PARLIAMENTARY
PROCEDURE AND PRACTICE
IN THE
DOMINION OF CANADA.

WITH HISTORICAL INTRODUCTION AND AN APPENDIX.

BY

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

THIRD EDITION.

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

TORONTO:
CANADA LAW BOOK COMPANY,
LAW PUBLISHERS.

1903.

Entered according to the Act of the Parliament of Canada, in the year one thousand nine hundred and three, by LADY ISABELLA BOURINOT

041750

AUTHOR'S DEDICATION.

(1st and 2nd Editions.)

TO

TRINITY COLLEGE, TORONTO,

MY ALMA MATER,

I DEDICATE THIS BOOK,

IN EVIDENCE OF MY AFFECTION AND ESTEEM.

EDITOR'S DEDICATION.

(3rd Edition.)

TO THE MEMORY OF

SIR JOHN GEORGE BOURINOT,

WHOSE LIFE AND LABOURS

HAVE WORTHILY HONOURED

HIS ALMA MATER.

PREFACE TO THIRD EDITION.

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

information. It may be further noted that the references herein to May's Parliamentary Practice are applicable (unless otherwise expressly stated) to the tenth edition of that invaluable work. T. B. F.

HOUSE OF COMMONS, Ottawa, Canada.
November 2nd, 1903.

PREFACE TO SECOND EDITION.

In presenting the second edition of this work to his readers, the author may explain that he has not only revised, but considerably enlarged it by bringing all the precedents down to the latest date, and by making it in other ways as useful as possible to all students of the constitutional system of Canada. The original plan and scope of the work have been continued. The first chapter gives an account of the origin and growth of parliamentary institutions, and contains all the material judicial decisions which bear on the respective legislative powers of the parliament of the dominion and of the legislatures of the provinces. The new rules and forms of the Senate in divorce proceedings have been given at length, and the practice of that House in such cases explained as fully as practicable. As this work is intended to show not merely the rules, orders and usages of the two Houses, but all the stages of constitutional development in Canada until the present time, there has been added at the end a chapter on the practical operation of parliamentary government. In this chapter it is endeavoured to explain the nature of the conventions and understandings which govern what is generally known as responsible or parliamentary government. As complete a list as possible has been given of all the text books and authorities which the student may wish to consult on the numerous questions which are necessarily, as a rule, very briefly reviewed in this work. The appendix contains the full text of the fundamental law or British North America Act of 1867, and of the amending imperial statutes, the commission and instructions of the governor-general, besides forms of petitions, and other proceedings

of the Senate and Commons. Some supplementary notes have also been added so that the work may contain all those precedents and proceedings of the session of the dominion parliament of 1891, which are necessary to the accuracy and completeness of the text. The author has had much reason to congratulate himself on the reception which the work, when just presented to the public, met not only in Canada, but in the majority of English-speaking countries, and he ventures now to express the hope that this new edition in its revised and enlarged form, will continue to meet with the same favour among all those interested in the important experiment of federal and parliamentary government which the Canadian people are endeavouring to work out on the continent of America.

HOUSE OF COMMONS, Ottawa, Canada.
October 30th, 1891.

PREFACE TO FIRST EDITION.

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

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

tures of the provinces. 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.
February 20th, 1884.

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CHAPTER I.

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PARLIAMENTARY INSTITUTIONS IN CANADA.

I. Canada under the French Règime.—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.—VIII. Constitution of Parliament.—IX. Constitution of the Provincial Governments and Legislatures.—X. Organization of the Northwest Territory.—XI. Disallowance of Provincial Acts.—XII. Distribution of Legislative Powers.—XIII. Judicial Decisions on questions of Legislative Jurisdiction.—XIV. Rules of Construction and Constitutional principles deduced from Judicial decisions.—XV. Position of the Judiciary.—Conclusion of Review.

I. Canada under the French Regime.—The history of parliamentary institutions in Canada commences towards the close of the eighteenth century. Whilst the country remained in the 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,(*a*) indeed, were the rule in all the old colonies of England on this continent—even in proprietary governments like that of Maryland. 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 (*b*). 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 (*c*). Of these two high

(*a*) Story on the Constitution of the United States (4th ed. Cooley), i 113, 114, 193 n; Bourinot's Local Government in Canada, in Johns Hopkins University Studies in Historical and Political Science, Baltimore, 1887.

(*b*) Garneau i. 87 (Bell's Translation). 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 to such things and concernments as are not provided for by these presents."

(*c*) The governor was styled in his commission, "Gouverneur et Lieutenant-Général en Canada, Acadie, Isle de Terre-Neuve, et autres

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 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 (*d*).

When the king reorganized the government of Canada, in the month of April, 1663, he decreed the establishment of a supreme council at Quebec (*e*). This body, afterwards called the superior council, consisted of the governor, the bishop, the intendant and five councillors, subsequently increased to seven (*f*), and eventually to twelve (*g*). 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

pays de la France Septentrionale"; and the intendant, "Intendant de la justice, Police et Finance du Canada," etc. Doutre et Lareau, Histoire du Droit Canadien, 130.

(*d*) See Commissions of Intendants in *Edits et Ordonnances*, iii.

(*e*) *Edit de création du conseil souverain de Quebec*, *Ib.*, i. 37.

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

(*g*) 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 the 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, Old Regime, 135-6.

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 without 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 (*h*). 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

(*h*) 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 Regime in Canada, 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., 10.

affairs (*i*). 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 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 French 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 (*j*). 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

(*i*) 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." Garneau i. 189-90.

(*j*) "The whole system of administration centered 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, 285-6.

material progress with a system of government which centralized all real authority several thousand miles distant(*k*).

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 (*l*). By these terms Great Britain bound herself to allow the French-Canadians the free exercise of their religion (*m*); and certain specified fraternities, and all communities of *religieuses* were guaranteed 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 (*n*).

(*k*) For accounts of system of government in Canada till the conquest, see Garneau i. 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, i. chap. ii.

(*l*) Atty.-Gen. Thurlow; Christie's Hist., i. 48. Garneau, ii. 70.

(*m*) The words "as far as the laws of Great Britain permit," appear in art. IV. of the Treaty of Paris. Doutre et Lareau, 328. They are also found in the Instructions given in 1763 to Governor Murray. *Ib.* 560.

(*n*) Atty.-Gen. Thurlow; Christie, i. 48. Miles, History of Canada under French Régime, app. xvi.

For three years after the conquest, the government of Canada was entrusted to military chiefs, stationed at Quebec, Montreal and Three Rivers, the headquarters of the three departments into which General Amherst divided the country (*o*). 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(*p*). 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 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 consent of the councils, courts of judicature and public justice, for the hearing of civil and crimnal causes, according to law and equity, and, as

(*o*) 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. Garneau, ii. 82.

(*p*) The others were East Florida, West Florida, and Grenada. The boundaries of the several governments are set forth in the proclamation.

near as may be, agreeable to the laws of England, with the right of appeal in all civil cases to the privy council (*q*). General Murray (*r*), 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 the declaration against transubstantiation (*s*). 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

(*q*) Proclamation of 7th October, 1763. Atty.-Gen. Thurlow's Report; Christie, i. 49-50. In the debates on the Quebec Bill, the vagueness of this proclamation was sharply criticized, 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, 29.

(*r*) Sir Jeffery Amherst was in reality the first, and Gen. Murray the second, governor-general of Canada. Garneau, ii 87; *supra*, 6.

(*s*) 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., 656, 657.

voice, and the power of adjourning, proroguing and dissolving all general assemblies (*t*).

No assembly, however, ever met, as the French-Canadian population were unwilling to take the test oath (*u*), 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 (*v*). 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 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 (*w*).

(*t*) Atty.-Gen. Thurlow, in Christie, i., 50-1.

(*u*) It was convoked *pro forma*, but never assembled. Garneau, ii. 92, 108.

(*v*) Garneau, ii. 87-8. Only one native French-Canadian was admitted into this council.

(*w*) Atty.-Gen. Thurlow, in Christie, i. 51-63; also Report of Atty.Gen. Yorke, and Sol.-Gen. De Gray, 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 pos-

III. The Quebec Act of 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 (*x*). But in 1774, a system of government was granted to Canada by the express authority of Parliament (*y*). This constitution was known as the Quebec Act, 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 frontiers of New England, Pennsylvania, New York province, the Ohio, and the left bank of the Mississippi; on the other, to the Hudson Bay Territory. Labrador, and the islands annexed to Newfoundland by the proclamation of 1763, were made part of the province of Quebec.

sessed 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. De Grey emphatically expressed it, tends to confound and subvert rights, instead of supporting them." *Ib.* 59.

(*x*) Report of Committee of Council, 1st May, 1849, app. A., vol. ii. Earl Grey's Colonial Policy.

(*y*) 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.

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 laws (*z*). The Act of 1774 was exceedingly unpopular in England and in the English-speaking colonies, then at the commencement of the Revolution (*a*). 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(*b*). 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"(*c*).

The new constitution came into force in October, 1774. The Act sets forth among the reasons for legislation that

(*z*) Cav. Deb., preface, iii.-vi.

(*a*) The American Congress, in an address to the people of Great Britain, September 5, 1774, declared the act to be unjust, unconstitutional, and most dangerous and destructive of American rights. (Christie, i. 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. See report for 1890 on Canadian Archives, by Douglas Brymner, xx-xxii.

(*b*) 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.

(*c*) Cav. Deb., iv.

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 about 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" (*d*). 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 (*e*). 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

(*d*) 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.

(*e*) 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. Christie, i. 1-2.

controversy, relative to property and 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 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 (*f*), who nominated a legislative council of twenty-three members, of whom eight were Roman Catholics (*g*). This body sat as a rule, with closed doors (*h*); 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

(*f*) 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*.

(*g*) Several were public functionaries. Garneau, ii. 166.

(*h*) 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." Doutre et Lareau, 719.

account of the government being fully occupied with the defence of the province during the progress of the American war of independence(*i*). In 1776, the governor-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 (*j*).

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 (*k*). One very important result of the war was the immigration into British North America of a large body of people who had remained faithful to British connection throughout the struggle in the old colonies, and were destined, with their descendants, to exercise a great 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 Can-

(*i*) It did not meet during 1776. Garneau, ii. 165.

(*j*) Garneau, ii. 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.

(*k*) In 1775, General Washington addressed a proclamation to the French Canadians; Baron D'Estaing, commander of the French Fleet, did the same in 1788. All such efforts were ineffectual. Speech of Sir G. E. Cartier, Confed. Deb., 57-60.

ada (*l*). By 1790, the total population of Canada had reached, probably, over one hundred and sixty thousand souls (*m*). In 1788, the governor created five judicial districts in Upper and Lower Canada, in order to meet the requirements of the new population (*n*). 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 enquiry into the state of the colony. In the session of 1791, George III. sent a message to the House of Commons declaring

(*l*) Introduction to Canada Census Statistics of 1871, vol. iv. xxxviii.-xlii.

(*m*) The population of New France in 1760 was estimated at between 60,000 and 70,000, a considerable emigration to France having taken 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. Garneau, ii. 205.

(*n*) 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. Doutre et Lareau, Histoire du Droit Canadien, 744. Bourinot's Local Government in Canada, 30.

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 (*o*). The result was the passage through Parliament of the Constitutional Act of 1791 (*p*), which was introduced in the House of Commons 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 (*q*). 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 the majority in one section, and the British in the other (*r*). The Quebec Act, it was

(*o*) March 4, 1791. Christie, i. 68-69.

(*p*) 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 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 Gray's Colonial Policy, ii., app. A.

(*q*) Mr. Adam Lymburner, a Quebec merchant, was heard on the 23rd March, 1791, at the bar of the House of Commons against the bill. Christie, i. 74-114.

(*r*) 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 British 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 com-

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 determination. In not a few cases, the judges were confessedly ignorant of French-Canadian jurisprudence (*s*).

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 no 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 (*t*). The speaker of the council

plete absurdity." For debates on bill see Eng. Hans. Parl. Hist. vol. 28, p. 1271; vol. 29, pp. 104, 359-459, 655. Garneau, ii. 198-203. Christie, i. 66-114.

(*s*) Christie, i. 67. Mr. Lymburner, *Ib.* 77-79; Report on Administration of Justice, 1787. Garneau, ii. 189-90.

(*t*) No titles were ever conferred under the authority of the Act. Colonel Pepperrell 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

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 (*u*)—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 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 *bonâ 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

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 a view of giving an Imperial recognition of the services of distinguished colonists in different parts of the Empire.

(*u*) 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. Garneau, ii. 202.

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 (*v*). The governor and executive council were to remain a court of appeals until the legislatures of the provinces might make other provisions (*w*).

(*v*) 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. Christie, i. 122.

(*w*) An ordinance of the province of Quebec had so constituted the executive. See Doutre et Lareau, 713.

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 (*x*). 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 on 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 (*y*). The government of Upper Canada was organized at Kingston, in July, 1792, when the members of the executive and legislative council 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 day of September, 1792, and was formally opened by Lieutenant-Governor Simcoe (*z*). Both legislatures, even

(*x*) 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. Christie, i. 124.

(*y*) 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 Christie, i. 126-8, where names of members of both 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.

(*z*) 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, 29.) The legislature of Upper Canada was re-

in those early times of the provinces, assembled with the formalities that are observed at the opening of the Imperial Parliament (*a*). 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 (*b*).

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" (*c*).

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

moved to York, now Toronto, in 1797—that town having been founded and named by Governor Simcoe in 1794. (Withrow, 292.) The provincial legislature met in a wooden building on what is now known as Parliament Street. (Scadding's Toronto, 26-7.)

(*a*) The Duke de la Rochefoucault-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. 88.

(*b*) See chap. entitled, "Rules, Orders and Usages."

(*c*) Despatch of Lord Grenville to Lord Dorchester, 20th Oct., 1789, given in App. to Christie, vi. 16-24. 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 constituional system "an image and transcript of the British constitution." See Journals of U.C., 1792; E. Commons Papers, 1839, vol. 33, p. 166.

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(*d*). 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 arrayed against each other in the bitterest antagonism (*e*). 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

(*d*) Mr. W. Macdougall: Mercer v. Attorney-General for Ontario, Canada Sup. Court Rep., vol. v. 545-6.

(*e*) "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., 7.

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 (*f*).

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 (*g*). 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 (*h*). In Prince Edward Island the political difficulty arose from the land monopoly (*i*), 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 political 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

(*f*) Lord Durham's R., 56-58.

(*g*) Mr. Young to Lord Durham, R., 75, and App. At the time of the border difficulties with Maine, the Nova Scotia legislature voted the necesssary 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."

(*h*) Lord Durham's R., 74.

(*i*) *Ibid.* 75.

the imperial administration in matters which should be left wholly to the provincial governments'' (*j*). 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 1837-38 (*k*), which inflicted much injury on the province, though happily it was confined to a very small part of the people. 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 (*l*); 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 disturbance occurred (*m*), and the leaders of the popular party were among the first to assist the authorities in their efforts to

(*j*) *Ibid.* 74.

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

(*l*) Life of W. Lyon Mackenzie, C. Lindsey. Withrow, chap. xxviii.

(*m*) "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., 74.

preserve the public tranquility, and to express themselves emphatically in favour of British connection (*n*).

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 (*o*). Lord Gosford came out in 1835 as governor-general and as head of the commission(*p*), 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(*q*). 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(*r*) 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(*s*), which continued in office until the arrival of

(*n*) See remarks of Mr. Joseph Howe at a public meeting held at Halifax, N.S., in 1838. Howe's Life and Letters, i. 171, 179.

(*o*) Garneau, ii. 414. Journals, L. C., 1834, p. 310.

(*p*) Withrow, 365. Sir C. Gray and Sir G. Gipps were associated with Lord Gosford on the Commission.

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

(*r*) 1 and 2 Vict., c. 9; 2 and 3 Vict., c. 53.

(*s*) Christie, v. 51. The first ordinance suspended the *Habeas Corpus* and declared that the enactment of the council should take effect from date of passage.

Lord Durham, who superseded Lord Gosford as governor-general(*t*), and was also entrusted with large powers as high commissioner(*u*) for the adjustment of certain important affairs, affecting the provinces of Upper and Lower Canada." Immediately on Lord Durham's arrival he dissolved the special council just mentioned and appointed a new executive council(*v*). This distinguished statesman continued at the head of affairs in the province from the last of May, 1838, until the 3rd 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(*w*). 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(*x*).

V. Union Act, 1840.—The immediate result of Lord Durham's mission was an elaborate report(*y*), in which he

(*t*) Christie, v. 47-9. Sir John Colborne was only administrator at this time.

(*u*) For instructions, in part, to Lord Durham and his remarks in the House of Lords on accepting the office, see Christie, v. 47-50.

(*v*) Christie, v. 150-51. After the departure of Lord Durham a "special council" was again appointed. *Ib.* 240. See *infra* 26.

(*w*) For debates on question, text of ordinance and accompanying proclamation, see Christie, v. 158-83.

(*x*) This bill was introduced by Lord Brougham, the severest critic of Lord Durham's course in this matter. (I 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. Christie, v. 183-94.

(*y*) Officially communicated to Parliament, 11th Feb., 1839.

fully reviewed the political difficulties of the provinces, and recommended imperial legislation with the view of remedying existing evils and strengthening British connection. 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(*z*). 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 3rd of May, 1839, of a royal message(*a*), recommending a union of the Canadas. In the month of June, in the same year, Lord John Russell introduced a bill to reunite 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,

(*z*) "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.

(*a*) Mr. Poulett Thomson's remarks to special council, 11th Nov., 1839. Christie, v. 316.

and more information obtained on the subject(*b*). Mr. Poulett Thomson(*c*) was appointed governor-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 reunion of the provinces under one legislature, as a measure of indispensible and urgent necessity"(*d*). 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"(*e*).

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 reunite the two provinces. Accordingly, Lord John Russell, in the session of 1840, again brought forward his bill entitled, "An Act to reunite

(*b*) Christie, v. 289-90. The opinion of the British Parliament was decidedly favourable to the bill.

(*c*) Mr. Thomson was a member of the Imperial Parliament, and of decidedly advanced views in politics. Sir John Colborne was governor in the interval betweeen Lord Durham's retirement and Mr. Thomson's appointment.

(*d*) Special Coun. J., Nov. 11, 12, 13, 14. Christie, v. 316-22.

(*e*) Leg. Coun. J. (1839-40), 14, &c. Leg. Ass. J. (1839-40), 16, 57, 63, 66, 161, 164. Christie, v. 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.

the provinces of Upper and Lower Canada, and for the government of Canada''(*f*), 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(*g*). The Act provided for 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, constituted 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 repre-

(*f*) 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.

(*g*) Mr. Poulett Thompson, now created Lord Sydenham, issued 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. (Christie, v. 357-8.) The first parliament of the United Canadas was held at Kingston, 14th of 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.

sentatives 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(*h*). A session of the legislature should be held once, at least, every year, and each legislative assembly was to have a duration of four years, unless sooner dissolved. Provision was made for a consolidated revenue fund, on which the first charges were 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(*i*).

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

(*h*) 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 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. Christie, v. 334-48.

(*i*) See chap. on Supply.

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 people"(*j*). Subsequently he communicated to the legislature of the united provinces two despatches from Lord John Russell(*k*), 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-gen-

(*j*) In answer to an address from the assembly, 13th December, 1839. (Christie, v. 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.

(*k*) **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, 23.

eral 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"(*l*). 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, 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" (*m*). Nevertheless, during the six years that elapsed after the passage of the 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

(*l*) 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. Journal of Ass., 20th August, 1841.

(*m*) 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.

of the principle as to the manner in which it should be worked out''(*n*). 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''(*o*). 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(*p*). By 1848 the provinces of Canada, Nova Scotia, and New Brunswick(*q*) 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

(*n*) 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.

(*o*) Grey, Colonial Policy, vol. i. 206-34; Adderley, 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. Bourinot, Canadian Studies in Comparative Politics, 18 note.

(*p*) 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.

(*q*) Earl Grey was colonial secretary in 1848, when the system was fully inaugurated in the maritime provinces. E. Commons papers, 1847-48, vol. 42, pp. 51-88.

and officials prevented from sitting in either house(*r*). 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(*s*), 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(*t*). 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(*u*). 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 the ordinance was revoked and a system established in both provinces which met with general approval(*v*). 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 dis-

(*r*) Chap. iv.

(*s*) 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. Christie, v. 347.

(*t*) Christie, v. 356.

(*u*) Introduced by Mr. Harrison; 4 & 5 Vict., c. 10.

(*v*) See Bourinot's Local Government in Canada; Turcotte, 1st Part, 97, 180; 2nd Part, 260, 384. Also, Cons. Stat. of Upper Canada, c. 54; of Lower Canada, c. 24.

posed of in town or county oganizations, 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(*w*). 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 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

(*w*) 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.

of 1791 attempted to establish a connection between Church and State in Canada, it signally failed(*x*).

Nor can the writer well leave out a brief reference to the abolition of the seigniorial tenure, after an existance 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(*y*).

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 provinces, but their appointment rested with the home government and the governors. In the appointments, Canadians were sys-

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

(*y*) 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 i., chap. iii.; Parkman's Old Régime, chap. xv.; Turcotte, ii., 161, 203, 234; Const. 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 rental. Garneau, i., 185. Report of Seigniorial Commission.

tematically 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"(*z*). 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(*a*). 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

(*z*) Lord John Russell, 1839. Journals of Ass. U.C., App. BB.

(*a*) 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.

other legislation in the same direction of improving the machinery of administration(*b*).

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(*c*). 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(*d*). The last tariff framed by the Imperial Parliament for the British possessions in North

(*b*) 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. 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. Pap., 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 later legislation. See Rev. Stat. of Canada, c. 17.

(*c*) Ss. 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, was brought into force, and duly provided a permanent Civil List in place of that arranged by the imperial authorities. See Cons. Stat. of Canada, c. 10.

(*d*) See speech of Lord Elgin, sess. of 1847, Journal 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.

America was mentioned in the speech at the opening of the legislature in 1842(*e*), and not long after that time, Canada found herself, as well as 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(*f*) 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(*g*). 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.

(*e*) Ass. Jour., 1842, p. 3.

(*f*) Imp. Stat. 9 and 10 Vict., c. 94. Todd, Parl. Gov. in the Colonies, 176-80. See speech of Lord Elgin, 1847, Jour. 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. 218.

(*g*) Leg. Ass. J. (1849), 43, 48, and App. C.; Imp. Act, 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 posssibly exist for monopolies and restrictions in favour of British shipping. App. C. as above.

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(*h*), to denationalize, if possible, the French Canadian province. The repeal of the clause in 1848 was one evidence of the harmonious operation of the union, and of better feeling between the two sections of the population(*i*). 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 (*j*). 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

(*h*) "Without effecting the change so rapidly or so roughly as to shock 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 none but a decidedly English legislature." P. 110, *et seq.*

(*i*) See chap. on "Rules, Orders and Usages."

(*j*) Leg. Ass. (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. See 22 and 23 Vict., c. 10, Imp. Stat., with reference to speaker of L.C.

were allowed to retain their seats during their lives(*k*). The speaker was appointed by the Crown from the council until 1862, when he was elected by the members from among their own number(*l*). The first election of councillors under the new Act took place in the summer of 1856.

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(*m*) was the fact that the Act gave to each province the same representation in the legislature, though Lower Canada had in 1840 the greater population(*n*). But the large immigration that

(*k*) 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.

(*l*) 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 his being obliged to leave the chair from illness, etc. The first election took place in 1862, March 20, when Sir Allan McNab was chosen speaker.

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

(*n*) 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;

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 proviso(*o*) 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(*p*).

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

of New Brunswick, in 1840, 156,162; of Assiniboia, 7,704; 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.

(*o*) 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. Garneau, ii. 480.

(*p*) 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, in the edition of 1859, accused Sir Francis Hincks of having been the inspiring cause; but in a pamphlet published in 1877, the latter denied it most emphatically. In a subsequent edition, the onus of the change is placed on Mr. Henry John Boulton, a member of the legislative assembly, who was in England in 1854, about the same time as Sir F. Hincks. Garneau (ed. of 1882), iii., 275, 376. In 1854, the total number of representatives in the assembly was 130, 65 from each province. 16 Vict., c. 152.

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(*q*). As a matter of justice, it was urged, no measure touching the interests of a particular province should be passed, except with the consent of a majority of its representatives"(*r*). The principle had more or less recognition in the government, and legislature after 1848(*s*). The very formation of the ministry, in which each province 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(*t*). 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

(*q*) Messrs. Lafontaine and Caron to Mr. Draper, 1845. Turcotte, i., 202-10.

(*r*) Mr. Baldwin resigned in 1851 on a vote of the Upper Canada representatives adverse to the court of chancery, Turcotte ii., 171-3. See remarks of Sir John A. Macdonald, Confederation Debates, 30.

(*s*) See resolution moved by Mr. (now Sir Hector) Langevin, 19th of May, 1858.

(*t*) See amendment moved by Mr. Cauchon to Mr. Thibaudeau's motion. Jour. Ass. (1858), 145, 876. Also *Ib.* (1856), 566.

province, and preserving the equality of representation provided in the constitution of 1840(*u*).

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(*v*). 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, 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(*w*). The union of the pro-

(*u*) 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. Turcotte, ii., 477-487. See Dent, ii. 429.

(*v*) Sir J. A. Macdonald. Con. Deb., 26; Sir E. P. Taché, *Ib.*, 9.

(*w*) 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. Taché, *Ib.*, 9.

vinces 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"(*x*). 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(*y*); but no practical result was ever reached until 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,

(*x*) Rep. 116-21. He preferred a legislative union. See for various schemes of union, Brymner's report on Canadian archives for 1890, pp. 23-24.

(*y*) Conf. Deb., Sir G. E. Cartier, 53; Ass. J. (1858), 1043. See also Mr. Brown's speech (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.

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(*z*). 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"(*a*). Some time, however, had to elapse before the

(*z*) For historical accounts of initiation of confederation see Doutre, Constitution of Canada, 15; Gray, Confederation of Canada, vol. i.; Turcotte, ii., 518-59; Confederation Debates, 1865, especially speeches of Sir E. P. Taché, 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. Taché, 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, Whalen and Pope. Newfoundland, Messrs. Shea and Carter.

(*a*) The address was agreed to in the legislative council by 45 contents to 15 non-contents, Jour. (1865, 1st sess.), 130; in the assembly by 91 yeas to 33 nays, Jour., 192-3; Confed. Debates, 1865, p. 962. Sir E. P. Taché 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 Northwest, and other important questions. Jour. 1865, 2nd sess., 7-16.

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 to 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(*b*). 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(*c*). The new constitution

(*b*) The Westminster Palace Conference was held in London, in December, 1866, and the result was the Union Act of 1867.

(*c*) 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 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.

came into force on the first of July, 1867, and the first parliament of the united provinces met on November of the same year(*d*)—the Act requiring it to assemble not later than six months after the union.

The confederation, as inaugurated in 1867, consisted only of the four provinces of Ontario, Quebec, Nova Scotia and New Brunswick. 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 Northwest Territory might also at any time be admitted into the union on the address of the Canadian Parliament. The acquisition of the Northwest 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 the Canadian delegates went to England(*e*). During the first session of the parliament of Canada, an address was adopted praying Her Majesty to unite Rupert's Land and the Northwest Territory to the Dominion(*f*). This address received a favourable response, but it was found necessary in the first place to obtain from the Imperial

(*d*) 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, ss. 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.

(*e*) Leg. Assembly J., 1865, 2nd sess., 12-13. For papers on the subject of the acquisition of the territory, see Can. Sess. P., 1867-8, No. 19, and p. 367 of Journals.

(*f*) Can. Com. J. (1867-8), 67.

Parliament authority to transfer to Canada the territory in question. An Act was passed in the month of July, 1868(*g*), and in accordance with its provisions, negotiations took place between Canadian delegates and the Hudson's Bay Company for the surrender of the Northwest 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(*h*), and an Act at once passed for the temporary government of Rupert's Land and the Northwest Territories when united with Canada(*i*). 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 Northwest Territories. In the autumn of 1869 an order in council was passed appointing Hon. W. McDougall the first lieutenant-governor of the territories, but the outbreak of an insurrection among the French half-breeds prevented him from ever exercising executive functions. 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 authorities to arrange

(*g*) Imp. Stat., 31 and 32 Vict., c. 105 (Can. Stat. for 1869), entitled "An Act for enabling Her Majesty to accept the 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."

(*h*) Can. Com. J. (1869), 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.

(*i*) Can. Stat. 32 and 33 Vict., c. 3.

terms on which the people of the Red River might enter confederation. In the session of 1870, the Canadian parliament passed an Act(*j*) to establish and provide for the government of Manitoba—a new province formed out of the Northwest 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(*k*), it was declared that after the 15th of July, 1870, the Northwest 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. The members for the House of Commons took their seats in the session of the same year(*l*)—the new senators in the session of 1872(*m*). When we come to consider the provincial constitutions we shall refer to the local goverment of Manitoba as well as to the provisions made in several statutory enactments for the administration of affairs in the Northwest.

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

(*j*) 33 Vict., c. 3. The limits of the province were enlarged in 1881; Can. Stat., 44 Vict., c. 14. See Rev. Stat. of Can., c. 47. Also Man. Stat., 44 Vict., cc. 1, 12, 13, 14. Also, Imp. Stat., 34 and 35 Vict., c. 28.

(*k*) In accordance with s. 146, B. N. A. Act, 1867; Canada Stat. 1872, p. lxiii.

(*l*) Can. 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., 152.

(*m*) Sen. J. (1872), 18.

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 of a transcontinental railway(*n*). The members for the province took their seats in the Senate and House of Commons during the session of 1872(*o*).

The province of Prince Edward 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 confederaion 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(*p*). 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(*q*). 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(*r*). The members for the two houses took their seats for the first time during the second session of 1873(*s*).

Newfoundland was also represented at the Quebec convention of 1864, but the general elections of 1865 resulted

(*n*) Can. Com. J. (1871), 193-99; Parl. Deb., 1871. Can. Stat. for 1872, lxxxiv. Also, as to preparatory steps, Can. Sess. Pap., No. 59, 1867-8, pp. 3-7.

(*o*) Sen. J. (1872),18; Com. J. (1872), 4. The elections for the Commons were held in accordance with 34 Vict., c. 20.

(*p*) Can. Com. J. (1873), 401-403.

(*q*) 36 Vict., c. 40.

(*r*) Can. Stat. for 1873, p. ix.

(*s*) Sen. J. 1873, 2nd session, 9. Com. J., *Ib.* 2-4.

adversely to the union(*t*). 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 "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 "(*u*); 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 Northwest 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(*v*).

(*t*) Turcotte, ii., 562.

(*u*) Can. Com. J. (1869), 221.

(*v*) Can. Com. J. (1878), 256-7; Can. Stat. 1881, p. ix, Order-in-Council. Can. Hans. (1878), 2386. (Mr. Mills.)

VII. Constitution of the General Government and Parliament.—The Dominion(*w*) 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 provinces 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, and 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 ad-

(*w*) The title of Dominion (s. 3, of B. N. A. Act of 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." See remarks of Sir John A. Macdonald, Confed. Deb., 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." Christie, i., 9. The old commonwealth of Virginia was known as "the Old Dominion."

ministered "according to the well understood principles of the British constitution"(*x*).

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. He holds office during the pleasure of the Crown, but he may exercise his functions for at least six years from the time he has entered on his duties(*y*). 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 severeign(*z*). His first duty, when he enters on his office, 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(*a*).

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

(*x*) These quotations are from the Quebec resolutions, Can. Leg. Ass. 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 to be vested in the Queen."

(*y*) Colonial Reg. sec. 7, Col. Office List, 1889, p. 322. 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.

(*z*) Todd, 90; Col. Reg., sec. 165.

(*a*) Instructions to governor-general, Can. Sess. P., 1870, 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.

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 not merely "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"(*b*). Without entering at length into 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 of parliament(*c*); to administer the oaths of allegiance and office(*d*); to transmit to the imperial government copies of all laws assented to by him or reserved for the signification of the royal assent(*e*); to administer the prerogative of pardon (*f*); to appoint all ministers of state, judges, and other public officers, and to remove or suspend them for sufficient cause(*g*). He may also appoint a deputy or deputies to exercise certain of his powers and functions(*h*). He may not leave the dominion upon any pretence whatsoever without having first obtained permis-

(*b*) 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 xviii. on bills, s. 25. 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.

(*c*) Letters-patent, 1878, s. 5.

(*d*) Instructions, 1878, s. 2.

(*e*) *Ib.* s. 4.

(*f*) *Ib.* s. 5. See Todd, 270.

(*g*) Letters-patent, ss. 3, 4.

(*h*) *Ib.* s. 6; also B. N. A. Act, 1867, s. 14. See chapter iii., s. 2, for appointment of deputy-governors since 1840.

sion to do so through one of the principal secretaries of state(*i*). In case of the death, incapacity, removal(*j*), or absence from Canada of the governor-general, his powers are vested in a lieutenant-governor or administrator appointed by the King, 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(*k*).

The senior executive councillor frequently administered the government in the absence of the governor-general before the union of 1840(*l*). But whenever the lieutenant-governor was in the country, during the period in question, it was his duty to administer the government(*m*). 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(*n*).

(*i*) Instructions, s. 6.

(*j*) 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. l., 701; Todd, 105, 106.

(*k*) Letters patent, s. 7. *Canada Gazette*, Dec. 30, 1882.

(*l*) 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. Christie, i., 259. On the death of the Duke of Richmond, in 1819, the government devolved on Mr. Monk, as senior executive councillor. Christie, ii., 322.

(*m*) General Prescott on departure of Lord Dorchester in 1796, Christie, i., 173; Sir R. Shore Milnes in 1799, *Ib.* 203; Sir F. Burton in 1824, *Ib.* iii., 55. No such official now exists in the dominion, the functions of the present lientenant-governors being confined to the provinces to which they are appointed.

(*n*) In 1841, Sir. R. D. Jackson; 1845, Lord Cathcart; 1853, Lieut.-Gen. Rowan; 1857, Sir W. Eyre; 1860, Lieut.-Gen Williams;

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(*o*). 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. Since the revolution of 1688, the privy council of England has had 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(*p*). 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(*q*). 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

1865, Lieut.-Gen. Michel; 1874, Major-Gen. O'Grady Haly; 1878, 1881-2, Sir P. L. McDougall. See *Canada Gazette*, Dec. 30, 1882.

(*o*) B. N. A. Act, 1867, s. 11.

(*p*) Todd, Parl. Gov. in England, ii., 79.

(*q*) Todd, ii., 179. The cabinet council or ministry who hold the principal offices of state, are first sworn in as privy councillors. May, ii., 79. Macaulay, c. 20.

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(*r*). In Canada, however, there is as yet no such distinction; for the term "ministry" or "cabinet" has been indifferently applied to those members of the privy council, who might be summoned by the governor-general to aid and advise him in the government of the dominion. But in the session of 1887 an Act was passed with the view of initiating the English system of having political heads of departments, who will commence their official career by holding certain offices which will not necessarily give them a position in the cabinet(*s*). 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, 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(*t*). In 1865, this body comprised in all twelve members, six from each province; two attorneys-general, two solicitors-general, a receiver-general (also minister of militia), minister of finance, commissioner of crown lands, minister of agricul-

(*r*) Taswell-Langmead, Cons. Hist., 707. And not only is the existence of the cabinet council unknown to th elaw, 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 fast of their having been called to seats in the cabinet council is not formally promulgated. Todd, ii., 181.

(*s*) Remarks of Sir J. A. Macdonald on the department of trade and commerce, Com. Hans., [1887] 862, 863.

(*t*) Can. Cons. Stat., 168, 169.

ture and statistics, commissioner of public works, president of council, provincial secretary, and post-master-general(*u*). In all the provinces of the dominion, the official body advising the lieutenant-governor is still authoritatively recognized as the executive council(*v*).

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 reorganized, and new ones established, to meet the changed conditions of things. The privy council was composed of the following ministers(*w*): minister of justice and attorney-general(*x*), minister of militia(*y*), minister of customs(*z*), minister of finance(*a*), minister of public works (*b*), minister of inland revenue(*c*), minister of marine and

(*u*) Confed. Debates, 1865, p. vii. Sir E. P. Taché was the premier of the Taché-Macdonald ministry, and held two offices, receiver-general and minister of militia.

(*v*) B. N. A. Act, 1867, ss. 63, 64; 45 Vict., c. 2, Quebec Stat.; c. 13, Ont. Rev. Stat.; Man. Cons. Stat., c. 6; 33 Vict., c. 3, s. 7, Can. Stat.; British Colum. Cons. Stat., c. 4, ss. 2, 3; P. E. Island, Dom. Stat., 1873, p. xii.

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

(*x*) Functions of department set forth in 31 Vict., c. 39.

(*y*) 31 Vict., c 40.

(*z*) 31 Vict., c. 43.

(*a*) 31 Vict., c. 5; 32 and 33 Vict., c. 4, and other acts relating to expenditures and revenues.

(*b*) 31 Vict., c. 12.

(*c*) 31 Vict., c. 49.

fisheries(*d*), postmaster-general(*e*), minister of agriculture(*f*), secretary of state of Canada(*g*), receiver-general (*h*), secretary of state for the provinces, president of the privy council(*i*). In 1873, on a change of government, the number of ministers was increased to fourteen, two of them without portfolios(*j*), but by subsequent rearrangement the number was reduced to thirteen as before, and Prince Edward Island, now a part of the confederation, was represented by one member in the cabinet(*k*). On two occasions since 1878, the speaker of the Senate received a seat in the council, though without portfolio(*l*), 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

(*d*) 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.

(*e*) 31 Vict., c. 10; 38 Vict., c. 7.

(*f*) 31 Vict., c. 53.

(*g*) 31 Vict., c. 42.

(*h*) 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.

(*i*) Neither of those offices was provided for by special act.

(*j*) Hon. E. Blake and Hon. R. W. Scott, Annual Register, 1878, p. 30.

(*k*) *Ib.* 30-31. P. E. Island has at present no representative in the cabinet; nor have Manitoba and British Columbia. The number of ministers in the cabinet is now 14 (in April, 1891), of whom two are without portfolios.

(*l*) Hon. Mr. Wilmot, in 1878; Hon. Mr. (afterwards Sir David Macpherson, in 1880, on appointment of former to lieutenant-governorship of New Brunswick. See *Canada Gazette*, Nov. 9, 1878; *Ib.*, Feb. 12, 1880.

and management of Indian affairs, dominion lands, geological survey, and some other matters previously entrusted to the secretary of state for Canada. The geological survey of Canada forms a branch, and is under the charge of a director who must necessarily be a man of high scientific attainments(*m*). The minister of the interior or head of any other department appointed for this purpose by the governor in council, shall be the superintendent-general of Indian affairs(*n*). The department of secretary of state for Canada remains in existence, but its functions are confined to state correspondence , the preservation of all state records, and papers not specially transferred to other departments, the registration of all instruments of summons, proclamations, commissions, letters-patent, writs, and other documents issued under the great seal and requiring to be registered(*o*). A department of public printing and stationery was organized in 1886, and is under the management for the time being of the secretary of state(*p*). In 1879, the office of receiver general was abolished, and the duties assigned to the finance minister(*q*). At the same time the department of public works was divided into two separate departments, presided over by two ministers—one

(*m*) Rev. Stat of Can., cc. 22, 23.

(*n*) Rev. Stat. of Can., c. 43. The premier, Sir J. A. Macdonald, while president of the council, held the office for some years. Parl. Companion for 1885.

(*o*) 31 Vict., c. 42; Rev. Stat. of Can., c. 26.

(*p*) 49 Vict., c. 22; Rev. Stat. of Can., c. 27.

(*q*) 42 Vict., c. 7; Rev. Stat. of Can., c. 28. 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, 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.

designated minister of railways and canals; the other, minister of public works. These changes were rendered necessary in the department of the interior and that of public works; 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 other department by the construction of the Canada Pacific Railway, which had been at that time undertaken by the government. In 1884, the department of marine and fisheries was divided into a department of marine, and a department of fisheries, presided over by one minister and two deputies(*r*). In 1892, however, the department of marine and fisheries was again constituted, and one deputy minister for the whole department was authorized(*s*).

In the session of 1887 a new scheme of organization was provided for several departments. In the first place, "there shall be a department of trade and commerce, presided over by a minister." Then the departments of customs and inland revenue respectively are to be placed under the control and supervision of the minister in question or of the minister of finance, as the governor in council from time to time directs (*t*). The governor in council may appoint also a controller of customs and a controller of inland revenue, each of whom shall, under the general instructions of the minister first mentioned, be the parliamentary head of these departments(*u*). It is also provided that the governor in council may appoint an officer who shall be called the solicitor-general of Canada, and who shall assist the minister of

(*r*) 47 Vict., c. 18; Rev. Stat. of Can., c. 25.

(*s*) 55 and 56 Vict., c. 17.

(*t*) 50 and 51 Vict., c. 10.

(*u*) 50 and 51 Vict., c. 11.

justice in the counsel work of the department of justice. He may hold a seat in either house of parliament, provided he is elected while he holds such office and is not otherwise disqualified(*v*).

VIII. Constitution of Parliament.—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." We have already seen that the sovereign is represented by a governor-general who, in person or by deputy, opens and prorogues parliament(*w*). He also assents to all bills in Her Majesty's name(*x*), and may at any time dissolve parliament(*y*), a prerogative of the Crown to be exercised with 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(*z*). Under the present system of constitutional government, such a condition of things cannot

(*v*) *Ib.*, c. 14. These statutes were brought into force by proclamation on the 3rd December, 1892. The department of customs and inland revenue were placed under the control and supervision of the minister of trade and commerce. In 1897 the offices of minister of customs and minister of inland revenue were revised, and the department of customs and department of inland revenue re-constituted as separate departments independent of the department of trade and commerce. 60 and 61 Vict., c. 18. See also Can. Hans. 1896 and 1897.

(*w*) See chapter on Public Bills.

(*w*) See chap. iii., s. 2.

(*y*) Governor-General's letters patent,, 1878, s. 5; B. N. A. Act, 1867, s. 50.

(*z*) 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. Christie, i., 283.

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"(*a*). 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(*b*). Occasions, however, can very rarely arise when he should feel himself bound, for powerful 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 be 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

(*a*) Sir T. E. May, New South Wales Leg. Ass. V. and P., 1877-78, vol. i., 451; Todd, Parl. Gov. in the Colonies, 561.

(*b*) "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 minister's 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.

on the broadest ground of the public welfare(*c*). Elsewhere the provisions in the Act of Union respecting the constitution of the Senate and of 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(*d*).

In the constitution of the Senate some 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" (*e*). 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 entrance of Prince Edward Island(*f*). 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" (*g*). 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(*h*). Special regard has also

(*c*) See mem. of Lieut.-Governor Robitaille, Oct. 30, 1879, in a Quebec constitutional crisis, in which he refused a dissolution to Mr. Joly, who thereupon resigned. Todd, 565. See also *Ib.* 573. Also Bourinot, Federal Government in Canada (Johns Hopkins University Studies, 7th Series) 83.

(*d*) Chap. ii.

(*e*) Sir A. Campbell, Confed. Deb., 21.

(*f*) See chap. iv., s. 1.

(*g*) Sir J. A. Macdonald, Confed. Deb. 35.

(*h*) *Ib.* 36; see chap. iv., s. 1.

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(*i*).

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 1891, been increased to two hundred and thirteen, in accordance with the principle of representation laid down in the constitution(*j*). 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 Northwest. 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

(*i*) Hon. G. Brown said in the debate on Confederation (90): "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.

(*j*) Chap. iv., s. 3. As a result of the returns of the census of 1901, the number of members was fixed by the Act of 1903 at 214. See Hansard Debate, March 31st, 1903, *et seq.* Also Sup. Court Canada Reports for April, 1903.

—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''(*k*). 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 ''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(*l*). In this connection it is interesting to note that in 1867, the writs for the first 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 returned on the 24th of October(*m*). The first parliament actually assembled in the month of November, 1867, and was dissolved on the 8th of July, 1872, 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 returned on the 12th of October(*n*), but parliament did not actually assemble until the 5th of March, 1873. The second parliament continued in exist-

(*k*) Sir J. A. Macdonald, Confed. Deb., 38.

(*l*) Sir J. A. Macdonald, Confed. Deb., 39; B. N. A. Act, 1867, S. 50.

(*m*) Jour. (1867-8), vii.-x.

(*n*) Jour. (1873), vi.-xi.

ence only until the 2nd of January, 1874, when it was dissolved, the writs for the new House 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(*nn*). The third parliament assembled on the 26th of March and was dissolved on the 17th of August, 1878, 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(*o*). 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(*p*). The fifth parliament assembled on the 8th of February, 1883, and was dissolved on the 15th of January, 1887(after a constitutional existence of about four years and five months from the date of the return of the writs in 1882(*q*). The sixth parliament was called together on the 13th of April, 1887, and was dissolved on the 4th of February, 1891, after a constitutional existence of about two months less than four years from return of writs in 1887(*r*). The seventh parliament met on the 29th of April, 1891. The longest session since 1867 was held in 1885, when it reached 173 days, and the shortest in the autumn of 1873—the second session

(*nn*) Jour. (1874), Proclamations, v.-ix. A separate proclamation had to be issued for Algoma, writ also returnable on the 12th of March.

(*o*) *Ibid.* (1879), vii.-x.

(*p*) Jour. (1883), v.-vi.

(*q*) *Ib.* (1887), ix.

(*r*) See *Canada Gazette*, February, 1891.

that year—when there occurred a ministerial crisis and parliament closed, after sitting for only sixteen days. The seventh parliament was dissolved April 24th, 1896, and the eighth parliament met on the 1st August in the same year. This parliament was dissolved October 9th, 1900, and the ninth parliament met February 6th, 1901(*s*).

The provisions representing the election of speaker, quorum, privileges, elections, money votes, royal assent, and reserved bills, oath of allegiance, use of the French language, will be found in the British North America Act, 1867. 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(*t*). The first charge thereon is the cost incident to the collection and management of the fund itself; the 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, so far as salary is a standard of recognition, in the third class among colonial governments"(*u*).

IX. Constitution of the Provincial Governments and Legislatures.—Under the Act of 1867, the dominion government

(*s*) See "The Statistical Year Book of Canada," which gives statistics of the legislatures of the provinces since confederation, as well as of the dominion parliament.

(*t*) Ss. 102-126. See Rev. Stat. of Can., c. 29, respecting the consolidated revenue fund, collection and management of the revenue and auditing of public accounts.

(*u*) Dom. Sess. P., 1869, No. 73.

assumed that control over the respective provinces which was previously exercised by the imperial government (*v*). 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" (*w*). Every lieutenant-governor, on his appointment, takes the same

(*v*) "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.

(*w*) B. N. A. Act, 1867, ss. 58-59. In the memorable case of Mr. 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 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. Also, Bourinot, Federal Government in Canada, 80 note. For communication to parliament in accordance with law, Can. Com. Jour. (1880), 24; Sen. J. (1880), 22-23.

oaths of allegiance and office as are taken by the governor-general (*x*). 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 (*y*).

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 (*z*). 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-governor can now be considered to represent the Crown (*a*). 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

(*x*) Sec. 61, B. N. A. Act, 1867. See form of oaths in Can. Sess. P., 1884, No. 77.

(*y*) B. N. A. Act, ss. 63, 65, 66, 67.

(*z*) Despatch of the colonial secretary, 1879; Can. Sess. 1880, No. 18, p. 8.

(*a*) "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.* Atty.-Gen. of Ontario, 671.

the legislative assemblies in the provinces(*b*). 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"(*c*).

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"(*d*). 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 instance of eighty-two members, elected for the same electoral districts which returned members to the House of Commons(*e*). After the census of 1871, there was a re-arrangement of constituencies, and the

(*b*) Todd, 392-93.

(*c*) Ritchie, C.J., Mercer *vs.* Att.-Gen. of Ontario, Can. Sup. Court R., vol. v, 637, 643.

(*d*) Leg. Ass. J. (1866), 362.

(*e*) Leg. Ass. J. (1866) 363, resolution 12. B. N. A. Act, 1867, ss. 69, 70, 1st sch.

number of representatives was increased to eighty-eight in all(*f*). In 1885 and 1889(*g*) the representation was enlarged to ninety-one members. It was, in 1897 (*h*), made ninety-three members, and in 1902 was further increased to ninety-seven members (*h*).

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(*i*). The qualifications of the legislative councillors of Quebec are the same as those of the senators from the province(*j*). The legislative assembly was composed of sixty-five members, elected until 1890 for the same electoral districts represented by the members of the House of Commons for the province(*k*). At present (1903) the legislative assembly is composed of seventy-four members(*l*). 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

(*f*) See chap. 8, Rev. Stat. of 1877, (38 Vict., c. 2, s. 1), in which the electoral divisions are set forth.

(*g*) See Rev. Stat. of 1887, c. 7, s. 15; c. 11, s. 1. Also 52 Vict., c. 2, which gives a representative to Nipissing.

(*h*) See Ont. Stat., 51 Vict., c. 4; Rev. Stat. Ont., c. 6, s. 1; 2 Edw. VII., c. 4.

(*i*) 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.

(*j*) B. N. A. Act, ss. 23 and 73.

(*k*) Ss. 40 and 80; Doutre, 85. Quebec Rev. Stat. (1888), arts. 60, 64, 90.

(*l*) By chapters 2 and 3, 53 Vict., the number was increased from 65 to 73. A further addition of one member was made by c. 6, 59 Vict.

of the majority of the members representing all those electoral divisions (*m*). In the session of 1890, the territorial limits of certain counties and electoral districts were modified, and the representation increased and distributed "in a more equitable manner." Among other changes the City of Montreal was divided into six electoral districts, represented by one member for each(*n*). The legislative assembly in each province is summoned by the lieutenant-governor in the Queen's name. It has a constitutional existence of four years in Ontario (*o*), and of five

(*m*) 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. Turcotte, ii., 590.

(*n*) See Quebec Stat. 53 Vict., c. 2. Chicoutimi was divided into two counties, "Chicoutimi and Saguenay" and "County of Lake St. John;" Rimouski, into "Rimouski and Matane;" Montreal into six divisions; Quebec East, into "Quebec East and St. Sauveur;" Drummond and Arthabasca, into two electoral districts.

(*o*) 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 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. In 1885 this act was amended by dividing

years in Quebec(*p*), 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" (*q*). The provisions in the Act respecting election and duties of speakers, quorum, and mode of voting, in the House of Commons, also apply to the legislative assemblies of the provinces in question (*r*). By an Act passed in 1882, the speaker of the legislative council of Quebec remains in office during the legislature to which he has been nominated by the lieutenant-governor, and may not be a member of the executive council of the provinces (*s*). But by the Act 58 Viet. c. 13 (1865), he may be a member of the executive council.

The Act of 1867 provides that the constitution of the executive authority as well as of the legislatures of the 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(*t*). These two colonies had, for very many years, enjoyed the advantages of representative institutions as liberal in all respects as those of the larger prov-

Algoma into two electoral districts and provision made to prevent any question arising in the future. See Ont. Rev. Stat. of 1887, c. 11, s. 3; also, Rev. Stat. 1897, c. 12.

(*p*) 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 Viet., c. 7. Quebec Rev. Stat. (1888), art. 110.

(*q*) Sec. 86.

(*r*) Sec. 87.

(*s*) Quebec Stat. 45 Viet., c. 3; Rev. Stat. (1888) arts. 80-86.

(*t*) B. N. A. Act, ss. 64, 88. The power of amendment so conferred, has not been exercised in Nova Scotia.—Gov. Archibald, Can. 1883, No. 70, p. 11.

inces in 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(*u*). 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(*v*). A legislative assembly met for the first time at Halifax(*w*) on the second 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

(*u*) 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.

(*v*) 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.

(*w*) Annapolis (Port Royal under the French regime) was the seat of government until 1749, when Halifax was founded. Murdoch's Hist., ii. c. 11.

assembly, and that he was only accountable to them for what he had said''(*x*). 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(*y*).

In 1838 the executive authority was separated from the legislative council, which became a distinct legislative branch only(*z*). 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 adopted until 1848(*a*). 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(*b*), and at the same time an address was proposed to limit the number of legislative councillors to eighteen(*c*). The number now is twenty-one. The House of Assembly continues for five years unless sooner dissolved(*d*).

In 1784 the province of New Brunswick, which had received large accessions of loyalists from the United States, was formally created, and a government established, consisting of a council of twelve members, having both execu-

(*x*) Murdoch, ii. 353.

(*y*) *Ib.* 354.

(*z*) Can. Sess. P. 1883, No. 70, pp. 8, 39.

(*a*) Howe's Speeches and Letters, vol. i. 553, 562-4; Todd, 60; Eng. Com. P. 1847-8, vol. 42, pp. 51-88.

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

(*c*) 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.

(*d*) See Rev. Stat. 1900.

tive and legislative functions, and of an assembly of twenty-six members(*e*); 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(*f*). 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"(*g*). The legislature now consists of a lieutenant-governor and an assembly of forty-five members, elected every four years(*h*).

The Island of Prince Edward, formerly known as St. John(*i*), 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(*j*). 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 plantations in the year

(*e*) The first governor was Colonel T. Carleton, brother of Lord Dorchester. The government was frequently administered by presidents of the executive council, and my 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.

(*f*) Todd, Parl. Govt. in the Colonies, 60.

(*g*) Sec. 88.

(*h*) The legislative council was abolished in Sept., 1892.

(*i*) 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.

(*j*) 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. The assembly first met in 1773.

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(*k*). Responsible government was not actually carried out until 1850-51, when the assembly obtained complete control, as in the other provinces, of the public revenues(*l*). 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(*m*), 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(*n*). 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(*o*). The legislature formerly consisted of a lieutenant-governor, an elective legislative coun-

(*k*) Campbell, 82. Mr. C. Douglas Smith was lieutenant-governor, and did not summon the legislature from 1814-1817. He dissolved three successive legislatures which proved intractable, and was removed in 1824.

(*l*) Col. Office List, 1890, p. 85.

(*m*) 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.

(*n*) 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. 764, 766-768.

(*o*) Dom. Stat. 1873, p. xii.

cil of thirteen members(*p*), and an assembly of thirty members(*q*)(*r*).

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(*s*). In 1876, Manitoba abolished the legislative council, and the legislature consequently now consists only of the lieutenant-governor and assembly(*t*). The same provisions as in the other provinces exist with respect to the duration of the legislature and its meetings once a year. Since 1890 only the English language may be used in the legislature. The present assembly consists of forty members(*u*).

By an act of the imperial parliament, passed in 1858, British Columbia was created a distinct colonial government, in order to maintain order among the people attracted by the gold discoveries(*v*). In 1859, Vancouver Island was

(*p*) P. E. I. Rev. Stat. of 1862, c. 18. P. E. I. Jour. (1880), 278-9; Leg. Council debates (1882), 57-72.

(*q*) Col. Office List, 1890, p. 85.

(*r*) The legislative council and assembly were, however, in 1893 merged into one body consisting of thirty members and called the legislative assembly.

(*s*) *Supra*, 47; 33 Vict. c. 3. See Sess. P. 1871, No. 20, for measures taken to organize the provincial government.

(*t*) Man. Stat., 39 Vict., c. 28. Parl. Companion, 1878, p. 310; Sess. Pap. 1876, No. 36.

(*u*) Man. Stat., 1903.

(*v*) The Hudson's Bay Company's trading license was revoked and a colony established in 1858, by 21 and 22 Vict. c. 99.

granted a complete form of government(*w*). In 1866 both colonies were united(*x*), and in 1871, as previously shown, they became part of the dominion of Canada(*y*). Previous to the union, the province of British Columbia was governed by a lieutenant-governor and a legislative council composed of heads of departments and other public officers(*z*); but it was expresssly 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." Since its admission, British Columbia has a local constitution similar to that of some of the other provinces(*a*); a lieutenant-governor, an executive council, responsible to the legislature, and one house only, a legislative assembly of thirty-eight members(*b*). The legislative term is four years.

(*w*) 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.

(*x*) Col. Office L., 1890, p. 82.

(*y*) *Supra*, 48.

(*z*) A legislative council of 15 persons was first established in 1863, and was enlarged to 23 members on the union with Vanvouver Island. In 1870 other constitutional changes took place, by which nine unofficial members were elected by the people. Col. O. List., 1873, p. 37.

(*a*) Can. Sess. P. 1867-8, No. 59; Stat. for 1872, p. lxxxix.; Col. Office List, 1890, p. 82.

(*b*) B. C. Con. Stat., c. 42; two members added by 48 Vict. c. 3; increased to thirty-three members, R.S. 1897, and to thirty-eight members by the Redistribution Act, 1898. See 33 Vict. c. 3.

X. Organization of the North-West Territories.—After the acquisition of the Northwest, the Parliament of Canada 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; 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 Rupert's Land and the Northwest Territory not included within the limits of that province. In subsequent sessions other acts were passed, and in 1886 all the legislation relating to the Northwest Territories was consolidated into one statute(*d*). The Territories are now governed by a lieutenant-governor, or administrator, appointed by the governor-general in council. The law originally provided for a council, composed of the judges of the supreme court 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 could make ordinances for the government of the Northwest Territory, within certain limitations set forth in the act, and copies of such ordinances had to be mailed to the secretary of state within thirty days after their passing; the governor in council might 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(*f*). Provision was also made for the erection of electoral districts and election of members of council, according as the territory increased in pop-

(*d*) Rev. Stat. of Can. c. 50.

(*f*) Sess. P. 1879, No. 86.

ulation; and a legislative assembly might be formed in place of a council, as soon as the elected members of any council amounted in all to twenty-one. The members held their seats in the assembly for two years.

A council, partly elected and partly nominated, was in existence until 1888. The lieutenant-governor presided over the council and had a vote. In 1888 the law was amended, and a legislative assembly of twenty-two elected members was created, with the powers and duties of the former council. As in the original constitution, the assembly has the assistance of three legal experts—at present the judges of the supreme court of the Territories—who sit for three years, the legal term of the legislature—and may take part in the debates, but cannot vote.

The lieutenant-governor may appoint from among the elected members of the assembly "an advisory council on matters of finance," who hold office during pleasure, but responsible government as it exists in the provinces, has not yet been formally introduced into the Territories. The assembly sits separately from the lieutenant-governor, to whom all bills passed by that body shall be submitted for his assent, and who may approve or reserve them for the assent of the governor-general (*g*) (*h*).

Pending the settlement of the western boundary of Ontario, it was considered expedient in 1876 to create a

(*g*) 51 Vict., c. 19.

(*h*) The Acts relating to legislation and government in the North-West Territories have since 1888 been largely amended. See Dom. Acts of 1891, 1894, 1895, 1896-97, 1898, 1899, 1900, and 1901. The government now (1903) consists of lieutenant-governor, executive council and legislative assembly, with far wider powers of legislation and administration than at first conceded. The number of members of the assembly is now fixed by Acts of the territorial legislature at thirty-five and the term of the assembly is four years, subject like provincial legislatures to previous dissolution by the lieutenant-governor.

separate territory out of the eastern part of the North-west(*i*). This territory is known as the district of Keewatin(*j*), 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 them by order of the governor in council(*k*). This arrangement of a separate district is altogether of a provisional nature, and will come entirely to an end with the rapid development of the Northwest Territories(*l*). The district of Keewatin has been materially altered by the extension of the limits of Manitoba, in accordance with acts passed since 1876, (*m*) and by the extension of the boundary of Ontario through the decision of the judicial committee of the privy council in 1884(*n*).

(*i*) 39 Vict., c. 21; Rev. Stat. of Can., c. 53.

(*j*) Sometimes Keewaydin.

(*k*) No such orders now appear in the statutes of Canada.

(*l*) Can. Hans. (1876), 86, remarks of Mr. Mackenzie, then premier, in introducing bill.

(*m*) 40 Vict., c. 6, defined new boundaries of the provinces of Manitoba and Keewatin. By 44 Vict., c. 14, the boundaries of the province of Manitoba were extended. See Rev. Stat. of Can., c. 53. For debates as to boundary question, see Sen. Hans. (1880-81) 606 *et seq.*, Com. Hans. (1880-1) 2 vo. p. 1443 *et seq.* In accordance with a resolution passed in the session of 1882 four divisions were marked out in the Northwest Territory for postal and other purposes, viz.: Alberta, Athabasca, Assiniboia and Saskatchewan. Com. J. (1882) 509. *Canada Gazette*, December, 1882.

(*n*) The Yukon district of the North-West Territories was provided with a government by c. 6, 61 Vict., the chief executive officer being styled Commissioner of the Yukon Territory. He was to be assisted by a council not exceeding six in number. The Territory was also for judicial purposes known as the Yukon Judicial District. Territorial elective representatives to the council were provided for

Before passing from this historical review of the establishment of government in the Northwest 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 Northwest Territory, or of British Columbia. 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

by 62-63 Vict., c. 2 and by the same Act further powers were conferred upon the commissioner in council. The territory was formally separated from the North-West Territories by the Act 1 Edw. VII. c. 41. This Act defined the boundaries of the Yukon Territory and made further provision for the administration of justice therein. By 2 Edw. VII. c. 34 the number of elective representative members of the council was increased to five. In the same year representation in the House of Commons of Canada was granted the Yukon Territory; the same being formed into an electoral district to return one member. 2 Edw. VII. c. 37.

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 Northwest, was sanctioned formally in the act (*p*).

In 1886, the Imperial Parliament, on addresses of the Canadian parliament, also passed an act empowering the latter body to provide for the representation in the Senate and House of Commons, of any territories which may form part of the dominion, but are not included in any regularly organized province. This measure was necessary on account of the measure passed in 1886, giving representation to the Northwest Territories in the two Houses of the parliament of Canada(*q*).

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(*r*), and the provinces of British Columbia and Manitoba have already availed themselves of the power thus conferred by abolishing the legislative council(*s*). The provisions in the act relating to the

(*p*) 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 a part of a territory from a province and form it into a county.

(*q*) Can. Com. J. (1886) 182; Can. Hans. (1886) 866-868. Imp. Stat. 49-50 Vict., c. 35, at beginning of Can. Stat. for 1886; Can. Stat. 49 Vict., c. 24.

(*r*) Sec. 92, sub-sec. 1, and as respects provinces coming in after 1867, see Can. Stat. 1870, c. 3, ss. 2, 10; 1872, p. lxxxviii., ss. 10 and 14; 1873, pp. xii.-xiii, etc.

(*s*) See *supra*, 76 (British Columbia); and 75 (Manitoba; also 70, *n.* as to duration of Quebec legislature extended to five years, and 69 as to changes in the representation in the legislative assembly of the same province.

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 now be disallowed by the dominion government within one year after its passage(*t*). 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(*u*).

XI. 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 (*v*). 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

(*t*) Ss. 87, 90. Also Manitoba Act, 33 Vict. c. 3, ss. 2, 21; British Columbia, 1872, p. lxxxviii., s. 10; P. E. Island, p. xxii.

(*u*) See chapter xviii., s. 26, respecting public bills

(*v*) Can. Sess. P. (1876), No. 116, pp. 79, 83; also 1877, No. 89, pp. 407, 432-34, 449-458.

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 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 interest permits such a course, to give the local government an opportunity of considering the objections to such legislation and of remedying the defects therein(*w*).

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 relatively few cases out of the large number of acts passed since confederation by the legislatures of the provinces. A review, however, of the very voluminous papers relating to this question proves that, whilst only a 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

(*w*) Report of Sir J. A. Macdonald, Can. Sess. P. 1870, No. 35, pp. 6-7. Also, Hodgins, Compilation of Orders in Council (1886), vol. i., 5.

the local governments to remove the objections pointed out by the minister of justice(*x*).

Considerable discussion has arisen, however, in and out of parliament with respect to certain cases of disallowance. The first of these cases was in connection with "An act for protecting the public interests in rivers and streams" (Ontario 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(*y*). 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 shall extend to all streams and all constructions and improvements thereon ; and that all persons might make use of

(*x*) Can. Sess. P., 1882, No. 141, pp. 2-29; *Ib.* 1886, No. 81.

(*y*) 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. Can. Sup. Court R., vol. viii. 435-474. In 1884 the privy council decided that the judgment of the supreme court should be reversed and that of the court of appeal restored. Leg. News, 195, 203.

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 interefering 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 cometency under the British North America Act(*z*). The legislature of Ontario subsequently re-enacted the act

(*z*) Can. Sess. P., 1882, No. 149 a. Hans. 876-926.

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, from any point at or near the Canadian Pacific Railway, except such line as shall run south-west or to the westward of south-west, nor to within fifteen miles of latitude 49." The government of Manitoba contended at that time that the act was "strictly within the jurisdiction of the legislature of the province(*a*). The government of Canada subsequently disallowed the acts of Manitoba to incorporate the Manitoba Tramway Co., to incorporate the Emerson and North-Western R. R. 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." To this policy the government of the dominion strictly adhered for years. In 1886 they disallowed the charters granted to the Manitoba Central Railway Company, and to the Rock Lake, Souris Valley & Brandon R. R. Co., and in 1887 those to the Winnipeg and Southern Railway Company and the Red River R. R.(*b*). In 1883 the acts passed by the legislature of British Columbia "to incorporate the Fraser River Railway Company," and "to incorporate the New Westminster

(*a*) Can. Sess. P. 1882, No. 166.

(*b*) *Ib.* 1886, No. 81; Can. Gazette, 1887.

Southern Railway Company," were disallowed for the same reasons(*c*).

Much irritation was felt in Manitoba on account of this policy, and the difficulty at last assumed a serious aspect when the government of the province persisted in an attitude of resistance to the power of disallowance exercised under these circumstances by the dominion government. Finally in order to settle a grave difficulty, the dominion government came to an arrangement with the Canadian Pacific Railway Company, under which they relinquished for certain considerations the exclusive privilege contained in their original contract as stated above(*d*).

These cases show the large power assumed by the dominion government under the law giving it 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

(*c*) Hodgins, Provincial Legislation, i. 819, 820.

(*d*) See 51 Vict., c. 32. Also speech of Sir Charles Tupper, minister of finance, Can. Hans. (1888) 1332. This settled the dispute as far as the power of disallowance in this case was concerned, but subsequently the matter in another form came before the supreme court of Canada in accordance with the sections of the Canada Railway Act, 51 Vict., c. 29, providing for a reference to the court for its opinion upon any question which, in the opinion of the railway committee of the Canadian privy council, is a question of law. Under chap. 5 of the statutes of Manitoba, passed in 1888, the railway commissioner of that province commenced the construction of the Portage extension of the Red River Valley Railway (within the province) and it was found necessary to make application to the railway committee of the privy council of Canada (under sec. 173 of the Railway Act of 1888) for the approval of the place at which, and the mode by which the extension in question should cross the Pembina Mountain branch of the Canadian Pacific Railway Co. Thereupon the latter company intervened and raised a preliminary legal objection that the railway commissioner of Manitoba had no authority to construct a line crossing the Canadian Pacific Railway

dominion jurisdiction, or where the vital interests 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 judicial authorities: "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 prerogative 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 consequence of the illegality of the statute. Mr. Edward Blake argued on behalf of the Company before the supreme court that the parliament of Canada had, years ago (see 46 Vict. c. 24, s. 6, and Rev. Stat. c. 109, s. 121) efficiently exercised its declaratory and sovereign power (see B.N.A. Act, 1867, s. 92, sub-s. 10 c.) with reference to railway works by the declaration that a work crossing the Canadian Pacific Railway is a work for the general advantage; that by that declaration any such work has been removed from the provincial and assumed to be within the dominion cognizance; that this work before the court was specifically such a work and therefore no other conclusion could be reached than that the provincial legislature was utterly incompetent to authorize the construction of such a work." The question submitted by the railway committee for the supreme court of Canada (see sec. 19 of the R.R. Act of 1888) was to the effect, whether the Manitoba statute in view of the provisions of c. 109 Rev. Stat. of Canada, particularly sec. 121, and of the R.R. Act of 1888, particularly ss. 306 and 307, was valid and effectual so as to confer authority on the railway commissioner to construct the railway in question. The supreme court unanimously declared its opinion that the Manitoba act is valid, and the railway constructed under it entitled to cross the C.P.R. subject to the approval of the railway committee, as provided by the Railway Act. See Report of argument before the supreme court on this question, Ottawa, 1888. Legal News (1889) vol. xii. 4, 5.

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" (*e*) (*f*).

XII. Distribution of Legislative Powers.—In the distribution of the legislative powers entrusted to the general parliament and the local legislatures respectively, the con-

(*e*) Can. Sup. Court R., vol. ii. Richards, C.J., 96; Fournier, J., 131. The principles laid down in the remarks of the learned judges, cited above, were emphatically urged in the House of Commons in the debate of 1889 on the act passed by the legislature of Quebec respecting the settlement of the Jesuits' Estates, which, some contended, ought to have been disallowed as beyond the power of the legislature, for reasons set forth in a resolution which was negatived by 188 to 13. The dominion government had previously advised the governor-general that the act dealt with a fiscal matter within the exclusive jurisdiction of the Quebec legislature, and that accordingly it should be left to its operation. Can. Hans. (1889) 811-910. It is now generally admitted that it is advisable to leave the courts, whenever practicable, to deal with all questions involving matters of constitutional controversy, and to reserve the power of disallowance for unconstitutional legislation, or for cases, should they ever happen, involving the peace, harmony, or good faith of the Confederation. See Bourinot, Federal Government in Canada, 60. In the session of 1890, the House of Commons agreed to an important resolution proposed by Mr. Edward Blake, that "it is expedient to provide means whereby, on solemn occasions touching the exercise of the power of disallowance, or of the appellate power as to educational legislation. important questions of law or fact, may be referred by the executive to a high judicial tribunal for hearing and consideration, in such mode that the authorities and parties interested may be represented, and that a reasoned opinion may be obtained for the information of

stitution makes such an enumeration as seems well adapted on the whole to secure the unity and stability of the dominion and at the same time gives 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(*g*). The doctrine of state sovereignty had been pressed to extreme lengths in the United States, and had formed one of the 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(*h*). Now, in the

the executive." At present there is no provision for a "reasoned opinion;" in the cases of the Manitoba railway crossing (stated in the text) and of the Liquor License Act the court stated no grounds for the conclusion which it gave shortly for the information of the executive. Under the proposition set forth above, the Crown would have the power to submit a question to the court, and give the opportunity to all parties interested to appear and be heard. In such a case the decision would not be binding on the government; they would not be relieved of any responsibility, but could dissent from the conclusion if they thought proper. See remarks of Sir John Macdonald and Mr. E. Blake on the question. Hans. 4083-4094.

(*f*) See also Lefroy, Legislative Power in Canada, pp. 185, 203. See also correspondence and reports on the subject of Japanese Immigration into British Columbia and legislation connected therewith. Can. Parl. papers, session 1903.

(*g*) 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 consitution," etc.

(*h*) The 10th art. of the Am. Cons. reads: "The powers not delegated to the United States by the constitution, nor prohibited by

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(*i*). 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 dominion import and significance(*j*). 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 "generally all matters of a merely local or private nature in the province" (*k*). The provincial legislatures have also

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, published by order of Congress, 1877. Also, Story on the Constitution (Cooley's 4th ed.), ss. 1906-1909; Bourinot, Canadian Studies in Comparative Politics, 44-48.

(*i*) 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.

(*j*) B. N. A. Act, 1867,, s. 91.

(*k*) B. N. A. Act, s. 92.

exclusive powers of legislation in educational matters, subject only to the right of the dominion parliament to make remedial laws under certain circumstances(*l*). 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(*m*). 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(*n*). 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(*o*). 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(*p*). The dominion government is authorized in

(*l*) Sec. 93.

(*m*) See New Brunswick School Law controversy. Todd, Parl. Gov. in the Colonies, 346-352; Can. Sess. P. 1877, No. 89. See also the extensive judicial and political literature produced by the agitation in connection with the school question between the years 1890 and 1896. Hansard, 1890 to 1897, Wheeler's Privy Council cases on the B. N. A. Act 1867, pp. 370 to 388. Barrett vs. City of Winnipeg, vo. xix. Sup. Court Canada Reports, pp. 374-425.

(*n*) Board of School Trustees *vs.* Grainger *et al.*, 25 Grant, Ch. 579.

(*o*) B. N. A. Act, s. 95.

(*p*) "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 oppo-

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"; 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 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(*q*). This court has an appellate jurisdiction in the case of controverted elections, and may examine and

site. The powers of the provincial governments are enumerated, and the dominion government possesses the general powers of legislation." Ritchie, C.J., Can. Sup. Court R., 13th April, 1880, vol. iii. 536.

(*q*) 38 Viet., c. 11. Lord Durham, in his report (123), recommended the establishment of a "supreme court of appeal for all the North American colonies." The provincial courts have equal power to declare any Canadian statute unconstitutional; the supreme court is a court of appeal for all the provinces of the dominion.

report on any private bill or petition for the same. The governor in council may refer any matter to this court for an opinion. In certifying their opinion the judges do not give their reasons, but follow in this respect the practice of the judicial committee of the privy council of England when dealing with cases referred by the Crown for advice(*r*). It has also 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(*s*). The supreme court of Canada, however, can be considered "a general court of appeal for the dominion in only a limited sense," for in addition to the power of appealing from the supreme court itself to the privy council of England there exists in every province the right of an appeal direct from its appellate tribunals to the same imperial tribunal. It is the continued practice of the judicial committee of the privy council "to entertain appeals from the supreme court where it is considered that any error of law has been made, and substantial interests have been involved"(*t*).

(*r*) See Cassells, Practice of the Supreme Court of Canada, for cases so referred to the court, and for other cases of reference under special acts, 29, 230.

(*s*) Dom. Rev. Stat. (1886), c. 135, ss. 72-74. The legislature of Ontario in 1877 passed 40 Vict., c. 5, authorizing such references. See Ont. Rev. Stat. (1887) c. 42. The legislature of Nova Scotia has also passed a similar act. Rev. Stat. 5th series c. 111. Also British Columbia, 44 Vict., c. 6.

(*t*) See Cassels, Practice of the Supreme Court of Canada, 4, 75, 76; Legal News, 1889, 281, 283. Dom. Rev. Stat. (1886) c. 135. The judgment of the supreme court is now final in criminal matters. See 51 Vict., 43, repealing 50, 51 Vict. c. 50, s. 1, sub-s. 5. By 50-51 Vict. c. 16, all original exchequer court jurisdiction was taken away from the supreme court judges, and an exchequer court, composed of one judge specially constituted.

XIII. Decisions of the Privy Council of England and of the Supreme Court of Canada on Questions of Legislative Jurisdiction.—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(*u*). 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.

Controverted Elections.

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(*v*). 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 court of

(*u*) See Cartwright's cases under the B. N. A. Act of 1867, 5 vols. already issued.

(*v*) "The Dominion Controverted Elections Act, 1874"; 37 Vict. c. 10. (Rev. Stat. of 1886, c. 9).

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(*w*).

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 :

(*w*) 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. 261. But certain judges of Quebec held adverse opinions. Quebec L. R., vol. v., p. 191.

That there is no doubt about the power of the dominion parliament to impose new duties upon the existing provincial 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(*x*).

In a later case it was decided that no appeal from the decision of the supreme court of Canada in a controverted election case will be entertained by the privy council of England. In giving their judgment their lordships stated that there are strong reasons why such matters should be decided within a colony, especially it is "most important that no long time should elapse before the constitution of the body is known ; and yet if the Crown is to entertain appeals in such cases, the necessary delays attending such appeals would greatly extend the time of uncertainty—which the legislature has striven to limit"(*y*).

Fire Insurance.

In 1876, the legislature of Ontario passed an act(*z*) intituled " An act to secure uniform conditions in policies of fire insurance." This statute was impeached on the

(*x*) 5 App. Cas. 115.

(*y*) Glengarry Case, Kennedy *vs.* Purcell, 7th July, 1888. See Cassells's Practice, 86; Can. Sup. Court R., vol. xiv. 453-515.

(*z*) 39 Vict., c. 24; Ont. Rev. Stat., c. 167.

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 (*a*).

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 commerce" by various aids to their interpretation, they would include political arrangements in regard to trade and 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 legis-

(*a*) Can. Sup. Court R., vol. iv. 215-349. The Citizens and the Queen Ins. Co.'s *vs.* Parsons, Western Insurance Co. *vs.* Johnston. This judgment of the supreme court affirmed the judgments of the court of appeal for Ontario (4 App. Rep., 96, 103), which had affirmed the judgments of the queen's bench; 43 U.C., Q.B. 261, 271.

lature of Ontario by sub-section 13 of section 92. That the act in question, so far as relates to insurance or 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(*b*), 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 intereferes with the authority of the Ontario legislature to legislate in relation to the contracts which corporations may enter into in that province(*c*).

Since the first session of the dominion parliament until the end of that of 1886, 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. It is now authoritatively decided that the terms of paragraph eleven of section 92 (giving powers to provincial legislatures for the 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(*d*). 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

(*b*) 38 Vict., c. 20.

(*c*) 45 L.T.N.S. 721; Cartwright, i., 265. The Citizens and Queen Insurance Cos. *vs.* Parsons.

(*d*) Fournier, J., Sup. Court R., vol. iv. 277, 278.

country or province in which the business is done(*e*). Policies of insurance being mere contracts of indemnity against loss by fire, are, like any other personal contracts against 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 upon civil rights and property(*f*).

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(*g*).

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 Vic., chap. 7) imposed a tax upon the policies of such insurance 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 assur-

(*e*) Harrison, C.J., 43 U.C. Q.B. 261; Doutre, 267.

(*f*) 4 Ont. App. 109.

(*g*) See 40 Vict., c. 42, s. 28; Rev. Stat. of Can., c. 124, s. 3.

ance, 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 raise a revenue for provincial purposes(*h*).

Sale of Spirituous Liquors.

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"(*i*). 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 hav-

(*h*) 3 App. Cas. 1090; Cartwright, i., 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.

(*i*) 37 Vict. c. 32; Ont. Rev. Stat. (1877), c. 181, ss. 39, 40, 41.

ing first obtained a license under this act, authorizing 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 license 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 parliament 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(*j*), 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

(*j*) So affirmed by the judicial committee of the privy council, Attorney-General of Quebec *v.* The Queen Insurance Co., Law Rep.. 3 App. Cas, 1090.

dominion revenue, which is authorized to be exclusively imposed by the federal parliament(*k*)(*l*).

Canada Temperance Act.

In 1878, the parliament of the Dominion passed an act cited as the "Canada Temperance Act, 1878"(*m*). The preamble sets forth "that as 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(*n*) 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*

(*k*) 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; 36 U.C.Q.B. 218.

(*l*) See also Clement's Canadian Constitution, pp. 359-372, and Lefroy's Legislative Power in Canada, subject "Liquor Traffic and Legislation"; also the Manitoba Reports, vol. 13, pp. 239 to 322 and Attorney-General of Manitoba *vs.* Manitoba License Holders Association, Law Reports (appeal cases) P.C. 1902, p. 73 *et seq.*

(*m*) 41 Vict. c. 16; Rev. Stat. of Can. c. 106.

(*n*) 3 Pug. and Bur., 139.

that under the second 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(*o*). 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 pri-

(*o*) Can. Sup. Court R., vol. iii. 505-574.

mary 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 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 parliament, 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 the 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." 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 convert the act itself into legislation affecting a purely local matter(*p*). 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(*q*).

Liquor Traffic in the Provinces.

The immediate effect of this important judgment on the Temperance Act was the passage by the parliament of Canada, 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(*r*).

(*p*) See judgment of Allen, C.J., 3 Pug. and Bur. 139.

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

(*r*) 46 Vict., c. 30; (see reference to subject in his Excellency's speech, Jour. 1883, p. 14). But strong objections were taken in the

Subsequent to the passage of this act, the judicial committee of the privy council rendered a judgment which has a very important bearing on the question of jurisdiction in the matter of the regulation of liquor traffic in a province, and consequently on the constitutionality of the measure just mentioned. The fourth and fifth sections of the Liquor License Act(*s*) of Ontario, which has come under the review of the privy council on the appeal of *Hodge* v. *The Queen* from the court of appeal of the province, authorizes 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, Mr. 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

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., 1883, May 22. See Can. Hans., May 16, 21 and 22.

(*s*) R.S.O. [1877] c. 181.

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. The 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; and that the legislature had power to delegate its authority as it had done in the matter in question(*t*).

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. They first reviewed 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

(*t*) See 7 Ont. App. Rep. 246; 46 U.C.Q.B. 141.

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 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* v. *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(*u*). 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 *Citizen's Insurance Company* illustrate is, that subjects which in one aspect and for one purpose fall within section 93, may in another aspect and for another purpose fall within section 91 (*v*).

(*u*) *Supra*, 109, 110.

(*v*) 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 Q.L.R., 387; 5 Legal News, 3,334;

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 to municipal institutions under the previously existing laws passed by the local parliaments." Their lordships consequently decide: "That 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. As 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 of 8, 15 and 16(*w*) of sec-

6 *Ib.* 209, 214. In the first mentioned case the supreme court of Canada (Rep. vol. xi. 25,) sustained the decision of the court of queen's bench of Quebec, and declared the Quebec License Act (41 Vict., c. 3) *intra vires* of the legislature of that province. The case of Hodge *vs.* The Queen was considered by the court to cover the constitutional ground.

(*w*) 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."

tion 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 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 en-

actment 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.

The result of this very important judgment was the passage by the dominion parliament of an act which referred the question of the constitutionality of the Liquor License Act of 1883 to the supreme court of Canada(*x*). A special case containing the following questions was accordingly referred by the governor-general in council to the court:—

"1. Are the following acts in whole or in part within the legislative authority of the parliament of Canada, namely:—

"(1) The Liquor License Act, 1883.

"(2) An act to amend 'The Liquor License Act, 1883'?

"2. If the court is of opinion that a part or parts only of said acts are within the legislative authority of the parliament of Canada, what part or parts of said acts are so within such legislative authority?"

The court(*y*) certified to the governor-general in council that in their opinion, the acts referred to them "are, and each of them is, *ultra vires* of the legislative authority of the parliament of Canada, except in so far as the said acts respectively purport to legislate respecting those licenses mentioned in section seven of the said 'The Liquor License Act, 1883,' which are there denominated vessel licenses and

(*x*) 47 Vict., c. 32, s. 26.

(*y*) See 48-49 Vict., c. 74, the schedule of which contains order of reference to, and the judgment of, the supreme court. Mr. Justice Henry was of opinion that "the said acts are *ultra vires* in whole."

wholesale licenses, and except also in so far as the acts respectively relate to the carrying into effect of the provisions of the 'Canada Temperance Act, 1878,'" The result of this decision was the suspension of the portions of the acts declared to be *ultra vires*. Subsequently the matter came before the judicial committee of the privy council, who maintained the right of the provincial legislatures to deal with the subject of licenses for the sale of liquors(*z*).

Fishery Leases in the Provinces.

In 1874, by virtue of section 2 of the Fisheries Act of 1868, the minister of marine and fisheries executed a lease of fishery of a portion of a certain river in New Brunswick. This portion was some fifty miles above the ebb and flow of the tide, though the stream for the greater part of the leased portion is navigable for canoes, small boats and timber. Certain parties in New Brunswick, however, claimed the exclusive right of fishing in this portion of the river on the ground that they had received conveyances thereof. They, therefore, prevented the lessee of the Dominion Government from enjoying the fishery under his lease. This raised the important question: Can the parliament of Canada authorize the minister of marine and fisheries to issue licenses to parties to fish in rivers, such as that described, where the provincial government has, before or after the union, granted lands that are bounded on or extend across such rivers?

The supreme court of Canada(*a*) decided: That the license granted by the minister 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,"

(*z*) Legal News, 17, 26, 379, 409.

(*a*) Sup. Ct. Can. Rep. vi., pp. 52.-143; Queen *vs.* Robertson; 2 Cart. B.N.A. cases, p. 65.

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 and tending to their regulation, protection and preservation; 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 Canada 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 thereon 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. 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 of the province, and, therefore, a license by the minister of marine and fisheries would be illegal. This decision has more recently been followed by another of the supreme court of Canada in harmony with it(*b*); although the discussion covered a far wider field. This was a special case referred by the governor-general to the supreme court of Canada. It propounded seventeen questions. The whole subject was afterwards reviewed on appeal to the privy

(*b*) *In re* Provincial Fisheries, 26 S.C.R. 444.

council(c), and the judgment of that court was pronounced (May 26th, 1898) by Lord Herschell. This decision has had a far-reaching effect, in some respects altering the whole relations of fishery control hitherto exercised by the Department of Marine and Fisheries under existing legislation. It held that whatever proprietory rights vested in the province at the date of confederation remained so unless transferred to the dominion by express enactment of the B.N.A. Act, and such transference is not to be presumed from the grant of legislative jurisdiction to Canada in respect of the subject of those proprietary rights. There is a broad distinction between proprietary rights and legislative jurisdiction, and there is no presumption that because legislative jurisdiction was vested in the dominion parliament, proprietary rights were also transferred to it. The court held that the transfer by section 108, and the fifth clause of its schedule of "rivers and lake improvements" to the dominion, operates in regard to the improvements only both of rivers and lakes and not in regard to the entire rivers; that the transfer of "public harbours" operates on whatever is properly comprised in that term, having regard to the circumstances of each case, and is not limited merely to those portions on which public works had been executed. It was also held that section 91 did not convey to the dominion any proprietary rights therein, although the legislative jurisdiction conferred by the section enable it to affect those rights to an unlimited extent, short of transferring them to others; (2) a tax by way of license as a condition of the right to fish is within the powers conferred by sub-sections 3 and 12, and the same power is conferred on the provincial parliament by section 92. The Rev. Stats. Canada, chapter 95, section 4, so far as it empowers the grant of exclusive fishing rights over provincial property, is *ultra vires* the dominion. The

(c) Law Reports, appeal cases (privy council), 1898, pp. 700-717.

Rev. Stats. Ont., chapter 24, section 47, is with a specific exception that in relation to land in harbours or canals, *ultra vires* the province.

But whilst "all restrictions or limitations by which public rights of fishing are sought to be controlled or limited may be the subject of dominion legislation only, it does not follow that the legislation of provincial legislatures is incompetent merely because it may have relation to fisheries. For example, provisions prescribing the mode in which a private fishery is to be conveyed and the rights of succession in respect of it would be properly treated as falling under the head of "Property and Civil Rights," within section 92, and not as in the class "Fisheries," within the meaning of section 91. So, too, the terms and conditions upon which the fisheries which are the property of the province may be granted, leased or otherwise disposed of, and the rights which, consistently with any general regulations respecting fisheries enacted by the dominion parliament may be conferred therein, appear proper subjects for provincial legislation either under class 5, section 92, "the management and sale of public lands," or under the class "property and civil rights."

Escheats.

Among the matters that have 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(*d*) to amend the law respecting escheats and forfeitures. This act was disallowed by the governor-general in council, and the report(*e*) of the minister

(*d*) 37 Vict., c. 8, passed on the 24th March, 1874.

(*e*) Can. Sess. P., 1882,, No. 141.

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 statuable position, has no power to deal with the 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."

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 lawful 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"(*f*).

Accordingly the legislature of Ontario again passed an

(*f*) Can. Sess. P., 1877, No. 89, pp. 88-105.

act(*g*), which enables the attorney-general to take possesion 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 personalty 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 F. 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(*h*) 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 F. Mercer, appealed 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

(*g*) R.S.O. (1877), c. 94 (40 Vict., c. 3). The legislature of New Brunswick passed a law to the same effect in 1877, c. 9. See also Quebec Act, 48 Vict., c. 10 (Rev. Stat. of 1888, ss. 1369-1373), passed after the privy council's decision stated in the text. Also Nova Scotia Rev. Stat. 5th series, c. 127.

(*h*) R.S.O. [1877,] c. 94.

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*(*i*). 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(*j*).

The case was brought finally before the privy council(*k*), 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.

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, *jure coronae*. 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

(*i*) Can. Sup. Court R. vol. 5, p. 538. The chief justice and another judge of the court dissented from the opinion of the majority.

(*k*) The Attorney-General of Ontario *vs.* Mercer; July 18, 1883.

(*j*) Per Fournier, Taschereau and Gwynne, JJ.

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(*l*).

Question Respecting Indian Lands.

An important question came before the supreme court of Canada in 1887, on the appeal of the Ontario court of appeal, affirming a judgment of the chancery division, which restrained the St. Catharines Milling & Lumber Co. from cutting timber on lands south of Wabigoon Lake in Algoma, claimed to be public lands of the province(*m*). The question was really whether certain lands admittedly within the boundaries of Ontario belonged to that province or to the dominion of Canada. By royal proclamation in 1763 possession was granted to certain Indian tribes of these lands, "of such parts of our dominion and terri-

(*l*) See 6 Legal News, 233, 244. Also Can. Sess. P., 1884, No. 117, for papers respecting escheated lands.
See also 4 Cart. 241 (1889), 14 App. Cases 295.

(*m*) Sup. Court. R., vol. 13, pp. 577-677. The St. Catharines Milling & Lumber Co. (appellants), and the Queen, on the information of the Attorney-General for the Province of Ontario (respondent), on appeal from the court of appeal for Ontario.

tories,'' as, not having been ceded or purchased by the Crown, were reserved ''for the present,'' to them as their hunting grounds. The proclamation further enacted that all purchases from the Indians of lands reserved to them must be made on behalf of the Crown by the governor of the colony in which the lands lie and not by any private person. In 1873 the lands in suit, situate in Ontario, which had been in Indian occupation until the date under the foregoing proclamation, were, to the extent of the whole right and title of the Indian inhabitants thereto, surrendered to the government of the dominion for the Crown, subject to a certain qualified privilege of hunting and fishing(*n*). In the answer of the defendants it was pleaded that the lands and timber thereon were, with other lands and timber in the district, until quite recently claimed by the Indians who inhabited that part of the dominion of Canada. That the claims of such Indians have always been acknowledged by the various governments of Canada, and that such claims are, as respects the lands in question, paramount to the claim of the Crown as represented by the government of Ontario. That the government of Canada have acquired the Indian title to these lands in consideration of a large expenditure of money for the benefit of these Indians, and have for that reason and by virtue of the inherent right of the Crown as represented by the government of Canada, alone the right to grant licenses to cut timber on the tract in dispute. For the province of Ontario it was contended that both before and after the treaty of 1873 the title to the lands in suit was in the Crown and not in the Indians. The lands being within the province, the beneficial interest therein passed to the province under the act of 1867, and the dominion obtained thereunder no such interest as it claimed in the suit. Even if they were lands reserved for

(*n*) These lands formed a portion of the territory declared under the Boundary Award to be in Ontario, *infra*, 123, 124.

the Indians within the meaning of the act, the dominion gained thereunder only a power of legislating in respect to them, it did not gain ownership or a right to become owner by purchase from the Indians. The majority of the court(*o*) decided that the boundary of the territory in the northwest angle being established, and the lands in question being found within the province of Ontario, they necessarily form part of the public domain of that section, and are public lands belonging to the same by virtue of sub-section 5 of section 92, and section 109 of the B.N.A. Act, as to lands, mines, minerals and royalties, and of section 117, by which the provinces are to retain all their property not otherwise disposed of by that act, subject to the right of the dominion to assume any lands or public property required for fortifications or for the defence of the country. Only those lands specifically set apart and reserved for the use of the Indians are "lands reserved for Indians" within the meaning of section 91, item 24, of the B.N.A. Act. In the course of their opinions, the majority of the judges dwelt on certain points interesting to the historical as well as to the legal student. They laid it down that "on the discovery of the American continent, the principle was asserted or acknowledged by all European nations that discovery followed by active possession gave title to the soil to the government by whose subjects, or by whose authority it was made, not only against other European governments, but against the natives themselves. While the different nations of Europe respected the rights(*p*) of the natives as occu-

(*o*) Ritchie, C.J., Taschereau and Henry, JJ.; Strong and Gwynne, JJ., dissenting. The most elaborate opinion on the whole question is by Boyd, C., in the Chancery division in the high court of justice for Ontario (10 O.R. 196). The opinions of Strong and Gwynne, JJ., on the other side merit a careful study.

(*p*) Judge Taschereau (643) very properly thinks "claims" the proper word here.

pants, they all asserted the ultimate dominion and title to the soil to be in themselves"(*q*). That such was the case with the French government in Canada, during its occupancy thereof, is an incontrovertible fact. The king was vested with the ownership of all the ungranted lands in the colony as part of the Crown domain, and a royal grant conveyed the full estate and entitled the grantee to possession(*r*). When, by the treaty of 1763, France ceded to Great Britain all her rights of sovereignty, property and possession over Canada, it is unquestionable that the full title of the territory ceded became vested in the new sovereign, and that he thereafter owned it in allodium as part of the Crown domain, in as full and ample a manner as the king of France had previously owned it. At no time had the sovereign of Great Britain ever divested himself of the ownership of the public lands to vest it in the Indians. For obvious political reasons and motives of humanity and benevolence, it has, no doubt, been the general policy of the Crown, as it had been at the times of the French authorities, to respect the claims of the Indians. But this, though it unquestionably gives them a title to the favourable consideration of the government, does not give them any title in law—any title that a court of justice can recognize as against the Crown(*s*).

The privy council in affirming the judgment of the supreme court of Canada held that by force of the proclamation of 1763 the tenure of the Indians was a personal and usufructuary right dependant upon the good will of the Crown; that the lands were thereby, and at the time of the union, vested in the Crown, subject to the Indian title, which was "an interest other than that of the province in

(*q*) Sup. Court of Louisiana (cited by Taschereau, J.), 4, La. An. 141.

(*r*) Taschereau, J., 644.

(*s*) Taschereau, J., 648, 649. See also opinion of Henry, J., 639.

the same," within the meaning of section 109. Their lordships also held that by force of the surrender in 1873 the entire beneficial interest in the lands subject to the privilege was transmitted to the province in terms of section 109; and that the dominion power of legislation over lands reserved for the Indians is not inconsistent with the beneficial interest of the province therein. The treaty of 1873 "left the Indians no right whatever to the timber growing upon the lands which they gave up, which is now fully vested in the Crown, all revenues derivable from the sale of such portions of it as are situate within the boundaries of Ontario being the property of that province." Their lordships added that there "may be other questions behind, with respect to the right to determine to what extent, and at what periods, the disputed territory, over which the Indians still exercise their vocations of hunting and fishing, is to be taken up for settlement or other purposes, but none of these questions are raised for decision in the present suit"(*t*).

Boundary Question.

Reference has been made, in connection with the case just cited, to the dispute between the governments of Ontario and Canada as to the boundary of the province on the north and west. This question has given rise to a vast amount of legal and political literature since the acquisition of the Northwest Territories, and it is necessary here to state briefly its present position. In 1878 three arbitrators were chosen on behalf of the Dominion and Ontario

(*t*) L.R. App. Cas. vol. xiv., 46-61. Seeing that the benefit of the surrender accrues to Ontario, their lordships gave their opinion that that province must, "of course, relieve the Crown, and the dominion, of all obligations involving the payment of money which were undertaken by her Majesty, and which are said to have been in part fulfilled by the dominion government."

governments to come to a settlement of the question(*u*). They arrived subsequently at a unanimous decision, but while the Ontario legislature accepted the award as satisfactory, and passed an act giving effect to the same so far as laid in the power of the province(*v*), the dominion government took no steps whatever in the matter. The subject remained in abeyance until 1884, when a case was arranged for reference to the judicial committee of the privy council, but before the case was argued, the dominion government withdrew, so that it went before their lordships only as affects the boundary between Ontario and Manitoba. At an early stage of the proceedings, their lordships decided that the award was not binding, inasmuch as no legislation had taken place to give effect to the same, but they found at the same time that "so much of the boundary lines laid down by that award as relates to the territory now in dispute between Ontario and Manitoba to be substantially correct." Their lordships did not express an opinion "as to the sufficiency or otherwise of concurrent legislation of the provinces of Ontario and Manitoba, and that of the dominion of Canada," but at the same time think it "desirable and most expedient that an imperial act of parliament should be passed to make this decision binding and effectual"(*w*). The result of this decision was a final settlement of this vexed public question. The Ontario government has taken all the measures necessary to establish its jurisdiction in the territory given to it by the decision in question. As we have already seen, the question that was subsequently raised with

(*u*) Ann. Reg. 1878, pp. 189-194. The arbitrator for Ontario was Chief Justice Harrison; for the dominion, Sir Francis Hincks; Sir Edward Thornton, British Minister at Washington, was the third, chosen by the two conjointly.

(*v*) See Ont. Stat. 42 Vict., c. 2. (Rev. Stat. of 1887, c. 4.)

(*w*) L. N. 1884, pp. 281-282. See remarks of Mr. Blake, Can. Hans. 1885, pp. 17, 18; and of Sir J. A. Macdonald, *Ib.*, 23. Also April 13, 1888.

respect to the title to the Indian lands in the disputed territory was decided by the courts in favour of Ontario(*x*). In 1889 the imperial parliament passed an act, in accordance with an address from the Canadian parliament, declaring the westerly, northerly and easterly boundaries of Ontario and carrying out the decision of the privy council(*y*):

XIV. Rules of Construction and Constitutional Principles Deduced from Judicial Decisions.—The most important questions which have come before the privy council and the supreme court of Canada, have arisen upon the provisions of the British North America Act, relating to the distribution of legislative powers between the parliament 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 rule of construction can be laid down and adopted, by which all the 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 *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

(*x*) See *supra*, 128.

(*y*) Imp. Stat. 52-53 Vict., c. 28 (at beginning of Can. Stat. 1890); Can. Com. J. (1889) 385; Can. Hans. (1889) 1654-1658. See Ont. Rev. Stat. c. 4.

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 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(*a*). 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 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(*b*).

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 only fall within one of the enumerated classes of subjects in section

(*a*) Ritchie, C.J., in The Queen *vs.* Robertson, Can. Sup. Court R., vol. vi., 110-11. Also, Valin *vs.* Langlois, vol. iii. 15; The Citizens Insurance Co. *vs.* Parsons, vol. iv. 242.

(*b*) Sir M. E. Smith in Cushing *vs.* Dupuy, 5 App. Ca. 415.

ninety-one, which states the legislative power of the dominion parliament, and whether the power of the provincial legislature is, or is not, thereby overborne (*c*).

The dominion parliament and the 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.

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.

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

(*c*) Dobie *vs.* The Temporalities Board of the Presbyterian Church in Canada, 7 App. Cas., 136; Cartwright, i., 367. In Steadman *vs.* 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 subject specially delegated to it." See also The Citizens & Queen Insurance Co. *vs.* Parsons, Rep. 45, L.T.N.S. 721; Cartwright, i., 271-273; 14 App. Cas. p. 59; 4 Cart., p 125 (1888), and Booth *vs.* McIntyre, 31 C.P., p. 193 (1880).

a local legislature should extend its jurisdiction by localising the application of its own statute(*e*).

The parliament of Canada has a right to interfere with 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.

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(*f*). 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(*g*).

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, or 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(*h*).

(*e*) Legal News on Hodge *vs.* 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.

(*f*) Can. Sup. Court R., iv. 308, Taschereau, J.

(*g*) *Ib.* 242, Ritchie, C.J.

(*h*) *Ib.* 272, Fournier, J.

Parliament may give powers to a railway or other company to expropriate and hold lands, as a necessary incident to its right to create such companies(*i*) ; 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(*j*). Nor does its authority to legislate for the regulation of trade and commerce comprehend 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(*k*).

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.

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 these 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(*l*).

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. The general authority, for instance, possessed

(*i*) Can. Hans. [1882], 433 (Mr. Mills).
(*j*) Can. Com. J. (1883) 326.
(*k*) *Supra*, 96, 97.
(*l*) Can. Sup. Court R., iv. 347, Gwynne, J.

by the dominion to make laws relating to public order and safety, or regulating trade and commerce, does not prevent the local legislature 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 parliament to make laws for the order and good government of Canada. Consequently a uniform law passed by the general legislature to promote temperance in the dominion, does not conflict with the power possessed by the 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.

Where a power is speedily 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) (*m*), 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"(*n*). 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

(*m*) "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."

(*n*) Meredith, C.J., cited by Ramsay, J., 5 Leg. News, 333.

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(*o*). The experience of the past twenty 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 to certain matters of legislation. It has been sometimes urged in parliament(*p*) that committees should be organized 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.

XV. Position of Judiciary.—The administration of justice in the provinces, including the constitution, maintenance, and organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in these courts, forms a class of subjects placed by

(*o*) See remarks of Sir John Macdonald in 1865, Conf. Deb. 32.

(*p*) 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.

the fundamental law(*q*) within the exclusive control of the provincial legislatures. In the province of Quebec the French law derived from the *Coutume de Paris,* has come down from the days of the French règime, and prevails in all civil matters, and the civil laws of that territorial division, including those of procedure, have been duly codified as the "Civil Code of Lower Canada"(*r*).

In the other provinces, the sources of law are the common law of England, brought naturally into the country by the English settlers, and the statutory laws passed from time to time by the legislative authorities. The criminal law is generally uniform throughout the dominion, and is under the jurisdiction of the parliament of Canada, except so far as relates to the constitution of the courts(*s*). The governor-general in council appoints the judges of the superior, district and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick(*t*). The judges in Ontario, Quebec, Nova Scotia, New Brunswick and Prince Edward Island(*u*) continue to be elected from the bars of their respective provinces.

(*q*) B.N.A. Act, 1867, sub-s. 14, s. 92.

(*r*) See 29 Vict., c. 41, "An Act respecting the Civil Code of Lower Canada, (Supplementary volume to Rev. Stat. of Canada, 1886.) Also Code de Procedure Civile, mis au courant de la legislation, par M. Lorrain, 1886.

(*s*) B.N.A. Act, 1867, sub-s. 27, s. 91.

(*t*) *Ib.* 96, justices of the peace, police and stipendiary magistrates are appointed in each province by the lieutenant-governor in council.

(*u*) *Ib.* 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." 98. "The judges of the courts of Quebec shall be selected from the bar of that province." See Debates Com. Hansard (1902), vol. i., p. 1067, *et seq.*

The independence of the judiciary has been for very many years recognized in Canada, as one of the fundamental principles necessary to the conservation of public liberty. The judges are not dependent on the mere will of the executive 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(*v*). 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(*w*). 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

(*v*) See 31 Vict., c. 33. Rev. Sta. of Can., c. 138. B.N.A. Act, 1867, s. 100.

(*w*) 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.

1867 only two committees of this character have been formally appointed, but in neither case did the inquiry result in the removal of the judge whose character was impugned(*x*). 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(*y*). Witnesses should be examined on oath in all such cases(*z*). 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(*a*). 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

(*x*) 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.

(*y*) Can. Com. J. (1867-8), 400; *Ib.* (1877), 25, 132; *Ib.* (1882), 192. Todd Parl. Govt. in England, ii. 876.

(*z*) Can. Com. J. (1877), 36. At the time of the previous case, select committees had no power to administer oaths to witnesses. See chap. xiv. on select committees, s. 11.

(*a*) See memorable cases of Baron Abinger and Sir Fitzroy Kelly, cited by Todd, ii. 870, 871. 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. In 1885 a senator who presented a petition in the senate asking for an investigation into certain charges against a judge withdrew it on a statement from the minister of justice that there was nothing in the charges alleged. Sen. Deb. (1885) 108.

judge may have full opportunity of answering the indictment thus presented against him(*b*). But the action of parliament may originate in other ways, if the public interest demand it, and there is no objection to a member formulating charges on his own responsibility as a member of the legislature having a grave duty to discharge(*c*). 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"(*d*).

We have now briefly reviewed the most important phases in the development of the constitutional system of the dominion of Canada. We have seen how the autocratic government of New France, so repressive of individual energy and ambition, gave place, after the conquest, to representative institutions well calculated to stimulate human

(*b*) Sir J. A. Macdonald, April 9, 1883, Can. Hans., Bothwell case. Cases of Judge Fox and Judge Kenrick, cited in Todd, ii. 862, 865.

(*c*) Case of Baron McLeland, 74 E. Com. J., 493; 11 Parl. Deb., 850-854.

(*d*) Todd ii. 904. Corresp. relative to Judge Boothby, English Com. P., 1862, vol. xxxvii. 180-184.

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 in a confederation, 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 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 in those things which make a community truly happy and prosperous.

CHAPTER II.

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. Libellous Reflections on Members.—VII. Proceedings of Select Committees.—VIII. Assaulting, Menacing or Challenging of Members.—IX. Disobedience to Orders of the House.—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"(*e*).

(*e*) Can. Com. J. (1867-8), 3; 1873, 1874, 1883, 1891, 1896, 1901. This formula has varied a little since 1792 [Low. Can. J. (1792), 16; Upp. Can. J. 5; Leg. Ass. J. (1841), 3.] See, however,

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(*f*).

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 powers enjoyed under the foregoing section by the parliament of Canada(*g*), 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 definded by act of the parliament of

on this point: "Are Legislatures Parliaments?" By F. Taylor (65-8), who points out what he considers material differences in the formula. In the English parliament since 1892 the ancient claim that "servants" of members be free "from arrest and molestation" has been omitted. The officers and servants of the House are still privileged within its precincts. May, 57. [References to May in this work, are, unless otherwise indicated, to the tenth edition.]

(*f*) 2 Hatsell, 227.

(*g*) See chapter on select committees where the difficulty, rendering new legislation necessary, is explained.

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, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof"(*h*).

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." Under this act the two Houses respectively and their members shall exercise like privileges as, at the time of the passing of the British North America Act, 1867 (sec. 18), 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(*i*). Though the British North America Act has been amended so far as respects sec. 18 since the passage of the Canadian Statute, the Canadian parliament has not passed further legislation dealing with its privileges. Elsewhere the fact has been noted, that all the provinces of the dominion have statutes with respect to their privileges, that the judicial

(*h*) 38-39 Vict., c. 38, Imp. Stat., at end of this book, and also in Dom. Stat. for 1876.

(*i*) 31 Vict., c. 23, Dom. Stat.; Rev. Stat. of Can. c. 11, ss. 3-8. See *infra*.

committee of the privy council have given a decision which shows how extensive are the powers of the legislatures for the protection of their members and the exercise of their legal and constitutional functions as deliberative and legislative bodies duly constituted in accordance with the fundamental principles of the British system of parliamentary government.

III. Extent of Privileges.—The privileges of parliament mean such rights as are acquired by custom and usage, or are expressly conferred by statute and belong to either House as a body or to its members as individuals. It is quite obvious that a legislative assembly would be entirely unable to discharge its functions with efficiency unless it had the "privilege" or in other words, the "discretionary authority" 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(*j*). Both Houses of a parliament 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(*k*). 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

(*j*) See Story on the Constitution of the United States (Cooley's 4th ed.), p. 588. "Between 'prerogative and privilege' there exists a close analogy; the one is the historical name for the discretionary authority of the Crown; the other is the historical name for the discretionary authority of each house of parliament." Dicey, The Law and the Constitution" (3rd ed.), 351.

(*k*) May, 61; 8 Grey's D. 232.

that no new privilege can be created(*l*). A breach of privilege committed in one parliament may be considered and dealt with in another parliament(*m*). So either House may punish in one session offences that have been committed in another(*n*).

As parliamentary privileges rest on statutory as well as customary law it follows that they can be inquired into and determined by courts of law like any other rights. In the words of an authority : "It seems now to be clearly settled that the courts will not be deterred from upholding private rights by the fact that questions of parliamentary privilege are involved in their maintenance ; and that, except as regards the internal regulation of its proceedings by the House, courts of law will not hesitate to inquire into alleged privilege, as they would into local custom, and determine its extent and application"(*o*).

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 (or return) the existence of the member, as a member of parliament, commences to all intents and pur-

(*l*) May, 61; 14 E. Com. J. 555, 560.

(*m*) 37 Parl. Hist. 198. 1 Hatsell, 184. 1 E. Com. J. 925; 2 *Ib.* 63; 13 *Ib.* 735. Mary, 88.

(*n*) May, 88. 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.

(*o*) Anson, Law and Custom of the Constitution, i. 182. See Bradlaugh *vs.* Gossett, 12 Q.B.D. 281.

poses(*p*). 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(*q*). 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(*r*) ; but it is not claimable for treason, felony, breach of peace or "any indictable offence"(*s*). This privilege of freedom from arrest on civil process has been always allowed in England for forty days before and after the meeting of parliament. It continues during the whole session and is enjoyed even after a dissolution for a reasonable and convenient time for returning home(*t*).

(*p*) 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 *vs.* Lord Rokeby, Taunt Rep. iv. 668.

(*q*) Cushing, p. 226.

(*r*) Lord Brougham, Wellesley's case, Russell & Mylnes' R. ii. 673, Westmeath *vs.* Westmeath, Law J. viii. (chancery), 177. Hale on P. 16, 30.

(*s*) Committee on P., Sess. P. (1831), 114; also 2 E. Com. J. 261; 4 Lords' J. 369; 11 E. Com. J. 784; 29 *Ib.* 689. 15 Parl. Hist. 1362-1378. See resolution of E. Commons, 20th May, 1675. May, 112, 113. 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. During session of 1885 a member of the Canadian Commons was arrested and fined by the Ottawa police magistrate for an assault committed in the lobby on a person who had written an offensive letter in the newspapers. See Ottawa papers of Feb. 21. "I know of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice;" Mr. Justice Stephen, Bradlaugh *vs.* Gossett, Feb. 9th, 1884, Q.B.D.

(*t*) May, 107, 108. Barnardo *vs.* 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-Chan-

A member may be committed for contempt of court when it is of a *quasi* criminal nature, and the English House has not of recent years deemed it expedient to interfere in cases of an open or gross character. But the courts would not sanction any more than parliament itself a commitment, as part of a civil process, for the recovery of a debt, and it may be laid down as a general principle that the House of Commons in England "has not waived its rights to interfere. When members are committed for contempt," but "each case is open to consideration as it arises ; and although protection has not been extended to flagrant contempts, privilege might still be allowed against commitment(*u*) under any civil process, or if the circumstances of the case appeared otherwise to justify it"(*v*).

cellor Hall held that the privilege extended to forty days after a prorogation or dissolution. *Times*, 16th April, 1880; May, 119. In the case of the Queen *vs.* 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 *vs.* Barrett *et al.*, or the more recent case of Kielly *vs.* Carson, at variance with the assertion and enjoyment of this privilege by our own legislature, I am confirmed in my opinion of its existence by our general adoption of the law of England, by the provision for suits against privileged parties contained in our statute of 1822; and in the statutes of Canada, 12 Vict., c. 63, ss. 22 and 23; 13 & 14 Vict., ch. 55, s. 96, and by the uniform decisions of our courts since the former act, and also, as I am informed, before it." In Ontario and Quebec, the privilege of members from arrest is made statutory for twenty days before and after a session (Ont. R. Stat. of 1897, c. 12, ss. 50, 57 (1); Quebec Rev. Stat, art. 129). In British Columbia, for forty days, Rev. Stat. for 1897, c. 47, s. 81. In Nova Scotia, for fifteen days. Rev. Stat. of 1900 ,c. 2, s. 20. In the other provinces there is no such special statutory provision.

(*u*) May, 119; see case of Fortescue Harrison, 1880, there cited.

(*v*) May, 118, 119. As this question has never come up in the Canadian House since 1867 we are confined to references to English authorities on the subject.

The privileges of exemptions from serving as jurors or attending as witnesses, during a session of parliament are well established(*w*), and precedents are found of the English Commons having in former times punished persons for serving subpœnas upon members(*x*). Though members cannot be compelled to attend as jurors(*y*), yet the Commons generally gives leave of absence to members to attend elsewhere as witnesses, when it is shown that the public interests will not consequently suffer(*z*). The exemption has been held good in the case of an adjournment(*a*).

In all cases where members are arrested whether on a criminal charge or committed for a contempt of court, the House should be informed by the proper authority of the causes of such action(*b*).

V. Freedom of Speech.—Among the most important privileges of a legislature is the enjoyment of freedom of speech—a privilege long recognized and confirmed as part of the law of the land in Great Britain and all her de-

(*w*) 1 Hatsell, 112, 118, 171, 173; D'Ewes, 637; 1 Dwaoris, 103, 105; Can. Hans. (1877), 1540-1.

(*x*) 3 Lords' J. 630; 9 E. Com. J. 339; 1 Hatsell, 96, 169, 175.

(*y*) 14 E. Hans. (N.S.), 569, 642; 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 on Privileges, 1826. Members, officers and employees of the legislature are exempt from serving as jurors by statutes of following provinces: Ont. Rev. Stat. (1897), c. 12, s. 52; Nova Scotia, *Ib.* (1900), c. 2, s. 21; Quebec *Ib.* art. 130; British Col. *Ib.* (1897), c. 107, s. 17; Man. *Ib.* (1891), c. 84, s. 42.

(*z*) 71 E. Com. J. 110: 82 *Ib.* 306, 379. May, 111. E. Hans. D., 1st March, 1844, Earl of Devon. But "it is doubtful," adds May (p. 111), "whether the House would not protect a member served with a subpoena from the legal consequences of non-attendance in a court of justice if permission had not been previously granted by the House for his attendance." 78 E. Com. J. 132.

(*a*) 21 E. Hans. (N.S.), 1770.

(*b*) May, 114-118; 107 E. Com. J. 28; 129 *Ib.* 11, 28, 71.

pendencies(*c*). 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(*d*). But if a member circulates or publishes outside of the House statements made within it, he must assume full responsibility and be liable to an action for libel should his language be defamatory(*e*).

The making by one member of an unfounded charge, which has been inquired into by the House does not constitute a breach of privilege ; for "one of the first and greatest of its privileges is *free speech*, and one of the advantages of free legislative bodies is the right of exposing and denouncing abuses by means of free speech"(*f*).

VI. Libellous Reflections on Members.—Any scandalous and libellous reflections on the proceedings of the House is a high breach of the privileges of parliament, but the libel must be based on matters arising in the usual transaction

(*c*) "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 Lords' 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.

(*d*) Cushing, p. 243.

(*e*) Anson i. 159; May, 97. See cases of Lord Abingdon. 1 Esp. N.P.C. 228; of Mr. Creevey, 1 M. & S. 278. The lord chief justice, in later case of Wason *vs.* 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, but that a fair and faithful report of the whole debate would not be actionable."

(*f*) Richards, C.J., in Landers *vs.* Woodworth, Can. Sup. C. R. ii., 203; also Ritchie, J., *Ib.* 203, and Sir J. Thompson's remarks, when Minister of Justice. Com. Hans., 1892, April 6.

of the business of the House (*g*). 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 land 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 and 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(*h*).

Very few cases can be found in the Canadian journals since 1867(*i*) of the House of Commons or its members

(*g*) Res. of 21st May, 1790; 45 E. Com. J. 508. See 29 Lords' 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. The Ontario, Nova Scotia, Quebec and Manitoba statutes on privileges have special provisions to meet such cases, but British Columbia legislation appears defective in this particular.

(*h*) May, 79, Cushing, p. 252. For recent English cases of libels on members individually and collectively, see *Carlisle Examiner*, reflecting on chairman of a committee, 113 E. Com. J. 189, 192, 193, 196, 201, 202, 203. 150 E. Hans. (3), 1022, 1066, 1198, 1313, 1318, 1404; *Pall Mall Gazette*, reflecting on Irish members, 215 E. Hans. 530-542; 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. Kenealy. Mr. Disraeli and others pointed out that the words complained of were not spoken in the House, and that Dr. K. was not at the time a member, and consequently could not raise a question of privilege. 222 E. Hans. (3), 1185-1204.

(*i*) 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.

taking formal proceedings with respect to attacks in the newspapers on their parliamentary conduct. The following are the only instances :

In 1873 Mr. Elie Tassè, 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(*j*). 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(*k*). In 1894 the House resolved that an article in the Ottawa *Free Press* was "a scandalous, false and malicious libel upon the honor, character, and integrity of the Speaker"(*l*).

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

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

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

(*l*) Can. Com. J. (1894), 108, 109; Com. Hans., April 25.

House, ought not to be published by any member of such committee or by any other person''(*m*).

As committees are generally open to the press and the public, the House is now very rarely disposed to press the foregoing rule(*n*). 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(*o*).

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''(*p*).

(*m*) 21st April, 1837, E. Com. J.

(*n*) *Times* and *Daily News*, 1875, 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.

(*o*) 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.

(*p*) 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

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

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

The criminal code enacts (55-56 Vict., c. 29, s. 70) that "everyone is guilty of an indictable offence (liable to fourteen years' imprisonment) who confederates, combines or conspires with any person to do any act of violence in order to intimidate, or to put any force in constraint upon any legislative council, legislative assembly or house of assembly."

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

of the lateness of the session the order could not be served. Can. Com. J. 423, 436; Hans. 1980-2; 2044. The House ineffectively, in the following session, dealt with the matter. Can. Hans. (1880), 44, 182; Jour. 24, 58-9.

(*q*) Res. of June 1st, 1780; 37 E. Com. J. 902.

(*r*) 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.

(*r*) 38 E. Com. J. 535, 537; 74 E. Hans. (3), 286. Can. Leg. Ass. J. (1854-5), 351, 352, 353.

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(*u*).

2. Tampering with a witness in regard to the evidence to be given by him before the House or any committee of the House(*v*).

3. Assault or interference with officers of the House, while in execution of their duty(*w*).

4. All attempts to influence the decision of a committee on a bill or other matter before it for consideration(*x*).

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"(*y*).

(*u*) 4 Lords' J. 247. 87 E. Com. J. 360; 88 *Ib.* 218; 90 *Ib.* 504; 91 *Ib.* 338; 92 *Ib.* 282. 134 E. Hans. (3), 452; 249 *Ib.* 989.

(*v*) Sess. O.; May, 84. 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.

(*w*) 19 E. Com. J. 366, 370; 20 *Ib.* 185. Low. Can. J. (1823-4), 113-4.

(*x*) 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 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 135 E. Com. J. 70, 73, 77. E. Hans. vols. 247, 248, 249 for 1879.

(*y*) Eng. Res. of 2nd May, 1695. The English Commons have always severely punished members for receiving bribes; 9 E. Com.

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(*z*). 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(*a*). Precedents are found for the granting of this protection to persons attending to prefer or prosecute a private bill or other business in parliament(*b*) ; or to the solicitor of a party(*c*) : or to prosecute a petition(*d*) ; or to claim a seat as a member(*dd*) ; or attending as a witness before the House or a committee(*e*) ; witnesses as well as counsel have been protected from actions of law for what they may have stated before committees(*f*).

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, pro-

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.), 134-9.

(*z*) 1 Lex. P. 380; 1 Hatsell. 9, 11, 172; 1 E. Com. J. 505; 2 *Ib.* 107; 9 *Ib.* 62; 13 *Ib.* 521; 18 *Ib.* 371; 21 *Ib.* 247; 74 *Ib.* 223. 4 Lords' J. 143-4.

(*a*) 48 E. Com. J. 426.

(*b*) 1 E. Com. J. 702, 863, 921, 924; 26 *Ib.* 797; 27 *Ib.* 447, 537. 88 Lords' J. 189; 92 *Ib.* 75, 76.

(*c*) 9 E. Com. J. 472; 24 *Ib.* 170.

(*d*) 2 E. Com. J. 72.

(*dd*) 39 *Ib.* 83; 48 *Ib.* 426.

(*e*) 1 E. Com. J. 863; 8 *Ib.* 525; 9 *Ib.* 20, 366, 472; 12 *Ib.* 304, 610.

(*f*) 11 E. Com. J. 591, 613, 100 *Ib.* 672, 680, 697; 81 E. Hans. (3), 1436; 82 *Ib.* (3), 431, 494.

ceedings 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.

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(*g*).

XIII. Power of Commitment.—It is clearly established that the power of commitment for contempt is incident to every court of justice, and more especially belongs to the Houses of parliament as essential to the maintenance of their undoubted rights and privileges(*h*),—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(*i*) ;—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"(*j*).

Sir Erskine May lays down the following broad principle :

(*g*) For latest case of imprisonment in Newgate, 249 E. Hans. (3), 989.

(*h*) Ellenborough, C.J., Burdett *vs.* Abbott, 14 East 1. Can. Sup. Court R., vol. ii. 177.

(*i*) Lord C. J. Abbott, *re* Hobhouse, 2 Chit. R. 207.

(*j*) De Grey, C.J., in Brass Crosby's case, 19 Howell, St. Tr. 1137; 3 Wils. 188, 203.

"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"(*k*).

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(*l*). Though doubts have always been entertained as to the powers of those legislatures in this particular, they never failed, when the occasion arose, to assert what they believed to be privileges incident to a legislative assembly, and the provincial legislatures since 1897 have invested themselves by statute with power to punish for contempt. 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

(*k*) May, 66, 67. It has even been decided that a person so committed cannot be admitted to bail. I Wils. 200, Wright J., in Murray's case.

(*l*) 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. 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 to 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, 263, Mr. Lajoie assaulting Mr. Dorion. A motion to commit him was voted down.

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 gaol 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*"(*m*).

XV. Procedure on 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(*n*). 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(*o*). If, when the order of the day has been read at the appointed time, the serjeant-at-arms informs the House that the person summoned is not in attendance,

(*m*) 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.

(*n*) 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.

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

or cannot be found, the House will instruct the speaker to issue a warrant for his arrest(*p*). If the person summoned obeys the order of the House(*pp*), or is brought to the bar under arrest, he will be examined as to the offence of which he is accused, and the House will consider whether he has excused himself or whether he is guilty of the offence. If the House come to the latter conclusion, he will be declared guilty of a breach of the privileges of the House, and ordered into custody(*q*). Or if his explanations are satisfactory he will be discharged from further attendance (*r*). The accused may be heard by counsel if the House think fit to grant his prayer(*s*). An offender may be discharged at any time upon causing a petition, expressing proper contrition for his offence, to be presented(*t*). Sometimes the House may deem it most expedient to refer a complaint to a committee, and to stop all proceedings until it make a report(*u*). If the examination of a person

(*p*) 4 Can. Com. J. (1873), 133; *Ib.* (1894), 288.

(*pp*) Can. Com. J. (1894) 298-300.

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

(*r*) 113 E. Com. J. 193; Can Com. J. (1894), 300.

(*s*) Leg. Ass. J. (1852-3), 216, 313, 315. *Ib.* (1854-5), 631, 639. No record of counsel's remarks appears in the journals. Leg. Ass. J. (1854-5), 677, &c.; Can. Com. J. (1887), 187.

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

(*u*) 112 E. Com. J. 232. 146 E. Hans. (3), 97. It is no longer the practice in England to refer breaches of privilege to committee of privileges, except the House think it necessary. Indeed the English committee of privileges is now only appointed *pro forma*, and it is the present practice, when a complaint is made, to deal with the matter with the usual formalities in the House itself, and to punish or acquit the offender according to his explanations. The references to a committee appears to be in cases where there is need of particular inquiry in order to reconcile conflicting statements, and then the House suspends judgment until a report is made. May, 86. In 1879 a question of privilege (Messrs. Ward and Grissell for attempting

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(*v*).

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(*w*). When a member has reason to complain of a speech made by another member outside the house, he must bring up the paper, but 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(*x*).

XVI. Suspension and Expulsion of Members.—The right of a legislative body to suspend or expel a member for what is sufficient cause in its own judgment is undoubted. Such a power is absolutely necessary to the conservation of the dignity and usefulness of a legislative body(*y*). In a

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.

(*v*) Can. Com. J. (1873, 2nd session), 139. But in this case, it would have been sufficient to have ordered him to attend, as no examination had been made into the charge.

(*w*) 113 E. Com. J. 189. 185 E. Hans. (3) 1667. 219 *Ib.* 394-6; Can. Com. J. (1894) 108.

(*x*) 74 E. Hans. (3), 139; 222 *Ib.* 1185; 236 *Ib.* 542.

(*y*) "The power to expel a member is not, in the British House of Commons," says the eminent American commentator, Story, "confined to offences committed by the party as a member, or during a session of parliament, but extends to all cases where the offence is such as, in the judgment of the House, unfits him for parliamentary duties." In the United States Congress it requires the concurrence of two-thirds of the members to expel an offending member. See Story, ss. 837, 838.

previous chapter cases have been cited of the exercise of the power of expulsion by the parliament of the dominion as 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.

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 purpose of an inquiry.

When the evidence of any person is shown to be material in a matter under consideration of the House, or a 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(*z*). In the Commons the order is signed by the clerk of the House and served by the sergeant 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(*a*).

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(*b*).

Debates in *Mail* and *Times*, 1873, p. 38, show the procedure on such occasions. For the latest case of examination see Can. Com. J. (1887), 187-93; Hans. 616 *et seq.*

(*z*) May, 400. The speaker signs in divorce cases.

(*a*) Same practice in the English House of Commons. *Ib.* 472-3.

(*b*) Can. Com. J. (1874), 8, 10, 13, 14, 17, 18, 32, 37, 38. Parl.

When the witness appears at the bar(*c*) of the House, each question will be written out and handed to the speaker; who, strictly speaking, should read it to the witness; but on certain occasions a considerable degree of latitude is allowed for the convenience of the House, and questions put directly by members have been supposed to be put through the speaker(*d*). As a matter of correct practice, when a member asks a question it should be put to the House; and it being agreed to, the witness must answer it distinctly and audibly, as soon as he has read it(*e*). In case a member objects to a question on any ground, he must state his objections, and the speaker will decide(*f*). 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(*g*).

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(*h*).

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

(*c*) Members are examined in their places (Leg. Ass. J. 1847, p. 4); the speaker in the chair; *Ib.* p. 6. May, 409. The bar is down during the examination of a witness not a member. *Ib.* 408; 2 Hatsell, 140.

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

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

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

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

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

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

House at the time required(*i*). A witness who neglects or refuses to obey the order of the House will be sent for in custody of the serjeant-at-arms(*j*). 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(*k*). Witnesses who refuse to answer proper questions will be admonished and ordered to answer them(*l*). If they refuse, they may be committed until they express their willingness to answer(*m*).

A witness is always considered under the protection of the House, and no insulting questions ought to be addressed to him(*n*). On the other hand, it is the duty of a witness to answer every question in a respectful manner, and should he not do so the usual course is for the speaker to reprimand him immediately and to caution him to be more careful in the future(*o*). 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(*p*).

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

(*j*) 35 *Ib.* 323; 95 *Ib.* 59; Mirror of P. (1840), vol. 15, p. 721; Can. Com. J. (1894), 288.

(*k*) 106 E. Com. J. 48.

(*l*) 88 *Ib.* 218; 12 E. Hans. (1), 450, 831.

(*m*) 90 *Ib.* 501, 504. Cushing, pp. 379-394.

(*n*) 11 Parl. Reg. 232, 233, 234; 13 *Ib.* 232, 233.

(*o*) 11 E. Hans. (1), 662. Also Cav. Deb. Can. 170, 171.

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

under no obligation to reply to any questions so as to criminate themselves(*q*).

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(*r*).

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(*s*). If his testimony be not required the order will be read and discharged(*t*). 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(*u*). A witness has been allowed the assistance of counsel when his evidence may tend to criminate himself(*v*).

As previously stated(*w*), no witness before either House of Parliament can excuse himself from answering any proper question that may be put to him. While the law of parliament demands the disclosure of the evidence, it recognizes to the fullest extent the principle upon which the witness is excused from making such disclosure in the ordinary courts of justice and protects him against the consequences which might otherwise result from his testimony —the rule of parliament being that no evidence given in

(*q*) 146 *Ib.* (3), 101-2.

(*r*) 95 E. Com. J. 253; Can. Com. J. (1874), 17, 18. *Ib.* (1891) June 8.

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

(*t*) *Ib.* 18; *Ib.* (1887), 193.

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

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

(*w*) 18 E. Hans. (N.S.) 968-974; May, 121-127. Cushing adds (p. 397), that the permission of the House is never granted provided the witness testifies truly, according to the opinion of Mr. Wynn, the eminent parliamentarian.

either House can be used against the witness in any other place without the permission of the House. On the 26th May, 1818, it was resolved by the English House of Commons "that all witnesses examined before the House or any committee thereof are entitled to the protection of this House in respect of anything that may be said by them in their evidence." The same resolution directs "that no clerk or officer of the House, or shorthand writer employed to take minutes of evidence before the House or any committee thereof, shall give evidence elsewhere in respect of any proceedings or examination had at the bar or before any committee of this House, without the special leave of the same"(*x*).

In view of certain prosecutions and suits, criminal and civil, instituted by the Department of Justice subsequent to enquiries before the committee of privileges, and the committee of public accounts in 1891, the House ordered in 1892 that all clerks and stenographers who were in the employment of the House, and in attendance on the said committees, "should attend, when required, before the courts and give evidence as to the statements made upon oath, and produce all books and papers used before the said committees;" and it was distinctly laid down in the same resolution that the House, "while waiving its privileges in these particular cases with the view of eliciting all the facts and obtaining substantial justice in the premises, does not in any sense give up its well-established and undoubted

(*x*) 73 7. Com. J. 389; 28 E. Hans. (1), 919, 956; Cushing, pp. 397, 398; May, 122, 407. With respect to members, Mr. Speaker Manners Sutton, one of the ablest men who ever filled the English chair, said "that hardly any doubt can exist in the mind of any honourable member that he is not at liberty to give evidence elsewhere of what passes here, without the direct, or at least, the implied permission of the House. See Cushing, p. 398, and 18 E. Hans. (N.S.), 968-974.

rights, whenever it may deem it in the public interest hereafter at any time to protect all witnesses examined before this House or any committee thereof in respect of any thing that may be said by them in their evidence, and to refuse permission to any clerk or officer of the House, or shorthand writer employed to take minutes of evidence before the House or any committee thereof, to give evidence elsewhere in respect to any proceeding or any examination had at the bar or before any committee of the House"(*y*).

The experience of parliament has shown that in the majority of cases, 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. 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 has also come before the courts of the dominion and the privy council. Immediately after confederation the legislatures of Ontario and Quebec passed acts to give the respective Houses such privileges and powers as are held by the Senate and House of Commons of Canada(*z*). When these statutes were disallowed as *ultra vires* by the governor-general in council(*a*), the legislatures passed other acts more clearly defining their

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

(*z*) Ont. Stat. 32 Vict., c. 3. Quebec Stat., 32 Vict., c. 4.

(*a*) Can. Sess. P. (1877), No. 89, pp. 202-212, 221; Todd's Parl. Govt. in B.C., 2nd ed., 522 *et seq.*

respective privileges(*b*). These acts were left to go into effect, and the court of Queen's bench in Quebec decided that the statute of that province was *ultra vires*(*c*). In 1874 a Manitoba act was disallowed, but a subsequent statute was permitted to come into operation(*d*).

The action of the respective provincial legislatures in passing statutes respecting their privileges and powers was subsequently justified by a decision of the supreme court of Canada with respect to a difficulty that arose in the House of Assembly of Nova Scotia. It appears that Mr. Woodworth, a member of the House of Assembly 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 sergeant-at-arms, who, with his assistant, enforced the order, and removed Mr. Woodworth, who soon afterwards brought an action of trespass

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

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

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

for assault against the speaker and certain members of the House, and obtained a verdict of $500 damages. The supreme court held, on appeal, affirming the judgment of the supreme court of Nova Scotia, that the legislative assembly of Nova Scotia had no power to punish for any offence not an immediate obstruction to the due course of its proceedings, and the proper exercise of its functions, such power not being an essential attribute, nor essentially necessary for the exercise of 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(*e*).

An act passed by the Nova Scotia legislature in 1876, while the foregoing action of *Landers* v. *Woodworth* was pending, also came under review of the judicial committee of the privy council in 1896. By the Nova Scotia Act it was declared that no member shall be liable to any civil action by reason of anything brought by petition, bill, etc.,

(*e*) Can. Sup. C. Rep. ii., 158-215. Kielly *vs.* Carson (4 Moore P.C.C. 63) and Doyle *vs.* Falconer (L.R. 1 P.C., App. 328) were commented upon by the court and followed. The learned chief justice cited these and other cases bearing on the question, viz., Beaumont and Barrett (1 Moore P.C.C., p. 59); Fenton and Hampton (11 Moore, 347); Cuvillier *vs.* Monro (4 L.C.R., 146); Lavoie's case (5 L.C.R., p. 99); Dill *vs.* Murphy (1 Moore P.C., C.N.S., 487); *ex parte* Dansereau. Low. Can. Jurist, vol. xix. 210-248.

before the House. The following acts are prohibited, amongst others: Insults to or assaults upon members during the session. Each House to be a court of record, with power to adjudicate upon and punish offences under the statute. Offenders to be liable to imprisonment. The plaintiff intentionally disobeyed the order of the House to attend before the House and was arrested by the serjeant-at-arms and imprisoned under order of the House. Being released under a writ of *habeas corpus*, he brought an action against certain members for assault and imprisonment. Judgment went for the plaintiff. On appeal to the supreme court of Nova Scotia the court was equally divided, and the judgment affirmed. This appeal was then taken to the privy council and the judgment was reversed, on the ground that the provincial act was *intra vires*. Their lordships held: That local legislatures existing at the time had authority prior to confederation to make laws respecting their constitution, powers and procedure, and to punish for contempt and disobedience of their orders. That even if this power did not then exist, the British North America Act, 1867, by section 92, conferred power on the local legislature to pass acts for defining their powers and privileges, and that consequently the protection of members from insult as set forth in the Nova Scotia statute was clearly part of the constitutional law of the province. That the legislature has none the less a right to prevent and punish obstruction to the business of legislation because the interference or obstruction is of a character which involves the commission of a criminal offence, or brings the offender within the reach of the criminal law. Finally, that the prohibition in the statute against bringing a civil action against any member was a complete bar to the action(*f*).

(*f*) L. N. (1896), 228-235. App. Cas. 600; consult Lefroy, 742-750.

To make this historical review complete, I may add that the legislatures of New Brunswick, Prince Edward Island and British Columbia have also passed statutes respecting their powers and privileges(*g*).

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

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

(*h*) May, 89; Anson i., 174.

(*i*) "The council and each House shall each be a court of record, and shall each have all the rights and privileges of a court of record for the purpose of summarily inquiring into and punishing the acts, matters and things herein declared to be violations of this chapter," *i.e.*, insults to, or libel upon members, refusal to obey orders, intimidation of members, and such like violations of privilege, now well understood and deferred on parliamentary law. See N.S. Rev. Stat (1900), c. 2, ss. 18-28. Ontario and Manitoba legislatures have invested themselves with similar powers as a court of record: Ont. Rev. Stat. (1897), c. 12, s. 57 (1); Man. Rev. Stat. (1891), c. 84, s. 47. The other provinces simply assert, general powers and privileges.

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

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

(*j*) See on this point opinion of Lord Ellenborough in the case of Burdett *vs.* Abbott, 14 East. 128, cited by Anson i., 175, and *supra* p. ...., where this right is more fully treated. See also Lefroy, 537-755. Comments on Fielding *vs.* Thomas and Ret. to address H. of C. Canada, 24th April, 1895 *re* "The Act respecting the Speaker of the Senate."

CHAPTER III.

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 and special legal enactments. Parliament can only be legally summoned by authority of the Crown(*a*); 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 first sitting in the next session"(*b*). A subsequent section also provides that "every House of Commons shall continue for five years from the day of the return of the writs for choosing the House—(subject to be sooner dissolved by the governor-general)—and no longer"(*c*). Apart, indeed, from statutory enactments, the practice of granting supplies annually renders a meeting of parliament every year absolutely necessary(*d*). Parliament is summoned by the

(*a*) Hatsell, 296.
(*b*) Sec. 20, B.N.A. Act, 1867.
(*c*) Sec. 50, *Ib.*
(*d*) May, 38.

Queen's proclamation, by and with the advice of the privy council(*e*). 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 favor of God be ordained"(*f*).

The parliament of Canada meets as a rule in the winter months. The first session was held in November, 1867, and adjourned to March, 1868. In 1869, 1872, and in 1891 (after a general election), the 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 Canadian Pacific Railway contract.

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

In 1888 a proclamation calling parliament together for the "despatch of business" was formally superseded by another fixing a later date, and a similar procedure was fol-

(*e*) Jour. (1867-8), i-x., etc.

(*f*) See different proclamations which appear at commencement of Journals of Senate and House of Commons.

lowed in the summer of 1896, when a new government was formed after a general election, and required time for preparation before meeting the Houses(*ff*).

The general sentiment of the House favors the summoning of parliament as soon as possible after the commencement of the year(*g*).

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 admitted and introduced. The House will then adjourn during pleasure, and resume as soon as his Excellency or the deputy-governor presents himself in the chamber(*h*).

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

The mace which before lay under the table, will now be

(*ff*) Can. Com. J. (1888), viii., ix. *Ib.* (1896 Aug. sess.) vii., viii.

(*g*) See Can. Hans. 1885, Jan. 30 (Mr. Blake, 8); *Ibid*, 1886 (Mr. Blake, 8).

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

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

placed thereon(*j*), and prayers will be read by the chaplain. It is usual then to present certificates of the appointment of new members, who will then be formally introduced. The House will next be informed of the hour when his Excellency or the deputy-governor will come down; and the House will then adjourn during pleasure or until that time. As soon as his Excellency 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(*k*).

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

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

(j) Ib (1896 Aug. 10. 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 buildings 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.

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

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

be announced at the same time(*m*). Whenever a new speaker and a new clerk have been appointed, as in 1867, the commission of the former will be first read, and he will take his seat in due form. The speaker will then announce the appointment of the clerk so that his commission may go on the journals(*n*).

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 Senate and privileges of parliament"(*o*). When the order of 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

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

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

(*o*) Rule I.; Sen. J. (1879) 22-23; *Ib.* (1896 Aug.) 19, 20; *Ib.* (1901) 21-24. To this committee are referred matters affecting the privileges of the House and its members. In 1880, a senator made a charge against the official reporters 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., 243-46, 267, 280.

practice in the two Houses with respect to the address was similar up to 1870(*p*), when it was simplified in the Senate in conformity with the latest practice of the House of Lords, and in 1896, during the first session of the eighth parliament, the procedure was still more curtailed by following the latest practice of the English Houses, and passing an addition of a single paragraph thanking his Excellency "for his gracious speech which he had been pleased to address to both Houses of parliament"(*nn*). 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(*q*) in the Commons.

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(*r*). The following oath will then be administered at the table by certain commissioners (generally the clerk, the clerk-assistant, sergeant-at-arms and law-clerk) appointed by *dedimus potestatem*, as provided by the British North America Act, 1867:—

(*p*) Sen. J. (1870) Feb. 17.

(*nn*) The same procedure was established in the House of Commons in 1903.

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

(*r*) Can. Com. J., 1867-8, 1873, 1874, 1879, 1883, 1887, 1891, 1896 (Aug.), 1901, p. 1.

"I, ————, do swear that I will be faithful and bear true allegiance to his Majesty, King Edward VII."(*s*).

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 the clerk assistant, being in their places at the table, the usher of the black rod presents himself at the door of the Commons and strikes it three times with his rod. He is at once admitted by the serjeant-at-arms, and advances up the middle of the house, where he makes three obeisances, and says in English and French:—

"Gentlemen, [or Mr. Speaker, in subsequent sessions] his Excellency the governor-general [or the deputy-governor] desires the immediate attendance of this honourable House in the Senate chamber"(*t*).

The gentleman usher 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

(*s*) 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, 155.

(*t*) Can. Com. J., 1867-8, 1873, 1874, 1879, 1883, 1887, 1891, 1896, Aug., 1901, p. 1. Parl. Deb. (1874). The governor-general's secretary advises by letter the clerk of the House that the deputy-governor will proceed to the senate chamber to open parliament. It appears from Hatsell, vol. 2, p. 374, that it is "the established custom, when the black rod knocks at the door, that he is immediately let in, and without any notice given by the serjeant to the House."

(*u*) The mace is not taken to the upper chamber on this occasion, as the Commons are not yet a formally organized house by the election of speaker. Previous to the session of 1880 members generally preceded Mr. Speaker and officers, but at the commencement of

chamber(*u*), where the members of the Commons will be informed by the speaker of the Senate:—

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

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 de-

that session arrangements were made to give precedence to Mr. Speaker and prevent, if possible, confusion and difficulty in entering the Senate chamber. Precedence of members in the English House in going up to the Lords may be determined by ballot. E. Com. J. 1851, p. 439, 443, 445. May, 168. 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.

(*v*) Sen. J. (1896, Aug.) 15; *Ib.* (1901) 18; Can. Com. J. (1896, Aug.) 2; *Ib.* (1901) 11. Until the cause of summons has been formally declared by the king or his representative, neither House can proceed upon any business whatever. The speaker's election is the only business which can be done, and that is no exception to the rule, since the Commons receive express authority for performing this act, without which the House of Commons is not completely organized. 2 Hatsell, 307, 327. 1 Todd, Parl. Gov., 405. 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. *Ib.* (1887) 2-8; *Ib.* (1891) April 29; *Ib.* (1901) 11-21.

clared 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 for the great honor they had been pleased to confer upon him by unanimously choosing him to be their speaker"(*w*).

In case there is opposition, and two or more candidates are proposed, the clerk will continue to point to each member as he rises, and then sit down; and when the debate is closed, he will put the question first proposed; and if the majority decide in favor 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(*x*). It is very unusual to divide the House when only one member has been proposed, as was the case in 1878, but still some instances can be found in the parliamentary history of England and Canada(*y*). It has never been the practive in the Canadian or English parliaments for a member proposed as speaker to vote for his own elec-

(*w*) Can. Com. J. (1867-8); *Ib.* (1873); *Ib.* (1874); *Ib.* (1883). *Ib.* (1887); *Ib.* (1891) 2; *Ib.* (1896, Aug.) 2; *Ib.* (1901) 11, 12. 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; *Ib.* (1901) 3. The English practice is a little different; no question is put by the clerk. 129 E. Com. J. 5. May, 152.

(*x*) May, 151. 90 E. Com. J. 5; 94 *Ib.* 274. There are no cases since 1867 of more than one candidate being proposed for the chair, but many instances can be found in the journals of the old legislative assembly. Leg. Ass, J. (1848), 1, 2; *Ib.* (1854-5), three candidates, Messrs. Cartier, Sicotte and J. S. Macdonald.

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

tion(*z*). In England the usage is, in case of the proposal of two or more candidates, for each of them to vote in favor of his rival(*zz*).

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

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

When the speaker has made his acknowledgments to the House, the mace will be laid on the table, where it always

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

(*zz*) May, 151; cases of election of Mr. Abercromby, 19th Feb., 1835, and of Mr. Shaw Leferre, 1839.

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

(*b*) May, 150, 151, 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 Mr. 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.

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

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

remains during the sitting of the house, while the speaker is in the chair(*e*). Then the house adjourns until the following day, or to such time as the governor-general 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(*f*). After which he will await the arrival of the 'black rod,' who presents himself in the manner previously described. When that functionary has delivered his message desiring the attendance of the Commons, the speaker-elect, preceded by the serjeant-at-arms with the mace, and followed by the House, will proceed to the Senate chamber, where he will acquaint his Excellency that the House had "elected him to be their speaker, and will humbly claim all their undoubted rights and privileges." On behalf of his Excellency, the speaker of the Senate will reply that "he freely confides in the duty and attachment of the House of Commons to his Majesty's per-

(*e*) 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 sergeant'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 speaker's chambers during the prorogation or adjournments of the House and accompanies him on all state occasions when parliament is in session, and he has authority to be present on behalf of the House. The mace now in use belonged to the old legislative assembly of Canada, and was carried away by the rioters on the 25th of April, 1849, when the parliament house was burned down at Montreal, after the assent of the governor-general, Lord Elgin, to the Rebellion Losses Bill. It was subsequently recovered, however, and was lying on the floor of the hall when the assembly met on the 26th in 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.

(*f*) See chapter vii., s. 10.

son and government, and upon all occasions will recognize and allow their constitutional privileges, etc." Then the governor-general will formally open the session with a speech which will be duly reported to each House and entered in its journals(*g*).

The choice of speaker by the Canadian Commons, it will be seen by the foregoing form, is not "confirmed" and "approved" as in the British House(*h*). In the old legislatures of Canada previous to 1841 the speakers always presented themselves for, and received the approval of the governors(*i*); but a difficulty arose in 1827 in the legislature of Lower Canada in consequence of the refusal of Lord Dalhousie, then governor-general, to accept Mr. Papineau as speaker. The assembly passed resolutions declaring that the course followed by the governor-general was unconstitutional, inasmuch as the act of parliament under which the legislature was constituted "did not 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 in 1678 in the famous case of Sir E. Seymour(*j*). No compromise being possible under the circumstances, the governor-general prorogued parliament. In a subsequent session, the choice of Mr. Papineau as speaker was "approved" by Sir James Kempt, who had succeeded

(*g*) Sen. and Com. J. 1867-8, 1873, 1874, 1879, 1883, 1887, 1891, 1896, Aug., 1901. For the formula when a speaker is elected during a parliament and no reference to privileges is made, see Journals of 1878 and 1899; also *supra*,

(*h*) 129 E. Com. J. 5; May, 201.

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

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

Lord Dalhousie as governor-general(*k*). The form of approval continued to be observed in the legislatures of Upper and Lower Canada until the union of the two provinces(*l*) 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(*m*). In the legislatures of Nova Scotia, New Brunswick and Prince Edward Island, the lieutenant-governors continue as formerly to ratify the choice of the assembly(*n*); 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(*o*).

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

(*l*) The speaker, on these occasions, generally said: "It has pleased the house of assembly to elect me as their speaker. In their name I therefore pray that your Excellency may approve of their choice." To which the speaker of the legislative council replied: "I am commanded by H. E. the governor-in-chief to inform you that he allows and confirms the choice that the assembly have made of you as their speaker." 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.

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

(*n*) N. S. Ass. J. (1883) 5, 6. N. B. Ass. J. (1879) 11, 12. P. E. I. Ass. J. (1877) 5 As far back as 1806, Sir John Wentworth, governor of Nova Scotia, refused to ratify the choice of W. Cottnam Tonge as speaker by the assembly, which body, while expressing regret at the use of a prerogative long disused in Great Britain, acquiesced and elected Mr. Wilkins. See "Lower Canada Watchman," which gives a list of precedents of refusal of the Crown to accept speakers in England and her dependencies. Also Murdoch's History, iii. 255.

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

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(*p*).

One of the first proceedings will be the presentation by the speaker of reports of judges and returns of the clerk of the Crown in chancery respecting elections. It is then the invariable practice in the Commons, as in the Senate, before the speaker reports the speech to the House, to introduce a bill, and 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(*q*).

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(*r*). The premier, or other member of gov-

(*p*) Can. Com. J. 1867-8, 1873, 1874, 1879, 1883, 1887, 1891, p. 3.

(*q*) Low. Can. J., vol. 9, p. 30. Can. Com. J. (1867-8) 3, and all subsequent sessions. 129 E. Com. J. 12. Sen. S. O. 1; Sen. J. (1867-8) 60, &c. May, 170. 2 Hatsell, 82. The English resolution of the 22nd March, 1603, orders this procedure, "That the first day of every sitting, in every parliament, some one bill, and no more, receiveth a first reading for form's sake."

(*r*) Can. Com. J. (1877) 10; *Ib.* (1883) 15. If the speech is read, it is not necessary that members stand uncovered, as it is only a copy, not an address under the sign manual. Sr. Speaker Peel, 28 Oct., 1884. See *infra*, Chap. xi., s. 1.

ernment in his absence, will move that the speech be taken into consideration on a future day, generally on the following day, if the House should meet at that time(*s*). On some occasions, to suit the convenience of the House, when important matters are to come up for debate, and time is required for the consideration of certain papers, the speech is not taken up for several days(*t*). It may, however, be immediately considered—and this is in accordance with the English practice—after it has been reported to the House(*u*).

When the speech has been ordered to be taken into consideration on a future day, it is the practice to move the formal resolution providing for the appointment of the select standing committees of the House, and to lay before the House the report of the librarian, or other papers(*v*). It is not usual in the Canadian Houses to discuss any important matter of public policy before considering the speech. In 1901, an address was passed to H. M. King Edward, expressive of the national grief on the demise of Queen Victoria, and of the continued attachment of the dominion to his Majesty's person and government, before the address in answer to the speech was taken up(*w*). In 1878, Mr. Barthe introduced a bill in reference to insolvency, but withdrew it in deference to the wishes of the House until the address was adopted(*x*). While bills are

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

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

(*u*) 129 E. Com. 13; 237 E. Hans. (3) 7, 59. 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. Todd, ii. 362. 6 E. Hans. N.S. 27, 47; 72 *Ib.* 60.

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

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

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

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

The old and cumbrous practice(*c*) with respect to the answer to the speech has been changed since 1893(*d*), when it was decided to present the same forthwith and agree to it without the formalities of having it first introduced as a resolution which, when adopted, would be referred to a select committee to report on address. Accordingly, when the clerk has read the order of the day for taking into con-

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

(*z*) 2 Hatsell, 308.

(*a*) May, 171; 266 E. Hans. (3) 326, 342; 140 E. Com. J. 6-17. In 1889 Mr. Abbott introduced in the Senate three government bills, mentioned in the speech, before the address in answer thereto was considered. Objection was taken to this departure from the ordinary course of procedure. The bills were placed on the order paper for consideration subsequent to the address. Sen. Deb. (1889) 4-6, 28-37. In the following session the usual and convenient procedure was followed.

(*b*) May, 171; 139 E. Com. J. 46-59.

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

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

sideration the speech—or as soon as it has been reported by the speaker, in case it is immediately considered—an address in answer will be immediately moved and seconded by two members on the government side, generally chosen from those last elected to the House. In the British Commons these members appear in uniform or full dress, but in Canada this formality is not observed.

This address may be debated and amended like any resolution, under the old practice(*e*). The question may be put upon each paragraph separately or the address may be considered as a whole(*f*). A general debate may take place on the address, but when an amendment is proposed the discussion can be strictly confined to the subject-matter of this amendment(*g*).

Members who have spoken on one paragraph(*h*) may speak again on the question being proposed on a subsequent paragraph, which is obviously a distinct question(*i*). As soon as the address has been agreed to, it is ordered to be engrossed and presented to his Excellency by such members of the House as are of the King's privy council(*j*). The next proceeding will be to move immediately that the House resolve itself on some future day into committees to

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

(*f*) *Ib.* (1890) 8; *Ib.* (1901) 20.

(*g*) Mr. Speaker Peel, 308 E. Hans. 413, 414, 626, 1242; Peel's Decisions, p. 2; Mr. Speaker Edgar, Can. Hans. (1899) 1565; Deputy Speaker Brodeur, *Ib.* 1574.

(*h*) As the address in reply to the speech from the throne now consists of but one paragraph, the above rules on this subject become historical rather than practical.

(*i*) Parl. Deb. 1867-8. Remarks of Sir J. A. Macdonald as to the right of Mr. Howe to address the House a second time. In the English House a general debate may take place on every amendment moved to a particular paragraph. 102 E. Hans. (3), 74-219.

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

consider of supply and ways and means(*k*). It is also usual to move at this stage of the proceedings the appointment of chairman of committees when such an appointment has to be made at the beginning of a new parliament(*l*).

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(*m*). 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(*n*). But under ordinary circumstances 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 House(*o*). It is felt desirable, whenever practicable, 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(*p*).

(*k*) *Ib.* 20.

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

(*m*) Can. Hans. (1875) Sir J. A. Macdonald, 12; Can. Hans. (1878) remarks of the premier, Mr. Mackenzie, 36. *Ib.* (1879) 16 232 E. Hans. (3) 73, Marquess of Hartington. Mirror of P., 1831-2, pp. 27-29; 119 E. Hans. (3) 13, 30.

(*n*) Can. Com. J. (1873 October session), 126.

(*o*) Todd, ii. 363-365; 232 E. Hans. (3) 45, 54, 56, 73.

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

But of course whilst there is a growing disposition on the part of the Houses in Canada and Great Britain 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(*q*). In the Session of 1882, the address was debated in the British House of Commons, even to an inordinate extent(*r*), and the same has happened in subsequent years; but the sense of the House is obviously opposed to these prolonged discussions, which are not likely to occur except under exceptional circumstances.

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, 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(*s*). Before the speaker has announced the

(*q*) In 1878 a very lengthy 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. From 1879 to 1890 the debate commenced and ended on the same day, generally before six o'clock p.m. In 1891 the debate on the address was continued from Friday to Monday when it ended before six p.m. In 1897 the debate lasted for a week in the Commons, and for two days longer in the Senate. In 1899 it was prolonged from the 20th March until 18th April, in consequence of an amendment having been proposed with respect to the administration of affairs in the Yukon.

(*r*) The debate commenced on the 7th Feb. and did not close until the 18th.

(*s*) Sen. J. (1877) 13-18; Com. J. 1871, 1877, 1873, 1890, &c.

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 election of members—all of which must be entered on the journals(*t*). The speech will then be taken up as in the manner previously described.

VI. Prorogation.—The proceedings at the prorogation of parliament are as follows: As soon as the business of the two Houses is concluded, or so nearly completed that there can be no doubt as to the time of prorogation, it is customary for the governor-general, through his secretary, to inform the speaker of each House that he will proceed to the Senate chamber at a certain hour to close the session(*u*). 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 acquaint this honorable House that it is the pleasure of his Excellency that the members thereof do forthwith attend him in the Senate chamber." When the messenger

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

(*u*) Sen. J. (1878) 291; *Ib.* (1883) 282. Com. J. (1870) 352; *Ib.* (1883) 435, &c. In 1886, the Houses were prorogued at half-past eight o'clock in the evening of June 2 in order to meet the convenience of the governor-general,—the hour is generally between three and four in the afternoon.

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(*v*), the speaker will make the usual speech in presenting the supply bill, to which the royal assent will be given in the prescribed words(*w*). 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(*x*).

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(*y*). 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(*z*). When parliament has been dissolved and summoned for a certain day, it meets

(*v*) See chap. xvi. on Public Bills, s. 25.

(*w*) Chap. xv. on Supply, s. 13.

(*x*) Sen. J. (1883) 292-98. Can. Com. J. (1883) 438-41, &c. In the case of the Ontario legislature, it is not necessary for the lieutenant-governor to name any day to which the same is prorogued, nor to issue a general proclamation except when it has to be called together for the despatch of business. Ont. Rev. Stat., c. 11, s. 5.

(*y*) See proclamations at commencement of Journals. Also "Canada Gazette," 1867-91.

(*z*) Journals (1879) ix-x.

on that day for the despatch of business, if not previously prorogued, without any proclamation for that purpose, the notice of such meeting being comprised in the proclamation of dissolution and the writs then issued(*a*). 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(*b*).

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(*c*). But no case of this kind has occurred in England since 1814(*d*); and none can now ever arise under the constitutional system which makes the ministry responsible for the acts of the Crown. In Canada, such cases have never occurred. When it is sometimes found necessary, as in 1873, to have a long adjournment, ministers must assume the responsibility, and convince the House of the necessity of such a course(*e*).

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(*f*). The

(*a*) May, 45.

(*b*) See reply to 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.

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

(*d*) 49 Lords' J. 747; 69 E. Com. J. 132.

(*e*) Despatch of Lord Dufferin; Com. Jour. 1873, 2nd sess. 16.

(*f*) Cushing, sec. 519.

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 the time, are entirely terminated, and must be commenced anew, in the next session, precisely as if they had never been begun(*g*). In like manner a prorogation has the effect of dissolving all committees, whether standing or select(*h*). 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. This has been done by the adoption of resolutions, permitting such bills to be re-introduced in the following session, and by means of *pro forma* and unopposed motions advanced to the stages at which they severally stood when the prorogation took place(*i*). But such procedure is only justifiable under circumstances of grave urgency, and in view of an abrupt and premature termination of the session(*j*). 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(*k*).

(*g*) Hatsell, 335. May, 43. 1 Blackst., 186.

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

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

(*j*) 180 E. Hans. (3) 692, 851. May says (p. 290): "The orders made in 1859, 1880, 1886 and 1892, for this purpose, were peculiarly simple and effectual, and will be probably followed on similar occasions to the exclusion of earlier precedents." See 124 Lords' J. (1892) 357, 406; 147 E. Com. J. (1892) 379, 380.

(*k*) Todd's Parl. Gov. in England, i. 388-401.

VIII. Dissolution.—Parliament was formerly terminated on the demise of the Crown in Canada as in England(*l*). The legislature of Canada, in 1843, passed an act providing 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"(*m*). This act was re-enacted in the first session of the parliament of the dominion of Canada(*n*).

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(*o*).

(*l*) 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 six months afterwards; and this restriction was swept away by the Reform Act of 1867, so that the 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, 770.

(*m*) 7 Vict., c. 3, s. 1. Cons. Stat. of Canada, c. 3.

(*n*) 31 Vict., c. 22, s. 1; Rev. Stat. of Canada, c. 11, ss. 1, 2. Similar legislation exists in all the provinces.

(*o*) See Journals for 1873, 1874, 1879, 1883, 1887, 1891, at the beginning of vols., especially the notable case of 1896, when parliament was prorogued only a day before its dissolution. The reasons of this old English usage, according to Hatsell (ii. 383), are probably those suggested by Charles I in his speech, in 1621:—"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 IV.

The Senate and House of Commons.

I. Senators.—II. Introduction of Senators.—III. Members of the House of Commons.—IV. Election of Members.—Dominion Franchise.—V. Franchise in the Provinces.—VI. Controverted Elections.—VII. Special Returns.—VIII. Dual Representation.—IX. Independence of Parliament.—X. Issue of Writs.—XI. Resignation of Members.—Double Returns, Etc.—XII. Introduction of Members.—XIII. Attendance of Members.—XIV. Members' Indemnity.—XV. Expulsion and Disqualification of Members.—XVI. Suspension of Members.—XVII. Questions Affecting Members Referred to Committees.—XVIII. Places in the House.

I. Senators.—When the parliament of Canada met for the first time in 1867, the Senate consisted of 72 members—24 for Ontario, 24 for Quebec, and 24 for Nova Scotia and New Brunswick, these two maritime provinces being considered one division(*a*). Subsequently, the provinces of Manitoba and British Columbia were admitted into the confederation, and the Northwest Territories given a representation in the two Houses, and the number of senators has been consequently increased to 81 in all—Manitoba having at present four members(*b*), British Columbia(*c*),

(*a*) B.N.A. Act, 1867, ss. 21 and 22.

(*b*) 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 1891 gave Manitoba a population of 152,506 and consequently the province received another senator. Rev. Stat. of Can. c. 12.

(*c*) Can. Com. J. (1871) 195. Dom. Stat. for 1872. Orders in Council, p. lxxxviii.

three and the Northwest Territories two(*d*). 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 its admission has not increased the number of senators in the aggregate (*e*). The senators who are nominated by the Crown, must each be of the full age of thirty 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(*f*). Every senator must take the oath of allegiance and make a declaration of his property qualification before taking his seat(*g*). In 1880 it was deemed expedient to adopt a resolution which was to the effect that "within the first twenty days of the first session of each parliament every member shall make and file with the clerk a renewed declaration of his property qualification, in the form 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 "(*h*). In case members arrive too late

(*d*) Dom. Stat. [1888] c. 3. See *supra*, 47.

(*e*) British N. A. Act, 1867, s. 147, 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."

(*f*) B.N.A. Act, 1867, s. 23. See app. A to this work.

(*g*) *Ib.*, s. 128.

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

to make the declaration within the stated period, then it is usual for a minister to move formally that the clerk be authorized to receive their declarations in due form(*i*). 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(*j*). In 1883, the Senate was satisfied with a declaration signed and transmitted to the clerk, by a senator suffering from paralysis(*k*).

The sovereign 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"(*l*). The number of

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

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

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

(*l*) B. N. A. Act, ss. 26, 27. See Sen. Deb. (1877) 87-94; Com. Deb. (1877) 371, for discussion on a case in which the queen refused to appoint additional senators under section 26. Also Todd's Parl. Gov. in the B. Colonies, 164. The Earl of Kimberly, 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. 130, 134.

senators is fixed by the British North America Act, 1867, at 78, but it is also provided that "in case of the admission of Newfoundland the normal number of senators shall be 76, and their maximum number shall be 82 "(*m*). Subsequently provision was made for additional representation from the Territories(*n*). Senators hold their seats for life, subject to the provisions of this act, but they may, at any time, resign by a writing under their hand, addressed to the governor-general. 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 proper person, fill the vacancy. If any question should at any time arise respecting the qualification of a senator or a vacancy in the senate, the same must be heard and determined by that House(*o*). The 99th rule of the Senate provides:—

"If for two consecutive sessions of parliament any senator has failed to give his attendance in the Senate, it shall

(*m*) B. N. A. Act, ss. 28, 147.

(*n*) Imp. Stat. 49-50 Vict. c. 35, App. D to this work.

(*o*) B. N. A. Act, ss. 29, 30, 31, 32, 33. A peer who has been adjudged a bankrupt cannot sit in the House of Lords, 34 and 35 Vict. c. 50, Imp. Stat.; 104 Lords' J., 138, 206, 321, 322, 342, 429. See remarks of Sen. Botsford, Hans. (1884) 118, that all questions of disqualification must be determined by the House itself. Also of Sir W. Laurier, Com. Hans. (1900) 1881.

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

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 chan-

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

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

cery that a new member has been summoned to the Senate. He will then inform the House: "Honorable 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) (*r*) 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(*s*).

III. The House of Commons.—In 1867, the House consisted of 181 members in all, distributed as follows: Ontario, 82 members; Quebec, 65; Nova Scotia, 19; New Brunswick, 15. But the British North America Act, 1867, provides(*t*) 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 popu-

(*r*) By s. 128 of B.N.A. Act, 1867.

(*s*) Sen. J., (1867-8) 165, 177, 178; *Ib.* (1877) 14, 26, &c., *Ib.* (1883) 20, 23, &c.; *Ib.* (1890) 3-7; *Ib.* (1900) 15, 16, &c. On the demise of Queen Victoria the oath to the King was taken by each Senator in the clerk's office when subscribing to the new declaration of qualification under rule 100 of the Senate. No entry appears in the Journals relative to the oath. The declaration is made in the clerk's office, but the oath is taken in the Senate.

(*t*) B.N.A. Act, s. 51.

lation 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 re-adjustment after a decennial census the number of members for a province shall not be reduced, "unless the proportion which the number of the population of the province bore to the number of the aggregate population of Canada at the then last preceding re-adjustment of the number of members for the province is ascertained at the then latest census to be diminished by one-twentieth part or upwards." Such re-adjustment, however, could 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(*u*).

In accordance with section 51, the representation of the people in the House of Commons was re-arranged in 1872, after the taking of the decennial census of 1871. Ontario received six additional members; Nova Scotia, 2; New Brunswick, 1; Quebec remained the same(*v*). on the admission of Manitoba(*w*) she received four members; British Columbia, 6(*x*); Prince Edward Island, 6(*y*). Consequently until 1882 the total number of members in the House of Commons was 206. In the session of 1882 the rep-

(*u*) B.N.A. Act, 1867, s. 52.

(*v*) 35 Vict., c. 13, s. 1, Dom. Stat.

(*w*) See *Ib.* s. 1; 33 Vict., c. 3, s. 4, Dom. Stat.

(*x*) Can. Com. J. (1871), 195; Dom. Stat. 1872. Orders in Council, lxxxviii.

(*y*) Can. Com. J. (1873), 402; also Orders in Council, Dom. Stat. 1873, xxiii.

resentation was again re-adjusted(*z*), and the province of Ontario received four additional members, and the province of Manitoba one. In 1886 provision was made for the representation of the Northwest Territories in the House of Commons(*a*). Under these statutes the total representation until 1891 was 215 members, distributed as follows: Ontario, 92; Quebec, 65; Nova Scotia, 21; New Brunswick, 16; Manitoba, 5; British Columbia, 6; Prince Edward Island, 6 ; Northwest Territories, 4(*b*). As a result of the census of 1891, the representation was re-adjusted as follows: Ontario, 92; Quebec, 65; Nova Scotia, 20; New Brunswick, 14; P. E. Island, 5; Manitoba, 7; British Columbia, 6; Northwest Territories, 4; in all, 213 members. A member was given to the Yukon Territory in 1902(*c*). By the readjustment bill, 1903, the number of members, owing to the result of the census of 1901, the House of Commons consists of 214 members, of whom Ontario elects 86; Quebec, 65; Nova Scotia, 18; New Brunswick, 13; Manitoba, 10; British Columbia, 7; P. E. Island, 4; Northwest Territories, 10 ; Yukon Territory, 1(*d*).

IV. The Election of Members to the House of Commons. —Dominion Franchise.—It is provided by the 41st section of the British North America Act, 1867, that:—

(*z*) 45 Vict., c. 3. The re-adjustment of the Ontario constituencies was strenuously opposed in the Commons. See Hansard (1882), 1356 *et seq.* A great number of amendments were proposed at various stages, Journals, 410-412.

(*a*) 49 Vict., c. 24; Rev. Stat. of Can., c. 7.

(*b*) Dom. Stat. 50-51 Vict., c. 4.

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

(*d*) The census of 1901 was as follows: Ontario, 2,182,947; Quebec, 1,648,898; Nova Scotia, 459,574; New Brunswick, 331,120; P. E. Island, 103,259; Manitoba, 255,211; British Columbia, 178,657; N.-W. Territories, 211,649. Ontario and the Eastern Maritime Provinces having lost representation under the re-adjustment raised constitutional objections to the changes contemplated by the bill. These objections were specially argued before the Supreme Court of Canada under a case stated. See Sup. Ct. Can. reports vol. 33 (1903).

"Until the Parliament of Canada otherwise provides, all laws in force in the several provinces at the time of the union, 'relative to elections and proceedings connected therewith,' shall respectively apply to elections of members to serve in the House of Commons for the same several provinces."

In 1871 and subsequent years, Parliament passed several acts of a temporary character, and it was not until the session of 1874 that more complete provision was made for the election of members of the House of Commons(*e*). This law dispenses with public nominations(*f*), and provides for simultaneous polling at a general election—a provision which had existed for years in the province of Nova Scotia. No qualification in real estate is now required of any candidate for a seat in the House of Commons(*g*), but he must be either a natural-born subject of the King, or a subject 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(*h*). All persons qualified to vote for members of the legislative assemblies of the several provinces comprising the dominion could until 1885 vote for members of the House of Commons for the several electoral districts comprised within such provinces respectively, and the lists of voters used in the election of representatives to the legisla-

(*e*) 34 Vict. c. 20; 35 Vict. cc. 14, 16, 17; 36 Vict. c. 27; 37 Vict. c. 9. See Rev. Stat. of Can., c. 8.

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

(*g*) The property qualification had been previously abolished in England in 1858 by 21 and 22 Vict. c. 26.

(*h*) By sub. s. 25 of s. 91, of B.N.A. Act, 1867, naturalization and aliens are now among matters falling under the exclusive legislative authority of the parliament of Canada.

tive assemblies were used at the election of members of the House of Commons. Provision was also made in the act of 1874 for voting by ballot. On several occasions since 1874 parliament has amended the law with the object of ensuring the greatest possible accuracy and secrecy in the use of the ballot—the latest form being adopted in 1901(*i*).

In the session of 1885, Parliament, after a remarkably prolonged debate in the House of Commons, passed an act(*j*) providing a uniform franchise for the dominion, exclusive of the Northwest Territories, which were not then represented.

The judges of all courts whose appointments rest with the governor-general, and persons disfranchised for corrupt practices or for taking bribes, are disqualified and incompetent to vote at elections for the House of Commons.

Returning officers and election clerks, and all counsel, agents, attorneys and clerks of candidates who may be paid for their services, are disqualified from voting in the district in which they have been so engaged, but not elsewhere. But deputy-returning officers, poll clerks and constables may vote. A returning officer may vote in case of an equality of votes between candidates. No revising officer for any electoral district while he acts in that capacity, or for two years thereafter, shall be a candidate for a seat in the House of Commons for such electoral district(*b*).

(*i*) The secret ballot was established in 1872 in England (except in case of university elections) by 35 and 36 Vict., c. 33. See Rev. Stat. of Can., c. 8. See 63-64 Vict., c. 12, and I Edw. VII., c. 16.

(*j*) Rev. Stat. of Can., c. 5. On several occasions previous to 1867, drafts of acts were submitted to the House of Commons but none of the measures were pressed. See Mr. Blake's speech on the bill of 1885, April 18th, Commons' Hansard, for various proposals to deal with this vexed question.

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

Every writ for the election of a member of the House of Commons shall be returnable on such days as the governor-general in council determines, and is addressed by the clerk of the Crown in chancery to such person as the government may appoint. The same day is fixed for the nomination of candidates in all the electoral districts of Canada—including the Northwest Territories—except in Cariboo, Burrard and Yale, in British Columbia, in Algoma in Ontario, and in Chicoutimi and Saguenay and in Gaspe in the province of Quebec, where the day may be fixed by the returning officer, and also the day and places for holding the polls(*c*). In case the person to whom a writ is addressed refuses, or is disqualified, or is unable to act, another person may be appointed. In such a case, or in the event of the death of a candidate after nomination, another day may be fixed for the nomination of candidates, and there must be a special return to the clerk of the Crown in chancery(*d*).

Any twenty-five electors may nominate a candidate for the House of Commons by signing a nomination paper in the form set forth, and the sum of two hundred dollars must be deposited at the same time with the returning officer; and this sum shall be returned to the candidate in case of his election or of his obtaining a number of votes at least equal to one-half of the number of votes polled in favor of the candidate elected, but otherwise it shall go into the public revenues, except in the case of the death of the candidate, when the deposit shall be returned to his personal rep-

(*d*) Such a case occurred in the general election of 1891, Huntingdon district.

(*c*) Previous to 1882 the writs were 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. See 37 Vict., c. 9, s. 1; am. by 45 Vict., c. 3, s. 6; See *infra* as to issue of writs and delays therein.

resentatives. When the election has been held the returning officer opens the ballot boxes, counts the ballots and declares elected the person who has received the majority of votes. A recount before a judge may be demanded within four days after that on which the returning officer has made the addition of votes. The returning officer shall immediately after the sixth day after the final addition of votes of the respective candidates, unless before that time he receives notice that he is required to attend before a judge for the purpose of a recount of such votes, transmit his return to the clerk of the crown in chancery, that the candidate having the largest number of votes has been duly elected, and shall forward to each candidate a duplicate of the return. The clerk of the crown in chancery must, on receiving the return of any member, enter it into a book in the order in which such return is received by him(*e*), and immediately give notice in the next ordinary issue of the Canada Gazette of the name of the candidate so elected. The same procedure is followed in the case of a recount before a judge(*f*).

As communication by water between the Magdalen Islands and the mainland of the electoral district of Gaspe, and by water or land between the polling divisions to the east of Bersimis in the electoral district of Chicoutimi, and Saguenay(*g*), may be interrupted during an election by the severity of the season, it is provided that the governor

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

(*f*) For procedure at all Dominion elections see Consolidated Election Law of 1900, 63-64 Vict., c. 12, and amendments 1901.

(*g*) *Ib.* s. 151.

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.

V. The Franchise in the Provinces and Dominion.—It is not within the scope of this work to note in detail the features of the franchise in the different provinces of Canada. These are established by provincial laws and vary considerably. For information on this subject the provincial statutes must be consulted. The Dominion Franchise Act, 1898 (61 Vict., c. 14), repealed the Electoral Franchise Act (c. 5, R.S.C.) and all acts amending it and provided that "the qualifications necessary to entitle any person to vote (in dominion elections) shall be those established by the laws of that province as necessary to entitle said person to vote in the same part of the province at a provincial election." Provincial polling divisions and voters' lists are adopted for the purpose of all federal elections. Provincial disqualifications for voting are, however, not recognized by the Dominion Franchise Act. The provincial voting lists are, under the Dominion Acts, to be sent within ten days after final revision to the clerk of the crown in chancery duly certified, and for the purposes of dominion elections such certified list shall be deemed to be the original and legal list of voters so long as that list remains in force. Immediately upon receipt of this certified list it becomes the duty of the clerk of the crown in chancery to cause it to be printed by the King's printer. The latter is required to send copies of the same as soon as printed to the sitting member for the electoral district to which the list belongs, and to certain other persons, some

free of cost and others on payment of the cost of printing. The province of Prince Edward Island is exempted in many particulars from the operation of the act owing to the fact that the franchise laws of the province differ greatly from those in force in other provinces of Canada. In all the provinces there are statutes providing for the punishment of corruption and bribery at provincial elections and for the trial of controverted elections before the courts similar to those for the dominion.

VI. The Trial of Controverted Elections.—The Canadian statutes regulating the trial of controverted elections and providing for the prevention of corrupt practices at parliamentary elections, have 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(*h*). Eventually the principle of the Grenville Act of 1770 (*i*) 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(*j*). It was soon found expedient to adopt the principles of Sir Robert Peel's act of

(*h*) 45 Geo. III., c. 3, Upp. Can. Stat.; 48 Geo. III., c. 21, Lower Can. Stat.; 58 Geo. III., c. 5, 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.

(*i*) 10 Geo. III., c. 16, Imp. Stat.; May, 715.

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

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

1839(*k*). 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 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 chairman'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(*l*). This system continued in operation for several years after 1867(*m*), 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(*n*).

(*l*) 14 and 15 Vict., c. 1; 19 and 20 Vict., c. 140; Con. Stat. of Canada, c. 7.

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

(*n*) 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

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 prime minister, introduced a bill, which passed into law, "to make better provision respecting election petitions, and matters relative to controverted elections of members of the House of Commons"(*o*). The act 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 in the session of 1874 by another, introduced by Mr. Fournier, subsequently minister of justice, and making more ample provision for the trial of controverted elections. Under the law as it now stands a petition complaining of an undue return or election of a member must be presented not later than thirty days after the day fixed, unless it questions the election upon an allegation of corrupt practices, and specifically alleges a payment of money or other act of bribery to have been committed by any member, since the time of such return, and in that case the petition may be presented at any time within thirty days after the date of such payment or corrupt act(*p*). Some of the judges in the prov-

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. 356.

(*o*) 36 Vict., c. 28.

(*p*) 54-55 Vict., c. 20.

inces 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. The statute (*q*) provides that two judges of the following courts shall try election petitions: In the province of Ontario, the high court of justice; 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; in the Northwest Territories, of the supreme court. By the Ontario Judicature Act of 1881(*r*), 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, 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 jus-

(*q*) Rev. Stat. of Can., c. 9, s. 2; 54-55 Vict., c. 20, ss. 1, 17.

(*r*) See Ont. Rev. Stat. of 1897, "Ontario Judicature Act," c. 51.

tice (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(*s*).

Under the Controverted Elections Act(*t*) the judge must report and certify the result to the speaker(*u*), 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 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 necessary for confirming or altering the return or for the issue of a new writ for a new election(*v*). When the judge makes a special report, the House may make such order in respect to the same as it may deem expedient. 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. It is also provided that the trial of every election petition must be commenced within six months from the time of its presentation, and

(*s*) Can. L.J. (1882) 348, 400; *Ib.* (1883) 240. Can. Sup. C. R., viii. 126.

(*t*) Rev. Stat. of Can., c. 9.

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

(*v*) Rev. Stat. of Can. c. 9, s. 46. The first case of a speaker ordering the clerk of the Crown to alter a return was that of Mr. Plumb, of Niagara, Can. Com J. (1879) 138-40. See also case of Queen's, N.B., in 1891; *Ib.* 109, 110.

be proceeded with day by day until the trial is over, but 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, and "in the computation of any time or delay allowed for any step or proceeding in respect of any such trial, or for the commencement thereof as aforesaid, the time occupied by such session of parliament shall not be included"(*w*). By a judgment of the supreme court of Canada it has been decided that the time of a session shall not be excluded unless the court has ordered that the respondent's presence is necessary. The time within which the trial of an election petition must be commenced cannot be enlarged beyond six months from the presentation of the petition, unless an order had been obtained on application made within the six months. An order granted on an application made after the expiration of the said six months is an invalid order, and can give no jurisdiction to try the merits of the petition which is then out of court(*x*). Provision is made in the Supreme Court Act(*y*) 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(*z*).

(*w*) Rev. Stat. of Can., c. 9, s. 32.

(*x*) Sup. Court of Can. Rep., vol. xiv. 453 *et seq.*, Glengarry Election case.

(*y*) Rev. Stat. of Can., c. 135.

(*z*) Mr. Langevin's case, 1877; Mr. Laflamme's case, 1878. Also Jour. (1880-81), 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., by inserting Mr. Brecken's name, as the legal consequence of the decision of the supreme court of Canada on an election appeal. Jour. 61-3.

The law for the prevention of corrupt practices at elections now provides severe penalties for all infractions of its provisions(*a*). Among other things, if it is proved that any corrupt practice has been committed by and with the actual knowledge and consent of any candidate at an election, his seat will be declared void, and he shall, during the seven years next after the date of his being found guilty, be incapable of being elected to the House of Commons or of voting at any election of a member of that body, or of holding an office in the nomination of the Crown or of the government of Canada. If any candidate is found guilty of having abetted or counselled the offence of personation at an election, his election shall be declared void, and he cannot sit in the House of Commons for any electoral district during the continuance of the parliament for which the election is held, and during the ensuing parliament. Any other person who is found guilty of any corrupt practice shall be incapable of sitting in the House of Commons, or of voting at any election for that body, or of holding any government office, during eight years after the time at which he is adjudged guilty(*b*).

The law provides that when the judge, in his report on the trial of an election petition under the Controverted Elections Act, states "that corrupt practices have extensively prevailed at the election to which the petition relates, or that he is of opinion that the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt practices have extensively prevailed is desirable, no new writ shall issue for

(*a*) See Rev. Stat. of Can., c. 8, ss. 84-99; c. 9, ss. 69-86; c. 10; 51 Vict., c. 11, ss. 14, 15; 52 Vict., c. 9, s. 1; 53 Vict., c. 8, s. 2.

(*b*) Rev. Stat. of Can., c. 8, ss. 96-98. See London Election, 1875, Can. Com. J., 24-30; Chambly Election, 1876, *Ib.* 18, 19; Welland case, 1892, *Ib.* 206, 343.

a new election in such case except by order of the House of Commons." Some doubt having been expressed in the session of 1888 as to the exact construction of the foregoing section, the question was referred to the committee on privileges and elections. It appears that the speaker had issued his warrant in the cases of the electoral districts of Kent and Russell, in the province of Ontario, where the elections had been declared null and void, and the judges had also reported, not in the exact words of the statute, but only in general terms, that corrupt practices had prevailed extensively, but were unable to say whether further inquiry was desirable. The committee reported in the Kent case alone, specially referred to them, that an order of the House was necessary for the issue of a new writ for that county on the report of the judge. New writs for Kent and Russell were immediately issued on motion duly made in the House—the previous warrants of the speaker having been withdrawn(*c*).

A statute(*d*) specially provides for the issue of a commission of inquiry on address from the House of Commons

(*c*) Rev. Stat. of Can., c. 9, ss. 44, 48; Can. Com. J., (1888) 12, 19, 52, 55, 128, 129, 139. In one case the speaker issued a writ of *supersedeas* to the clerk of the Crown in chancery to stay all proceedings in relation to the issue of a new writ under his warrant given through error. See Can. Hans. (1888) 18, 20-24, for an explanation of the circumstances of this peculiar case of warrants having been issued by the speaker through some misconception of the statute and the vagueness of the judge's report. See case of Chicoutimi and Saguenay, in 1892 (C. Jour. 331-333); of E. Queen's, P.E.I., *Ib.* Feb. 19, and March 1st, 1901. In both cases an order was issued by the House, but only in the Prince Edward case was the matter referred to the committee of privileges.

(*d*) Rev. Stat. of Can., c. 10. See remarks of Mr. (now Sir Louis) Davies in the Canadian House of Commons as to the practice in England for the attorney-general to move for a royal commission to take evidence on the statement of a judge and report to the House, and on this report a bill is brought in to disfranchise the constituency, or other action is taken by the House. Can. Hans. (1888) 22.

whenever a judge reports that corrupt practices have or that there is reason to believe that corrupt practices have extensively prevailed at an election, or that he is of opinion that the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt practices have extensively prevailed is desirable. Or such commission may issue on an address when a petition has been presented to the House, signed by twenty-five or more electors of the district, stating that no petition had been presented under the Controverted Elections Act, and asking for inquiry into corrupt practices which, there is reason to believe, extensively prevailed at the election. Only one case has so far occurred under this statute : the petition of certain electors of South Grenville, which was referred to the standing committee on privileges in 1879, but no report was ever made on the subject(*e*). The law requires security to be given to meet the expenses of the inquiry in certain cases. One thousand dollars must be deposited with the accountant of the House before the petition under the act can be received. The certificate of the accountant that the money has been deposited must be attached to the petition on its presentation.

In the Session of 1887 the subject of the powers and duties of returning officers, and the jurisdiction still possessed by the House in controverted elections was discussed. It appears that the returning officer for the county of Queens, New Brunswick, instead of declaring Mr. King,

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

who had the majority of votes at the general election of 1887, duly elected to represent that electoral district, decided that his nomination paper was invalid on the ground that the deposit was not legally made. He returned Mr. Baird as the representative to parliament. It was proposed in the House to amend the return, by erasing Mr. Baird's name and inserting Mr. King's in its place, but after a long debate the matter was referred to the committee of privileges and elections. In the course of the debate the Minister of Justice (the late Sir John Thompson) strenuously supported the principle of non-interference with the jurisdiction of the courts over matters of controverted elections, "but he thought it quite competent for the House to refer the case to the committee for the express purpose, 'not of trying the case, but of finding' whether the court is already exercising jurisdiction therein, and of enquiring into precedents governing such matters."

The committee, after a full investigation of authorities, reported as their opinion that the House "ought not to declare that the said George F. Baird is not entitled to sit in the said House, but should leave the case to be disposed of under the provisions of the Controverted Elections Act, it being the intention, spirit and policy of parliament that all questions as to the validity of the election of members to the House of Commons should be decided by the ordinary legal tribunals of the country instead of the House of Commons." When the report came before the House it was strongly opposed. A motion was made to declare Mr. King duly elected, but the report was finally agreed to on a division.

The committee considered that the conduct of the returning officer in this case required explanation, and on their recommendation he was called to the bar of the House

"to answer for his conduct in returning as elected a candidate who did not receive a majority of the votes cast at the election." No steps were taken in his case after his examination, which in no wise improved his case; the general sense of the House was undoubtedly in disapproval of his course; and the result must be to make officers in the same position hereafter very cautious in exercising discretionary powers, and to induce them to follow the express terms of the law, the intent of which is certainly that the candidate having an undoubted majority should be returned as elected, and that all questions of law, arising after the nomination papers have been duly filed, and a poll ordered, should be left to the proper courts to decide. In this vexatious case, to follow it to a conclusion, it appears that no election petition was filed in the courts, although there would have been time to have done so three days after the presentation of the committee's report in favour of leaving the matter to the jurisdiction of the courts. Subsequently, in accordance with a statement made during the debate, Mr. Baird resigned his seat, and was re-elected by the same constituency (*f*).

The Controverted Elections Act (sec. 68) provides that all elections shall be subject to the provisions of the Act, and shall not be questioned otherwise than in accordance therewith(*g*). The courts have full jurisdiction over petitions complaining of an undue return, of undue election of a member, of no return, of a double return or of any unlawful act by any candidate not returned, by which

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

(*g*) This is a copy of s. 50 of British Act "Election Petitions," &c., 1868.

he is alleged to become disqualified to sit in the House. Since 1894 three petitions calling in question the right of a member to his seat have been presented to parliament, but not allowed to proceed further. In the first case in 1874 the petition was presented within the time when it could have been taken under the law. It asked that the return for Gaspé be amended by substituting the name of the petitioner for that of the sitting member. The petition was ruled out of order by the Speaker on the ground that it dealt with a matter which should properly come under the cognizance of the courts(*h*).

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

In the Nipissing case of 1901 it appears that the election for that district did not take place on the day fixed for the general election, though the returning officer received the writ and posted his proclamation in accordance with law. The records shew that the officer subsequently found himself in a difficulty as to the voters' lists. He applied for advice to the Secretary of State, who instructed him to use the old lists of 1898. These lists it seems, were imperfect. They did not contain a large number of names in the unorganized territory, and consequently the returning officer again applied to the Minister. The latter instructed him to use the lists of 1900 already prepared or

(*h*) Can. Com. J. (1874) 82. See also remarks Hon. E. Blake and Sir John A. Macdonald; Hans. 1875, pp. 817-819.

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

in course of preparation. The next step was the issue of an order in council directing the sheriffs of Algoma and Nipissing to prepare voters' lists for those districts. The returning officer for Nipissing adjourned the nomination and election until he received a new writ from the Clerk of the Crown in Chancery fixing a new date for the nomination. Mr. Klock, one of the candidates, attended on the day first fixed for the nomination with the papers required by law, but he could find neither returning officer nor his clerk. Both these officers had purposely kept out of the way. At the election held later Mr. McCool was returned without opposition, as Mr. Klock was advised that the second writ was illegal. Mr. Klock filed a petition against the returning officer, declaring that as he had duly been nominated on the first occasion, was entitled to the seat.

The Court decided that there was no regular nomination on the day which had first been fixed, and declared that "it did not form part of their duty under the statute to investigate or pronounce upon the constitutional right of the executive to direct the issue of a new writ under the circumstances of this case; that it is a matter not for the election judges, but for the House of Commons, to whom the ministers are responsible."

In asking to have the question as to the validity of the second writ referred to the Committee of Privileges, it was urged that the House was asked to deal simply with the right of the executive to direct the issue of such a writ —not as with a matter that strictly fell under the provisions of the Controverted Elections Act. It was also urged that the House had the right to inquire into the conduct of its own returning officer, whatever might be the action in the courts against him. The Solicitor-General (Mr. Fitzpatrick) did not deny the power of the House to

deal with its own officers and with matters affecting the position of members under certain circumstances, but both he and the Prime Minister (Sir Wilfrid Laurier) took the ground that it was useless to refer to the committee a case of which all the facts had been already before the courts. This view prevailed (*j*).

In 1870 the British House ordered the issue of a new writ for Tipperary, where O'Donovan Rossa, then in prison for life, had been elected (*o*). In 1882 it was also resolved that Michael Davitt, then imprisoned for felony, was incapable of being elected or returned as a member (*p*).

(*j*) Can. Hansard, 1901, Apl. 24.

Since 1868, when the "Election Petitions Act" became law in Great Britain, the British House of Commons has considered the question of its jurisdiction over its members in the following cases: In 1869 it declared Mr. Sydney Waterlow disqualified as a government contractor from sitting and voting in the House. In this case a petition had been duly presented to the proper court taking exception to the election on the same ground of disqualification, but as it was withdrawn the House felt bound to take action (*k*). The case of

(*k*) 124 Eng. Com. J., 12, 43, 82, 88; May, 618, 619.

John Mitchell, who had escaped from prison, furnishes an example of the principles which guide the British House. Mitchell was elected for Tipperary without a contest in 1895. As no question arose in the courts as to his election, the House inquired into his legal qualification and declared the seat vacant. He was returned a second time. A petition was filed in the courts and the House refrained from any action until the court gave the seat to the petitioning candidate. It became necessary to amend the return and insert the name of the person held to be legally returned (*l*), but, adds an English authority,

(*l*) May, 619, 620; 130 E. Com. J., 49, 52, 239; 222 Eng. Hans. 493.

"it did not follow that the House in this case was bound to await the decision of a court of law" (*m*). The jurisdiction of the House cannot

(*m*) Anson 1, 167.

be questioned as to the incapacity of a member convicted and imprisoned for felony (*n*).

(*n*) May, 622; E. Hans. 28 Feb., 1882.

(*o*) E. Hans. 10 Feb., 1870. See also case of Riel, a fugitive from justice, expelled from Canadian House of Commons in 1874 and 1875.

(*p*) 137 E. Com. J., 77.

We may come to the following conclusions from the proceedings of the Canadian and British Houses of Commons since the passage of the Acts delegating to the courts jurisdiction over the trial of controverted elections: that there is no instance of a contested election having been tried, or an election return disturbed in the Commons House of either country, but that the leading members on both sides of the House have expressed themselves most emphatically against returning to the old system, and in favour of adhering strictly to the provisions of the new laws (*q*); that the provisions of the Controverted Elections Act apply to the questioning of returns by election petitions only, and does not supersede the constitutional jurisdiction of the House in determining questions affecting the seats of its own members, not arising out of controverted elections (*pp*); that the very same question (as in the Waterlow case) which might have been determined upon petition, by an election judge, may be determined by the House itself (*qq*); that the House is in fact (as in the Rossa case) bound to take notice of any legal disability affecting its members, and to issue writs for election to fill the places of members adjudged to be incapable of sitting, without waiting for the return to be questioned by persons outside of parliament; that the House has always the power to inquire into the conduct of its own returning officers, and to punish them if they are adjudged guilty of wrong-doing, though it will proceed cautiously

(*q*) See speeches of Sir John Thompson, Com. Hans. (1887) 160; *Ib.* (1892) 1044; also remarks of Mr. Disraeli cited in Amos' British Constitution 445; also Can. Com. Hans. (1880-81) 825.

(*pp*) May, 618. The Ont. Court Q.B. in the Centre Wellington Election case has held that "the House of Commons retains all powers that it has not expressly given up."

(*qq*) May, 619. Anson 1, 166, 167.

in any case that might be more satisfactorily investigated and determined by the courts ; that it is always regular to receive a petition setting forth a grievance and praying for remedy, provided it does not question the return of a member within the meaning of the Controverted Elections Act (*r*).

VII. Special Returns.—On several occasions special returns have been made to the House of Commons by returning officers. In the Muskoka case of 1873, no return was made on the ground that, though Mr. Cockburn received the majority of votes, a statement from one polling place was missing, and other irregularities occurred in connection with the election. After debate, the House ordered the Clerk of the Crown in Chancery to amend the return by inserting therein the name of Mr. Cockburn (*s*). In the West Durham case of 1900, the circumstances were briefly as follows :—The returning officer accepted the deposit of $200 from one of the two candidates in the shape of an accepted cheque. This candidate received a majority of the votes, but the solicitor of his opponent thereupon raised the objection that deposit was invalid inasmuch as it was not in legal tender notes or bank bills as required by the Act. The returning officer decided chiefly on this ground not to return either candidate as elected, but to make a "special return" of all the circumstances of the case to parliament (*t*). The court to whom the matter was referred never gave a decision on the legality of the deposit, as it became immaterial in view of the

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

(*s*) Com. J. (1873) 10, 11.

(*t*) Can. Com. J. (1901). It appears that at this very time two members of the House held seats therein although their deposits had been made in exactly the same way as Mr. Thornton's.

fact that the election was voided on the ground of a corrupt practice by one of Mr. Thornton's agents, and parliament, while the matter was before the courts, amended the statute so as to prevent a similar difficulty in the future by declaring legal any cheque for $200 "drawn upon and accepted" by a "chartered bank doing business in Canada" (*u*).

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 assembles 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(*v*). Subsequent to 1872, several acts were passed to prevent dual representation. The law now renders members of the legislative councils and assemblies ineligible for sitting or voting in the House of Commons. A member of the House of Commons who accepts a seat in a provincial legislature must vacate his seat in the former body. Statutes of the provincial legislatures now provide that no senator nor 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(*v*). But no senator or member of the Commons shall be eligible as a member of the Quebec legislative assembly.

In the Session of 1874 a question arose as to the eligibility of Mr. Perry, one of the members for Prince Edward

(*u*) 1 Edw. VII., c. 16, s. 2.

(*v*) Senator Ferrier represented Victoria division in the Quebec legislative council from 1887 until his death in 1888. Senator de Burcheville is still a member of both bodies.

Island, on account of an irregularity in his resignation as a member of the legislative assembly of that province.

It appears that Mr. Perry, who was speaker of the local house, resigned his seat by a letter addressed to the lieutenant-governor of the Island, and the point at issue was 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 doubts as to his right to sit and vote in parliament. An act was accordingly passed in the same session(*w*).

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) (*x*), 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

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

(*x*) Can. Com. J. (1883), xix.

votes by 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." The whole matter was referred to the committee on privileges and elections. Both in the House and before the committee it was contended that, by the Dominion Elections Act of 1874, "after a candidate has been accepted as duly nominated by the returning officer and declared by him to the electors as such candidate, the returning officer has *no power or right* to reject such candidate, or if he has a majority of votes upon their summing up to refuse to return him as elected." A majority of the committee, however, came to the conclusion after the hearing of evidence and arguments that Mr. Robertson had never legally resigned his seat, and that he was at the time of his election a member of the House of Assembly of Prince Edward Island; that an act of that province (39 Vict., c. 3), made it illegal for a member of the House of Commons to be elected to sit or vote in the House of Assembly; that according to the express terms of the second section (*y*) of the Dominion Act of 1872 (35 Vict.

(*y*) 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." See Rev. Stat. of Can., c. 13, s. 2.

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. The report was, however, 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(z).

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

(z) Can. Com. J. and Hans., 1883, Feb. 19th, March 1st and 9th, and 25th April. Jour. App. No. 2.

the ferry contract, Mr. Perry became a person holding and enjoying within the meaning of section 4 of 39 Vict. c. 3, of the statutes of P.E.I., a contract or agreement with her Majesty, which disqualified him and rendered him ineligible for election to the assembly of the province, or to sit or vote in the same, and by section 8 of the same act,—to be read with section 4,—his seat in the assembly became vacated; and he was therefore eligible for election as a member of the House of Commons(*a*).

IX. 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 remonstrances of the great majority of the representatives in the assemblies, and expressed their readiness to assent to such legislation as might be necessary to render the legislatures independent of official influence(*b*). 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(*c*); 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(*d*). Legislation in the two prov-

(*a*) Can S. C. R., vol. xiv. 265-287; L. N. vol. xi. 38.

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

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

(*d*) 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

inces 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(*e*).

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

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(*f*) 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 specially disqualified from sitting and voting in the assembly, and were liable to a heavy penalty should they violate the law. Seats of members accepting offices of profit from the Crown had to be vacated, and writs for new elections issued forthwith; but all persons, not disqualified under the act, could be again returned to the assembly—a provision intended to apply to members of the executive council. In 1857, Solicitor-General Smith

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.

(*e*) 7 Will. IV., c. 114, Upp. Can. Stat.; 4 Will. IV., c. 32, Lower Can. Stat.

(*f*) 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.

introduced an act amending the foregoing statute in several important particulars. Under this act (*g*), 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(*h*). *During the first session of the first parliament of the dominion, the act of 1857 was re-enacted(*i*), with several amendments that were necessary under the new state of things, but the great principle involved in such legislation—of preserving the independence of parliament—was steadily kept in view. It was provided, however, that one of the commissioners of the Intercolonial railway, or any officer of her Majesty's army or navy, or any officer in the militia, or militiaman (except officers on the staff of the militia receiving permanent salaries), might sit in the house(*j*).

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

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

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

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

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

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 referrd 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(*k*). That Mr. Currier was a member of a firm which had supplied some lumber to the department of public works(*l*). That Mr. Norris was one of the proprietors of a line of steamers upon the lakes which had carried rails for the government(*m*). That Mr. Burpee was a member of a firm which was supplying certain iron goods to government railways(*n*). That Mr. Moffat was interested in, and had been paid for, the transport of rails for the government(*o*). That Mr. T. Workman was a member of a firm interested in the supply of hardware to the department of public works(*p*). That Mr. A. Desjardins was editor and publisher of the "*Nouveau Monde*," which had received public money for government advertisements and printing(*q*). Both Mr. Currier and Mr. Norris, believing that they had unwittingly infringed the law, resigned their seats during

(*k*) Can. Com. J. (1877), 233, 234, 235, 236, 265, 357, and app. No. 8.
(*l*) *Ib.* 263.
(*m*) *Ib.* 264.
(*n*) *Ib.* 313.
(*o*) *Ib.* 315.
(*p*) Can. Com. J. (1877), 325.
(*q*) *Ib.* 326.

the session(*r*). 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 *bonâ 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 "(*s*). 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 the committee, and from the public accounts of the dominion, that "between 1867 and 1873, numerous orders, given by public officers, for the insertion of advertisements connected with the public service were fulfilled, and various sums of public money were paid therefor to members of parliament." It was never alleged at the time that these members were disqualified, but the committee were of opinion, nevertheless, that "according to the true construction of the act for securing the independence of parliament, the transactions in question did constitute disqualifying contracts." The result of this report was the resignation, during the recess, of Mr. Anglin, Mr. Moffatt,

(*r*) Mr. Currier, *Ib.* 270; Hans. 1513; Mr. Norris, Jour. 282; Hans. 1568.

(*s*) Can. Com. J. (1877), 357, app. No. 8. Hans., 1267, 1303.

and some other members who had entered into such contracts(*t*).

In the session of 1878, the minister of justice, Mr. Laflamme, introduced a bill "to further secure the independence of parliament "(*u*). As the law 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, allowances or emolument, or profit of any kind is attached " is eligible as a member of the House of Commons. But nothing in the section just quoted " shall render ineligible any person holding any office, commission, or employment of the nature or description " mentioned above, " as a member of the House of Commons, or shall disqualify him from sitting or voting therein, if, by his commission or other instrument of appointment, it is declared or provided that he shall hold such office, commission or employment, without any salary, fees, wages, allowances, emolument or other

(*t*) 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 Desjardines did not resign, as they had not violated the provisions of the act. See Hans. (1877), 1709, 1809, 1810. In 1894 Mr. Corby resigned his seat on learning for the first time in the course of a discussion in committee of supply, that his firm had had a small business transaction with the department of inland revenue, and that he had consequently inadvertently infringed the law. Hans., 4811; Jour., 339. See cases of Messrs. Schell and Loy, 1903.

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

profit of any kind attached thereto "(*v*). 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 quite stringent. Among other things it is provided that " in every contract, agreement, or commission to be made, entered into or accepted by any person with the government of Canada, or any of the departments or officers of the government of Canada, there shall be inserted an express condition that no member of the House of Commons shall be admitted to any share or part of such contract, agreement or commission, or to any benefit to arise therefrom." Any person disqualified 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, or be indirectly concerned in a contract, and in case of a contravention of the statute he shall forfeit two hundred dollars for every day during which he continues a party to such 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 mem-

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

bers accepting office in the privy council, it is provided, as in the act of 1867, that a minister need not vacate his seat if he resigns his office and accepts another in the same ministry within one month after his resignation "unless" —and this was added in 1878—"the administration of which he was a member has resigned and a new administration has been formed, and has occupied the said offices"(*w*).

The law also provides that nothing in the statute shall render ineligible persons holding the several cabinet offices, "or any office which may be hereafter created, to be held by a member of the queen's privy council for Canada, and entitling him to be a minister of the Crown, or shall disqualify him to sit and vote in the House of Commons, pro-

(*w*) This provision is intended to guard against a repetition of what actually occurred in the history of Canada during the administration of Sir Edmund Head. Can. Hans. (1878), 1227. The facts of this 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 of 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 adverse criticisin 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 B.C. 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.

vided he is elected while holding such office and is not otherwise disqualified "(*x*).

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

In the first session of the parliament of the dominion, attention was called to some important questions affecting the right of a number of members to hold their seats in the Commons. The first question raised was this—Whether those gentlemen who were ministers of the Crown in the provinces of Ontario and Quebec were 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?(*y*) 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 par-

(*x*) 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.

(*y*) Parl. Deb. (1867-8), 37-38, 46-48.

liament. 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. 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 "(*z*). 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(*a*). The issue of the controversy was the introduction and passage of an act to remove all doubts as to the matters in question(*b*).

X. Issue of Writs of Election.—In the session of 1877, a question arose as to the power of the House to order the issue of writs when seats are vacated by the decision of a court. It was doubted whether such an order was neces-

(*z*) 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.

(*a*) Can. Com. J., 38, 40.

(*b*) 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.

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(*c*) 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 (*d*), on the other hand, made it the express duty of the speaker to order the issue of the writ. It is now the practice for the speaker to inform the House immediately when he has given his orders for the issue of a writ in case of a vacancy caused by an election report(*e*) by death(*f*), resignation(*g*), or acceptance of office(*h*). In cases when the judges expressly report the prevalence of corrupt practices, the House reserves to itself the right to order the issue of an election writ(*i*). In all cases not specified by statute, the House retains its control over the issue of writs, and may order the speaker to issue his warrant. In England, the usual motion for a new writ is made by a member when the House is in session(*j*). In cases where the speaker is in doubt as to his action his course is to lay the facts before the House and ask its instruction(*k*).

Although the law provides for the immediate issue of warrants by the speaker of the House for writs of election,

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

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

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

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

(*g*) *Ib.* (1894), 339.

(*h*) *Ib.* (1877), 5.

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

(*j*) 131 E. Com. J., 50, 55; 140 *Ib.* 214, etc.

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

it is defective inasmuch as great delay may occur in the absence of any provision requiring the writ to issue at a definite date. As it is now, the writ cannot issue until a returning officer has been duly appointed by the government(*l*).

XI. Resignations of Members—Vacancies by Death, etc.—It is a settled principle of British parliamentary law that a member, after he is duly chosen cannot relinquish his seat. In order to evade this restriction a member who wishes to retire accepts office (usually the Chiltern Hundreds) under the Crown, an act which legally vacates his seat(*m*). Provision, however, is made in the Canadian law for the resignation of members during a session or a prorogation of parliament(*n*). 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(*o*)—or by addressing and delivering to the speaker a declaration of his intention, made under his hand and seal before two witnesses, either during the session or in the interval between two sessions, which declaration must also be duly entered on the journals(*p*). When these preliminaries have been complied with the speaker shall forthwith issue his warrant for the issue of a writ for a

(*l*) Can. Com. J. (1888), 266, 267; Can. Hans., May 2nd, where speakers gave some data on the subject, to show the necessity of a change in the law.

(*m*) May, 605.

(*n*) 41 Vict., c. 5, Dom. Stat., ss. 12-15 inclusive. Rev. Stat. of Can., c. 13, ss. 5-9.

(*o*) Mr. Methot, March 26th, 1884, on acceptance of a seat in the Quebec legislative council; Mr. Rykert, May 2nd, 1890.

(*p*) Can. Com. J. (1877), 269-70 (Mr. Currier); 282 (Mr. Norris); *Ib.* (1894), Mr. Corby. See case of Mr. Watson, who accepted office in the Manitoba Government (Mr. Thomas).

new election(*q*). 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(*r*). 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(*s*). In case of a vacancy by death

(*q*) Can. Com. J. (1877), 275, 284. In 1898 Mr. Bruneau sent in his resignation to the Speaker, but changed his mind and obtained the return of his communication before the Speaker had time to open it and become conversant with its contents. A debate took place in the House as to the right of a member to withdraw his resignation after he had formally tendered it within the meaning—as contended —of the law. A motion to refer the legal questions involved to the committee on privileges was negatived. Can. Com. J. 100, 101; Deb. 21st March.

(*r*) Mr. Thomas McGreevy, in the session of 1891, formally resigned his seat in the House of Commons, and the Speaker at once issued his Warrant for a Writ of Election under s. 5 of c. 13, Rev. Stat. of Can. On announcing the fact to the House, a member arose and stated that he knew of his own knowledge that Mr. McGreevy's seat was contested and that he could not legally tender his resignation under s. 7 of the Act just cited. Neither the Speaker nor the House had had any official information of the contestation, as the law makes no provision on the subject. Under all the circumstances it was thought expedient to refer the question as a matter of fact and of law to the Committee of Privileges and Elections. They reported that the seat was contested at the time of resignation, and recommended the withdrawal of the warrant for the issue of a writ of election. They also expressed the opinion that under the present state of the law, the Speaker, when not aware of the contestation of the election, may properly issue his warrant, and that it was necessary to amend the statute by providing that in future an officer of the Election Court shall notify the Speaker of the filing of a petition against the seat. No further steps, however, were taken during the session to amend the law, which remains (1903) still as in 1891. The speaker issued a writ of *supersedeas* withdrawing his warrant.

(*s*) Can. Com. J. (1878), 2-8. Mr. Speaker Anglin had resigned his seat soon after the prorogation in May, 1877.

(*t*) or acceptance of office(*u*), 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 shall thereupon address his warrant to the clerk of the crown in chancery for a writ of election. If, when such vacancy occurs there be no speaker, or he be absent from Canada, or if the member whose seat is vacated be himself the speaker ; then, any two members may address their warrant to the clerk of the Crown in chancery for a writ of election(*v*). Provision is also made for the issue of a new writ for the election of a member to fill up any vacancy arising subsequently to a general election and before the first meeting of the new parliament, by reason of the death or acceptance of office of any member—which writ may issue at any time after such vacancy occurs(*w*). In the absence of a definite pro-

(*t*) Can. Com. J. 1877), 5. It was not an unusual practice in the Commons on the decease of a member to move that Mr. Speaker do issue his warrant, etc., Jour. (1880), 163; *Ib.* (1880-1), 247. But the express language of the statute does not require such a motion, and the Speaker now always issues his warrant on receiving a written notification from two members (Carleton, N.B., 1880-81; S. Grenville, 1885; Ottawa city, 1890; Brockville, 1899) or on simply being informed by a member in his place of the decease of a member (Cariboo, B.C., 1880-81; Kent, N.B., 1890; Winnipeg, 1899).

(*u*) *Ib.* (1877), 5.

(*v*) *Ib.* (1878), 2. Mr. Laurier accepted office after resignation of Mr. Speaker Anglin. *Ib.* (1898), 16, Speaker absent from Canada.

(*w*) 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 at that time later than in Ontario. On accepting office in October, his seat became vacated, and he decided to sit for the district of Victoria, British Columbia, where the election was held on the 21st October. See Annual Register (1878), 211. Mr. Caley, of Beauharnois, also died before the meeting of the new parliament, xxix.

vision in the statute for a member resigning his seat after a general election and before the meeting of parliament, it has been the invariable practice to create a vacancy by appointing a member to an office of emolument under the Crown(*x*).

In case a member is returned for two constituencies he must make his election for which of the places he will serve by formally resigning his seat when the House is in session. This election may be made by a member from his place in the House(*y*) or in the usual legal communication to the speaker. Under the old Controverted Elections Act, he would have to wait until the expiration of the fourteen days required by law for the presentation of a petition in the House against his return(*z*). The English House of Commons has a sessional order requiring that "all members returned for two or more places do make their election within one week after it shall appear that there is no question upon the return for that place "(*a*). If there is

(*x*) 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. 1358-9. See cases of Messrs. Horton and Macdougall temporarily accepting unimportant offices to provide seats for Messrs. Cartwright and Langevin, Can. Com. J. (1879), xxv., xxix.; Annual Register (1878), 210, 212. After the general election of 1896, Mr. Forbes, of Queen's, N.S., and Mr. King, of Sunbury and Queen's, N.B., accepted offices of emolument under the Crown, before the meeting of Parliament to give seats to Mr. Fielding and Mr. Blair, who were appointed to prominent positions in the new ministry after the general election. See Com. J. (1896, 2nd sess.), x., xi., xv., 23. Mr. Bechard was also summoned to the Senate and Mr. Tarte elected for an old constituency as a minister. *Ib.* xvi.

(*y*) 121 E. Com. J. 104; 142 *Ib.* 4. Can. Com. J. (1896, 2nd sess.), 10.

(*z*) Mr. Blake returned for West Durham and South Bruce; he elected to serve for S. Bruce; Jour. (1873), 49.

(*a*) May. This order is renewed every session.

a petition against the return of a member, he cannot elect to serve for either until the matter is finally decided in the courts(*b*). In 1882, Sir John Macdonald was returned for the electoral districts of Carlton and Lennox, and a petition having been regularly entered in the courts against his return for Lennox he was unable to make his election for either during the session of 1883 in accordance with the rule governing such cases. For a member "cannot abandon the seat petitioned against, which may be proved to belong of right to another, and thus render void an election which may turn out to have been good in favour of some other candidate ; neither can he abandon the other seat, because if it should be proved that he is only entitled to sit for one he has no election to make "(*c*). But a member may accept an office of emolument under the Crown, and consequently vacate his seat under the law providing for the independence of parliament, all rights of any persons to contest being saved(*d*).

(*b*) May. Mr. Gathorne Hardy, 21st Feb., 1866.

(*c*) May. See case of Mr. O'Connell in 1841, 96 E. Com. J., 564; 59 E. Hans. (3), 503. In 1842, the election committee having reported, he made his election; 97 E. Com. J., 302. In 1887, both Sir J. Macdonald and Mr. Blake were returned for two constituencies, but they did not elect for which seat they would sit until after the session of that year, as their seats were contested in the courts. Can. Com. J. (1888), 38, 39. Case of Mr. Prefontaine elected for Terrebonne and Maisonneuve in 1900.

(*d*) See Rev. Stat. of Can., c. 13, s. 8. In 1883 Mr. de Beaujeu was elected for Soulanges, on the decease of Mr. Lantier, and his seat being contested the Superior Court of Quebec declared the election null and void. He appealed to the Supreme Court of Canada. But before it was there decided he accepted an office, which he immediately resigned, and then contested his county again, but he was defeated by his former opponent. The judgment of the Supreme Court, confirming the judgment of the Quebec Superior Court, was not given until several weeks after the second election. Can. Com. J. (1883), 13; *Ib.* (1884), 12, 210. In 1896 Sir W. Laurier became Prime Minister after a general election, and the two constituencies

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(*e*). 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(*f*). The rule of the House requires that "all members returned upon double returns are to withdraw until their returns are determined"(*g*). The Dominion Elections Act (Rev. Stat., c. 8, s. 61) 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(*h*). In the absence of

for which he had been elected became vacated by his acceptance of office (presidency of the council). He was returned immediately for one (Quebec East), but the other (Saskatchewan) was not filled up until after the opening of the session in August. Can. Com. Hans. (1896, 2nd sess.), 162; C. Jour., xi., xii., xiii., 14.

(*e*) See Cushing on Legislative Assemblies, p. 49.

(*f*) 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, 718, 719. 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 erasing the name of one of the parties. See 133 E. Com. J., 333. Rev. Stat. of Can., c. 9, s. 61 (37 Vict., c. 10, s. 59), provides for a similar procedure.

(*g*) Made a standing order in 1876, Jour. 110. The English rule is the same; 136 E. Com. J., 8.

(*h*) Parl. and Mun. Elections Act of 1872, s. 2. See the King's Co., P.E.I., election case, *supra*.

statutory enactments the common political law governs in England and her dependencies. For instance, insane persons are incapable of exercising the trust of members ; but the English Commons have always inquired into the nature of the affliction, and granted or refused a new writ, according as the incapacity has been shown to be temporary or permanent(*i*).

XII. 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 test-roll or book 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(*j*). 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(*k*).

(*i*) Case of Grampound, in 1566; of Alcock in 1811; D'Ewes, 126; 2 Hatsell 35 n. Also that of Mr. Crooks, Ontario Legislature, Feb. 12 and 14, 1884. See Cushing, p. 26.

(*j*) Can. Com. J. (1874, 1879, 1891), 1, etc. May, 166.

(*k*) *Ib.* (1877), 5, 6, etc. For some years members were permitted, on motion duly carried in the House, to take the oaths and their seats on the production of the certificate of the returning officer in advance of the legal certificate of the clerk of the crown in chancery. See cases of Mr. Abbott, etc., etc. Mr. Abbott, Feb. 16, 1880; Mr. Angers, Feb. 20, 1880; also, Jour. (1880-81), 15 and 21 Dec.; Mr. Platt, 23rd March, 1888; Mr. Edwards, May 14th, 1888. This practice might have lead to an awkward complication if a recount should have taken place under the law after the member was allowed to be sworn in on the receipt of the mere certificate of the returning officer; and since 1888 no effort has been made to continue what was clearly an illegal procedure. The clerk can only administer the oath of allegiance on receipt of the return of the clerk of the Crown. It

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 "(*l*).

Until 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

was even proposed in 1879 to admit a member on a telegram sent to the clerk of the crown by a returning officer, but the House very properly refused to make so dangerous—actually illegal—precedent. Can. Hans., 42-44.

(*l*) 2 Hatsell, 85; May; 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*. Cases of Mr. Plumb, Can. Com. J. (1879), 139, *supra*, *n*; of Mr. Brecken, *Ib.* (1883), 63, *supra*, *n*; of Mr. Baird, *Ib.* (1892), 110. 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. Kenealy, 222 E. Hans. (3), 486-7; Can. Hans. (1878), 5. Mr. Perrault was introduced Feb. 27, 1879; here vacancy occurred after general election of 1878, by death of Mr. Tremblay. Mr. Bain, re-elected Feb. 17, 1885; Mr. Hudspeth, re-elected May 5, 1887. Members have been introduced while a member is speaking in the course of a debate, and a committee of the whole has reported progress for that purpose; March 4th, 1890, in the case of Mr. Montague. See Can. Hans. in these cases.

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 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.

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(*m*). But in the session of 1875, the premier called attention to the fact that Mr. Orton, member of the electoral district of Centre Wellington, had sat and voted in the House during the session without having taken and subscribed the oath prescribed by law(*n*). 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" (*o*).

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 "it would be better to revert to the old practice and have everybody introduced"(*p*) ; and the House tacitly consented to the suggestion, and the practice was carried out uniformly during 1876 and 1877(*q*). But in the com-

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

(*n*) Can. Hans. (1875), 260, 322, 324.

(*o*) 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) ; Mr. Bright (May, 165) voted with Parl. Oaths Committee in 1880, before making an affirmation. But a member may not present a petition until he has been sworn, as that is a proceeding within the House itself. 137 E. Com. J., 295.

(*p*) Can. Hans. (1876), 1.

(*q*) Can. Hans. (1876), 1, 3; *Ib.* (1877), 2, 24, etc.

mencement of the session of 1878 a number of members elected during the recess(*r*) 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(*s*). The House being in possession of these evidences 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

(*r*) They had resigned on account of a violation of the Independence of Parliament Act.

(*s*) Can. Hans. (1878), 1, 2. See proceedings of legislative council in 1862 (then elective) before election of Sir Allan McNab, Leg. Coun. J., 17-19; also, proceedings in Leg. Ass. of Quebec, in 1876, when a new speaker was appointed in the place of Mr. Fortin. In these cases returns were laid before the House before election of speaker. Also, see the journals of the Lower Canada Assembly for 1823 for a case of the clerk laying before the House the returns of the election of new members under somewhat similar circumstances. Mr. Papineau had declared his intention in writing not to be present as speaker, and consequently it was necessary to elect a new presiding officer.

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(*t*). Several members elected during the recess were introduced formally on the day following the election of speaker(*u*). Since 1879 all new members, including ministers after re-election, have been introduced(*v*). But it is not the practice to introduce ministers of the Crown who have been re-elected on a change of government after a general election before the meeting of parliament(*w*).

XIII. Attendance of Members.—The members of both Houses are expected to attend regularly in their places,

(*t*) Can. Hans. (1878), 1-11; Jour., 1.

(*u*) Can. Hans. (1878), 11, 12, 13. This difficulty could not have occurred in English practice. Members must be sworn with the speaker in the chair. 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.

(*v*) Jour. (1880-1), 9; Can. Hans., 9th December; *Ib.*, 1882, 9th Feb.; Jour. (1896, 2nd sess.), 24. Mr. Gladstone was formally introduced after his re-election as minister of the Crown, in 1880. "London Graphic," July 3rd, 1880; H. W. Lucy, Diary of Two Parliaments, ii. 9, 10.

(*w*) See beginning of C. Jour. for 1874 (Mackenzie Government) and for 1896, 2nd session (Laurier Government). In the case of Messrs. Blair and Paterson, elected while parliament was sitting in 1896, they were introduced. Can. Com. J. (1896, 2nd sess.), 24.

and perform their duties under the constitution(*x*). In case of unavoidable absence it was for several years usual to have the reasons explained to the House, and leave then given to the member to absent himself from his duties(*y*). 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(*z*).

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(*a*), 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.

XIV. 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(*b*).

The act of 1867 relating to the indemnity to members and salary of the speaker(*c*) gave each member six dollars

(*x*) 2 Hatsell, 99-101. A member of the English Commons has been expelled for refusing to attend the service of the house; Mr. Pryse, in 1715.

(*y*) Can. Com. J. (1867-8), 34, 38.

(*z*) Sen. Journals, 1867-1891.

(*a*) May, 230; 80 E. Com. J., 150, 153, 157. Can. Leg. Ass. J. (1854), 177, 246, 284, 596, 622.

(*b*) In old times members of the English Commons were paid by a tax levied on the several constituencies, and the custom of members bearing their own charges probably dates to the middle of Elizabeth's reign. Hearn, Govt. of England, 526-531. In 1841 members of the legislature of Canada voted themselves £65 for indemnity. Turcotte, i. 88.

(*c*) 31 Vict., c. 3.

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(*d*). The act of 1873 (c. 11 R.S.C.) on the subject of the indemnity was repealed in 1901 (1 Ed. VIII. c. 14), and a sessional allowance of one thousand five hundred dollars thereafter allowed to each member of the Senate and House of Commons. A deduction of eight dollars per day is made from the allowance for each day of non-attendance beyond fifteen. There is no deduction 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(*e*). Members are paid seven dollars for each day as the session advances(*f*), 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(*g*).

(*d*) 36 Vict., c. 31, ss. 13, 14; Rev. Stat. of Can., c. 11, ss. 24, 25.

(*e*) 31 Vict., c. 3, s. 2, amended by 36 Vict., c. 31, s. 13; Rev. Stat. of Can., c. 11, s. 26.

(*f*) 39 Vict., c. 8, in amendment of 31 Vict., c. 3, s. 4; Rev. Stat. of Can., c. 11, s. 28.

(*g*) Rev. Stat. of Can., c. 11, s. 31. 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 commence-

Formerly when members had been obliged through illness to absent themselves for a considerable part of the session, or had been unable to present themselves in good season at the seat of government through unavoidable circumstances arising out of their election and return, it was usual to draw the attention of the House to the facts, and to move that the members in question receive the sum to which they would be entitled had not such circumstances prevented their attendance. The House eventually recognised the fact that this practice was a violation of the statute fixing the conditions of the member's indemnity; and now in all cases, when it is deemed expedient to vote money under the circumstances just stated or to give full indemnity to families of deceased members of either House, the proper course is for the government to bring down the requisite vote in the estimates(*h*).

XV. Expulsion and Disqualification of Members.—The power of Parliament to expel a member is undoubted(*i*). This power has been repeatedly exercised by

ment 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 House. Sen. Deb. (1880), 294-304; Jour. 253. In 1890, a member who was living in London, England, was paid travelling expenses between that city and Ottawa, on his declaration that his "place of residence" was in London. See Can. Com. J., 449; Hans. 8th of May. The Act, ch. 12, 1889, permits of 15 days non-attendance without deduction of indemnity—and also for the case of a member being a militiaman for absence on duty.

(*h*) Estimates of 1881. Sess. P., 1880-81, No. 1.

(*i*) May; 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, p. 250.

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 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 may be seen by reference to the English authorities(*j*). 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 "(*k*).

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

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

(*j*) May, 53-56; 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.

(*k*) 137 E. Com. J., 59, 61-62.

(*l*) 199 E. Hans. (3), 122-152.

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(*m*).

In 1829, Mr. Christie, member for Gaspè, 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(*n*).

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, etc." He was expelled, and having been

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

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

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(*o*).

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

In 1874, on motion of Mr. (now Sir) Mackenzie Bowell, Louis Riel, who was accused of the murder of Thomas Scott during the Northwest troubles, was expelled as a fugitive from justice, the necessary evidence having been previously laid before the House(*q*). 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 of Louis Riel, adjudged an outlaw," which

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

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

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

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

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

(*r*) Can. Com. J. (1875), 42, 67, 111, 118, 122, 124, 125. Can. Hans. (1875), 139, 144, 307-322. 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.

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

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

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

(*t*) 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.

(*u*) May.

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

been appointed to inquire into the allegations(*w*). 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(*x*). 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(*y*). 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(*z*). By reference to the precedents given above, the proper procedure in all cases will be more clearly understood(*a*).

XVI. 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 always to be entered on the journals after motion duly made(*b*). 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 busi-

(*w*) 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.

(*x*) 67 E. Com. J., 176; 69 *Ib.*, 433; 222 E. Hans. (3), 415.

(*y*) 144 E. Hans. (3), 715.

(*z*) 69 E. Com. J., 433; 111 *Ib.*, 367; 144 E. Hans. (3), 711. Can. Com. J. (1874), 13, 18.

(*a*) See Anson's Law and Custom of the Constitution, Part. I., 169, as to the procedure in cases of misdemeanor, etc. Also May, 55, *et seq.*

(*b*) Case of Mr. O'Connell, 1838, vol. 3, pp. 2231, 2263, Mirror of P.; E. Com. J., 1838, Feb. 28.

ness, 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 "(*c*). The rights of electors are no more infringed than if the House had exercised its unquestionable power of imprisonment(*d*). 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(*e*).

XVII. 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"(*f*). For example: In the case of Mr. Perry, referred to in a previous page; of Mr. J. S. Macdonald and Mr. C. Dunkin, whose seats were questioned on account of their holding offices in the executive councils of Ontario and Quebec(*h*); of Mr. R. B. Cutler, who

(*c*) 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.

(*d*) May.

(*e*) Standing order made 28 Feb., 1880, amended in 1882 and 1902. 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.

(*f*) May; 94 E. Com. J., 29, 58; 110 *Ib.*, 325; 134 *Ib.*, 86.

(*h*) Can. Com. J. (1867-8), 30.

had been paymaster of a government railway at the time of his re-election(*i*); of Mr. DeLorme, who was charged with complicity in the Red River rebellion(*j*); of Mr. Anglin and others, alleged to have violated the Independence of Parliament Act(*k*). In the case of Mr. Daoust, 1876, the matter was referred to the committee on privileges and elections, which reported in his favour(*l*); but in 1880 the House refused to refer a petition making certain charges against Mr. Hooper to the same committee(*m*). In 1890 the conduct of Mr. Rykert, in connection with certain timber limits, was referred to the committee of privileges(*n*). 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(*o*); 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(*p*).

XVIII. Places in the House.—The members of the two Houses are provided with seats and desks(*q*), to which is affixed a card with the name of the member to whom it has

(*i*) *Ib.* (1873), 285, 321, 328.

(*j*) *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.

(*k*) In 1877.

(*l*) Can. Com. J. (1876), 145, 159, 160, 208.

(*m*) *Ib.* (1880), 60, 62, 87, 88.

(*n*) Can. Com. J. (1890), 197, 198.

(*o*) Case of Louis Riel, *supra*, p. 258.

(*p*) Mr. Gladstone, 190 E. Hans., 123.

(*q*) Seats were first provided in Lower Can. Ass., 17 Jan., 1801. See Scrope's Life of Lord Sydenham, 223, *note*.

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 preference in the choice of seats. 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(*r*).

(*r*) Chap. v., s. 3.

CHAPTER V.

The Speakers and Officers of the Two Houses.

I. Speaker and Officers of the Senate—Contingent Accounts Committee.—II. Speaker of the House of Commons.—III. Officers and Clerks, etc., 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. 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 (*a*). The proceedings consequent on the appointment of a new speaker will be found fully explained in another part of this work. In case of the unavoidable absence of the speaker during the session, it was necessary from 1867-1894 to appoint a new speaker for the time being. When the former returned his re-appointment was made known to the House with all the usual formalities (*b*).

(*a*) Sec. 34 B.N.A. Act, 1867. The following are the names of the speakers of the Senate since 1867:—Hon. J. E. Cauchon, 1867-1873; Hon. P. J. O. Chauveau, 1873-1874; Hon. D. Christie, 1874-1878; Hon. D. R. Wilmot, 1878-1880; Hon. A. E. Botsford, 16th Feb. until 19th April, 1880; Sir David L. Macpherson, 1880-1883; Hon. W. Miller, 1883-1887; Hon. J. B. Plumb, 1887-1888; Hon. G. W. Allan, 1888-1891; Hon. Mr. Lacoste, 1891; Hon. J. J. Ross, 1891-1896; Hon. (Sir) C. A. P. Pelletier, 1896-1901; Hon. L. G. Power, 1901.

(*b*) Hon. Mr. Ross, from 17th to 28th May, 1869, in place of Mr. Cauchon. 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 re-appointed. Sen. J. 177. In 1872 Mr.

After much discussion in 1893 and 1894 (*c*) a statute (*d*) was passed to provide for a deputy speaker in the Senate in the case of the unavoidable absence of the speaker. Doubts were raised as to the powers of the Senate under the British North America Act to allow another senator to perform the duties of an officer appointed by the Crown, and the question was referred to the law officers of the British Government. Their report led to the passage of an Imperial Act (*e*) "for removing doubts as to the validity" of the Act in question. As in the House of Commons, every act done by a senator, called to the chair under the provisions of the statute, "shall have the same effect and validity as if the act was done by the speaker himself."

In accordance with this statute, the clerk now informs the Senate, whenever necessary, of "the unavoidable absence of Mr. Speaker," and a motion is at once made "That the Honourable Mr. —— do take the chair." When it is so ordered by the House, the member proposed is duly

Speaker Cauchon was accidentally detained, and information was given of the fact by the clerk when the Senate met. Mr. Hamilton took the chair, and by consent declared the House continued till 9.30 that evening. Sen. J. (1872), 79. In 1888 Mr. Speaker Plumb died very suddenly during the session, and the fact was announced to the House by the clerk, and Senator Ryan having been temporarily called to the chair, the House adjourned for several days. On its reassembling, the appointment of Hon. George W. Allan as speaker was formally announced. Sen. J. (1888), 30, 31. Deb. 13th and 19th March.

(*c*) Sen. Deb., March 16, 17, 20, 1893, and Com. Hans. March 30, 1893, Senator Gowan in the Senate and Hon. Mr. Mills in the Commons took the lead in doubting the constitutionality of the legislation. See Sess. P., 1895, in which the opinions of the English law officers are given on a statement of the case, presented by the author of this work, at the request of Sir John S. D. Thompson, minister of justice and prime minister.

(*d*) 57-58 Vict., c. 2.

(*e*) Imp. Stat. 59 Vict., c. . . , at beginning of Can. Stat for 1896.

escorted to the chair by the leaders of the Government and opposition, and the mace is laid upon the table (*f*).

The speaker presides over all the deliberations of the Senate, except when the House goes into committee of the whole, and then he must call another member to the chair. He has in all cases a vote (*g*), 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 (*h*). 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(*i*). 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 (*j*). Like the speaker in the Commons, he presents to the House all papers, returns, and addresses which he has received and which ought to be laid before that body (*k*).

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's assistant have also been always appointed masters in the

(*j*) Sen. R. 28.

(*k*) Sen. J. (1867-8), 206, 210, 230-231, 269, &c.; *Ib.* (1880), 17, 30, 47, &c.

(*f*) Hon. G. W. Allan, 2nd April, 1900; Jour. 114.

(*g*) Sec. 36, B.N.A. Act, 1867. See chapter .... on divisions.

(*h*) Sen. Deb. ("Times"), 1867-8, pp. 176, 184.

(*i*) Mr. Speaker Christie, Sen. Deb. (1877), 131; Mr. Speaker Wilmot, 2nd May, 1879; Lords' S. O. 19; May, 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. 749.

chancery of Canada, by virtue of special commissions under the great seal(*l*). The clerk, who is appointed by the Crown under the great seal, performs duties similar to those of the clerk of the Commons, and also acts as accountant in pursuance of the orders of the House itself (*m*). He reads the commission for the appointment of a new speaker (*n*), and takes minutes of all the *res gestæ*, or proceedings of the Senate (*o*). He administers the oaths required by law to new members as one of the commissioners appointed for that purpose (*p*). At the prorogation of parliament he pronounces the royal assent to bills, or signifies that certain bills have been reserved(*q*). He also replies, by his Excellency's command, accepting the benevolence of the Commons, when their speaker makes the usual speech in presenting the Supply Bill (*r*). Whenever a new clerk is appointed, the speaker will inform the House of the fact, and the commission will be read and put on the journals. He will then take the oath of

(*l*) Sen. J. (1867-8), 61, 62; *Ib.* (1883), 15; *Ib.* (1884), 3.

(*m*) Report of contingent committee on subject, Sen. J. (1867-8), 131; *Ib.* (1870), 165. An assistant appointed in 1875, Jour. 34; *Ib.* (1877), 115.

(*n*) *Ib.* 1873, 1874, 1879, 1891.

(*o*) See a decision of a speaker (Sen. Hans., 1898, pp. 840 *et seq.*) that it is not the duty of the clerk to enter decisions on points of order arising during debate, but only decisions on a bill or motion duly entered, when put from the chair, and subsequently ruled out on an appeal to the speaker. This decision was based on precedents of the English and Canadian Commons, and was repeated in a subsequent session under similar conditions. (Sen. Hans., 1900, pp. 730-732).

(*p*) *Ib.* (1874), 14, &c.; *Ib.* (1883), 18. See 128, B.N.A. Act, 1867.

(*q*) Sen. J. (1874, 262, &c.; *Ib.* (1883), 297.

(*r*) *Ib.* (1874) 262-3, &c.; *Ib.* (1883), 297.

office before the speaker (*s*). He is also styled the clerk of the Parliaments, and has the custody of all the original Acts of Parliament (*t*). He has a seal of office which he affixes to 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 of ten cents for every hundred words, which goes into the contingent fund of the Senate (*u*).

The clerk assistant, who is also generally the deputy clerk, sits at the table to the right of the chief clerk. He is not sworn like the officers of the Commons (*v*). His duties consist in reading petitions and other documents, in taking minutes of proceedings in committee of the whole, and in otherwise assisting the clerk in the business of the House. Official reporters have also seats on the floor by the indulgence of the House.

The gentleman usher of the black rod, who is appointed by the Crown (*w*) is always sent to desire the attendance

(*s*) *Ib.* (1867-8), 55; *Ib.* (1871), 15-16; *Ib.* (1883), 13, 14; *Ib.* (1900) 10, 11. For practice in Lords, which is similar, see 223 E. Hans. (3), 1684.

(*t*) See Rev. Stat. of Can., c. 2, ss. 5, 6, 7. This act does not contain a power of deputation for this purpose.

(*u*) The clerk of the Commons in England—but not in Canada—is the "under clerk of the Parliaments to attend upon the Commons." 2 Hatsell, 255; London *Gazette*, 3rd Feb., 1871.

(*v*) He acts as deputy by virtue of authority from the clerk. In the Lords he is appointed by the lord chancellor, and the House is always informed of the fact, and asked to approve, 223 E. Hans. (3), 1685. In the Senate the contingent accounts committee practically appoint the officer and give 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.

(*w*) *Ib.* (1867-8), 56.

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 (*x*). The speaker should, following British precedent, report any new appointment to the House, as in the case of all other officers under royal commissions (*y*).

The Senate has also a sergeant-at-arms, who carries the mace, and executes the orders of the House for the attachment of delinquents, when they are in the country (*a*). The usher of the black rod performed the duties of this office until 1869, when an officer was appointed to fill the position (*b*).

Until 1901 prayers were read in the Senate by a chaplain appointed by commission under the privy seal (*c*), but in that year the Senate adopted the form of prayers in use in the Commons House, and had them read by the speaker. Whenever it is necessary to appoint any officer, clerk or messenger, the subject is referred to the committee of internal economy and contingent accounts, who report as to the necessity for such office, and the salary that ought to be given (*e*). All appointments and salaries (except the appointment of crown officers) as well as promotions, and recommendations for superannuation, or a leave of absence, are practically regulated by this

(*x*) 4 May, 194, 401, 627.

(*y*) Sen. J. (1867-8), 56. But this was not done in 1876 when a new officer was appointed. He occupies, like the sergeant-at-arms of the Commons apartments in the parliament buildings. *Ib.* (1876), 29.

(*a*) May, 194.

(*b*) Sen. J. (1867-8), 90; *Ib.* (1869), 83. He is appointed under the great seal, *Ib.* (1884), 76, 77.

(*c*) *Ib.* (1869), 33-4. *Ib.* (1884), 3.

(*e*) *Ib.* (1869), 83; *Ib.* (1875), 132; *Ib.* (1876), 86.

committee (*f*). In fact it supervises all the ordinary expenses of the Senate, apart from the members' indemnity and other expenditures authorized by statute(*g*). Its members have always jealously resented all attempts to interfere with the control of matters which it is the practice to refer to them (*h*). 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(*i*). At the commencement of every session the clerk is to lay before the Senate, on the day after the appointment of the committee on contingent accounts, and so often as he may be required to do so, a detailed statement of his receipts and disbursements, since the last audit, with vouchers in support thereof(*z*). The committee in question will always report on the correctness of these accounts (*a*). In 1880 the Senate agreed that "the accounts of expenditure for salaries and contingencies of the Senate, and for their members' indemnity, etc., should be audited by the auditor-general (*b*). All reports of the committee of contingent accounts, making recommendations, must be considered and adopted by the Senate before they can be valid (*c*).

(*f*) *Ib.* (1867-68), 90; *Ib.* (1880), 252; *Ib.* (1882), 65, 300; *Ib.* (1883), 45, 91; *Ib.* (1890), 47, 48, 279; *Ib.* (1900), 83 (leave of absence), 100, 239, 286, &c.

(*g*) Sen. J. (1877), 44, 66, 114; *Ib.* (1880-81), 103-4; *Ib.* (1884), 270; *Ib.* (1900) 238.

(*h*) Sen. Deb. (1875), 25, 37, 66, 69.

(*i*) Sen. J. (1867-8), 200, 273; *Ib.* (1876), 61; *Ib.* (1880), 87, 95.

(*z*) Sen. R. 98; Jour. (1879), 51; *Ib.* (1883), 46; *Ib.* (1890), 18; *Ib.* (1900), 43.

(*a*) Sen. J. (1878), 234; *Ib.* (1879), 246; *Ib.* (1880), 186; *Ib.* (1900), 285.

(*b*) Sen. J. (1880), 97.

(*c*) *Ib.* (1900), 250, 297.

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 (*d*). The journals, which are almost identical with the minutes, are bound in annual volumes as soon as possible after each session, with a full index, and are the authoritative record of the Senate (*e*).

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.

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" (*g*).

(*d*) Sen. R. 94.

(*e*) Sen. R. 95.

(*g*) 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 a 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, 219.

The proceedings in such a case are described more conveniently in a later chapter on the opening of parliament.

The 45th section provides—

"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."

Only one case of the election of a speaker during a session has occurred since 1867 in the dominion parliament, and that was on the occasion of the death of Sir James D. Edgar, who had been in the chair since August, 1896. In this case, on the day following the announcement of the decease, the sergeant-at-arms brought the mace and laid it under the table. Then the premier, Sir Wilfrid Laurier, addressing himself to the clerk, as at the opening of a new parliament, informed the House that His Excellency the governor-general had been informed of the death of Sir James Edgar, and gave leave to the House forthwith to proceed to the choice of a new speaker. The House immediately elected Mr. Bain, and the mace was laid on the table. The House then went up immediately to the Senate Chamber, where His Excellency the governor-general received the new speaker with the usual formalities (*h*).

(*h*) Can. Com. J. and Hansard, 1899, August 1st, and similar procedure is followed in the case of the retirement of a Speaker during a session. See 127 E. Com. J. (Mr. Speaker Denison) 9, 22, 23; 209 E. Hans. (3), 181. 139 E. Com. J. (Mr. Speaker Brand), 68; May, 153. For the earliest instance probably of proceedings on the death of an English speaker, see 94 E. Com. J. 116; 1 Parl. Hist. 811. No case of the death or resignation of a Speaker occurred from 1841 until 1866 in the old parliament of Canada; but after confederation we have in 1871 the resignation of Mr. Speaker Scott in the Ontario assembly. Leg. Ass. J. (1871), 36. See case of the election of a new speaker in the legislative assembly of Lower Canada in

In case the speaker dies or resigns during a prorogation, it will be necessary for the House of Commons to go up to the Senate chamber at the opening of parliament and receive the authority of the governor-general to proceed to the election of a new speaker in accordance with law. This was done in conformity with British precedents, on the occasion of the re-election of Mr. Speaker Anglin, who had resigned his seat during the recess (*i*). 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 (*j*).

1823, when Mr. Papineau was absent in England. On the assembling of the House, the clerk read a letter from Mr. Papineau informing them that he would not be able to attend to his duties that session. On the members of the assembly presenting themselves in the chamber of the legislative council, the speaker of that body informed them that his Excellency had been made aware of the absence of Mr. Papineau, and requested them to elect a new speaker in his place. Christie, iii. 5, 6; Ass. Jour. (1823), 9-11.

(*i*) Can. Com. Jour. (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. 1-7; also, in the Ontario legislature, on the resignation of Mr. Currie in 1874.

(*j*) 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

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, "until the parliament of Canada otherwise provides 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." 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 some days, when the clerk had communicated to the House the fact of the speaker's indisposition (*k*).

The House of Commons had no deputy speaker before the session of 1885; but, in pursuance of a statute in that behalf, whenever the speaker from illness, or other cause, was obliged to leave the chair, he called upon a member to take his place for the time being, and every order made and thing done under these circumstances was declared valid and effectual (*l*).

In 1885 the House adopted the English practice as far as possible with respect to the appointment of a deputy

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; *Ib.* (1891), (new Parliament). Also, sec. 14, B.N.A. Act, 1867.

(*k*) Leg. Ass. J. (1858), 161. No business could be done, and the clerk put the motion for adjournment. See 2 Hatsell, 222.

(*l*) 31 Vict., c. 2. From 1870 to 1885 no record of the fact was made in the journals, but the reverse was the case previously. Can. Com. J. (1867-8), 167, etc.

speaker. The chairman of committees, appointed at the beginning of every session as hereinafter set forth(*m*), acts as deputy speaker in conformity with the following provisions of a statute (*n*) passed to give validity to all proceedings while the officer in question is in the chair:

1. Whenever the speaker of the House of Commons, from illness or other cause, finds it necessary to leave the chair during any part of the sittings of the said House, on any day, he may call upon the chairman of committees, or, in his absence upon any member of this House, to take the chair and to act as deputy speaker during the remainder of such day, unless the speaker shall himself resume the chair before the close of the sittings for that day.

2. Whenever the House shall be informed by the clerk at the table of the unavoidable absence of Mr. Speaker, the chairman of committees, if present, shall take the chair and shall perform the duties and exercise the authority of speaker in relation to all the proceedings of the House, as deputy speaker, until the meeting of the House on the next sitting day, and so on from day to day on the like information being given to the House until the House shall otherwise order: Provided that if the House shall adjourn for more than twenty-four hours the deputy speaker shall continue to perform the duties and exercise the authority of speaker for twenty-four hours only after such adjournment.

(*m*) See *infra*, chap. xiii., s. 3.

(*n*) 48-49 Vict., c. 1 (R.S.C., c. 14). This statute is based on the imp. stat., 18-19 Vict., c. 84. The assent of the Crown was given to the Canadian bill in accordance with British precedent. See preamble of 48-49 Vict., c. 1, and remarks of Mr. Edward Blake, Can. Hans. (1885) 175, showing that the office of speaker involves some ancient prerogatives of the Crown, and that its assent must constitutionally be given to any measure affecting that office.

3. If at any time during a session of parliament the speaker shall be temporarily absent from the House, and a deputy speaker shall thereupon perform the duties and exercise the authority of speaker as hereinbefore provided, or pursuant to the standing orders or other order or resolution of the House every act done and proceeding taken in or by the House in the exercise of its powers and authority, shall be as valid and effectual as if the speaker himself were in the chair; and every act done, and warrant, order, or other document issued, signed or published by such deputy speaker in relation to any proceedings of the House of Commons, or which under any statute would be done, issued, signed or published by the speaker if then able to act, shall have the same effect and validity as if the same had been done, issued, signed or published by the speaker for the time being.

For the first time (on the first of May, 1885), in accordance with the law, the clerk informed the House of the unavoidable absence of Mr. Speaker Kirkpatrick, on account of serious illness in his family, and Mr. Daly, chairman of committees, took the chair, and adjourned the House. The speaker was obliged to be absent for two more sittings, and the clerk every day informed the House of the fact as soon as it met, and the deputy speaker took the chair and read prayers (*o*). The same procedure has always been followed since (*p*).

(*o*) Can. Com. J. (1885), 357, 358, 359. This is the English practice, 108 E. Com. J., 758, 766; 110 *Ib*, 210, 395; 121 *Ib*., 146, 156, 163; 131 *Ib*., 353. The mace is always on the table on such occasions, May, 251, *note*. For report on the office of deputy speaker, and proceedings in relation thereto, see E. Com. Sess. P., 1852-3, vol. 34; *Ib*. 1885, vol. 7. Also report on public business, 1878, p. 160 (Mr. Raikes) vol. 18. As to necessity of Speaker or Deputy Speaker being in the chair in order to adjourn the House, see debates, 1903, Can. Hans.

(*p*) Illness of Sir J. D. Edgar, Can. Com. J. (1898), 77, 160, &c.

When the speaker enters or leaves the House, the sergeant-at-arms precedes him with the mace, which will lie on the table whilst he is in the chair, and the House is consequently in session (*q*). The House cannot proceed to the election of speaker without the mace (*r*).

During a session of parliament, or an adjournment, the speaker can be accompanied by the mace on any state or solemn occasion, in pursuance of the express resolution of the House, or in accordance with parliamentary usage (*s*). Even when parliament is sitting, and the speaker may have a doubt as to the propriety of his using the mace on some occasion, he asks the opinion of the House, and is governed accordingly (*t*).

But during a prorogation the speaker has no authority under correct British parliamentary usage to use the mace on any public occasion, since it is an emblem of the authority of the House and its speaker to be used only while parliament is sitting (*u*).

(*q*) May, 152.

(*r*) 2 Hatsell, 218.

(*s*) Mr. Speaker Onslow cited by Hatsell, vol. 2, 249*n*. Also Cushing, sec. 354. For cases of attendance of the speaker accompanied by the mace, and dressed in his robes: State funeral to Rt. Hon. W. Pitt, Eng. Com. J., 1806, 27th Jan.; State funeral of Duke of Wellington in 1852, 108 Eng. Com. J. 29; Coronation in 1838, 93 Eng. Com. J. 621, May, 182; Thanksgiving for recovery of Prince of Wales in 1852, 127 Eng. Com. J. 51, 61; General Thanksgiving in St. Margaret's, Westminster, 4th May, 1856, 111 Eng. Com. J. 175; Thanksgiving in celebration of the 50th year of her Majesty Queen Victoria's reign, 21st June, 1887, 142 Eng. Com. J. 293; State funeral of the Rt. Hon. Sir J. A. Macdonald, prime minister of Canada for years, Can. Com. J., 8th June, 1891.

(*t*) Eng. Com. J., 1668, May 7th.

(*u*) During prorogation the English speaker has no longer even the custody of the mace, but it is kept in the jewel chamber until parliament resumes, 2 Hatsell, 249*n*; Sir R. Palgrave's "House of Commons," p. 80. In Canada two cases have occurred of the speaker attending with the mace on two important occasions during a pro-

In the records of the parliamentary history of Canada but one example can be found of a House having attempted to remove a speaker for any cause. This occurred in the province of Nova Scotia in the year 1875, when a resolution was adopted by a vote of 20 to 12 requesting Mr. Speaker Dickie to resign. Nothing was alleged against Mr. Dickie's moral character, but his conduct of the office showed that he had not the requisite qualifications to satisfactorily discharge its duties. Upon the passage of the resolution the speaker resigned and another was elected(*v*). 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(*vv*). In the memorable case of Sir John Trevor, in 1694, a committee showed that he had received a bribe to promote the passage of a certain bill, and the House resolved that he had been guilty of a high crime and misdemeanour. Thereupon he resigned, and the king immediately gave leave to the House to proceed to the election of a new speaker. Sir John Trevor was then formally expelled (*w*).

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 (*x*). He announces the

rogation; addresses to the Prince of Wales, in 1860; funeral of Sir George E. Cartier, in 1873 (Can. Com. J. 23rd May). In the first case the House authorized the speaker to attend with the mace, but this resolution was at entire variance with sound English practice, which allows the mace only to be used when parliament is fully invested with its constitutional powers. In the case of the State funeral of Sir John S. D. Thompson, prime minister, at Halifax, N.S., in December, 1894, the correct British usage was followed by the speakers of the two Houses.

(*v*) See Jour. H. of Assembly, N.S., April, 1875.

(*vv*) 2 Hatsell, 214, 215; 2 Grey's Debates, 186.

(*w*) Parl. Hist. 1694, vol. v., pp. 900-10.

(*x*) 240 E. Hans. (3), 651.

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 parliament. 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 (*y*). He reprimands or admonishes members (*z*), or commits persons to the custody of the serjeant-at-arms when he has received the necessary instructions from the House (*a*). He must even put a question when it affects himself personally (*b*). 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 (*c*). He decides only when questions actually arise, and not in anticipation (*d*). If a member wishes to challenge his action or conduct, he must proceed in the usual way, by giving notice of a motion on the subject (*e*). He authenticates by his signature, when necessary, all the acts, orders, and proceedings of the House. He is the "mouthpiece of the House" (*f*) on all occasions when an address is to be pre-

(*y*) Rule 8.
(*z*) Mirror of P. (1838), 2263, 2267.
(*a*) 113 E. Com. J. 192; Can. Com. J. (1873, 2nd sess), 135.
(*b*) 32 E. Com. J. 708; 10 E. Hans. (1), 1170; Can. Com. J. (1877), 234, 235.
(*c*) Rule 8.
(*d*) 276 E. Hans. (3), 1908; 277 *Ib.* 810-812.
(*e*) *Ib.*
(*f*) 2 Hatsell, 242.

sented by the whole House to the queen or her representative in Canada, or to the heir apparent to the Crown (*g*).

This is only a very brief summary of the important functions of the first commoner (*h*)—his duties will be more clearly understood by the perusal of later 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 (*i*) 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" (*j*).

The speaker, however, cannot be called upon to decide a question of law (*k*), nor to express opinions on matters which are for the determination of the House itself (*l*).

(*g*) Chap viii. on addresses, ss. 6, 8.

(*h*) 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 1802, Cushing, p. 127; Lex. Parl. 264; 2 Parl. Hist. 535; 2 Hatsell, 242*n*. Also, Reports as to office of speaker, E. Commons P. 1853 and 1855.

(*i*) In the Lords, the speaker takes no notice of irregularities until his attention is specially directed to the same by a member, May.

(*j*) 2 Hatsell, 233.

(*k*) Leg. Ass. J. (1864), 444; Can. Com. J. (1868), 161; 150 E. Hans. (3), 2104.

(*l*) 264 E. Hans. 260, 852; *Ib.* 1530-31.

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 (*m*). For instance, he will always explain when necessary, matters connected with the internal economy of the House (*n*), and may sometimes refer to matters of interest to his constituents when the estimates are under consideration (*o*). 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 (*p*), 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 (*q*). He generally abstains from voting on the divisions in committee (*r*).

(*m*) Mr. Raikes, committee on public business, E. Com. P., 1878, p. 136.

(*n*) Can. Hans. (1878), 1819, 2247.

(*o*) *Ib.* (1878), 1197.

(*p*) May, 4.

(*q*) Mr. Speaker Anglin, on Temperance Act, May 3, 1878.

(*r*) Mr. Raikes, Public B. Com., 1878, p. 136. In England, the same speaker is re-elected, whenever practicable, for several parliaments. Mr. Shaw Lefevre was speaker about 18 years; Mr. E. Denison, 15 years. It is also usual to elevate them to the peerage, and confer a pension 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 elcted both in 1867 and 1873. See speech of Sir J. Macdonald in proposing Mr. Cockburn a second time. Parl. Deb., 1873, p. 1. The speakers since Mr. Cockburn have been: Mr. Anglin, 1874-1878; Mr. Blanchet, 1879-1882; Mr. (later Sir George) Kirkpatrick, 1883-1886; Mr. Ouimet, 1887-1890; Mr. Peter White, 1891-1896; Sir J. D. Edgar, 1896-1899; Mr. T. Bain, 1899-1900; Mr. Brodeur, 1901.

III. The Officers of the House of Commons, etc.—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 (*s*)—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. 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"(*t*). His minutes, technically styled "the scroll," are made up every day in a brief and convenient shape, known as the "votes and proceedings," which comprise a record of all the proceedings, but omit many of the parliamentary forms which are given in full in the journals, when these are extended after the close of a session. The votes are now prepared on the responsibility of the clerk by an officer, especially selected for his knowledge and experience, and it is ordered that "they be printed, being first perused by Mr. Speaker"(*u*). In recording the minutes, the clerk must always wait for the directions of the speaker(*v*). Consequently the clerk cannot re-

(*s*) The commission reads: "For and during our royal pleasure and the continued residence of you the said——within our dominion of Canada."

(*t*) 2 Hatsell, 267. See *supra* .... for remarks of the speaker of the Senate as to recording speaker's decisions in the Commons as well as Senate.

(*u*) Can. Com. J. (1877), 12; 131 E. Com. J. 5. The speaker's name is also appended. The clerk also signs a copy forwarded daily to the governor-general.

(*v*) 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 num-

cord any motion until it is formally proposed from the chair (*w*). In case of any mistake or ommission 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 (*x*); but if the mistake is not discovered until after some time, it ought properly to be corrected by an order of the House (*y*); and sometimes under exceptional circumstances only on the report of a committee appointed to investigate the subject (*a*).

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 an assistant clerk at the table. He authenticates, by his signature, all the orders of the House, for the attendance of persons, for the production and transmission of papers and records, for the appointment and meeting of committees (*b*), and certifies all the bills which pass the House (*c*). 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

ber of members, as the directions of the House, unless they are conveyed to the clerk through the usual and only channel by which he can receive them," vol. ii. 271.

(*x*) 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. 210-211.

(*y*) Can. Com. J. (1871), 173; Votes and P. (1883), 402.

(*z*) Can. Hans. (1875), 260 (remarks of Sir J. A. Macdonald).

(*a*) 2 Hatsell, 266.

(*b*) *Ib.*, 268.

(*c*) Rule 45.

custody, without the leave of the House (*d*). It is the duty of the clerk and clerk's assistant "to complete and finish the work remaining at the close of the session" (*e*). 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" (*f*). He assists the speaker and members whenever questions arise with respect to the rules, usages and proceedings of parliament. He is to place on the speaker's table "every morning previous to the meeting of the House, the order of the proceedings for the day" (*g*). 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 (*h*). He is to take care that "a copy of the journal, certified by himself, be delivered each day to his Excellency the governor-general" (*i*). He lays on the table returns relative to or in possession of his department (*j*).

The clerk assistant takes minutes of the proceedings in committee of the whole (*k*), and calls off the names of

(*d*) 2 Hatsell, 265; rule 104. Members have the right to peruse all papers in the possession of the clerk, and to obtain copies of them through him.

(*e*) Rule 103.

(*f*) Rule 104.

(*g*) Rule 105.

(*h*) Rule 106.

(*i*) Rule 91.

(*j*) Can. Com. J. (1883), 354; *Ib.* (1885), 255; 134 E. Com. J. 39, 390.

(*k*) 2 Hatsell, 273. Until 1880 there was a second clerk assistant at the table, but the office was abolished after that date by dropping the salary from the estimates. The two clerks assistant in England are appointed by the Crown on the recommendation of the Speaker, 19 and 20 Vict., c. 1, Imp. Stat. Treasury Min., Parl. Pap., 1856, vol. 51, p. 1; 140 E. Hans. (3), 258, 447. The clerk is ap-

members on a division of the House, and translates motions into the language with which he is best acquainted.

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" (*m*). Permanent clerks are also appointed to assist the committees of railways, canals, and telegraph lines, of stand-

pointed by the Crown, on the recommendation of the prime minister, 114 E. Hans. (3), 142. In Canada a very loose system has existed since 1867, and the speaker makes appointments generally on the recommendation of ministers, though there is no express rule of the House or statute giving him the legal right in place of the clerk. In the old assemblies of Canada the clerk always exercised the right of appointing officers in his department with the approval of the Speaker, in accordance with English practice. See Leg. Ass. J. (1852), 451; *Ib.* 1860, App. No. 8; which latter report was not concurred in. Gradually all the appointments came to be practically made by the speaker, though the contingent accounts committee attempted frequently to limit the speaker's efforts to assume all authority in this particular. App. No. 2, Jour. 1862; also No. 6, Jour. 1866. Jour. (1863), App. No. 1 (not concurred in); *Ib.* (1864), 498. Also since 1867, 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 sergeant-at-arms in their respective departments, 1 Todd, 627. Parl. Pap. 1856, vol. 51, p. 1. 202 E. Hans. (3), 386, 388.

(*m*) Rule 48. In 1880 it was proposed to amalgamate the law and translation departments of the two houses, but after full inquiry a committee reported against the proposition. The duties of the law officers and translators are very fully set forth in memorandums attached to the report. Sen. J. (1880), 225-234; Com. J. App. No. 4; Sen. Hansard, 468; also Sen. J. (1882), 65, 75, report of contingent accounts committee as to duties of a new officer appointed.

ing 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 the session, with the approbation of the speaker, such extra writers as may be necessary, engaging others as the public business may require" (*n*). It is also ordered (*o*):

"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" (*p*).

In case of any changes in the personnel of the officers, who have seats on the floor, it was usual for the speaker for some years before and after 1867 to communicate the names to the House when the doors were opened, and to make a record of the facts in the journals; but this practice has gradually fallen into disuse (*q*).

(*n*) Rule 110. Remarks of Speaker Edgar, Can. Com. Hans. (1896, 2nd sess.) 1074. 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 seventy in the latter year. The commission of internal economy decided to make such clerks permanent, and to limit the number to twenty-five sessional clerks and five extra translators, besides five junior sessional clerks who had been permanent for years. See estimates, 1882-3, 1889-90, and Can. Hans. (1880), 1026; speech of Sir John Macdonald, 1026. Also Can. Com. J., 1885, App. I.

(*o*) Rule 102.

(*p*) Rule 109.

(*q*) Leg. Ass. J. (1841), 53; *Ib.* (1852-3), 170, 211, 1034; *Ib.* (1862), 210, 216. Can. Com. J. (1872), 15; *Ib.* (1879), 8. The appointment of Mr. Patrick, as chief clerk, does not appear in the

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 (*r*).

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 (*s*). 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

journals of 1873. It seems that under English practice it is not necessary to make a formal announcement of Crown officers like the clerk and clerk's assistant. The appointment of Mr. Patrick's successor in 1880-1 was incidentally announced, as it was thought necessary by the speaker to explain the appointment of a clerk assistant. Jour. 1. The appointment of the Clerk, who succeeded Sir John Bourinot, was however formally announced to the House by the Speaker at the opening of the Session of 1903.

(*r*) 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. Lemoine, who was allowed certain honorary privileges. Sen. J. (1883) 278. Hans. 627. Also of Mr. Langevin, *Ib.* 718.

(*s*) 31 Vict., c. 27, sec. 9. In 1896 several sessional clerks were dismissed for active, offensive partisanship in the general election of that year. See Com. Hans. for Sept. 11, 1896, for debate on the subject, and for rules laid down for such cases by the speaker and others. No objection, however, was taken to officials exercising their legal right to vote by ballot.

Act (*t*). Officers, clerks, and messengers, are to take the oath of allegiance on their appointment, before the clerk, who shall keep a register for the purpose. The clerk takes the oath of allegiance before the speaker (*u*), and the oath of office before the clerk of the privy council. The superannuation act applies to the permanent officers and servants of both Houses, "who, for the purposes of this act, shall be held to be in the civil service of Canada, saving always all legal rights and privileges of either House as

(*t*) In 1878-9 a difficulty arose with respect to the right of the former Speaker after the dissolution of 1878, to make certain appointments. Mr. Anglin 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; but no legislation took place to obviate such difficulties in the future. The law (Rev. Stat. of Can., c. 13, ss. 10-16) simply continues the former speaker (whose office constitutionally expired with the dissolution of parliament), as chairman of a board of internal economy, and his functions are expressly limited by the provisions of the statute. See Can. Hans. (1879), 29-41. Correspondence, Sess. Pap. 1879, No. 17.

(*u*) 31 Vict., c. 27, s. 10 (Rev. Stat. of Can., c. 13, s. 17). 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 oath of office and allegiance. 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. In 1901 on the death of Queen Victoria, the clerk took the oath of allegiance to the King before the clerk of the privy council by virtue of s. 3, c. 19, Rev. Stat. of Can., as there was no speaker until parliament met and was organized after the general election of 1900. He then administered the oath to all officers, clerks and messengers in the service of the House.

respects the appointment or removal of these officers and servants or any of them" (*v*).

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 sitting (*w*); serves the processes and executes the orders of the Commons; arrests all persons who are ordered to be taken into custody (*x*); confines in his custody or elsewhere, all those who are committed by order of the House (*y*); gives notice of all messages from the Senate; preserves order in the galleries and other parts of the House (*z*). 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 (*a*). He is entitled to a fee of four dollars from all persons who shall have been committed to his custody (*b*). He has the right to appoint a deputy with the sanction of the speaker who will always report such an appointment to the House(*c*). 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,

(*v*) 46 Vict., c. 8, s. 1, Dom. Stat.

(*w*) See *supra*.

(*x*) May, ...; 15 Mirror of P. (1840), 720; Can. Com. J. (1873), 12, 70 May, 265; 95 E. Com. J. 56-59; Can. Com. J. (1873), 133; 15 Mirror of P., 722, 795.

(*y*) 113 E. Com. J. 192; Leg. Ass. J. (1866), 265.

(*z*) E. Com. Pap. 1847-8, vol. xvi. 45.

(*a*) Rule 107.

(*b*) Rule 108.

(*c*) Can. Com. J. (1872), 15.

or actions brought for executing the orders of the assembly (*d*).

IV. Admission of Strangers. — The serjeant-at-arms maintains order in the galleries and lobbies of the House. The orders and arrangements of the House with reference to the admission of strangers are carried out by him. The senators have a gallery devoted exclusively to themselves; the speaker also gives admission to a gallery of his own. The public in general is admitted to other galleries by tickets distributed to members by the serjeant-at-arms. Strangers are not obliged to withdraw from the galleries when a division takes place. In the session of 1876 the Commons—and the Senate, also—adopted as a standing order (*e*) the following resolution which was first proposed by Mr. Disraeli(*f*) 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

(*d*) Cases of Sir Francis Burdett (1810); Mr. Howard (1842-3); Mr. Lines (1852), given by May, 181-89. See also Cushing, p. 134. See also action against deputy-serjeant of English house, in 1882, by Mr. Bradlaugh, *Times*, 12th Jan., and 21st Feb., 1883; May.

(*e*) Sen. S. O.; Com. S. O. 6.

(*f*) 130 E. Com. J. 243; 224 E. Hans. (3), 1185; 131 E. Com. J. 79; 227 E. Hans. (3), 1420.

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(*g*). In conformity with law he issues writs for elections (*h*), makes certificates to the House, in due form, of the return of members, and performs other functions relating to elections (*i*). He attends the House with election returns, and amends the same, when so ordered(*j*). The various proclamations, summoning, proroguing, and dissolving parliament, are issued by command out of chancery(*k*). 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(*l*). From the foregoing summary of this officer's duties it will be seen that, while he is appointed by the Crown to perform certain duties by its command in connection with elections, and also to attend in the upper house on the occasion of the exercise of certain royal prerogatives, he is also an officer of the House

(*g*) Can. Com. J. 1867-8, 1874, 1879, &c., p. 1.

(*h*) 37 Vict., c. 10, s. 36; 41 Vict., c. 5, ss. 12-15; Rev. Stat. of Can. c. 9, s. 46; *Ib.* c. 13, ss. 5-9.

(*i*) *Ib.* c. 8, s. 66, etc.; Can. Com. J, (1882), 3-8, etc. *Supra.*

(*j*) Can. Com. J. (1873), 5; *Ib.* (1883), 40, 261, 262; *Ib.* (1887), 6; *Ib.* (1892), 103; *Ib.* (1899), 406, 407.

(*k*) See Can. Com. J. (1891), and commencement of every volume since 1867.

(*l*) Sen. J. (1383), 294.

of Commons(*m*), so far as he must immediately obey its orders to lay on the table election returns in his possession, and even alter them at its pleasure.

VI. The Votes and Journals.—The "Votes and Proceedings" are printed daily, and distributed in English and French to members and others. The Journals(*n*) 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(*nn*). A member may move that an entry in the journals be expunged(*o*), and in this way a resolution of a former session has been ordered to be struck out(*p*). When a motion or entry has been ordered to be expunged, no mention of it will appear in the votes(*q*). 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

(*m*) 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.

(*n*) The Canadian journals were first printed in their present 8vo form (1852-3), 85.

(*nn*) Cushing, p. 175. Perry & Knapp, 536; Parl. Deb. v., 20.

(*o*) E. Com. J. 197; 33 *Ib.* 509. Sen. J. (1871), 134; Debates, 278. A motion to expunge an entry in the journals of the House must come up by due notice, and cannot be treated as a question of privilege. 263 E. Hans. (3), 45-9.

(*p*) May, 197; 38 E. Com. J. 977, resolution respecting Wilkes.

(*q*) 17 E. Hans, (3), 1324; 137 *Ib.* 202; May.

produce the printed journal, or extracts which he certifies to be true copies; or, if necessary, the original manuscript journal book(*qq*). It is provided by the 3rd section of 31 Vict., chap. 23 (Rev. Stat. of Can., chap. 11, s. 5), 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

(*qq*) May, 197. It has been decided in English courts that copies of the journals are evidence; Rex *vs.* Gordon (Lord George), 2 Doug., 593; See Mortimer *vs.* 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 *vs.* Salomans, 3 Carrington and Kirwin, 75; Pollock. By c. 31, 56 Vict., Can. (Stat. of 1893), it is provided that in every case in which the original record would be received in evidence a copy of any official or public document of Canada, or of any province, purporting to be certified under the hand of the proper officer or person in whose custody such document is placed shall be receivable in evidence, without proof of the signature or of the official character of the person appearing to have signed the same, in all criminal proceedings and all civil cases respecting which the parliament of Canada has jurisdiction. It is also enacted in the same statute that whenever any book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody a copy or extract therefrom shall be admissible in evidence in the courts, provided it be proved that it is an examined copy or extract or that it purports to be signed and certified as a true copy or extract by the officer to whose custody the original has been entrusted.

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 (*r*). A similar resolution still remains among the rules of the Senate(*s*).

In case certain documents or records belonging to the 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(*t*). During the prorogation, as previously stated, it is usual to obtain the permission of the speaker.

VII. The Official Reports.—The House of Commons has the advantage of the services of an efficient staff of official reporters. Previous to 1874 all attempts in this direction were fruitless(*u*), though it had not been unusual to make special arrangements for the reporting of very important debates in the House and its committees(*v*). 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(*w*).

(*r*) Leg. Ass. J. (1856), 747.

(*s*) R. 110.

(*t*) 136 E. Com. J., 320, 337; Can. Com. J. (1884), 39, 40; Sen. J., 44. Can. Com. J. (1892) 445; *Ib.* (1893) 180. In one case the clerk was allowed to appear with the roll of members. *Ib.* (1893) 231.

(*u*) Can. Com. J. (1867-8), 33, 48, 60, 68, 399. See also journals of 1870 and 1871.

(*v*) *Ib.* (1867-8), 200. The debates on confederation during 1865 were reported in full by the authority of the legislative assembly.

(*w*) *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.

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 in England as Hansard's Debates(*x*).

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 with reference to the publication of the official reports of debates(*y*). The reporters, both French and English, are now permanent officers of the Commons(*z*).

(*x*) 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.

(*y*) Sen. J. (1890), 14; Com. J., 6. The commons' committee on debates recommend to the House the appointment, salaries and duties of the official reporters, and in fact make all the arrangements necessary for the satisfactory operation of the system. Their reports, when adopted, are the rules governing the publication of the reports. Can. Com. J. (1885) 21, 26, 30, 616, 619; *Ib.* (1888), 57, 110, 272, 289; *Ib.* (1890), 46, 429, 446. In the Senate the work is under contract. Sen. J. (1885), 265, 273, 365, 395. In 1887, during the elections, certain French official reporters of the commons having published language reflecting on two members of the House—one of them a minister of the Crown, the subject was brought before the Speaker by the committee on debates, and they were dismissed by him; but exception was taken to this course by an amendment setting forth that all questions respecting the reporting were within the exclusive jurisdiction of the House itself. The House decided by a division that the speaker acted within the scope of his powers. Can. Com. J. (1887), 338; *Ib.* (1888), 173, 177. Hans. 713 *et seq.*

(*z*) Com. J. (1880), 268, 281, 349; *Ib.* (1883), 176, 188.

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(*a*) 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(*aa*) has power, from time to time, to make orders and regulations for the government of the library, and for the proper expenditure of moneys to be voted by parliament for the purchase of books, subject, however, to the approval of the two Houses. The officers and servants(*b*) consist of a general librarian, a parliamentary librarian(*c*), and several clerks and messengers, who are appointed by the Crown, and hold office during pleasure. Under the rules(*d*) 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(*e*). No person is entitled to resort to the library during the session except the governor-general, the members of the privy council, and of the two houses, and the officers of the same, and such other persons as may receive a written order of admission from the speaker of either House.

(*a*) 34 Vict., c.21; Rev. Stat. of Can., c. 15.

(*aa*) Appointed at the commencement of every session.

(*b*) All such officers and servants have now their salaries fixed by the governor-in-council according to the scale provided in the acts relating to the Civil Service. Rev. Stat. of Can., c. 15, s. 5.

(*c*) Previous to 1885 there was one chief and one assistant librarian, but in that year the two officers named above were appointed under 48-49 Vict., c. 45, and have commissions under the great seal. The late chief librarian, Dr. Alpheus Todd, C.M.G., was a well-known authority on parliamentary government. The library now comprises a large and valuable collection of books (some 150,000 volumes) in every department of literature. See librarians' report at beginning of every session of parliament.

(*d*) Rules 111-118 of Commons.

(*e*) Can. Com. J. (1890), Sess. P., No. 8.

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 librarians will report any infraction of the rules.

It was formerly the practice for the committee on the library to act as a "Board for the encouragement of literary undertakings" in Canada, and to recommend from time to time that the patronage of the legislature should be extended to various native authors. In 1867-8 the committee reported that thereafter the executive government should themselves assume the responsibility of recommending to parliament grants of money in aid of useful and valuable publications(*f*). The committee continue, however, to recommend that aid be given to works relating to constitutional questions and parliamentary practice (*g*).

(*f*) Can. Com. J. (1867-8), 251.

(*g*) *Ib.* (1879), 345, 414; *Ib.* (1883), 178; Sen. J. 122-127. In the two last cases a vote was put in the estimates, in accordance with the recommendation of the committee. Jour. (1883), 433; also, *Ib.* (1890), 394.

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 accompanied and introduced by a member (*h*).

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(*i*). The committee was re-appointed in 1867-8, and made several reports, which were acted upon(*j*); 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(*k*). 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

(*h*) Rules of admission are posted up in the reading-room of the Commons under the authority of the speaker.

(*i*) Leg. Ass. J. (1861), 9, 66, 138, 259, 260.

(*j*) Can. Com. J. (1867-8), 5, 22, 143, 188, 195, 208.

(*k*) Can. Com. J. (1867-8), 305, 430; Rev. Stat. of Can., c. 13, ss. 10-16, am. by 52 Vict., c. 11. See Imp. Stat. 52 Geo. III., c. 11; 9 and 10 Vict., c. 77; 12 and 13 Vict., c. 72; 1 Todd, 663. The Canadian Act is based on these imperial statutes.

in the first week of each session of parliament(*l*)—the said commissioners being appointed by the governor-in-council. For the purposes of this act, the person who shall fill the office of speaker at the time of any dissolution of parliament shall be deemed to be a speaker to carry out the provisions of the act until a speaker shall be chosen by the new parliament; and in the event of the death, disability, or absence from Canada of the speaker, during any dissolution or prorogation of parliament, any three of the commissioners—three being always a quorum—may execute any of the purposes of this act. The speaker is to appoint an accountant, who must give proper security. The accountant has the disbursement of all the moneys required to pay members' indemnity, salaries of clerks, officers, and messengers, and other contingent expenses of the House. All sums of money voted by parliament shall be subject to the order of the commissioners, or any three of them, of whom the speaker shall be one. Credits issued in favour of the accountant or his assistant, or of two such officers as the commissioners may designate from time to time. Cheques are signed by the accountant and his assistant. The clerk and 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 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(*m*) passed in the session of 1878,

(*l*) 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.

(*m*) 41 Vict., c. 7, Rev. Stat. of Can. c. 29, ss. 21 *et seq.*

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(*n*), the committee of public accounts recommended the adoption by the House of certain resolutions declaring it advisable to have the accounts of the two Houses, as well as of the library, audited in due form(*o*). The Houses subsequently agreed to have all their accounts fully audited—the printing and library accounts being included in the resolutions on the subject(*p*). All fees received by the two Houses for private bill legislation must be deposited as soon as paid, to the credit of the consolidated fund(*q*), from which refunds are subsequently made on the order of the House. All such accounts are also submitted to the auditor-general, whose annual report gives the fullest possible information with respect to the expenditure of the two Houses.

(*n*) Auditor-General's Rep. 1880, Sess. P., No. 5, pp. xv.,xvi.

(*o*) Com. Jour. (1880), 119.

(*p*) Sen. J. (1880), 96-7; Com. J. 125-6. Auditor General's Rep. for 1881 and subsequent years. All accounts are now submitted every month to the auditor-general, certified by the proper officers.

(*q*) 56 Vict., c. 8.

CHAPTER VI.

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 Parliament and the Legislatures of Canada.

I. Origin of the Rules, Orders, and Usages of the Canadian Parliament.—The Senate and House of Commons regulate proceedings under certain rules, orders and usages, which are derived, for the most part, from the practice of the British Parliament. Canadian legislatures have adopted, since 1792, the 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. The 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 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 oppor-

unity for the consideration of every measure, and to prevent any legislative action being taken heedlessly and upon sudden impulse(*a*).

It is true that the English House of Commons has, in 1882, and in 1902, 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 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.

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 council of United Canada(*b*), and in 1867-8 by the Senate, whose standing orders now provide:

"124. 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

(*a*) Hearn, Gov. of England, 555-8.

(*b*) Leg. C.J. (1841), 28. App. 2.

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(*c*). The legislative assembly of Upper Canada, which met for the first time at Niagara, followed a similar course(*d*). The legislature of the united Canadas also adopted a code in conformity with that of the Imperial Parliament(*e*).

Again, when the Parliament of the dominion met for the first time, after the passage of the Union Act of 1867, one of the first proceedings of the House of Commons was necessarily to appoint a committee to frame rules for the government of procedure in that House. The committee subsequently reported the rules and standing orders which are substantially those of the legislative assembly of Canada(*f*). The present rule 120 was then adopted as follows:

"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"(*g*).

(*c*) Christie's Low. Canada, i., 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, 86, 124, &c.

(*d*) Upp. Can. J. (1792), in MS. in the Parliamentary Library.

(*e*) Leg. Ass. J. (1841), 29, 40, &c.

(*f*) Can. Com. J. (1867-8), 5, 16, 43, 115, 125, 133.

(*g*) When the rules were amended in 1876, this rule was not considered, but has always remained in its present terms. It has been decided by the highest English court that "a standing order of a legislative assembly, adopting, as far as applicable to its proceedings, the rules, forms and usages in force in the British House of

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, etc."(*h*).

When this committee has reported, its proceedings will be ordered to be printed with the amendments in brackets(*i*), generally in the votes and proceedings(*j*); and after some time has been given to members for the consideration of the proposed changes, the House will resolve itself into a committee of the whole on the report. When the rules or amendments to the rules are reported from the committee, they must be formally concurred in like any other resolutions; and when that has been done they regulate the procedure of the House(*k*). All the rules and standing orders are printed from time to time in a small volume, which, for convenience of reference, also includes the British North America Act, 1867, and acts in amendments thereof(*l*).

Commons must be construed to relate, only to such rules, forms and usages as were in existence at the date of the order." Barton *vs.* Taylor, L.R. 11 App. Cas. 197. (See Tavring's "Law relating to Colonies," 2nd ed., p. 142.) It would appear then that the action of the House in 1868 governs. Under any circumstances the House has never been governed in doubtful cases by standing orders, but rather by the usage or practice of the English Commons.

(*h*) Can. Com. J. (1867-8), 16, 133. *Ib.* (1876), 58.

(*i*) *Ib.* (1867-8), 43.

(*j*) *Ib.*, 1876, March 6; V. and P.. The rules and standing orders as amended in committee of the whole and adopted by the House, should be given in full 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.

(*k*) Can. Com. J. (1867-8), 115-125. *Ib.* (1876), 216.

(*l*) Can. Com. J. (1867-8), 133.

In the Senate it is also the practice to refer the question of revising the rules to a select committee(*m*). In 1875 Mr. Speaker Christie was authorized by that House to examine during the recess the rules and forms of proceedings and suggest to the House at the next session such amendments as he might deem advisable(*n*). 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(*o*) and adopted with some modifications. In the sessions of 1893 and 1894 the rules were again considered by a select committee, and amended in several important particulars(*p*).

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(*q*). The political party which controls the House at one time may be in a different position at another, 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

(*m*) Sen. J. (1867-8), 60.

(*n*) Senate J. (1875), 256.

(*o*) Sen. J. (1867-8) 43; *Ib.* (1876), 23, 119, 168; *Ib.* (1893), 103, 191, 174-5; *Ib.* (1894) 27, 34.

(*p*) *Ib.* (1894), 34.

(*q*) See eulogy on Parliamentary Law in Hearn, Gov. of England, 555-8. Bentham, certainly an impartial critic, "recognizes, in this bye-corner, the original seed-plot of English liberty."

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 adherence to which the weaker party can alone be 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(*r*). The Senate(*s*), like the House of Lords, has standing orders on the subject:—

"16. 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.

"17. 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(*t*). But any rule may be suspended without notice by the consent of the Senate(*u*), and the rule proposed to be suspended shall be precisely and dis-

(*r*) 80 E. Hans. (3), 158; 182 *Ib.* (3), 591; 224 *Ib.* 48, 164. Can. Com. J. (1867-8) 144. Remarks of Sir J. A. Macdonald, Can. Hans. (1878), 3-4. Can. Com. J. (1877), 111, 258; 227 (R. 1 and 19 suspended); *Ib.* (1883), 128, decision of Mr. Speaker Kirkpatrick; Mr. Speaker Ouimet, 15th June, 1887, Hans. 1001; Mr. Speaker Edgar, June 1, 1898, Jour. and Hans.

(*s*) Min. of P. (1867)-8), 111; *Ib.* (1869), 107; Jour. 69. Deb. (1878), 292.

(*t*) Sen. Hans. (1882), 705-6. Min. of P. (1883), 359, 363; Jour. 276.

(*u*) Sen. Hans. (1882), 103.

tinctly 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''(*v*).

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 consented 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(*w*). 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''(*x*).

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(*y*). It must also be

(*v*) See Commons standing orders respecting private bills No. 55.

(*w*) Cushing, sec. 790.

(*x*) Can. Com. J. (1871), 72; *Ib.* 50.

(*y*) Cushing, p. 311; 4 Hatsell, preface; 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.

borne in mind that in the interpretation of the rules or 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"(*z*).

IV. Sessional Orders and Resolutions. — The House passes, in the course of every session, certain orders or resolutions, which are intended to have only a temporary effect on its proceedings, or to regulate the business of the session. These orders generally relate to the times of adjournment, the arrangement of business, or the internal economy of the House, or to the presentation of certain papers in subsequent sessions(*a*). Up to the session of 1876, certain resolutions relative to the offer of money were formally proposed and agreed to at the commencement of every session, but when the rules were revised that year, these resolutions were placed among the permanent orders (*b*). Though resolutions expire (*c*) with the session in which they are adopted, there are certain resolutions and orders, concerning matters of order and practice, which have been observed as binding without being renewed in future sessions. In such a case it is the practice of the speaker to call attention to the resolution, and

(*z*) Mirror of P. 1840, vol. 16, p. 1108-9.

(*a*) Can. Com. J. (1867-8), 59, 80 &c.; *Ib.* (1877), 111, 227, 258; *Ib.* (1882), 55; *Ib.* (1883)), 51, etc.

(*b*) Can. Com. J. (1876), 110; *supra*, 156. The order relative to votes and proceedings, however, was 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.

(*c*) 276 E. Hans. (3), 176; 284 *Ib.* 819.

to give the House another opportunity of considering whether the resolution should continue to be observed(*d*).

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 conversant with English, it was subsequently resolved that in all cases when the speaker could not speak both English and French, "he should read in either of the two languages most familiar to him, while the reading in the other language should be by the clerk or his deputy at the table." It was also decided to have the journals and bills printed in English and French. Every member had a right to introduce a bill in his own language, but it was then the duty of the clerk to have it translated(*e*). 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

(*d*) May, 145, 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, 384. 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. of present author, March 5, 1878.

(*e*) Christie's Lower Canada, i., 132-4; Low. Can. J. [1792], 92, 100, 148, &c. The journals were printed with corresponding pages in the two languages.

Act of Union (*f*), that the journals and the legislative records, of what nature soever, shall be in the English language only, and though translations might be made, no copy of them could be kept among the records or be deemed in any case to have the force of an original record. This law naturally created great dissatisfaction among the French-Canadians, and it was finally repealed by the Imperial Parliament after an address to the queen had been passed by both Houses (*g*).

By the 133rd section of the British North America Act, 1867, it is expressly provided:—

"Either the English or the French language may be used by any person in the debates of the Houses of the parliament of Canada and of the Houses of the legislature of Quebec; and both these languages shall be used in the respective records and journals of those Houses.....

The acts of the parliament of Canada and of the legislature of Quebec shall be printed and published in both these languages."

And by rule 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

(*f*) 3 and 4 Vict., c. 35.

(*g*) 11 and 12 Vict., c. 56, s. 1, Imp. Stat.; Leg. Ass. J. [1845], 289, 290, 300, 305, 317.

table in both Houses—for though the Senate(*h*) 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(*i*) and in the North-West Territory(*j*). The act providing for the government of Manitoba also enacted that either French or English "may be used in the debates" of the legislature; that both those languages "shall be used in the respective records and journals;" and that either "may be used in any pleading or process" in the courts(*k*). In 1890 the legislature passed an act providing that English shall be the official language of the province, "any statute or law to the contrary notwithstanding"(*l*).

(*h*) See Report of Select Committee, Sen. J. (1877), 114, 136, 208, 256; Deb. (1884), 66, 67.

(*i*) B.N.A. Act, 1867, s. 133; *supra*. Quebec Leg. Ass. Rules, 33, 93.

(*j*) 43 Vict., c. 25, s. 94; Rev. Stat. of Can. c. 50, s. 110. In the session of 1890 a long debate took place on a proposition to repeal this section, and provide for the use of English only in the legislature and courts, but the House rejected a motion to that effect, and passed one in favour of allowing the assembly of the Territories to regulate its own proceedings. Can. Hans. (1890), 38, 532, 877, 1018.

(*k*) Dom. Stat. 33 Vict., c. 3, s. 23; Man. Rev. Stat. (1891)

(*l*) Man. Stat., 53 Vict., c. 14; Rev. Stat. of 1902, c. 126. In the report of the minister of justice allowing this act to go into operation, it is pointed out that the most satisfactory method of testing its efficiency is to bring the question of its validity before an authoritative legal tribunal. See *Toronto Empire*, April 7, 1891, for summary of report.

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(*a*). 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 in the Commons should also state the order of business; that is to say, whether government or private measures are to have precedence(b).

II. Adjournment over Holidays.—The Houses generally adjourn over certain statutory holidays and festivals, or holy days observed by religious bodies. The following are

(*a*) Sen. R. 3, and Com. R. 1. See Can. Hans. (1887), 1270 (Mr. Mills).

(*b*) Sen. J. (1901) 249; Can. Com. J. (1877), 227; *Ib.* (1878), 188, 220 (earlier hour); *Ib.* (1901), 281.

the holidays now recognized by law in the Dominion(*c*): Sunday, Christmas(*d*), New Year's Day, Ash Wednesday, the Epiphany, Ascension Day, Good Friday, Easter Monday, All Saint's Day, Conception Day, King's (or Queen's) Birthday, Victoria Day, Labor Day(*e*), Dominion Day, and any day appointed by proclamation for a general fast or thanksgiving(*f*). Accordingly the Houses have, as a rule, adjourned over those days when parliament is in session. It is the practice to make the following motion in case of a proposed adjournment, "That when this House adjourns this day, it do stand adjourned till——next(*g*). In 1872 the Houses adjourned over the day appointed to give thanks for the recovery of the Prince of Wales.

(*c*) Rev. Stat. Can. c. 1, s. 7, par. 26. 56 Vict., c. 30; 57-58 Vict., c. 55; 1 Edw. VII., c. 12.

(*d*) In 1880 the Houses met in December, but adjourned the day before Christmas until after the New Year. Previous to 1893 it was customary to adjourn over Corpus Christi, St. Pêter and St. Paul and the Annunciation, but in that year the Quebec legislature enacted that they should be left out of the legal holidays and the Dominion Parliament also escaped them (56 Vict., c. 30). In 1891 the Commons sat on Dominion Day to expedite business, but it usually adjourns on that day. In 1883 the Senate met on the Queen's birthday on account of the urgent state of public business. The House adjourned during pleasure on the previous day and met on the Queen's birthday by general consent. See Hans. 657, 658. No entry consequently is made of the meeting on that day. Jour. 288. The House sat on Easter Monday in 1877 and 1878 in order to clear business expeditiously.

(*e*) Labor day, the first Monday in September. See 57-58 Vict., c. 55. It was first observed by parliament in the 2nd session of 1896.

(*f*) See 1 Edw. VII., c. 12. This act, introduced by the late Dr. Horsey, M.P., became law 23rd May, 1902, and made the 24th May, a legal holiday in honour of the memory of the late Queen. When the 24th of May falls on Sunday the 25th day will be observed.

(*g*) In case it is decided not to sit in the evening, it is usual to make a formal motion to the effect that "when Mr. Speaker leaves the chair at six o'clock, the House shall stand adjourned until to-morrow (or another day) at 3 o'clock." The speaker then at 6 o'clock leaves the chair without settling any question.

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 or the deputy governor to come down on or before the day of adjournment, for the purpose of assenting to all the bills that have passed the two Houses(*h*). 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 matter connected with the construction of the Canadian Pacific Railway(*i*). 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.

IV. Decease of Members.—It was the practice in the Senate up to a very recent date always to adjourn the House out of respect to a deceased senator; but this is now done only in exceptional cases(*j*). The House adjourned, for instance, on the death of Mr. Christie, formerly speaker, and two senators were named to attend the funeral(*k*).

(*h*) Can. Com. J. 1867, Dec. 21.

(*i*) *Ib.* (1873), 423, 436, 437.

(*j*) Sen. Deb. (1871), 6-8; *Ib.* (1872), 14; *Ib.* (1873), 233-235, &c. Jour. (1872), 29, &c. In the case of Senator Bourinot, one of the original members of the Senate, who died during the session of 1884, the House adjourned. Hans. 33-34. Death of Senator Sandford by drowning, 1899.

(*k*) Sen. Hans. (1880-81), 44-45; Jour. 39, 40. Upon this occasion Mr. Scott referred to the practice of the Senate. When Speaker Plumb died suddenly in the session of 1888, the Senate had

The Senate has also more than once adjourned to show respect to the memory of a distinguished member of the House of Commons(*l*). But though the Senate does not now adjourn under ordinary circumstances, a member may refer in appropriate terms to a deceased senator(*m*).

It was formerly also the usage for the House of Commons to adjourn when it was informed of the decease of a member(*n*). In 1868, the House adjourned on the news of the assassination of Mr. McGee, whilst on his way home from the Commons (*o*). 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(*p*). The practice has been followed only in exceptional cases since 1871(*q*)—that of Mr. Holton, a prominent and respected member, in 1880(*r*); that of Mr. White, minister of the interior, in 1888(*s*); that of Mr. Plumb, Speaker of the Senate, and an old member of the Commons, in 1888(*t*); that of Mr. Pope, minister of railways, in 1889(*u*). In June, 1891, a state funeral was given the great premier, Sir John Macdonald, and the House adjourned for several days. In 1892 the House, on resuming

adjourned for a fortnight; upon its re-assembling on the 13th of March, the House was formally adjourned out of respect to his memory.

(*l*) D'Arcy McGee, 1867-8. Sen. J. 213; Sir George E. Cartier, 1873, Debates, 284; Jour. 306.

(*m*) Sen. Hans. (1880), 211 (death of Sen. Seymour).

(*n*) Can. Com. J. (1870), 114, 175; Parl. Deb., 718.

(*o*) Can. Com. J. (1867-8), 186.

(*p*) *Ib.* (1869), 100; H. J. Friel, Mayor of Ottawa.

(*q*) Parl. Deb. 1872, p. 181; remarks of Sir J. A. Macdonald on the occasion of the death of J. Sandfield Macdonald, who had himself urged a change of practice in this particular.

(*r*) Can. Com. J. (1880), 137; Hans. 649.

(*s*) Can. Com. J. (1888), 208; Hans. 962.

(*t*) Can. Com. J. (1888), 94; Hans. 124.

(*u*) Can. Com. J. (1889), 218; Hans. 943, 1017.

after Easter, adjourned from Tuesday until the following Thursday, out of respect to the Hon. Alexander Mackenzie, formerly prime minister, who had died on the previous Sunday at Toronto, and to give an opportunity to members to attend his funeral(*v*). In 1899 the House adjourned in the evening of July 31 on the announcement of the death of the speaker, Sir James Edgar, only until three o'clock on the following day, when a new speaker was elected, as the desire was to bring business to a close(*w*). In 1899 Mr. Geoffrion, who was formerly minister of the crown, died during the session, but the House did not adjourn on account of pressure of public business(*x*). The expediency of adhering to the practice of the English Parliament except under exceptional circumstances has been more than once strongly urged by leading members on both sides of the House(*y*). It is now usual in the Commons, when orders are called or at some other convenient time of the day, to make some remarks on the decease of a member(*z*).

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(*a*). Sometimes the House has

(*v*) Can. Com. Hans. and Jour., 1892, April 19.

(*w*) *Ib.*, July 31, and Aug. 1, 1899.

(*x*) See remarks of Sir W. Laurier, and Sir C. Tupper on Com. Hans., July 17 and 18, 1899.

(*y*) Can. Hans. (1880-1), 223-4. See May 182, 183. Both English houses adjourned after the assassination of Lord Cavendish and Mr. Burke; 269 E. Hans. (3) 315, 319. Also in case of death of Mr. Wykeham Martin in the library of the House in 1878.

(*z*) Col. Williams, 6th July, 1885; Mr. Thompson of Haldimand, 19th April, 1886; Mr. Moffat, 26th April, 1887; Mr. Perley of Ottawa, 1st April, 1890.

(*a*) Can. Com. J. (1870), 226; *Ib.* (1871), 221, 256, 275, 298; *Ib.* (1878), 220; *Ib.* (1885), 675, 677.

two(*b*) or three(*c*) distinct sittings on the same day. In such cases each sitting is considered a full parliamentary day, and bills of supply can be advanced stages without objection. Latterly it is customery to have one prolonged session, commencing at an early hour and lasting until hour of adjournment with two intermissions, at one and six o'clock(*d*).

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(*e*). It has been attempted several times to limit the sitting of the House to a certain hour every night, but the motion has been withdrawn when leading members on both sides have shown that it is practically impossible to carry it out on all occasions(*f*). In 1877, it was attempted to have an understanding 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 strictly carried out(*g*). In the old Canadian legislature the House sat in 1858 from three o'clock in the afternoon of May 25 till six 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 three 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(*h*). In

(*b*) *Ib.* (1867-8), 59, 80, 315; *Ib.* (1878), 292; *Ib.* (1894), 468 (including Saturday); *Ib.* (1895), 300. The same course has been followed in the Senate. Jour. (1880), 234.
(*c*) Leg. Ass. J. (1866), 355.
(*d*) Can. Com. J. (1899), 400; *Ib.* (1901), 257. *Ib.*, 1903.
(*e*) Can. Com. J. (1877), 98. *Ib.* (1878), 283, etc.
(*f*) Can. Hans. (1877), 99-103; *Ib.* (1878), 393-5.
(*g*) *Ib.* (1901), 257.
(*h*) Speak. D. 28. Journals, 506-515.

the following year, the House sat still longer, for nearly 39 hours, with two intermissions at six o'clock p.m. on each day(*i*). The House of Commons also sat from three o'clock on Friday to six p.m. on Saturday evening, in 1878, on the occasion of an exciting debate with respect to the constitutionality of the action taken by Lieutenant-Governor Letellier de St. Just, when he dismissed the de Boucherville ministry in the province of Quebec(*j*). In 1885, when the dominion franchise bill was under consideration, the House sat from three o'clock on Monday, April 27th, until ten o'clock on Tuesday night, April 28th, with the usual recess from six to seven p.m. It also had a remarkably protracted sitting—the same question being under discussion—from three o'clock p.m. on Thursday, April 30th, until the midnight of Saturday, May 2nd, with an intermission at six o'clock on each day(*k*). The longest sittings of the Canadian Commons occurred in the first session of 1896, when the Manitoba School question was the subject of excited political controversy. For instance, from 3 o'clock p.m. on Wednesday, March 18, until 5.55 a.m. Friday, March 20; from 3 o'clock Monday, April 6, until 11.55 p.m. Saturday night, April 11th, and then from the following Monday, April 13, until Friday (16th April) morning, 12.10. In all these cases there were the usual intermissions at six o'clock p.m. each day. In 1899 the Commons sat from 3 o'clock Monday, 10th July, until 12.10 a.m., Wednesday, 12th July, with three intermissions—two at six on Monday and Tuesday and one from 1 to 3 o'clock on Tuesday.

(*i*) Seigniorial Tenure Resolutions, April 14 and 15, 1859.

(*j*) 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.

(*k*) Can. Com. J. (1885), 343-353, 354-357. See also a long sitting on March 26-27, 1890.

The English parliament has occasionally met on Sundays, but only in cases of necessity(*l*). On one occasion since 1867 the Commons of Canada sat over Saturday until nearly one o'clock on Sunday morning(*m*).

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(*n*).

"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—except as stated below—for the mace is left on the table, and the House is considered still in session. But if the House is in committee of the whole and there is an hour for private bills after half-past seven, 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 the fact is so recorded in the journals, and call on the chairman to resume. In case private bills are fixed for the first hour after half-past seven (R. 19) they must be first disposed of, and then the committee resumes(*o*). But in case there are no private bills, and

(*l*) On the demise of the Crown, 13 E. Com. J. 782; 18 *Ib.* 3; 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. In 1856 the House met *pro forma* to proceed as official bodies to divine service on a day of thanksgiving for peace with Russia, 88 Lords J. 123; 111 E. Com. J. 175. Also in 1887, in connection with the celebration of the fiftieth anniversary of her late Majesty's accession to the throne, 142 *Ib.* 245, 259. See May, 180, 181.

(*m*) Can. Com. J. (1870), 237.

(*n*) Sen. R. 4; Com. 2.

(*o*) Can. Com. J. (1874), 113; *Ib.* (1878), 118-121; *Ib.* (1883), 153, 223; *Ib.* (1886), 131, 133; *Ib.* (1901), 169-170.

the house is in committee, the chairman may leave the chair and resume at the usual hour——no entry being necessary in the journal as under the conditions just set forth.

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(*p*). As the House is technically in session—the mace being on the table as at six o'clock—no entry is made of the fact in the Commons journal(*q*); but it is always recorded in the Senate minutes(*r*). But every formal motion for adjournment—even for half an hour(*s*)—must be entered as well as the time at which the House of Commons adjourns every sitting after midnight(*t*).

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, fifteen senators, including the speaker, are not present, the speaker takes the chair, and adjourns the House till the next sitting

(*p*) Sen. J. (1867-8), 100, etc. See *supra*, n. (Queen's Birthday).

(*q*) May, 221.

(*r*) Sen. J. (1877), 309.

(*s*) Can. Com. J. (1870), 13.

(*t*) *Ib.* (1877), 237; *Ib.* (1878), 224; *Ib.* (1883), 317. 137 E. Com. J. 440.

day; the names of the senators present being taken down by the clerk"(*v*).

"6. When it appears on notice being taken, during the sitting of the Senate, that fifteen senators, including the speaker, are not present, the senators who may be in the adjoining rooms being previously summoned, the speaker adjourns the 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 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(*v*). If it should appear, after a division, that a quorum is not present, the House should be adjourned immediately(*w*); 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

(*u*) In the House of Lords, only three lords may constitute a quorum for business, but in case of a division on a stage of a bill, the question cannot be decided unless there are thirty present, and the debate thereon is adjourned to the next sitting. May, 205.

(*v*) Can. Com. J. (1869), 243. A member may direct attention to the fact while a member is speaking: Can. Hans. (1885), 1535; 164 E. Hans. (3), 682.

(*w*) 23 E. Com. J. 700; *Ib.* 845; 135, *Ib.* 385.

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(*x*). 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(*y*). A "count out" is of frequent occurrence in the English House of Commons(*z*); but only one case has happened in the Canadian Commons since 1867(*a*).

X. Prayers.—Like the old legislative councils of Canada, the Senate have always opened their proceedings with prayers, and a chaplain was, until 1901, appointed by the governor-general for that purpose(*b*). He read prayers as soon as the House met, before the arrival of the governor-general or the deputy governor(*c*). In 1901 the government decided not to appoint a chaplain on the decease of the Dean of Ottawa, who had the office for many years, and the speaker now reads the prayers as soon as the Sena-

(*x*) May, 224; Can. Com. J. (1899), 239.

(*y*) 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.

(*z*) On Tuesdays and Fridays, sess. of 1873, 14 times; Parl. P. 1873, vol. 53, p. 1. In 1882, 20 times; Jour. vol. 137.

(*a*) In 1869, Jour. 243. Several cases can be found in the journals of the legislative assembly of Canada (1858), 231; (1861), 342; (1865, Aug. Sess.), 110.

(*b*) *Supra*, c. vi.

(*c*) Sen. J. (1874), 13; *Ib.* (1878), 15; *Ib.* (1879), 16; *Ib.* (1883), 13; *Ib.* (1900), 9. The clerk assistant has read the prayers in the absence of the chaplain.

tors are in their seats at the hour appointed. In case there is no speaker, the clerk acts as under the old practice when the chaplain was absent.

The old legislative assembly of Canada never commenced its proceedings with prayer(*d*); 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 is read by the speaker every day before the opening of the doors. The report (*e*), which was adopted *nem. con.*, recommends that "the aforesaid form of prayer be read by Mr. Speaker in the language most familiar to him"(*f*). Mr. Speaker Blanchet read the prayers in English and French on alternate days, and the same practice has been followed by Speakers conversant with the two languages.

In accordance with English practice, at the opening of parliament, when a speaker has to be chosen he reads prayers on the day following his election, and before the causes of summons are announced(*g*). In other sessions

(*d*) 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.

(*e*) Can. Com. J. (1877), 26, 42.

(*f*) This was added at the instance of the French-speaking members of the House. Hans. (1877), 95.

(*g*) May, 155, 167; 121 E. Com. J. 9; 129 *Ib.* 5. Can. Com. J. (1879), 2; *Ib.* (1883), 2. Mr. Anglin read prayers after his return from the Senate chamber in 1878, when he was re-elected speaker, a departure from the practice. Jour., pp. 10, 11.

when there is a speaker the prayers are said as soon as the Commons meet in their chamber before the causes of summons are communicated to them in the Senate Chamber by the representative of the Crown(*h*). In case of an election of a speaker in the British Commons during the session the prayers are read on the day following the election before the House proceeds to the Lords' to inform the Crown of their choice(*i*). In the only case that, so far, has occurred in Canada the prayers were read on the return from the Senate—the election and *quasi* approval of the Crown being given on the same day(*j*). When there are two sittings on the same day, prayers must be read at the opening of each session(*k*).

XI. Order of Business.—The order of daily business after prayer in the Senate is as follows, under rule 11 :—

Presentation of petitions.
Reading of petitions.
Reports of committees.
Notices of motions.
Motions.
Orders of the day.

Orders of the day for the third reading (rule 44), take precedence of all others, except orders to which the Senate may have previously given priority. The orders (rule 12) 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

(*h*) May, 167; 137 E. Com. J. 1; Can. Com. J. (1882), 1; *Ib.* (1900), 1. In 1880-1 it was necessary to follow the precedent of 1878, on account of a message from the Senate announcing the presence of the governor-general in the Senate.

(*i*) 127 E. Com. J. 23, 24; election of Mr. Speaker Brand.

(*j*) Can. Com. J. (1899), 489.

(*k*) *Ib.* (1894), 476, 498; *Ib.* 305, 306.

ordered. An order of the day which at the adjournment is under consideration shall stand first on the order of the following day, next after orders to which precedence has been assigned under rule 12; unless the Senate shall otherwise order. 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(*l*), all the members rising and remaining with their heads uncovered until the prayers are concluded. Then the speaker orders that the doors be opened, unless it is proposed to discuss some matter of privilege or of political 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(*m*).

Introduction of Public Bills(*n*).

The same rule also arranges the order of business, after daily routine, on the following days:—

(*l*) See appendix G.

(*m*) This includes motions for private bills which, being based on petition reported on by committee on standing orders (*infra*, chap. xviii., s. 4), require no notice.

(*n*) This proceeding is not included in Rule 19, but is a matter of practice, and intended to show the House that notice has been given of public bills.

MONDAY.

Private bills.
Questions put by members.
Notices of motions.
Public bills and orders.
Government notices of motions.
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 printed for every sitting day; in the Senate the business of the day is set forth at the end of the minutes of proceedings.

XII. Calling of Questions and Orders.—Until 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(*o*), 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 for the day for the next day on which the House shall sit."

This rule is now rigidly enforced. If a member is absent when the speaker calls a question or notice of motion which the former has put on the paper, it disappears, and

(*o*) Can. Hans. (1875), 1088.

he must again give notice if he wishes to proceed with the matter(*p*). In case, however, of an order of the day in the House of Commons, it will go on the orders of the next sitting day, in accordance with usage. In the Senate, if a bill on the order paper is called, and no one moves in relation thereto, it is dropped, but the member in charge has the right to move to restore it to the paper without notice, but on that motion he cannot discuss the subject-matter of the measure(*q*).

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 of the Commons 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"(*r*).

(*p*) Can. Hans. (1876), 907. *Ib.* (1878), 393. It is usual, however, to permit motions to remain on the paper, when a member of the government calls "stand." 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), 1638. Mr. Christie's motion in respect to the observance of the Sabbath, February 24, 1879. Also Can. Hans. (1879), 1762-3.

(*q*) Mr. Speaker Allan, March 11th, 1890 (Gaelic Bill).

(*r*) This is identical with the English S. O., No. 13 See decisions of Mr. Speaker Ouimet, Feb. 21, 1889, when a member attempted to move a bill out of its place; also on April 1, 1889, when a member wished to move a motion on the notice paper as an amendment to a question. Can. Com. J. 214; Hans. 253.

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(*s*).

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 member has the right to interpose unless with his consent(*t*). When an order has been read for the first time, however, a petition may be presented in connection with the subject under consideration; but *not after* the question in relation thereto has been proposed in due form, or on resuming an adjourned debate(*u*).

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 "(*v*).

"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 refer-

(*s*) Can. Com. Hans. (1875), 1088. *Ib.* (1877), 842 (Sir J. A. Macdonald); *Ib.* (1896), 6826-7.

(*t*) May, 248. 159 E. Hans. (3), 26.

(*u*) May, 227; 185 E. Hans. (3), 1091-93; 224 *Ib.* 123.

(*v*) Also Sen. R. 44.

ence 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 on public bills and orders to which it is entitled under the rules just cited, with respect to the precedence of bills at different stages(*w*). In this respect bills occupy a more favorable position than motions, which, when the debate is adjourned on Wednesday or Thursday, go to the foot of the orders(*x*).

Sometimes towards the close of the session, bills reported from select or standing committees are placed immediately (by unanimous consent only) on the order paper for consideration in committee of the whole(*y*).

(*w*) Orders of the day, Mr. Charlton's Bill (No. 13), respecting adultery, etc., 20th and 21st March, 1883. The debate was adjourned on the question for the consideration of the bill as amended; and it was kept at the head of the list, two bills for the third reading alone having precedence under the 20th rule: Hans. 287. See also Representation of Territories Bill, Orders of the Day, 11th and 12th March, 1885.

(*x*) Orders of the day, Mr. Casey's motion respecting a claim for gravel, 30th April and 1st May, 1883. Rule 27 regulates motions and Rules 20-23 inclusive give precedence to certain stages of bills.

(*y*) Can. Com. J. (1877), 188; *Ib.* (1887), 289; this ought to be done on the recommendation of the committee to which the bill was referred.

The Houses frequently agree to give precedence to an important question, and in that case a special order will be made. For instance, the debate on the tariff proposed by the government has been made the first order until concluded(*z*), and as 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(*a*). Sometimes the House will give precedence to several orders at the same time, when they refer to the one question(*b*). Or it may consent to suspend rule 19 in order to take up a question(*c*). Motions in the hands of private members are sometimes taken out of their regular place and placed on the government orders for immediate consideration(*d*). In 1879, a notice of motion was given precedence on the order paper(*e*). Public bills and orders are also sometimes given precedence over notices(*f*). It may sometimes

(*z*) *Ib.* (1893), 14th Feb. See also Manitoba school question, March 7, 1893; Yukon R.R. Bill, 1898.

(*a*) 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, 283. *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.

(*b*) Can. Com. J. (1874), 26 (*re* Louis Riel, expelled).

(*c*) *Ib.* (1867-8), 247.

(*d*) *Ib.* (1873), 370; *Ib.* (1886), 341 (Northern Pacific Junction Railway Co. bill). Orders of Day, June 9, 1898, adoption of a report of select committee on the Drummond R.R., Can. Com. J. (1899), 474 (Prohibition of liquor traffic).

(*e*) Mr. Fortin's motion respecting fisheries: Can. Com. J. (1879), 337. In 1884, a liquor license question was given precedence, after due notice: Jour. 250. In 1884, resolutions respecting the Canadian Pacific Railway were given precedence after routine proceedings; Jour. 114. In 1885, a motion respecting the Exchange Bank was taken up, and the debate having been adjourned, it was made first order on public bills and orders for a subsequent day: Jour. 156. See also Factory bill, March 18th, 1885.

(*f*) Can. Com. J. (1879), 311-2, 337.

happen that a public bill will be considered of sufficient importance to cause it to be placed on the government orders, in the name of a minister. This 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(*g*). 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(*h*); the other respecting crimes of violence(*i*). Such motions, however, can only be made with the unanimous assent of the House(*j*). 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(*k*). 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(*l*). On the same principle, if it is generally desired to postpone notices of motions on a day when such notices have precedence, it can be done only after notices or by unanimous consent on a mo-

(*g*) *Ib.* (1878), 148.

(*h*) Can. Com. J. (1878), 198.

(*i*) *Ib.* 232. Also Insolvency Bill, 1879, p. 271.

(*j*) See chapter x., s. 3.

(*k*) Building Societies Bill, April 24, 1878.

(*l*) Railway Passenger Tickets Bill. Votes and P. (1882), 374; Jour. 334. In this case the government took charge of the bill after notice. In an ordinary case the motion goes on the list of private business, and towards the end of a session a member may never reach it. In this case it was attempted to transfer the bill without notice, but objection having been taken to this proceeding, the motion was withdrawn and notice given in due form: Hans. 851.

tion to that effect having been duly proposed (*m*); or if a motion has priority continuously until concluded it can only be postponed and other business taken up by the adoption of another motion to that effect(*n*).

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(*o*). It is quite irregular, even if a member proposes to conclude with a motion, to introduce and attempt to debate a subject which stands on the orders for another day(*p*).

Under a rule of the Commons:—

"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 is 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(*q*). 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

(*m*) This was done to give precedence to debate on the answer to the speech at the opening of a session. Can. Com. J. (1891), 15; *Ib.* (1892), 90; *Ib.* (1894), 15, etc.

(*n*) Can. Com. J. (1893), 76, 95. Such an order is merely of an *interim* character, and the previous order comes again into force on its expiration.

(*o*) May, 249; 118 E. Com. J. 237; 172 E. Hans. (3), 246; Can. Com. J. (1875), 177.

(*p*) 219 E. Hans. (3), 1302, 1053-4; 225 *Ib.* 1824.

(*q*) May, 250. 119 E. Com. J. 131, 256; 120 *Ib.* 225, 352; 121 *Ib.* 78; 122 *Ib.* 377, 404.

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(*r*).

If a select committee report adversely on a public bill, it will nevertheless appear in its proper place on the orders of the following day, under the rules, as it is only a private bill that disappears from the paper when the preamble is reported to be "not proven"(*s*).

If an order for the second reading of a bill be read, and it is not found expedient to proceed with the bill that day, the motion for the second reading must be withdrawn, and the bill ordered for a second reading on a future day(*t*).

If a motion is at the head of public bills and orders on a Wednesday or Thursday, it remains in the same position until finally disposed of, subject, of course, to have precedence given to another question by the rules or a special order of the House(*u*).

(*r*) Sen. Hans. (1883), 179, 226; Jour. 134, 146.

(*s*) Carriers by Land Bill, March 18 and 19, V. & P., 1885, and Orders of the Day; Railway Commissioners Bill, V. & P., April 3, and Orders of the Day, April 5, 1883; Toronto Harbour Bill, April 24 and 25, 1883, V. & P., and Orders of the Day; Railway Bill, April 8, 1890, Orders of the Day. In this case the bill should have been on the orders on the previous day, but was inadvertently omitted. See also Alien Labour Bill, April 17, 1890, Orders of the Day; V. & P., April 15; Interest Bill, V. & P. & J., Feb. 27, and Orders (Public) of the Day, Feb. 28, 1896.

(*t*) 123 E. Com. J. 146; Officers of the Crown Bill, 9th June, 1885; Maritime Court Bill, 16th March, 1886.

(*u*) Franchise debate, Orders of the Day, Feb. 6th and 12th, 1890. In this case precedence was given to another question, the N.W.T. Bill (Mr. McCarthy), and the franchise debate took a second place. Also prohibitory liquor motion (Mr. Jamieson's). Orders of the Day, May 20, 21 and 22; June 24, 1891. See *infra*.

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 (*v*). 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 the time of the adjournment of the House, a motion on the notice paper should 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."

The practice under this rule, which is not always understood, may be explained as follows: If a motion among "notices of motions" on the day's order is moved on Wednesday, and the House adjourns, or the speaker leaves the chair, at six o'clock while it is still under consideration, it goes to the head of public bills and orders, for the next day, subject, of course, to have priority given to third readings and other stages of bills, as provided by rules 20, 21, 22 and 23 already cited(*w*). On Thursday, when notices of motions come up again, the same practice prevails, but if a debate on a motion is continued after six o'clock, and the adjournment of the House is moved and

(*v*) Reciprocity Treaty; Debates, March 10; Orders of the Day, March 15, 1875. On May 13, 1871, Mr. Bowell rose to move a motion respecting dismissals from office, but before he had concluded and handed his motion to the speaker .six o'clock was announced. The motion remained in the same place. Parl. Deb. 97, 105. See also Mr. McCallum's motion, March 18 and 23, 1885; Mr. Jackson's, April 14 and 19, 1886; Hansard and Orders of the Day.

(*w*) See Orders of the Day, March 4th and 5th, 1885; *Ib.* March 3rd and 4th, 1886; May 20, 21-22, 1891; April 6 and 7, 1892; March 14 and 15, 1900; March 6 and 7, 1901.

carried the question is not superseded, but finds its place, as on a Wednesday, on the orders of the following day. When such a motion is carried in this way to the orders of the day, it keeps its place thereon, in case the adjournment of the debate is carried every day, while the subject is under consideration. If this is not done, the adjournment of the House will supersede the question, since it is no longer guarded by the rule which applies only to a motion on the "notice paper"—that is to say, not on the "orders," but among the "notices of motions" on the day's order of proceeding(*x*).

The rule with respect to Wednesday and Thursday does not apply to notice of motions on Monday, but in case one is under consideration the debate thereon must be adjourned formally as otherwise it will be superseded by an adjournment of the House(*y*). It is also necessary to remember that when on a Wednesday or Thursday the adjournment of the debate is moved before a notice of motion under discussion is interrupted by the speaker leaving the chair at six o'clock, or by the adjournment of the House, the motion under consideration does not come under the operation of the rule, but takes a place at the foot of the orders of the following day(*z*).

On Monday, March 17th, 1890, a day devoted to notices of motions, a special order was made for 8 p.m. By 4 p.m. the notices on the paper were exhausted, and an order for

(*x*) See Orders of the Day on Wed., May 20th, 1891. When the debate was resumed and adjourned, the order kept its place until June 24, when it was finally disposed of (Jour. 249-257).

(*y*) Can. Com. J. (1871), 51; *Ib.* (1872), 135.

(*z*) See Orders of the Day, Mr. Shakespear's motion on Chinese question, March 29 and 30, 1883; Mr. Landerkin's on Central R.R. Feb. 11 and 12, 1885. Also Orders of the Day, Feb. 12 and 13, 1885; Feb. 13 and 14, 1889; March 16 and 17, 1898. See also Orders of the Day, March 23 and 24, 1898, as to adjournment of debate not carried before six o'clock.

a resumed debate was taken up, and was not disposed of when the House took the six o'clock recess. At eight o'clock, when the speaker again took the chair, the special order was called and discussed, but the question under consideration at six o'clock had to disappear from the order book as the rules made no provision for such a case(*a*).

On Monday, June 4, 1894, a motion on the notice paper with respect to contracts for public works was under consideration at six o'clock when the speaker left the chair, and as the adjournment of the debate had not been moved and carried previously, the question was superseded and disappeared from the paper on account of the order of business under rule 19 having been disturbed by a special order to take up public bills and orders when the House resumed at 8 o'clock (*b*).

If Wednesday's order of proceeding is made the order for Monday, then all the rules governing Wednesday prevail; and if a motion is under consideration at six o'clock on Monday, under such circumstances, it goes over to public bills and orders(*c*).

If a private bill is under consideration after half-past seven o'clock, and the debate is not concluded thereon at half-past eight, a member may call the attention of the speaker to the fact that the hour allotted to such subjects under the rules has expired, and the question will there-

(*a*) See Mr. Eisenhauer's motion respecting a bounty to fishermen, Orders of the Day, March 17th and 18th, 1890.

(*b*) Can. Com. J. (1894), 233. *Ib.* (1894), May 18th, Mr. Perry's motion *re* winter connection with P.E. Island. *Ib.* (1901), 191, 195 (W. C. Edwards Co. Bill).

(*c*) See Gen. Laurie's motion respecting customs, V. and P., April 8th; and Orders of the Day, April 8th and 9th, 1889. Also Mr. Davin's respecting Col. Herchmer, V. and P., March 31st, and Orders of the Day, March 31st and April 1st, 1890.

upon go over until another day, when it will be taken up at the same stage where its progress was interrupted(*d*).

The hour for private bills is not interfered with, as a matter of usage, when precedence is given to a particular order, but sometimes they are not called in order to meet the general convenience of the House, and its desire to conclude a debate. In such cases, this is a matter of arrangement with the members in charge of private bills(*e*).

In case the House continues sitting from 3 o'clock on one day until after 3 o'clock on another, and notice of motion or question is given during such prolonged sitting, the said motion or question appears in the votes and proceedings of this sitting and after an interval of 24 hours—in accordance with the usual rule—in the orders of a later day(*f*).

Towards the close of the session, with a view of advancing public business, the government usually appropriate to themselves one or more of the days devoted to notices of motions, public bills and orders, and other matters in the hands of private members. They must, however, give formal notice, and obtain the consent of the House to a motion, the effect of which is to suspend the nineteenth rule, governing the order of business each day(*g*).

(*d*) See Can. Com. J. (1896, 2nd sess.), 105, 112 (Hull Electric R.R.); *Ib.* (1899), 106, 118, 119 (Ontario and Rainy River R.R.); *Ib.* 1898.

(*e*) See remarks of Sir Hector Langevin, 21st Feb., 1890; Hans. 998.

(*f*) See Mr. McInnes's question respecting R. Gray, notice given in V. & P., July 10 and 11, 1899 (a long sitting, and appearing in Orders, July 13).

(*g*) Can. Com. J. (1879), 156, 252, 380, 413; *Ib.* (1890), 117, 209, 375; *Ib.* (1901), 80, 107, 151, 281, 226. See Sen. J. (1882), 318, for an instance of "urgency" being given to government measures in the Senate.

CHAPTER VIII.

Petitions, Orders and Addresses.

I. Presentation and reception of petitions.—II. Form.—III. Irregularities.—IV. Petitions for pecuniary aid.—V. For taxes or duties.—VI. Reading of petitions at length—Urgency.—VII. Printing.—VIII. Reflections on House or members.—IX. Petitions to Imperial authorities.—X. Presentation of papers.—XI. Their character.—XII. Form of motions.—XIII. Distinction between addresses and orders.—XIV. Returns in answer.—XV. Carefulness in preparation.—XVI. Motions for papers refused.—XVII. Printing of documents.—XVIII. Joint committee on printing.—XIX. Subject-matter of Addresses.—XX. Addresses founded on resolutions.—XXI. Joint Addresses.—XXII. Addresses of Condolence and Congratulation.—XXIII. On retirement of the Governor-General.—XXIV. Presentation.—XXV. Messages from the Governor-General.—XXVI. Addresses to Prince of Wales in 1860.—XXVII. Thanks to distinguished persons.

I. Presentation and Reception of Petitions.—The routine business in the two Houses commences with the presentation and reading of petitions(*a*), 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 sub-

(*a*) Sen. R. 11; Com. R. 19.

ject(*b*). No doubt the privilege is sometime abused by energetic agents, but notwithstanding such abuses, the right of petition is highly prized. Parliament, therefore, 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 vital question.

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.

Petitions should not be presented under British constitutional usage on the first day of a session when the speech from the throne is formally delivered(*c*). But on other days 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(*d*) should be careful to endorse his name on the petition. One sitting day must intervene between the presentation and reception of a

(*b*) See index to Sen. and Com. J., Prohibitory Law, 1874; and Protection to Native Manufacturers, 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. Canada Temperance Act, March 30, 1885; a total of 76,501 petitioners. Also Can. Sess. P., 1892, No. 58, shewing the large number of petitions in 1891 in favour of the prohibition of the liquor traffic.

(*c*) May, 170, 501.

(*d*) May, 501; 137 E. Com. J. 295. A member who has not taken the oath cannot present a petition.

petition(*e*). 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"(*f*).

"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 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 remedy, the matter contained therein may be brought into immediate discussion"(*g*).

A senator, in presenting a petition, may briefly explain its general purport, but other members may not proceed to discuss its contents(*h*). The practice of the House of Lords appears different. A member may not only make

(*e*) Sen. Deb. (1890), 33.

(*f*) 228 E. Hans. (3), 1320; 229 *Ib.*, 586.

(*g*) See s. 79 and 80 of Eng. Com.; May, 503, 504; 79 E. Hans. (3), 496; 106 *Ib.* 300.

(*h*) Sen. Deb. (1876), 93, 96. *Ib.* (1880), 293.

a long speech on the presentation, but a debate may follow on the subject-matter(*i*).

In the House of Commons every petition is deposited in the journals 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(*j*). It is brought to the table to be read and received two days after the presentation; in other words, one day between the presentation and reception, as in the Senate. 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(*k*). 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(*l*).

(*i*) 140 E. Hans. (3), 706-15; 808-14; May, 502. 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.

(*j*) 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. 81; May, 505; 132 E. Com. J., 41.

(*k*) Can. Com. J. (1877), 27; *Ib.* (1879), 21, 32, &c. See "petitions" in index to journals.

(*l*) 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(*m*). 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(*n*). 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(*o*).

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(*p*). 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(*q*). If he wishes to present a petition signed by himself, he must give it to another member to bring up(*r*). The speaker of the Commons cannot present a petition, but must avail himself of the services of a member on the floor(*s*). But it is quite competent for the

(*m*) Can. Com. J. (1867-8), 339-40.

(*n*) *Ib.* (1880-81), 89.

(*o*) V. and P. (1882), 216, 442; Jour., 354-5.

(*p*) Can. Com. J. (1875), 177.

(*q*) 109 E. Hans. (3), 233. May, 504.

(*r*) 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.

(*s*) 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.

speaker of the Senate to do so, since he may take part in the debates(*t*).

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."

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 (*u*). Every petition should have the signatures of "at least three petitioners on the sheet containing the prayer"(*v*). But this rule is never interpreted

(*t*) Sen. J. (1880-81), 95.

(*u*) 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 (1882), 158.

(*v*) Can Com. J. (1876), 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

as precluding a single petitioner from approaching the House; it simply 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(*w*). The Senate rule is quite explicit on this point:

"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(*x*). It may be printed(*y*), but it must be free from erasures or interlineations(*z*), and the signatures must be written(*a*), not printed, pasted upon, or otherwise transferred(*b*). It must not have appendices attached thereto, whether in the shape of letters, affidavits, certificates, statistical statements, or documents of any character(*c*). A member may, how-

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."

(*w*) 100 E. Com. J., 335; 109 *Ib.*, 293; 66 E. Hans. (3), 1032; Can. Com. J. 1876), 294; *Ib.* (1877), 20, 61; May, 496.

(*x*) Petition from Judge Loranger and others relative to weights and measures in 1877, &c.

(*y*) Prohibitory Liquor Law, 1875; Welland Canal, 1877, &c. Sen R. 36.

(*z*) 82 E. Com. J., 262; 86 *Ib.*, 748; Can. Com. J. March 6, 1885.

(*a*) Chenal Ecarté Petitions, March 1, 1877; all printed, March 16, 1885.

(*b*) 104 E. Com. J., 283; 105 *Ib.*, 79; Can. Com. J., April 19, 1886.

(*c*) Can. Com. J. (1876), 212; *Ib.* (1877), 113; *Ib.* (1885, 173. 81 E. Com. J., 41, 84; 111 *Ib.* 102. 14 Parl. Deb. N.S., 569. Sen. Hans. (1880), 293, 294 (Mr. Penny); *Ib.* (1887), 325, 326 (Mr. Speaker Allan).

ever, 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(*d*). But in case the appendix is objected to, the member has no alternative except to present a new petition(*e*).

A petition forwarded by telegraph cannot be received, inasmuch as "it has no real signatures attached to it"(*f*). When a petition has contained a number of signatures in the same handwriting, these signatures have not been counted(*g*). Petitions of corporations aggregate must be under their common seal; and if the chairman of a public meeting sign a petition in behalf of those so assembled, it is only received "as the petition of the individual, and is so entered in the minutes, because the signature of one party for others cannot be recognized"(*h*). Aliens, not resident in this country, have strictly no right to petition parliament(*i*). In the case of applications for private bills, however, this rule is not enforced. It was agreed in 1878, at the suggestion of Mr. Speaker Anglin, to receive a petition from the Hartford directors of the Connecticut Mutual Life Insurance Company on the ground that it was a mutual company, partly composed of Canadians, and

(*d*) Can. Com. J. (1879), 18.

(*e*) 27 E. Hans. (1), 395; 38 *Ib.*, 662. Can. Com. J. (1876), 212, 239.

(*f*) Can. Sp. D., 192. Can. Com. J. (1872), 80.

(*g*) 138 E. Com. J., 153. See Can. Hans. (1885), 2027.

(*h*) Sen. R. 37, 38. May, 497; 10 E. Com. J. 285.

(*i*) 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 (1882), 158.

that it was the subject of parliamentary legislation, the company being required to make a certain deposit before doing business in the country(*j*). In 1883 a petition from certain persons in the city of Portland in the state of Maine, asking for an act of incorporation, was received on the ground that the subject-matter came within the jurisdiction of the House, as in the case already cited(*k*). The reception of such petitions may be considered an act of grace; and since 1883 no objection had been raised to their being brought up in the Canadian Houses.

All petitions should be respectfully and temperately worded. The House will refuse to receive them if they contain any reflections on the King or his representative in Canada(*m*), or on the action of parliament(*n*), or on any of its committees(*o*), or on the courts of justice(*p*),

(*j*) Can. Hans. (1878), 950. See also petition from American Association of Breeders of Shorthorns, Feb. 18, 1878.

(*k*) Can. Hans. (1883), 138. The necessity of offering every inducement to capital was referred to in the debate by the premier, Sir John Macdonald, as a reason for allowing the reception of such petitions. On the 31st of March, 1886, the House received a petition from certain contractors in New York and New Hampshire, claiming that their statutory and vested rights were injuriously affected by proposed legislation (Canada Atlantic R. R. Bill). Mr. Speaker Kirkpatrick privately expressed the opinion that aliens had a right to approach parliament on a question touching their private interests, when it was under the purview of the House. The Houses, in the matter of private bills, clearly act in a judicial as well as legislative capacity, and all persons interested should be allowed to appear there as in any court and seek a remedy. See on this point the opinion to the same effect of Sir Erskine May, before the Committee on the Boulogne-sur-mer petition. See case of Bishop of Russo-Greek Church, session 1902.

(*l*) Mr. Sp. Brand, Friday, April 7, 1876, Eng. Hans.

(*m*) 122 E. Hans. (3), 863. See R. 13 of Can. Com., *infra*.

(*n*) 84 E. Com. J. 275.

(*o*) 129 *Ib.* 209.

(*p*) 76 *Ib.* 105; 129 *Ib.* 276.

or affect "the legal and social positions of individuals"(*q*). A document headed as a "remonstrance," even though it conclude with prayer, cannot be received (*r*). Neither can any paper in the shape of a declaration be presented as a petition (*s*). Any forgery or fraud in the preparation of petitions will be considered a serious breach of privilege and severely punished (*t*).

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(*u*). The 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 the moneys to be provided by parliament, unless recommended from the Crown"(*v*).

Accordingly a large number of petitions have been rejected every session, when they have asked for remuneration for services performed(*w*); for arrears of salaries and pensions(*x*); for aid to construct or repair public

(*q*) 129 *Ib.* 276.

(*r*) May, 496; 70 E. Hans. (3), 745. But when headed as a petition and concluding with a prayer, remonstrances have been received. 65 E. Hans. 1225, 1227.

(*s*) Can. Hans. (1879), 1453-4; 60 E. Hans. (3), 640.

(*t*) May gives numerous cases. 106 E. Com. J. 193, 289; 120 *Ib.* 57, 336. See Res. of 2nd June, 1774; 34 *Ib.* 800.

(*u*) Can. Com. J. (1867-8), 297. 245 E. Hans. (3), 1724.

(*v*) See Eng. S. O. 57 and 58. May, 531, 832; 90 E. Com. J. 42, 487; 111 *Ib.* 247; 104 *Ib.* 223.

(*w*) Can. Com. J. (1871), 65, 229; *Ib.* (1883), 57.

(*x*) *Ib.* (1870), 67, 110; *Ib.* (1871), 18; *Ib.* (1878), 70.

works(*y*); for subsidies to keep them in an efficient condition(*z*); for any remission of moneys due to the Dominion(*a*); for compensation for losses incurred from public works(*b*); for subsidies to steamers owned by private individuals or companies(*c*); for grants of public lands to aid certain works(*d*); for compensation on account of losses alleged to have been sustained through the operation of an act of parliament(*e*).

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 "(*f*). 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

(*y*) *Ib.* (1870), 40, 56, 191, 233; *Ib.* (1871), 44, 135, etc. *Ib.* (1877), 79, 92, etc.
(*z*) *Ib.* (1870), 167.
(*a*) *Ib.* (1871), 159.
(*b*) (1873), 66.
(*c*) *Ib.* (1878), 56.
(*d*) *Ib.* (1882), 75.
(*e*) *Ib.* (1883), 47; Canada Temperance Act.
(*f*) 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.

works(*g*). Such petitions are received on the same principle which allows the moving of resolutions expressive of the abstract opinions of the House on matters of expenditure(*h*).

No petition asking directly for an appropriation from the public treasury can be properly received in the Senate. There is no rule or usage of the Lords or Senate, however, to prevent the presentation or discussion or reference to a committee, of a petition for the expenditure of public money or for pecuniary aid or redress, provided it be framed in general terms(*i*).

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(*j*), 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

(*g*) Can. Com. J. (1877), 100, etc., Welland Canal; St. Peter's Canal. *Ib.* (1877), 27, 147, ex-sergeants of Volunteers; first petition not received; second received, as it asked the House simply to take the facts into its favourable consideration.

(*h*) Hatsell (iii., 241), says the prayer should be general, and not prescribe the quantum of aid.

(*i*) See remarks of Mr. Speaker Christie, Sen. J. (1874), 93-4; Deb. (1874), 134-8; Todd's Parl. Govt., i. 696, 697; 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 that aid be given, or with some such general prayer. Sen. J. (1867-8), 171; *Ib.* (1879), 108 (York Pioneers); *Ib.* (1883), 63; *Ib.* (1884), 140.

(*j*) Can. Com. J. (1873), 146; *Ib.* (1875), 205, 241, 260, etc.; *Ib.* (1876), 58, 76, 86, etc.

petitions asking for the imposition of customs and excise duties(*k*). It has also been decided that when a number of persons ask for a bounty to a particular industry on public grounds, it is regular to receive their petition. The objection to the reception of petitions for a bounty properly applies only to cases where an individual or individuals, personally interested, ask for such a bounty as will be profitable and confined to themselves(*l*). It is also usual to receive petitions from individuals for an exemption of a tax or duty on public grounds(*m*); but petitions from parties immediately interested in a remission of duties or other charges payable by any company or person, will be ruled out(*n*). Neither will the House receive a petition praying for the compounding or releasing any debt due to the Crown(*o*); but petitions may be considered when they pray for provision for compensation for losses contingent on proposed legislation(*p*). Petitions against measures for the imposition of any tax or duty for the current service of the year, are always in order(*q*).

VI. Reading of petitions at length—Urgency.—Previous to 1885 a very loose practice existed with respect to the reading of petitions, when required by a member, but in

(*k*) 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, etc.; *Ib.* (1877), 37, 54, 58, etc.; *Ib.* (1878), 150; *Ib.* (1879), 57, 66, 140, etc.

(*l*) Mr. Speaker Anglin on Coal Bounty, Can. Com. J. (1877), 27, 37. Such a petition, he shewed, stood precisely in the same position as one asking for the imposition of taxes for general purposes.

(*m*) Can. Com. J. (1876), 70; *Ib.* (1879), 300, Paper Machine.

(*n*) Can. Com. J. (1875), 260; 92 E. Com. J. 372; 223 E. Hans. (3), 879.

(*o*) Eng. S. O. 58; 81 E. Com. J. 66; 83 *Ib.* 212

(*p*) May, 532; 92 E. Com. J. 469.

(*q*) Eng. S. O. 82; 97 E. Com. J. 191.

that year it was decided that the consent of the House was necessary in accordance with the English rule, which is the same literally as the Canadian rule 86. In case of opposition, the speaker will have to put a motion formally to the House. Whilst a member has clearly a right to ask that the petition be read(*r*), it is a privilege like many others, subject to the approval of the House itself. 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(*s*). In case of urgency, however, a petition may be immediately considered(*t*), but the grievance must be such as to require a speedy and urgent remedy(*u*). Petitions affecting the privileges of the House will at once be taken into consideration in accordance with parliamentary usage in all cases of privilege(*v*).

VII. Printing.—Petitions are often ordered to be printed for the information of members by the committee on printing(*w*). It is frequently found convenient to print them in the votes and proceedings—a motion to that effect being duly made and agreed to(*x*). Petitions of a previous session have also been so printed(*y*).

(*r*) *Supra.* Can. Hans. (1885), 1893; 164 E. Hans. (3), 977-8; 221 *Ib.* 302 (Blackmore, 236); May, 503.

(*s*) Can. Sp. Dec. 25; Can. Com. J. (1875), 152. Hans. 450-1. Can. Com. J. (1876), 171, 204. In one case, the petition was received and printed forthwith, because it referred to the bill respecting marriage with a sister of a deceased wife, then under discussion; *Ib.* (1880), 130.

(*t*) Rule 86. Also Eng. S. O. 80.

(*u*) 139 E. Hans. (3), 453-5. Any previous notice will preclude its being at once considered; 75 E. Hans. (3), 894, 1264.

(*v*) 164 E. Hans. (3), 1178; 114 E. Com. J. 357.

(*w*) Can. Com. J. (1867-8), 400; *Ib.* (1880), 130; *Ib.* (1882), 192, 261.

(*x*) V. and P., March 19, 1875; Can. Com. J. (1877), 25.

(*y*) *Ib.* (1877), 25; 112 E. Com. J. 155.

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(*z*). 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(*a*). 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(*b*). 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(*c*).

IX. Petitions to Imperial Authorities.—As a general rule the Parliament of England receives petitions from British subjects in all parts of the world(*d*). 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 sometimes be thought expedient to petition the sovereign, and in such a case the constitutional procedure is to forward the petition through the governor-general. The rules of

(*z*) 130 E. Com. J. 134, 145.
(*a*) 220 E. Hans. (3), 600.
(*b*) 228 *Ib.* 1395-1400; Blackmore (1882), 155-6.
(*c*) 262 E. Hans. 859-60.
(*d*) Mr. Sp. Brand, April 7, 1876. Blackmore (1882), 158.

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 well as reported upon, before they reach the secretary of state." Petitions addressed to the king, or the king in council, memorials to public officers or boards in his Majesty's government, "must in like manner be sent to the governor-general for transmission home"(*e*). 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

(*e*) Col. Off. Reg., 217, 218, 219, 220, 221, 222, 223. See C. O. List for 1901, p. 366.

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(*f*).

X. Presentation of Papers.—By reference to the index of the journals of the Canadian as well as the 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 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 of the House, or in pursuance of an act of parliament(*g*). 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," but since the departments of the government lay regularly on the table all reports made to them by railways, boats, and other incorporated companies which are required to send in statements, this rule has become practically of little use and is not now regularly carried out.

(*f*) E. Com. P., 1678, No. 389; Todd's P. G. in the Colonies, 356-7.

(*g*) See Can. Com. J. (1901), 56, 132, 326.

XI. Character of Papers.—The returns laid on the tables of the Houses every session by command of his Excellency, include the reports of the ministers of the several departments of the government, public works, militia, post-office, marine and fisheries, etc., which are printed in the two languages in the shape of "blue books." Amongst the papers required by law are: lists of stockholders of banks, 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(*h*). The reports of the several departments of the government are laid annually before parliament in accordance with statute organizing such departments.

Certain papers are also periodically laid before parliament by a message from the governor-general. The estimates of the sums required for the service of the dominion must be brought down in this way, in accordance with constitutional usage(*j*). Despatches from the secretary of state for the colonies are always sent down by the governor-general(*k*), and so are all papers relative to royal commissions and other matters affecting imperial interests or the royal prerogative(*l*). 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 Cana-

(*h*) 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.

(*j*) See chap. on Supply, sec. 4.

(*k*) N. A. Boundary Com., 1877; Irish Relief Grant, 1880.

(*l*) Northern R. R. Com., 1877.

dian tariff, then the subject of discussion in parliament. He decided that individuals outside of the House could only approach it properly by petition, and that the document in question was a mere declaration, and could not be presented by a member. He took this occasion of stating that no document can be regularly laid before parliament, unless by message from the governor-general, or in answer to an order or an address, or in pursuance of a statute requiring their production(*m*). 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(*n*).

(*m*) Can. Com. J. (1879), 1453; *Ib.* (1892), 2268. 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. In February 1885, Mr. Speaker Kirkpatrick received by telegraph a resolution from the legislature of British Columbia, respecting the disallowance of an Act (Chinese immigration). As he had no precedent permitting him to lay such a document before the Commons, he telegraphed to the speaker of the assembly to have an address sent to the governor-general—the proper constitutional course. In the Session of 1903 a resolution of the Legislature of Ontario was sent to the Speaker of the House of Commons by the Clerk of the Ontario Assembly, with the request to lay the same before parliament. Speaker Brodeur informed the Clerk of the Ontario Legislature that the Speaker of the House had no power or authority to lay such a resolution before the House of Commons.

(*n*) For instance, a resolution was received from the city council of Ottawa, May 6th, 1887, on the subject of Home Rule in Ireland, and in accordance with the usual practice an acknowledgment of its receipt was sent to the proper municipal authority. See Mr. Sp. Brand on resolutions from chairmen of public meetings, 280 E. Hans. (3), 1145.

When a minister of the Crown desires to lay on the table an unopposed return which is not the subject of an order, but is necessary for the proper decision of some question the rule is for him to move for its production, and then on the order being made to bring it down immediately(*o*). In case the paper would, under ordinary conditions be the subject of an address or message he will bring it down "by command of his Excellency," and then, if necessary, move that it do lie on the table(*p*).

XII. Form of Motions.—Returns and papers are moved for in the form either of an address to the governor-general, 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.

XIII. 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

(*o*) Mr. Speaker White, C. Com. Hans. (1892), 2268; 266 E. Hans. (3), 1710-11; C. Com. J. (1899), 170; *Ib.* (1901), 210-11.

(*p*) Alaska Boundary, Can. Com. J. (1899), 227. See remarks of Mr. Speaker Edgar, Can. Com. Hans. (1899), 4259; May, 511.

own order from any department or officer of the government. It is sometimes difficult to make a correct application of this general principle(*q*); 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(*r*); for orders in council(*s*); for correspondence between the dominion, British and foreign governments(*t*), or between the dominion and provincial governments(*u*), or between the dominion government and any companies, corporations, or individuals(*v*); for information respecting a royal commission(*w*); for instructions to the governor-general(*x*). Memorials and other papers relating to the government of the North-West Territories, are brought down also by address(*y*).

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(*z*). Correspondence with persons in the employ of the government, and in the possession of a department are ordered(*a*). Petitions and memorials not in the

(*q*) May, 507, states that the same difficulty exists in the English Commons.

(*r*) Can. Com. J. (1877), 151; *Ib.* (1878), 124.

(*s*) *Ib.* (1877), 46, 56; *Ib.* (1878), 63-4.

(*t*) Can. Com. J. (1877), 21, 22, 35, 109; *Ib.* (1878), 44.

(*u*) *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).

(*v*) *Ib.* (1877), 21, 22, 45, 191. But this is not done invariably.

(*w*) *Ib.* (1878), 65.

(*x*) *Ib.* (1882), 326.

(*y*) *Ib.* (1886), 145; *Ib.* (1890), 55.

(*z*) See index to journals for 1890 ("accounts and papers").

(*a*) Can. Com. J. (1878), 124 (Serj. Hart); 125 (Mr. Perley).

possession of the House, but addressed to the governor-in-council, and including memorials for public aid, must be asked for by address(*b*); but petitions addressed to a particular department are directly ordered(*c*). Returns of petitions of right and cases before supreme and exchequer courts are brought down on an address(*d*). Returns relative to the trial of election cases before judges(*e*), and the expenses of returning officers and candidates at elections(*f*) 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(*g*). Returns relative to the administration of justice(*h*) and the judicial conduct of a judge(*i*) 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(*j*). Returns respecting confidential printing are by address, when such printing is done by order in council(*k*). Papers relative to the exercise of the preroga-

(*b*) *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.

(*c*) Can. Com. J. (1882), 357.

(*d*) *Ib.* (1878), 125; *Ib.* (1880), 80.

(*e*) 129 E. Com. J. 157, 158.

(*f*) 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. See a return asked for in 1885, relating to dates of issue of warrants and writs, of nominations and pollings, of returns of writs; information in the possession of the clerk of the House and of the clerk of the crown in chancery asked for by order, Can. Com. J. 111.

(*g*) Can. Com. J. (1883), April 9.

(*h*) 129 E. Com. J. 79, 98, 203; 132 *Ib.* 392.

(*i*) Can. Com. J. (1882), 25.

(*j*) *Ib.* (1878), 90.

(*k*) *Ib.* (1882), 25.

tive of pardon must be sought in the same mode(*l*). Memorials to heads of departments or bodies immediately under the control of a department are ordered by the House(*m*). 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.(*n*). The Senate does not observe the distinction drawn in the Commons between orders and addresses(*o*).

XIV. Returns in Answer.—As soon as these addresses and orders have been passed by the House, they are engrossed and forwarded immediately by the clerk of the House to the secretary of state, who will send them to the proper department or officer for the necessary answer. When the department or person, whose duty it is to furnish the information, has prepared it, he will return it to the secretary of state, who will take the earliest opportunity of laying it before parliament through the medium of a minister of the Crown. It is the practice for each minister in the House of Commons to present the returns relative to his own department(*p*).

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

(*l*) *Ib.* (1882), 157.

(*m*) 129 E. Com. J. 72, 80, 241, 366.

(*n*) 129 *Ib.* 336, 369; Can. Com. J. (1878), 40, 54; 199, 208.

(*o*) 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).

(*p*) Can. Com. J. (1877), 12, 50, 354-356; *Ib.* (1883), 328.

which they are ordered. In such a case, returns are often presented during the following session(*q*), and papers have even been brought down several years after having been ordered(*r*). A prorogation, however, nullifies the effect of an order, and the strict practice is to make a motion in the next session(*s*), or read the order of the previous session, and order the return immediately(*t*). But it is now frequently found most convenient—indeed, it has almost become an established practice—to bring down in the following session all papers of general importance without a renewal of the order(*u*).

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. When returns have once been presented to the House, it is in order to refer them to a standing or select committee (*w*).

XV. 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 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 ;

(*q*) *Ib.* (1877), 38, 55, 62; *Ib.* (1879), 39.
(*r*) *Ib.* (1877), 284.
(*s*) May, 510.
(*t*) 114 E. Com. J. 371.
(*u*) Can. Com. J. (1882), 104, 142.
(*v*) *Infra.*
(*w*) Can. Com. J. (1874), 103, 220; *Ib.* (1876), 98; *Ib.* (1877), 59, 153, 211; *Ib.* (1890), 54.

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 informally by a minister in cases where an important debate is at hand or in progress and there is no time to make a formal motion on the subject(*x*).

Every care should be taken by the department or officer, whose duty it is to furnish the return, to have it strictly in accordance with the terms of the address or order. If a person neglects to furnish a return or frames it so as to mislead the House, it will be considered a breach of privilege, and he will be liable to reprimand or punishment(*y*).

XVI. Motions for Papers Refused.—Occasions may arise when the government will feel constrained to refuse certain papers on the ground that their production would be inconvenient or injurious to the public interests. A high authority writes on this point: "Considerations of public policy, and a due regard to the interests of the state, occasionally demand that information sought for by members of the legislature should be withheld, at the discretion and upon the general responsibility of ministers. This principle is systematically recognized in all parliamentary transactions; were it otherwise, it would be impossible to carry on the government with safety and honor"(*z*). Consequently, there are frequent cases in which the ministers refuse information, especially at some stage of an investigation or

(*x*) Can. Com. J. (1874), 76, consolidated fund expenditure.

(*y*) 90 E. Com. J. 575; 96 *Ib.* 363; Mirror of P. 1841, vol. 23, pp. 2014-5; 81 Lords' J. 134; 82 *Ib.* 89; May, 626; Can. Com. Hans. (1895), 1839.

(*z*) 173 E. Hans. (3), 1054; Mir. of Parl. 1837-8, p. 658; Can. Hans. (1878), 1653; 1 Todd 440.

negotiation(*a*); 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 bought down, they will agree to such alterations as the minister may show to be advisable in the public interests. Sometimes the government may be obliged to withhold all information at the time, or they may be able to put the House in possession of only a part of the correspondence(*b*). If the government objects to the production of documents on the ground that they are of a confidential nature, it is not usual to insist upon their being furnished(*c*), except under peculiar or imperative circumstances(*d*), on the ground that it would be wholly without precedent to produce them(*e*). Estimates and reports of the engineers of the public works, in many cases, are considered confidential(*f*). As a rule the

(*a*) Sen. Hans. (1880), 77, 469 (Sir A. Campbell); Mirror of P., 1841, p. 1032; 157 E. Hans. (3), 1177.

(*b*) Can. Hans. (1877), 58-9.

(*c*) Mir. of Parl., 1834, p. 2774; 1835, p. 1634; 1 Todd 440. pp. 93, 95; Mir. of Parl., 1831, p. 524.

(*e*) 211 E. Hans. (3), 1725.

(*d*) See Ld. Hatherton's Memoir on the occurrences of 1834,

(*f*) Can. Com. Hans. (1878), 510, Lachine canal. *Ib.* (1879), 45, Carillon works. Also 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. Also Mr. Pope (Canadian Pacific R. R.), Can.

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(*g*). The same rule applies to communications between law officers of the crown respecting particular trials; or the judge's notes, taken at a trial (*h*), or to coroner's notes which as they partake of a judicial character, can be produced only with the consent of the officer himself (*i*).

The practice of asking for reports from officers, addressed to particular departments of the executive government, is considered to be open to serious objection(*j*). As to "confidential documents" passing between officers of a department, Mr. Speaker Peel observes: "they are not necessarily laid on the table of the House, especially if the minister declares that they are of a confidential character." He adds: that if a minister stated in his place that a document was of that class, the House should take his word, "and" he was not bound to lay it on the table(*k*). But if a minister cite any such document in the House, it becomes a public paper and should be produced(*l*).

Hans., 1885, p. 122. The reports of inspectors of post offices are generally considered as confidential: Can. Hans. (1890), 518 (Mr. Haggart). When a tender for a public work has not been accepted, it is contrary to the policy of a department to make the amounts known.

(*g*) Mir. of Parl., 1830, pp. 387, 1877-1879; 1840, p. 2120; 74 E. Hans. (3), 568. See reply of Lord Gosford to an address of the Assembly, Lower Canada, Dec. 11, 1835: Jour., 1835-6, p. 263.

(*h*) Mir. of Parl., 1880, pp. 527, 1667-1668. Todd, I., 576; Can. Hans. 1885, 89.

(*i*) Mir. of Parl., 1841, p. 2207.

(*j*) 177 E. Hans. 961, 1402, 1455; 178 *Ib.* 154; 1 Todd 442.

(*k*) Mr. Justice Gibson's charge, E. Hans., Feb. 14, 1893. See also Disraeli, 193 E. Hans. (3), 1273; 177 *Ib.* 1402, 1455; Blackmore's Dec., p. 81.

(*l*) 187 E. Hans. (3), 219, etc.; 149 *Ib.* 178. H. of C. Jour. (Can.) Vol. 14, p. 201; *Ib.*, Vol. 34, pp. 238, 239.

Certain papers have also been refused in the Canadian Commons on the ground that the "governor-general, acting as an executive officer of the imperial government, reserves to himself the right of withholding from parliament any documents, the publication of which might, in his judgment, be prejudicial to the public service. That with respect to communications from the secretary of state, marked 'private and confidential,' it is not competent for the governor-general to give copies of such correspondence without the express sanction of the secretary of state. That this rule equally applies to letters written by the governor-general to third parties, communicating confidentially to them, or referring to the contents of private and confidential letters from the secretary of state, and to answers received by the governor-general to such letters"(*m*).

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(*n*). "Num-

(*m*) Can. Com. J. (1867-8), 275. See remarks Hon. D. Mills (Can. Com. Hans., 1892, pp. 604-610, on the expediency of ministers making statements in the absence of the documents on which they are based.

(*n*) Col. Reg. 165-188; C. O. List, 1901, pp. 363-365.

bered'' despatches are always laid before parliament on the responsibility of ministers(*o*). 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''(*p*).

In 1878, Mr. Lanthier asked that the House pass an address 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(*q*).

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

(*o*) New Zealand H. of R. Jour., 1871, app. vol. I., p. 14; Parl. Deb. viii. 140.

(*p*) See Todd's Parl. Gov. in B.C. (126-132), where this question is fully reviewed.

(*q*) Can. Com. Hans. (1878), 389-92.

on the subject, an amendment was accepted to meet the difficulty in which the House was obviously placed(*r*).

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"(*s*).

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(*t*). The paper 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(*u*). Neither is it a proper ground for the

(*r*) Can. Com. Hans. (1878), 510-25. See Sir Charles Dilke's motion with respect to the civil list; only two voted for his motion; 276 against; 210 E. Hans. (3), 251-318.

(*s*) Can. Com. Hans. (1879), 492.

(*t*) 11 E. Hans. (1), 271; Cushing, pp. 364-5; 11 Parl. Reg. 128; 74 E. Hans. (3), 865.

(*u*) 15 E. Hans. (N.S.), 194-202.

production of papers that they will either prove or disprove an assertion made by a member on some former occasion(*v*); 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(*w*). A sound rule, generally observed by the House, is that proceedings before a court of justice are not given, except for public purposes, and still more is this the rule when a case is pending and the ultimate decision not yet reached. 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 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"(*x*). And on a later occasion it was declared by Sir Robert Peel that "where parliament has given peculiar privileges to any body of men (as for example, banks or railway companies), it has a right to ask that body for information upon points which it deems necessary for the public 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"(*y*).

All the departments of the public service are kept most laboriously employed every session in furnishing informa-

(*v*) 22 *Ib.* (1), 120.

(*w*) 16 *Ib.* (3), 194-5.

(*x*) Mr. Blake, Can. Com. Hans. (1885), 704. Sir Robert Peel and Lord John Russell, in case of Royal Academy, Mirror of P. 1839, pp. 4238, 4503; Todd, i. 452-453.

(*y*) Mirror of P. 1840, p. 4840; also *Ib.* 1828, p. 825.

tion 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(*z*).

Returns may be refused on account of their voluminous character and the length of time it would take to prepare them(*a*), but in order to obviate such an objection, members are frequently invited to communicate with the department direct(*b*).

XVII. 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 it 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 97 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."

(*z*) Lord Melbourne, Mirror of P. 1838, p. 5387. Also 11 Parl. Reg. 132, 133; 2 Cav. Deb. 237. Can. Hans. (1879), 1265-7.

(*a*) Mirror of Parl. 1836, p. 887.

(*b*) *Ib.* 1837, p. 601; 1 Todd, 443.

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(*c*). 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.

Until 1887 it was usual to delay the public issue of the departmental reports until they were formally laid on the tables of the Houses by the ministers, and to remedy such an inconvenient system, which kept back useful and important information frequently for months, it was ordered in the session of that year that all such blue-books for each fiscal and calendar year "should be in future made public as soon as practicable after the same are prepared"(*d*).

XVIII. 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(*e*). 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,

(*c*) Sen. J. (1875), 176; *Ib.* (1878), 99, 129.

(*d*) Can. Com. J. (1887), 92; Hans., 5th of May. The convenience of such an arrangement was found in 1890-91, when parliament did not meet until 29th of April, 1891.

(*e*) See chapter on select committees, s. 1.

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(*f*). This plan was favorably entertained by the legislative assembly, and in the session of 1859 the first joint committee on printing commenced its labors(*g*). 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 information was established. Step by step the public printing was brought under perfect parliamentary control. The result was, from the economic point of view, satisfactory. For some years the printing service was performed by tender and contract, under the directions of the committee, which reported its recommendations to the Houses, which might or might not concur in the committee's conclusions(*h*). This contract system lasted for many years, but all the public printing is now done at a government printing office. The first change took place in connection with the *Canada Gazette* and the departmental printing. In 1869, an act was passed for the appointment of a queen's printer for Canada, under whose superintendence the *Canada Gazette,* the statutes and departmental printing had to be performed(*i*). In 1888, a department

(*f*) Leg. Coun. J. (1858), 215-222.

(*g*) Leg. Ass. J. (1861), 146.

(*h*) 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 instructions 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.

(*i*) For 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, be-

of public printing and stationery was established as a branch of the public service, under the direction of the secretary of state of Canada(*j*). This department is managed by a queen's printer and controller of stationery—who is a deputy head, appointed by commission under the great seal —a superintendent of printing, a superintendent of stationery, an accountant, and some minor officials. A government establishment was organized at Ottawa, under the management of the superintendent of printing, for the purpose of executing of all stereotyping, lithographing, binding and other work of like nature required for the service of the parliament and government of Canada. The stationery branch purchases all printing papers, stationery, books and supplies of all kinds of that character required for the use of the parliament and the government, and has charge of the sale of all official publications of Canada. All purchases of books and stationery required for the public service are made by the new department upon requisitions duly furnished by the clerks of the two Houses and the proper officers of the departments. The *Canada Gazette*, the statutes and all departmental and other official reports are printed by this bureau.

Provision is also made in the law(*k*) for the thorough audit of all accounts for any of the services under the control of the department. The joint committee of the two

came vacant. Mr. Malcolm 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. 315); and the dominion government, in 1869, at last took the question up, and the result was the passage of the act 32-33 Vict., c. 7.

(*j*) But the statute provides that the governor in council may designate any other member of the privy council when necessary to preside over this department.

(*k*) Rev. Stat. of Can., c. 27; am. by 51 Vict., c. 17.

Houses continues to discharge practically all the important functions that have for so many years devolved upon it with regard to the printing of parliament(*l*). It has the services, as formerly, of an officer designated by itself to attend to all matters within its jurisdiction(*m*).

The salaries of the employes are fixed by the committee and any increases or diminutions are recommended to the Houses for their sanction(*n*). 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 employes, subject, of course, to the approval of the Houses. The committee simply distributes the moneys set apart by parliament for this purpose(*o*). But no committee should recommend any new appropriation of money—this being a function constitutionally conferred upon the crown alone(*p*).

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 ses-

(*l*) Can. Com. J. (1888), 315; *Ib.* (1889), 178-188; *Ib.* (1890), 290-295.

(*m*) 51 Vict., c. 17, s. 1; Can. Com. J. (1892), 181, 220.

(*n*) Can. Com. J. (1870), 243, 288; Can. Com. Hans. (1878), 2253-4; Jour. 131, 226. *Ib.* (1890), 290-295, 313. Sen. J. (1890), 171-177, 192.

(*o*) Can. Com. Hans. (1878), 2201-2203; 2253-2254. Also for new appointments by committee, see Jour. (1880), 54, 62; *Ib.* (1883), 79, 80; for new services and increases, *Ib.* (1901), 263 269.

(*p*) See s. 54 B.N.A. Act.

sional papers—the reports of committees always in the appendix to the journals(*q*). 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 annually given to members of parliament and others(*r*). 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 refers only 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(*s*).

In practice it is now found convenient for the chairman of a committee to give notice that he will on a future day, when motions are called, ask for the adoption or consideration of a report which may provoke debate. In fact, this is the expedient course under all circumstances(*t*).

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."

(*q*) Can. Com. J. (1876), 135, &c.

(*r*) Can. Com. J. (1867-8), App. No. 2 (3rd and 13th Reports); *Ib.* (1869), App. No. 2; *Ib.* (1874), 271; *Ib.* (1875), 118. The distribution of documents was rearranged in 1878, pp. 220, 254, App. No. 3; Sen. J. pp. 218-230, 265. Number of votes and bills was increased in 1879, Com. J. 56, 78. See also *Ib.* (1890), 290, 313.

(*s*) See Com. J. (1880), 364. Also chapter on select committees, s. 8.

(*t*) Mr. Speaker Edgar, Can. Com. Hans. (1896, 2nd sess.), 1368, 1369.

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(*u*). Sometimes the rule has been suspended, and the order given immediately for printing—a regular proceeding in case of urgency(*v*). But if objection be taken, the motion cannot be put(*w*). 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(*x*). No motions, however, for the printing of papers are now put from the chair, but are simply entered on the journals as referred in accordance with the rule(*y*). If a member is not satisfied with the report of the committee at any time, he can move to amend it on the motion for concurrence(*z*). Sometimes reports are only agreed to in part(*a*). The committee has frequently reconsidered previous decisions without a motion formally proposed in the House to refer the matter back for further deliberation(*b*). At other times, the report has been amended by the committee itself when referred back for consideration(*c*), the more regular proceed-

(*u*) Can. Com. J. (1867-8), 43; *Ib.* (1870), 30; *Ib.* (1873), 20, 49. A paper of a previous session has been referred to the committee on motion. *Ib.* (1890), 221.

(*v*) *Ib* (1871), 20; *Ib.* (1880), 160. Can. Com. Hans. (1877), 686.

(*w*) *Ib.* (1890), 2911-2914.

(*x*) Can. Com. J. (1876), 71; *Ib.* (1867-8), 157; *Ib.* (1882), 192.

(*y*) *Ib.* (1877), 47, 124, 132, &c.; *Ib.* (1879), 353; *Ib.* (1883), 391. Mr. Sp. Anglin questioned the propriety of any debate on such a motion. Can. Com. Hans. 1877, Feb. 19; also, *Ib.* p. 686.

(*z*) Can. Com. J. (1874), 304; *Ib.* (1901), 287, 288.

(*a*) *Ib.* (1867-8), 224; *Ib.* (1879), 326.

(*b*) *Ib.* (1873), 415.

(*c*) 12 Lords' J. 72, 81, 88; 8 E. Com. J. 670; 1 Grey. 5; May, 429.

ing, since it gives power to the committee to revise its former judgment on a question(*d*).

XIX. 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, 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. The subjects on which the two Houses may address the sovereign or his 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; in short, to all subjects connected with the government and the welfare of the dominion. They may also contain expressions of congratulation or regret in reference to matters affecting the royal family or the governor-general. But no address may be presented in relation to a bill or matter under the consideration of the House.

XX. Addresses founded on Resolutions.—By reference to the journals of the House it will be seen that addresses have frequently originated in committee of the whole(*e*) on report from a select committee(*f*), or on simple motion direct without such a previous formality(*g*). The principle that has guided the House with reference to addresses of a general character appears to be this: Whenever the question is one involving legislation, or affecting commerce, and requires considerable discussion of details, it is advisable, and certainly convenient, to ask the House to go into committee of the whole to consider a resolution on which to base an

(*d*) See ch. xiv.
(*e*) Can. Com. J. (1877) 237-9; also Leg. Ass. (1859), 509.
(*f*) *Ib.* (1867-8), 376, 377.
(*g*) Can. Com. J. (1875), 197-203.

address(*h*). But in the case of all addresses which are passed *nemine contradicente*, such as those to the sovereign or governor-general(*i*), modern usage has now simplified the procedure, and it is sufficient to move them directly.

It is, of course, optional for a member to choose the method of procedure in such cases. The address to the Queen embodying the Quebec resolutions of 1864 with respect to confederation was not initialed in committee. In the session of 1882 the House of Commons agreed to a joint address to her majesty on the subject of the difficulties in Ireland, as an amendment to its motion for the House to go into joint committee of supply(*j*). In the Senate an amendment was moved to this address—an unusual proceeding. In 1901 the same procedure was followed with reference to an address to the King on the subject of the declaration regarding transubstantiation in the bill of rights and act of settlements; but the inconveniences that may at times arise by moving a debatable question in this way was quite apparent on this occasion, since it was ultimately found necessary to withdraw the original motion and bring it in immediately in an amended form to meet objections that were raised as to the phraseology(*k*).

XXI. Joint Addresses.—When it is agreed in the Commons to transmit an address of the two Houses to the sovereign, a message will be sent to the Senate requesting their honors to unite with the House in the same. This message will be proposed as soon as the address has been passed by

(*h*) *Ib.* (1873), 187. Naturalization. *Ib.* (1878), 255 Boundary Question.

(*i*) Can. Com. J. (1872), 292-3. Retirement of Lord Lisgar from the governor-generalship.

(*j*) 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.

(*k*) Can. Com. J. (1901), 71-74.

the House and ordered to be engrossed. When the Senate has received the message the address will be read by the clerk and ordered to be taken into consideration, sometimes immediately, but more frequently on a future day. The address from the Commons always contains a blank: "We, your Majesty's most dutiful and loyal subjects, the ———— Commons of Canada." This blank will be filled up by the Senate with the words "Senate and," so that the address will read "the Senate and Commons of Canada in Parliament assembled," etc. It will then be ordered that the speaker do sign the address on the part of the Senate. The next step will be for the Senate to order an address to the governor-general, requesting him to transmit the same to the sovereign. Then this address will be agreed to, signed by the speaker, and ordered to be communicated to the Commons by one of the masters in chancery for their concurrence. In this address there is also a blank to be filled up by the House, with the words "and Commons," and a message will be sent to the Senate informing them that the Commons have agreed to the said address. When the message has been received by the Senate, they will order that "the joint address to his Majesty, and also the joint address to his Excellency, the Governor-General, be presented to his Excellency by such members of this House as are members of the privy council"(*l*).

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

(*l*) 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; Can. Com. J. 268; Sen. J. 239, 240. Can. Com. J. (1886), 181, 182, 215; Sen. J. 107, 137, 147; Can. Com. J. (1890), 286, 313; Sen. J. 221-223; Can. Com. J. (1901), 16, 17; Sen. J. 26, 29.

the words "and Commons;" and the address concurred in. An address will next be passed to the governor-general requesting him to transmit the joint address to the King. The Senate will then proceed to fill up the blank in this address in the usual way, and communicate the fact to the Commons. The addresses will be presented to his Excellency by such members of the Senate as are members of the privy council(*m*).

XXII. Addresses and Messages 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 Canadian parliament(*n*).

In 1880 the Houses passed an address congratulating the Marquis of Lorne, then governor-general, and the Princess Louise, on their escape from what might have been a serious accident(*o*).

(*m*) 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; Sen J. (1887), 104, 156; Com. J. 208, 209, 229; Sen. J. (1897), 118, 125, 126; Com. J. 203, 205.

(*n*) 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; death of Prince Leopold, Sen. J. (1884), 229, 342; Can. Com. J. 328, 335, 350; death of the Duke of Clarence, Sen. J. (1892), 23, 24, 122; Com. J. 102, 103, 288; birth of son to R.H. the Duke and Duchess of York, Sen. J. (1894) 277, 278; Com. J. 467, 523, 524.

(*o*) Sen. J. (1880), 53, 54; Com. J. 78, 79, 82.

It is usual to present addresses of congratulation to the governor-general when he is the recipient of royal honors(*p*).

In 1882 the Houses forwarded through the governor-general by telegraphic cable messages of congratulation to Queen Victoria on the occasion of her escape from an attempt on her life. A similar procedure has been followed in other cases of urgency(*q*).

In the session of 1898 a resolution of condolence on the death of the Rt. Hon. W. E. Gladstone was reported from a select committee to whom the matter had been referred, and after its passage the speaker of the Commons was instructed to communicate it to Mrs. Gladstone. In the next session the speaker read her answer to the House(*r*).

In 1899 the prime minister moved a series of resolutions expressing the sympathy of the House of Commons with her Majesty's government in seeking to obtain equal rights for her Majesty's subjects in the Transvaal Republic; and when they had unanimously passed, the speaker was instructed to communicate them to the secretary of state for the colonies(*s*).

If the Houses wish to congratulate any members of the royal family on their marriage; or on the birth of a son, or to condole with them on some sad bereavement, it is proper to do so in the form of a message. For instance, in the case of the death of the Duke of Clarence in 1892, an address of condolence was first passed to the queen, then a message to the same effect to the Prince and Princess of Wales. An

(*p*) Sir John Young created Baron Lisgar; Sen. J. (1871), 25.
(*q*) Can. Com. J. (1882), 105; Sen. J. 79.
(*r*) Can. Com. J. (1898), 249, 263, 264; *Ib.* (1899), 9.
(*s*) Can. Com. J. (1899), 485, 486.

address will be passed to the governor-general asking him to transmit the message of condolence or congratulation(*t*).

XXIII. 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 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(*u*). In the next case, that of the farewell address to Lord Dufferin, in 1878, it was ordered in each House to be presented by such members as were of the privy council. A member of the privy council subsequently informed the Senate that Lord Dufferin had appointed two o'clock of the afternoon of a later day, in the Senate chamber. The Commons were duly informed of the fact by message, and were accordingly able to be present at the reading of the address and answer. On a subsequent day, a member of the privy council presented, in each House, a copy of Lord Dufferin's reply, in order to give it a place in the journals(*v*).

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

(*t*) Sen. J. (1892), 23, 24; Com. J. 102, 103. Also marriage of Prince of Wales, Can. Leg. Ass. J. 1863; birth of an heir to Prince and Princess of Wales, *Ib.* 1864; birth of a son to Duke and Duchess of York, Sen. and Com. J. 1894; death of Prince Battenburg, *Ib.* 1896.

(*u*) Can. Com. J. (1872), 292, 293, 319, 335; Sen. J. 201-2.

(*v*) Can. Com. J. (1878), 164, 165, 166, 171, 182; Sen. J. 183-85, 193.

speaker of the Commons informed the members present that he had just received an intimation from his Excellency that the address would be presented in the Senate chamber. Accordingly, the Houses having adjourned during pleasure, the members of both assembled on the occasion of the reading of the address by the premier, Sir John Macdonald. His Excellency read his reply, which was duly reported to both Houses, and entered on the journals. It was also ordered in the Senate to be printed in both languages for the use of members(*w*). In 1888 the two Houses passed an address to Lord Lansdowne on his retirement from the governor-generalship of Canada to preside over the government of India, and it was presented in the Senate chambers by the two speakers—one reading it in English and the other in French. The answer was duly reported by the speakers in each House, and entered on the journals(*x*). In 1898 a joint address was presented to the Earl of Aberdeen on the occasion of the approaching termination of his official connection with Canada, in the Senate chamber as soon as Parliament had been formally prorogued(*y*).

XXIV. Presentation of Addresses.—It was formerly the practice of the Canadian Houses, separately or jointly, to wait upon the governor-general with the addresses in answer to the speech(*z*). 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

(*w*) Can. Com. J. (1883), 429, 430, 431, 436; Com. Hans. 1396; Sen. J. 288-290, 292-293.

(*x*) Sen. J. (1888), 249, 260, 272, 274; Can. Com. J. 307, 316, 387.

(*y*) Can. Com. J. (1898), 339, 381, 432; Sen. J. 306, 334; Sen. Deb., June 13.

(*z*) Upp. C. Ass. J. (1792), 6, 7; Low. Can. Ass. J. (1792), 58; Can. Ass. J. (1841), 67; *Ib.* (1859), 61, &c.

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(*a*). At the hour appointed the Houses adjourned during pleasure, and attended his Excellency, generally in the executive council chamber(*b*), but sometimes at government house(*c*). The speaker, attended by the sergeant-at-arms with the mace, and by 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(*d*). In the case of 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 gov-

(*a*) 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 sergeant-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; 1 Upp. Can. Ass. J. 6, 7; 1 Can. Ass. J. 67.

(*b*) Quebec *Mercury*, Parl. Deb. Feb. 28, 1863.

(*c*) Low. Can. J. (1792), 60; Can. Leg. Ass. J. (1841), 69.

(*d*) 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 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.

ernor-general; and the president or speaker of the legislative council would read the address to his Excellency in English and French. 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(*e*). 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(*f*).

The practice of presenting the addresses in answer to the speech by the Houses in a body continued up to 1867(*g*), when the more convenient course was adopted of presenting such addresses by members of the privy council(*h*). It had, however, for many years previous been the practice to present addresses on general subjects, through executive councillors(*i*), or the speakers of the two houses(*j*), or by committees of the same(*k*). Addresses for papers and returns were formerly taken up by a committee, one of whom would sometimes report the reply(*l*). It was soon, however, found for the convenience of the House to present such addresses by members of the executive council(*m*); and the answers would be brought down by one of the same(*n*); or be sent down by message(*o*). This prac-

(*e*) Leg. Ass. J. (1844-5, 317; Leg. Coun. J. 125.

(*f*) In conformity with the old parliamentary privilege, 2 Hatsell, 390 *n*.

(*g*) Leg. Ass. J. (1866), 16, 17.

(*h*) Can. Com. J. (1867-8), 15.

(*i*) Leg. Ass. J. (1844-5), 437.

(*j*) Leg. Ass J. (1841), 399; Leg. Coun. J., 112. See *infra* for cases of speakers still presenting formal addresses to governor-general.

(*k*) *Ib.* (1841), 630.

(*l*) *Ib.* (1841), 99, 212.

(*m*) *Ib.* (1841), 172.

(*n*) *Ib.* (1841), 191, 202.

(*o*) *Ib.* (1841), 173, 201; *Ib.* (1842), 46, 111.

tice 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(*p*). 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(*q*); and the same practice obtains in respect to messages generally(*r*). Messages are always received by the members standing and uncovered, when they are signed by his Excellency's own hand(*s*). In the Senate such messages are generally read by the clerk at the table(*t*); in the Commons by the speaker(*u*). In case they are *again* read by the clerk in the House of Commons, members need not be uncovered(*v*). It is the usage, however, in the Commons for members to remain standing and uncovered while 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 the members do not stand on such occasions—that ceremony being reserved for written messages immediately from the queen or her representative.

XXV. 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 in the course of the session. Other communications which take

(*p*) See *supra*.
(*q*) Can. Com. J. (1872), 18; *Ib.* (1877), 44; Sen. J. (1877), 50.
(*r*) Can. Com. J. (1872), 16; *Ib.* (1877), 39, 44, 324, 333.
(*s*) *Ib.* (1877), 44. See *infra*.
(*t*) Sen. J. (1867-8), 211; *Ib.* (1877, 39, 50; *Ib.* (1890) 36.
(*u*) Can. Com. J. (1877), 39.
(*v*) 2 Hatsell, 365*n*.

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(*w*), reports of royal commissions(*x*), and all despatches from the imperial government acknowledging the receipt of addresses to her Majesty and relating to other subjects(*y*), 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(*z*).

(*w*) Can. Com. J. (1878), 37.

(*x*) Ib. (1873, 2nd session), 120 (Canadian Pacific R.R.); *Ib.* (1885), 124 (Chinese immigration).

(*y*) Sen. J. (1879), 159. See despatches in reply to addresses; on the attempted assassination of the Duke of Edinburgh, Can. Com. J. (1869), 20; on the imperial Extradition Act, *Ib.* (1878), 45; on an attempt against her Majesty's life, *Ib.* (1882), 321; such messages are brought down by a privy councillor in either House. In 1891, a reply to a loyal address of the Commons to the queen, passed and forwarded in 1890, was sent by the governor-general to the premier to be communicated by him to the House; Can Com. J. (1890), 37-39; *Ib.* (1891), May 18.

(*z*) Can. Com. J. (1878), 100, 106, 150. The message was printed only in the V. and P.; both message and address appeared in full in the Senate minutes of the 22nd March, 1878. See *supra*.

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. Some time later a despatch on the subject from the secretary of state for the colonies was transmitted to the Houses by his Excellency(*a*).

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"(*c*). 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(*d*). If a member

(*a*) Com. J. (1880), 30, 35, 40, 57, 78, 375; Sen. J. 47-8. A similar case occurred in 1854-5, 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., 309, 345, 346, 353, 354, 595.

(*c*) May, 114; 37 E. Com. J. 903; 103 *Ib.*, 888.

(*d*) May, 427; 37 E. Com. J. 903; 70 *Ib.*, 70.

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(*e*).

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(*f*). It is the rule, in fact, in both Houses, to answer by addresses all special messages which refer to important public events(*g*); or to matters connected with the interests, property, or prerogatives of the Crown(*h*), or which call for special legislative action(*i*). 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 accord-

(*e*) 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 fulfilled his duty in reporting the matter to the House, and that there was no necessity for giving it further attention. Also case of Mr. Gray in 1882; 137 E. Com. J., 487, 490, 491, 504, 509. See May, 117, 118.

(*f*) Sen. J. (1867-8), 212, 214; 114 Lords' J., 78.

(*g*) 82 E. Com. J., 114; 239 E. Hans. (3) 274, 290, 870, 1038. Leg. Ass. J. (1861), 72, 84 &c. Can. Com. J. (1867-8), 224.

(*h*) 85 E. Com. J., 466; 89 *Ib.*, 578.

(*i*) 85 E. Com. J. 214; Can. Com. J. (1867-8), 189, 201; *Ib.* (1880), 40 (Irish relief).

ingly(*j*). 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(*k*).

XXVI. Address 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(*l*). At the commencement of the session of 1860 the governor-general transmitted 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 honorable members of this House as may be present on the occasion"(*m*). 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 ser-

(*j*) May, 426; 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.

(*k*) Establishment of provisional districts in the N.W.T. Can. Com. J. (1882), 414, 509.

(*l*) Leg. Ass. J. (1859), 583, 584, 587.

(*m*) Leg. Coun. J. (1860), 270, 285; Leg. Ass. J. 4, 435, 454. See *supra* as to doubtful use of mace on this occasion.

geant-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 honor 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"(*n*). The speaker of the assembly also communicated the fact that he had received the dignity of knighthood, which he was "persuaded was conferred for no service or merit of his own, but as a distinguishing mark of royal favor 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"(*o*).

XXVII. Thanks to Distinguished Persons.—Letters from distinguished individuals, in return for 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(*p*). Such thanks are voted to distinguished officers of the army and navy who have performed signal services which demand some official recognition from parliament. Such motions

(*n*) Dent's Canada since the Union, ii. c. 38.

(*o*) Leg. Coun. J. (1861), 114, 115; Leg. Ass. J. 7, 8. No such official statement was made in the legislative council by the speaker.

(*p*) 151 E. Hans. (3), 2152; 152 *Ib.* 211. Low. Can. J. (1814), 114, 186.

should be made by members of the government concurrently in the two Houses(*q*). Several cases occurred in Canada during the war of 1812-15, and the rebellion of 1837-38(*r*). In 1885 the thanks of the two Houses were unanimously given to Major-General Middleton, C.B., and to the officers and men of the militia force of Canada for their services in suppressing the rebellion in the Northwest Territories(*s*).

(*q*) 148 E. Hans. (3), 880, governor-general of India, etc.; generals of Indian army; 149 E. Hans. (3), 252, 253; Todd's P. Gov. i. 593-597, 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).

(*r*) Brigadier-General Proctor; Low. Can. J. for 1813 and 1814. —Colonel de Salaberry for bravery at the battle of Chateauguay; Low. Can. J., 1814, pp. 92, 186.—Colonel Morrison for defeat of Boyd at Chrysler'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, etc.—To Colonel Radcliffe and volunteers of Upper Canada; Leg. Ass. J. (1838) 29, 234-5.

(*s*) Can. Com. J. (1885), 666; Sen. J. 411. General (now Sir Frederick) Middleton's letter in reply was communicated to the House of Commons by Mr. Speaker; Can. Com. J. (1886) 134.

CHAPTER IX.

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 Commons, whilst the legislative council transmitted the same through a master in chancery(*a*). It was soon, however, found more convenient to send all bills to the upper house by a clerk at the table(*b*). 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(*c*); but it has been the practice since 1870 to transmit all messages through the clerks of the two Houses(*d*). The following rules(*e*) are common to both chambers:—

"One of the clerks of either House may be the bearer of messages from one House to the other."

(*a*) Low. Can. J. (1792), 42, 174; Leg. Ass. (1841) 168, R. 24; *Ib.* (1852-3) 995; Leg. Coun. J. (1841), 48, 59. The clerk and clerk's assistant of the Senate are appointed masters in chancery; Sen. J. (1867-8) 61; *Ib.* (1884), 3. Also, the law clerk; *Ib.* (1883), 15.

(*b*) Leg. Ass. J. (1857), 411, 412; *Ib.* (1860), 403, 430, &c.

(*c*) Can. Com. J. (1867-8), 109, 225.

(*d*) *Ib.* (1871), 294, 301.

(*e*) Sen. R. 89, 90; Com. R. 97.

Ch. IX. "Messages so sent are received at the bar by one of the clerks of the House to which they are sent, at any time whilst the House is sitting, or in committee, without interrupting the business then proceeding."

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(*f*).

98. "Messages from the Senate shall be received by the House as soon as announced by the sergeant-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(*g*). A message from the governor-general or the deputy-governor will, however, interrupt any proceeding, which will again be taken up at the point where it was broken off(*h*)—except, of course, in the case of a prorogation, when the message will interrupt all proceedings for that session(*i*).

Whenever either House desires the attendance of a senator or member before a select committee, a message must

(*f*) This is the old rule, but it is practically obsolete.
(*g*) 131 E. Com. J. 290; Can. Com. J. (1877, 244).
(*h*) 129 E. Com. J. 66; Can. Com. J., 1891, July 31.
(*i*) 131 E. Com. J. 424. Can. Parl. Deb. (1873), 210-11; *supra*.

be sent to that effect(*j*). Leave must be given by the House to which the member belongs, and it is optional for him to attend(*k*). In case the attendance of one of the officers or servants of either House is required, the same course will be pursued; but it is not optional for them to refuse to attend(*l*).

In 1870 a message was sent to the Senate requesting that they would give leave to their clerk to attend the committee of public accounts, and lay before that committee an account of the sums paid to each member of the Senate as indemnity and mileage(*m*). The Senate did not comply with the request, but simply communicated to the Commons a statement on the subject(*n*). In a subsequent session the Senate agreed to a resolution instructing the clerk to lay before that House at the commencement of every session, a statement of indemnity and mileage, and to deliver to the chairman of the committee of public accounts a copy of such statement, whenever an application may be made for the same(*o*). In answer to a message from the House in 1880, the Senate gave leave to their clerk to furnish details of certain expenditures of their own for the use of the same committee, adding at the same time an expression of opinion that "the critical examination of the details of such disbursements was, in the interest of the harmonious relations of the two Houses, best left to the House by whose order

(*j*) 131 E. Com. J. 87, 100, 168; Sen. R. 91; Can. Com. J. (1877), 142, 178, 234; *Ib.* (1889) 152. See chapter on select committees.

(*k*) 131 E. Com. J. 93, 100, 191; Sen. R. 91; Sen. J. (1877), 129, 203; Can. Com. J. (1877), 150, 182, 237; Sen. J. (1882), 159.

(*l*) 113 E. Com. J. 255; Sen. R. 91 (see chapter on select committees; Can. Com. J. (1870) 210; *Ib.* (1890) 104.

(*m*) Can. Com. J. (1870), 210; Sen. J. (1870), 130.

(*n*) Can. Com. J. (1870), 265; Sen. J. (1870), 149; Parl. Deb. 1184, 1214.

(*o*) Sen. J. (1872), 96; Deb. 92.

payment is made"(*p*). In the session of 1890, the House of Commons requested the attendance of one of the officers of the Senate before the committee of public accounts to give information respecting the distribution of stationery and the expenditure for contingencies in that House. The Senate replied that the matter was under the consideration of their own contingent committee and that as soon as a report was submitted by that committee it would be transmitted to the Commons. Subsequently the report was laid before the House of Commons(*q*).

II. Conferences.—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 assembly(*r*). 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(*s*). 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. It is the privilege of the Sen-

(*p*) Can. Com. J. (1880), 130, 158-9, 242; Sen. J. 112.

(*q*) Can. Com. J. (1890) 104, 136, 502; Sen. Deb. 130, 149. The report never came from the Senate until the last day of the session, when the committee on public accounts had finally reported.

(*r*) 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.

(*s*) 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.

ate to name both the time and place of meeting, whether they or the Commons first request such conference(*t*). It is an old rule that "the number of the Commons named for a conference are always double those of the Lords"(*u*); 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"(*v*). It is also an ancient rule that the conference can be asked only by that House which is at the time in the possession of a bill(*w*) or other matter(*x*). Rule 99 of the Canadian House also provides:—

"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"(*y*).

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(*z*). 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(*a*). The duty of the managers on the part of the House proposing the conference is confined to the

(*t*) As in the Lords, May, 413; 1 E. Com. J. 154; 9 *Ib.* 348.

(*u*) 1 E. Com. J. 154; Can. Leg. J. (1861), 114, 117.

(*v*) May, 413, 414; 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.

(*w*) 1 E. Com. J. 114; 13th March, 1575.

(*x*) 2 *Ib.* 581; 9 *Ib.* 555.

(*y*) Leg. Ass. J. (1860), 321; 122 E. Com. J. 438, 440.

(*z*) 4 Hatsell, 50, 51; 88 E. Com. J. 488; 89 *Ib.* 232; Leg. Ass. J. (1861), 105.

(*a*) 113 E. Com. J. 182; 150 E. Hans. (3), 1859.

delivery to the managers of 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)(*b*) first states the occasion of it in his own words(*c*), 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 the respective Houses and report. Such reports should always be made in accordance with correct parliamentary practice(*d*). The Senate has the following rule: —

92. "None are to speak at a conference with the House of Commons but those that are of the committee; and when anything from such conference is reported, the senators of the committee are to stand up."

The report of the managers for the House at whose request the conference has taken place is in substance that they have met the managers for the other House, and have delivered to them the communication with which they were charged(*e*). 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

(*b*) Parl. Reg. (53), 108.

(*c*) Speaker Onslow, 4 Hatsell, 28 *n.*

(*d*) May, 414. 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.

(*e*) 113 E. Com. J. 182.

place immediately or be postponed to a future time(*f*). The result will be communicated to the other House by a message(*g*). Sometimes a second conference will be necessary, when the first has not led to an arrangement between the Houses(*h*). 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(*i*). 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(*j*).

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 "(*k*).

(*f*) Leg. Coun. J. (1861), 92, 93, 97, 98, 104; 90 Lords' J. 171.

(*g*) 113 E. Com. J. 308.

(*h*) 91 E. Com. J. 681. On one occasion the English Houses held no less than four ordinary conferences; 92 *Ib.* 466, 512, 589, 646.

(*i*) 91 E. Com. J. 771, 783, 787.

(*j*) For full details of proceedings of conferences, see 4 Hatsell, 26; May, chap. xvii.; Cushing, s. 820 *et seq.*

(*k*) May, 479; 106 E. Com. J. 210, 217, 223, 438; 108 *Ib.* 809.

These reasons are moved immediately after the second reading of the amendment(*l*).

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(*m*). Such committees are now appointed every session with respect to the library and printing of parliament. In 1885 a joint committee was appointed to examine and report upon the consolidation of the statutes. In 1892 the whole criminal law considered and codified in the same way(*n*).

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(*o*).

(*l*) 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.

(*m*) 3 Hatsell, 38; 131 E. Com. J. 282, 289, 292, 294; 136 *Ib.* 281, 315, 318, 320; 138 *Ib.* 116, 143. See Railway Transfer and Amalgamating bills, 1873; 128 E. Com. J. 62, 72, 178, 189, 193, 304, 318; Lords' J. 62, 277, 284, 304, 311, 587, 602. Consult also Can. Com. J. (1870), 56, 57, 60, 68; *Ib.* (1880), 147, 152, 177.

(*n*) See chapter on select committees. Also Sen. J. (1885), 161, 211; Com. J. 223, 250.

(*o*) Can. Com. J. (1889), 34, 77, 107; *Ib.* (1901), 33, 37; Sen. Deb. (1897), 407, 408.

No positive rule exists as to the exact number to be appointed from each House, but it is now generally equal. In the British Parliament the two Houses appoint an equal number.

The House of Commons will not, however, consent to unite their committee with that of the Senate when the matter is one affecting the revenue or public expenditures(*p*).

In case it is necessary to amend the report of a joint committee, the proper and convenient course is to refer the matter back to the committee(*q*).

V. Interchange of Documents.—In case the Senate or Commons require a copy of a report of a select committee or other official documents that may be in possession of one House or the other, a message will be sent to that effect(*r*). 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 (*s*). It is also usual to ask that it be returned to the House to which it belongs; and this will be done by message in due time(*t*). If one House desires any return re-

(*p*) Can. Com. J. (1874), 63, 111; Parl. Deb. (1874), ap. 24. In this case the question to be considered was the passage of a prohibitory liquor law; committees were formed in each House, but the Commons, after discussion, thought it unadvisable to unite their committee with that of the Senate, as the result might 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.

(*q*) Sen. Hans. (1880), 480; Sen. J. 238, 255; Com. J. 349.

(*r*) 131 E. Com. J. 232, 339, 389. Can. Com. J. (1876), 132; *Ib.* (1877), 274; *Ib.* (1878), 126; Sen. J. (1878), 133, 139.

(*s*) 131 E. Com. J. 339. Also *Ib.* 298; Sen. J. (1880-1), 97, 105; Com. J. 124.

(*t*) Can. Com. J. (1878), 147, 294; Sen. J. 140.

lating to the business or proceedings of the other, neither courtesy nor custom allows such a return to be ordered ; but an arrangement is generally made by which the return is moved for in the other House, and after it has been presented a message is sent that it may be communicated(*u*), or a message is sent requesting that a return on certain matters may be communicated; and such return is prepared and communicated accordingly(*v*).

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, 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

(*u*) May, 509; 111 E. Com. J. 120.

(*v*) May, 509; 123 E. Com. J. 212; 127 *Ib.* 141.

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(*w*).

In the session of 1851 the Supply Bill containing 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 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"(*x*).

In the session of 1856, the Supply Bill contained a provision for erecting public buildings at Quebec, as the seat

(*w*) 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.

(*x*) Leg. Council J. (1851), 215. The speaker himself directed the attention of the council to the subject, but he and others did not claim the right of amendment, but only of entire rejection—an extreme course which they did not think it expedient to take for the reasons given in the declaration. Montreal *Gazette*, Aug. 28, 1851.

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(*y*).

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(*z*).

In the third session of the parliament of the Dominion strong objections were taken to the bill imposing new customs and excise duties, and an amendment was proposed to

(*y*) Leg. Ass. J. (1856), 738, 746; Leg. Coun. J. 414, 416; Parl. Deb. 249, 260, 262. See also *infra*.

(*z*) Leg. Coun. J. and Parl. Deb. 29th April, 1859.

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(*a*).

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 majority 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"(*b*).

Since 1870 no attempt has been made in the Senate to

(*a*) Parl. Deb. (1870), 1437-1487.

(*b*) Todd, Parl. Govt. in British Colonies; Quebec Leg. Coun. J. (1879), 186-90, 220-1.

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(*c*). Without abandoning their abstract claim to reject a money or tax bill when they feel they are warranted by the public necessities in resorting to so extreme 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 up 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(*d*).

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(*e*). 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(*f*). But the committee should not

(*c*) 3 Hatsell, 147-155; Todd, Parl. Govt. in England, i. 808.

(*d*) See remarks of Lord Palmerston on paper duties repeal bill, 159 E. Hans. (3), 1389. Also Mr. Collier, 1413; Lord Fermoy, 1453.

(*e*) Sen. Deb. (1879), 816-818.

(*f*) Todd, i. 697; 129 E. Hans (3), 1097; 164 *Ib.* 394, 401; Sen. J. (1878), 59, 62.

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(*g*).

The English authorities lay it down distinctly : " The Lords express their opinion upon the public expenditure, the method of taxation and of financial administration, both in debate and by resolution, and they investigate these matters by their select committees. Nor do the Commons, as formerly, attempt to exclude the Lords from inquiries of the matter by not transmitting to them reports and papers relating to taxation, or by declining to permit the attendance of members to give evidence on these subjects before a select committee of the Lords"(*h*).

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 de-

(*g*) The Gatineau booms and piers committee in 1875 recommended a payment of $1,000 to one Palen; the report was amended, so as to recommend the matter simply to the favourable consideration of the government; Sen. J. (1875), 218, 273; Deb. 718-722. See also Beveridge & Tibbitts' claim; Hans. (1880-81), 688. The committee here simply and properly stated the conclusion at which they had arrived after investigation of the facts.

(*h*) May, 541; Todd, i. 696. In 1898 the Senate appointed a committee to inquire into the expenditure of subsidies granted to the Drummond Co. R.R. Co. In this case the Commons had also a select committee investigating matters relating to the same subject. The Senate justified its action on the ground that it had rejected a bill on the subject during the previous session and it was expedient to shew that the Senate had reason for its action on that occasion. Sen. Deb. (1898).

manded(*i*). In 1874 the Senate threw out a bill respecting Tuckersmith, altering the electoral divisions of a county; in 1875, bills respecting the Esquimalt & Nanaimo railway, and county court judges in Nova Scotia; in 1877, a bill respecting the auditing of public accounts; in 1878, a bill creating the office of attorney-general; in 1879, a bill respecting two additional judges in British Columbia. In all 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 unifrom practice of parliament that contracts into which the executive is authorized to enter should be made subject to the approval of the upper chamber, etc." The Senate submitted in their answer several precedents justifying, in their opinion, their action, and at the same time urged that "without the amendment the bill would provide for the disposal of public property for a term of years without obtaining the sanction of both Houses to the terms of the transfer." It was also urged that the practice referred to in the Commons message "never extended beyond contracts for the completion of public works, for which money voted by the Commons is in the course of being expended, other contracts having been constantly submitted for the approval 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

(*i*) Parl. Deb., Ottawa *Times* (1867), p. 255.

taken on the grounds of public policy and constitutional right(*j*). 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 "(*k*). In 1889, the Senate postponed for six months the second reading of a government bill to provide for the building and working of a railway from Harvey to Salisbury or Moncton, in New Brunswick(*l*).

In 1897 the Senate rejected a government bill "to confirm certain agreements entered into by her Majesty with the Grand Trunk Railway company of Canada and the Drummond County Railway company for the purpose of securing the extension of the Intercolonial Railway(*m*). In 1899, however, the same House agreed to bills having the same object in view on the ground that the conditions of the arrangement were more favourable to the Dominion(*n*). In 1898 the Senate refused "to confirm and ratify an agreement between her Majesty and William Mackenzie and Donald D. Mann, and to incorporate the Canadian

(*j*) Can. Com. J. (1878), 263, 284; Sen. J. 275-6; Can. Com. Hans. 2454-2459, 2549, 2553-58. 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.

(*k*) 42 Vict., c. 13, s. 1. This provision is in accordance with English practice; 25 and 26 Vict., c. 78, s. 2, Imp. Stat.; Todd, i. 493. One example is given in the same work of a contract being laid before both Houses of the Imperial Parliament; 28 and 29 Vict., c. 51 (Dockyards at Portsmouth and Chatham).

(*l*) Sen. Deb. (1889), 690-715. This bill had passed the Commons.

(*m*) Sen. J. (1897), 217, 218; Deb. June 23rd.

(*n*) Sen. Deb. (1899).

Yukon Railway Company(*o*). In 1899 the upper House negatived an equally important measure, "An Act respecting representation in the House of Commons," on the ground that it was inexpedient to proceed with the bill until after the taking of the next decennial census in 1901, when the representation of the provinces in the House of Commons would be readjusted in accordance(*p*) with section 51 of the B.N.A. Act of 1867. The same course was followed in 1900 when the same bill was again sent up from the House of Commons(*q*). In 1900 government bills respecting judges of provincial courts(*r*), and postage on newspapers(*s*) passing from one province into another also failed to pass in the Senate.

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 governors to enforce the observance of the strict usage by refusing their assent to any bill in which it might be infringed(*t*).

(*o*) *Ib.* March 22-30, 1898.

(*p*) *Ib.* (1899), 784, 807, 833, 897.

(*q*) *Ib.* (1900), March 21-28.

(*r*) Sen. J. (1900), 361, 369.

(*s*) Sen. Deb. 1099-1113.

(*t*) 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

No modern example can be found in the English or Canadian journals of a practice now admitted to be unconstitutional in principle and mischievous in its results. The Senate still retain among their standing orders the following rule, which is almost identical with that of the Lords(*u*):

"47. 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 many measures have been in past years brought from the Commons at a very late period, when it was clearly impossible to give them that full and patient consideration to which legislation should be submitted 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. The question of initiating more important legislation in the upper chamber has been constantly discussed in that body(*v*), and committees have even been formed to consider the subject and provide a means of meeting the difficulty(*x*). An effort has, however, been

revenues. Christie iii., 455; L.C. Jour. 26th Nov., 1832. See also on this point 3 Hatsell, 218-225; 16 Lords' J. 369; 17 *Ib.* 185; 13 E. Com. J. 320; 159 E. Hans. (3), 1550.

(*u*) 17 Lords' J. 185. See chapter on Supply, s. 11, Appropriation Bill.

(*v*) Sen. Deb. (1872), 53; *Ib.* (1873), 74; *Ib.* (1877), 479.

made in some years to increase the amount of legislation initiated in the Senate, notably in the sessions of 1880-81 and 1882(*y*). In 1890, out of the total number of thirty-three government bills which became law ten were initiated in the Senate. Since that year, however, the number presented first in that house has decreased, the number in 1901 being only five out of thirty-eight government measures which passed the two houses. The number of private bills which are presented in the two houses shows the same disparity, the Senate having in 1901, initiated only five out of seventy-six bills which received the royal assent. Of these five three were divorce bills, a class of bills which by usage are always initiated in the Senate.

(*x*) Sen. J. (1867-8), 194, 260 *Ib.* (1874), 109, 118; Deb. (1874), 196. The committee of 1867-8, of which Hon. 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 "shall adequately fill its place in the constitution." Jour. 261.

(*y*) Sen. Hans. (1880-81), 702-3; *Ib.* (1882), 16, 29.

CHAPTER X.

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 this he must give due notice, unless it be one of those questions of privilege, or urgency which may be immediately considered. Rule 13 of the Senate is as follows :—

"One intermediate day's notice, in writing, must be given of all notices deemed special "(*a*).

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(*b*).

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 reso-

(*a*) See ruling on this point of Mr. Sp. Allan, Sen. Deb. (1889), 37, 38.

(*b*) 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.

lutions, but objection was at once taken on the ground that the matter had been already disposed of otherwise. The Senate finally resolved that "the notice should not be received by the clerk," inasmuch as the subject-matter thereof "had already been considered during the present session and referred to the committee on contingent accounts"(*c*).

It is not an unusual practice in the House of Lords—and the same has sometimes been 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(*d*), 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(*e*). No notice need be given in the Senate of public bills(*f*). Neither has that body any special rule, like that

(*c*) Sen. J. (1880), 201-2; Hans. 370-5. See somewhat analogous English case (cited by Mr. Dickey in debate), 7th June, 1858, when Lord Kingston gave notice of certain questions. The lords resolved that the questions had been sufficiently answered, and would not permit the renewal of the subject. Also Lords' Minutes, 191; May, 286; Can. Com. J. (1869), vol. 2, pp. 217, 218, 219. In this case Mr. Speaker Cockburn ruled a motion, made by Hon. E. B. Wood, seconded by Hon. T. Anglin, out of order on the ground that the House, by rejecting a previous motion of Mr. Blake's, had already decided upon the question. Mr. Blake's motion had been to the same effect as the subsequent one by Mr. Wood. See also Can. Com. J. s. 4 (1872), pp. 264, 265.

(*d*) 141 E. Hans. (3), 1383; 145 *Ib.* 1869; 149 *Ib.* 1193, 1700; 157 *Ib.* 930; 210 *Ib.* 378. Can. Parl. Deb. (1870), 766.

(*e*) 164 E. Hans. (3), 175. In fact, the necessity of giving notice precludes any debate; such explanations as are made are given only with the indulgence of the House.

(*f*) R. 39; chapter on public bills. Private bills are brought in on petition.

of the House of Commons, requiring a seconder; but it is the practice, nevertheless, to have a motion duly seconded(*g*).

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(*h*), 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"(*i*).

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 public 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

(*g*) Sen. J. (1878), 190, 191, 193; *Ib.* (1883), 227, etc. 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.

(*h*) 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 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.

(*i*) A notice of motion may be handed in on first day of a new parliament as soon as the speaker is elected. See V. and P., 1867-8, 1887 and 1891.

now they are placed on the order paper. If Saturday is a sitting day, then the notices given on that day will appear on the order paper on the following Monday.

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(*j*). 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 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"(*k*).

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(*l*). When the House is in this way formally seized of the question, it may be debated, amended(*m*), superseded(*n*), resolved in the affirmative(*o*), or passed in the negative(*p*), as the House

(*j*) 222 E. Hans. (3), 421; 226 *Ib.* 386 (no seconder, and motion not put). A speaker in the Canadian Commons even thought on one occasion that the motion for the adjournment of the House should properly be in writing, but the practice has invariably been not to enforce this rule in respect to purely formal motions.

(*k*) In the British House of Commons Orders of the Day and motions in Com. do not require a seconder, May 263.

(*l*) May, 266.

(*m*) Can. Com. J. (1876), 69.

(*n*) Can. Com. J. (1870), 237; Sen. J. (1876), 132; 121 E. Com. J., 78.

(*o*) Can. Com. J. (1877), 60, 84; 129 E. Com. J., 114.

(*p*) Can. Com. J. (1877), 132; 129 E. Com. J., 112.

may decide. If a motion be out of order, the speaker will call attention to the irregularity, and refuse to put it to the House under the thirty-seventh rule.

"Whenever the speaker is of opinion that a motion offered to the House is contrary to the rules and privileges of parliament, he shall apprise the House thereof immediately, before putting the question thereon, and quote the rule or authority applicable to the case."

Consequently, if, on reading the motion, he detects an irregularity, he will at once apprise the House of the fact without waiting to have a point of order raised(*q*).

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(*r*).

Motions are frequently proposed and then withdrawn, but this can be done, under the thirty-first rule of the Commons, only "by leave of the House, such leave being granted without any negative voice." The fifteenth 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(*s*). If an amendment has been pro-

(*q*) 76 E. Hans. (3), 1021; 112 E. Com. J., 157; 115 *Ib.* 494.

(*r*) Parl. Reg. (62), 200; 224 E. Hans. (3), 1236; Can. Hans. (1879) pp. 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 found 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, 116.

(*s*) Can. Com. J. (1877), 36; 129 E. Com. J. 215; 186 E. Hans. (3), 887; Sen. J. (1867-8), 277; *Ib.* (1882), 66.

posed to the motion, it must be first withdrawn before leave can be given to retire the main question(*t*). 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(*u*).

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 is now obviated by the facilities offered for moving amendments. But, in any case, it is always open to a member to move formally that a question be divided(*v*).

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(*w*). 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

(*t*) Can. Com. J. (1876), 227; 129 E. Com. J. 215; 223 E. Hans. (3), 1149; 227 *Ib.* 787; 230 *Ib.* 1026; 250 *Ib.* 1540-41. Sen. Deb. (1889), 631. Or if a motion for adjournment be made, it must be first withdrawn ; Can. Com. J. (1886), 78.

(*u*) 186 E. Hans. (3), 887; May, 299. No member may amend his own motion, but with leave of the House he may withdraw it and substitute another. Mr. Sp. Brand, 212 E. Hans. (3), 192-218; 235 *Ib.* 1625; Can. Hans. (1887), 137.

(*v*) 2 Hatsell, 118-120.

(*w*) 253 E. Hans. (3), 1763-4.

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 conventional form of procedure, since it gives the House an opportunity of deciding on each distinct proposition(*x*).

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(*y*).

In the English House 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(*z*). But this rule is not applied to resolutions to be proposed in committee of the whole(*a*). 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 the day before it is to be considered in committee; and this is now invariably done in the Canadian Commons(*b*).

(*x*) Can. Com. J. (1883), 125-8, and Votes, 142. For example of Canadian practice respecting committees, see Jour. 1879, pp. 248-9. For English practice, 137 E. Com. J. 65-6.

(*y*) Can. Com. J. (1873), 326; 78 E. Hans. (3), 717; 212 *Ib.* 218, 219; 235 *Ib.* 904; Can. Hans. (1876), 535; *Ib.* (1879), 1215.

(*z*) 148 E. Hans. (3), 865; 205 *Ib.* 774; 207 *Ib.* 143; May, 286 (9th ed.).

(*a*) May, 286 (9th ed.). Sardinian Loan, E. Com. J., June 12, 1856.

(*b*) Res. respecting inland revenue, adulteration, gas and gas meters, V. and P. of Feb. 15 (p. 43), and 23 Feb. (pp. 76-7); 20 March, 1877 (pp. 172-3); Can. Hans. (1877), 248, 853-55. Here Mr. Laflamme (minister of inland revenue) gave, in the first instance, only notice of the substance of the proposed resolutions; but

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(*c*). A member who has given notice of a series of resolutions may withdraw some of them and go on with the others(*d*). 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(*e*). Merely formal motions for the adoption of reports or for certain papers to which there is no objection, are frequently permitted to be made(*f*), 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. Schultz, in whose name it appeared on the notice paper(*g*). It is quite customary for members to send in notices in the names of absent members who have requested them to do so(*h*). 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

subsequently he punished them in detail in the votes before he moved them in committee of the whole.

(*c*) 32 Parl. Reg., 43.

(*d*) Mr. Gladstone's motion, 234 E. Hans. (3), 385.

(*e*) 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.

(*f*) For instance, March 4th, 1878; Sir J. A. Macdonald, in absence of Dr. Tupper; Mr. Taschereau, of Mr. Frechette. Can. Hansard, 721, 738. Very commonly done in 1879 and subsequent years.

(*g*) Author's Notes. Also Northern R. R. Can. Hans. (1877), 196.

(*h*) 2 E. Hans. (1), 439.

permission of another member(*i*). 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(*j*). 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(*k*). 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(*l*).

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 be taken out of its appointed order only 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

(*i*) Can. Sp. D. 109. The Insolvency Bill, 1876, introduced by Mr. Bourassa, disappeared from the order paper (the House refusing to read it *then* a second time), but it was revived by Mr. Caron; Journ., 184, 245. It is usual to allow a member to bring in a bill for another when there is no opposition, but *not* when opposition is expected; Mr. Sp. Brand, 209 E. Hans. (3), 330.

(*j*) Mr. Langevin's motions, March 5, 1877. Author's Notes.

(*k*) 187 E. Hans. (3), 208; 216 *Ib.* 268, 276-7; 240 *Ib.* 1675; 247 *Ib.* 1403.

(*l*) 159 E. Hans. (3), 1310. In 1880 Mr. Schultz moved that the House go into committee of the whole on the Northwest Colonization Land Bill, but the debate was adjourned, and when the question was again taken up, Mr. Schultz was absent. The motion for committee was then negatived and the bill withdrawn. Can. Com. J., 249, 266.

relating to the business can be made without notice. If it is the pleasure of the House that the motion 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'' (*m*). 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 proceedings, it was made with the general assent of the House (*n*). The 24th rule provides for all items on the order paper being taken up in their regular order (*o*).

Many motions known as ''unopposed'' (*p*) 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, to leave of absence for members, to the addition of members to committees and to other matters connected with the business of the House (*q*). But, as already shown, if any member object to such motions being made without notice, they cannot be pressed (*r*).

(*m*) 226 E. Hans. (3), 94, 127.

(*n*) Can. Hans. (1879), 650. On government days, all government notices appear and are first taken up on the order paper.

(*o*) In the Canadian Commons, in more than one case, it has been attempted to take a notice of motion out of its place, and give it priority, which, of course, could not be allowed. See ruling in Can. Hans., 24th March, 1885, when it was proposed to give precedence to a bill without notice. Also Can. Com. J. (1889), 214.

(*p*) Any business may be considered "unopposed" when no notice of opposition is given.—Mr. Sp. Brand.

(*q*) Can. Com. J. (1867-8), 247, 422, etc.; *Ib.* (1873), 370.

(*r*) May, 233, 9th ed., 288; 220 E. Hans. (3), 674; Can. Hans. (1878), 529; Can. Com. J. (1884), 244. Sen. Deb. (1889), 37, 38.

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(*s*).

IV. Questions of Privilege.—Questions of privilege may always be considered in either House(*t*) 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 the practice in the House of Commons to bring up a question of privilege after prayers, and before the House has taken up the orders of the day. Only in very aggravated cases, requiring the immediate interposition of the House, will any business be suddenly interrupted. If a member be insulted or attacked, or some disorder suddenly arises, a debate may be interrupted(*u*); 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 privileges of the House, they have always instantly heard him"(*v*).

In the Canadian House of Commons questions of privilege take a very wide range, but it may be stated in general terms that they refer to all matters affecting the rights and immunities of the House collectively, or the position and conduct of members in their respresentative character. In this category may be placed: motions touching the seat or

(*s*) 240 E. Hans. (3), 1076; 252 *Ib.* 422; 261 *Ib.* 1335.

(*t*) Sen. Deb. (1876), 325.

(*u*) 65 E. Com. J. 134; 79 *Ib.* 483.

(*v*) Mr. Williams Wynn, Feb. 11, 1836; Mirror of P., vol. 31, p. 97; May, 258.

election of members(*w*); reflections or libels in books and newspapers on the House or members thereof(*x*), or any of its committees(*y*); forgery of signatures to petitions(*z*); motions for new writs(*a*); questions affecting the internal economy or proceedings of the House(*b*); applications for the discharge of persons in the custody of the sergeant-at-arms(*c*); interference of officials in elections(*d*). *Prima facie*, any question affecting a member is considered a case of privilege, but in order to entitle a member to bring it up on that ground he must show that it affects him since he became a member of the House, and consequently in his character of a member(*e*). In the Canadian Commons members have been in the habit of correcting reports of

(*w*) 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*, 173. Carlow election, 91 E. Com. J. 24; Stamford election, E. Com. J. 1848, May 259; 98 E. Hans. (3), 931; 97 E. Com. J. 263; 245 E. Hans. (3), 518; case of Sir C. Tupper, Can. Hans. (1884), 542, *supra*, 237. In 1887 the Queen's Co. (N.B.) election case was taken up as a question of privilege on two successive days, May 31st and June 1st.

(*x*) Mr. Plimsoll, E. Com. J., 20th Feb., 1873. *Morning Freeman and Courrier d'Outaouais*, Can. Com. J. (1873), 133, 167 (*supra*, 153); Mr. Piché (clerk asst.), Feb. 19th, 1878, Can. Hans. See *supra*, chapter ii., on privileges.

(*y*) Mr. R. S. France, 129 E. Com. J. 182.

(*z*) E. Com. J., 1865, May 8, Azeem Jah.; 178 E. Hans. (3), 1604; 238 *Ib.* 1737-41.

(*a*) 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; 245 E. Hans. (3), 576-8.

(*b*) Translation of official debates; Can. Hans. (1876), 288. Can. Hansard committee, February 11th, 1878, p. 16.

(*c*) Washington Wilks, 150 E. Hans. (3), 1314, 1404.

(*d*) Welland and Chicoutimi elections, Can. Com. J. (1873), 190, 269.

(*e*) 164 E. Hans. (3), 1286.

their speeches, or inaccurate statements in the press on the ground of privilege(*f*); but these are personal explanations, not matters of privilege, and are allowed by the indulgence of 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(*g*). 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(*h*). And if a member brings forward a matter of privilege of this character, the motion with which he concludes should be relevant thereto(*i*).

It is the practice to give questions of privilege the precedence over other matters when they appear among the notices of motion. For instance, a notice for the expulsion of Louis Riel, which was low down among the notices, was given priority 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(*j*). In 1877 a motion for a new writ for Lincoln, in place of Mr. Norris, who had en-

(*f*) Can. Hans. (1878), 1867.

(*g*) 150 E. Hans. (3), 1022, 1066, etc.; 219 *Ib.* (3), 394-6; 239 *Ib.* 536; 261 *Ib.* 1667-70. See chapter vi., s. 15, on privileges, where a number of cases in point are given in full.

(*h*) Mr. Bailie Cochran, 184 E. Hans. (3), 1667.

(*i*) 219 E. Hans. (3), 396. Blackmore's Sp. Dec. (1882), 168.

(*j*) Can. Com. J. and Votes, 1874, April 15 and 16.

tered 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(*k*). Sir Erskine May has this observation on the subject: "It has been said that a question of privilege is properly one not admitting of notice; but where the circumstances have been such as to enable the member to give notice, and the matter was, nevertheless, *bona fide* a question of privilege, precedence has still been given to it"(*l*).

The precedents go to show that the Canadian House of Commons, in its desire to deal promptly with all questions affecting its members, has generally waived the strict rules which govern matters of privilege, properly speaking, and given every possible facility for inquiry thereon. When a member proposes to make a motion touching another member, it is frequently found convenient that he should state his intentions in his place, and then give notice that he will move it when motions are called in due order on a subsequent day(*m*).

When a debate on a question of privilege has been adjourned until a future day, priority will still be given to it.

(*k*) Can. Com. J. (1877), 264. On another occasion the speaker decided that a motion for the adoption of the report of a committee on printing and reporting partook of the character of privilege, and might therefore take precedence over the other notices; Can. Hans. (1876), 343-4. It was rather a question of procedure.

(*l*) May, 259. Expulsion of James Sadleir, 143 E. Hans. (3), 1386; 144 *Ib.* 702. Case of Mr. Bradlaugh, 261 *Ib.* 218, 282, 431. See also cases of Mr. Bowell and Mr. White, April 5, 1886, given precedence over motions on paper by general consent. Also of Mr. Cameron, of Victoria, 28th May, 1886.

(*m*) Queen's Co. (N.B.) election case, April 26-28, 1887; V. & P., 98, 110. In Mr. Rykert's case, 1890, rules respecting notice were not pressed, but every facility given to enquiry and explanations.

We have seen that this was done in the case of Louis Reil, mentioned in a previous page, and there are numerous precedents in the English journals illustrating the same point (*n*). 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(*o*). But the House will refuse any priority over other motions when the question is not *bona fide* one of privilege, or it is not of an urgent character(*p*). 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"(*q*).

(*n*) 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.

(*o*) Can. Com. J. (1883), 68, 101, 107, 257. See remarks of Mr. Speaker Kirkpatrick as to precedence of such a question, Hans. 102. In case it is proposed to take the debate up on a particular day, it should be so fixed in adjourning the debate. See Mr. Plimsoll's case, 17th Feb., 1880, 135 E. Com. J. Also Queen's Co., N.B., case, 1887.

(*p*) 146 E. Hans. (3), 769; 159 *Ib.* 2035.

(*q*) 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.

V. Motions of Want of Confidence.—When a motion of a want of confidence in the government of the day is under consideration, 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 motion 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

(1882), 165-6. See a case where it was decided that a motion with respect to the arrest of a member who has been sometime in prison could not be treated as a matter of privilege since urgency could not apply; 261 E. Hans. (3), 692-94. If a member proposes to challenge the speaker's action with respect to a proceeding of the House he must do so by notice, as the matter is one of order and not of privilege. 258 E. Hans. (3), 7-14; 259 *Ib.* 657-8; 263 *Ib.* 45-9. In the Senate, in 1889, a member has not been allowed to make a statement bringing charges against the government as a question of privilege. See decision of Mr. Speaker Allan, Sen. Deb. 580, 597-598. See also May, 259-260.

reference to the English debates that motions of want of confidence could proceed only on days devoted to private business, with the consent of all members interested(*r*). In a subsequent session the same question arose, and the speaker, after careful deliberation, came to the same conclusion as on the previous occasion(*s*). A case in point occurred in England 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 motion 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(*t*).

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,

(*r*) Can. Hans. 1876, March 10th and 13th.

(*s*) 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; 946. But on reconsideration, Mr. Speaker Anglin found that he had been led into an error. "Because a motion has been treated as of privilege, that right cannot be claimed for subsequent motions bearing on the same subject." Nor should the claim for precedence be extended to any motion which does not strictly relate to an urgent matter of privilege, properly so called. May, 261-262.

(*t*) 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. Todd ii., 399.

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 the House of Commons, of putting questions to the ministers of the Crown, concerning any measure pending in parliament, or other public matter, and of receiving the answers and 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(*u*), and a debate often takes place on a mere question or inquiry, of which, however, notice must always be given when it is of a *special* character (*v*). 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(*w*) which is essentially the same as in

(*u*) Parl. Deb. (1870), 883, 912, 1090; Sen. Deb. (1871), 51-66; *Ib.* (1872), 62, 188; *Ib.* (1874), 95-99 ; *Ib.* (1875), 112-116; *Ib.* (1879), 51-52; *Ib.* (1880), 107-112; *Ib.* 350-352; *Ib.* (1882), 50, 295; *Ib.* (1883), 200-4; *Ib.* (1884), 163-167; 280-290.

(*v*) R. 14.

(*w*) 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. In 1890, a member addressed the House for several days on a mere inquiry; the debate went over from day to day. Such a proceeding is without precedent in the history of the Lords, and is peculiar to the Senate. The debate was actually adjourned on each day, but no entry appears in the journals, as there was no motion strictly before the House. See Sen. Deb. and Journals of February 10th, 13th and 24th. On an inquiry, however, on

the Lords' House(*x*). 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(*y*). 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(*z*). This practice of the House of Lords has been followed in the Canadian Senate since 1877(*a*).

one occasion a member has not been allowed a reply. *Ib.* (1884), 649. An inquiry is not a substantive motion. *Ib.* (1885), 44. Mr. Miller, formerly speaker, in 1888 expressed himself strongly as to permitting debate on a mere inquiry. Deb. 76, 77. But, as these notes show, the Senate has never laid down any distinct rules to limit debate.

(*x*) 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.

(*y*) Sen. Hans. (1883), 240-1, 315.

(*z*) 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; *Ib.* (1884), 82-92.

(*a*) Senator Macpherson (subsequently speaker) commenced the practice. Sen. Deb. (1877), 313, 375; *Ib.* (1879), 171-186. 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, as in those of the Senate, of a debate on such an inquiry since 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; *Ib.* (1878), 93, 95, 99, 193; *Ib.* (1883), 78, 137,

In the House of Commons, not only is a notice necessary in the case of all questions under rule 31, 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 order of the speaker"(*b*). 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(*c*). It is always within the

256; *Ib.* (1890), 100, etc. 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.

(*b*) 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.

(*c*) 240 E. Hans. (3), 646. If it is not possible to communicate with the member, then it is for the officers of the House to make the question conform as nearly as possible to the rules of the House. 206 E. Hans. (3), 468. For instance, a question in any way casting reflections upon members is out of order, and would be revised; 262 E. Hans. (3), 18.

right of a member to call attention to the matter as one of privilege, and to challenge the action of the speaker(*d*). If an irregularity should escape the attention of the clerks at the table, the speaker will point it out before the member stands up; and he is then generally permitted to put the question when he has struck out the objectionable words(*e*). A question has been refused a reply because it referred to a matter of opinion(*f*). 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(*g*). It should not be ironical or convey an imputation(*h*). It has, however, been decided in numerous instances in the English Commons that a member may make any explanation which is necessary for a clear understanding of his question, but he may not enter upon any general discussion(*i*). 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(*j*). 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 find it necessary to extend their remarks with the view of clearly explaining the matter in question(*k*). When the answer to a question has been

(*d*) 240 E. Hans. (3), 643.

(*e*) 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.

(*f*) 208 E. Hans. (3), 786.

(*g*) Todd ii. 424.

(*h*) May, 238.

(*i*) 224 E. Hans. (3), 473, 1467, 1715; 240 *Ib.* 1617.

(*j*) 240 E. Hans. (3), 646.

(*k*) 161 E. Hans. (3), 497; 215 *Ib.* 644.

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(*l*). No member may put a question to another member unless it refers to some bill or motion before the House(*m*). Nor are questions usually put on matters which are at the time the subject of proceedings in the courts(*n*), or which involve a question of law(*o*). 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(*p*). A member is guilty of an irregularity who puts a question which he has been informed by the proper authority is irregular(*q*). A series of questions has not been answered because it embodied matters which should be formally moved for by order or address(*r*).

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

(*l*) 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.

(*m*) 192 *Ib.* (3), 717; 235 *Ib.* 684; Can. Com. R. 29; Can. Hans. (1886), 1379, 1380; May, 238.

(*n*) 246 E. Hans. (3), 686; 257 *Ib.* 448-9.

(*o*) Can. Hans. (1885), 1306. *Ib.* (1888), 494, 495. Any question asking a minister for an expression of opinion is not permissible; 243 E. Hans. (3), 198; 274 *Ib.* 430.

(*p*) 210 *Ib.* 35-9; Blackmore's Sp. D. (1882), 129-30.

(*q*) *Ib.* (1883), 44; 257 E. Hans. (3), 448-9; 265 *Ib.* 879-80.

(*r*) 211 E. Hans. (3), 605, 606; 209 *Ib.* 462-6; Can. Hans. (1885), 568. See remarks of Lord J. Russell, 133 E. Hans. (3), 869.

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(*s*). 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.

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(*t*). By the fourteenth 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(*u*). A similar

(*s*) May, 276; Cushing, p. 517. This rule does not apply to amendments to prevent bills in committee of the whole or on third readings which in the House of Commons are governed by rule 67.

(*t*) Cushing, p. 509.

(*u*) Sen. J. (1867-8), 280; Deb. (1878), 675.

rule was adopted by the legislative assembly of Canada; 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(*v*), but that form is obviously inconvenient, and not in conformity with the correct usage of either the Canadian or the English parliament.

When it is proposed to leave out all the words of the main motion and to substitute others, the amendment should commence—"That all the words after 'that' to the end of the question be left out, in order to insert the following instead thereof," etc.(*w*). All amendments to insert or add words should commence: Mr.—seconded by Mr.—moves in amendment, That, etc.(*x*).

(*v*) Can. Com. J. (1877), 214.

(*w*) *Ib.* (1867-8), 248; *Ib.* (1877), 103-5; *Ib.* (1878), 71.

(*x*) *Ib.* (1867-8), 107; *Ib.* (1876), 69; *Ib.* (1877), 103, 105. Sen. J. (1878), 197, etc. 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 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, 277. In an extremely useful little work, "The Chairman's Handbook," by Mr. Palgrave, the present clerk 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 proposi-

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.—

tions 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 shall 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 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 essential, 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 the majority of Colonial Legislatures, by the United States Congress, and by European Parliaments, as far as the writer can gather from the books at hand.

'That, etc.'" Then he will proceed to give the amendment: "To this Mr. C. moves in amendment, seconded by Mr. D. —That, etc." Under Canadian practice the speaker will put the amendment directly in the first place to the House: —"Is it the pleasure of the House to adopt the amendment?" If the amendment be negatived, the speaker will again propose the main question, and a debate may ensue thereon, or another amendment may then be submitted(*y*). 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(*z*). But an amendment once negatived by the House, cannot be proposed a second time(*a*). And it is distinctly laid down in the highest English authority that "when the House have agreed that certain words shall stand part of the question, it is irregular to propose any amendment to those words, as the decision of the House has already been pronounced in their favour, but this rule would not exclude an addition to the 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"(*b*).

When an amendment has been proposed, it is competent

(*y*) Can. Com. J. (1875), 217, 218; *Ib.* (1877), 225; Can. Hans. (1879), 1376 (debate on main motion).

(*z*) Can. Com. J. (1876), 69.

(*a*) May, 279.

(*b*) May, 280.

for any member to move an amendment to the same(*c*). 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(*d*). 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(*e*) (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

(*c*) Can. Com. J. (1877), 105, 111; *Ib.* (1878), 50; Sen. J. (1876), 132.

(*d*) May, 282.

(*e*) Can. Com. J. (1871), 74, 75; May, 278.

during the present session of parliament to make any alteration in the existing duties on coal, coke, wheat flour, salt, peas, beans, barley, rye, oats, Indian corn, buckwheat." Mr. Holton at once objected to this amendment on the ground that it proposed to strike out certain words which the House 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 is clearly out of order"(*f*).

Amendments may, however, be proposed to add words to the main motion, or amendment, as amended(*g*).

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"(*h*).

(*f*) Can. Com. J. (1871), 131-3. A similar decision was given by Mr. Speaker Anglin, *Ib.* (1875), 200.

(*g*) *Ib.* (1871), 133; *Ib.* (1873), 393.

(*h*) May, 278; 183 E. Hans. (3), 1918; 186 *Ib.* 1285; 240 *Ib.* 1602.

Only two amendments can be proposed at the same time to a question. Some limit is necessary, and the usage has grown into law, that an amendment to an amendment is allowable, but that no motion to amend further can be entertained until one of the two amendments is disposed of. There is no limit, however, to the number of amendments to a question provided they come within these and other rules stated above(*i*). No decision appears in 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(*j*). This rule is observed especially in the case of bills in a committee of the whole, where each section is considered a distinct proposition, to be amended line by line, if necessary; and consequently if the committee have amended the latter part of the clause, they cannot amend the first part of the same(*k*). For this reason, the resolution for the address at the beginning of the session was 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(*l*).

Canadian speakers have frequently decided that amendments must be relevant to a motion or question(*m*). The

(*i*) It is not regular, however, to move as an amendment to a question a motion of which notice has been given, and when it appears on the notice paper in a particular place; Can. Com. J. (1889), 214.

(*j*) 2 Hatsell, 123; 102 E. Hans. (3), 117.

(*k*) 46 E. Com. J. 175. See chapter xviii., s. 12.

(*l*) *Supra*, 282.

(*m*) 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. Also Can. Hans. (1889), 268.

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 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(*n*). Sir Erskine May thus stated the former usage in his edition of 1879: "There is no rule which requires an amendment to be made relevant to the question to which it is proposed to be made, except in the case of an order of the day"(*o*). 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 su-

(*n*) 23 E. Hans. (3), 785; 38 *Ib.* 174, 190.

(*o*) Page 303.

perseded 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 1893, however, lays it down as "an imperative rule that every amendment must be relevant to the question on which the amendment is proposed—except in the case of amendments moved to the question for the speaker's leaving the chair for the committee of supply or ways and means." 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(*p*). 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(*q*). The exceptions to this rule are amendments on the question of going into supply or ways and means(*r*). 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"(*s*).

(*p*) May, 278, 571. 266 E. Hans. (3), 1846; 269 *Ib.* 461.

(*q*) To show wide range of amendments, see decision of Mr. Speaker Brand, who ruled that it was regular to move an amendment in relation to the Oaths Act on a question re-affirming a resolution restraining Mr. Bradlaugh from taking the oath; 267 E. Hans. (3), 219. Such an amendment was, however, germane to the question.

(*r*) See chapter xvii. on supply, s. 5. But on report from such committees, amendments must be relevant to the question under consideration; Can. Com. J. (1890), 367.

(*s*) 143 E. Hans. (3), 643.

VIII. Dilatory Motions.—There is a class of motions, common to all parliamentary assemblies, intended to have the effect of superseding or delaying the consideration of a question. For instance, motions for the adjournment of the House or debate, for reading the orders of the day, and for the previous question, are all in this direction. The term "dilatory," is used here as a convenient means of grouping together such motions as postpone a question for the time being(*t*).

Motions of Adjournment.—When any question is under the consideration of either House, a motion to adjourn will always be in order. The thirtieth 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"(*u*).

(*t*) 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. 249. See also Mr. Sp. Brand; 136 E. Com. J. 50.

(*u*) The rule as to the intermediate business, the doing of which is necessary to the validity of a second motion to adjourn, or of any other motion, into which the element of time enters after a former motion of the same sort has been decided in the negative, seems to require a proceeding that can be properly entered on the journals. The true test is that if any parliamentary proceeding takes place, the second motion is regular, and the clerk ought to enter the proceeding to show that the motion in question is regular. See Cushing, p. 546, note. It is usual to alternate motions for adjournment of House and debate when a question is under consideration. Can. Com. J. (1880-1), 107. In case there is a substantive motion of adjournment before the House, and it is negatived, some proceeding must be had in order to render a second motion to the same effect regular. See proceedings of June 22, 1891. Here the message from the governor-general which was followed by other proceedings would have been sufficient to render the second motion of adjournment valid. The rule applies literally to the adjournment of the House, and not of the debate, but it is usual and convenient to make an entry in the journal between two motions of the latter character. See proceedings of May 21, 1891, when the clerk entered the fact

A motion of this kind, when made to supersede a question, should be simply, "that the House do now adjourn"; and it is not allowable to move an adjournment to a future day, or to propose an amendment to the question of adjournment(*v*). If the motion for the adjournment be carried 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(*w*), so that if it was on the orders of the day, it must at once disappear from the order paper where it can only be again placed by a motion formally made in the House for its revival(*x*). But if the question is not regularly before the House—that is to say, if it has not been proposed to the House by the speaker—it will not even appear in the votes; but if it has been so proposed, it will be duly recorded. But in case a notice of motion is under consideration on Wednesday or Thursday, 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(*y*). 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(*z*), unless indeed it is desired to supersede it.

that the question before the House was again proposed before the speaker put the second motion for adjournment of debate. Also a similar proceeding, July 1-2, 1891.

(*v*) 2 Hatsell, 113. In the Lords a future day may be specified, May, 300.

(*w*) For cases in point, 110 E. Com. J. 367; 115 *Ib.* 393; 119 *Ib.* 131, 256; 121 *Ib.* 78. Sen. J. (1876), 132, 133, 139 (Pacific R. R.). It cannot be made while a member is speaking, May, 300.

(*x*) Sen. J. (1876), 133, 139; Sen. Deb. (1878), 832, 834 (Pacific R. R. Act Amendment Bill); Can. Com. J. (1870), 237, 287 (Interest Bill).

(*y*) *Supra*, ch. vii. Can. Com. J. (1876), 64.

(*z*) Can. Com. J. (1876), 129.

But the adjournment of the debate obviously cannot be moved to the adjournment of the House, when it is a substantive question(*a*).

It has been decided 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(*b*).

If the House should be suddenly adjourned in consequence of the absence of a quorum, a question then under the consideration of the House will disappear from the order paper for the time being(*c*).

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 twenty-eighth rule orders:—

"A motion for reading the orders of the day shall have preference over any motion before the House"(*d*).

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," or "to the public bills and orders." If this question is resolved in the affirmative, the original motion is superseded, and the House must proceed at once to the orders of the day(*e*). It has been ruled in the Canadian

(*a*) 144 E. Hans. (3), 1906; May, 267.

(*b*) Can. Com. J. (1880-1), 86. Also Can. Leg. Ass. J., 7th March, 1865. Can. Sp. D., No. 129.

(*c*) 129 E. Com. J. 371.

(*d*) 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. 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.

(*e*) May, 266, note; 111 E. Com. J. 167; Can. Com. J. (1873), 300; *Ib.* (1885), 297; a motion has also been made to proceed to a particular order of the day; Can. Com. J. (1886), 54, 58. But

as well as in the English House that no amendment can be made to the motion for proceeding to the orders of the day(*f*), it being considered equivalent to a motion for the previous question(*g*).

If the House is considering an order of the day, a motion to proceed to another order of the day will have the same effect of superseding a question as the motion we have just mentioned(*h*). It is equally in order to move to proceed to the government orders, while a question among "public bills and orders" is under consideration(*i*).

Previous Question.—Another method of evading or superseding a question in both Houses is the moving of what is known as "the previous question." The Senate rule on the subject is as follows:—

"23. 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"(*j*).

such a motion is not in the nature of the previous question, which appears from English practice to be confined to the question "to proceed to the orders of the day" generally.

(*f*) Can. Com. J. (1873), 300, Mr. Sp. Cockburn. But a case occurred in 1880, Journ. 194. The weight of authority clearly rests with the previous precedent, since it is obvious that the motion is in the nature of the previous question.

(*g*) May, 266, note. A motion for the adjournment of the House, however, will always be in order.

(*h*) 93 E. Com. J. 418; 107 *Ib.* 205. Can. Com. J. (1870), 312. Can. Sp. D., No. 120. Leg. Ass. J. (1864), 194. An amendment may be moved to such a motion as it is not in the nature of the previous question; Can. Com. J. (1886), 279.

(*i*) Can. Com. J. (1880-1), 81; Can. Hans., 13th January, 1880-1, 107 E. Com. J. 225.

(*j*) 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.

The thirty-fifth 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(*k*). 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(*l*), "though it may be 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"(*m*).

(*k*) 2 Hatsell, 122, *n*. Can. Com. J. (1879), 84-5; *Ib.* (1886), 72, 73.

(*l* Can. Com. J. (1869), 163-4. Also *Ib.* (1870), 254; 71 Lords' J. 581; 113 E. Com. J. 100.

(*m*) May, 269. In the congress of the Confederation 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, p. 555); but the form is now fixed as it prevails in Canada, 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, 249). From the edition of the "Rules, Orders, and Forms of Procedure" of the English Commons, issued in 1891, under the supervision of the clerk of the House (See No. 139), it appears that that body has returned to the old practice of 250 years ago, and adopted the more logical form, "That that question be not now put" (E. Com. J., May 25th, 1604; Jan. 22nd, 1628; 6th Sept., 1641). 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, 83. By the rules of 1902 (No. 26) the form of the question for "the closure debate" is that the question be now put, but it is provided that not less than 100 members must vote in the majority in support of the motion in order that the motion should prevail.

As a rule, the previous question is proposed with the object of preventing a direct decision upon a question; and in that case the members who propose and second it should vote against their own motion(*n*). In the old Canadian legislature and in the dominion parliament, however, the motion has also frequently 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(*o*).

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(*p*).

Amendments to Previous Question or to Motion for Proceeding to Orders of the Day.—No amendment may

(*n*) May, 303-4 (9th ed.).

(*o*) Leg. Ass. J. (1864), 191; Can. Com. J. (1869), 163-4.

(*p*) In 1865 (1st sess.), Atty.-Gen. 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. 254; in a previous session, when the object was to prevent the putting of the question, he 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 from voting as he pleases on such a question. See also Can. Com. J., 1886, March 11th and 25th.

be proposed to the motion for the previous question (*q*). Neither can it be proposed when there is an amendment under consideration (*r*). If the previous question has actually been proposed it must be withdrawn before any amendment can be submitted to the House (*s*). If an amendment has been first proposed, it must be disposed of before a member can move the previous question (*t*).

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 (*u*). It is also perfectly in order to move the adjournment of the debate on the previous question (*v*). 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. It is allowable to move the previous question on the different stages of bills (*w*).

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.

(*q*) May, 270. Commons' rule, 35.

(*r*) 2 Hatsell, 116; 212 E. Hans. (3), 926.

(*s*) 149 E. Hans. 712.

(*t*) 117 E. Com. J. 129; 118 *Ib.* 269. 174 E. Hans. (3), 1376. Can. Com. J. (1870), 254.

(*u*) 250 E. Hans. (3), 1157-8.

(*v*) Can. Hans. (1879), 407. But not if the House decide that the question be put; 250 E. Hans. (3), 1158; May, 270.

(*w*) 99 E. Com. J. 504; 113 *Ib.* 220; 119 *Ib.* 160, 234; 135 *Ib.* 261; 137 *Ib.* 378; 114 Lords' J. 173. On this subject see also Cushing, Law and Practice of Legislative Assemblies, pp. 509 and 549 to 561.

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" (*x*). 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" (*y*). 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 (*z*) and resolutions rescinded (*a*). The latter part of the thirteenth 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 the journals of the resolution; and when that has been done by the clerk, the next motion will be

(*x*) May, 286; 1 E. Com. J. 306, 434.

(*y*) Res. April 2, 1604, E. Com. J.

(*z*) Can. Com. J. (1877), 26.

(*a*) *Ib.* (1867-8), 184; Leg. Ass. J. (1856), 722; 253 E. Hans. (3), 643.

that the said resolution be rescinded (*b*), or another resolution expressing a different opinion may be agreed to (*c*). 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 (*d*). 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 (*e*). 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 (*f*). 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 (*g*). If an amendment has been negatived, a

(*b*) May, 286; Can. Com. J. (1867-8), 184; *Ib.* (1885), 53.

(*c*) 132 E. Com. J. 345, 367; 235 E. Hans. 1690; Controller of H. M. Stationery Office.

(*d*) 95 E. Com. J. 495; 115 *Ib.* 249; 245 E. Hans. (3), 1502; Can. Com. J. (1884), 462.

(*e*) 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.

(*f*) 76 E. Hans. (3), 1021.

(*g*) 80 E. Hans. (3), 432, 798.

similar amendment cannot be proposed on a future day(*h*). 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 (*i*).

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 the subject at length in the chapter devoted exclusively to public bills.

(*h*) 214 E. Hans. (3), 287. For other illustrations of the rule, see May, chap. xi.

(*i*) Can. Sp. Dec. 186; Can. Com. J. (1871), 145, 146. Also Mr. Speaker Kirkpatrick, March 12, 1883; Hans. 175, 176.

CHAPTER XI.

Rules of Debate.

I. Deportment of Members.—II. Precedence in Debate.—III. Written Speeches not Permissible.—IV. Extracts from Papers.—V. Reference to the Sovereign 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 British Commons.

I. Deportment of Members in Speaking.—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.

Senators and members of the Commons may sit in their places, in their respective Houses, with their heads covered, but when they desire to speak they must rise and remove their hats (*a*). Exception, however, will be made in cases of sickness, or bodily infirmity, when the indulgence of a seat is permitted, at the suggestion of a member and with

(*a*) Sen. R. 19; Com. R. 10.,

the general acquiescence of the House (*b*). A member suffering from indisposition will also be permitted to hand his motion to another member to read (*c*).

In the Commons, a member must address himself to Mr. Speaker (*d*). In the Senate the members must address themselves "to the rest of the senators, and not refer to any other senator by name" (*e*). In the Commons, if a member addresses the House and not the chair, he will be called to order immediately (*f*).

Senators and members, when they enter or leave the House, or cross the floor, must make obeisance to the chair (*g*). The rule of the Senate provides:

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 disturbance; and when a member is speaking, no member shall interrupt him, except to order, nor pass between

(*b*) 2 Hatsell, 107; Romilly, 269, 270. When Mr. Pitt made his celebrated speech in 1793 against the peace he was permitted to speak sitting. Also cases of Lord Wynford, 64 Lords' J. 167; Mr. Wynn, 9th March, 1843; 67 E. Hans. (3) 658. It is usual to move that leave be accorded the afflicted member.

(*c*) 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.

(*d*) Com. R. 10.

(*e*) Sen. R. 19. Same as the Lords' S. O. No. 14.

(*f*) 223 E. Hans. (3), 1002, 1458.

(*g*) 8 E. Com. J. 264.

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" (*h*).

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 (*i*). 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

(*h*) Sen. R. 8; Com. R. 3.

(*i*) In the English Lords and Commons the members sit uncovered when messages are received direct from the crown under the sign manual (E. Hans. Oct. 27, 1884); but Hatsell (ii. 366) states that in 1620-1 one English House of Commons carried their respect still further and every one stood up uncovered. The message under the royal sign manual in Great Britain is brought to the House by a member of the House, being a minister of the crown or one of the royal household. In the House of Lords, the peer who is charged with the message acquaints the House from his place that he has a message which his majesty has commanded him to deliver. And the Lord Chancellor then reads the message, all the lords being uncovered. In the House the member who brings the message appears at the bar where he informs the Speaker of the message. On the request of the Speaker he brings it up to the chair. The message is read by the Speaker to the House, all the members being uncovered. May, 421.

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' " (*j*).

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 supporters and opponents of a measure or question (*k*); and it is irregular to interfere with the speaker's call in favour of any other member.

In the House of Lords, when two rise at the same time, the chancellor or chairman of committees has no absolute right to determine the question as to which should address their lordships. Unless one immediately gives way the House will call upon one of them to speak, and in case of variance of opinion the decision must rest with the House (*l*), which may forthwith proceed to vote who shall be heard (*m*). The lord chancellor is given, by courtesy, precedence over other peers should he rise to speak at the same time with other members (*n*).

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

(*j*) See May (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. Memorials of Fox i. 295.

(*k*) 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.

(*l*) 18 E. Hans. (1), 719, *n*; 4th Jan. 1811.

(*m*) 34 Lords' J. 306; May 296.

(*n*) 21 E. Hans. (N.S.), 187-8; May, 296.

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" (*o*). 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 (*p*). Members may, however, make use of notes in delivering a speech (*q*).

IV. Extracts from Papers.—It is now in order for a member to make extracts from books, newspapers or other printed publications as part of his speech, provided in doing so he does not infringe on any point of order (*r*). But there are certain limitations to this right; for it is not allowable to read any petition referring to debates in the House (*s*), nor any portion of a speech made in the same session from a private book or paper. It is also irregular to read extracts from newspapers or documents referring to debates in the House in the same session (*t*). In making extracts a member must be careful to confine himself to

(*o*) Parl. Deb. 1806, vol. 7, pp. 188, 207-8. Rule 164 of the British House of Commons (11th ed., 1896), provides, "A member is not to read his speech but may refresh his memory by reference to notes."

(*p*) 223 E. Hans. (3), 178.

(*q*) Parl. Deb. 1806, p. 208.

(*r*) 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. Where the language of a document is such as would be disorderly or unparliamentary, if spoken in debate, it cannot be read; no language can be orderly in a quotation which would be disorderly if spoken; 16 E. Hans. (3), 217; Can. Hans. (1885), 2210; *Ib.* 2392.

(*s*) Mirror of P., 1840, vol. 20, p. 4820.

(*t*) May, 309.

those which are pertinent to the question; it is not regular to quote a whole essay or pamphlet of a general character (*u*). Neither is it regular for a member to read a paper which he is asking the House to order to be produced (*v*). Nor is it in order to read articles in newspapers, letters or other communications, whether printed or written, emanating from persons outside of the House, and referring to, or commenting on, or denying anything said by a member, or expressing any opinion reflecting on proceedings within the House (*w*). During a debate on the tariff in the session of 1877, Mr. Mills referred to the opinions of Sir Alexander Galt, formerly a member and minister of finance. Subsequently one of the Canadian papers published a letter from Sir Alexander in answer to some of Mr. Mills' remarks; and the latter rose and proposed reading from the paper in question; but the speaker interrupted him and questioned the propriety of this course—a decision entirely in accordance with the English rules of debate (*x*). It is quite in order, however,

(*u*) 139 E. Hans. (3), 638; Can. Hans. (1885), 1461. Nor may a member read to himself in a low tone; he must address himself to the chair; 221 E. Hans. (3), 1002-3. See resolution of 19th April, 1886 (Mr. Charlton), with respect to the reading of voluminous and irrelevant extracts.

(*v*) 12 *Ib.* (1) 1043; 10 *Ib.* (1), 700; 161 *Ib.*, (3), 432.

(*w*) 61 E. Hans. (3), 141, 661, 662; 64 *Ib.* 26; 230 *Ib.*, 1339; 241 *Ib.*, 831; 245 *Ib.*, 1673. "Allusion to debates in the other House are out of order," says May (p. 310), "and although there are few orders more important than this for the conduct of debate and for observing courtesy between the two Houses, not one, perhaps, is more generally transgressed."

(*x*) Can. Hans. (1877) 1190. When a member proposed to read a letter in the "Times" from General Hay, Mr. Speaker Denison interposed and said that "the hon. member had exercised a wise discretion in not doing so." The House, however, is generally 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. 178 E. Hans. (3), 373. Also 183 *Ib.* 826.

for a member to quote from a printed paper, on which he proposes to found a motion (*y*). Members must read documents or extracts in full if they wish them printed in the Canadian official debates.

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 (*z*). But it is allowable to repeat to the House information which is contained in a private communication (*a*). When such private papers are quoted in the House there is no rule requiring them to be laid on the table (*b*). 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

(*y*) 240 E. Hans. (3), 1069.

(*z*) May, 321-322. Lord Palmerston, 166 E. Hans. (3), 2129; Mr. Canning's case, 63 E. Com. J., 4th March, 1868; 176 E. Hans. (3), 962; 156 *Ib.*, 1587; 235 *Ib.*, 935. But he may refuse in case he believes that the public interests would be jeopardized, 243 E. Hans. (3), 940-41. See Com. J. (Can.) vol. xiv. (1880), p. 201. On June 7th, 1889, while the schedule of a bill relating to the Grand Trunk Railway Company was under consideration in a committee of the whole Sir Chas. H. Tupper quoted from a speech of the minister of railways, made a few days previously, where he referred to information given to him by one of the officers of his department and asked the ruling of the chair upon the obligation of the minister to lay on the table the document containing this information. The chairman ruled that the point of order should have been taken when the reference was made to the document, if it existed, and it was too late now to declare that the minister should produce it. Sir C. H. Tupper thereupon appealed from the decision of the chairman. The speaker resumed the chair and the question being put that the decision of the chairman be confirmed, the House divided, yeas 65, nays 20. So it was resolved in the affirmative. Can. Com. J., vol. 34, pp. 238, 239. Desjardins "Speaker's Decisions," p. 111.

(*a*) Lord Palmerston, 146 E. Hans. (3), 1759; 156 *Ib.*, 1587.

(*b*) 179 *Ib.*, 490.

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 (*c*).

V. References to the Sovereign or Governor-General.—By rule 13 of the House of Commons it is expressly forbidden to speak disrespectfully of the sovereign or his representative in this country, or of any member of the royal family (*d*). The use of the name of the sovereign or his representative in debate, so as to interefere with the freedom of discussion, or for the purpose of influencing the determination of the House or the votes of members with respect to any matter pending in parliament is out of order, being unconstitutional and an interference with the independence of parliament. Cases, however, may arise where it is permissible to introduce the name of the sovereign or of the governor-general in debate. A member of the government may, with the authority of the sovereign or governor-general, make a statement of facts, provided

(*c*) The English authorities do not support a decision of the speaker in 1880 (Can. Com. J., 200) to the effect that a private member who quoted from public documents ought to lay them on the table. See May, 322. 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. Since 1880 the opinion of Mr. Speaker Blanchet has not been followed; it arose from a misunderstanding of the correct practice.

(*d*) Mr. Speaker Lefevre, 69 E. Hans. (3), 24, 574; 228 *Ib.*, 133-6; 235 *Ib.*, 1596. In 1783, Dec. 17, the House of Commons resolved that it was "a high crime and misdemeanour, derogatory to the honour of the crown, a breach of the fundamental privileges of parliament, and subversive of the constitution of the country, to report any opinion or pretended opinion of his majesty upon any bill or other proceeding depending in either House." Also see the remonstrance of the Lords and Commons to Charles I. on the 16 December, 1641.

it is not intended to influence the judgment or decision of the House (*e*). 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" (*f*).

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 giving him authority to deny certain inaccurate statements that had appeared in a newspaper with reference to the dismissal of Lieutenant-Governor Letellier de St. Just (*g*).

When despatches are brought down from her Majesty or the governor-general, it is of course perfectly legitimate to discuss the subject-matter (*h*), but it is irregular to say that they have been brought down for a purpose (*i*).

(*e*) Sir Robert Peel, 9th May, 1843. 69 E. Hans. (3), 24, 574.

(*f*) 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.

(*g*) Can. Hans. (1879), 1100.

(*h*) Can. Hans., 1st March, 1877 (appointment of senators).

(*i*) Mr. Speaker Cockburn, 3rd November, second session, 1873, Com. Jour.

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 rambling discussions; and consequently every member who addresses the House, should 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 (*j*). 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 (*k*). But it is nevertheless the duty of the speaker of the House (or chairman of committee) to interfere when he finds that the member's remarks are not relevant to the 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" (*l*); or "that he will conclude with something that will bring him within order" (*m*). 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" (*n*).

In the English Commons the authority of the speaker, in cases where members persist in making irrelevant re-

(*j*) 227 E. Hans. (3), 783, 896; 229 *Ib.*, 1751; 230 *Ib.*, 1099; 231 *Ib.*, 1222; 238 *Ib.*, 214, 1976; 242 *Ib.*, 1696, 1700, &c.

(*k*) Cushing, p. 635.

(*l*) 18 E. Hans. (3), 89; Mr. Speaker Sutton.

(*m*) Mr. Speaker Abbott; Cushing, p. 637.

(*n*) 222 *Ib.*, 1199. See May, 299, 300.

marks on a question, has very recently been enlarged. A member who resorts to persistent irrelevance may be directed by the speaker (or chairman) to discontinue his speech, and if he continues in his irregular course he is "named" as disregarding the authority of the speaker(*o*).

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 the ministers of the Crown; but the House negatived the proposed amendment by a large majority(*p*). 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 to limit the time (*q*).

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.

VIII. Motion for Adjournment.—The rule as to relevancy in speeches has never been applied in the Canadian

(*o*) 264 E. Hans. (3), 374, 385, 388, 393, 396; See S. O. 18 *et seq.* (1902).

(*p*) 102 E. Hans. (3), 258.

(*q*) Leg. Ass. J. (1851), 163, half an hour; (1854-5), 162; three-quarters of an hour. In the House of Representatives in Washington there are rules limiting the time of speaking. Wilson's Digest of Parl. Law, 404.

Houses to motions for the adjournment of the House (*r*) or of the debate (*s*). New rules have been quite recently adopted in the English Commons to confine debate to a motion for adjournment, when it is made during the discussion of any matter (*t*). But so far the Canadian House has not shewn 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 (*u*).

Motions for the adjournment of the House or of 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 (*v*), or to make certain explanations which, otherwise, they might not be able to make(*w*).

Substantive motions for the adjournment of the House ought to be reserved for occasions when it is necessary to discuss questions of gravity (*x*). They are not unfrequently proposed in the Canadian Commons with the view of bringing before it some question in which a member is

(*r*) May, 300; 99 E. Hans. (3), 1196; 161 *Ib.*, 344.

(*s*) But in the British House of Commons there are restrictions as to relevancy. See May, 301; 99 E. Hans. (3), 1196; *Ib.* 344; 85 E. Hans. (3), 1405; 182 *Ib.*, 2172-5; Sen. Deb. (1884), 545.

(*t*) See new S. O. (1902) No. 22.

(*u*) Rule 15 of Com.; rule 21 of Sen.; 186 E. Hans. (3), 1505.

(*v*) See Can. Hans., March 8, 1877 (Graving Dock at Levis); *Ib.*, March 13, 1878. Also 261 E. Hans. (3), 999.

(*w*) Can. Hans. (1883), 949.

(*x*) *Ib.* (1885), 2030 (Mr. Blake), 188 E. Hans. (3), 1523-6. Such motions are now restricted in England. S. O. (1902), No. 10.

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 (*y*). 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 (*z*). In 1891, Mr. Laurier initiated in this way a long debate on the formation and policy of the new administration, formed on the death of Sir John Macdonald, premier of the ministry consequently dissolved *ipso facto* (*a*).

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 (*b*), or a notice of motion on the paper (*c*), or a motion which was dropped owing to a count-out (*d*), or what has taken place in a former debate (*e*). It has also been decided that a motion of adjournment is out of order on a motion that the House go into committee on a bill on a future day (*f*). Nor is it in order under cover of a motion for adjournment to put a question which the speaker has already declared to be irregular (*g*). When there is a question before the House,

(*y*) Can. Hans. (1878), 2057.

(*z*) Can. Hans. (1878), 2227.

(*a*) *Ib.* June 22, 1891. See *infra*, chap. xxii.

(*b*) 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.

(*c*) 185 *Ib.* (3), 886; 187 *Ib.*, 775. Can. Hans., 10th April, 1876; 269 E. Hans. (3), 1246 (Lords).

(*d*) 224 *Ib.*, 593; Blackmore (1882), 76.

(*e*) 261 E. Hans. (3), 1689; Can. Hans. (1888), 1093; Can. Hans (1880), 1916.

(*f*) 221 E. Hans. (3), 744.

(*g*) 260 *Ib.*, 1257.

and a member moves the adjournment, he must confine himself to the question (*h*). 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 (*i*), nor debate the subject-matter of a bill (*j*), nor refer to a past debate (*k*). 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 (*l*).

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:

20. "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.

21. "No senator may speak twice to a question before the Senate, except in explanation or reply, when he has made a substantive motion (*m*).

22. "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.

23. "When a question is under debate no motion is received unless to amend it, to commit it, to postpone it

(*h*) 232 E. Hans. (3), 1733, 1734.
(*i*) 257 *Ib.*, 1351-2.
(*j*) 259 *Ib.*, 179-80; 530.
(*k*) 250 *Ib.*, 1446-7.
(*l*) 263 *Ib.*, 50-51; Blackmore (1883), 22; May, 301.
(*m*) Sen. Deb. (1884), 60.

to a certain day, for the previous question, for reading the orders of the day, or for the adjournment of the House.

24. "Any senator called to order shall sit down and shall not proceed without leave of the Senate" (*n*).

The foregoing rules are substantially the same as those of the House of Commons. It is ordered by the rules of the 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 (*o*), or an instruction to a committee" (*p*).

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 (*q*). 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

(*n*) See a decision of Mr. Speaker Miller in 1886 that a senator called to order must sit down and cannot proceed without the *unanimous assent* of the House; that is to say, any one member may prevent him from going on, when he has been called to order under the rule. Deb. 775-778; 883.

(*o*) May, 304, 305.

(*p*) 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, 305.

(*q*) This is the English practice; May, 304-306; 210 E. Hans. (3), 304.

according to a strict interpretation of the rules (*r*). 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 (*s*). 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 (*t*).

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 (*u*). For the same reason a member who has moved the adjournment of the debate which has been negatived cannot speak to the original question(*v*). A member who has moved or seconded the adjournment of a debate cannot afterwards rise to move the adjournment of the House (*w*). 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

(*r*) 194 E. Hans. (3), 1470. But it is unusal to enforce the rule so strictly as in the case cited. Also 4 Hans. N. S. 1013.

(*s*) 118 E. Hans. (3), 1147, 1163; Mr. B. Osborne's am.; May, 361.

(*t*) Can. Hans. 14th April, 1877; secret service (Mr. Young).

(*u*) May, 306; 222 E. Hans. (3), 1120; 237 *Ib.* 408, 1532, Mr. Holton, 25th Feb., 1878 (gov.-gen.'s expenses). See Cushing, pp. 618, 619 with reference to speeches on main question and amendments thereto.

(*v*) 227 E. Hans. (3), 1098; 254 *Ib.* 1793. 257 *Ib.* 1351-2.

(*w*) May, 306; 202 E. Hans. (3), 448-450; 240 *Ib.* 123.

question was before the House, and before the amendment had been proposed from the chair" (*x*).

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 (*y*). But a member must rise in his place when the House resumes the debate, otherwise he will forfeit his privilege (*z*). If a member should move the adjournment of the debate, and the House should negative that motion, he will have exhausted his right of speaking on the main question (*a*). 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 (*b*).

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,

(*x*) May, 306; 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.

(*y*) See Can. Hans. 7th April, 1877 (Mr. Costigan) 1266-7. Also 13 E. Hans. (1), 114; 194 *Ib.* (3), 1470; 196 *Ib.* 1365.

(*z*) 126 E. Hans. (3), 1246. This rule has been always observed in the Canadian House.

(*a*) 194 E. Hans. (3), 1470; 196 *Ib.* 1365; 232 *Ib.* 1341; Can. Hans. (1878) 1976 (Mr. McDougall).

(*b*) 1 E. Com. J. 245; May, 304.

to explain with respect to the part so misunderstood (*c*), and this privilege of explanation is permitted without leave being actually asked from the House (*d*). 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 (*e*); 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 (*f*); or attempts to censure others (*g*); or proceeds to state what he was going to say, but did not (*h*); or to give the motives which operated in his mind to induce him to form the opinion which he had expressed (*i*); or to explain the language of other members (*j*); or to explain the conduct of another person (*k*); or to go into any new reasoning or argument or to advert to a past debate on any other matter (*l*). 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 (*m*). The indulgence of the House

(*c*) 12 E. Hans. (3), 923; 223 *Ib.* (3), 1187; *Ib.* 367; Sen. Deb. (1874), 84.

(*d*) May, 304, 305.

(*e*) 167 E. Hans. (3), 1215. Can. Hans. (1875), 861-4.

(*f*) 66 E. Hans. (3), 884; 165 *Ib.* 1032; 223 *Ib.* 367; 224 *Ib.* 1924; 232 *Ib.* 358; Mr. Goudge, Can. Hans. 3rd April, 1878.

(*g*) 175 E. Hans. (3), 462-6; 252 *Ib.* 225. See remarks of Mr. Speaker Kirkpatrick, Can. Hans. (1886), 1198.

(*h*) E. Hans. (1), 814, 815.

(*i*) 29 E. Hans. (1), 409.

(*j*) 26 *Ib.* (1), 515; 41 *Ib.* 167.

(*k*) 38 E. Hans. (3), 13.

(*l*) 161 *Ib.*, 355, 487.

(*m*) 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.

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(*n*). 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(*o*). 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(*p*). 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 (*q*).

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. If a member disavows the use of words attributed to him, and objected to, the matter must end (*r*).

(*n*) 2 Hatsell, 105; 111 Grey, 357, 416; 18 E. Hans. (3), 510, 555; Cushing, p. 623.

(*o*) 119 E. Hans. (3), 88, 153.

(*p*) 148 E. Hans. (3), 672, 1364, 1458. Can. Hans. (1878), 803. See also 210 E. Hans. (3), 406. Mr. Reid, admiralty organization.

(*q*) 216 *Ib.* 1783, Blackmore's Sp. D. (1882), 151-2.

(*r*) 21 Hans. (2), 393; Can. Hans. 1878, 15th Feb. (Mr. Dymond) p. 34. Also 2 E. Hans. (1), 315; 61 *Ib.* (3), 53; 200 *Ib.* 918; 233 *Ib.* 1566-69; 245 *Ib.* 1474.

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. 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 (*s*). A message from the governor-general, or deputy governor, brought by the usher of the black rod, will also interrupt a member or any proceeding, but the debate or business will continue when the House resumes (*t*). 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 (*u*). 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 (*v*). Whilst a member is addressing the House, no one has a right to interrupt him by putting a question to him, or by making

(*s*) 7 E. Hans. (1), 194, 208; 195 *Ib.* (3), 2007-8.

(*t*) Can. Com. J. (1884), 189; Can. Hans. (1888) 1196, 1197; *Ib.* (1889) 745 (Mr. Beausoleil was speaking when the message was received).

(*u*) Parl. Deb., 13th Aug, 1873. Also 2 Hatsell, 374-7.

(*v*) 45 E. Hans. (3), 956. A member has been introduced whilst a member was speaking; Mr. White, 11th March, and Mr. Orton, 12th March, 1879; Mr. Shanley, Can. Hans. (1885), 3103. See case of a return for election and the introduction of the member himself during a debate; *Ib.*, 1192 (Mr. Guillet). For analogous proceeding, 93 E. Com. J. 276, 308.

or demanding an explanation (*w*). 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 (*x*). 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 whilst 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 (*y*).

XIII. Speaking on Calling of Orders.—It is a common practice for members in both Houses of the Canadian Parliament to make personal explanations or ask questions of the government when the orders of the day are called. They make these explanations in reference to an inaccurate report of their speeches in the official record (*z*), or in the newspapers (*a*); or in denial of certain charges made against them in the public prints (*b*); or in reference to certain remarks which had been misunderstood on a pre-

(*w*) 192 E. Hans. (3), 749.

(*x*) 231 E. Hans. (3), 301; 226 *Ib.* 356; Can. Hans. (1884) 561.

(*y*) 261 E. Hans. (3), 1250, 1257; Blackmore (1883) 22.

(*z*) Mr. Pouliot, Hans., 1878, p. 531. Senator Miller, Sen. Deb. (1880) 243.

(*a*) Parl. Deb. (1870) 522.

(*b*) Can. Hans. (1875) 861-2; *Ib.* (1878), 1311. Such explanations are not allowable on the ground of privilege, unless the conduct of a member as a member is attacked, and in that case a motion should be formally proposed. Mr. Holton's remarks, 21st March, 1878; also 11th April, 1878.

vious occasion, and which they had not before had an opportunity of explaining (*c*); or in respect to the incompleteness or inaccuracy of certain returns brought down under the order of the House (*d*). Questions have been asked, when the orders are called, relative to the state of public business, or other matters of public interest (*e*). But no discussion should be allowed when a minister has replied to a question, nor after a member has made his personal explanation (*f*). In asking a question, a member must not attack the conduct of the government (*g*). 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 (*h*); 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 (*i*). But no question can be put, nor remarks made, after the clerk has read the first item on the order paper; for then all questions or remarks must clearly relate to the business under consideration (*j*).

Remarks with respect to a return not brought down in answer to an order or address, or on a matter of urgency, or of public business, or of personal explanation, may be allowed by the indulgence of the House, but not as a matter of absolute right. All questions and the answers thereto—when answers are necessary—should be brief, and involve no matter of controversy or debate. If a member wishes to bring up a question of urgent public importance, he

(*c*) 87 E. Hans. (3), 480.
(*d*) Can. Hans. (1878), 532, 593.
(*e*) *Ib.* (1878) 593, 708.
(*f*) *Ib.* (1878), 595.
(*g*) *Ib.* (1878), 1269.
(*h*) 216 E. Hans. (3), 1783.
(*i*) 174 *Ib.* (3), 192.
(*j*) Can. Hans. (1889), 384.

should conclude with a motion for the adjournment of the House (*k*).

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 (*l*). When the premier or member leading the government in the House has made such explanations, it is usual to permit the leader of the opposition to make some remarks on points arising out of the former speech. In fact, considerable latitude is allowed by the indulgence of the House on such occasions in the Canadian Commons. In the English Commons, it is irregular to permit any debate, after the ministerial statement has been made, unless some question is formally proposed to the House (*m*); and the same practice obtains in the Lords—a motion for the adjournment being made when a debate is expected (*n*).

XIV. Manner of Addressing Another Member.—It is a rule of parliament that a member addressing the House should not mention another member by name (*nn*). The

(*k*) See remarks of Speakers on the proper procedure to follow: Can. Hans. (1885), 2890; *Ib.* (1888) 1093; *Ib.* (1889) 385; *Ib.* (1890) 506, 1516, 3198. As an illustration of the inconveniences of the practice, see Can. Hans. for July 10th, 1885. In the session of 1885, when an insurrection had broken out among the Half-breeds, questions were asked of the government to an extraordinary degree, but the excuse at this time was the necessity of keeping the public informed during a national emergency. In 1891 the practice was carried to an inordinate extent, and Mr. Speaker White was forced more than once to call attention to its inconveniencies, and to ask the House to assist him in restraining it to questions of urgency and necessity. See Can. Hans. June 4, 18, etc.

(*l*) 214 E. Hans. (3), 1945; Sen. Deb. (1873) 31-36; Can. Hans. (1877) 32.

(*m*) 174. E. Hans. (3), 1215, 1216; 191 *Ib.* 1694-1717; 1787-1819. See on this point, Todd ii., 491.

(*n*) 153 E. Hans. (3), 1266.

(*nn*) May, 317.

Senate have an express rule on this point (*o*); and it is usual in that House to speak of another senator as "the hon. member for Grandville" (or other division he may represent) (*p*); or simply the hon. member (*q*); or "the hon. postmaster-general" (or other office he may hold in the government) (*r*); or his hon. friend and colleague from Nova Scotia (or other province) (*s*). In the Commons, members are referred to as the hon. member for ———; the hon. minister of inland revenue; the hon. premier, or first minister, or the hon. gentleman who leads the government; the hon. and learned member; my honourable friend the member for ———; the right hon. gentleman; or in such other terms as designate a member's position, rank or profession (*t*). But it is not irregular to refer to members of a previous parliament by name (*u*), or 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 (*v*).

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 strict-

(*o*) R. 19. "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."

(*p*) Parl. Deb. (1870) 1440.

(*q*) Ib. 1442.

(*r*) *Ib.* 1446, 1450.

(*s*) *Ib.* 1480.

(*t*) Can. Hans. (1877) 11, 17, 33, 212, 241; 231 E. Hans. (3), 301, &c. Also Sen. Deb. (1879) 124, 390.

(*u*) 252 E. Hans. (3), 1364-5.

(*v*) 261 E. Hans. (3), 23.

ness (*w*). Members sometimes attempt to evade this rule by resorting to ambiguous terms of expression—by referring, for instance, to what happened "in another place" (*x*); but all such evasions of a wholesome practice should be stopped by the speaker, when it is evident to whom the allusions are made (*y*). 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 (*z*).

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 economize the time of the House (*a*). Neither is it regular to refer to arguments used in committee of the whole (*b*); nor to an amendment proposed in the same (*c*). Neither

(*w*) 198 *Ib.* (3), 368; 208 *Ib.* 1682; 228 *Ib.*, 1771; 267 *Ib.*, 44; Sen. Deb. (1871), 284; *Ib.* (1884), 167. "There is no S. O. on the subject, but the unwritten law of parliament is of equal, if not a 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 Christie, ii., 370-6. When declarations have been made by ministers of the Crown in the Lords, exceptions have been made to the strict observance of the rule. Mr. Sp. Denison, 191 E. Hans. (3), 1786.

(*x*) 159 *Ib.* (3), 1481.

(*y*) 168 *Ib.* (3), 1197, 1198.

(*z*) 99 *Ib.* (3), 631; 159 *Ib.* 856. Also 4 *Ib.* (N.S.) 213.

(*a*) 13 *Ib.* (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. On a motion for the adjournment of the House a member cannot infringe this wise rule; 250 *Ib.* (3), 1446-48.

(*b*) 154 E. Hans. (3), 985; 221 *Ib.* 1043-4, Blackmore's Sp. Dec. (1882) 50.

(*c*) 221 *Ib.* (3), 1044.

may a member read, from a printed newspaper or book, comments on any speech made in parliament during the current session (*d*). It is also in contravention of the rules of the House to discuss measures which are not regularly before it (*e*). But a reference to a previous debate, by way of illustration, is in order (*f*). But a member may always quote from a speech made in a previous session (*g*).

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 (*h*).

25. "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.

26. "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."

(*d*) 263 *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.

(*e*) 235 *Ib.* 323; 236 *Ib.* 15.

(*f*) 234 *Ib.* 1916.

(*g*) 162 *Ib.* 393.

(*h*) Sen. Deb: (1885) 60; irrelevant remarks are also forbidden, *Ib.* 167.

Similar orders have been, for centuries, the rules of the House of Lords (*i*). In case of a difference between senators the matter will be discussed with closed doors (*j*). 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" (*k*). The Lords have even extended this rule to prevent quarrels which have happened outside from proceeding any further (*l*). In such matters, however, the speaker has no more authority than any other peer, 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 (*m*).

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 (*n*); or to impute to any member or members unworthy motives for their action in a particular case (*o*); or to use any profane or indecent language, such as is unfit for the House to hear or for any member to utter (*p*); or to question the acknowledged and undoubted powers of

(*i*) S. O. 16 and 19; June 13th, 1626; Mirror of P. 1833, vol. 22. p. 2855.

(*j*) Sen. Deb. (1871), 83. For a case of taking down words, and a subsequent retraction, see Sen. Deb. (1880), 300.

(*k*) Sen. R. 28; 31 Lords' J. 448.

(*l*) May, 318; 36 Lords' J. 191.

(*m*) May, 307, 331. See debate in Senate on Speaker's powers, June 21, 1887.

(*n*) 13 S. O.; 11 E. Com. J. 580; 15 E. Hans. (1), 338-9; 236 *Ib.* (3), 397.

(*o*) 6 *Ib.* (N.S.), 69, 70; 245 *Ib.* (3), 1587.

(*p*) 16 *Ib.* (3), 217; 218 *Ib.* 1331.

the House in a matter of privilege (*q*); or to reflect upon, argue against, or in any manner call in question, the past acts and proceedings of the House (*r*); or to speak of committees as if they were the special nomination of any person or "packed by the majority" (*s*); or to speak in abusive and disrespectful terms of an act of parliament (*t*); or to speak ironically or in terms of disrespect of the members of the other House of Parliament (*u*). 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 â materiâ ad personam* is disorderly, that whatever wanders from the subject in debate and is converted into a personal attack is contrary to order" (*v*). No member will be permitted to say of another that he could expect no candour from him (*w*); that he only affected to deplore the distresses of the country (*x*); that his remarks are insulting to the House and to the country (*y*); that he is in the habit of uttering libels in the House (*z*); that he is guilty of gross misrepresentations (*a*); that he has acted basely or from base motives (*b*); that he is observed indulging in a smile un-

(*q*) 4 E. Hans. (N.S.), 116-8.
(*r*) 2 Hatsell, 234; 2 E. Hans. (1), 695.
(*s*) 4 *Ib.* (1), 738; Can. Hans. (1878), 630; May, 317, 318.
(*t*) 35 E. Hans. (1), 369.
(*u*) 264 E. Hans.. (3), 1590; 3 Hatsell, 74; Cushing, pp. 659, 660.
(*v*) 38 Parl. Reg. 367; also 6 E. Hans. (N.S.), 69, 70, 518; 16 *Ib.* 470.
(*w*) 33 *Ib.* (1), 505.
(*x*) 4 *Ib.* (2), 243.
(*y*) 3 *Ib.* (3), 1152, 1153.
(*z*) 3 *Ib.* (3), 1194.
(*a*) 8 *Ib.* (2), 410.
(*b*) 27 *Ib.* (3), 120.

worthy of a man (*c*); that the House has a right to know whether a member meant what he said or knew what he meant (*d*). No member can be allowed to apply the expression "impertinence" to another member (*e*); or to attribute motives (*f*) or any intention to insult others (*g*); or to question the honour of one (*h*); or to tell a member that he went about the country telling palpable lies (*i*); or that certain members would shrink from nothing, however illegal or unconstitutional (*j*); or that "members came to the House to benefit themselves"(*k*); or that "a member has acted as a traitor to the sovereign" (*l*); 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" (*m*); or that a member has stated what he knew not to be correct (*n*); or that he does not believe a statement he himself has made(*o*); or that he had inspired another member in a certain disorderely course which had brought down the censure of the House(*p*); or that he shelters himself behind his temporary privilege to evade a criminal action(*q*); nor

(*c*) 4 *Ib.* (3), 561.

(*d*) 4 *Ib.* (2), 240.

(*e*) 230 *Ib.* (3), 863; Com. J., vol. 34, p. 290; Speaker's Decisions—Desjardins, p. 113.

(*f*) 35 *Ib.* (1), 723; 6 *Ib.* (2), 69; 231 *Ib.* (3), 437.

(*g*) 228 *Ib.* 2029, 2030.

(*h*) 222 *Ib.* 329.

(*i*) 223 *Ib.* 1015.

(*j*) 219 *Ib.* 589.

(*k*) 6 *Ib.* (2), 69.

(*l*) 257 *Ib.* 1294.

(*m*) 264 E. Hans. 390; Blackmore (1883), 26.

(*n*) 261 *Ib.* 1028.

(*o*) 261 *Ib.* 996.

(*p*) 261 *Ib.* 419.

(*q*) Can. Hans. (1883), 519.

may he refer derisively to another member "as the member who sits" for a constituency(*r*); or say that he sits for his constituency "by the grace of the leader of the government" that he is a "servile follower" of a government(*s*). 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"(*t*). 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"(*u*). 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(*v*). Words which are plain and intelligible, and convey a direct meaning, are sometimes used *hypothetically* or *conditionally*, upon the idea, that, in that form, they are not disorderly. But this is a mistake. If, notwithstanding their being put hypothetically or conditionally, they are plainly intended to convey a direct imputation, the rule is not to be evaded by the form in which they are expressed. Thus, where a member, being called to order for personal remarks, justifies himself by saying that he was wholly mis-

(*r*) Can. Hans. (1883), 520.
(*s*) *Ib.* (1878), 2191; *Ib.* (1884), 448.
(*t*) 218 E. Hans. (3), 1875.
(*u*) 220 *Ib.* 583.
(*v*) 261 E. Hans. (3), 1082.

understood, 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 "(*w*).

It is the duty of the Speaker to interrupt a member who makes use of any language which is clearly out of order(*x*). 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 "(*y*).

In matters of doubt(*z*) or of trifling importance(*a*) he will naturally hestitate 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 "(*b*).

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 expres-

(*w*) 8 *Ib.* 722, 723; 28 *Ib.* 15.
(*x*) 8 *Ib.* 410; 228 *Ib.* (3), 2029; 231 *Ib.* 437.
(*y*) 6 *Ib.* (2), 69, 70, 944.
(*z*) 13 *Ib.* (2), 129, 130.
(*a*) 2 *Ib.* (2), 944.
(*b*) 13 *Ib.* (2), 130.

sion at the moment when it is spoken(*c*). It is legitimate on such occasions for members to debate the point of order, but they must confine themselves strictly to it(*d*). 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 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(*e*). Some instances have occurred in the Canadian Houses, of his decisions on disputed points of procedure having been overruled(*f*). 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(*g*) ; or refer the question to the discretion or feeling of the House(*h*) ; or suggest that the House may, if it think proper, dispense with the rule in a particular case(*i*) ; Also in many doubtful cases, the Speaker will be entirely guided by the circumstances connected there-

(*c*) 195 E. Hans. (3), 2007.

(*d*) 1 *Ib.* (1), 800, 801; 7 *Ib.* 194, 208; 195 *Ib.* (3), 2007.

(*e*) Cushing, p. 677.

(*f*) 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.

(*g*) 7 *Ib.* (1), 188, 207, 208.

(*h*) 4 *Ib.* (2), 518, 519; 6 *Ib.* (1), 847.

(*i*) 15 E. Hans. (1), 154; 16 *Ib.* (1), 739.

with(*j*), and will endeavour to meet the wishes of the House, when he has heard them expressed(*k*).

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(*l*). In case, however, a member 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 "(*m*).

In such case the member whose conduct is in question should explain and withdraw, and it will be for the House to consider what course to pursue in reference to him. If the House consider the explanation sufficient, it will be proper for a member to make a motion to that effect, which will be adopted and duly recorded(*n*). Or when a member has withdrawn after having been named, some one may move that he be called in and reprimanded by Mr. Speaker

(*j*) 1 *Ib.* (1), 800, 801.

(*k*) Mirror of P., 1840, vol. 16, p. 1634.

(*l*) 230 Eng. Hans. (3), 863; 231 *Ib.* 437; 107 E. Com. J. 277.

(*m*) Res. of Jan. 22nd, 1693. Rules and Orders (Palgrave) No. 194.

(*n*) Can. Leg. Ass. J. (1852-3), 126; *Ib.* (1861), 270.

in his place. Even then the offender may take this opportunity of apologizing to the House, through another member for having transgressed the rules of the House ; and in such 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(*o*). 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(*p*). The House, in all cases, should give every proper opportunity to an offending member to make such a defence as may satisfy the House and avoid a reprimand. In the case of Mr. Plimsoll, in the session of 1875, it was shown that he had made use of most offensive expressions "while extremely ill, and labouring under excessive mental excitement—the result of an overstrain acting upon a very sensitive temperament." Under these circumstances it was considered most advisable that Mr. Plimsoll should not be required to attend in his place till some days later. It was accordingly agreed to adjourn the debate until a future day, when Mr. Plimsoll appeared and apologized to the House ; and then the order of the day for the adjourned debate having been read, Mr. Disraeli moved that it be discharged, which was agreed to unanimously(*q*).

(*o*) 30 Parl. Hist. 114.

(*p*) 3 Mirror of P. (1838), 2231, 2233, 2263, 2267.

(*q*) 225 E. Hans. (3), 1824; 226 *Ib.* 178. The present rules of the British House of Commons, adopted in 1902, contain more drastic provisions on the subjects of conduct of debate and order of procedure when the rules are disobeyed than those previously in force. See Standing Orders H. of C., 1902.

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(*r*). 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(*s*). 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 "(*t*).

The motion to take down the words should include the exact words (as far as possible) that may be objected to(*u*). When the motion has been made, it is allowable to discuss 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(*v*). When he apologizes, the motion will be almost invariably withdrawn with the general consent of the House(*w*). 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(*x*). It is also the rule :

(*r*) See Sen. R. 26.
(*s*) 272 E. Hans. (3), 1563, 1565.
(*t*) 2 Hatsell, 273, *n*.
(*u*) 3 Mirror of P.(1838), 2233; 186 E. Hans. (3), 882.
(*v*) 186 E. Hans. (4), 882-887.
(*w*) 219 *Ib*. 589.
(*x*) 115 *Ib*. 276.

"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 "(*y*).

Consequently the objection must be taken immediately that the words are spoken(*z*). 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(*a*); and he may then deny that those were the words he spoke(*b*); 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(*d*). If he does not deny that he spoke those words(*e*), 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(*f*). If his explanation or apology be deemed sufficient by the House

(*y*) 2 Hatsell, 268, *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;" 168 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.

(*z*) 9 E. Hans. (1), 326.

(*a*) May, 320. See also 48 E. Hans. (3), 321, which shows that in the Lords, also, the words must be taken down *instanter*. 2 Hatsell, 273, *n.*; 235 E. Hans. (3), 1809-1833; 272 *Ib.* 1571.

(*b*) 32 E. Com. J. 708.

(*d*) 2 Hatsell 273, *n.*; 18 E. Com. J. 653.

(*e*) 126 E. Hans. (3), 1194.

(*f*) 2 Hatsell, 273, *n.*; 32 E. Com. J. 708; 66 *Ib.* 391; 126 E. Hans. (3), 1207.

no further proceeding is necessary(*g*). Or the House may feel compelled to resolve that the words are most disorderly, and proceed to censure him(*h*). Or the House may resolve that the words are not disorderly by negativing the motion to censure the member(*i*). Or the House may go still further and order the offending member to be committed to the custody of the sergeant-at-arms and imprisoned(*j*). 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(*k*). 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 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(*l*).

(*g*) 66 E. Com. J. 391; 137 *Ib.* 395. Sen. Deb. (1880), 300.

(*h*) 18 E. Com. J. 653.

(*i*) 32 *Ib.* 708.

(*j*) 18 *Ib.* 653.

(*k*) 126 E. Hans. (3), 1208; 235 *Ib.* 1809-26.

(*l*) 126 *Ib.* (3), 1207, 1218, 1234. Of late years no occasion has arisen to require the application of the rules as to taking down words and much of the learning on the subject is practically obsolete. The Speaker (or chairman) deals promptly with unparliamentary expressions without the interference of the House or committee under the somewhat cumbersome and elaborate procedure above indicated. See May, pp. 320, 321, 331.

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(*m*).

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(*n*). 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(*o*). But when words have been taken down in committee, it is always open to the offending member to withdraw the objectionable expressions, and to apologize to the House for having used them. In case his apology is accepted, the fact of his having made it will be duly entered on the journals(*p*).

It is also for the House to consider what course it ought to take with reference to any disorderly conduct of members(*q*) in the lobbies. The attention of the House may be called to the matter when the Speaker is in the chair. The jurisdiction of the House to deal with the member so offending is undisputed.

XXI. Proceedings to Prevent Hostile Meetings.—From the foregoing and other illustrations of the procedure in

(*m*) 32 E. Com. J. 707-8. Cav. Deb. i. 463.

(*n*) Com. R. 76; 233 E. Hans. (3), 951-956.

(*o*) 108 E. Com. J. 461, 466; 126 E. Hans. (3), 1193-1207; 235 *Ib.* 1809, 1833.

(*p*) 137 E. Com. J. 253.

(*q*) 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.

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(*r*). 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"(*s*). If the members are not present, they will be sent for immediately, and the necessary assurances asked from each(*t*).

If the member who has committed a breach of order either in the House, or in a committee of the whole, or in a select committee, refuse to apologize or withdraw the expression complained of, and there is a prospect of a quarrel arising between him and another member on account of such words, a member may move in the House that he be taken into the custody of the sergeant-at-arms. If the

(*r*) 183 *Ib.* (3), 801-2.

(*s*) Case of Sir R. Peel and the O'Donoghue, 1862; 165 E. Hans. (3), 616-626.

(*t*) 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. Case of Mr. O'Kelly, 138 E. Com. J. 238. 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.

member should subsequently apologize and explain that the matter will not proceed further, the motion for his arrest will be withdrawn(*u*).

XXII. Punishment of Misconduct.—Either House of parliament has full authority to punish those members who are guilty of contempt towards it, by disorderly behaviour, by obstruction of the public business(*v*), or by wilful disobedience of its orders. Any member, so offending, is liable to censure or suspension from the service of the House, or commitment, as the House may adjudge. Suspension is now the mode of punishment freely used in the English House of Commons(*w*) under the orders of 1902. If a member refuse to withdraw when suspended, the Speaker will order him to be removed by the serjeant-at-arms.

It is usual when a charge of misconduct is made against a member to hear any explanation which he may have to offer ; but " if the House should be of opinion that the offence which the hon. member has committed is flagrant and culpable, and admits of no apology, it will be competent first, without directing him to attend in his place, to order 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(*x*). Subsequently a petition, stating that he was of unsound mind, was received and referred to a select committee, which reported that the allegations thereon were correct, and it was accordingly ordered that he be discharged from custody.

(*u*) 8 E. Hans. (2), 1091-1102; Can. Leg. Ass. J. (1849), 88; 106 E. Com. J. 313 (committee of whole). For procedure in case of altercations in a select committee, see 91 E. Com. 464, 468 and 34 E. Hans. (3), 410, 486.

(*v*) Mr. Speaker Brand, 132 E. Com. J. 375.

(*w*) 136 E. Com. J. 55, 56.

(*x*) 122 E. Hans. (3), 367-73; 107 E. Com. J. 278, 292, 301.

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(*y*). For instance, when a member is named by Mr. Speaker for disorderly conduct or language, he will explain and withdraw(*z*). 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(*a*). 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(*b*). 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,

(*y*) 122 E. Hans. (3), 611, 816.

(*z*) 2 Hatsell, 170; Cushing, p. 692; May, 332; 150 E. Hans. (3), 2102; 233 *Ib.* 951; Can. Leg. Ass. J. (1861), 270; 126 E. Hans. (3), 1207.

(*a*) 235 E. Hans. (3), 1826.

(*b*) 2 Hatsell, 170, 171, *n.*; Mirror of P. 1838, vol. 3, pp. 2159, 2164; 101 E. Com. J. 582; 113 *Ib.* 68; 116 *Ib.* 377, 381. Case of Mr. Daoust, Can. Com. J., 16th March, 1876. He will also be required to withdraw should he present himself in the House before they have finally determined the matter affecting him; 85 E. Hans. (3), 1198. Queen's Co. (N.B.) election case, June 1, 1887; in this case, when Mr. Baird's seat was attacked, he made his explanations and then retired from the House until the matter was disposed of; Hans. 671, 675.

in his explanation or exculpation ; and then he is to withdraw(*c*). The 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(*d*).

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(*e*). 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(*f*).

XXIV. References to Judges and other Persons.—The rules of the two Houses are only intended to protect their own members, and consequently any reflection on the conduct of persons outside cannot be strictly considered as breaches of order(*g*). But the speakers of the English Commons now always interfere to prevent as far as they can all personal attack on the judges and courts of justice. They have always felt themselves compelled to say that

(*c*) 235 E. Hans. (3), 1811-12.

(*d*) 91 E. Com. J. 314.

(*e*) 100 E. Com. J. 588; Can. Com. J. 16th March, 1876. See also case of Mr. Schell, M.P., Hans. 25th June, 1903.

(*f*) 93 E. Com. J. 307; 63 E. Com. J. 149; 132 *Ib.* 144, 375.

(*g*) 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; May, 316, 317.

"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 "(*h*). Members have even been interrupted in committee of the whole by the chairman when they have cast an imputation upon a judicial proceeding(*i*). 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(*j*).

XXV. New Standing Orders of the British Commons.—In the British House of Commons it became evident that the old rules were ineffective to present obstruction of public business and to maintain the dignity of the House. The efforts made to improve the conditions of things between the years 1878 and 1888 are described in May's Parliamentary Practice(*k*). In 1902 a completely new list of Standing Orders was adopted, covering all points deemed necessary to protect the House and to facilitate the

(*h*) 212 E. Hans. (3), 1809; 234 *Ib.* 1463, 1558; 238 *Ib.* 1953; Can. Hans. (1887), 373.

(*i*) 240 E. Hans. 990-992. The House has also refused to receive petitions reflecting on courts of law. Neither is it regular to discuss proceedings that are *sub judice*, 216 E. Hans. (3), 960-1; May, 316.

(*j*) 237 E. Hans. (3), 1639. See May, p. 317 note. 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; Can. 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.

(*k*) May (10th ed.), pp. 301, 322, 325.

transaction of business. Order in the House and the closure of the debate are provided for by Orders 18, 19, 20, 21, 26 and 27(*l*). Happily there have been no events in the recent history of Canadian legislatures to show the absolute necessity of adopting the same extraordinary measures for maintaining order and decorum, and ensuring the despatch of necessary legislation.

(*l*) Ord. 18 provides that whenever any member shall have been named by the Speaker (or chairman of committee of the whole) for abusing the rules of the House, then 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 forthwith suspend the proceedings of the Committee and report the circumstances to the House and the Speaker shall, on motion being made thereupon put the same question in the same manner as above indicated.

Ord. 26 provides for closure of debate. "After a question has been proposed, a member rising in his place may claim to move, 'That the question be now put,' and unless it shall appear to the chair that such motion is an abuse of the rules of the House or an infringement of the rights of the minority, the question 'That the question be now put' shall be put forthwith and decided without amendment or debate."

Ord. 27. "Questions for the closure of debate shall be decided in the affirmative, if when a division be taken, it appears by the numbers declared from the chair, that not less than one hundred members voted in the majority in support of the motion."

CHAPTER XII.

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 the question, or that the members be called in. In most cases, however, the question is put without calling in the members. The speaker rises in his place and asks—"Is the House ready for the question?" If it is evident that no member claims the right of speaking, the speaker proceeds to put the question by reading the main motion, and then the amendment or amendments in their order as the case may be. Having read the question on which the decision of the House is to be first given, he takes the sense of members by saying—"Those who are in favour of the question (or amendment) will say content (or yea); those who are of the contrary opinion will say non-content (or nay)." When the sup-

porters 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:—

30. "If two senators require it the contents and non-contents are entered upon the minutes(*a*), provided the Senate shall not have taken up other business; and each senator shall vote on the question openly and without debate, unless for special reasons he be excused by the Senate."

In the Commons the yeas and nays can be taken only in conformity with the following rule:—

83. "Upon a division, the yeas and nays shall not be entered on the minutes, unless demanded by five members"(*b*).

In the case of important questions, the members are called in when it is proposed to close the debate, and decide the matter under consideration. The moment the speaker

(*a*) Sen. J. (1882), 199; *Ib.* (1890), 194.

(*b*) It has often been 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 speaker's decision to the ultimate test of a division. May, 273, 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. See 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, 341. On the 29th Jan., 1890, no votes were given in the negative; Can. Com. J., 38.

orders that the members be called in, no further debate will be permitted. The Senate rule provides:—

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(*c*). Several minutes elapse—no stated time is fixed as in the English Commons, where a sand-glass for two minutes is provided(*d*)—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(*e*).

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 indiction of the head his desire to vote, or his intention not to vote by the absence of any movement on his part. In all cases the speaker's vote should be first recorded on the side

(*c*) The whips of the respective political parties in the House are always, on such occasions, occupied in bringing in the members.

(*d*) In the English House, when 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, 337; S.O. 19th July, 1854.

(*e*) 80 E. Com. J. 307; 114 *Ib.* 112.

on which he wishes to vote. After the contents have been taken down the speaker again says—"The non-contents will now rise"(*f*). The names having been taken down, and the numbers declared, the speaker states the result of the question in the usual parliamentary terms.

In the House of Commons the speaker says—"Those who are in favour of the motion (or amendment) will please 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(*g*). When the members in favour of the motion have all voted, the speaker says again—"Those who are opposed to the motion (or amendment) will please 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 King, when the clerk will designate him as Sir———, but it is usual for the clerk in the Commons, as a matter of courtesy, to give precedence in a division to the name of the leader of the government should he rise with the rest(*h*).

(*f*) Senate R. 29. "In voting the contents first rise in their places, and then the non-contents." See Sen. J. (1878), 67.

(*g*) This system seems peculiar to the Canadian Commons. The 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."

(*h*) 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 similar courtesy is paid to the recognized leader of the opposition in cases of party divisions.

When all the names have been duly taken down, the clerk will count up the votes on each side, and declare them, in both languages—yeas, —; nays, —. The speaker will then say—"The motion is resolved in the affirmative;" or "passed in the negative," as the case may be(*i*). 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(*j*).

§.

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(*k*). 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(*l*). 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." "Putting the question" means

a division is in progress; unless, of course, the House orders the withdrawal of strangers in accordance with rule 10 of the Senate and rule 6 of the Commons.

(*i*) Sen. J. (1878), 197-8; Com. J. (1878) 10, 79.

(*j*) Can. Com. J. (1877) 173-5; *Ib.* (1878) 278-9. Sen. J. (1878) 197. Members should not leave their seats before the question is finally declared. In 1880-1, a member's vote was hastily struck off on account of his leaving his place before the question was so declared (Can. Hans. 724): but Mr. Speaker Blanchet misinterpreted a rule (17) which had no application whatever to such cases, and his decision was properly reversed in 1889; Can. Hans., 249.

(*k*) May 6, 1878.

(*l*) 110 E. Com. J., 352; 139 E. Hans. (3), 488.

reading the whole question either in one or the other language from the beginning to the end. A member "who has indistinctly heard the motion read may ask it to be read again, but the rule is that he should be in his place *all* the time the question is being put in either French or English and he can only require it to be read again in case he did not hear it clearly on the first occasion in either language. If a question is raised after a division as to the right of a member to vote under the condition stated, the speaker will inquire if the hon. member was present in the House and heard the question put(*m*). If he replies in the negative, his name will be struck off the list, and the clerk will again declare the numbers(*n*). 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(*o*). 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

(*m*) Mr. Sp. White, Can. Hans. (1891) 4455-4462.

(*n*) 2 Hatsell, 187. 139 E. Hans. 486; 111 E. Com. J. 47. Can. Com. Hans. (1890) 460 (Mr. Welsh); the name appeared incorrectly in the Hansard division list (see Jour. 79). Mr. Ethier's name struck off, Can. Com. Hans. (1896, 2nd sess.), 852.

(*o*) 114 E. Com. J. 102; 129 *Ib.* 234. Mr. McInnes, 16th April, 1878, Canadian Commons. Can. Com. Hans. (1879) 1979 (Sir J. A. Macdonald's remarks as to compelling members to vote). In the English Commons, 3rd February 1881, Mr. Speaker informed the House that several members who had given their voices with the noes when the question was put, had refused to quit their places, and consequently he had submitted their conduct to the consideration of the House. A number of members were then suspended for refusing to withdraw during the division after having been warned of the consequences by the speaker. 136 E. Com. J. 55-56.

in the House, are not any more authoritatively recognized in the Senate or Commons than in the Houses of the English Parliament, yet it is customary not to press the vote of a member when he states that he has "paired" with another member(*p*). 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(*q*). 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 vote, immediately after the announcement of the division." If a member's name is entered incorrectly or is inadvertently left off the list, he can have it rectified should the clerk read out the names, or on the following day when he notices the error in the printed votes(*r*). It may be added here that

(*p*) May, 351. Can. Com. Hans. (1876), 685; *Ib.* (1879), 1979. *Ib.* (1891) June 1 and 5. 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. Deb. (1883) 458. *Ib.* (1889) 715. But pairs are recognised by the rules of the house of representatives at Washington. Smith's Digest, p. 239; Rule viii. (2). In the Canadian Commons the clerk at the table has been on more than one occasion allowed to strike off the name of a member who is recorded and then admits having paired; but there is no rule or order authorising this questionable proceeding. The official Hansard, each session, publishes a list of pairs on each question, obtained from the whips of the two political parties. It is usual at the close of a division to call upon a member known to have paired, to explain how he would have voted. Can. Com. Hans. (1890), 399; *Ib.* (1896, 2nd sess.) 852, 853. On one occasion a member inadvertently voted, though he had paired in the opinion of another member who had not voted, and on the following day he wished to have his name struck off but it was not considered expedient to make such a precedent and alter the journals; *Ib.* (1887), 360. See case of Mr. Taylor, Can. Com. Hans. (1894) 6355.

(*q*) 176 E. Hans. (3) 31; 164 *Ib.* 210; 242 *Ib.* 1814; May, 351.

(*r*) Can. Com. J. (1871), 174; V. & P. (1879 356; *Ib.* (1887), 113; Sen. Deb. (1880) 455-6; *Ib.* (1880-81) 591.

when the House, by division, has decided a matter, a discussion thereon cannot be renewed nor reference made to circumstances connected with the division(*s*).

III. Questions Carried on Division.—Members who are opposed to the unanimous adoption of a motion, and nevertheless do not wish to divide the House, may ask that it be entered on the journals as "carried on a division," and the speaker will order it accordingly. The entry on the journal is simply: "The question being put, the House divided, and it was resolved in the affirmative;"(*t*) or "passed in the negative"(*u*). Questions may also be entered as "resolved in the affirmative," or "passed in the negative," as "in the last preceding division"(*v*). Frequently, in the case of numerous motions on a question, all the divisions are ordered by general consent to be recorded as in the first case(*w*).

IV. Equality of Votes in a Division.—When the voices are equal in the Senate the decision is deemed to be in the negative(*x*). 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 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."

(*s*) 232 E. Hans. (3), 1636; Blackmore's Dec. (1882) 91.

(*t*) Can. Com. J. (1877) 191, 192, 200, 226; *Ib.* (1878) 50.

(*u*) *Ib.* (1877) 200, 231; *Ib.* (1878) 56; 129 E. Com. J. 144, 289.

(*v*) Can. Com. J. (1877) 193 249.

(*w*) Can. Com. Hans. (1882) 1479 (Representation bill). On July 3rd, 1885, the majority of the divisions on the Franchise bill were so ordered, and accordingly recorded.

(*x*) 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.

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 two cases are recorded in the Canadian journals from 1867 to 1890 of the speaker having been called upon to vote. On the first occasion the question was on a motion for deferring the second reading of an Interest Bill for three months—on which there was great diversity of opinion—and the speaker voted with the yeas, but no reasons are entered in the journals(*y*). In 1889 the speaker voted in favour of giving the House another opportunity of considering a bill to prevent cruelty to animals(*z*).

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(*a*) on such occasions is to vote, when practicable, in such a manner as not to make the decision of the House final(*b*). 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"(*c*). It was evidently on this ground that

(*y*) Can. Com. J. (1870) 311. Reasons are not always given in the English journals; 98 E. Com. J. 163; 102 *Ib.* 872.

(*z*) Can. Com. J. (1889) 114.

(*a*) 131 E. Com. J. 398; May, 410.

(*b*) 83 E. Com. J. 292; 92 *Ib.* 496; Can. Com. J. (1889) 114.

(*c*) Church Rates Abolition bill (3rd reading) 163 E. Hans. (3) 1322. Some cases are recorded in the journals of the legislative assembly of Canada of reasons being given by the speaker under such circumstances; 1863, August sess., p. 33.

the speaker gave his casting vote against further progress during the session of 1870 with the Interest Bill.

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 (*d*), 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 (*e*).

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" (*f*).

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 (*g*). Any protests, or reasons, or parts thereof, if considered by the House to be unbecoming or otherwise irregular, may be ordered to be expunged (*h*). 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 (*i*).

VI. Members' Interest in a Question.—The House of Commons of England in 1858 resolved:

(*d*) Sen. J. (1875) 149; *Ib.* (1877) 261; *Ib.* (1882) 188-9.

(*e*) Lords' S. O. 32; May, 352.

(*f*) The same practice obtains in the Lords; 87 E. Hans. (3) 1137; 55 Lords' J. 492. Sen. Deb. (1879), 432-3.

(*g*) Sen. J. (1877) 261; *Ib.* (1879) 188; *Ib.* (1882) 189.

(*h*) 40 Lords' J. 49; 43 *Ib.* 82; May, 352, 355.

(*i*) 43 Lords' J. 82.

"That it is contrary to the usage and derogatory to the dignity of this House that any of its members should bring forward, promote or advocate in this House any proceeding or measure in which he may have acted or been concerned, for or in consideration of any pecuniary fee or reward" (*j*).

Mr. Speaker Peel has given his opinion that this resolution is "strictly confined to cases in which a member, in his public capacity as a member of Parliament, advocates a particular person's cause or promotes any case, and receives a pecuniary reward for so doing." It does not "extend to the forbidding of a member to engage in the House on a subsequent occasion in a debate relating to a case in which he has been engaged after it has been decided."

The Canadian Senate and Commons have among their rules the following old order of the English Parliament (*k*).

"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" (Sen. R. 31; Com. R. 16).

The interest must be of a direct character, as it was well explained, on one occasion, in a decision of Mr. Speaker Wallbridge, in the legislative assembly of Canada. A division having taken place upon a bill respecting permanent building societies in Upper Canada (which had been introduced by Mr. Street), Mr. Scatcherd raised the point of order that, under the rule of the House, the former had a direct pecuniary interest in the bill, and could not consequently vote for the same. The speaker said—"That the interest which disqualifies must be a direct pecuniary inter-

(*j*) Res. of 22nd of June, 1858; May, 82.

(*k*) E. Hans., Feb. 10, 1893; Blackmore's Dec. 92. Mr. Sp. Abbot, 20 E. Hans. (1) 1011; Can. Com. R. 16. See Mr. Speaker Kirkpatrick's decision that a bill cannot be promoted in the House by any member who has advised thereon in his professional capacity; Can. Com. Hans. (1884), 857.

est, 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"(*l*). This decision is strictly in accordance with the principle laid down in all the English authorities (*m*), 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 (*n*). Consequently the votes of members on questions of public policy are allowed to pass unchallenged (*o*). Public bills are frequently passed relative to railways (*p*), building societies, insurance companies(*q*), and salaries to ministers(*r*), in which members have an indirect interest; but their votes when questioned have been always allowed (*s*). An objection to a vote on

(*l*) Can. Speakers' D., No. 135; Leg. Ass. J. (1865) 228.

(*m*) 2 Hatsell, 169, *n.*

(*n*) May, 353; 20 E. Hans. (1) 1011.

(*o*) 2 Hatsell, 169, *n.* 76 E. Hans. (3), 16.

(*p*) 99 E. Com. J. 491.

(*q*) 79 E. Com. J. 455.

(*r*) Leg. Ass. J. (1854-5) 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." It has been ruled in the English Commons (334 E. Hans. (3) 732) that on a motion for the reduction of a salary for the purpose of considering the official conduct of the holder thereof, his vote against the motion was in order.

(*s*) Bill to grant aid to the Grand Trunk Railway; Leg. Ass. J. (1856) 662, 679, 680.

the ground of personal interest cannot be raised except upon a substantive motion that the vote given be disallowed and cannot be brought forward as a point of order(*t*). The member whose vote is in question having been heard in his place should withdraw before the question has been proposed. 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 (*u*); or that they had taken the necessary legal steps to retire from a company about to receive government aid (*v*); or that their interests are only in common with those of Her Majesty's subjects in Canada (*w*). 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(*x*). A member has also been excused from voting on a question because he was personally interested in the decision of an election committee (*y*). An

(*t*) May, 357; 80 E. Com. J. 110; 91 *Ib.* 271; 20 E. Hans. (1), 1001-12. Leg. Ass. J. (1857), 312. See Mr. Speaker Bain's ruling on this point in accordance with English authority as stated in the text. Can. Hans. (1900) July 10.

(*u*) 52 E. Com. J. 632.

(*v*) 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.

(*w*) *Ib.* (1857), 311-4.

(*x*) 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.

(*y*) 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. On the 11th of Feb., 1890, Mr. Corby did not vote because, as owner of a distillery, he had an interest in the question of a rebate of duty on corn; Hans. 459.

objection on the ground of personal interest raised in a committee of the whole must be determined by the committee (*z*).

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 passage (*a*). 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 (*b*); or that a member was a landowner on the line of a railway company, and that his property would be injured by its construction (*c*). 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 (*d*). 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 (*e*). A member interested in a bill may take part in a debate thereon, or propose a motion or an amendment in relation thereto (*f*).

It was not until 1894, when the rules were revised, that the Senate adopted the Canadian and English resolution governing such matters, but previously the practice was the

(*z*) 334 E. Hans. (3) 732. May, 355 *n*.

(*a*) May, 355; 80 E. Com. J. 443; 91 *Ib.* 271; 13 E. Hans. (N.S.), 796. Sen. Deb. (1876), 258.

(*b*) 80 E. Com. J. 110; 101 *Ib.* 873.

(*c*) 100 *Ib.* 436. See also 212 E. Hans. (3), 1134-7.

(*d*) May, 358; S. O. 108-110.

(*e*) 101 E. Com. J. 904; 115 *Ib.* 218.

(*f*) 155 E. Hans. (3) 459; *Ib.* May 29, 1894; Blackmore's Peel's Dec., 95.

same in both houses. When the bill is of a public nature a member of the Senate may properly vote if he wishes to do so (*g*). 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" (*h*); but they are exempted by standing order from serving on any committee on a private bill in which they are interested (*i*).

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 (*j*).

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 (*k*). 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(*l*).

(*g*) In 1875 Senator Ryan asked if he could vote on a public bill respecting marine electric telegraphs, as he was a shareholder in a company affected by that bill. The speaker said that there was no rule to prevent him voting on a public bill in which he had only an indirect personal or pecuniary interest, and he voted accordingly. Sen. J. (1875) 137-8; Hans. 410 (remarks of Sir A. Campbell); *Ib.* (1876) 258.

(*h*) May, 353.

(*i*) S. O. 98.

(*j*) Case of Mr. Townsend, a bankrupt, 113 E. Com. J. 229; 150 E. Hans. (3) 2099-2104. Of Dr. Orton, Can. Com. J. (1875) 176.

(*k*) Leg. Coun. J. (1857) 31-57.

(*l*) May's Const. Hist., ii. 57.

CHAPTER XIII.

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 British 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. These committees 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.

Though regularly appointed they existed only in name from the time of the Restoration, and were wholly laid aside in 1832, at the beginning of the first session of the reformed parliament (*a*).

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 (*b*). 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 once famous ninety-two resolutions of the legislature of Lower Canada originated (*c*). Such committees were not uncommon in 1778 in the English Parliament (*d*).

These grand committees on constitutional questions have not existed by name since the union of the Canadas in 1840, and the concession of responsible government. 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 (*e*).

Committees of the whole House, being composed of all members, possess none of the advantages which result from

(*a*) For a very full account of the composition and functions of these committees, see Cushing, app. xv.; Dwarris, i. 160-1.

(*b*) Low. Can. Ass. J. (1807), 48; *Ib.* (1808), 26; *Ib.* (1819), 9.

(*c*) *Ib.* (1834, 11, 65, 310.

(*d*) See remarks of Lord Chancellor Loughborough, as to the great latitude taken in these committees; 59 Parl. Reg. 512; Cushing, s. 2041.

(*e*) Can. Com. Hans. (1883), 37 (Sir John Macdonald).

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 involving many details in a committee of the whole House, rather than in the House itself, consists in the liberty which every member enjoys in such committee of speaking more than once to the same question.

II. Senate Rules.—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" (*f*). 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:

"74. When the Senate is put into committee, every senator is to sit in his place.

"75. 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.

"76. No arguments are admitted against the principle of a bill in a committee of the whole.

"77. 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.

"78. The proceedings of the committee are entered in the journals of the Senate."

(*f*) Sen. J. (1883), 86; *Ib.* (1890), 198; *Ib.* (1901) 223, 236. The same practice prevails in the Lords, though it is not now usual to make the entry "adjourned during pleasure." 119 Lords J. 293, etc.

There is no chairman of committees in the Senate regularly appointed at the commencement of every session, as in the House of Lords(*g*); but the speaker will call a member to the chair. In committee a senator may address himself to the rest of the senators (*h*).

III. Procedure in the Commons.—When the House of Commons proposes to go into a committee of the whole on a bill or other question, it must first agree to resolution duly moved and seconded—"That this House will immediately (or on a future day named in the motion) resolve itself into a committee of the whole" (*i*). 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(*j*).

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 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."

In the session of 1885 the House of Commons adopted the English practice of electing a permanent chairman of committees of the whole, who acts also as deputy speaker(*k*).

(*g*) Lords' S. O. 2, 38, 39; 109 Lords' Jour. 11; 237 E. Hans. (3), 58.

(*h*) R. 20.

(*i*) Can. Com. J. (1875), 188; *Ib.* (1877), 117; *Ib.* (1878), 147.

(*j*) *Ib.* (1875), 351, 355; *Ib.* (1878), 255.

(*k*) Jour. and Hans. 10th Feb., 1885. Mr. Daly was the first chairman appointed under this rule. No notice is absolutely required

At the same time the House passed the following standing orders:

1. That this House do elect a chairman of committees of this House at the commencement of every parliament, as soon as an address has been agreed to in answer of his Excellency's speech; and that the member so elected do, if in his place in the House, take the chair of all committees of the whole, including the committees of supply and ways and means, in accordance with the rules and usages which regulate the duties of a similar officer, generally designated the chairman of the committee of ways and means, in the House of Commons of England.

2. That the member elected to serve as deputy speaker and chairman of committees shall be required to possess the full and practical knowledge of the language which is not that of the speaker for the time being.

3. That the member so elected chairman of committees do continue to act in that capacity until the end of the parliament for which he is elected, and in the case of a vacancy by death, resignation or otherwise, the House shall proceed forthwith to elect a successor.

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

of the election of a chairman, as it proceeds, like the formation of committees of supply and ways and means, by virtue of a standing order. As soon as these committees are formed after the adoption of the address in answer to the speech at the opening of the House, the motion can be at once regularly made for the election of this officer. Can. Com. J. (1896, 2nd sess.), 15; *Ib.* (1901), 20.

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 (*l*).

Instructions to committees of the whole in the Commons are permissive (*m*), but in the Senate and Lords they may be imperative (*n*).

When the speaker leaves the chair, the serjeant-at-arms places the mace under the table where it remains during the sitting of the committee. The chairman (who occupies the clerk's chair) will propose and put every question in the same manner as the speaker is accustomed to do in the House itself. The members stand uncovered when they address the chairman (*o*). If a question of order arise the chairman will decide it himself, unless it be deemed more advisable to refer the matter to the speaker in the House itself. Rule 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 (*p*); but disorder in a committee can only be censured by the House, on receiving a report thereof."

In case of an appeal to the House it is the duty of the chairman of the committee to report in writing the point of order which he has decided. The Speaker must then sub-

(*l*) Can. Com. J. (1820) 120. See also chap. on Public Bills.

(*m*) 189 E. Hans. (3) 1870. May 455.

(*n*) 68 Lords J. 151; 71 *Ib.* 532. May, 455.

(*o*) 248 E. Hans. (3) 400. May, 365. See also Can. Com. Hans. (1896, 1st sess., p. 5735).

(*p*) The first case of appeal to the House under this rule occurred in the session of 1885, but it has its grave inconveniences, since the House is called upon suddenly and without debate to decide a question of order which many of its members may not have heard discussed in committee, and the result is, in many cases, a political, rather than a judicial, vote.

mit the matter to the determination of the House in the language reported to him, and put the question—"That the decision of the chairman be confirmed." No discussion is allowed on the appeal (*q*).

If the committee wish assistance or information on a point of procedure on which they are in doubt, or on which the chairman has not expressed or does not wish to express an opinion, they may ask the advice of the speaker. But, as a rule of practice, the chairman alone is responsible for the business and the procedure of the committee, and no appeal can be made from his decision on a point of procedure except to the House as provided by the rule just cited. In the former case, where the committee refers to the speaker for advice, progress is reported on motion duly made, and when the speaker has given his advice the committee resumes in accordance with regular practice (*r*). In case of an appeal to the House, there is no such motion made, but the chairman leaves the chair immediately, and reports the point in dispute to the speaker, so that the House may decide thereon. If the speaker is absent, and the deputy speaker himself has to take the chair in case of such an appeal, it is in accordance with correct practice of the Canadian as well as English Commons, for a member to take the chair of the committee for the instant, and make the report of appeal to the deputy speaker, who will at once submit the question to the House for its decision (*s*).

In case of disorderly proceedings in committee, such as unseemly noise and interruptions, the chairman will endeavour to preserve order, and will rebuke those guilty of

(*q*) Can. Com. J. (1885) 354, 355; Hans. 1513.

(*r*) Can. Com. Hans. (1896, 1st sess.) 5736; *Ib.* (1889) 4553-4; 170 E. Hans. (3) 19; 181 *Ib.* 1320; 345 *Ib.* 1506. Can. Com. J. (1875) April 1st,; Sen. J. (1875), 137-8; May, 365.

(*s*) So ruled by Mr. Deputy Speaker (afterwards Speaker) Brodeur, Can. Com. Hans. (1899), 4553-4.

such breaches of parliamentary decorum (*t*); but he cannot put a question censuring a member; that can be done by the House alone (*u*). In a very urgent case of disorder, the speaker may take the chair immediately, without waiting for the report of the chairman (*v*). 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 (*w*).

If a member wishes at any time to call in question the conduct of the chairman in the execution of his duties, the proper course is to give notice of a motion to that effect in due course (*x*).

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 old standing order of the English Commons is followed in Canada—there being no written rule in the Canadian House on this point:

"When a bill or other matter (except supply of ways and means) has been partly considered in committee, and the chairman has been directed to report progress, and ask leave to sit again, and the House shall have ordered that the committee shall sit again on a particular day, the speaker shall, when the order for the committee has been read, forthwith leave the chair, without putting any question, and the

(*t*) 239 E. Hans. (3) 1790.

(*u*) *Supra*, R. 76. 126 E. Hans. (3), 1193; 235 *Ib.* 1810; 108 E. Com. J. 461.

(*v*) Case of J. Fuller, 65 E. Com. J. 134-136.

(*w*) 235 E. Hans. (3), 1809-1833. See chapter xiv. on debate, s. XX.

(*x*) Mr. Sp. Peel, July 12, 1893 (Blackmore, p. 55).

House shall thereupon resolve itself into such committee" (*y*).

According to English practice no motion or amendment in committee need be seconded(*z*). When a resolution is proposed in committee, any amendment may be moved thereto as in the House itself. Amendments are moved to the "proposed resolution" (*a*).

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(*b*). In giving his casting vote, in case of an equality of voices, the chairman is governed by the same rules as the speaker under a similar condition. The committee can only consider those matters duly referred to them. If it is deemed expedient to extend their powers, the House must give them an instruction to that effect.

The clerk-assistant keeps a record of the proceedings of committee of the whole in a book, to which members can always have access. The chairman of the committee signs his initials at the side of every 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 (*c*); 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.

(*y*) S. O., 25th June, 1852.

(*z*) May, 363.

(*a*) 108 E. Com. J. 188.

(*b*) Sen. J. (1878) 215; *Ib.* (1879) 272.

(*c*) Can. Com. J. (1901) 40, 51, etc.; 129 E. Com. J. 100, 133. 258.

and have to be received on a future day(*d*). The proceedings in committees on bills are not given in the Canadian journals(*e*), though it is the invariable practice in the English Commons to do so when amendments are proposed or made(*f*). In case of amendments being moved or divisions taking place on a question, they are sometimes recorded in the Canadian Commons journals, but this practice is exceptional (*g*). In the Senate the proceedings of all committees are recorded in the journals in accordance with an express order (*h*).

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(*i*); 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" (*j*); and if this motion (which is equivalent to a motion for the adjournment of the debate) (*k*) 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 (*l*). But if a member wishes to supersede a question entirely, he will

(*d*) May, 363.

(*e*) Can. Com. J. (1876) 74; *Ib.* (1877) 155, 156, 160.

(*f*) 129 E. Com. J. 191, 198, 205.

(*g*) Can. Com. J. (1867-8), 32; *Ib.* (1870), 230-1.

(*h*) Sen. R. 78; Sen. J. (1878), 215.

(*i*) Sen. R. 75; May, 368.

(*j*) 132 E. Com. J. 395.

(*k*) Evidence of Mr. Raikes, chairman of Committees, before committee on public business, 1878, p. 89. The discussion on this motion may be on a bill or question generally; 239 E. Hans. (3), 633.

(*l*) Can. Com. J. (1877), 76.

move—"That the chairman do now leave the chair" (*m*) 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) (*n*) 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 (*o*). Two motions to report progress cannot immediately follow each other on the same question; but some intermediate proceeding must be had (*h*). Consequently if a motion to report progress be negatived, a member may move that "the chairman do leave the chair" (*q*). If the latter motion is carried in the affrmative, 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 (*r*).

By reference to the Senate rules (*s*) it will be seen that the motion for the previous question is expressly forbidden. No such rule appears among the orders of the Canadian

(*m*) 132 E. Com. J. 395.

(*n*) Evidence of Mr. Raikes, C. on P. B. 1878, p. 89.

(*o*) 117 E. Com. J. 177; Can. Com. J. (1869), 106, 288, 303; *Ib.* (1874), 326.

(*p*) May, 370. The same principle applies to these motions that applies to those for the adjournment of the House and debate.

(*q*) 132 E. Com. J. 394-6; 239 E. Hans. (3), 1802, 1811-15.

(*r*) See chapter xvi. on public bills, s. 18.

(*s*) R. 75.

Commons; but the practice is the same as that of the English House, which does not admit of the motion(*t*).

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 (*u*). If the House is adjourned for want of a quorum the committee may again be revived (*v*). 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 (*w*).

During the sitting of the committee, the speaker generally remains in the House, or within immediate call, so that he may be able to resume the chair the moment it is necessary. In case the chairman of committees has to take the chair, in the absence of the speaker, he may call upon any member on the government side to make the report (*x*). A

(*t*) See May, 9th ed., p. 433; also 10th ed., p. 364. Education, 111 E. Com. J. 134; 141 E. Hans. (3), 780, 799-80.

(*u*) 100 E. Com. J. 701; 121 *Ib.* 272; 137 *Ib.* 197; Leg. Ass. (1852-3), 1038, 1116; Can. Com. J. (1899), 239.

(*v*) 110 E. Com. J. 449; 137 *Ib.* 197.

(*w*) 176 E. Hans. (3), 99; 115 E. Com. J. 402, 427. Evidence of Mr. Raikes, Com. on P. B., 1878, p. 89. Also chapter XX. on public bills, s. 18.

(*x*) Sir Reginald Palgrave, clerk of the English House of Commons, in a letter to the author, states in these words the English practice: "When during the speaker's absence, the chairman of ways and means leaves the chair of the committee, to take *the chair*—a committee sitting being over—he asks a member at hand, usually off the government bench, to make a report from the committee, as any member of a committee can make a committee report to the House, and so the absurdity of the chairman's report from himself to himself is avoided." See Can. Com. Hans. (1899), 4554.

message from the governor-general, summoning the House to attend him in the Senate chamber, will require the speaker to resume the chair immediately. But messages brought by a clerk of the Senate will not interrupt the proceedings of 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 (*y*).

When six o'clock comes the speaker will resume the chair immediately, without waiting for any report from the chairman, and will say—"It being six o'clock, I now leave the chair." In case, however, the committee cannot sit after recess, the chairman must make the usual formal motion for leave to sit again. In case, however, the committee can continue, the chairman will resume the chair after half-past seven o'clock, when the speaker has taken his seat and called on him to discharge that duty (*z*). 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 (*a*).

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" (*b*). Resolutions providing for a grant of public money, or for the imposition of a public tax, can only be regularly received on a future

(*y*) Can. Com. J. (1877), 282. Here the message was received whilst the committee of supply was sitting.

(*z*) Can. Com. J. (1876), 264-5.

(*a*) *Ib.* (1878), 85. Here no private bills were on the paper, but a message from the Senate with a private bill was taken up, and progress made therewith. Messages with bills from the Senate are sometimes taken up by general consent at this stage; *Ib.* (1885), 235.

(*b*) Chapter xvi. on public bills, s. 11.

day (*c*). Resolutions relating to trade or other matters may be received immediately, and bills introduced thereupon (*d*). 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 subject of debate and amendment (*e*). Resolutions may be withdrawn, postponed, referred back for amendment, or otherwise disposed of (*f*). 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 (*g*).

V. New Rules of the English Commons.—The old rules which govern committees of the whole in Canada give exceptional opportunities for making motions and indulging in prolonged discussions. When 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. Of late years, the English House of Commons has found it necessary to make more stringent rules for the conduct of business and the maintenance of order in committee of the whole (*h*).

(*c*) Chapter xv. on supply, s. 9; May, 370.

(*d*) Can. Com. J. (1873), 127, 149, 155, 157; *Ib.* (1878), 108, 116; 129 E. Com. J. 31; 137 *Ib.* 48 (Banking Laws); May.

(*e*) Can. Com. J. (1880-1), 94 (Canadian Pacific R.); *Ib.* (1885), 516; *Ib.* (1894), 502, 503.

(*f*) 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; *Ib.* (1894), 350.

(*g*) 174 E. Hans. (3), 1551; Can. Com. J. (1883) 401.

(*h*) S. O. (1902), 18, 19, 20, 21.

CHAPTER XIV.

Standing and Special or Select Committees.

I Standing 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. Committees of the Senate.—Standing and special committees now form a most important part of the legislative machinery. They possess the obvious advantages, which a small number of persons must naturally have, of being able to discuss the details of the questions referred to them with patient deliberation which is practically impossible in the whole House. The tendency of modern practice is to refer to committees all matters requiring the taking of evidence and laborious investigation. In this way, the Houses are able to simplify their proceedings and make greater progress with the public business.

The value of committees for these purposes has always been recognized by the Canadian legislatures, and of late years their usefulness has received extension by the reference of many public bills of an important character to 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, of not more than eighty members for the consideration of all bills relating to law, courts of justice and legal procedure, and to trade (which includes agriculture

and fishing), shipping and manufactures; in fact, establishing a class of committees which have been practically in operation for years in the legislatures of Canada (*a*).

In the course of every session, a number of standing or sessional committees are appointed in each house to inquire into and report on those matters referred to them for consideration. By standing committees are meant those sessional 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 at the commencement of each session, after the communication of the Speech from the Throne, a committee of selection of nine members (R. 79) is appointed to nominate the senators to serve on the several standing committees of the Senate. These are as follows:—Banking and Commerce (25 in number), Standing Orders (9), Railways (35), Private Bills (25), Internal Economy (25), Debates (9), Divorce (9), Restaurant (7), Printing (21), Library (17) (*b*).

Notice is always given in the minutes of the members of the different sessional committees (*c*). The motion for the appointment of a sessional committee must be put and concurred by the House (*d*).

The Standing committees of the Senate report from time to time without receiving special authority to that effect in the order appointing them.

(*a*) See remarks of Sir J. Macdonald, 16th July, 1883; Can. Com. Hans. Also S. O., Dec. 1st, 1882; and 1st Dec., 1902, with respect to English Committees.

(*b*) Sen. R. 79, 80; Sen. J. (1902), 21st Feb.

(*c*) Min. of Parl., 1878, 26-27; *Ib.* 1882, 18-20; *Ib.* (1883), 35-36; Deb. (1889), 37.

(*d*) Sen. J. (1878), 36; *Ib.* (1882), 30; *Ib.* (1890), 13.

Messages will be sent to the Commons informing them of the appointment of committees on the library and printing (*e*). The committees of the Senate meet, if practicable, on the next sitting day after their appointment, and choose their chairman, and the majority of senators appointed on such committees constitute a quorum, unless it be otherwise ordered (*f*). 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 (*g*).

The rules that govern the proceedings of the committees of the Senate are, for the most part, the same as those of the Commons; and whenever there is any difference in practice, it will be shown in the course of this chapter.

II. 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 agriculture 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" (*h*).

(*e*) *Ib.* (1882), 29-30; *Ib.* (1890), 13.

(*f*) R. 92.

(*g*) Sen. J. (1878), 44, 52, 54; *Ib.* (1879), 54, 55; *Ib.* (1882), 32, 33; *Ib.* (1890), 16.

(*h*) Can. Com. J. (1867-8), 5; (1878), 14; *Ib.* (1890), 6; *Ib.* (1901), 15.

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 (*i*). This committee is then appointed (*j*), and reports the standing committees without delay (*k*). The report is now generally adopted immediately after its presentation (*l*); but sometimes it is left upon the table for one or two days, so that the 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 in such a case to move concurrence immediately in the report "so far as it relates to the select standing committee on standing orders (*m*), 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 (*n*). 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 (*o*).

(*i*) V. and P. (1877), 6; *Ib.* (1878), 14, etc.

(*j*) Can. Com. J. (1878), 24; *Ib.* (1890), 12; *Ib.* (1901), 22.

(*k*) *Ib.* (1877), 23; *Ib.* (1878), 28; *Ib.* (1890), 13; *Ib.* (1900), 31.

(*l*) *Ib.* (1901), 31-33.

(*m*) Ib. (1877), 25; *Ib.* (1878), 28; *Ib.* (1879), 23; *Ib.* (1890), 14.

(*n*) Chapter xviii. on private bills, s. 4.

(*o*) Can. Com. J. (1878), 41; *Ib.* (1890), 15, 18, 19; *Ib.* (1901), 33, 37.

The titles of the several standing committees of the Commons sufficiently indicate their respective functions. Some of these committees are very large, the number of members on railways, canals and telegraph lines having been 182 in 1903; on banking and commerce, 130; on agriculture and colonization, 119; on miscellaneous private bills, 80; on standing orders, 49. 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. In 1901 it consisted of 70 members (*q*).

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 or special committee, is properly applied to a committee appointed to consider a particular subject(*r*). One of the first select committees appointed in the Commons at the commencement of each session is one to supervise the official reports of the debates(*s*).

When a committee is appointed in the Senate it is usual to ask in the motion for power to send for persons, papers, and records, to examine witnesses on oath, engage counsel, to report from time to time, or for other powers that may be necessary(*t*). If it is necessary to refer to minutes or evidence taken before a committee of the previous session, the motion should be to that effect(*u*). Notice should properly

(*q*) 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. lxxvii.) since 3rd of April, 1862 (amended 28th of March, 1870), consists of only 11 members, of whom 5 are a quorum.

(*r*) See Sen. and Com. J. under head of Committees.

(*s*) Can. Com. J. (1901), 28.

(*t*) Sen. J. (1878), 59, 63; *Ib.* (1901), 66-70, 73.

(*u*) *Ib.* (1878), 59 (Canadian Pacific R. R., terminus at Fort William).

be given of all motions for select committees(*v*), but it is not the invariable practice in the Senate to include in the motion the names of the members, which may be given by consent of the House when the motion is duly proposed(*w*). But no doubt it is the more convenient and regular course to include the names in the notice of motion(*x*). It is usual for the mover of a select committee to be one of its members. Rule 85 provides:—

"Every senator, on whose motion any bill, petition, or question shall have been referred to a special 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, unless 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."

By the thirty-first rule 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

(*v*) Min. of P. (1878), 42, 138.
(*w*) Min. of P. 1878, p. 44; Journ. 62.
(*x*) Min. of P. (1878), 138; Jour. (1901), 73.

the privileges of the House(*y*). 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(*z*). The motion should also state whether it is necessary that the committee should report from time to time(*a*). If the committee should report once without having received the power in question, it will be defunct until revived(*b*). 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(*c*). The same remarks apply to sending for persons, papers, and records(*d*). If a committee has no power to send for papers, the necessary documents may be handed in by the chairman(*e*). It may examine witnesses who voluntarily give evidence when it has no such authority given it expressly by the House(*f*). Sometimes committees may find it necessary to ask for power "to report evidence from time to time"(*g*). If it be proposed to appoint a larger committee than one of fifteen members, the mover will ask for leave to suspend the rule(*h*)—of which motion a notice should properly be

(*y*) 113 E. Com. J. 68; 146 E. Hans. (3), 97; 148 *Ib.* 1855-1867.

(*z*) V. and P. (1877), 48, 127; Can. Com. J. (1876), 173-4. The English S. O. directs that one day's notice be given in the votes before the nomination of a select committee. Rules and Orders (Palgrave) No. 327.

(*a*) Can. Com. J. (1877), 36.

(*b*) *Ib.* (1870), 23, 36, 58; Can. Com. Hans. (1900), 7646.

(*c*) 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.

(*d*) *Ib.* (1873), 61; *Ib.* (1882), 122.

(*e*) May, 384.

(*f*) 104 E. Com. J. 75; May, 384.

(*g*) *Ib.* (1873), 137; *Ib.* (1875), 139, 172.

(*h*) *Ib.* (1869), 56; *Ib.* (1870), 117; *Ib.* (1875), 139; *Ib.* (1883), 128; *Ib.* (1890), 205.

given(*i*). Members are frequently added or substituted in place of others, without a notice being given(*j*); 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 of proceedings(*k*).

Committees are sometimes appointed directly by the House of Commons, in accordance with Rule 78; and in such a case the procedure is as follows: The assistant clerk will call out in alphabetical order the names of the members from a printed division list, and each member will immediately reply with the name of the member he votes for. Those who receive the highest number of votes 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(*l*).

By reference to the rule of the 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(*m*). The practice was for the members to take objection under the rule as soon

(*i*) 112 E. Com. J. 157; 137 *Ib.* 21.

(*j*) Sen. J. (1867-8), 115, &c.; Can. Com. J. (1878), 48, 57, &c.

(*k*) Can. Speak. D. 43; Sen. Min. of P. (1878), 82; 174 E. Hans. (3), 501, 1569; 227 *Ib.* 1496; 239 *Ib.* 1192. But it has been ruled that no notice is necessary to substitute one member for another on a committee on a bill under rule 31; Can. Com. J. (1884), 238. See rule 31, p. 416.

(*l*) Can. Com. J. (1873), 137 (Pacific Railway charges). *Ib.* (1876), 173-74. Votes (1877), 127; Jour. 103, 118.

(*m*) 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. (1852-3), 127.

as the question was proposed on the motion for the committee, and the House would at once proceed to name the committee(*n*). It is a standing order of the English House of Commons:—

"Every member intending to move for the appointment of a select committee shall endeavour to ascertain previously whether each member proposed to be named by him on such committee will give his attendance thereupon(*o*).

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."

Members Exempt from Serving.—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(*p*).

It appears that the rule in question was always in force in the legislative assemblies of Canada(*q*), and is derived from ancient English usage(*r*). 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

(*n*) Leg. Ass. J. (1854-5) 173. See Can. Com. J. (1883) 128.

(*o*) S. O. 56.

(*p*) Com. on coal and intercolonial trade, Hans. (1877), March 1 and 2. See case of Mr. Casey also, Can. Com. Hans. (1899) 2934. See also Can. Com. J. (1883), 128; Hans. 253-4.

(*q*) Low. Can. J. (1792), 124; Leg. Ass. J. (1841), 14, 46. The rule was enforced more than once; Can. Speak. Dec., 44, 93.

(*r*) 2 E. Com. 14. Lex. Parl. 329, 331.

a committee(*s*). 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(*t*).

If a member is desirous of being excused from attendance on a committee he should ask leave from the House through another member(*u*). 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 good reasons for his non-attendance(*v*). 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(*w*).

(*s*) 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*, 398.

(*t*) Can. Com. Hans. (1880) 102.

(*u*) Can. Com. J. (1873) 60.

(*v*) It was said by Mr. Speaker Sutton on a proposition to discharge a member from a committee, on the ground that he could not attend, for the purpose of substituting another, "that he could not find any trace of such having been the practice; he did not perceive any member had been left out, except it was by absolute parliamentary disqualification or physical impossibility of attendance; as to any other disqualification of attendance, there was, so far as his knowledge extended, no account of any case having arisen." 37 E. Hans. (1) 200-4. Also 43 *Ib.* 1230, 1234; 81 *Ib.* (3) 1104, 1190 (Lords). A member has been substituted for another in the Canadian Commons on account of the member originally appointed having acted as counsel for the parties interested in the matter before the committee; Can. Com. J. (1884), 239, 240; Hans. 843. Or on account of a member of his family being directly affected by the issue; Can. Com. J. 173; Hans. 569. Or on account of a member being unable to attend; Can. Com. Hans. (1900), 7649.

(*w*) 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. Can. Com. J. (1890) 168, 169; 91 E. Com. J. 42; 113 *Ib.* 68.

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, with the exception of the committee on "privileges and elections(*x*). Sometimes the chairman or other member of a select committee will move that the House order a reduction in the number of the quorum, in case it is found difficult to obtain a large attendance of the members; or this may be done on the recommendation of the committee itself(*y*). 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(*z*). Sometimes the quorum of a select committee will be increased in case of an addition to its numbers(*a*). The committee on privileges and elections has sometimes recommended a reduction of its quorum(*b*).

V. Organization and Procedure of Committees.—Rule 87 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 [or special] committees appointed during the session."

(*x*) Can. Com. J. (1877) 24; *Ib.* (1878) 28; *Ib.* (1901), 31-33. 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.

(*y*) *Ib.* (1901), 31.

(*z*) *Ib.* (1877) 55, 59; *Ib.* (1878) 46; *Ib.* (1890), 64; Sen. J. (1890), 9, 27.

(*a*) Can. Com. J. (1874) 85.

(*b*) Can. Com. J. (1873) 82.

It is usual for the leader of the government in either House to give the clerk of the House instructions as to the time and place of meeting for the organization of the several standing committees(*c*).

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. It is usual for the member, on whose motion a select committee has been nominated, to take the initiative in calling it together and having it regularly organized, and this he will do by placing himself immediately in communication with the clerk of the House(*d*).

The committee having met, and a quorum being present, the members will proceed to elect a chairman(*e*). 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(*f*). 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(*g*). Every question is determined in a select committee in the same manner as in the House to which it belongs(*h*). 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

(*c*) Sen. Deb. (1883), 49. Author's MSS. notes.

(*d*) Rep. of Com. on the petition of G. T. Denison, App. No. 7, Can. Com. J. 1867-8.

(*e*) Can. Com. J. (1873), 276; *Ib.* 1883, App. No. 2, King's election case.

(*f*) May, 384.

(*g*) 11 E. Hans. (2), 912, 914; 32 *Ib.* (3), 501-2-3-4.

(*h*) May, 388.

to correct practice, the clerk puts the question and directs the division in the same way as is done on that occasion by the clerk of the House. The name of the member first proposed will be first submitted to the committee, and if the question is 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(*i*). 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(*j*). 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(*k*); but it is usual to do so only when the question is of particular importance, and all the proceedings are reported(*l*). When there is no evidence taken, it is usual to make only a general report, giving the opinion or observations of the committee(*m*). The minutes, however, must be kept in a proper book by the clerks of the different committees in the two houses for reference(*n*). The name of a member asking a question of a witness should be entered(*o*).

The rules that govern the conduct of members in the House should govern them when in committee. It is a rule

(*i*) May, 388. See Mr. Palgrave's Chairman's Handbook, for some interesting information on committee procedure, based on the practice of the English House of Commons, and useful to parliamentarians as well as all persons engaged in public business.

(*j*) English S. O., 25th June, 1852; May, 384.

(*k*) This is the S. O. of the Lords and Commons; Lords J. 25th June, 1852; Com. S. O. lxxii. See proceedings in King's Co. election case, Can. Com. J. 1883, App. No. 2.

(*l*) Printing R. App. No. 2, 1869; Public Accounts R., App. No. 2, 1873; Canada Pacific R. R. Com. Jour. (1873), 275.

(*m*) Printing R., App. No. 1, 1876.

(*n*) Sen. Deb. (1883), 474-5 (Mr. Vidal).

(*o*) *Infra.* Can. Com. J. 1883, App. No. 3.

of the Senate (82) 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(*p*).

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"(*q*).

The standing order of the Lords is the same as that of the House of Commons(*r*). 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(*s*). 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 Sen-

(*p*) May, 391.

(*q*) S.O. lxxiii. Can. Com. J. 1869, printing R., App. No. 2, pp. 10-12; *Ib.* 1870, public accounts.

(*r*) Resolution of 7th Dec., 1852.

(*s*) Sen. Deb. (1878) 413.

ate(*t*). 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(*u*). The sessional committees on bills do not report their proceedings, but only the conclusions to which they have come.

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 shorthand writer(*v*), whose remuneration is fixed by rule of the House(*w*).

Committees should be regularly adjourned from day to day, though in the case of select committees particularly, the chairman is frequently allowed to arrange the day and hour of sitting, but this can be done only with the consent of all the members of the committee(*x*). Committees are not permitted to sit and transact business during the sittings of the Canadian Commons. It is still a S. O. of the House of Commons in England:—

"That the serjeant-at-arms attending this House shall, from time to time, when the House is going to prayers, give notice thereof to all committees; and all proceedings of committees, after such notice, are declared to be null and void, unless such committees be otherwise empowered to sit after prayers"(*y*).

(*t*) Com. on Can. Pac. R. R., 1st May, 1878; Jour. 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.

(*u*) Cook Comm. Acc., App. I. to Sen. J., 1901, p. xv.

(*v*) Can. Com. J. (1877), 117; *Ib.* (1878), 109. Sen J. (1883), 85.

(*w*) Can. Com. J. (1874), 201.

(*x*) May, 391; 205 E. Hans. (3) 685.

(*y*) S. O. 64, 1902, 19 E. Hans. (3), 381. But under latest rules of the English Commons (S. O. 54) "all committees have leave to sit, except while the House is at prayers, during the sitting, and notwithstanding any adjournment of the House." May 390.

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(*z*).

In the Canadian House of Commons, committees frequently sit on Saturday(*a*). Committees of the Senate sometimes sit on the same day, and it was formerly the practice to move for leave to do so(*b*). The point was at last properly raised whether such a motion for leave is not unnecessary, since the Lords have a rule which permits select committees "to sit, notwithstanding any adjournment of the House, without special leave"(*c*). 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(*d*).

Sometimes a committee is authorized by the House to adjourn from "place to place as may be found expedient"(*e*), or to meet at a particular place(*f*), 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

(*z*) 129 E. Com. J. 122, &c. Can. Com. J. (1891), 320, 464, 479; *Ib.* (1901), 275, 316.

(*a*) 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, 391; Parl. Reg. (63), 613.

(*b*) Sen. J. (1877), 190.

(*c*) May, 379.

(*d*) Sen. Deb. (1878), 120; *Ib.* (1882), 128 (Senators Dickey and Miller).

(*e*) 107 E. Com. J. 279; 111 *Ib.* 318; Romilly, 304, *n.*

(*f*) Can. Com. J. (1873), 294 (Pacific R. R. Com.).

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(*g*).

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(*h*). 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"(*i*). The practice of the English Houses prevails in the Senate and Commons of Canada. The same rules, in fact, obtain with respect to divisions in committees as in the House itself(*j*). 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(*k*). 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(*l*).

In the Senate committees no persons except senators are allowed to be present. Their rules are as follows:—

(*g*) See statement of Lord Dufferin on this question in the Can. Com. J. 1873 (2nd sess.), 15 *et seq.* Also Can. Com. J. (1873, 1st sess.), 137, 275, 287, 294, 368. *Supra*, 196, as to effect of prorogation on committees and proceedings generally.

(*h*) May, 388. See Cushing, p. 118.

(*i*) 91 E. Com. J. 214.

(*j*) Sen. J. (1875), 221; *Ib.* (1878), 254. Can. Com. J. (1870), public accounts, App. No. 2; *Ib.* (1873), 278; here there was a tie, and the chairman voted.

(*k*) Can. Pacific R. R. Com. (1873), 430.

(*l*) Sen. R. 64; Com. R. 62. See chapter xviii., s. 8.

83. "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"(*m*).

84. "No other persons, unless commanded to attend, are to enter at any meeting of a committee, or at any conference"(*n*).

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 point of order, or deliberations on its report(*o*). Members of the Commons may be present during the proceedings of their committees, and a committee has no power of itself to exclude any member at any stage of its proceedings, but may obtain special power from the House for that purpose(*p*). Such applications have not been favourably entertained by the House(*q*). Consequently the House will at times appoint secret committees which will conduct their proceedings with closed doors(*r*). Such committees are often chosen by ballot in the English Parliament(*s*). It has

(*m*) See Lords S. O., No. 43.

(*n*) Same practice in Lords, S. O. 44.

(*o*) Can. Com. J. (1869), App. 8, p. 4; 247 E. Hans. (3), 1957-8.

(*p*) May, 387.

(*q*) May, 387. 1 E. Com. J. 849; 38 *Ib.* 870; 66 *Ib.* 6; 67 *Ib.* 17; 247 E. Hans. (3), 1958.

(*r*) 53 Lords' J. 115; 92 E. Com. J. 26; 99 *Ib.* 461; 112 *Ib.* 94; 96 E. Hans. (3), 987, 1056.

(*s*) 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. 146), and it was subsequently rescinded by the committee itself (Jour. 294).

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"(*t*).

When counsel are required in cases involving the interests, conduct or character of individuals, petitions asking permission to employ such counsel have been referred, and counsel ordered(*u*).

It is a clear and indisputable principle of parliamentary law that a committee is bound by, and is not at liberty to depart from, the order of reference(*v*). 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 confusion(*w*). 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(*x*). 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(*y*). Instructions may be mandatory or permissive in the case of special committees(*z*). When given to joint or

(*t*) 73 E. Hans. (3), 725-6; Cushing, p. 745.

(*u*) May, 391; 77 E. Com. J. 405.

(*v*) May, 378. Parl. Reg. (22), 258; 190 E. Hans. (3), 1869.

(*w*) Cushing, p. 741. 12 Parl. Reg. 382.

(*x*) 190 E. Hans. (3), 1869.

(*y*) 101 E. Com. J. 636; 105 *Ib.* 497; 121 *Ib.* 107; 190 E. Hans. (3), 1870. Can. Com. J. (1867-8), 33, 157; *Ib.* (1870), 116; *Ib.* (1871), 34; *Ib.* (1873), 186; *Ib.* (1888), 88.

(*z*) May, 378; 210 E. Hans. (3), 1262; 119 E. Com. J. 147.

standing committees they should be in the form used with respect to committees of the whole. "That they have power" to deal with the matter referred to them(*a*). No such restriction applies to committees on private bills, nor to committees of the whole House in the Lords. Mandatory or imperative instructions can be given to such committees(*b*).

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(*c*). 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(*d*). It is at times found necessary to discharge the order for a committee and appoint another with a different order of reference(*e*). In case a committee requires its evidence to be printed for its own use in the course of an enquiry, its chairman should apply to the joint committee on printing, who will duly order it(*f*). Sometimes a committee may have to obtain leave from the House to make a special report, when its order of reference is limited in its scope(*g*).

(*a*) May, 399, 455.

(*b*) May, 455; 71 Lords J. 532.

(*c*) Can. Com. J. (1875), 176 (public accounts). See remarks of Sir A. MacNab, Leg. Ass., June 7th, 1856 (*Globe* report).

(*d*) Can. Com. J. (1883), 90-92, 95. Previous to this year the correct practice was not generally followed. See *Ib.* (1885), 97 (Mr. Rykert), 183.

(*e*) Conventual establishments, 18th May, 1854. This case presents examples of every conceivable obstacle that can be opposed to the nomination of a committee after its appointment. Also conventual and monastic institutions, 1870.

(*f*) Sen. J. (1884), 129; Can. Com. J. (1884), 202.

(*g*) *Ib.* (1890), 205, 305.

VI. Reports of Committees.—When a committee has gone through the business referred to it, the duty of preparing a report is devolved upon one of the members, usually the chairman, by whom it is prepared, and submitted to the committee for its consideration. The report of a committee, but in its form and as to its substance, ought to correspond with the authority of the committee(*h*). As a rule, draft reports should be submitted like resolutions in the House itself, and amendments proposed thereto in the ordinary mode(*i*). 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(*j*). 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(*k*). Sometimes the minutes of evidence and proceedings are simply reported to the House, without any observations or opinions on the part of the committee(*l*). 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(*m*), as such a report is as unknown to Canadian as to

(*h*) 60 Parl. Reg. 391, 395, 396.

(*i*) May, 394.

(*j*) 12 E. Com. J. 687.

(*k*) Can. Com. J. 1870, public accounts, App. No. 2, pp. 12-32; *Ib.* 1874, App. No. 9, p. 144; *Ib.* 1878, App. No. 1, p. 51.

(*l*) Ib. 1870, 4th R. of public accounts; *Ib.* 1878, 3rd R. App. No. 1.

(*m*) See Palgrave, Chairman's Handbook, 91. Also a decision of Mr. Speaker Wurtele in Quebec Assembly, 1st of April, 1885; Cushing, s. 1968.

English practice. When the chairman signs a report it is only by way of authentication. In 1879, a report of a dissenting member was brought in and appeared in the votes, but attention having been called to the irregularity of the proceeding, this minority report was ordered not to be entered on the journal(*n*). The rule with respect to such matters, however, has been more than once practically evaded by permitting a minority report to appear in the appendix to the report of the committee; but such a paper of course can only be added in this way with the consent of the Commons House as a part of their proceedings(*o*). In 1898 a minority report was regularly moved as an amendment to the draft report, which was adopted and appears in the minutes of proceedings—the proper course under such circumstances(*p*).

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(*q*). Such a report has sometimes been submitted to the House by the com-

(*n*) River Trent Navigation and Canal Works, Votes, 511-12. By some error of a clerk this minority report nevertheless appears in the journals.

(*o*) Can. Com. J. 1874, public accounts, App. No. 9, p. 144. See debate in the legislative assembly, June 7th, 1856 (*Globe*).

(*p*) Can. Com. J. (1898), App. I., p. xxiii.

(*q*) Can. Com. J. 1880, App. No. 2, R. on printing; Sen. J. App. No. 1.

mittee as its own report(*r*). 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 committees, to which, in the English House of Commons, the different classes of private bills are always referred(*s*).

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(*t*). 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(*u*). 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(*v*). Every report must be regularly signed by the chairman(*w*).

Until a committee report, it is irregular to refer to its proceedings in debate in the House. For instance, in the

(*r*) Can. Com. J. 1875, public accounts, 4th R., App. No. 2; *Ib.* 1878, printing, 7th R., App. No. 3; *Ib.* 1882, public accounts, 2nd R., App. No. 1.

(*s*) Can. Com. Hans. (1883), 37 (Sir John Macdonald).

(*t*) Sen. J. (1875), 220; Can. Com. J. 1877, public accounts, App. No. 2; *Ib.* 1878, public accounts, first report, App. No. 1.

(*u*) 4 Hatsell, 192, *n.*

(*v*) 22 E. Hans. (3), 712.

(*w*) Can. Com. J. (1878), App. 1 to 5. Sen. J. (1878), 271; App. No. 4, &c.

session of 1873, Mr. Huntington was proceeding to refer to certain papers and letters relative to an important matter under the consideration of a select committee; but the speaker decided in accordance with English precedents that they could not be read in the House(*x*). 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(*y*). 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(*z*). It is, strictly speaking, a breach of privilege to publish the proceedings of a committee before they are formally reported to the House(*a*), but as a matter of fact such publication is constantly made in the press without objection. If the evidence taken by a committee has not been reported to the House, it may be ordered to be laid before it(*b*). 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(*c*).

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

(*x*) Can. Com. J. (1873), 349 (Pacific railway inquiry). See 159 E. Hans. (3), 814; 189 *Ib.* 604; 193 *Ib.* 1124, 1125; 223 *Ib.* 789, 793, 1134.

(*y*) Can. Com. J. (1874), 282 (Agricultural Com.). Here the committee embodied in its report the substance of the information obtained in a previous session.

(*z*) 107 E. Com. J. 177; 129 *Ib.* 129, 237. Sen. J. (1878), 59.

(*a*) Can. Com. Hans. (1875), 864; Sen. Deb. (1873), 61.

(*b*) 105 E. Com. J. 637, &c.

(*c*) Can. Com. Hans. (1878), 2267, 2268, debate on contracts; Cushing, p. 668.

motion proposed in the committee to lay the papers before the House(*d*). Whenever evidence is taken before a committee it should be reported in the shape of an appendix to the report(*e*). All reports of committees of the House appear in the appendices to the journals; but if it is wished to print them for distribution, the matter must be decided by the committee on printing(*f*), which may recommend the printing of the report alone, or of the report and part of the evidence(*g*).

Though it is the practice, whenever necessary, to report the minutes of proceedings of the select committees of the House of Commons, it seems that the same usage does not obtain in the case of the standing or sessional committees of the Senate. In the case of a bill respecting the Grand Trunk Railway, reported in 1883 from the committee on railways, canals and harbours, some of the members of the committee requested the chairman to submit the minutes of proceedings to the House. No such course, however, was taken, as there was no special motion made in the committee, and the chairman, on inquiry, found that it had been the practice of the sessional committees on private bills to report not their minutes of proceedings in full, but only the general result arrived at, though it was admitted a different practice prevailed with respect to divorce bills, and certain matters

(*d*) Can. Com. J. 1877, first and second Rep. of Public Accounts, Com. App. No. 2.

(*e*) Reports on salt interests and depression in trade, App. Nos. 2 and 3, 1876; public accounts, App. No. 1, 1878.

(*f*) Can. Com. J. (1876), report on salt interests, 282, 296.

(*g*) Agricultural Com. (1876), 296. The report of the committee relative to Judge Loranger was omitted in the appendix of 1877 through a misapprehension of the report of the printing committee, Jour. 141. In the session of 1869 a report relative to Judge Lafontaine was omitted on the report of the committee; 1869, p. 272, and App. No. 5.

referred to select or special committees(*h*). The difficulty in the case in question appears to have been the absence of a motion regularly proposed and put in the committee. If it was considered desirable on any occasion to depart from the general practice, it could be done in two ways: First, by instruction to the committee from the Senate; and secondly, by the action of the committee itself(*i*). The rules of the House of Lords provide for the report of minutes of proceedings(*j*). In the case of special Senate committees, however, minutes are printed and reported(*k*).

VII. Presentation of Reports.—When a report of a standing or special 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(*l*). It is usual for the chairman to move, after he has presented his report, that it be taken into consideration on a future day(*m*), on the orders of which it will accordingly appear(*n*). 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(*o*). Or, as is now generally done, the report may be considered and adopted as a whole(*p*).

(*h*) Sen. J. (1875), 219 (Palen contract); *Ib.* (1878), 249 (Pacific R. R.).

(*i*) Sen. Deb. (1883), 474-82 (remarks of Senators Miller and Vidal).

(*j*) *Supra*, sec. v.

(*k*) Cook Committee, App. I. to Jour. of 1901.

(*l*) R. 97.

(*m*) Sen. J. (1867-8), 131; *Ib.* (1878), 211; *Ib.* (1882), 45; *Ib.* (1901), 171, 172; Min. of P. (1882), Feb. 23rd.

(*n*) Min. of P. (1867-8), 161.

(*o*) Sen. J. (1867-8), 93.

(*p*) *Ib.* (1901), 194; Deb. 312-320. In 1901 a report was referred to committee of the whole, who reported that the subject might be more properly considered by the House itself. *Ib.* (1901), 188.

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 in the votes and proceedings, for the information of members, as soon as they are laid before the House(*q*). The reports should be in English and French, like all other proceedings of the two Houses(*r*). 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(*s*).

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(*t*). Also reports containing certain opinions or resolutions are frequently concurred in on motion(*u*). But when the report does not contain any resolution or

(*q*) V. & P. 1877 and 1878. Reports on immigration and colonization.

(*r*) This question was raised in the Senate in 1867-8, and the speaker decided that the reports should be in the two languages; Sen. J. 224.

(*s*) Can. Com. Hans. 1878, April 26, Public Accounts Rep.

(*t*) Printing R. 1878, Jour. pp. 88, 226, 255, &c.

(*u*) Can. Com. J. (1869), 264; *Ib.* 1877; public acc., secret service fund, 256, 264; *Ib.* 1891, Aug. 19.

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(*v*). In order to bring a report into discussion, a member can move: "That it be taken into consideration on ———"; and when that motion is agreed to, motions may be proposed in relation to the subject-matter(*w*).

Many motions for concurrence in reports of select committees are brought up without notice and allowed to pass by unanimous consent(*x*). But in all cases objection may be taken, and it is the regular course to give notice(*y*). This is consequently always done when there is an objection taken by one or more members to the adoption of a report, and a debate is likely to arise on its subject-matter(*z*). The reports of the committees relative to private bills are not concurred in, as they are regulated by special standing or-

(*v*) Report of Com. on salt interests and financial depression in 1876; public accounts, coal trade, civil service in 1877. Report of Committee on Agriculture and Colonization, 1888, 1889, 1890.

(*w*) Can. Com. J. (1894), 95, 109.

(*x*) Can. Com. J. (1877), 59, 100, &c.; *Ib.* (1878), 88, 226, &c.

(*y*) Can. Jour. (1880), 364; *Ib.* (1886), 1239; Printing C., V. & P. (1892), 192, 224.

(*z*) V. & P. 1869; 6 Rep. of printing com., recommending acceptance of certain tenders. Mr. Mackenzie gave notice of motion for its adoption on same day it was presented (162). Huron and Ontario ship canal (pp. 227-231); railways, canals and telegraphs, 3 R. (161, 162), 1876. Printing C. 4 R., respecting form of Votes and P. (164, 219), 1876.

ders. 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(*a*). It is allowable to move an amendment, to add words as a condition to a motion for concurrence in a report(*b*). A report has been sometimes adopted only in part(*c*).

A report may be referred back to a committee for further consideration(*d*), or with instructions to amend the same in any respect(*e*). 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(*f*). For instance, we recognize the operation of this rule in the fact that in committee on a bill a new clause or amendment will not be allowed, in contravention of a previous decision(*g*). 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, and ordered the chair-

(*a*) 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.

(*b*) Can. Com. J. (1880), 372.

(*c*) *Ib.* (1884), 285, 421.

(*d*) Sen. J. (1867-8), 222; Can. Com. J. (1883), 116, 236; *Ib.* (1884), 298.

(*e*) Sen. J. (1879), 170; Can. Com. J. (1884), 285. 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. 60, and App. No. 2, fourth report.

(*f*) *Supra*, p. 451, *et seq.*

(*g*) 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."

man 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(*h*). 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.—Witnesses are examined in the course of every session before committees of the Senate and House of Commons. It is usual in both Houses to give committees special authority to send for witnesses or documentary evidence(*i*).

Witnesses are summoned in the Commons by an order, signed by the chairman, and they are bound to bring all the papers which the committee may require; but the committee cannot order the production of documents or the summoning of witnesses unless it has the necessary authority from the House "to send for persons, papers and records." In the Senate witnesses generally attend on a notice from the clerk of the committee. In case a witness will not attend, application must be made to the House for the necessary power to compel his attendance(*j*).

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

(*h*) May, 778.

(*i*) *Supra*, sec. iii. Sen. J. (1878), 37, 59, 62-3; Com. J. (1878), 14.

(*j*) 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. May, 379, 380. See Sen. J. and Deb., Aug. 7 and 14, 1891.

give the required leave to the senator, "if he thinks fit"(*k*). If the attendance of a member of the Commons is required before a committee of the Senate, the same procedure will be followed(*l*). 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(*m*). The Senate has the following rule on this subject:—

91. "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"(*n*).

In case the evidence of a member of the Commons is required before a committee of the House, it is customary for the chairman to request him to come, and not to address or summon him in the ordinary form(*o*).

(*k*) Com. J. (1877), 142, 178, 234; *Ib.* (1890), 217; *Ib.* 1891, July 17. Sen. J. (1877), 129, 163.

(*l*) 132 E. Com. J. 99, 261, &c.

(*m*) 103 E. Com. J. 658; 113 *Ib.* 255.

(*n*) Sen. Hans. (1883), 158. Attention was called on this occasion to the rule by Senator Miller.

(*o*) 10 E.Com. J. 51. For cases of the British 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

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(*p*). 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 sergeant"(*q*). Similar proceedings are taken when a witness refuses to answer questions(*r*).

In the session of 1891 the committee of privileges and elections to whom was referred a very important inquiry, reported that one of the witnesses refused to place under the immediate control of the committee certain documents, which he had produced. His conduct was reported to the House, and he was ordered to appear at the Bar. He appeared and was ordered to deliver all accounts and papers to the clerk of the House. He complied at once with the order, and the committee had consequently full control of the documents in question(*s*).

In 1894, two witnesses, summoned to attend a committee by telegraph, did not appear. Their conduct was duly reported to the House, who ordered them to attend at the bar on a future day. When they did not attend accordingly a

been committed to the custody of the serjeant that he might be brought before a committee. 21 *Ib.* 851, 852. 97 *Ib.* 438, 453, 458. Rep. of Precedents, Parl. P., No. 392, sess. 10, 1842.

(*p*) 91 E. Com. J. 352; 112 *Ib.* 263; 121 *Ib.* 365; 131 *Ib.* 95.

(*q*) May, c. 16. 95 E. Com. J. 59; 106 *Ib.* 48, 150. Mirror of P. (1840), 720.

(*r*) 88 E. Com. J. 212, 218; Cushing, p. 385. See case of Mr. McGreevy, a member, ordered into custody; Can. Com. J., Aug. 12, 13, 18, and 20, 1891.

(*s*) See Can. Com. J. and Hans., June 5, 16 and 17. The proceedings of this committee (to whom was referred an investigation into matters relating to the Quebec Harbour Works) give numerous examples of the powers and duties of committees of parliament.

warrant was ordered to be issued for their arrest. When they were brought to the bar and examined, the House accepted their explanations and released them on their giving a promise to appear before the committee(*t*).

The practice of the Senate and House of Commons(*u*) 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(*v*):

"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 member [or lord] asking such question"(*w*).

When the evidence has been taken down it must be read by the witness, but he is then permitted to make verbal alterations only. Should he wish to make any material corrections he must be re-examined before the committee. The alterations must be in his own handwriting, or in case of disability or infirmity, made by another person at his own dictation(*x*). 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(*y*). The signing of evidence has not been considered essential in cases when the evidence has been taken by shorthand writers of the committee(*z*).

(*t*) Can. Com. J. (1894), 242, 288, 299-300.

(*u*) Com. on financial depression, 1876, App. No. 3, Can. Com. J.; Com. on immigration, 1878, App. No. 2, Can. Com. J.

(*v*) Divorce trial, 1876, App. No. 1; Canadian Pacific R.R., App. No. 4, 1878; Fort Francis Lock Com., App. No. 5, 1878. In the Cook Case the correct practice was followed, App. 1 to Sen. J. of 1901.

(*w*) Lords J., 25th June, 1852; E. Com. S. O. lxxi.

(*x*) May, 392. 12 E. Hans. (1), 515; Cushing, pp. 391-2.

(*y*) Can. Com. J. (1877), 132, 141; Can. Com. Hans. (1877), 685, 686. *Supra*, ch. viii., sec. 7.

(*z*) Can. Com. J. (1891), 418.

X. Payment of Witnesses.—By a rule common to the Senate and Commons(*a*), 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 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. 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(*b*). Printed forms are provided and certified by the clerk of the House before payment is made by the accountant. No witness who comes as a witness at the solicitation of parties interested in a private bill is paid by the House. The rule only applies to those persons who are present in cases of public inquiry.

XI. Examination of Witnesses Under Oath.—It is only within a 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

(*a*) Sen. R. 88; Com. R. 81.

(*b*) 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. In England no witness residing in or near London is allowed any expenses, except under some special circumstances of service to the committee. In England, professional men are allowed a fixed remuneration for every day or part of a day that they are necessarily kept from home; May, 410, *n*.

Imperial Parliament(*c*) giving the same power to the Commons that had been for a long time exercised by the Lords(*d*). Prior to the confederation of the British North American provinces, the committees of either branch of the legislature had no power to examine witnesses on oath, several attempts to pass such a law having failed(*l*); 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. The same Act gave the power to the Senate of administering oaths to witnesses at the bar(*f*).

In 1873 a very important committee was appointed to inquire into certain matters connected with the contemplated construction of the Canadian 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(*g*). In the Meantime the Commons instructed the committee to examine witnesses on oath, in view of the passage of the bill (*h*). Doubts were expressed in both Houses as to the competency of the Canadian parliament

(*c*) Imp. Stat. 34 & 35 Vict. c. 83.

(*d*) May, 405.

(*e*) Todd's private bill practice, 68-9.

(*f*) 31 Vict. c. 24, Dom. Stat.

(*g*) 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.

(*h*) Can. Com. J. (1873), 267. No witnesses were examined for the reasons given further on in the text.

to pass such a bill at that time(*i*), 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 oath, that being a power which the House of Commons did not possess in 1867, when the Imperial Act was passed"(*j*). The act of 1873 was accordingly disallowed(*k*). In the same despatch, it was declared that the first section of the act of 1868 (ch. 24), which gave power to the Senate to examine witnesses on oath at their bar, was also beyond the competence of the parliament of Canada at the time it passed; and that though that act had not been disallowed, it was void and inoperative as being repugnant to the provisions of the British North America Act.

As regards, however, the powers given by the act of 1868 to select committees upon private bills, they appeared to the law officers to be unobjectionable, as like powers had, before the passing of the B.N.A. Act, been given to the English House of Commons by 21 and 22 Vict. ch. 78.

In accordance with the request of the Government of Canada, made in 1875(*l*), 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

(*i*) Com. Deb. (1873), 88; Sen. Deb. 142. See Lord Dufferin's despatch to the Colonial Secretary, Can. Com. J. (1873, Oct. sess.), 5 *et seq.* In this document the whole matter is explained with great clearness.

(*j*) Can. Com. J. 1873, Oct. sess., p. 10. See s. 18 of B.N.A. Act, 1867.

(*k*) Despatch of Lord Kimberley, *Ib.* 11.

(*l*) Can. Com. J. (1876), 120; Sess. P. No. 45.

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"(*m*).

In the session of 1876 an act(*n*) was passed by the parliament of Canada giving the necessary powers to the two Houses. This act provided not only that witnesses might be examined upon oath or affirmation at the bar of the Senate, and by the committees of private bills of either House, but that the two Houses could also at any time by a resolution give a similar power to any select or standing committee. From 1876 until 1894 a large number of witnesses were examined under oath in accordance with resolution of the two Houses(*o*). In 1894 it was deemed in the interests of orderly and minute investigation by committees to enlarge their privileges by an act(*p*), which is virtually a transcript of the English act of 1871.

This statute enlarged the powers of the several committees since it gives each of them the authority to administer an oath or affirmation in its discretion, while it invests

(*m*) "The Parliament of Canada Act, 1875;" 38-39 Vict. c. 38.

(*n*) Dom. Stat. 39 Vict. c. 7; Can. Rev. Stat. c. 11, ss. 20-23. This act was a transcript of the act of 1873, which had been disallowed. See Can. Com. J. (1873, Oct. sess.), p. 10, for copy of act.

(*o*) Sen. J. (1877), 207, 216; *Ib.* (1878), 59, 63; *Ib.* (1880), 79; Can. Com. J. (1877), 118, 120, 265, 314, 355; *Ib.* (1890), 169.

(*p*) 57-58 Vict. c. 16.

the Houses themselves with the right to order witnesses to be examined by committee. In the English Commons, where the same law exists, it is not usual for select committees to examine witnesses except upon inquiries of a judicial or other special character; and only in exceptional or grave cases will the House itself interefere with the discretion allowed by law to committees to give any instruction to them(*q*). In a case where the Senate ordered a select committee to examine witnesses in accordance with the law, the inquiry was of an exceptional character and could be justified by English precedent(*r*).

(*q*) May, 406, 407. See cases cited in note 1.

(*r*) See London Corporation (Malversation) Com., 142 E. Com. J. 97; Cook Inquiry Com., Sen. J. (1901), 59-62.

CHAPTER XV.

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. Votes of credit and votes on account.—XVI. Audit of appropriation accounts.

I. Grants of Public Money.—The rules of the House of Commons of Canada with respect to the expenditure of public money and the imposition of burthens upon the people are 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—whether burthens are imposed on the people, every opportunity must be given for free and frequent discussion, so that parliament may not, by sudden and hasty votes, incur any expenses, or be induced to approve of measures, which may entail heavy and lasting burthens upon the country. Hence it is ordered that the Crown must first come down with a recommendation whenever the government finds it necessary to incur a

public expenditure, and that there should be full consideration of the matter in committee and in the House, so that no member may be forced to come to a hasty decision, but that every one may have abundant opportunities afforded him of stating his reasons for supporting or opposing the proposed grant(*a*).

In the old legislatures of Canada, previous to 1840, all application for pecuniary assistance were addressed directly to the House of Assembly, and every governor, especially Lord Sydenham(*b*), has given his testimony as to the injurious effects of the system. The Union Act of 1840 placed the initiation of money votes in the Crown, and this practice was 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—it is expressly declared:

"It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended by a message of the governor-general in the session in which such vote, resolution, address or bill is proposed(*c*).

The standing orders of the English Commons go still further than the foregoing provision, for they also exclude

(*a*) 3 Hatsell, 176, 182.

(*b*) "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, 172. See Lord Durham's R., 109.

(*c*) See Can. Com. Hans. (1878), 2157; in this case the meaning of the section was clearly explained by Mr. Speaker Anglin.

the reception of petitions for "any sum relating to public service"(*d*).

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. A member who has not received the permission of the Crown has not been allowed to move the House into committee on a resolution providing for the purchase and exportation by the government of certain depreciated silver coinage(*e*). In 1871 it was proposed to go into committee on an address to the Queen for a change in the Union Act, so as to assign the debt of old Canada to the Dominion entirely, and to compensate Nova Scotia and New Brunswick in connection therewith; the speaker expressed an opinion adverse to the proposal on the ground that it was intended as preliminary to legislation imposing a public burthen, and was consequently not a mere abstract resolution which did not necessarily involve a future grant(*f*).

No cases can be found of any private member in the Canadian Commons receiving the authority of the Crown, through a minister, to propose a motion involving the expenditure of public money. No principle is better understood than the constitutional obligation that rests upon the executive government, of alone initiating measures imposing charges upon the public exchequer. On one occasion, in the English Commons, the consent of the Crown was

(*d*) S. O. 20th March, 1866. See also Mirror of P., 1857, June 15, p. 1888; 182 Hans. (3), 591-603, where present S. O. of English House are fully discussed.

(*e*) Mr. Speaker Cockburn, 26th of May, 1869. Can. Speakers' D., No. 159.

(*f*) *Ibid.*, No. 181; Can. Com. J. (1871), 50. See also *Ib.* 62 and 72.

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 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 mater of policy, that the proposition should emanate from a responsible adviser of the sovereign(*g*).

Another check is imposed on the expenditure of public money by rule 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 committe of the whole House, before any resolution or vote of the House do pass thereon"(*h*).

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 parlia-

(*g*) 187 E. Hans. (3), 1667. See remarks of Mr. Gladstone in 1886 with respect to the old Canadian system of private members initiating grants of public money. 182 *Ib.*, 578.

(*h*) Can. Com. J. and Hansard, 1878, April 24 (Mr. Speaker Anglin). This rule was adopted in the Lower Canada Ass., 19th of April, 1793; Jour. 546. See Manitoba Res., Can. Com. J. (1882), 251, 424.

ment(*i*). 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 money owing to the Crown, but in a committee of the whole House"(*j*).

The foregoing rule of the Canadian Commons is strictly observed(*k*); 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"(*l*).

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(*m*).

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

(*i*) S. O. 20th March, 1866.

(*j*) S. O. 29th March, 1707. See Res. respecting the town of Cobourg, Can. Com. J. (1886), 181, 206.

(*k*) Can. Com. J. (1876), 67, 83, &c. *Ib.* (1878), 271.

(*l*) Can. Com. J. (1871), 72.

(*m*) *Ib.* (1878), 170, 178. Also Dundas & Waterloo Road, *Ib.* (1885), 183; Can. Pacific R. R., *Ib.* (1886), 194, 195, 219, 223.

the House of Commons(*n*). 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(*o*). In case of an agreement which must be confirmed by legislation, it is necessary to go into committee of the whole on the same after recommendation of the form has been formally given, and subsequently insert it in the bill(*p*). On the 21st of March, 1879, numerous contracts for the construction of portions of the Canadian Pacific Railway, then a government work, were laid on the table. No special motion was made with respect to these contracts. The statute under which they were brought down (37 Vict. ch. 14, sec. 11) simply required that they should lie on the table for thirty days; if they were not moved against at the end of that time, they were considered to have received the approval of the House(*q*). In the case of the proposed Canadian Yukon Railway—a Government measure which failed in the Senate—the order in council and the contract made by the Crown for the construction of the work were first laid on the table, the bill was then introduced. The House went subsequently into committee

(*n*) *Ib.* (1875), 219, Canada Central R. R.; *Ib.* 350, Canadian Pacific R. R.; *Ib.* (1878), 257-9, Moncton Gas Co.; *Ib.* 202, 273, Canada Central R. R.

(*o*) Can. Com. Hans. (1880), 782. 165 E. Hans. (3), 1819-26. In 1873 the House went into committee on a provisional contract for the ocean mail service, before introduction of bill. Can. Com. J., 83, 178.

(*p*) *Ib.* (1897), 262, 276, 305.

(*q*) Can. Com. Hans. (1879), 825. See *supra*, 409, as to laying contracts and agreements before the Senate. The practice of submitting contracts for the ratification of parliament is now regulated by standing orders in England. Todd's Parl. Govt. in England, i. 490-493; 194 E. Hans. 1287-89.

on a resolution for a grant of land recommended by the governor-general, and when it had passed was referred to committee on the bill(*r*).

In 1873, the government was authorized to enter into negotiations during the recess with some reliable company for the transfer to the same of some of the dominion railways in Nova Scotia on certain conditions subject to the approval of parliament at the next session. This resolution was adopted without previous reference to a committee of the whole(*s*); 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(t). 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(*u*). Following the precedent of 1873, Mr. Mackenzie, when premier, proposed in the session of 1878, that the House should adopt a resolution authorizing the government to enter into an arrangement with the Grand Trunk Railway during the recess for acquiring control of the River du Loup branch of that road —any such arrangement to be subject to ratification by parliament at the next session. The propriety of the procedure was called in question. It was said in reply that as the resolution was merely "tentative," it was not necessary to go into committee of the whole. But Sir John Macdonald, Mr. Holton, and Mr. Blake pointed out the necessity of considering with the fullest deliberation all propo-

(*r*) Can. Com. J. (1898), 25, 38, etc.

(*s*) Can. Com. J. (1873), 430.

(*t*) *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.

(*u*) Can. Com. J. (1874), 273, 299, 300.

sitions 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(*v*).

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(*w*). 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.

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"(*x*). Nevertheless neither the English nor

(*v*) Can. Com. Hans. (1878), 2002-2005.

(*w*) Can. Com. J., (1869), 236; *Ib.* (1874), 214; Can. Hans. (1877), 396; Can. Com. J. (1885), 128 (compensation to brewers, &c.); *Ib.* 256 (payment of full indemnity to members engaged in the North-West on military service); *Ib.* (1886), 54 (indemnity to members); *Ib.* (1888), 241 (claims of volunteers in N.W.T.).

(*x*) May, 539; Todd's Parl. Govt. in England, i. 411, 700; 170 E. Hans. (3), 677. It has been ruled in the Canadian House that it is not regular to move to go into committee of the whole on an abstract resolution. Mr. Frechette having proposed to take this course in 1878, in the case of a motion on the winter navigation of the St. Lawrence, was allowed to amend it. V. & P., Feb. 26th and March 20th, 1878; Can. Hans. 1290.

Canadian House of Commons has ever agreed to the adoption of a rule to fetter their discretion in regard to the entertaining of such propositions(*y*).

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(*z*). 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(*a*). 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"(*b*).

(*y*) The following are Canadian examples of this class of resolutions: Can. Com. J. (1892), 133 (deepening of canals); *Ib.* (1896), 24 (creameries in the North-West); *Ib.* (1897), 59 (bonus to creamery butter); *Ib.* (1899), 85 (seed grain).

(*z*) See Todd, i. 703, *et seq.* for cases in point; 124 E. Hans. (3), 841; 174 *Ib.* 1460.

(*a*) Can. Com. J. (1876), 72, 73, 98, 122.

(*b*) Can. Com. J. (1875), 127, 226, 303. See 3 Hatsell, 243, on such cases. Also speaker's decision (No. 189) that a claim for damages might be referred to a select committee; Jour. (1871), 254. Also claim of James King; *Ib.* (1888), 187.

In the foregoing, as in other cases, the government consented to the appointment of the committee.

II. Governor-General's Recommendation. — The recommendation of the Crown to any resolution involving a payment out of the dominion treasury must be formally given by a privy councillor in his place at the very initiation of a proceeding, in accordance with the express terms of the 54th section of the British North America Act, 1867, and in conformity with the invariable practice of the English House of Commons(*c*). 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"(*d*).

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 is to give the necessary recommendation through the minister directing the

(*c*) See Can. Com. Hans., 24th of April, 1878, when Mr. Speaker Anglin fully explained the meaning of the 54th section of the union act. The recommendation has been given in cases of a bounty on pig-iron, Can. Com. J. (1886), 341; of land subsidies; *Ib.* (1889), 319, 374; of commutation of debt due to Crown; *Ib.* 320.

(*d*) 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 Northwest, 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.

department in charge of the particular matter before the House(*e*).

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.

46. "The Senate will not proceed upon a bill appropriating public money, that shall not, within the knowledge of the Senate, have been recommended by the queen's representative."

III. Consent of the Crown Explained.—A misapprehension has sometimes arisen as to the time when the "consent" of the Crown should be given to a bill. The procedure with respect to signifying the consent is different from that in giving the recommendation of the Crown. The recommendation precedes every grant of money; the consent may be given at any stage before final passage, and is always necessary in matters involving the rights of the Crown, its patronage, its property, or its prerogatives(*f*). 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

(*e*) 129 E. Com. J. 14, 29, 30, 32, &c.

(*f*) May, 423; Todd, ii. 366; 243 E. Hans., 211. See also an elaborate decision on this subject of Mr. Speaker Brodeur in connection with the third reading of National Transcontinental Railway Bill, 1903. Can. Journals, Sept. 30, 1903.

Houses, and ultimately submitted for the royal assent''(*g*). 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(*h*). The consent should be properly given before the committal of the bill(*i*), but, according to the practice of the English House, it is not generally given before the third reading(*j*). A bill may be permitted to proceed to the very last stage without receiving the royal consent, but when it is not given before the motion for the final passage, it must be dropped(*k*). If the introducer of a bill finds from statements of a minister that the royal assent will be withheld, he has no other alternative open to him except to withdraw the measure(*l*). If the royal assent is not given at the last stage, the speaker will refuse to put the question(*m*). 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''(*n*).

The consent of the governor-general, as a representative

(*g*) 191 E. Hans. 1445; 192 *Ib.* 732; Established Church (Ireland) bill.

(*h*) Mr. Gladstone, 191 E. Hans. (3), 1898-9.

(*i*) Church Reform (Ireland) bill; Mirror of P., (1833), 1627, 1733.

(*j*) Mr. Speaker Denison; Peerage of Ireland bill, 191 E. Hans. (3), 1564.

(*k*) Mr. Gathorne Hardy; 191 E. Hans. (3), 1564.

(*l*) 76 E. Hans. (3), 591; 191 *Ib.*, 1564 (Peerage of Ireland bill).

(*m*) 121 E. Com. J. 423.

(*n*) 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.

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(*o*). 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(*p*). In the session of 1879 a bill was introduced "to provide for the payment of the defendant's costs in certain actions at the suit of the Crown." The first section provided that the several courts and judges of the different provinces, having concurrent jurisdiction with the dominion exchequer court, "shall have power to award and tax costs in favour of and against the Crown as well as against the subject," in certain cases

(*o*) 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 R.R. Arrangements bill, 9th April, 1875; 36 Vict., c. 18. April 17, 1874. 37 Vict., c. 65. Northern R. R. bill, April 11, 1877; 40 Vict., c. 57. In 1888 the consent was given on third reading of a bill respecting the discharge of securities to the Crown; Can. Com. J., 197. In 1885 the consent of the Crown was formally given to a resolution providing for the appointment of a deputy speaker, in accordance with English precedent in such cases; Can. Com. J. 55. Also given to Senate amendments affecting interests of the Crown; *Ib.* (1886), 323. See 101 E. Com. J. 892; 103 *Ib.* 729; 126 *Ib.* 355.

(*p*) Can. Com. J. (1871), 135, 160; 34 Vict. c. 45.

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(*q*).

IV. Committees of Supply and Ways and Means.—One of the principal purposes of the House of Commons is the consideration and criticism of the estimates and the taxes required to meet the public expenditures(*r*); and the committees of supply and ways and means 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(*s*). 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 coming year in order to provide for services which had been forgotten in the main estimates, or on which a decision had not been reached when the latter were made up. All these

(*q*) Can. Com. Hans. (1879), 1578-1581.

(*r*) 237 E. Hans. (3), 380.

(*s*) Can. Com. J. (1879), 77; *Ib.* (1883), 146, 299; *Ib.* (1890), 43, 225; *Ib.* (1901), 20, 40, 164, 271, 281, 314.

estimates are divided into 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. 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(*t*) in conformity with various statutes(*u*). These payments comprise: costs and charges incident to the collection and management of the revenue; interest of the public debt; salaries of governor-general, lieutenant-governors, judges, etc.; loans; grants to provinces under the Union Act; and all other permanent payments. Whenever it is necessary to make any changes with respect to these permanent

(*t*) The public revenues from taxes, imposts, loans, or other sources are placed to the account of the consolidated fund, out of which all payments are made by authority of law, either in the shape of permanent grants regulated by statute or annual grants voted in supply. Todd, i. 737, 738.

(*u*) 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.

grants, they must be introduced in the shape of resolutions in committee of the whole, and bills founded thereon(*v*). 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 instances, the estimates of 1879 included a vote (No. 120) for a subsidy towards the construction and maintenance of certain telegraph lines; but, as this was shown to be a permanent grant and not one for the service of the year, it was struck out of the estimates and submitted subsequently in a bill(*w*).

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(*x*).

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(*y*). When the speech has been duly considered and the address in answer formally agreed to, the minister of finance will make the usual motions for

(*v*) Can. Com. J. (1873), 205, 345, 396, 398; *Ib.* (1901), 201, 235, etc.

(*w*) Can. Stat. 42 Vict., c. 5. Can. Com. Hans. (1879), 1668 (Mr. Mackenzie) Jour. 367.

(*x*) May, 553; Todd, i. 791.

(*y*) Can. Com. J. (1878), 14; 131 E. Com. J. 9.

the formation of the committees of supply and ways and means. Previous to 1874, a number of perplexing preliminary motions were requisite(*z*); but at the commencement of the session of that year a 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(*a*), "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"(*b*).

The time for the meeting of these committees is always proposed by a minister of the Crown(*c*), but a member may move to substitute another day as an amendment(*d*). A member may not move an instruction to the committee of supply, as they can only consider the estimates permitted by the Crown(*e*).

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

(*z*) Can. Com. J. (1873), 24, 56, 63, 102.

(*a*) Can. Com. J., 1874, March 31; R. 87.

(*b*) *Ib.* (1876), 55; *Ib.* (1878), 24; *Ib.* (1901), 20; 131 E. Com. J. 11.

(*c*) 240 E. Hans. (3), 1663.

(*d*) 240 *Ib.* 1669.

(*e*) Mirror of P. 1828, p. 1972. Todd, i. 753.

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"(*f*). The same question is always put whenever the House is to go into committee of supply, in order to afford an opportunity to members to propose amendments. On this point it is observed by an eminent 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"(*g*). The same practice is now followed very extensively in the Canadian Commons(*h*); but there are certain limitations to this right. Only one amendment can be moved to the question, "that Mr. Speaker do now leave

(*f*) Can. Com. J. (1876), 68; *Ib.* (1878), 47; 131 E. Com. J. 39, 47, 51.

(*g*) May, 660-61 (9th ed.); see also 10th ed., p. 571. Mirror of P., 1838, vol. 7, p. 5874; 110 E. Hans. (3), 861; 243 *Ib.* 1549; Can. Com. Hans. (1878), 1808 (Sir J. A. Macdonald). The right to consider grievances at this stage is one of the first principles of the British constitution, 237 E. Hans. (3), 380. But the practice has been much abused in England, and the Commons have more than once considered what means can be devised for limiting discussion. See report of Com., July 8, 1878, pp. 4, 6, 46, 105, &c.; also an article by Mr. Raikes, "Nineteenth Century," Nov. 1879.

(*h*) Can. Com. J. (1876), 88, 114, 129, 191, 213, 233, 237, 291.

the chair"(*i*). If that amendment is negatived, a discussion on other questions may be raised but no other motion can be proposed(*j*). If the amendment is withdrawn, however, another amendment can be at once submitted to the House(*k*). It is the practice in the English Commons to give notice of all motions in amendment proposed to be made at this stage; but this is not the practice in the Canadian House(*m*), though notice is sometimes given of contemplated amendments. No doubt the uniform adoption of the English practice would enable the Commons to

(*i*) 206 E. Hans. (3), 1445. Can. Com. Hans. (1878), 1808-11. This peculiar limitation to moving amendments arose originally from a misunderstanding of a Canadian speaker as to the English practice. In the English Commons, when it is moved "that Mr. Speaker do now leave the chair," and an amendment is proposed thereto, no other amendment can be submitted until the House decide whether the words "proposed to be left out" after "That" in the original motion shall "stand part of the question." If the House answer in the negative, then an amendment can be proposed by way of addition to the amendment. In the Canadian Commons the amendment is moved at once, and there is no reason under their system of proposing questions for applying an English rule arising out of a different procedure of moving amendments. The effect is to impose a restraint upon moving amendments—in fact, the previous question in another form—which does not practically exist in England. Indeed, the English practice might as well be applied to various stages of bills and other proceedings in the Canadian House as on going into committee of supply. See 129 E. Com. J. 337; 132 *Ib.* 118; 138 *Ib.* 167, 168. 121 E. Hans. (3), 761; 198 *Ib.* (3), 633; 245 *Ib.* 908.

(*j*) 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; 239 *Ib.* 16, 22-23.

(*k*) 131 E. Com. J. 103; 180 E. Hans. 369-427.

(*m*) Dr. Tupper's remarks, Can. Com. Hans. (1878), 2279. Priority has been sometimes given in the English Commons to those who have amendments on the paper. See the decision of Mr. Speaker Lefevre, 110 E. Hans. (3), 861.

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(*n*); but they may not refer specifically to any vote which has passed, or is about to be discussed in committee(*o*); nor to any resolution of the committee of ways and means(*p*); nor to any bill or order of the day(*q*); nor to discharge(*r*) an order of the day. Neither will a member be permitted to debate a motion on the notice paper(*s*). The adjournment of the House is always in order at this stage(*t*), and it is also allowable to move an address to the sovereign or of the governor-general(*u*).

(*n*) Mr. Langevin, April 29, 1878; Mr. McCarthy, Feb. 26, 1878; 240 E. Hans. (3), 759; Can. Com. Hans., 1878, Feb. 22, &c.

(*o*) 164 E. Hans. (3), 1500; 173 *Ib.* 903; 189 *Ib.* 857; 209 *Ib.* 1327; 218 *Ib.* 1869; 222 *Ib.* 971; 253 *Ib.* 924.

(*p*) May, 572. 174 *Ib.* 1439; here a resolution respecting fire insurances was framed so as to avoid the irregularity.

(*q*) 142 *Ib.* 1026; 221 *Ib.* 720, 795; Can. Com. Hans. (1882), 1435.

(*r*) 231 E. Hans. (3), 301.

(*s*) Can. Com. Hans. (1876), 1155; *Ib.* (1896, 1st sess.), 7007-7014. 146 E. Hans. (3), 1699-1702. In the session of 1890 Mr. Laurier, on going into committee of supply, proposed a motion similar to one already on the notice paper in Mr. Kirkpatrick's name. The latter waived raising a point of order, on account of the premier having previously arranged to give Mr. Laurier an opportunity of making and speaking to the motion. See Can. Com. Hans. 391. The speaker intimated privately to the author that had the question been raised he would have been obliged to decide against Mr. Laurier in accordance with precedent.

(*t*) 240 E. Hans. (3), 1669. But on a motion for the adjournment at this stage, no one can discuss a notice of motion.

(*u*) Can. Com. J. (1869), 93, 101.

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(*v*). 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(*w*). 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"(*x*). 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(*y*). Or, when it is necessary to

(*v*) 235 E. Hans. (3), 602-623; 1330-1358; this reference illustrates the practice. See 240 *Ib.* 759 for the speaker's ruling, in which he clearly defines the distinction between a debate on an amendment and one on the motion for the speaker to leave the chair. Also Can. Com. Hans. (1878), 892; *Ib.* (1885), 747-756, where the House discussed the tariff generally and then proceeded to debate a distinct motion on a specific question moved by Mr. Blake. Also *Ib.* (1899) 7872; *Ib.* (1901), 1472; 230 E. Hans. (3), 456; 232 *Ib.* 834.

(*w*) 239 *Ib.* 16, 22-3. Blackmore's Speaker's D. (1882), 11, 200; 215 E. Hans. (3), 994, 1739.

(*x*) Can. Com. Hans. (1876), 367; see 225 E. Hans. (3), 1940-1955, for an illustration of the extent to which a debate may proceed at this stage. Also 222 E. Hans. (3), 1727; 223 *Ib.* 1932; 224 *Ib.* 652; 240 *Ib.* 759; Can. Com. Hans. (1890), 1938-1954.

(*y*) 131 E. Com. J., 193-4; Can. Com. J. (1882), 254; *Ib.* 1891, Aug. 4.

proceed at once with the estimates it will be resolved "That this House do immediately resolve itself into committee of supply"(*z*). Mr. Speaker will then again propose the question for his leaving the chair, which is generally agreed to(*a*), although it is quite legitimate to propose amendments and debate various matters(*b*).

In case it is found inconvenient at any time to go into committee of supply or ways and means after the motion that the speaker do leave the chair has been put and discussed, the motion may be withdrawn with the consent of the House, and the committee will then be formally fixed for another day(*c*).

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.(*d*). 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."(*e*).

(*z*) Can. Com. J. (1873), 272-3; *Ib.* (1890), 182; *Ib.* (1901), 154; 127 E. Com. J. 96; 129 *Ib.* 337.

(*a*) 122 E. Com. J. 106.

(*b*) Can. Com. J. (1901), 154; 174 E. Hans. (3), 1960; 235 *Ib.* 1350-58.

(*c*) Can. Com. J. (1894), 241; *Ib.* (1899), 121 (ways and means); *Ib.* (1901), 179, 193 (supply). 123 E. Com. J. 163.

(*d*) 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.

(*e*) 240 E. Hans. (3), 1086. Also 132 E. Com. J. 119, 120. In 1890 in the Canadian Commons the committee rose and reported,

On going into committee of supply (or ways and means) it is the practice for members to ask questions of the government, but when a minister has replied it is not regular for him to speak again until a new question is proposed from the chair, and consequently it is the practice in the English Commons for a minister who has not spoken to give an answer to another question, when necessary(*f*).

The House is not necessarily called upon to go into committee of ways and means with any frequency, as its action is only imperative to vote duties of customs and excise or order payments out of consolidated funds to meet votes of supply; but whenever the motion is made for the speaker to leave the chair to go into ways and means, members may address the House on any subject of public importance or move amendments under the same rules as govern on going into committee of supply(*g*).

An amendment moved to the motion to go into committee of supply (or ways and means) does not *per se* necessarily involve want of confidence in the administration. When such an amendment simply affirms a general principle, or sets forth a public grievance, and does not directly

and then it was moved (by general consent) to go immediately into committee again that day in order to give Mr. Laurier an opportunity of proposing an amendment, in accordance with an arrangement made between him and the premier; Can. Com. Hans. 390, 391. See 132 E. Com. J. 119, 120.

(*f*) 212 E. Hans. (3), 1083-1129; Blackmore (1882), 182.

(*g*) Can. Com. J. (1893), 76; *Ib.* (1895), 58; *Ib.* (1899), 132; *Ib.* (1901), 110, 154. In 1894 a motion was made to go into ways and means to give an opportunity to Mr. Davies (later Sir Louis) to propose an amendment on the Ellis case, as there was already an amendment (Mr. Foster's) precluding him from moving or going into supply. When Mr. Davies' amendment had been lost, it was necessary to negative the motion for the committee of ways and means, as the minister of finance was not present to withdraw it, and then resolve to go into committee at next sitting. Can. Com. J. (1894), 228-237; Can. Com. Hans. 3866.

or impliedly challenge the conduct or policy of the government, it is not in a parliamentary sense a motion of want of confidence(*h*), and consequently cases often occur in the Canadian Commons of the government agreeing to the passage of such motions(*i*). Any motion that would seriously challenge a proposed expenditure, or any public act, for which the government have assumed the responsibility would of course be resisted by them(*j*). The usage of parliament for centuries has settled this as the proper stage for a complete statement of grievances and enunciation of important principles(*j*). Consequently motions of this nature, when not objected to by the government, do not stop supply or ways and means.

VI. In Committee of Supply.—When the House agrees to go into committee of supply, the speaker will call on the chairman of committees(*k*), or, in his absence, on an experienced member, to take the chair of this important committee. The rules that obtain in other committees prevail also in this. Each resolution will be formally proposed from the chair, and amendments may be made thereto. Each member is provided with a printed copy of the estimates, and the chairman reads the vote at length from a written set of resolutions, each of which he signs when it has been adopted by the committee. As in other committees, each resolution must be proposed and discussed

(*h*) See remarks of Mr. Laurier (afterwards Prime Minister of Canada) to this effect. Can. Com. Hans. (1895), 4262.

(*i*) For cases of amendments current at this stage, see Can. Com. J. (1882), 238 (Ontario boundary question); *Ib.* (1891), 382-4 (fiscal policy of the government); *Ib.* (1899), 194, 195 (responsibility of ministers); *Ib.* (1900), 101, 102 (preferential advantages to Great Britain in Canadian tariff); *Ib.* (1901), 154 (Canadian Pacific Railway contract).

(*j*) See remarks of Mr. Gladstone, cited by Todd, ii., 502.

(*k*) See *supra*, 518.

as a distinct question, and when it has been formally carried, no reference can again be made thereto(*l*). Neither is it regular to discuss any resolution before it has been formally proposed from the chair. Each vote or resolution is necessarily a question in itself to be proposed, amended and put as any motion or bill in the House. Sometimes there are a number of items in a vote or resolution, and then these may be 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(*m*). 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(*n*).

It is irregular to discuss any matters in committee which are not relevant to the resolution under consideration(*o*). 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(*p*). Sometimes, when it is not convenient to discuss a resolution it is not proposed from the chair but al-

(*l*) 175 E. Hans. (3), 1673.

(*m*) May, 587. See Can. Com. Hans., 1891, July 2.

(*n*) 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.

(*o*) 157 E. Hans. (3), 1851.

(*p*) 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.

lowed to stand over with general consent until another occasion(*q*); 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(*r*). 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(*s*). 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(*t*). Or they may report certain resolutions which they have agreed to, and progress on certain others(*u*). Sometimes the House will go into committee and immediately rise and report progress without adopting a vote(*v*); 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 propose the time when the committee is to resume(*w*). The answer generally given to the speaker in reply to this question is usually "At the next sitting of the House." In case of a message from the governor-general or the deputy-governor, while the committee is sitting, the speaker must resume the chair, and

(*q*) Pacific R. R. votes, 1877, &c.

(*r*) 159 E. Hans. (3), 549; 175 *Ib.* 77.

(*s*) Mirror of P. 1830, p. 1498; *Ib.* 1840, p. 2867.

(*t*) 128 E. Com. J., 74, &c.

(*u*) 129 E. Com. J., 91, 134; Can. Com. J. (1876), 238, 239.

(*v*) 129 E. Com. J. 261, 331; Can. Com. J. (1877), 324; *Ib.* (1886), 182; *Ib.* (1890), 282.

(*w*) Can. Com. J. 1874, March 31.

the House proceeds to the Senate. On the return of the speaker, the committee may resume(*x*).

The committee of supply can not increase a grant which has been recommended by a message from the governor-general(*y*). It is also irregular to increase any item in a resolution(*z*). But any motion to reduce a grant, or to strike it out of the estimates altogether, will be always in order(*a*). 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(*b*). The ministry alone can move in the matter, and another message will be brought down to increase the grant(*c*) Neither is it allowable under English practice to attach a condition or an expression of opinion to a vote, or to change the destination of a grant(*d*).

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

(*x*) Can. Com. J. (1888), 235-237; *Ib.* (1890), 222, 223; *Ib.* (1892), 302, 303.

(*y*) 148 E. Hans. (3), 392.

(*z*) 173 *Ib.* 1282.

(*a*) 131 E. Com. J. (1870), 51, 65, 249.

(*b*) Todd, Parl. Govt. in England, i., 702, note (Annuity to the Duke of Wellington); 27 E. Hans. (3), 831.

(*c*) Mirror of P., 1838, vol. vii., p. 5875.

(*d*) May, 580; 71 E. Hans. (3), 294; 122 E. Com. J. 266, 270; 130 *Ib.* 324.

means(*e*). It is usual to make the speech on the "budget" on the motion for the House to go into committee of ways and means since it is there that taxes are increased, repealed, or otherwise amended; but finance ministers have, at times, found it 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(*f*). 1869 he made a financial statement on the motion for the House to go into committee of ways and means(*g*).

In 1870 Sir Francis Hincks made his financial statement and developed the fiscal policy of the government in committee of ways and means(*h*). In 1874, Sir Richard Cartwright took the same course when he proposed to amend the tariff(*i*). In 1877 he made his financial statement when the order of the day for ways and means had been read(*j*). In 1878 no change in the tariff being proposed he made his statement on the motion for the House to go into committee of supply. In 1879 Sir Leonard Tilley proposed a new tariff in ways and means, but in subsequent years, from 1880 to 1902, the statement has been generally made

(*e*) It was the practice in the Canadian Commons until the session of 1883 (Jour. 1880-81, pp. 212-13) to take a preliminary vote in committee of supply and to concur in the same, before moving the House into committee of ways and means. This inconvenient and unnecessary procedure was tacitly dropped.

(*f*) Parl. Deb. (1867-8), 76, 97.

(*g*) *Ib.* (1869), 33. It is the rule of the government to take possession of the telegraph lines as soon as the budget speech commences, and a change in the public taxation is proposed. Parl. Deb. (1874), 24; Can. Com. Hans. (1885), 3226 (Mr. Bowell, minister of customs).

(*h*) Parl. Deb. (1870), 916; Jour. 168.

(*i*) Parl. Deb. (1874), 248; Jour. 56.

(*j*) Can. Com. Hans. (1877), 123.

by the finance minister on the motion to go into committee, with the speaker in the chair. It is usual for a discussion to follow the budget speech; and much latitude is permitted.

Previous to 1888, it was the custom to delay the consideration of the estimates until the budget was ready, and consequently in some years supply was greatly delayed; but in that year the more convenient practice was adopted, and has been followed ever since, of going into committee of supply as soon as possible after the commencement of the session, and making considerable progress therein before the annual statement of the finance minister is duly made to parliament. In 1902 the House went into committee of supply on the seventh day after the opening and passed a large number of votes before the delivery of the budget speech.

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(*k*). In the session of 1871 Mr. Speaker Cockburn(*l*) recommended to the House the adoption of the British practice in this particular, and the Commons have ever since acquiesced in its wisdom. As a consequence no private member is now permitted to propose a dominion tax upon the people; it must proceed from a minister of the Crown, or be in some other form declared to be necessary for the public service. A motion or a bill of such a character should properly be introduced by a minister of the Crown. The following precedents will show the strictness with which the House now adheres to this practice:

(*k*) 182 E. Hans. (3), 592; May, 533; Todd, i. 709, 713.

(*l*) Can. Com. J. (1871), 112, 113.

"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(*m*). 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"(*n*).

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(*o*). 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(*p*).

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 another tax of equivalent amount for that proposed by ministers, the necessity of new taxation to a given ex-

(*m*) Speak. D., No. 194, 20th of May, 1872. See also No. 162, 14th of June, 1869, for a similar ruling.

(*n*) Can. Com. J. (1874), 141, 216.

(*o*) 155 E. Hans. (3), 991; 114 E. Com. J. 348; Todd, i., 711.

(*p*) 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.

tent being declared on behalf of the Crown(*q*). It is also competent for any member to propose another scheme of taxation for the same purpose as a substitute for the government plan(*r*). But it is not regular to propose a new and distinct tax, which is not a mere increase(*s*) or diminution of a duty upon an article already recommended by government for taxation(*t*). 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(*u*).

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"(*v*). 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(*w*). But never-

(*q*) May, 533; 108 E. Com. J. 187; 123 E. Hans. (3), 1248; also Todd, i. 711.

(*r*) Mirror of P. (1836), 1963-4; *Ib.* (1840), 3042, vol. 18; 75 E. Hans. (3), 920.

(*s*) 63 E. Hans. (3), 629, 708, 750, 753, 1364.

(*t*) 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 (9th ed.). Also 77 E. Hans. (3), 637, 751; 75 *Ib.* (3), 1015.

(*u*) 128 E. Hans (3), 1129; 166 *Ib.* 1574, &c.

(*v*) Todd, i. 713, 714; 88 E. Com. J. 336; 94 *Ib.* 510; 102 *Ib.* 580; 103 *Ib.* 886; 229 E. Hans. (3), 778. Also, Mr. Sp. Edgar, Can. Com. Hans. (1898), 3206.

(*w*) Sir R. Peel, Mirror of P., 1830, vol. 7, p. 1032; also March 26th, 1833; August 7th, 1848; May 10th, 1849; May 10th, 1864. Also 73 E. Hans. (3), 1052-56.

theless numerous instances will be found in Canadian, as well as English, practice, of committees having been appointed to consider questions of taxation, notwithstanding the opposition of the government(*x*). 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"(*y*).

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(*z*). Any motion or resolution moved in committee must be relevant to the subject-matter referred to it(*a*). 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(*b*).

It is not the present practice in Great Britain to allow amendments in committee of ways and means to a resolution proposed by the government in the shape of an abstract resolution condemning their financial propositions or the imposition of taxation, in argumentative terms(*c*).

(*x*) See Todd, i. 714-721, for numerous cases in point.

(*y*) Committee on a petition to impose a coal duty; Can. Com. Hans. (1877), 380-398; Jour. 91, 111. Also British Columbia tariff, Can. Com. Hans. (1877), 532; journals, March 7th. Petroleum duty, Can. Com. J. (1876), 233; *Ib.* (1877), 25; *Ib.* (1878), 215 (coal duty).

(*z*) 239 E. Hans. (3), 556, 605. Can. Com. J. (1883), 207, 216, 228-234.

(*a*) 156 E. Hans. (3), 1473-4.

(*b*) 261 *Ib.* 474-6.

(*c*) May, 588, *n.*; 108 E. Com. J. 431; 126 E. Hans. (3), 453. This English rule has not been pressed so far in the Canadian Com-

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"(*d*). 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 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(*e*). In the Canadian House, however, towards the close of the session, this rule is frequently broken(*f*).

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

mons; see a motion of this character proposed by Sir C. Tupper. Can. Com. Hans. (1897), 2864-5.

(*d*) May, 590; 129 E. Com. J. 107; 137 E. Hans. (3), 1639; Can. Com. J. (1877), 51, 95; *Ib.* (1883), 220, 228.

(*e*) 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). In a later case an order made to report a resolution from ways and means forthwith to facilitate business was annulled, and the resolution placed on the orders of a future day. 158 E. Hans. (3), 1161, 1167; 115 E. Com. J. 234, 240.

(*f*) Can. Com. J. (1882), 500-505. See *infra*, —.

been read at the table. The practice of the Canadian Commons with reference to amendment and debate, at this stage, was variable up to the session of 1877, when it was decided to adopt the English practice. The procedure on the report of such resolutions is now as follows: The order of the day having been called and read, the speaker proposes the question—That these resolutions be read a first time. This is a purely formal motion and is never discussed or amended. The speaker then proposes the next question—That these resolutions be read a second time(*g*). "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"(*h*), but they should be "relevant to the subject-matter"(*i*). 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

(*g*) Can. Com. J. (1878), 249, &c., (supply); *Ib.* (1879), 193, (ways and means); *Ib.* (1890), 261, 366; *Ib.* 1891, June 26. In 1877 the question for the second reading was not regularly put, and an entry was made in the journals to guard against such irregularities in the future. Can. Com. Hans. 1171, 1172; Jour. 97, 172, 224, 336.

(*h*) 174 E. Hans. (3), 1550-52.

(*i*) 162 *Ib.* (3), 662; 206 *Ib.*, 1367-8.

that resolutions adopted in committee of supply be read a second time''(*j*). 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(*k*). 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''(*l*).

In the Canadian Commons, on report of resolutions on the tariff from ways and means, the rule of relevancy is understood to apply to any amendment—even to an abstract resolution—relating to the tariff, or to the fiscal policy of the country, or laying down a new principle of commercial policy in opposition to that of the government of the day(*m*).

Resolutions reported from committees of supply or ways and means are frequently postponed after they have

(*j*) 243 *Ib.* 1549.

(*k*) 174 *Ib.* 1551.

(*l*) 240 E. Hans. (3), 348. Also 231 *Ib.*, 749. For precedents of amendments and debate on reports of resolutions in English Commons, see 129 E. Com. J. 263 (supply); 115 E. Hans. (3), 1135, (ways and means); Mirror of 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.

(*m*) Can. Com. Hans. (1877), 1172. Sir Richard Cartwright's amendment in 1890 on the second reading of resolutions of tariff. Can. Com. J. 261. Also amendments proposed on June 26, and July 9, 1891, Jour. and Hans.

been read a second time(*n*). 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(*o*). Or the resolutions, as in 1879—when the whole tariff was revised—may be all sent back to committee after the second reading(*p*). Any resolution may be withdrawn on the second reading(*q*).

The amount voted in any resolution from supply may be reduced after report without going back into committee(*r*), though it is sometimes convenient to do so for that purpose(*s*). When resolutions are reported, members are restricted to one speech on each question(*t*).

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(*u*). But it is always

(*n*) Can. Com. J. (1874), 170; *Ib.* (1877), 297; *Ib.* (1886), 110; *Ib.* (1900), 287, 404; 119 E. Com. J. 324; 129 *Ib.* 197; 131 *Ib.* 60; 132 *Ib.* 360.

(*o*) Can. Com. J. (1874), 144. 113 E. Com. J. 211.

(*p*) Can. Com. J. (1879), 201; or before second reading, *Ib.* (1890), 280.

(*q*) *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.

(*r*) 129 E. Com. J. 164; Can. Com. J. (1873), 374; *Ib.* (1878), 241; *Ib.* (1885), 619, 620; *Ib.* (1900), 494.

(*s*) Can. Com. J. (1873), 356, 371; *Ib.* (1878), 249.

(*t*) 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.

(*u*) Mennonite grant; Can. Com. J. (1875), 140. Can. Sp. D., No. 160, 10th of June, 1869; No. 176, 6th of May, 1870. 148 E. Hans. (3), 392; 170 *Ib.* 1884. This rule applies to all money resolutions reported from committee of the whole; Can. Com. J. (1867-8), 390.

in order to propose an amendment stating the conditions under which the House makes a grant of money(*v*).

It is also quite regular at this stage to move an amendment to an amendment to a resolution(*w*).

In case it is proposed to increase a grant, it can only be done with the recommendation of the Crown, and in committee of supply(*x*). 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(*y*). 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 that he would bring down a supplementary vote for $3,000(*z*).

On the same principle any increase in the imposts should be made in committee of ways and means(*a*). But it must be remembered that it is always regular to pro-

(*v*) Mennonite loan, 1875; Can. Pacific R. R., 1876; 78 E. Com. J. 443.

(*w*) Can. Com. J. (1875), 141; *Ib.* (1877), 105.

(*x*) 3 Hatsell, 179.

(*y*) Can. Sp. Dec., No. 199; 11th June, 1872.

(*z*) Can. Hans. (1883), 1316-17 (Rideau Canal Basin). 113 Com. J. 211, 314, 320; 150 E. Hans. (3), 1502, 1585.

(*a*) Supra, sec. vi.; 155 E. Hans. (3), 991; 3 Hatsell, 167; 124 E. Com. J. 203; Can. Com. J. (1885), 587, 595; *Ib.* (1890), 437.

pose 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(*b*). 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(*c*).

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"(*d*).

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(*e*). In fact, it is considered the more convenient course to consider all changes in the tariff in committee of ways and means(*f*).

When there are a large number of items in a resolution reported from committee of ways and means—as was

(*b*) May, 534-5; 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.

(*c*) Can. Com. J. (1882), 469, 470; item 3, books, charts, &c. See May, 534-5.

(*d*) May, 687 (9th ed.); 109 E. Com. J. 330; Can. Com. Hans. (1890), 4480.

(*e*) Can. Com. J. (1867-8), 92; *Ib.* (1874), 241, &c.

(*f*) *Ib.* (1874), 144.

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, postponed or disagreed to(*g*). 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(*h*).

It is the practice of the government to give operation immediately to the resolutions embodying customs and excise changes, by agreeing to a resolution to that effect in committee of the whole, which is afterwards embodied in the Act of Parliament based on the resolutions(*i*). 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(*j*). In such cases the government assumes full responsibility and expect to be indemnified by the action of Parliament.

X. Tax Bills.—When the resolutions amending the tariff, or imposing any charges upon the people, have been

(*g*) *Ib.* (1879), 260-7; 271-6, &c. *Ib.* (1886), 159, 160; *Ib.* 1891, July 31; *Ib.* 1894, June 8.

(*h*) *Ib.* (1879), 276.

(*i*) Can. Com. J. (1874), 59, 146; *Ib.* (1879), 108; *Ib.* (1885), 162; *Ib.* (1890), 243; *Ib.* (1898), 362; Can. Com. Hans. (1897), 1135, 1171, 1226, (debate on the differential tariff in favour of England which was brought into force as soon as finance minister announced policy of the government. Sometimes certain alterations are deferred until a later date, and, if so, the resolution must expressly state it; *Ib.* (1883), 234. In the Imperial House the executive government, on their own responsibility, give immediate effect to the resolutions as soon as they are reported and agreed to by the House. Todd, i. 793.

(*j*) Todd, i. 793; 99 E. Hans. (3), 1316; 156 *Ib.* 1274; 160 *Ib.* 1827.

agreed to by the House, they are embodied in one or more bills which should pass through the same stages as other bills(*k*). Resolutions against the principle of such bills may be proposed at the different stages(*l*). It is also regular to move amendments in the committee on the bill, for the repeal or reduction or modification of any charge or duty upon the people(*m*). 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(*n*). But it must be always borne in mind that any new duty or increase of duty must be previously voted in committee of ways and means, and then referred with instructions to the committee on the bill(*o*). As the resolutions on which the bill is based are always discussed at length, the members opposed to its policy are seldom disposed to raise further debate during its passage, though they may think proper at times to express dissent and even divide the House on the question(*p*).

The committee of the whole has been at times dispensed with in the case of customs or tariff bills when they have been exhaustively discussed on the resolutions(*q*), and it is not necessary to make any alteration in the bills themselves. In 1882 and 1883 the bill was committed, as it was necessary to make some immaterial amendments(*r*). It is now the practice to commit such bills.

(*k*) Can. Com. J. (1867-8), 93, 94, 266; *Ib.* (1877), 226, &c.

(*l*) *Ib.* (1870), 298, 299.

(*m*) May, 533; 108 E. Com. J. 640 (committee on customs acts).

(*n*) Can. Com. J. (1867-8), 403, 415; *Ib.* (1874), 241.

(*o*) *Supra*, sec. ix.; 155 E. Hans. 991; 132 E. Com. J. 112; 137 *Ib.* 365-6, &c.; Can. Com. J. (1885), 609, 659; *Ib.* (1890), 437; *Ib.* 1891, July 31.

(*p*) Can. Com. J. (1874), 241. Can. Com. Hans. (1879), 1806.

(*q*) Can. Com. J. (1880-1), 307.

(*r*) *Ib.* (1882), 492; *Ib.* (1883), 408.

XI. The Appropriation or Supply Bill.—When all the estimates have passed through committee of supply(*s*), 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"(*t*). These resolutions 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 chapter on bills.

It is enacted in the supply bill that a detailed account of the sums expended under the authority of the Act shall be laid before the House of Commons during the first fifteen days of the following session of Parliament.

The Canadian 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

(*s*) 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.

(*t*) Can. Com. J. (1879), 431. By some inadvertency, the supply resolutions were in 1877 (p. 352) referred to the committee of ways and means. As the House goes into that committee to provide the means to meet the sums already declared necessary for the public service, the reference was not only unnecessary, but without precedent.

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(*u*). In subsequent years, it passed all its stages as a rule on the same day(*v*). This practice is entirely at variance with the 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(*w*). No instance can be found in the English journals of two stages of a money bill being taken at the same sitting(*x*). 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(*y*). Again, in 1879, Mr. Holton objected to concur-

(*u*) Can. Com. J. (1877), 352, 353; *Ib.* (1882), 505.

(*v*) In 1886 the supply resolutions and the appropriation bill were passed with remarkable despatch, and the House prorogued on the same day. It was done to suit the convenience of the governor-general, who had made his arrangements for leaving the city for Quebec on the evening of the same day. Can. Com. J. (1886), 361-401. Such a proceeding is without parallel in the parliamentary history of Canada.

(*w*) 131 E. Com. J. 62, 65, 67, 74, 76, 79, &c.; 239 E. Hans. (3), 1419.

(*x*) Mr. Speaker Brand, 239 E. Hans. (3), 1419.

(*y*) Author's notes. No mention of the fact, strange to say, is made in the Canadian Hansard.

rence in the report, and it was accordingly held over until next day(*z*).

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. It has been ruled frequently in the English Commons that debate and amendments on the different stages of the appropriation bill are governed by the same rule as is applicable to other bills. For instance, when a member was attempting to speak of the constitution of the country, he was at once interrupted by the speaker(*a*).

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(*b*). 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"(*c*). 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 ill-

(*z*) Can. Com. Hans. (1879), 2001-3. Mr. Holton, 6th of May, 1879, p. 1799, Hansard.

(*a*) 231 E. Hans. (3), 1162.

(*b*) 211 E. Hans. (3), 1555; 231 *Ib.* 1118, 1158-62; 265 *Ib.* 735-6. Can. Sp. D., No. 77.

(*c*) Todd, i. 819-821; 143 E. Hans. (3), 643; 176 *Ib.* 1859; 256 *Ib.* 967, 1232.

(*d*) Can. Parl. Deb., May 11, 1870. Amendments were proposed at different stages, pp. 1568-9.

ness of the premier, Sir John A. Macdonald(*d*). Since then, the old practice of raising discussion 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(*e*). In 1898 Mr. Foster discussed briefly the financial policy of the government, the finance minister replied(*f*).

In a previous part of this work(*g*), 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, 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 proceedings 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

(*e*) Can. Com. Hans. (1879), 2011-2035.
(*f*) *Ib.* (1898), 7858.
(*g*) Chapter ix., s. 6.

bills containing anything in the nature of a tack to a money bill"(*h*).

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(*i*). It is usual, however, sometimes to discuss the various questions arising out of the bill at some length(*j*).

The House of Commons alone has the constitutional right to initiate measures for the imposition of taxes and the expenditure of public money. The fifty-third section of the British North America Act, 1867, enacts that "bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons"(*k*).

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(*l*).

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

(*h*) 256 E. Hans. (3), 1058-9; 1209-10.

(*i*) 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.

(*j*) Sen. Deb. (1874), 359; *Ib.* (1875), 750; *Ib.* (1877), 487; *Ib.* (1878), 983; *Ib.* (1900), 1215; *Ib.* (1901), 533.

(*k*) A similar provision is found in the Union Act. 1840, s. 57.

(*l*) Sen. J. (1879), 298; *Ib.* (1901), 23, 294; 132 E. Com. J., 441.

short formal address which he makes on such an occasion, like the preamble of the English appropriation act, is an emphatic assertion of the sole right of the Commons to vote the money, and that the governor-general, in the Sovereign's name, gives, in the form of his answer, a recognition of this claim(*m*).

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(*n*).

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 such an alteration is of very unusual occurrence, and so jealous are the Commons of even an appearance of an infringement of their privileges, that they will make a special entry of their reasons for accepting such amendments(*o*). The supply bill when it comes back from the Senate bears the endorsement common to other bills "Passed by the Senate without amendment"(*p*); 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

(*m*) *Infra*, s. xiii.

(*n*) Chapter xvi., s. 2.

(*o*) 112 E. Com. J. 393; 122 *Ib.* 426. See chapter xvi. on public bills, s. 17.

(*p*) Sen. J. (1879), 293; *Ib.* (1901), 290.

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(*q*). Either the direct or indirect concurrence of the upper House in every grant of money is constitutionally requisite(*r*). 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(*s*). 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(*t*).

XIII. Royal Assent to the Bill.—The supply bill is always returned to the House of Commons(*u*), and is taken up to the Senate chamber by the speaker, when his Excellency the Governor-General has summoned the Com-

(*q*) Blackstone's C., 169. DeLolme, book 1, c. 4. Cox on British Institutions, 188-9; Todd, i., 808; see *supra*, 404, for a recent case of a supply bill rejected by the legislative council of the province of Quebec.

(*r*) See despatch of Earl of Bathurst, Aug. 31, 1817; Low. Can. Ass. Jour. Garneau, ii. 334.

(*s*) 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.

(*t*) Todd, i. 806 *et seq.* In 1879 resolutions setting forth the policy of the dominion government with respect to the Canadian Pacific R. R. were introduced and passed in both Houses. Sen. J. (1879), 276; Com. J. 417.

(*u*) It is privately returned to the clerk, who hands it to the speaker. See 3 Hatsell, 161-2.

mons for the purpose of proroguing parliament. When all the bills passed by both Houses have been formally assented to, or reserved for the signification of the Sovereign's pleasure thereon, Mr. Speaker will present the supply bill with the usual speech.

"May it please your Excellency: The Commons of Canada have voted the supplies required to enable the government to defray the expense of the public service. In the name of the Commons, I present to your Excellency a bill intituled," etc.(*v*).

The clerk of the Senate will then proceed to the bar, and receive from the speaker the supply bill, with which he will return to the table; and the clerk of the crown in chancery will then read the title of the bill in the two languages. This done, the clerk of the Senate signifies in both languages the royal assent in the following words:

"In his Majesty's name, his Excellency the Governor-General thanks his loyal subjects, accepts their benevolence, and assents to this bill"(*w*).

(*v*) In accordance with an old usage of the English parliament (3 Hatsell, 163), the speakers of the legislative assemblies of Canada were accustomed, before presenting the supply bill, to deliver an address directing the attention of the governor-general to the most important measures that had been passed during the session. Leg. Ass. J. (1865), 257; *Ib.* (1866), 386. On the 22nd 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; Dent's Canada, ii., 294. The last occasion on which the speaker availed himself of this old privilege was in 1869, and then he made only a brief reference to the importance of the measures of the session; Can. Com. J. (1869), 312.

(*w*) Sen. J. (1890), 286; Com. J. 505. A similar procedure is followed in the case of any supply bill passed and assented to during a session. Can. Com. J. 1891, 9th July.

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 had all gone through the committee of supply, and when in consequence of the lateness of the session or for some other reason, it is not convenient to make a grant therein, or it is not possible to state the exact amount of money required, the House of Commons 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"(*x*). 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(*y*). But since that time the House of Commons has adopted a standing order requiring that all such addresses should originate in committee(*z*); 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

(*x*) Can. Com. J. (1873, first session), 430.

(*y*) 36 E. Com. J. (1778), 972; 61 *Ib.* (1806), 15. Also Lord Nelson; 61 E. Com. J. 16.

(*z*) May, 539. Sir R. Peel, 1850; 105 E. Com. J. 512. Vic. Palmerston, 1866; 121 E. Com. J. 100. Earl of Beaconsfield, 1881, 136 *Ib.* 230.

later English practice, and should have originated in committee of the whole(*a*).

The right of a private member in the English Commons to move an address to the Crown for a grant of public money to be provided by parliament—such address as we have just seen, to originate in committee—appears to be admitted by all the English authorities. The form of the motion "that this House will make good the same," makes the royal recommendation unnecessary(*b*). When the House of Commons amended their standing orders, as they appear now, the chancellor of the exchequer recognized the right of any member to move an address—"the ancient and truly constitutional method of expressing the desire of the House, that some public expenditure should be incurred." 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(*c*).

It must be remembered, however, that the express language of the 54th section of the B. N. A. Act, 1867, forbids any member in the Canadian Commons from moving for an address for a grant of public money, without a recommendation of the Crown(*d*). It is still necessary,

(*a*) 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. See address for a statue to Viscount Gough, May, 539. 125 E. Com. J. 355, 362, 368. Also 98 E. Com. J. 321; 106 *Ib.* 189.

(*b*) Todd, i., 700, 701, 766. Also 221 E. Hans. (3), 766, where a member moved, on motion for going into supply, that the House go into committee of the whole on a future day to consider the granting of a pension, and to assure Her Majesty that the House would make good the same.

(*c*) 182 E. Hans. (3), 598. But this right should only be exercised under peculiar and exceptional circumstances; *Ib.* 593, Mr. Gladstone.

(*d*) *Supra*, sec. 1.

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.

In 1891, on the occasion of the death of the premier, Sir John A. Macdonald, the incorrect procedure of 1873 was avoided by the senior member of the cabinet, Sir Hector Langevin, simply moving an abstract resolution that the remains of the deceased statesman should be publicly interred and the House would "concur in giving to the ceremony a fitting degree of solemnity and importance(*e*).

XV. Votes of Credit and on Account.—Occasions may arise when parliament will be called upon to give the government a vote of credit to meet a national emergency, and it is impossible to determine the exact amount that may be required for the public service. In 1885 parliament voted the sum of $1,700,000, "required for defraying certain expenses in connection with the troubles in the Northwest Territories." Such "votes" are brought down like all matters of supply with a message from the governor-general, passed in committees of supply and ways and means, and included in an appropriation bill, which is presented by the speaker of the Commons, and receives the formal assent of the governor-general like other supply bills(*f*). A similar procedure was followed in the case of the Queen's jubilee expenses in 1897(*g*).

The nature of the service and the amount probably required should be specified in the Act. The amount should

(*e*) See Can. Com. J. and Hans., 8th June.

(*f*) Can. Com. J. (1885), 304, 305, 411, 445, 449, 680. See Todd, i., 757, 758; May, 524; 82 E. Com. J. 542; 115 *Ib.* 142. The preamble of such bills is the same as in the general appropriation act.

(*g*) Can. Com. J. (1897), 175, 176, 180.

be limited, as nearly as possible under the circumstances, to the necessities of the state, and should be fully accounted for at the earliest practicable moment. The strict auditing of all public expenditures now renders any abuse of a vote of credit almost impossible(*h*).

Votes "on account of" particular services, now quite common in the English House, have only been necessary on one occasion from 1867 to 1891 in the practice of the Canadian Commons. On the eve of a dissolution, in case of a ministerial crisis, or at other times in anticipation of particular grants or classes of service, the imperial parliament has allowed votes "on account." Such a course has now become necessary every session, in consequence of the increased strictness in the audit of public accounts and the difficulty of securing the consideration of the estimates in due time(*i*). "It is an established rule," says a high authority, "that a vote on account should involve no new principle, but should merely provide for the continuation of services which had been sanctioned in the previous year; and it is the practice not to take more than two or three months' supply, except in certain particular cases of public emergency, so that the committee in agreeing to vote on account are not pledged to the estimates for the year in anticipation of the opportunity to be afterwards afforded of voting them in detail"(*j*), In Canada, as the fiscal year ends on the 30th of June(*k*), and parliament generally assembles in the month of January, or, at least, months before the appropriations for public services are exhausted, the necessity for votes on account can only arise

(*h*) Todd, i., 758-763, 823.

(*i*) May, 518-520.

(*j*) Todd, i., 760. 181 E. Hans. (3), 1780; 195 *Ib.* 523; 197 *Ib.* 1440; 200 *Ib.* 1583; 205 *Ib.* 1034; 211 *Ib.* 1049.

(*k*) The English financial year ends on the 31st of March.

under exceptional conditions. In 1891, parliament met on the 29th of April, and it became necessary when the first of July was passed to meet the exigencies of the public service. One tenth of the annual estimates was passed without discussion, and included with all the resolutions previously passed in an appropriation act, which immediately received the royal assent. Subsequently one fifth was voted in the same way(*l*). Finally the sums necessary to complete the amounts required for the service of the year were voted after the usual full discussion. In the first session of 1896 only a small sum was voted to meet the pressing needs of the public service, as parliament expired by efflux of time (*supra*, 1) before a general appropriation act could be passed. A change of government ensued, and when parliament met in September, it was necessary to vote three supply bills as there were no funds available, and the new ministry had been obliged to issue governor-general's warrants to meet pressing expenses since first of July(*m*). In 1899 it was also found necessary when parliament sat beyond the first of July to vote one tenth of certain estimates to meet the necessities of the public service(*n*).

XVI. 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 during good behaviour, but is removable by the governor-general, on address of the Senate and

(*l*) Can. Com. J. and Hans., July 3, 10; Aug. 21, 28.

(*m*) See Can. Stat. (1896, 1st sess.), 59 Vict. c. 1; *Ib.* (1896, 2nd sess.), 60 Vict. c. 1, 60 Vict. c. 2, 60 Vict. c. 3.

(*n*) Can. Com. Hans. (1899), 6462 (Mr. Fielding).

House of Commons(*o*). 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(*p*); if not, then

(*o*) 41 Vict. c. 7. Rev. Stat. of Can., c. 29, am. by 51 Vict. c. 7. A summary of some of the more important provisions of this act follows in the text.

(*p*) 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. In 1891 parliament did not meet until April 29, but under the new regulations permitting the issue of blue books when ready for circulation (*supra*, 343) the report was made public property in February. In 1896 parliament met on Jan. 2, and the report was brought down in two parts—one on Jan. 29, and the other on Feb. 18.

within one week after the Houses have assembled(*q*). 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 of finance, and when certified and reported upon, they are laid before the House of Commons. These accounts are carefully examined by the auditor, who, in his report to the House, calls attention to every case in which cheques have been issued without his certificate, or in which it appears to him that a grant has been exceeded, or that money received by a department from other sources than the grants for the year to which the accounts relate has not been applied or accounted for according to the directions of parliament, or that a sum charged against a grant is not supported by proof of payment, or that a payment so charged did not occur within the period of the account, or was for any other reason not properly chargeable against the grant. The Act provides that if the minister of finance does not, within the time prescribed in the statute, present to the House the report of the auditor on these or other accounts, the latter shall immediately transmit it himself to the Commons. All balances of appropriations which remain unexpended at the end of the financial year lapse and are written off, but the time for closing these accounts may be continued for three months from the 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,

(*q*) *Ib.* (1883), 28; *Ib.* 1902, 18th Feb., or fifth day after opening of session.

a warrant is issued in due form. Special warrants may issue, when parliament is not in session and any expenditure not foreseen or provided for by parliament is urgently and immediately required for the public good; and a statement of all such warrants is laid before the House, not later than the third day of the next session(*r*). 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 when they are brought down in the following year—the printed copies of the estimates having a column, when necessary, to indicate the amounts of this re-vote(*s*).

A detailed statement of all unforeseen expenditures, made under order of council, is also laid before parliament during the first fifteen days of each session(*t*).

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(*u*).

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.

(*r*) Can. Com. J. (1883), 47; 41 Vict. c. 7, s. 32, subs. 4; Rev. Stat. of Can. c. 29, s. 32. This power of issuing governor-general's warrants should be exercised strictly within the limitations of urgency and necessity expressly laid down in the statute. See debate on this subject in the Can. Com. Hans., Aug. 27, 1891, and Sept. 3 and 4, 1896, 2nd sess.

(*s*) See estimates for 1883 in Sess. P. for 1882, No. 2, pp. 44-5, &c.

(*t*) This statement appears in accordance with the provisions of the appropriation act of every year. Can. Com. J. (1890), 17; 52 Vict., c. 1.

(*u*) Can. Com. J. (1880), 183.

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(*v*) 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.

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.

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(*w*).

(*v*) The reference here is to the supplementary estimates brought down with, or subsequent to, the main estimates.

(*w*) Sen, J. (1880), 96-7; Com. J. 119, 125-6. See *supra*, 271, 301.

CHAPTER XVI.

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.

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1. Explanatory.—A bill is, generally speaking, divided into five distinct parts: 1. the title; 2. the preamble and statement of the enacting authority; 3. the body of the act, consisting of one or more propositions, known as clauses; 4. the provisos, and 5. the schedules(*a*). The

(*a*) See 46 Vict. c. 30 (Liquor License Act, 1883), which contains all the parts of a complete act as given in the text.

provisos and schedules may not be necessary in every act, while public statutes generally omit any preamble, or recital of the reasons of the enactment. The Interpretation Act(*b*) 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 : "His 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"(*c*).

The only exception to this form of enactment is the preamble of the supply bill, which is in the form of an address to the sovereign :

" Most gracious Sovereign : whereas it appears by messages from his Excellency the Governor-General, and the estimates accompanying the same, that the sums hereinafter mentioned are required to defray certain expenses of the public service of the dominion, not otherwise provided for, for the financial year, etc.

" *May it therefore please your Majesty that it may be*

(*b*) 31 Vict. c. 1, "An act respecting the statutes of Canada," Rev. Stat. of Can., c. i.

(*c*) In acts of Ontario, Quebec, Manitoba, and British Columbia, the Sovereign's name is used as in acts of the dominion parliament. In New Brunswick and P. E. Island, bills are enacted by the lieutenant-governor and assembly; in Nova Scotia, by the governor, council and assembly. The same practice was followed in the legislatures of the old provinces before confederation. In the Northwest territories, ordinances are now enacted by the lieutenant-governor, by and with the advice and consent of the legislative assembly (formerly with the consent of the council).

enacted; and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Commons of Canada."

This preamble appears in all bills of appropriation since the union of Canada in 1840(*d*), and differs from the English form in similar bills since it does not assert in express terms the sole right of the Commons to grant supply. 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 King'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 the sovereign, that it may be enacted. This form appears to be derived from the ancient practice of the English Commons when bills were presented in the shape of petitions to the king. While the language of a petition is still retained as above in certain bills, the declaration of the advice and consent of the two houses of parliament has been added in the course

(*d*) 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.

of time in accordance with the modern form of statutes(*e*).

Bills are divided into two classes : Public bills and private bills. The former comprise all bills dealing with matters of a public nature, and may be introduced for the most part directly on motion. The latter comprise such bills as relate to the affairs of corporations or of individuals, and can be presented only on the petition of the parties interested, and in conformity with certain standing orders. It is proposed in the present chapter to deal exclusively with public bills.

II. Appropriation and Taxation Bills.—As a general rule, public bills may originate in either House; but whenever they grant supplies of any kind, or involve directly or indirectly the levying or appropriation of any tax upon the people, they must be initiated in the popular branch. in accordance with law and constitutional practice(*f*). 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,

(*e*) See or 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. Cushing, pp. 796, 819; Stephen's Comm. ii., 399.

(*f*) 3 Hatsell, 126, 154, 155, &c. Bramwell, i. 150.

the ends, purposes, considerations, conditions, limitations and qualifications of such grants which are not alterable by the Senate"(*g*).

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(*h*). 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(*i*). As an illustration of the strictness with which the Commons adhere to their constitutional privileges in this respect, it may be mentioned that on the 23rd of May, 1874, a bill was returned from the Senate, with an amendment providing for an increase in the quantity of land granted to settlers in the Northwest. The premier and other members doubted the right of the Senate to increase a grant of land—the public lands being, in the opinion of the House, in the same position as the public revenues. The amendment was only adopted with an entry in the journals that the Commons did not think it "necessary at that late

(*g*) This standing order is literally taken from the English resolution of 3rd of July, 1878 (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, 550; Todd, Parl. Govt. in England, i. 810. The same resolution always appeared among the rules of the old legislative assemblies of Canada. Low. Can. Ass. J. 19th April, 1793. Leg. Ass. J. (1841), 43.

(*h*) Railway Audit Bill (1850), 105 E. Com. J. 458; Parochial schoolmasters (Scotland Bill), 1857; 112 *Ib.* 404. May, 551.

(*i*) Can. Com. J. (1873), 429-30, Quebec Harbour bill. The Senate did not insist, 431. 13 E. Com. J. 318; 105 *Ib.* 518.

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''(*j*). 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(*k*). It is quite regular, however, to agree to amendments which "affect charges upon the people incidentally only, and have not been made with that object''(*l*).

In order, however, to expedite the business of the House, 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

(*j*) Can. Com. J. (1874), 336. Since then all grants of public land are initiated in the Commons.

(*k*) Can. Com. J. (1867-8), 418, 420; *Ib.* (1873), 319. In cases where the amendments do not infringe materially on the Commons privileges, it is also usual in the English Commons to agree to them with special entries. 80 E. Com. J. 579, 631; 122 *Ib.* 426, 456.

(*l*) 3 Hatsell, 155; E. Com. J., prisoners removal bill, 1849; industrial schools bill, 1861. 104 E. Com. J. 23. See debate in Senate on marine electric telegraph bill, 1875, pp. 422, 423. In this case the speaker at first misinterpreted the rule with respect to rates, tolls and fees, which, as set forth in English rule, are not in the nature of a tax, but are imposed in respect of benefit taken; but he did not persist in this hastily given opinion, and the Senate proceeded to pass the section giving the company the right to impose a tariff for messages. (See Dom. Stat., 38 Vict. c. 26). Also, Joint Stock Co.'s Bill to facilitate transmission of timber (56 Vict. c. 26).

general or special purposes by rates, tolls, assessments or otherwise."

It is frequently found convenient to introduce bills involving public expenditure in the Senate, and in such a case, the money clauses are embodied in the bill as presented, in order to make it more intelligible. When the Senate goes into committee on the bill, these clauses are ordered to be left out. They are printed in red ink or italics in the engrossed bill sent 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(*m*). 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(*n*).

III. Introduction of Bills.—In the Senate, as in the Lords in Great Britain(*o*), 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"(*p*).

(*m*) Census and statistics bill, 1879. Sen. Min. of P., 144, 148; clauses 22, 23, 24, 37; Com. J., 160. County court judges bill, 1882; Sen. Min. of P., 108, clauses 10 and 11; Com. J., 370-71. See also the journals of 1883 for civil service act, superannuation act and penitentiaries act. For a somewhat similar procedure in the English parliament, see British North America Act, 1867, introduced first in Lords; and Probates Act, 1858.

(*n*) Copyright bill (1872), 285. In this case the duty was imposed for the benefit of owners of British copyright works.

(*o*) May, 436.

(*p*) Similar practice in Lords; 3 E. Hans. (3), 24; 13 *Ib.* 1188. Sen. J. (1878), 88.

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(*q*), which appears in the votes and since 1880, on the orders of the day(*r*). If the notice is not given, it is open to any member to object to the introduction of a bill, and the speaker will sustain the objection. When the two days' notice has been given. the member in charge of a public bill rises as soon as motions for public bills are called in the course of the day's routine proceedings, and moves formally for "leave to introduce a bill, intituled, etc." He sends to the speaker the motion in writing with a copy of the bill. The speaker will then propose the question. " Is it the pleasure of the House that the honourable member have leave to introduce his bill?"(*s*) But if the speaker finds that the bill is "in blank or in an imperfect shape" he will decline to put the question and will return the bill to the member who must take another opportunity of bringing it up in conformity with the rules(*t*). It is usual on the introduction of a bill

(*q*) R. 31; *supra*, 416.

(*r*) Can. Com. Hans. (1880), 79 (remarks of Mr. Holton). Private bills are called when " motions " are reached; they require no notice on the paper, as the petition, which is reported on by the Standing Orders Committee is the notice; *infra*, chap. xviii., s. 6. Public Bills are now introduced when the speaker calls for the "introduction of bills"—the proceeding following " motions " of a general character on the printed Order Paper.

(*s*) Can. Com. Hans. (1878), 2226. Building societies bill (proposed introduction irregular).

(*t*) R. 40; Can. Speak. D., No. 50; Can. Com. Hans. (1878), 1583.

—on the motion for leave—to explain clearly and succinctly its main provisions(*u*); but it is not the practice to debate it at length at that stage. 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(*v*). 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(*w*), though such a course is very seldom followed. As in England, it is now a very rare thing for the House to refuse leave, though, of course. it rests entirely in the discretion of the majority to do so"(*x*). 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*(*y*).

(*u*) 159 E. Hans. (3), 360, 762; 218 *Ib.* 1699, 1706; 144 *Ib.* 329, 422; Can. Hans. (1878), 1582-1584; Sen. Deb. (1878), 160.

(*v*) 219 E. Hans. (3), 379; 144 *Ib.* 422-450; Sen. Deb. (1874), 112-119.

(*w*) 107 E. Com. J. 68, 131. On the 20th of Feb., 1852, the title of the militia bill was amended in this way, and the ministry, of which Lord John Russell was premier, resigned. In 1884, in the Canadian Commons, an amendment was made to add words to the motion for leave, with the view of condemning the proposed legislation; Independence of parliament amendment act, 4th March; Can. Com. Hans., vol. i., p. 624.

(*x*) 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.

(*y*) 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

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(*z*). The general debate on the bill takes place on the second reading, the bill then being printed and in the hands of all the members.

IV. Bills Relating to Trade.—But here it is 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, concerning trade, is to be brought into the 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(*a*).

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

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. Com. Hans. 1878, April 2nd, election bill (Mr. Macdougall). It is always competent, however, for a member to move formally that a bill be read at length; 192 E. Hans. (3), 323.

(*z*) 107 E. Com. J. 174, 201; Can. Com. J. (1877), 143, 144, 169.

(*a*) 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.

proposition, setting forth the expediency of bringing in a measure on a particular question affecting trade(*b*). The object of the rule is to give another stage for consideration of a measure involving commercial interests.

Both in the English and Canadian Commons the rule, just cited, has been held to apply to trade *generally*, as well as to any particular trade, if directly affected by a bill. It has also been decided that to bring a bill under the rule it should properly propose to regulate trade as a subject-matter (*c*). Some diversity of practice has, however, arisen at different times on account of a variance of opinion as to the proper application of the rule. The following precedents will show how it has been worked out in the Canadian Commons:—

Mr. Speaker Cockburn held that the term trade "does not, in its general and popular sense, apply to insurance. Trade means buying, selling, importing and exporting goods to market. Banking, railways, navigation and telegraphs, in his opinion, all assist trade and are its auxiliaries, but are not branches of trade in the popular sense (*d*). However, bills respecting insurance have been indifferently introduced on motion, or on resolutions adopted in committee (*e*). Bills respecting interest have been introduced

(*b*) 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.

(*c*) Can. Speak. D. 193; Jour. (1872), 120.

(*d*) Can. Speak. D., No. 177; Jour. (1870), 313, 314, 348.

(*e*) Can. Com. J. (1874), 131; *Ib.* (1877), 64. But legal authorities call insurance business a "trade" and insurance companies "traders." Doutre, Const. of Canada, 274-6, citing the opinion of several judges. See also 38 Vict., c. 16, s. 1, applying to "traders and trading companies, except insurance companies." The correct practice, no doubt, is to commence in committee. A judgment of the Canada supreme court considers that insurance falls under the constitutional provision affecting trade and commerce. See *supra*, 94, 95.

as a rule, on motion in the English as well as Canadian Commons (*f*). In 1874 Mr. Anglin decided that general banking bills ought to be based on resolutions (*g*)—a decision in accordance with the practice of the English Parliament (*h*), which is, however, variable, with respect to joint stock banks (*i*). Bills respecting insolvency have been invariably introduced on motion for leave (*j*). 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 (*k*); but in the session of 1877 a bill providing for the more effectual observance by railway companies of the law requiring equality of treatment in the management of the traffic and the imposition of rates and tolls was founded on resolutions (*l*). Bills relating to joint-stock and loan companies have been presented directly on motion (*m*); but in England bills relating to joint-stock banks, companies, and partnership have frequently originated in committee (*n*). Bills respect-

(*f*) 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.

(*g*) Can. Com. J. (1874), 142.

(*h*) 94 E. Com. J. 468; 100 *Ib.* 468; 112 *Ib.* 239; 136 *Ib.* 13; 137 *Ib.* 48. General banking bills are now always initiated in the Canadian Commons by resolution in committee of the whole; Can. Com J. (1890), 209.

(*i*) 111 E. Com. J. 13, 37, 119.

(*j*) Speak. D. 193; Can. Com. J. (1873), 287; *Ib.* (1876), 164; *Ib.* (1877), 21, 71, 94; *Ib.* (1878), 47; *Ib.* (1879), 19, &c.

(*k*) *Ib.* (1873), 60, 118; *Ib.* (1876), 70; *Ib.* (1877), 159; *Ib.* (1879), 301.

(*l*) *Ib.* (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 and 9 Vict., c. 20, and Jour. of 1845 (railways).

(*m*) Can. Com. J. (1877), 28, 107, 258.

(*n*) 111 E. Com. J. 13.

ing the inspection of staple articles of Canadian produce have generally been founded on resolutions (*o*); but a bill to amend the same has been allowed on motion (*p*). Bills to regulate weights and measures have generally been founded on resolutions (*q*); but in England, as well as in Canada, it has been decided that as such bills deal with questions of public policy, affecting the whole community, and not merely the interests of trade, they may be directly presented on motion for leave (*r*). Bills regulating harbours (*s*), pilotage (*t*), and shipping (*u*); and providing for the preservation of good order on board, and for the inspection and measurement of steamers (*v*), have always been based on resolutions passed in committee. Bills respecting the culling and measurement of timber should originate in committee of the whole (*w*). Bills respecting patents (*x*) and copyright (*y*) have been presented without

(*o*) Can. Com. J. (1873), 127; *Ib.* (1874), 184.

(*p*) *Ib.* (1876), 76.

(*q*) *Ib.* (1873), 83; *Ib.* (1877), 291; *Ib.* (1879), 287.

(*r*) 114 E. Com. J. 235; 115 *Ib.* 370; Can. Com. J. (1877), 44, 122.

(*s*) 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. 649.

(*t*) Can. Com. J. (1873), 127; *Ib.* (1877), 136, 222; *Ib.* (1879), 290-1.

(*u*) 129 E. Com. J. 31; Can. Com. J. (1873), 24, 54, 245; *Ib.* (1874), 185; *Ib.* (1878), 108, 109, 116.

(*v*) Can. Com. J. (1873), 23; *Ib.* (1877), 117, 118, 222.

(*w*) Can. Speak. D., No. 104; Can. Com. J. (1877), 207.

(*x*) 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

a committee. Bills respecting bills of exchange and promissory notes need not originate in committee of the whole, unless they impose stamp duties (*z*). 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 a second reading because it was not commenced in committee of the whole (*a*). A bill to prevent fraud in the sale of agricultural fertilizers has originated in committee (*b*). Bills to regulate generally the sale or prohibit the traffic in intoxicating liquors should originate in committee(*c*); but bills which prevent liquor traffic on Sundays(d) 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

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 the whole on the bill.

(*y*) Mirror of P., 1840, p. 1110; 129 E. Com. J. 287.

(*z*) Can. Com. J. (1870), 33, 53; *Ib.* (1872), 125; *Ib.* (1873), 41, 175. Also in 1874, 1875, 1879, 1882. See Can. Hans., April 24, 1878.

(*a*) Can. Com. J. (1878), 146.

(*b*) *Ib.* (1884), 65.

(*c*) 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 terms of the rule and first pass a resolution in committee of the whole before formally bringing in the bill. Hans. 234 (Mr. Casgrain). In 1885 a bill to suspend certain portions of the Liquor License Act of 1883 was initiated in committee; Can. Com. J., 322.

(*d*) See English Commons journals for 1855, 1863, 1868, 1878, 1881, &c.

matters of police regulation and public decency(*e*). Bills regulating the importation of cattle, with the view of preventing the spread of contagious diseases, are always initiated in committee of the whole(*f*). Bills to amend or consolidate the customs acts are always founded on resolutions(*g*). Bills reducing duties of customs originate invariably in committee on the ground evidently that all such measures affect trade(*h*). Bills to grant certificates to pedlers (*i*), and to regulate the sale of poisons(*j*) have not required committees. A bill to regulate the dimensions of apple barrels has originated in committee(*k*); also one to regulate the sale of fertilizers(*l*); also to regulate the sale and manufacture of oleomargarine and butterine(*m*), also to stamp packages of butter and cheese(*n*). 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

(*e*) May, 532. Sunday trading bills, 1833, 1863, 1868, &c. Fairs and markets (Ireland) bill, 1854, 1855, 1857 and 1858.

(*f*) 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. 114, 136. This act prohibited importation; 42 Vict., c. 23. In the English Commons the sheep and diseases Bill of 1848, being merely sanitary, was brought in without a committee; 103 E. Com. J. 863.

(*g*) Can. Com. J. (1877), 129.

(*h*) 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.

(*i*) 125 E. Com. J. 309.

(*j*) 125 *Ib.* 187.

(*k*) Can. Com. J. (1876), 248-9.

(*l*) *Ib.* (1880), 154-5; *Ib.* (1885), 277.

(*m*) *Ib.* (1886), 125.

(*n*) *Ib.* (1895), 27.

committee(*o*). Bills to prevent adulteration of food, etc., have been brought in on motion(*p*).

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 notice to the persons interested. These objects have been already secured by the proceedings in the other House"(*q*).

Nor is a previous committee necessary for a consolidation of existing laws, but in case of changes it would be necessary(*r*).

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(*s*). The rule requiring the adoption of resolutions on another day only applies to money or tax resolutions(*t*).

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

(*o*) 72 E. Hans. (3), 286.

(*p*) Can. Com. J. (1884), 177, 188. When the bill imposes license dues, it originates in committee; *Ib.* (1877), 155.

(*q*) 172 E. Hans. (3), 1221; Can. Com. J. (1885), 422.

(*r*) 57 E. Hans. (3), 587. See bill respecting infectious or contagious diseases, 1885.

(*s*) Contagious diseases, weights and measures bills, 1879. 129 E. Com. J. 31, &c.

(*t*) May, 370, 529. See *supra*, 526, 527.

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"(*u*).

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(*v*). And all such resolutions necessary to the introduction of a bill, must first obtain the recommendation of the governor-general(*w*).

It often happens that bills are introduced with certain clauses providing for salaries or other charges on the public revenue, and in that case the bill may be introduced directly on motion, while the clauses in question (which should be distinguished by italics or brackets, are considered in the shape of resolutions in committee, and when agreed to, referred to the committee on the bill(*x*). "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

(*u*) Res. of 1667; 3 Hatsell, 176; 150 E. Hans. (3), 911, 912. Such a motion cannot be discussed on the same day it is first presented; 164 *Ib.* (3), 996. Can. Pacific Res., Dec. 13, 1880-81; 1st Feb., 1884. It is of course competent for a member to propose an amendment substituting a later date for that proposed by the mover of a resolution for the committees of the whole, and to give reasons for the delay without going into details or discussion of the subject-matter of the resolution. See debate on Can. Pacific R.R. resolution, Can. Com. Hans. (1880-81), 48, 49.

(*v*) Can. Com. J. (1873), 399; *Ib.* (1876), 84; *Ib.* (1877), 200; *Ib.* (1879), 313.

(*w*) See chapter xv., ss. 2 and 3.

(*x*) May, 441. Can. Com. J. (1872), 170; *Ib.* (1873), 269, 400; *Ib.* (1877), 128; *Ib.* (1883), 228.

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"(*y*). 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(*z*). 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(*a*). All bills conveying grants of lands now originate in committee and receive the previous assent of the Crown(*b*). A bill transferring a government railway to a company has also been proceeded with in the same way(*c*).

(*y*) 209 E. Hans. (3), 1950-53.

(*z*) Can. Com. J. (1877), 200; *Ib.* (1879), 313. See also procedure H. of C. Canada on Railway Bill—Salaries of Commissioners, Aug., 1903.

(*a*) *Ib.* (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 the 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.

(*b*) Can. Com. J. (1885), 604; *Ib.* (1886), 295; *Ib.* (1890), 465. When a member has proposed an increase of the grant, he has been ruled out of order; *Ib.* (1885), 626, 627.

(*c*) Truro & Pictou R.R. Can. Com. J. 1877, pp. 94, 134.

The rule also applies to releasing or compounding any sum of money due to the Crown(*d*).

The rule just cited also applies to the imposition of any state tax or charge upon the people or any class thereof(*e*). But it is not held to apply to pecuniary penalties necessary to the operation of a bill(*f*). In the Canadian House it is the practice to consider all fees and charges which go into the treasury in a committee of the whole(*g*); 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(*h*). The correct practice, as in the English Commons, is not to require a previous committee when the bill exacts fees for services performed, and when they are not payable

(*d*) English S. O., 20th of March, 1707. Release of town of Cobourg from a certain debt. See Can. Com. J. (1889), 319. Tankland Mortgage, *Ib.* (1895), 106, 142.

(*e*) 174 E. Hans. (3), 1700-1. Can. Com. J. (1870), 283. In 1886 a bill, in effect increasing the indemnity to members, was not allowed to proceed; Can. Com. Hans., 38. The same occurred in case of another bill that proposed to give power to assess officials of the dominion government. *Ib.* (1889), 367. See also Superannuation Bill, Can. Com. Jour. (1895), 147; Chinese Tax, *Ib.* (1885), 433, 523; *Ib.* (1900), 369.

(*f*) Post-office act, 1867-8, s. 81, &c.; wharves and docks bill, 1875; gaming houses bill, 1877. In England same practice obtains; petroleum bill, 1871; act granting certificates to peddlers, 1870; small penalties in Ireland bill, 1873, &c.

(*g*) Can. Com. J. (1870), 242, 314; *Ib.* (1872), 254. *Ib.* (1874), 195, election law; *Ib.* (1876), 83; *Ib.* (1879), 253-55, 346-7, 368.

(*h*) Patent Bill, 1869; trade marks and designs bill, 1876. For Imperial acts, see patent law amendment act, 1852; also, 16 and 17 Vict., c. 78, commissioners under act relative to appointment of persons to administer oaths in chancery, &c.; also 35 Vict., c. 1, s. 5, Dom. Stat.; also English railway bills imposing rates of tolls, 8 and 9 Vict., c. 10, s. 90; 21 and 22 Vict., c. 75.

into the treasury or in aid of the public revenue(*i*). 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(*j*). The following precedents illustrate the correct practice in cases of fees:

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 was to be handed over to the treasurers of the various municipalities, except in the case of unorganized districts, where it should be paid to the receiver-general. As these fees were only necessary to the execution of the act, and were not intended to be in aid of the public revenue, no previous committee was required(*k*).

In 1885, a bill provided a salary for a harbour master at the port of Halifax, to be paid out of the fees received

(*i*) See also "Act granting certificates to pedlers," in which fees are paid to police authorities; 125 E. Com. J. 309; also 29 and 30 Vict., c. 36, assessing railways by commissioners for special purposes; also sec. 11 of 9 and 10 Vict., c. 105; 11 and 12 Vict., c. 48; 12 and 13 Vict., c. 77; also joint stock companies act, 40 Vict., c. 43, s. 74, Dom. Stat.; also railway acts of 1868 and 1879 requiring a payment of $10 for each mile for a fund for the purposes of the acts; also Dominion Lands Act, 1886, allowing fees for services performed; also 151 E. Hans. (3), 1601; corrupt practices prevention bill, 1858.

(*j*) 123 E. Com. J. 109, 312.

(*k*) 46 Vict., c. 30, s. 56, &c. See 53 Vict., c. 26, sched. 1.

by him. It was based on a resolution which passed in committee of the whole and previously received the recommendation of the governor-general, since it used the public funds—all the fees in question being made payable under the existing law into the public treasury(*l*).

Clauses in a bill, granting costs against the Crown or revenue officers will not be entertained unless authorized by a preliminary committee(*m*).

A bill to enable the government to take ground for public purposes, but not providing the funds for the same, need not originate in committee of the whole. The funds should be voted afterwards in committee(*n*).

The recommendation of the Crown and a committee of the whole are necessary in the case of a bill granting a drawback on imports(*o*). In 1900 the same proceedings were followed in the case of a bill extending contracts providing cold storage on steamships beyond the provision made in previous legislation(*p*).

A bill merely declaratory in its nature, and involving no new charge, need not originate in committee of the whole(*q*). Neither is a committee necessary in the case of bills authorizing the levy or application of rates for local purposes by local authorities acting in behalf of the rate-

(*l*) Can. Com. J. (1885), 433, 441. See *Ib.* (1872), 170, 188; also, *Ib.* (1888), 271; fees in this case under the Territories' real property act being made payable into the treasury.

(*m*) 166 E. Hans. (3), 1593.

(*n*) Public offices (site and approaches) bill, 177 *Ib.* 1301-1308.

(*o*) Can. Com. J. (1894), 342, 382, 393; Can. Com. Hans. (1896, 1st sess.), 4682-4685.

(*p*) Can. Com. J. (1900), 204.

(*q*) Bill to remove doubts as to the liability to stamp duties of premium notes, taken or held by Mutual Fire Insurance companies. Can. Speak. D. 183. See also promissory notes bill, Can. Com. Hans., April 24, 1878.

payers(*r*). Nor does the rule apply to bills imposing charges upon any particular class of persons for their own use and benefit(*s*). Nor to bills indemnifying members for penalties they may have incurred for the violation of an act(*t*). Nor to bills having for their object the diminution or repeal of any public tax(*u*), provided such bills do not affect trade; and then they come under the special rule on that subject. As an illustration of the strictness with which the Canadian Commons observe the rules respecting trade, it may be mentioned that in the session of 1871, the House went into a committee on resolutions to exempt paraffine wax, lubricating oil, and other articles from excise duty, and to reduce that duty on certain articles in the province of Manitoba. When the House had agreed to these resolutions, a bill was brought in; but before it had gone through committee, it was considered advisable by the government to reduce the duty on certain spirits manufactured from molasses in bond; and accordingly resolutions were passed in committee, and when adopted by the House, referred to the committee on the foregoing bill(*v*). No previous vote

(*r*) 84 E. Com. J. 233; 94 *Ib.* 363; 151 E. Hans. (3), 1519; 174 *Ib.* 1701. See a decision of Mr. Speaker White (Can. Com. Hans., 1896, 1st sess., 4510-4517), setting forth that clauses in the Manitoba Remedial bill, imposing a certain assessment on Roman Catholics through the municipalities of the province in order to enforce the provisions of the measure, need not originate in committee of the whole, as they came within the category of local rates, as explained above.

(*s*) 103 E. Com. J. 57, Merchants' Seamen's Fund; 105 *Ib.* 54, Seamen's Relief Fund; May, 536 (9th ed.).

(*t*) 175 E. Hans. (3), 83. See Dom. Stat. 34 Vict. c. 2 (indemnity act).

(*u*) 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.

(*v*) Can. Com. J. (1871), 119, 120, 234.

in committee is necessary in the case of bills authorizing payments out of moneys already applicable to such objects(*w*), nor in the case of bills appropriating the proceeds of an existing charge(*x*).

Bills consolidating and amending statutes are frequently brought into the House with clauses containing charges on the public revenue, but it is only when these clauses impose new burthens that it is necessary to consider them first in a committee of the whole. For instance, in the session of 1883, the House passed "an act consolidating and amending the several acts relating to the militia and defence of the dominion." The bill, as introduced, contained two classes of clauses affecting the public revenue: 1, Clauses taken from the existing statutes. 2. Clauses entirely new. As to the second class, there was no doubt that they imposed a new burthen, and consequently resolutions were at once introduced with the recommendation of the governor-general, considered in committee of the whole, and when agreed to by the House, referred to the committee on the bill. With respect to the first class of clauses, they re-enacted simply the existing law and did not create any new charge on the treasury; and accordingly no previous committee was necessary.

The object aimed at in such bills of consolidation is to give the old law in a new and more convenient form of reference; and certain charges were merely continued, in the bill in question, in accordance with law at that time in force. The last clause of the act, in fact, expressly declares: "This act shall not be construed as a new law, but as a consolidation of so much of the said act as is hereby re-enacted"(*y*).

(*w*) Public works (I.) act, 9 Vict. c. 1; May, 535.

(*x*) Thames embankment bill, 1862; 165 Hans. (3), 1826.

(*y*) 46 Vict., c. 11, ss. 28-45; Can. Com. J. (1883), 226.

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?"

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 to any other stage of a measure(*z*).

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(*a*). 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(*b*). 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 second reading on that day(*c*). But if the motion

(*z*) Can. Com. J. (1876), 245; *Ib.* (1877), 160; Can. Com. Hans. (1879), 1375-8, 1385; supreme court repealing bill.

(*a*) Orders of the day require no seconder, May, 545 (9th ed.). Such motions, however, are generally seconded in the Canadian Commons.

(*b*) See *supra*, 311, R. 93.

(*c*) Can. Sp. D. Nos. 94, 118. Can. Com. Hans. (1897), 552.

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(*d*).

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(*e*). The Senate has a rule on the subject:

"42. The principle of a bill is usually debated at its second reading."

The Commons have no rule on the subject, but the practice of the House is always to discuss the principle of a bill at this stage(*f*). Any member may propose as an amendment a resolution declaratory of some principle adverse to, or differing from, the principles, policy or provisions of the bill, or expressing opinions as to any circumstances connected with its introduction or prosecution or otherwise opposed to its progress, or seeking further information in relation to the bill by committees, commissioners, the production of papers or other evidences, or the opinion of judges(*g*). On setting forth reasons why the bill could not be discussed satisfactorily at a late period of the session(*h*), or proposing a delay in the consideration of the bill until other measures promised by the government had

(*d*) Mr. Speaker Blanchet. Insolvency bill, Can. Com. Hans. (1879), 1620.

(*e*) Mirror of Parl. 1840, vol. 17, p. 2629; 190 E. Hans. (3), 1869; Can. Com. Hans. (1878), 599, common assaults bill; Sen. J. (1867-8), 248, 283, 296, &c.; 216 E. Hans. (3), 1686; Can. Com. J. (1879), 327.

(*f*) May, 445; 131 E. Com. J. 196; Can. Com. J. (1867-8), 425; Can. Com. Hans. (1885), 1360, 1385; *Ib.* (1897), 723.

(*g*) May, 446, 547; Can. Com. (1882), 410, 412; *Ib.* (1885), 94, 308, 311; *Ib.* (1890), 86, 102.

(*h*) Can. Com. J. (1885), 308. Thames Embankment bill, 22nd July, 1872. E. Com. J., May, 408.

been disposed of(*i*). All amendments must "strictly relate to the bill which the House by its order has resolved upon considering"(*j*).

If a resolution adverse to the bill be resolved in the affirmative(*k*); 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 without notice,

"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(*l*).

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"(*m*).

(*i*) Can. Com. Hans. (1897), 756.

(*j*) 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. Sen. Deb. (1886), 742.

(*k*) 244 E. Hans. (3), 1384.

(*l*) Interest bill, 1870; insolvency bill, April 3, 1876; interest bill, 4th May, 1883; act for relief of Susan Ash, 21st June, 1887; Lowry divorce bill, 4th April, 1889; Northwest territories bill, May 12, 1892 (Mr. Speaker White here stated practice, p. 2486, Can. Com. Hans., vol. I.); Chignecto Marine Transport R. R. bill, March 26, 1896.

(*m*) 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; 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(*n*). In 1880, a bill respecting marriage with a sister of a deceased wife was postponed in the Senate by the passage of a resolution declaring it inexpedient to pass the measure that session(*o*).

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(*p*). Or if the motion has been actually made for the second reading, it must first, with leave of the House, be withdrawn(*q*). 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(*r*). A member who has moved

(*n*) 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).

(*o*) Sen. J. (1880), 209.

(*p*) 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.

(*q*) Can. Com. J. (1867-8, 40; *Ib.* (1877), 90; *Ib.* (1878), 146; *Ib.* (1882), 129; *Ib.* (1886), 128; 129 E. Com. J. 309, &c.; Lords' J. (1877), 235, 271. An order may be discharged and made the first for a subsequent day. Can. Com. J. (1877), 39; *Ib.* (1890, 1st sess.) 100; or a motion for the second reading having been withdrawn, a new order for a future day can be passed. Can. Com. J. (1899), 188.

(*r*) 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.

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 to the measure(*s*). 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(*t*). On the motion for the second reading it is out of order to discuss the clauses *seriatim*(*u*). Nor is it regular, when a bill is before the House, to anticipate discussion by a motion on the same subject(*v*).

VII. Order for Committee of the Whole.—When a bill has been read a second time by the clerk, the next question will be proposed(*w*).

"That the House go into committee on the bill on —— next."

Which motion generally passes, *nem, con.*(*x*), like all such formal motions; though it is quite regular to move an amendment as to the time of committal(*y*). But it is not regular to move that the House do adjourn, according to an English decision(*z*).

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."

(*s*) Rule 15, p. 469. 219 E. Hans. (3), 584; 220 *Ib.* 381; 223 *Ib.* 1764.

(*t*) 183 E. Hans. (3), 1918; 186 *Ib.* 1285.

(*u*) 224 E. Hans. (3), 1297; 225 *Ib.* 684; 238 *Ib.* 1593; 248 *Ib.* 590.

(*v*) 219 E. Hans. (3), 1053, 1054, 1302.

(*w*) *Supra*, 517.

(*x*) Can. Com. J. (1870), 300; *Ib.* (1877), 128.

(*y*) 129 E. Com. J. 140.

(*z*) 221 E. Hans. (3), 744.

Now is the time to move any amendment to this question. Members opposed to the bill may move that the House resolve itself into committee on the bill that day three or six months; or may propose motions adverse to the principle or policy of the measure(*a*). But it is not competent to move an amendment by way of addition to the question for leaving the chair(*b*).

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"(*c*).

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(*d*). 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(*e*). If an instruction is moved when the latter motion is proposed, then it becomes an amendment, which, if agreed to, supersedes the motion for the committee, and the bill consequently cannot be proceeded with for the time being(*f*).

(*a*) Supreme court bill, 25th March, 1875.

(*b*) May, 552, 9th ed., citing Mr. Speaker Denison's notebook.

(*c*) 223 E. Hans. (3), 35; 224 *Ib.* 1297; 232 *Ib.* 1195-6; Can. Hans. (1885), 1383, 1384.

(*d*) 163 E. Hans. (3), 597-8; 212 *Ib.* 1075; Can. Com. J. (1894), 490, 491.

(*e*) 179 *Ib.* 116-7; 183 *Ib.* 920-1; Sen. J. (1882), 195.

(*f*) 163 E. Hans. 597-8; 179 *Ib.* 116-7; Can. Com. J. (1875), 284.

Considerable misapprehension appears to exist as to the meaning of an instruction. An instruction is given to a committee to confer on it that power which, without such instruction, it would not have. If the subject-matter of an instruction is relevant to the subject-matter and within the scope and title of a bill, then such instruction is irregular since the committee has the power to make the required amendment(*g*). The following precedents will illustrate the correct practice with respect to this class of motions.

In 1854 the English Commons had before them a "Bill to abolish in England and Wales the compulsory removal of the poor on the ground of settlement," and a member proposed to introduce clauses into the bill to prevent the removal of Irish paupers in the different unions of the country. It was pointed out that the contemplated changes would entirely alter the character of the bill, and could only be made by an instruction: the speaker being appealed to said, "that the rule had been clearly stated, and if the noble lord intended to propose the addition of the new provisions alluded to, it would be necessary to move them as an instruction to the committee"(*h*).

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

(*g*) 74 E. Hans. (3), 107; 195 *Ib.* 847; 207 *Ib.* 401-2.
(*h*) 131 *Ib.* 1274.

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"(*i*).

In 1878, the order for committee on the Factories and Workshops Bill having been read, Mr. Fawcett rose to move on instruction extending the operation of the bill to children employed in agriculture. Mr. Speaker Brand stated in reply to an objection to the proceeding: "The motion of the hon. member is in the form of an instruction to the committee. The committee would not have power to deal with the question unless an instruction of this kind was passed(*j*).

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"(*k*).

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(*l*).

In 1870, the order of the day having been read for committee on a bill respecting elections of members of the Com-

(*i*) 179 E. Hans. (3), 116.

(*j*) 238 *Ib.* 63-4.

(*k*) 136 E. Com. J. 302.

(*l*) 190 E. Hans. (3), 1869. In the Senate it has been decided that it is irregular and unnecessary to move to instruct a select standing committee to do that which it has already the power to do under its order of reference; Sen. Deb. (1886), 436-445.

mons, 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(*m*).

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"(*n*).

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(*o*).

"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(*p*).

"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

(*m*) Can. Com. J. (1870), 120-21.

(*n*) *Ib.* (1872), 78-9. See Sen. Deb. (1885), 853, 854; *Ib.* (1890), 399.

(*o*) 86 E. Hans. (3), 154; also 136 E. Com. J. 285; 137 *Ib.* 121. See Can. Com. J. 1891, June 18, when five bills were referred to a select committee.

(*p*) 175 E. Hans. (3), 1939-40; 158 *Ib.* 1951.

of such bill, but it may be an instruction to the committee to introduce such a clause(*q*).

"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(*r*).

" 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(*s*).

"That it is regular to move amendments to a question for an instruction"(*t*).

If a motion for an instruction contains a proposition that ought to be considered in a preliminary committee, it cannot be entertained(*u*).

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

(*q*) 159 *Ib.* 1912, 1924.

(*r*) 158 E. Hans. (3), 1954-5.

(*s*) In 1860 nine instructions were moved on the order for committee on the representation of people bill; the proceedings and rulings, on this occasion, illustrate the correct practice with respect to instructions. 158 E. Hans. (3), 1951-88. See Blackmore's decisions (1881), 116-17, where a summary is given of the decisions of Mr. Speaker Denison, on points that were raised.

(*t*) 101 E. Com. J. 113.

(*u*) 167 E. Hans. (3), 696-700.

committee of the whole(*v*). 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(*w*). 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(*x*).

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(*y*). "For," as stated by Mr. Speaker Denison, "the intention of the instruction is to give a committee power to do a certain thing if they think proper, not to command them to do it"(*z*). It has been pointed out by an English authority in such matters that even the committee cannot act upon the instruction without a question put upon the thing to be done, which

(*v*) 78 *Ib.* 904.

(*w*) 136 E. Com. J., 240, 304; 137 *Ib.* 366, 404. Can. Com. J. (1885), 659.

(*x*) 137 E. Com. J. 383.

(*y*) 137 *Ib.* 366, &c. Such mandatory instructions in the case of bills can be found in the English journals, but not for many years past. 21 *Ib.* 836; 66 *Ib.* 299; 90 *Ib.* 451; May, 445.

(*z*) 158 E. Com. J. 1954-5.

of itself implies that the instruction is not conclusive upon the committee(*a*).

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(*b*).

IX. Reference to Select Committees.—It is becoming a frequent practice to send important bills, requiring very careful and deliberate inquiry to a special or a select standing committee, before referring them to a committee of the whole(*c*). The practice of revising bills in committee of the whole only dates from 1700, and the most eminent English authorities have frequently advised, and the House of Commons has already attempted a modified return to the old method of considering certain public bills in select committees(d). Particularly in the case where several bills

(*a*) Mr. Addington cited by Lord Colchester (Mr. Speaker Abott) in his diary, 431. 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).

(*b*) *Supra*, 521.

(*c*) 129 E. Com. J. 103, 110, 265. Lords' J. (1861), 263; *Ib.* (1873), 364. Can. Com. J. (1876), 120, criminal procedure bill. *Ib.* (1875), 139, insolvency bill; *Ib.* (1877), 161, larceny bill; *Ib.* (1877), 75, insurance bill; *Ib.* (1878), 56, evidence in common assaults bill. Several bills may be consolidated into one bill in this way; Leg. Ass. J. (1863), 296, 313, 320.

(*d*) House of Commons, Palgrave, note A at end of work. Bagehot, in his work on the English constitution, shows how difficult it is for a committee of the whole to give that patient, orderly examination which all bills should receive. The same question was discussed before a committee on public business in 1854 (Report, 31), and in

on the same subject are before the House has it been found convenient to refer them all to one committee(*e*). Sometimes a committee will combine two bills in one(*f*). 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(*g*). If it is intended to consolidate two or more bills, or otherwise incorporate the provisions of one with the provisions of another, an instruction is necessary(*h*).

Any bill may be referred to a select committee in amendment to the motion for the House to go into committee of

1878 (Report, 21-22), and the opinion was expressed by Sir Erskine May and others that bills are exposed to too many opportunities of discussion, and that if a bill is referred to a competent committee, the report of that committee ought to be accepted in the same way as a report of a committee of the whole. 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, revived 1902, providing for the appointment of standing committees to consider certain classes of bills.

(*e*) Can. Com. J., railway bills, 1870 and 1871, &c. Insolvency bill, 1870, criminal law bills, 1876; banking bills, 1871; 129 E. Com. J. 286; Can. Com. J. (1889), 234.

(*f*) Can. Com. J. (1882), 285.

(*g*) *Ib.* (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, 1885.

(*h*) See Can. Com. J. 1891, June 18th. Also *supra*, sec. viii.

the whole, or on the reading of the order for committee(*i*). No notice is required in the case of a reference(*j*). The merits of a bill cannot be discussed at this juncture(*k*).

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(*l*).

In 1892 the criminal laws were referred to a joint committee of both Houses, which reported a number of clauses from time to time for convenience sake. These clauses were duly referred to a committee of the whole until the whole subject was fully considered in this way, and a code reported to the Commons and sent to the Senate for concurrence(*m*).

X. Notice of Amendments in Committee.—When a member intends to move an important amendment in committee of the whole to a bill, he is not required, according to Canadian practice, to give notice of such amendment(*n*). In

(*i*) Marine electric telegraphs bills; Can. Com. Hans. (1879), 1572 (Mr. Speak. Blanchet). May, 469.

(*j*) Rule 31 H. of C.; May, 374.

(*k*) 278 E. Hans. (3), 330, 335, 336.

(*l*) Eng. S. O., 19th July, 1854, No. xxxiii. 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 is to 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. In the Canadian Commons, 7th May, 1888, a bill respecting railway employees was referred—order for committee being first discharged—to a committee of the whole on the general railway act.

(*m*) Can. Com. J. (1892), 310, 318, 319, 349, 400.

(*n*) Com. R. 31; Sen. Deb. (1884), 520, 521; Jour. 253. V. & P. (1877), 175, 200, 214, 225, 226, 233, 257. Railway act (1879),

the English House the rules provide that on the consideration of the bill as amended in committee, no new clause can be proposed unless the House has received a regular notice containing the words of the proposed amendment(*o*).

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 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"(*p*).

Every committee on a public bill is bound to report thereon, as the House alone has power to prevent its passage or order its withdrawal(*q*).

When a bill has been referred to a select committee, and the committee wish to make a special report and submit minutes of evidence thereon, it is necessary to obtain per-

250; militia act, 462. Temperance Act, V. & P., 1885, April 9, p. 418. See also Franchise Act, 1885. Notice is required in case of amendments to private bills.

(*o*) May, 466. S. O. 38.

(*p*) 129 E. Com. J. 269, 314; Can. Com. J. (1877), 140, 207. Insurance bill. See *supra*, 335, for cases of public bills reported against, but still placed on the orders of the day.

(*q*) See *infra*, ch. xvi., sec. xiii. Sen. Deb. (1886), 516.

mission from the House to that effect in case no such power is given in the original order of reference(*r*).

XII. Proceedings in Committee of the Whole. — When either House agrees to go into committee of the whole on a bill, the speaker calls the chairman of committees, or, in his absence, a member to the chair, and the mace is put under the table. The practice in both Houses is for the most part identical(*s*); 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"(*t*).

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(*u*); but in the Commons it is never considered except when it is necessary to amend the same in accordance with amendments made in committee and in ordinary cases the practice is to amend the title after the third reading. The preamble is also postponed in both Houses until after the consideration of the clauses(*v*). The bill is then considered clause by clause. The chairman usually calls out

(*r*) Alien Labour Bill, Can. Com. J. (1890), 305; 120 E. Com. J. 386; May, 471. The select standing committees of the Canadian Commons have general power to report opinions and observations. R. R. Commissioners Bill; Can. Com. J. (1883), 98, 169.

(*s*) Sen. J. (1867-8), 121.

(*t*) R. 76.

(*u*) Sen. J. (1880), 166.

(*v*) *Ib.* (1880), 166. The English House has now a S. O. to postpone the preamble until after the consideration of the clauses, without question put, No. xxxv., 27th Nov., 1882.

the number of each clause, and reads the marginal note, but he should read the clause at length if demanded by the committee. He will then put the question, "shall the clause be adopted," or "stand part of the bill?" Each clause is a distinct question, and must be separately discussed. When a clause has been agreed to, it is irregular to discuss it again on the consideration of another clause(*w*). 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(*x*). When the committee have agreed to a clause, or to "a clause as amended," the chairman will sign his initials on the margin, and his name in full at the end of the bill, when it has been fully considered by the committee. It is irregular to propose to leave out all the words from "that" to the end of a clause in order to substitute other words, as such an amendment is in the nature of a new clause, which should be considered at a later stage in committee(*y*).

According to 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

(*w*) 241 E. Hans. (3), 2112; May, 457; Can. Com. Hans. (1885), 1482, 1483. If a member moves to omit a clause, the chairman will simply put the usual question, shall the clause stand part of the bill? 164 E. Hans. (3), 1466.

(*x*) 46 E. Com. J. 175; 181 E. Hans. (3), 539. The proceedings in committee on the Franchise Bill of 1885, illustrate the practice with respect to amendments and the order in which they should be moved; Can. Com. Hans. 1470, 1471.

(*y*) 116 E. Hans. (3), 666; 200 *Ib.* 1057.

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. As a rule, in the Canadian House, any change in the title is made the subject of a special motion after the third reading(*z*). In the case of a Senate bill it is usual to amend it in committee, and report the fact to the House(*a*). But in the Senate the title may be amended at this as at any other stage of the bill(b).

A committee of the whole have now power to make amendments not within the scope and title of the bill. The rules of the English Commons(*c*) 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(*d*), and report the same specially to the House(*e*).

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

(*z*) 127 E. Com. J. 352, parish constables abolition bill; Can. Com. J. (1882), 426, harbour and river police bill. Can. Com. J. (1876), 217; *Ib.* (1877), 212.

(*a*) *Ib.* (1882), 426.

(*b*) Sen. J. (1880), 166, 168.

(*c*) S. O. 19th July, 1854.

(*d*) Sen. J. (1877), 253.

(*e*) S. O. 34. This order has always been held in the English House to apply to select committees. May, 471; 118 E. Com. J. 248; 127 *Ib.* 169, 342.

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(*f*) 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 (*g*).

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(*h*).

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(*i*).

The committee cannot agree to any clauses involving payments out of the public funds(*j*), or imposing any dominion tax or charge upon the people(*k*), unless such clauses have been previously considered in committee of the whole—a subject fully explained in the previous part of this chapter(*l*). The committee on the bill cannot increase duties, without a previous resolution from a com-

(*f*) Can. Com. J. (1875), 327.

(*g*) Can. Com. Hans. (1879), 1775.

(*h*) 129 E. Com. J. 353.

(*i*) 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.

(*j*) May, 529; Can. Com. J. (1876), 84; *Ib.* (1877), 94, 128.

(*k*) Can. Com. J. (1870), 242, registration of timber marks; *Ib.* 285, copyright.

(*l*) *Supra*, sec. ii.

mittee, but it may reduce them in accordance with the settled principle that gives every facility to the removal of public burthens(*m*). It has also been ruled in the English House that amendments varying the incidence of a rate or tax come within the rule, requiring considerations in a previous committee, and the bill must be recommitted with respect to the clauses affected, in case there has been no previous committee on the subject(*n*). Such clauses, having been read a second time and agreed to, and referred to the committee on the bill, are not considered as amendments made in committee. Accordingly if no alteration be made therein in committee on the bill, the latter may be reported up without amendment(*o*).

When such clauses, however, are added to a Senate bill, they must be considered as amendments and reported up as such, in order to send them to the Upper House for concurrence(*p*). Amendments are irregular when irrelevant to a bill or any of its provisions; governed by amendments already negatived; inconsistent with or contradictory to the bill as agreed to by the committee; or tendered in a spirit of mockery. The chairman will decline to put such questions from the chair(*q*). Though a committee has full power to amend, even to the extent of nullifying the provisions of a bill, they cannot insert a clause, reversing the principle affirmed by the second reading(*r*).

A committee may, in conformity with instructions, con-

(*m*) May, 533.

(*n*) 217 E. Hans. (3), 402, 413.

(*o*) Penitentiary act, 1876.

(*p*) Post-office bill, 1867-8; Sen. J. 155-8; Com. J. 128-9; census bill, 1879.

(*q*) May, 458; 167 E. Hans. (3), 112; 179 *Ib.* 522; 187 *Ib.* 1942; 188 *Ib.* 84; 211 *Ib.* 137, 2026; 258 *Ib.* 1239, 1333, 1451, 1455; 275 *Ib.* 862; 296 *Ib.* 800; 305 *Ib.* 83; 111 E. Com. J. 213.

(*r*) 251 E. Hans. (3), 1134; May, 458.

solidate two bills into one, or divide one bill into two or more, or examine witnesses and hear counsel. When two bills are to be consolidated in pursuance of an instruction, the preambles of the two bills are severally postponed, and the clauses of each are successively proceeded with. When a bill is to be divided into one or more bills, it is usual to postpone those clauses which are to form a separate bill, and when they are afterwards considered, to annex to them a preamble enacting words and title. The separate bills are then separately reported(*s*).

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 (*t*). The Senate have a rule which appears to provide for such cases:

"43. 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(*u*). The proper time for the reconsideration of an amended bill is after report from committee, when it is competent to make amendments, and "reconsider" the bill; or in any case, it may be sent back, and the committee regularly authorized to reconsider it in any particular(*v*).

In case private bills intervene under Rule 19 before a measure is fully considered in committee of the whole, proceedings are resumed as soon as the time for the consideration of the former bills has expired(*w*).

(*s*) May, 461; 73 Lords' J. 188; 127 E. Com. J. 230. Also 126 *Ib.* 121; 205 E. Hans. (3), 977.

(*t*) Sen. J. 1882, March 6th and 13th, county judges bill.

(*u*) See *supra*, 452, and *infra*, ch. xvi., sec. xxiv.

(*v*) *Infra*, ch. xvi., sec. xiii.

(*w*) Can. Com. J. (1886), 131, 133.

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(*x*). 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(*y*). The same will happen if it is found that there is not a quorum present in the committee(*z*). But the committee "have no power to extinguish a bill, that power is retained by the House itself"(*a*). Consequently the bill may be subsequently revived by a motion, without notice, to fix another day for the committee, and the proceedings are resumed at the point where they were previously interrupted(*b*).

In case a committee of the whole has reported progress a motion may be made immediately before fixing the committee for a future day, that the bill be referred to a select standing or other committee(*c*).

When the committee have fully considered the bill, the chairman reports "The committee have considered the bill

(*x*) Can. Com. J. (1877), 186. Sometimes the committee may receive leave to sit again that same day. *Ib.* (1878), 147.

(*y*) *Ib.* (1869), 106, 288; *Ib.* (1874), 326; *Ib.* (1882), 229; *Ib.* (1886), 126; Can. Hans. (1882), 615; Sen. J. (1880), 166.

(*z*) 110 E. Com. J. 449; 137 *Ib.* 197, 210.

(*a*) 176 E. Hans. (3), 99.

(*b*) Can. Com. J. (1883), 159 (Mr. Speaker Kirkpatrick's ruling with respect to Criminal Law Amendment Bill). See *infra*, s. xviii., where the question of notice is discussed. Law of Evidence Amendment Bill, Sen. Deb. (1886), 565, 568.

(*c*) Revised Association Bill, May 6, 1901; Com. J., 250.

and made certain amendments thereto;" or "the committee have considered the bill and directed me to report the same without amendment"(*d*). 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(*e*).

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(*f*). Except in

(*d*) Can. Com. J. (1877), 232.

(*e*) In the session of 1898 Mr. Speaker Edgar, being unable to decide from the voices as to the time of reading a bill a third time, he submitted the question to the determination of the House under the Rule in this form: "Whether the bill shall be forthwith ordered to be read a third time?" The House having decided in the affirmative, the bill was read on another division. See Jour. and Hans., 28th March. In April, 1901, the same practice was followed. Com. J. 149. See also Mr. Speaker Peel's decision that the question of the time of reading, when urgency is of the nature of the case, "is a question not of the leave of the House, but of the vote of the House, and may be decided by division." 348 E. Hans. (3), 1148-9.

(*f*) 217 E. Hans. (3), 345-58. It is not regular to discuss a particular clause, 256 *Ib.* 3.

cases where the amendments are of an important character, and the House requires time to consider them(*g*), the bill is immediately considered(*h*). When the bill, as amended, is taken into consideration, the amendments are twice read and agreed to(*i*). Up to very recently the amendments only were considered(*j*); but now the whole bill is open to consideration, which is in conformity with the practice of the English Commons, from which it is taken(*k*).

In the Senate it is usual to follow the English practice and amend the bill, when necessary, on consideration of the bill as amended in committee of the whole(*l*). As a fact, the Canadian Commons never amend the bill at this stage in accordance with the English practice. It is quite usual, however, for a member to move that the order for consideration be discharged and the bill recommitted for the purpose of amending the bill in any particular(*m*). The bill may be ordered to be reprinted as amended, or recommitted to a committee of the whole, or to a select committee, immediately after reception of the report(*n*).

(*g*) Maritime jurisdiction bill, 1877. Can. Com. J. (1878), 99.

(*h*) Can. Com. J. (1877), 224; *Ib.* (1878), 200; Sen .J. (1867-8), 225.

(*i*) Can .Com. J. (1877), 241.

(*j*) *Ib.* (1869), 253.

(*k*) See for English procedure, 136 E. Com. J. 116-118; for Canadian practice, Can. Com. J. (1885), 527, 529-554; *Ib.* (1899), 417 (representation bill). See debate on Kettle Valley R. R. Bill, April 13 and 15, 1898, Com. Hans.

(*l*) Sen. J. (1867-8), 222; *Ib.* (1877), 143-4; *Ib.* (1878), 180, 259, &c.

(*m*) Can. Com. J. (1869), 249-252; *Ib.* (1877), 208; 83 E. Com. J. 533; 128 *Ib.* 375.

(*n*) 129 E. Com. J. 228, 244; Can. Com. J. (1875), 160; *Ib.* (1880), 124; *Ib.* (1882), 158; *Ib.* (1884), 108 (reprinting); *Ib.* (1877), 149 (select com.); *Ib.* (1878), 172 (com. of whole). *Ib.* (1885), 527 (com. of whole). Sometimes the amendments, when they are short, are printed in the votes for the convenience of the

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. Bills may be recommitted any number of times to a committee of the whole(*o*) or to a special committee(*p*). Bills may be recommitted *with* or *without* limitation; in the latter case, the whole bill is open to reconsideration(*q*); but in the former case, the committee can only consider the clauses or amendments or instructions referred to them(*r*). It is open to a committee to accept or reject amendments sent to them, whether as instructions or not(*s*).

XIV. Bills not referred to Committee of the Whole.—It has not been uncommon in the Canadian House to pass bills without reference to a committee of the whole. This has been done in the case of the Appropriation or Supply Bill(*t*), and not unfrequently in the case of other bills, also founded on resolutions passed in the committee 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.

(*o*) Can. Com. J. 1875, supreme court bill; *Ib.* 1877, Pickering harbour bill; 69 E. Com. J. 420, 444, 460; 128 *Ib.* 360.

(*p*) 129 E. Com. J. 345.

(*q*) 129 E. Com. J. 284, 308; Can. Com. J. (1878), 170; *Ib.* (1880), 82.

(*r*) Can. Com. J. (1877), 115, criminal procedure bill; 216, joint stock companies' bill; *Ib.* (1878), 172, independence of parliament bill; 178, insurance bill; *Ib.* (1885), 527, franchise bill; *Ib.* (1899), 417, representation bill. Also 129 E. Com. J. 364; 179 E. Hans. (3), 826; Can. Com. Hans. (1875), 908.

(*s*) See *supra*, sec. viii. *n.* In the case of the temperance bill, April 13, 1885, the committee altered some amendments referred to them and negatived another. See Com. Hans. 1045, *et seq.*

(*t*) Chapter xvi., s. 11.

whole(*u*). Supply and customs bills, on the other hand, have been considered only at times in committee, whenever it has been found necessary to amend them(*v*). 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(*w*). The correct usage of considering all bills in committee of the whole is now invariably followed.

In the Senate, public bills are also sometimes considered without reference to a committee of the whole(*x*), and invariably so in the case of the supply bill(*y*).

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(*z*), or that it be recommitted(*a*). Formerly it was not unusual when the motion for the third reading had been agreed to, to add clauses, or make other amendments(*b*); 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"(*c*). Whenever it is pro-

(*u*) Can. Com. J. (1867-8), 114; *Ib.* (1871), 117; *Ib.* (1877), 336; *Ib.* (1879), 374, &c.; Sen. J. (1878), 205, 282.

(*v*) Can. Com. J. (1867-8), 421; *Ib.* (1874), 207.

(*w*) 241 E. Hans. (3), 1238-9; 253 *Ib.* 316-7.

(*x*) Sen. J. (1867-8), 309.

(*y*) Lords' J. (1877), 393, 405, &c.

(*z*) Can. Com. J. (1874), 298; 112 E. Com. J. 380, &c.

(*a*) Can. Com. J. (1873), 311; 113 E. Com. J. 318, &c.

(*b*) Can. Com. J. (1867-8), 112, 180, 402.

(*c*) 21st July, 1856, Rules and orders (Palgrave) No. 261; 256 E. Hans. (3), 19, 20.

posed 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(*d*). 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(*e*).

In the Senate, bills are constantly amended on the third reading without going back to committee(*f*). Previous to 1880-81 it was customary not to require a formal motion for the third reading,—a practice which sometimes gave rise to misunderstandings when members wished to move amendments. Since then, the third reading is moved regularly as in the Commons(*g*). The practice in moving amendments is still variable. Amendments are now moved after the reading of the order(*h*), or on the motion for the third reading—the proper time when there is a diversity of opinion as to the bill and amendments(*i*). Or they are moved after the third reading has been agreed to(*j*). Sometimes it is found convenient to go back to committee(*k*).

(*d*) Can. Com. J. (1877), 228.

(*e*) 131 E. Com. J. 229.

(*f*) Sen. J. (1867-8), 124, 278; *Ib.* (1876), 115, 183, 212; *Ib.* (1878), 186; *Ib.* (1880), 247; *Ib.* (1882), 334; *Ib.* (1884), 255, 257. Same practice in Lords; 151 E. Hans. (3), 1967, 2077; 209 *Ib.* 764; 20th Feb., 1862; Lords' J. (1877), 260.

(*g*) Sen. Hans. (1880-81), 401* (Mr. Speaker Macpherson's remarks).

(*h*) 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.

(*i*) Sen. J. (1880-81), 203-6; *Ib.* (1880), 247; *Ib.* (1882), 199, 327; *Ib.* (1890), 266, 267. See a case where a motion for the third reading of a bill in the Senate was actually superseded by an amendment, and it was necessary to move that it be replaced at once on the order paper. Northwest Territories bill, 1st May, 1890; Sen. Deb. 679, 680.

(*j*) Sen. Hans. (1880), 281-2; Jour. 157, 160, 187; *Ib.* (1880-81), 188; *Ib.* (1882), 66. Sen. Deb. (1890), 675.

(*k*) Sen. J. (1869), 151; *Ib.* (1876), 165-6; *Ib.* (1890), 212, 247.

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(*l*), though it is quite regular to defer the final passage until a future day(*m*), 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(*n*). 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(*o*). Any amendment to the title may now be made(*p*).

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(*q*). Every bill has engrossed on its back the order of the House, in the two languages : That the clerk do carry the bill to the Senate

(*l*) Can. Com. J. (1877), 223, &c. In the English Commons the putting of the question, after the third reading, "that the bill do now pass," is practically obsolete. Mr. Speaker Peel, 289 E. Hans. (3), 1583.

(*m*) May, 472. In the Senate, 1879, the motion for the passage of a bill was negatived, the speaker coming down from his chair to speak and vote against the measure. Hans. 439.

(*n*) 86 E. Com. J. 860; 106 *Ib.* 335; 117 *Ib.* 383.

(*o*) Can. Com. J. (1877), 220.

(*p*) 129 E. Com. J. 60, 64, 115, 153, &c.; Can. Com. J. (1874), 324; *Ib.* (1876), 217; *Ib.* (1879), 373.

(*q*) Sen. R. 90; Com. R. 97.

(or Commons) and desire their concurrence(*r*). If the bill is passed by the Senate, to which it is sent, without any amendment, a written message is returned to that effect(*s*). 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(*t*). 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(*u*).

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(*v*); but if they are important their consideration is deferred until a future day(*w*). 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

(*r*) Sen. J. (1878), 187; Can. Com. J. (1878), 202, 265, &c.

(*s*) Sen. J. (1878), 216; Com. J. 224.

(*t*) Sen. J. (1878), 277; Com. J. (1877), 131, 322.

(*u*) Receiver-general and attorney-general of Canada bill; Com. J. 1878, p. 155-6; Sen. J. 201.

(*v*) Sen. J. (1878), 277-9.

(*w*) Sen. J. (1869), 170; Com. J. (1877), 183; *Ib.* (1878), 261, 291.

in charge of the bill is bound to satisfy the House that expedition is necessary''(*x*).

If amendments from the upper chamber are under consideration, and a count-out occurs, they can be taken up on a subsequent day at the point where the proceedings were for the moment interrupted(*y*).

If the 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(*z*). In case the amendments are objected to, a member may propose : That the amendments be considered that day ''three'' or ''six'' months(*a*), 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(*b*). 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.''(*c*); and no further action need be taken on the sub-

(*x*) 225 E. Hans. (3), 650. See also 110 E. Com. J. 458, 464; 135 E. Hans. (3), 1411. Mr. Sp. Kirkpatrick, Can. Hans. (1886), 1327.

(*y*) 91 E. Com. J. 382, 388.

(*z*) Can. Com. J. (1876), 212; *Ib.* (1878), 260; Sen. J. (1878), 177.

(*a*) Sen. J. (1876), 190; Can. Com. J. (1877), 350, Albert R. R. bill. 113 E. Com. J. 349.

(*b*) Can. Com. J. (1874), 319; *Ib.* (1877), 262; *Ib.* (1878), 263; *Ib.* (1882), 508; *Ib.* (1883), 326; *Ib.* (1890), 448; Sen. J. (1878), 293, &c.

(*c*) Sen. J. (1878), 232, 289, 290; *Ib.* (1880), 277; *Ib.* (1890), 257; Com. J. (1877), 328; *Ib.* (1882), 512-3; *Ib.* (1890), 469.

ject. But if they "insist on their amendment,"(*d*) 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(*e*). In 1878, the Senate having insisted on their amendments to two Commons bills, respecting the supreme and exchequer court and the Pembina branch of the Pacific Railway, the government allowed them to drop; and the same was done in 1883 in the case of a bill further to amend the Fisheries Act(*f*). The practice of resorting to a conference, in order to bring about an agreement between the two Houses, had become almost obsolete, but was revived during the session of 1903 in connection with the Railway Bill of that year(*g*).

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(*h*). Nor on a motion for disagreeing to an amendment of this kind, is it regular to enter into a general discussion of the prin-

(*d*) *Sen. J.* (1878), 289. In such a case the reasons are also given. *Ib.* 275-6.

(*e*) Sen. J. (1878), 295; *Ib.* (1882), 335, 341, 342; Can. Com. J. (1877), 328; *Ib.* (1878), 297-8; *Ib.* (1882), 515; 113 E. Com. J. 332.

(*f*) Sen. J. (1878), 277, 294; Com. J. 284, 298; Com. Hans. 2550, 2553; Sen. J. (1883), 288; Com. J. 436.

(*g*) Chapter ix., s. 2.; C. Rule 99, Sen. R. 92. Previous to this there had been no conference between the two Houses since Confederation.

(*h*) 231 E. Hans. (3), 1222; 241 *Ib.* 846, 1059; Can. Hans. (1880), 1985.

ciple of the bill, but all debate should be confined to the amendment and the reasons for the same(*i*).

Neither House can regularly, at this stage, insert any new provision, or amend, or omit any part of a bill it has itself passed and sent up to the other House for concurrence(*j*). 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(*k*). In 1879, a bill respecting petroleum was sent up to the Senate for concurrence. It had been amended in the Senate and sent back to the Commons, when it was discovered that a very important matter had been left out of the bill. As it was impossible to alter the bill at that stage, since the requisite amendment was not consequent on the Senate amendment, it was necessary to introduce a short bill embodying the provision in question(*l*).

The House, whose amendments are disagreed to, though not at liberty to propose new amendments to a part of the bill to which both Houses have agreed, as above mentioned,

(*i*) Can. Hans. (1877), 1879, Albert R. R. bill; *Ib.* (1878), 2457, Canada Pacific R. R. bill.

(*j*) 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.

(*k*) May, 477; 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); 136 *Ib.* 445. Sen. J. (1877), 228; *Ib.* (1882), 328; Can. Com. J. (1869), 281; *Ib.* (1877), 201, 269; *Ib.* (1879), 415; *Ib.* (1882), 508, 509, 513, 514, 515; *Ib.* (1883), 323; *Ib.* (1885), 458; *Ib.* (1886), 327; *Ib.* (1889), 263; *Ib.* (1890), 432.

(*l*) Can. Com. J. (1879), 422. The error was pointed out in the Senate, when the original bill had passed its final stage, but it was too late then to rectify it. Sen. Deb. (1879), 609. See Pirates' Head Money Bill, 1850; 105 E. Com. J., 471; May, 478; Teeswater and Kincardine Bill, Can. Hans. (1887), 926.

may nevertheless, propose amendments to a part of it to which the amending House has not agreed, and is consequently still under its consideration(*m*).

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(*n*); 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(*o*). If an amendment made by the Senate alters a contract made with the government or otherwise affects the interests of the Crown, the formal assent should be given to it before it finally passes the Commons(*p*).

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"(*q*). 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(*r*). The motion for the first reading will

(*m*) 48 Lords' J., 907; 67 E. Com. J., 468, 479; Cushing, p. 874. May, 478; 113 Lords' J., 419, 420; 125 E. Com. J. 346; 136 *Ib.* 445, 446. Canada Temperance Act, Can. Com. J. (1885), 458. For procedure in moving every possible amendment to amendments from the upper chambers, see Arrears of Rent (Ireland) Bill, 137 E. Com. J. 451; Land Law (Ireland) Bill, 136 *Ib.* 444, 448, 452.

(*n*) Can. Com. J. (1873), 430; Sen. J. 330; timber duties at Quebec.

(*o*) Can. Com. J. (1874), 336. See *supra*, 571.

(*p*) Northern & Pacific Junction R. R. Bill, Can. Hans. (1886), 1605.

(*q*) Sen. J. (1878), 231, &c.; Can. Com. J. (1878), 171; 129 E. Com. J. 281.

(*r*) Sen. J. (1878), 231; Com. J. (1878), 171; 132 E. Com. J. 110.

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.—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." A notice for leave to introduce a bill does not go on the order paper among the ordinary notices, but is placed after "motions" at the head of the paper containing the daily order of business(*s*), for the information of the House. During the progress of routine business—always before calling of orders of the day—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(*t*). Such a motion prevents sur-

(*s*) This practice was commenced in the session of 1880, notices of bills having previously appeared only in the votes.

(*t*) Can. Speak. D. 132. Interest bill, 1870; Insolvency bill, April 3, 1876; Bill for relief of Robert Campbell, April 24 and 26. 1877, Can. Hans., 1837. Albert railway company bill, April 27, 1877. Criminal law amendment bill, 30th March, 1883 (Mr. Speaker Kirkpatrick's decision). Criminal Law Evidence Bill, Can. Com. J. (1884), 196, 203, 230; Fraud in Contracts Bill, *Ib.* 230, 232. Ash Divorce Bill, *Ib.* (1887), 330, 338; Cruelty to Animals Bill, *Ib.*

prise and is equivalent to a notice. The same subject has also been considered in the English House, and the same conclusion arrived at in reference to a bill which had disappeared from the order paper, on account of a committee having risen without reporting(*u*). On another occasion it was decided :

" 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"(*v*).

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(*w*). 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(*x*).

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

(1889), 109, 113. Lowry Divorce Bill, *Ib.* 224, 226. Mr. Speaker Allan's decision, Law of Evidence Amendment Bill, Sen. Deb. (1886), 565, 568.

(*u*) See remarks of Mr. Speaker Denison on this point, 176 E. Hans. (3), 99.

(*v*) 215 E. Hans. (3), 303. Also 214 *Ib.* 194.

(*w*) 107 E. Com. J. 267; 110 *Ib.* 199. The same course may be followed in case it is attemped to restore a bill lost in committee of the whole; Sen. Deb. (1886), 568. This is done to prevent a revival of the bill during the same session.

(*x*) 262 E. Hans. (3), 1716; Blackmore's Sp. D. (1882), 34.

favourably, it became necessary to restore the bill to the paper, which was done without notice(*y*).

XIX. Bill Introduced by Mistake.—If a bill should be introduced by mistake, and the order made for the second reading, it will be necessary to move for the discharge of the order and the withdrawal of the bill. In the session of 1878, the minister of marine had two resolutions respecting merchants' shipping on the paper; the House agreed to one, and then he introduced a bill, which was ordered to be read a second time on a future day. It transpired, however, on the following day that he had inadvertently introduced a bill respecting deck-loads which was intended to be based on the second resolution, not then adopted by the House. He was thereupon allowed to withdraw the bill and introduce the one properly consequent upon the passage of the first resolution(*z*).

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. "No bill shall be read twice on the same day. No committee of the whole House shall proceed on any bill the same

(*y*) Canada Provident Association bill, Sen. J. (1882), 273-4, 316; Deb. 698. In the case of the Northwest Territories Bill, 1890, it was necessary to move immediately that the bill be restored to the orders—a motion for the third reading having been superseded by an amendment to the same, and it being the general desire to proceed at once with the measure. Jour. 231-232; Deb., 1st May. See Mr. Speaker Allan's decision on the point of order.

(*z*) March 26 and 27, 1878. See Can. Hans. (1878), 801, for an illustration of a case where a private bill had been introduced before the application has been reported on by the committee on standing orders. Also Can. Com. J. (1880), 59, 63 (marriage bill).

day a bill is read a second time and no bill shall be read a third time the same day that the bill is reported from the committee when any amendments have been made in committee''(a).

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(b). The Senate generally orders a bill for committee of the whole on a future day(c), but frequently toward the close of the session it has gone immediately into committee thereon, on a motion to that effect duly made and agreed to without objection(d).

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."

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

(a) In the session of 1882, a motion was passed in the Senate to the effect that government bills should be deemed " urgent " in accordance with the 42nd rule. Sen. Hans. 698-700, 705; Jour. 318. Notice was given of this motion, Min. of P., 504. See 261 E. Hans. (3), 670.

(b) Sen. J. (1867-8), 293, 294, 299, 309, 312, &c.; *Ib.* 1878, (285-6), *Ib.* (1880), 274, 275; *Ib.* (1882), 56; *Ib.* (1890), 283. Sen. Deb. (1889), 721. Amendments made in a select committee to a bill may also be concurred in forthwith; Sen. Deb. (1884), 325.

(c) Sen. J. (1889), 226, 229; *Ib.* (1890), 229, 245.

(d) *Ib.* (1869), 226, 230; *Ib.* (1878), 286; *Ib.* (1890), 262, 264, 281, etc. In the Lords (S. O. of the 25-28 June, 1715, 20 May, 1801, 3 July, 1848, No. 39) "No committee of the whole House shall proceed on any bill the same day the bill is committed for the first time," and "no report shall be received from any committee of the whole House the same day such committee goes through the bill."

passage of the measure(*e*); and whenever the sense of the House is to take more than one stage on the same day, the speaker has permitted it to be done. If a bill is amended in committee, it will not be considered immediately and read a third time on the same day except under exceptional circumstances. Toward the close of the session, however, bills which have not been amended in committee are frequently allowed to be read a third time forthwith(*f*). "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(*g*). In fact, in England, as in this country, when urgency can be shown, the House will allow a bill to pass through several stages(*h*) (except money bills)(*i*) on one day; but such occasions seldom

(*e*) Can. Speak. D. Nos. 40, 139, 140; also Can. Hans. (1878), 2006-7, 2157; also 256 E. Hans. (3), 768. Speaker Brand said in 1880: "It is occasionally the custom to pass bills through their different stages at one and the same sitting. That course, however, is never taken except in cases of extreme urgency, and with the general assent of the House." 254 E. Hans. (3), 609-10, 646.

(*f*) R. 47 leaves it within the authority of the House to order the 3d. 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 bill.

(*g*) 184 E. Hans. (3), 2107. See also Mr. Speaker Macpherson's decision; Sen. Deb. (1880), 216.

(*h*) May says "there are no orders to be found in the journals which forbid the passing of bills in this manner," p. 487. Also 244 E. Hans. (3), 1491-2. Can. Hans. (1886), 1714, a case in which urgency was pressed.

(*i*) No instance of this course being taken in England with regard to money bills, 239 E. Hans. (3), 1419.

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 would have to be withdrawn(*j*). A clerical alteration, however, is admissible(*k*). 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"(*l*). 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(*m*). In the session of 1882, the attention of the speaker was directed to the fact that the representation bill had been materially altered since its introduction, and that it was not, in consequence of such alteration, the same bill that had been presented a few days before to the House. Mr. Speaker Blanchet at once decided that the bill could not be allowed to proceed, and that it was necessary "to follow strictly thereafter the practice of the English parliament and not permit any changes, except mere clerical alterations, in a bill when once regularly before the House." The bill was accordingly withdrawn and another immediately presented(*n*). No

(*j*) 215 E. Hans. (3), 300.
(*k*) 108 *Ib.* 969; 237 *Ib.* 362-3.
(*l*) 111 E. Com. J., 211, 213; 117 *Ib.* 202; 132 *Ib.* 84, 243.
(*m*) Can. Com. J. (1874), 123, 126.
(*n*) *Ib.* (1882), 406.

notice need be given in such cases, as the original order of leave for the introduction is still operative(*o*).

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(*p*). 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(*q*). 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(*r*). 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 inad-

(*o*) 215 E. Hans. (3), 307.

(*p*) 78 E. Com. J. 317; 91 *Ib.* 639; 92 *Ib.* 609, 646; 100 *Ib.* 804.

(*q*) 75 E. Com. J. 447; 80 *Ib.* 512; 92 *Ib.* 572.

(*r*) 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 sess.), 266, 269.

vertently left out in the copy of the bill sent back to the Commons, and requesting that leave be given to the proper officer of the Senate to supply the omission. It was accordingly resolved by the House to give the necessary leave, and a message was returned to that effect. Then the omitted amendment was considered and regularly agreed to(*s*). This is the ordinary practice now in the case of an amendment being omitted in any bill(*t*). 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(*u*). 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(*v*).

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*(*w*). By reference to the proceedings of the legislature it will be seen that in

(*s*) Can. Com. J. (1875), 353-4; Sen. J. 258, 267.

(*t*) 103 E. Com. J. 736; 112 *Ib.* 420.

(*u*) 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*.

(*v*) 107 E. Com. J. 157; *supra*, 577.

(*w*) 2 Hatsell, 267; Bramwell, 28; 63 E. Com. J. Jesuits' Bark bill.

such cases a new bill was presented and passed immediately through all its stages. For instance, a bill in reference to marriages had been passed and returned by the legislative council with amendments previous to the destruction of the bill by fire. A message was afterwards sent to the council informing them that the bill had been destroyed; a new bill was then sent up and passed by both Houses without delay(*x*).

XXIV. A bill, once rejected, not to be again offered in the same session.—Exceptions to rule.—It has been shown that it is a well established rule of parliamentary practice that no question or motion can regularly be offered upon which the judgment of the House has been expressed during the current session. But while this rule is recognized as a general one, it is limited in its application as respects bills. In reference to amendments to bills, Hatsell lays down the uniform practice which still obtains in the Canadian and English Parliaments: "That in every stage of a bill, every part of the bill is open to amendment, either for insertion or omission, whether the same amendment has been, in a former stage, accepted or rejected"(*y*). 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(*z*).

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:

(*x*) 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.

(*y*) 2 Hatsell, 135, *n.*

(*z*) May, 291-2; 211 E. Hans. (3), 137.

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(*a*).

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(*b*). Again when a bill has finally passed, it cannot be introduced again in the House where it was presented(*c*). But there are ways of evading this rule, when the necessity arises. For instance, if a bill begun in one House be rejected in the other, "a new bill of the same matter may be drawn and commenced again in that House

(*a*) 1 Hans. (3), 553.

(*b*) May, 286; Bramwell, 27; Hakewell, s. 5; June 22, 1821, forgery punishment; Jan. 9, 1807, *Ibid.*

(*c*) May 292. 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 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. Deb. 612-13.

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"(*d*). Or if a bill be altered in any material point, both in the body and title, it may be received a second time(*e*). 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(*f*). 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(*g*). 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(*h*). 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(*i*)

(*d*) Lords J. 17th of May, 1606; 2 Hatsell, 125; Bramwell, 27; 151 E. Hans. (3), 699.

(*e*) Bramwell, 27; Hakewell, sec. 5.

(*f*) Bramwell, 27; E. Com. J., 9th of Jan., 1807.

(*g*) May, 292, drainage (Ireland) bill; drainage and improvement of land (Ireland) bill, 1863.

(*h*) May, 293.

(*i*) 91 E. Com. J. 777, 810; revenue charges bill, 1854.

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(*j*).

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 rule has always been strictly enforced in the Canadian Commons; notably in the case of two Interest Bills in the session of 1870(*k*).

In the sessions 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 already before the House. It is the *rejection* and not the *pendency* of a bill that creates a difficulty as to the ulterior

(*j*) 203 E. Hans. (3), 563.

(*k*) 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.

proceedings. The rule applies to both Houses''(*l*). 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(*m*).

It is always regular for a member to introduce a second bill upon the same subject, with the intention of moving the discharge of the order on the first bill, when leave has been given for the introduction of the second(*n*).

XXV. Royal Assent to Bills.—The bills passed by both Houses remain in the possession of the clerk of the Parliaments(*o*) or clerk of the Senate as he is commonly called, (with the exception of the supply bill which is always returned to the Commons)(*p*), until his Excellency the Governor-General, comes down to give the royal assent. 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 assent. Then the clerk of the Parliaments having made his obeisance to the governor-general gives the royal assent in the prescribed formula(*q*).

As a rule all the bills receive the royal assent at the end of the session, when the governor-general comes down to

(*l*) 151 E. Hans. (3), 699; 204 *Ib.* 2046. Mr. Speaker Kirkpatrick on supreme court bill, Can. Hans. (1885), 270; Cushing, sec. 2321.

(*m*) Leg. Ass. J., March 29, 1849; increase of representation bill, *Colonist* debates; interest bill, 1870.

(*n*) 261 E. Hans. (3), 670.

(*o*) *Supra*, 269.

(*p*) *Supra*, 613.

(*q*) Sen. J. (1878), 296-7; Com. J. 299-310, &c.

prorogue parliament. In 1867-8, however, it was found necessary to adjourn from December to March, and his Excellency consequently came down on the day of adjournment and assented to all the bills passed up to that time(*r*). Sometimes in a 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 authorize 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(*s*). In almost every year since bills have been assented to in the course of the session. On such occasions when the House of Commons returns from the Senate chamber, the speaker (who has received a list from the clerk of the Senate) will report the Acts to the House, so that the titles may appear on the journals(*t*).

It is a constitutional rule that the royal assent is due and should be given to all bills which have passed all their stages in the two Houses, and are ready for that assent, when the sovereign or his representative comes down for that purpose. For some unexplained cause, this rule was not observed in the session of 1890, when the assent was given to a number of bills in the course of the session(*u*).

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

(*r*) Can. Com. J. (1867-8), 134.

(*s*) *Ib.* (1870), 186, 188.

(*t*) *Ib.* (1878), 177; 131 E. Com. J. 103, &c.

(*u*) See remarks of Mr. Blake, Can. Hans. (1890), 2594, 2595; May, 592; 2 Hatsell, 339. No action was taken on seventeen bills.

these bills for the signification of her Majesty's pleasure thereon."

Sections 55, 56 and 57 in the British North America Act, 1867, refer to the royal assent and to reserved bills.

The same sections are also found in the Union Act of 1840, and the Constitutional Act of 1791(*v*). The governor-general's instructions, previous to 1878, directed him not to assent in her Majesty's name to any bill within certain specified classes, eight in number(*w*).

In accordance with these instructions, the governor-general, between 1867 and 1878 inclusive, reserved twenty-one bills of the parliament of Canada(*x*). Of these eleven related to divorce, and received the assent of the Queen in council with little or no delay(*y*).

Among the other bills was one to reduce the salary of the governor-general, to which her Majesty's advisers refused to give their approval. In 1869, the dominion parliament passed a bill, re-enacting the clause in the imperial statute of 1867, fixing the salary at £10,000 sterling; and this Act subsequently became law though it too was reserved, in accordance with the royal instructions(*z*). In 1872, a bill respecting copyrights was reserved, and never

(*v*) 3 & 4 Vict., c. 35, ss. 37, 38, 39; 31 Geo. III., c. 31, ss. 30, 31, 32. See also 14 Geo. III., c. 83, s. 14, as to his Majesty's approval of ordinances passed by the legislative council of those days; *supra*, 13.

(*w*) Sen. J. (1873), 74; Sess. P. 1867-8, No. 22.

(*x*) See Sen. and Com. J. of 1867-8, 1869, 1872, 1873, 1874, 1875, 1877 and 1878.

(*y*) See the case of Harris divorce bill disallowed in 1845, because the parties were not at the time domiciled in Canada—Mr. Harris being an officer in the army—and the courts of law would not on that account consider such an act as a valid divorce. Can. Leg. Ass. J. (1846), 29.

(*z*) 32-33 Vict., c. 74; Can. Sess. P. 1869, No. 73. See proclamation in the *Canada Gazette*, Oct. 16, 1869, and Can. Stat. 1870.

received the approval of the imperial government, because it conflicted with imperial legislation(*a*).

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(*b*). In 1873 and 1874, two other bills on the subject of extradition generally were reserved, and never became law, though the dominion government earnestly contended at the time that it has full powers to deal with the question(*c*).

Since 1878, however, 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"(*d*). 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 results of the action of the government of Canada in 1876 and 1877, when the minister of justice (Mr. Blake) made various suggestions which were practically

(*a*) Can. Sess. P. 1875, No. 28.

(*b*) 31 Vict., c. 94, amended by 33 Vict., c. 25.

(*c*) See Todd, Parl. Govt. in the Colonies, 204, *et seq.*; Can. Sess. P. 1876, No. 49; *Ib.* 1877, No. 13, pp. 10-18. And see Rev. Stat. of Can., c. 142.

(*d*) Can. Sess. P. 1877, No. 13, p. 4.

adopted by the imperial ministry. In his elaborate 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 mentioned that the clause in the former royal instructions, requiring that certain classes of bills should be reserved for her Majesty's approval, "was omitted from the revised instructions, because her Majesty's government thought it undesirable that they should contain anything which could be interpreted as limiting or defining the legislative powers conferred in 1867 on the dominion parliament"(*e*).

In 1878, an Act passed by the parliament of Canada to effect a judicial separation of certain parties from the bonds of matrimony received the assent of the governor-general, though it would have been reserved in previous years, in accordance with the old instructions(*f*).

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(*g*). 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

(*e*) 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).

(*f*) 42 Vict., c. 79; Sen. Deb. (1879), 287. In 1886, Sen. J. 284, 285. See Bourinot, Federal Government in Canada, 36.

(*g*) Can. Sess. P. 1877, No. 13, p. 9.

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(*h*).

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(*i*). The mode of informing parliament of the disallowance is given in section 56 of the British North America Act(*j*).

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 the *Gazette,* to bring the Act into force(*k*).

The following is the only paragraph in the amended instructions that refers to legislation in Canada :

(*h*) Can. Com. J. 1873, 2nd sess., 5, *et seq.* See *Supra*, 562, 563, where the history of the act is given.

(*i*) Col. regulations, No. 51; col. office list, 1890.

(*j*) Can. Com. J. 1873, 2nd sess., 5; Sen. J. 14. See Leg. Ass. J. 1860, p. vi., for a proclamation disallowing a Canadian act.

(*k*) Col. regulations, No. 49; col. office list, 1890. See 33 Vict., c. 14, s. 3.

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-general of Canada since 1763(*l*). An Act of the parliament of Canada 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(*m*).

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(*n*). The British North America Act, like previous imperial statutes

(*l*) See copy of instructions issued to Governor Murray, 7th of Dec., 1763, in Doutre et Lareau, Histoire du Droit Canadien, 556.

(*m*) 35 Vict., c. 1, s. 4; Rev. Stat. of Can., c. 2, s. 4.

(*n*) 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 principle of following British constitutional usage in the opening and the closing of the legislatures of this country.

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(*o*). 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.

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 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

(*o*) Leg. Ass. J. (1841), 638, 640.

the bills in the presence of the two Houses—his previous proceedings being deemed insufficient(*p*).

Should a bill receive the royal assent without having passed through all its stages in the two Houses, then a serious question as to the validity of the statute may arise. Cases of this nature have occurred in the parliamentary practice of England and Canada. In 1829, the Lords amended a Commons bill relating to the employment of children in factories, but did not send it back that the Commons might consider it as amended. After it had received the royal assent, the speaker of the Commons drew attention to the mistake. The amendment was agreed to by the House, after a conference on the subject, and a bill was passed to render valid and effectual the Act in question. In 1843, Mr. Speaker Lefevre called attention to the fact that the Schoolmasters' Widows' Fund (Scotland) Bill had been returned by the Lords to the Commons with amendments, but before these were agreed to, it was taken up by mistake to the other chamber, and though it had not the usual endorsement, *a ces amendmens les communes sont assentus*, the mistake was not noticed, but the bill received the royal assent in due form. In this case also, a new Act was considered necessary to give validity to the measure(*q*).

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

(*p*) 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. See Ann. Reg. (1879), 172-9.

(*q*) 69 E. Hans. (3), 427. See Bourke's Precedents, 64-6. May, 480, 483.

destruction of noxious weed," though it had only been read twice in the assembly. Apparently 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(*r*). 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 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 'lieuten-

(*r*) Can. Com. Sess. P. 1879, No. 19, p. 20, and No. 26.

ant-governor' of the provinces for the 'governor-general,' of the 'governor-general' for the 'queen' and for a 'secretary of state,' of 'one year' for 'two years,' and of the province for 'Canada.'" Consequently it is now within the discretion of a lieutenant-governor in any province, when any bill is presented to him for the necessary assent, to reserve the same "for the signification of the pleasure of his excellency the governor-general thereon." Such a bill cannot go into operation unless, within one year from the date of its having been reserved, the governor-general shall issue his proclamation intimating that it has received the assent of the governor in council(*s*). 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(*t*).

The lieutenant-governors of the provinces have sometimes reserved bills for the consideration of the governor-general in council(*u*). In Nova Scotia, New Brunswick, and P. E. Island—but not in the other provinces—they have also, on several occasions, withheld their assent from bills passed by the legislature(*v*). The power is, however,

(*s*) These proclamations always appear in the *Canada Gazette* and Canada Statutes.

(*t*) See *Canada Gazette*, Dec. 4, 1869, p. 386.

(*u*) 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.

(*v*) 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. In 1707, in the case of a bill respecting the militia in Scotland. See 18 Lords' J. 506. We find in the history of Nova Scotia a remarkable case of an appropriation bill having been vetoed in 1809 by Dr. A. Croke, when president or administrator of the province. See a paper

expressly given to them as well as to the governor-general by sections 55 and 90 of the British North America Act. The governor-general 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 legislatures of the old province 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(*w*).

Section 55 of the British North America Act thus applies 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(*x*). No

on the subject by Lieutenant-Governor Sir Adams Archibald, N.S. Historical Society, 1879-80, vol. ii., pp. 121, 122; Murdoch's History, iii., 288.

(*w*) 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.

(*x*) "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 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, p. 161.

instructions having been given them, 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(*y*).

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 passed in the same session thereof"(*z*).

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"(*a*).

XXVIII. Commencement of an Act.—It is also provided by law that the clerk of the Senate shall endorse on every Act of parliament, immediately after the title, the day, month, and year when it received the assent of her Majesty,

(*y*) See Todd, Parl. Govt. in the Colonies, 396, where he endeavours to explain the position of one lieutenant-governor from whom he had a private memorandum on the subject. "It cannot be imagined that a law should have received the consent of both houses of parliament, in which the responsible ministers of the Crown are sitting, debating, acting, and voting, unless those who advise the Crown have agreed to that law, and are therefore prepared to counsel the sovereign to assent to it. If a law were passed by the two Houses against the will and opinion of the ministers of the day, those ministers must naturally resign their offices, and be replaced by men in whose wisdom parliament reposed more confidence, and who agreed with the majorities in the two Houses." Lord Palmerston, 159 E. Hans. (3), 1386.

(*z*) 31 Vict. c. 1; Rev. Stat. of Can., c. 1; s. 6. See Can. Com. J. 1879, petroleum acts; 1882, Ontario Bank; 1883, booms and works in navigable waters bill.

(*a*) 46 Vict., c. 1. See Rev. Stat. of Can. c. 1. Additional amendments were made to this act in 1890, 53 Vict., c. 7.

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(*b*).

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. These statutes are printed in the two languages, and distributed in accordance with a list arranged in council. The mode of distribution is annually reported to parliament. Acts may be published in the *Canada Gazette* previous to their publication in the printed volumes. All the original acts of the parliament of Canada, of the legislatures of Canada and of the late provinces of Upper Canada and Lower Canada, as well as all disallowed and reserved bills, remain in the custody of the clerk of the parliaments, who can furnish certified copies to those persons who may require them(*c*).

(*b*) Rev. Stat. of Can., c. 1, s. 5. For instance, the Liquor Licence Act of 1883 (46 Vict., c. 30, s. 147) was only to come into force on the 1st of January, 1884, and the licences thereunder on the 1st of May, in the same year.

(*c*) See Rev. Stat. of Can. c. 2. Also with respect to office of queen's printer, *supra*, 373.

CHAPTER XVII.

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 Legislation 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.

II. Definition of Private Bills.—Private bills are distinguished from public bills in that 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, must originate by petition(*a*) and be subject to certain special standing orders in both Houses of parliament. Judicial as well as legislative functions are entrusted to committees to which all petitions and bills of a private nature are referred with the view of carefully protecting all the interests involved in the proposed legislation. The parties whose private interests are to be promoted appear as suitors before a select committee, to whom the bill has been referred, whilst those who apprehend any injury, and are opposed to the legislation sought for, are admitted as adverse parties. The analogy which the proceedings bear to those of courts is sustained by the fact that certain fees must be paid by the promoters of a private bill before the House will permit its passage. All 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 the House and dispute, if necessary, its passage(*b*).

(*a*) Both public and private bills had their rise in the ancient petitions to the Crown for the redress of public or private grievances. All trace of this origin has disappeared from public bills, except, perhaps, in the case of the preamble to appropriation bills; but promoters, and even the opponents of private bills, as a rule, must proceed by petition, and consequently this class of legislation retains evidences of an ancient form which has here survived for well nigh six hundred years. See Clifford's History of Private Bill Legislation, i. 270.

(*b*) Courts of equity also look upon the solicitation of a bill in parliament in the light of an ordinary suit, and will in a proper case restrain the promoters by injunction from proceeding with a bill. May, 645.

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 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 experience has proved incontestably that there is still some uncertainity as to the rules and principles that ought to govern the question of jurisdiction. In every session of parliament, the issue has come up for discussion, and from the difference of opinion that prevails in some cases it is easy to see that the question of jurisdiction is of a perplexing and difficult character.

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 railways, 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(*c*), it has

(*c*) 31 Vict., cc. 20 and 86.

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, a large number of 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 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(*d*), which became law, with the object of giving effect to that policy. It is expressly declared to be "for the better and more uniform government of railways" that the Grand Trunk, Great Western, Intercolonial, North Shore, Northern, Hamilton & North Western, 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 of them, "are works for the general advantage of Canada within the meaning of the British North America Act." The provisions of any act of the legislature of any province, passed prior to May 25, 1883, and in force at that date, remain in force so far as they are consistent with any act of the parliament of Canada passed subsequently.

The question was raised during the passage of the bill, whether the effect of so wide a provision was not practically to destroy the efficiency of provincial jurisdiction

(*d*) 46 Vict., c. 24. "An act further to amend the Consolidated Railway act of 1879, and to declare certain lines of railway to be works for the general advantage of Canada." See Rev. Stat. of Can., c. 109, s. 121.

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(*e*). 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. 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(*f*).

Since 1867, the Houses have frequently found a difficulty in many cases in determining what class of bills come within the meaning of the section assigning to the local 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 commit-

(*e*) Can. Hans. (1883), 1293-1304.

(*f*) Mr. Blake, in an elaborate argument before the supreme court of Canada in 1888, on the Manitoba Railway Crossings Case, very explicitly stated the large legislative authority of the parliament of Canada in this regard. For the other side of the question, see Mr. Mills' remarks, July 6th, 1891, on the Bay des Chaleurs Railway Company's Bill.

tee 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(*g*). 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(*h*).

In the same session the committee on standing orders reported with respect to the applications of the Gore District Mutual Fire Insurance Company, and of the Sorghum Growers' Association of the County of Essex, that these companies came more properly within the jurisdiction of the local legislature of the dominion of Canada(*i*). The committee 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 pre-

(*g*) Can. Com. J. (1867-8), 357, 379.

(*h*) 37 Vict., c. 51; Rev. Stat. of Can., c. 130.

(*i*) 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 the committee on the bill.

sented a report to the House representing that "doubts had arisen whether the objects sought to be obtained by the promoters were not provincial in their character and such as the local legislature is exclusively empowered to deal with," and at the same time soliciting instructions from the House as to the course to be pursued with reference to the bill. The result was that no further progress was made with the bill during that session(*j*). Doubts were also expressed by the banking committee as to the jurisdiction of parliament in the case of the Canada Live Stock Insurance Company Bill,which was not proceeded with(*k*).

The whole question of the jurisdiction of the dominion parliament over the subject of insurance came up for discussion on a motion for the second reading of a public bill respecting insurance companies. It was moved in amendment that the "regulation of insurance companies is a subject properly within the jurisdiction of the provincial legislatures;" but the House decided by a large majority against the amendment(*l*). Since then, the courts have given authoritative decisions to the effect that while the dominion parliament and the provincial legislatures have an undoubted right to incorporate insurance companies in the one case for the whole dominion, and in the other for the limits of a province only, yet the form of the contract and the rights of the parties thereunder must be regulated by the province in which the business is done(*m*).

(*j*) Can. Com. J. (1867-8), 60.

(*k*) *Ib.* 357.

(*l*) The division showed, yeas, 5; nays, 44; Can. Com. J. (1867-8), 426.

(*m*) In 1886, a bill relating to interest on mortgages secured by real estate was withdrawn as *ultra vires*, the minister of justice having drawn attention to the fact that among other objectionable features, one of the clauses contained a provision not relating to

Since 1867 the two houses of parliament have passed a 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

interest properly speaking, but rather to contracts for the securing of money—clearly a matter of provincial jurisdiction. Can. Hans. (1886), 440; Can. Com. J. 137.

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(*n*).

Whilst parliament is disposed to give every legitimate

(*n*) 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.

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 incorporated for the purpose of building dykes across the Chebogue and Little Rivers. The premier and others took strong objections to the bill on the ground that it was a matter properly within the jurisdiction of the legislature of Nova Scotia. It was simply a bill to enable a single person to dyke two rivers in Nova Scotia, and was so completely of a provincial 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(*o*). The proper course, no doubt, was, as suggested in

(*o*) Can. Hans. (1879), 921-24; Yarmouth Dyking Co. bill.

debate, to obtain an act of incorporation in the first instance from the local legislature, and then apply to the dominion parliament for any additional powers that it could constitutionally grant.

In the session of 1882 a bill respecting pawnbrokers—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 dominion parliament(*p*). In 1869, a bill providing for vaccination was not proceeded with for a similar reason(*q*).

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 belong 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(*r*).

In 1885, objection was taken to a bill to incorporate the Dominion Drainage Company on the ground that it was in the nature of the bill just referred to, and provided for

(*p*) Can. Hans. (1882), 266.

(*q*) Com. Deb. (1869), 64; also Sen. Deb. (1879), 47.

(*r*) Sen. J. (1883), 154, 241; Com. J. 317, 326, 351.

the drainage of lands, a subject essentially of a provincial character. The object of the company, however, was shown to be to drain lands in the North-West Territories as well as in Manitoba and Ontario, and the preamble was subsequently amended to make the bill applicable to the whole dominion(*s*).

In the case of the Colonial Building and Investment Company, incorporated by the parliament of Canada in 1874(*t*), the issue was taken in the courts of Quebec, and subsequently before the privy council that, inasmuch as the association had confined its operations to that province, and its business had been of a local and private nature, it followed that its objects were local and provincial, and its incorporation consequently belonged to the provincial legislature exclusively. But in deciding that the act was not *ultra vires* of the dominion parliament, the privy council stated that "the fact that the association had thought fit to confine the exercise of its powers to one province could not effect its status or capacity as a corporation, if the act incorporating the same was originally within the legislative power of the dominion parliament." The company was incorporated "with powers to carry on its business, consisting of various kinds, throughout the Dominion." The parliament of Canada could "alone constitute a corporation with those powers; and the fact that the exercise of them has not been co-extensive with the grant cannot operate to repeal the act of incorporation, nor warrant the judgment prayed for, viz.: that the company be declared to be illegally constituted"(*u*).

(*s*) Can. Hans. (1885), 1007, 1008; Can. Com. J. 282. See 48-95 Vict., c. 95.

(*t*) 37 Vict., c. 103.

(*u*) 7 L.N., 10-15. The appeal was from the judgment of the court of queen's bench, Quebec, reversing a judgment of the superior

In 1887, objection was taken to the incorporation of the Imperial Trusts Company(*v*) on the ground that it enabled a company to exercise the functions of trustees of estates in the different provinces, when it might not have an agency or head office therein and be brought under the control of the courts of those provinces. The House, however, appeared to coincide with the argument of the minister of justice that, inasmuch as the company sought to do business in all the provinces, it was alone within the competency of the dominion parliament to pass it. Parliament had incorporated previously two accident corporations of precisely the same character, and for precisely the same purposes. In the case of Dobie(*w*), it was practically decided that the question of "territoriality,"—to use a convenient expression in such cases,—that is, the extent within which the company was to operate, is to be one test of its constitutionality. More than that, the company did not acquire any right under the bill to assume the office of trustee of its own motion ; it could only so act by the authority of one of the superior courts in each province(*x*).

In the session of 1889 objection was taken to a bill to amend the act respecting Queen's College at Kingston, on the ground that the institution, though incorporated by royal charter originally, had its domicile exclusively in Ontario, and was within the control of the legislature of

court of the province, dismissing the petition of the attorney-general, praying that the act incorporating the company be declared *ultra vires*. See 5 *Ib.* 116.

(*v*) 50-51 Vict., c. 115.

(*w*) See *Dobie* vs. *Temporalities Board*, 7 App. Cases, 136 ; 1 Cartwright 351.

(*x*) Can. Hans. (1887), 637, 638. Also opinion of Mr. Mills as to interpretation to be placed on Dobie *v.* Temporalities Board ; *Ib.* (1889), 602.

that province which had complete jurisdiction over the subject of education. The bill, however, passed after a division by a very large majority, who appeared mainly influenced by the arguments that the corporation was only asking for the removal of restraints, which were imposed by an act of the parliament of Canada in 1882, when the question of jurisdiction was never raised; that it had property in the two provinces of Ontario and Quebec, which it was necessary to administer under the authority of a new statute; that the legislation asked for did not deal with the subject-matter of education, but with a body established for the purpose of carrying on operations in two provinces(*y*).

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(*z*). 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(*a*). 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

(*y*) Can. Hans. (1889), 602-606. See Dom. Stat., 52 Vict., c. 103.

(*z*) *Ib.* (1882), 429-30.

(*a*) 44 Vict., c. 63; 45 Vict., c. 119.

its various forms." It declared its desire 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"(*aa*). 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(*b*). 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(*c*). Whenever companies, incorporated under

(*aa*) 45 Vict., c. 113.

(*b*) Can. Hans. (1882), 429-30.

(*c*) B.N.A. Act, s. 91, sub-s. 10; Doutre, 141. See Dom. Stat. 38 Vict., c. 97, bridge across river L'Assomption; Can. Hans. (1875), 893-896. The committee on this bill were of opinion that the parliament of Canada had the power to deal with such matters, 895. Also 40 Vict., c. 65, Rivière du Loup bridge; this river is only navigable

provincial acts, have required certain privileges upon navigable streams, they have always sought and obtained them from the general legislature.

In the session of 1883, a very instructive discussion took place on the question how far the general legislature may go in legislating in the case of companies already incorporated under provincial acts. Among the bills before the House was one to grant certain powers to the Acadia Powder Company, already incorporated by special acts of the province of Nova Scotia. The bill asked for power to extend the business of the company throughout the dominion; and, from the debate on the measure, it is evident that had its promoters been content with asking parliament to grant this general power, there would have been little objection to its passage, except from those who had doubts as to the right of the dominion legislature to interfere in any way with local legislation(*d*). But the bill went still

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, constructed under authority of provincial acts." Sen. Deb. (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. In the case of Wood *v.* Esson, the supreme court of Canada (reversing a judgment of the supreme court of Nova Scotia), virtually decided that the Crown could not, without legislative sanction, grant to any person the right to place in Halifax harbour below low-water mark any obstruction or impediment so as to prevent the free and full enjoyment of the right of navigation. Can. Sup. Court R., vol. ix., pp. 239-256.

(*d*) See speech by Mr. Amyot (Hans. 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.

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 Credit Foncier Franco-Canadien(*e*) 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 share-

But, on the other hand, see the argument of the premier in the very opposite direction.

(*e*) 46 Vict., c. 85.

holders, creditors, or otherwise, in the constitutional 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(*f*).

IV. Supreme Court Reports on Private Bills.—By section 53 of the Supreme and Exchequer Court Act(*g*) 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(*h*). The opinion of the judges is placed on the journals as soon as it has been laid before the Senate by the speaker(*i*).

(*f*) 46 Vict., c. 94; Can. Hans. (1883), 262, 422, 499, 500.

(*g*) 38 Vict., c. 11, Dom. Stat. Rev. Stat. of Can., c. 135, s. 38.

(*h*) R. 55 amended in 1878, March 28, p. 337, Sen. Deb. Also, *Ib.* (1877), 260; *Ib.* (1878), 137, 293.

(*i*) Sen. J. (1876), 155, 206.

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-sec. 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 private bill to them, express an opinion on the constitutional rights of the Canadian parliament to pass the bill(*j*).

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 them-

(*j*) Sen. J. (1876), 207.

selves 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(*k*).

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 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(*l*).

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

(*k*) 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.

(*l*) 45 Vict., c. 107; Sen. J. (1882), 273, 301-2; Hans. 460-2, 698.

case of bills submitted to them. Rule 60 was rescinded and the following substituted:

"56. Any private bill shall, if it be demanded by two Senators, when read the first time, be referred to the committee on standing orders, to ascertain and report whether or not the said bill comes within the class of subjects assigned exclusively to the legislatures of the provinces"(*m*).

This rule was subsequently also rescinded, and the following rule, having the same number, substituted therefor:

56. The law clerk shall examine all private bills, and shall, before their second reading, call the attention of the Senate to such of them as contain exceptional provisions, or contain, expressly or impliedly, the declaration mentioned in paragraph (c) of sub-section 10 of section 92 of the British North America Act, or may otherwise raise a question of jurisdiction as between the parliament of Canada and the legislature of any province.

All private bills to which the law clerk calls attention as containing the above-mentioned declaration, or otherwise raising the question of jurisdiction, shall thereupon stand as referred, without special order to that effect, to the committee on legislation, for the purposes of ascertaining and reporting whether the said declaration comes within the intent and spirit of the British North America Act, or otherwise dealing with the question of jurisdiction.(*mm*)

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

(*m*) Sen. J. (1879), 155, 170, 190, 206; Deb. 309, 340, 415; Jour. (1880), 79, 83, 85, 91, &c.

(*mm*) Adopted by the Senate, Sept. 3d., 1903.

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(*n*). In the session of 1865 a bill was brought up from the legislative council 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(*o*). All bills respecting synods and religious corporations are considered private since 1867(*p*).

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(*q*). Subsequently a petition for a private bill was presented(*r*).

Bills from the corporations of towns, and municipal

(*n*) Todd's Private Bill Practice, 8-10; bill in reference to townships in Victoria county, Ass. Jour. (1858), 568, 684; Huron Indians, Ass. Jour. (1864), 391, 478.

(*o*) Speak. D. 134; Ass. Jour. (1865, Aug. sess), 123.

(*p*) Saskatchewan Synod bill, Com. J. (1882), 64, &c.; 45 Vict., c. 126; also 34 Vict., c. 58; Com. J. (1871), 71, &c.

(*q*) Can. Hans. 1879, March 5. By reference to the journals of 1878 (27, 36, 74), it will be seen that a private bill on the same subject had been presented that session, but not proceeded with.

(*r*) Can. Com. J. (1879), 56, 57.

bodies, generally, are always treated as private bills when they desire special legislation affecting their property or interests(*s*). 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 of the dominion parliament; and as they have affected trade, navigation and shipping, matters within the jurisdiction of the dominion parliament, they have been properly presented in the general legislature(*t*).

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 Railway Company(*u*). In the same session a minister pre-

(*s*) 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. 150.

(*t*) 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); Kincardine bill (40 Vict., c. 52); Moira river bill (42 Vict., c. 51); Grafton harbour continuance bill (46 Vict., c. 93).

(*u*) 44 Vict., c. 1.

sented 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(*v*).

In 1885, the government took charge of two bills—one "respecting the Commercial Bank of Windsor," and the other "respecting the Bank of British Columbia,"—applying the provisions of the general Banking Act to these banks. In both cases these bills were referred to the select standing committee on Banking and Commerce before consideration in committee of the whole(*w*).

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

(*v*) 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.

(*w*) Can. Com. J. (1885), 271, 365; Can. Hans., 1677. 48-49 Vict., cc. 83, 84. But in 1877 a bill of a somewhat similar character, respecting the Bank of British North America, was presented as, and passed through all the stages of, a private bill; Can. Com. J. 41, 49, 50, 67, &c., 40 Vict., c. 54. In 1891, June 22nd, the minister of finance withdrew a bill in his name respecting the Albion Mines Savings Bank, as it was clearly a private bill, and did not come within the precedents cited in the text, which simply applied a public act to certain banks.

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(*x*).

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 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(*y*).

In the English House of Commons, there is a class of *quasi* private bills, distinguished as "hybrid bills." They are brought in, by order, as public bills, but as they affect private rights "their further progress is subject to the proof of compliance with the standing orders before the examiner, and to the payment of fees." They are generally "bills for carrying out national works, or relating to Crown property, or other public works in which the government is concerned," or they sometimes deal with matters affecting the metropolis(*z*). They are committed to a select commit-

(*x*) Mr. Speaker Denison, June 23, 1864; 176 E. Hans. (3), 163, 171.

(*y*) Can. Com. J. (1883), 203, 224; Hans. 709.

(*z*) May, 696. Windsor Castle approaches bill, 1848; Portland harbour and breakwater bill, 1850; Smithfield market removal bill, 1851; Belfast municipal boundaries bill, 1853; Thames embankment

tee, when the committee on standing orders has reported favourably. The rules of the Canadian Houses do not make any special provision for this class of bills. In other cases, where bills have affected both public and private interests, a different course has been followed. In the session of 1875, the premier (Mr. Mackenzie) moved for leave to introduce a public bill to re-arrange the "capital of the Northern Railway of Canada, to enable the said company to change the gauge of its railway, and to provide for the release of the government lien on the road on certain conditions." Objection having been taken that some of the provisions affected private interests and altered the powers of the Company in very material points, the speaker decided that the bill ought to be withdrawn. Separate bills were subsequently passed by the House—one, relating to the government lien, was treated as a public bill, and the other, relating to the gauge and capital, as a private bill(*a*).

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 govern-

bills, 1862 and 1863; Metropolis gas bills, 1867 and 1868; Dover pier and harbour bill, 1875; Public Offices site bill, 1882; Hyde Park Corner bill, 1887. See Rules and Orders (Palgrave) No. 226.

(*a*) Can. Com. J. (1875), 213, 217; Hans. 662.

ment of the province of Quebec. The bill was not discussed in the House, but sent at once to the railway committee, where the inconveniencies 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 or public officer who may hereafter be substituted by the legislature of Quebec in place of the said commissioner(*b*).

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

(*b*) Can. Com. J. (1879), 65, 89, &c.; 42 Vict., c. 56. See Montreal *Gazette*, March 29, for summary of discussion on various points raised.

adduced as a precedent. The bill was then withdrawn(*c*).

It is unusual to repeal or amend a public act by a private bill(*d*). The policy of this mode of legislation has been sometimes questioned, and while the practice is allowable, such bills should be closely scrutinized.

Many cases can be found in Canadian, as in English legislation, of companies or corporations being excepted in express terms from the provisions of certain public statutes. A new rule was adopted in the Canadian Commons in 1883, with the view of indicating in every bill any departure in its details from general acts(*e*).

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(*f*).

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(*g*). Nor can a strictly private bill be turned into a hybrid(*h*).

(*c*) Can. Hans. (1880), 1998.

(*d*) 176 E. Hans. (3), 16-19.

(*e*) Res. of 20th April, 1883. Com. J. 1883, p. 237.

(*f*) Can. Hans. (1883), 1034.

(*g*) May, 642. 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).

(*h*) 180 E. Hans. (3), 45.

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(*i*). A private bill has not been allowed to proceed on the ground that it affected the public revenue(*j*), 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(*k*).

In the session of 1885, on the second reading of a bill to incorporate a railway company, attention was called to the fact that it contained a positive parliamentary declaration alienating a large portion of the public domain in the North-West for each mile of railway constructed. At the suggestion of the speaker, the bill was withdrawn and another subsequently presented without the objectionable clause(*l*).

(*i*) Canada vine growers' association bill, 1866 and 1867-8. In the case of a petition affecting stamp duties or other branches of the revenue, says Sir Erskine May, "the petition is presented, and the queen's recommendation having been signified, the House resolves to go into committee on a future day to consider the matter. It is considered in committee on that day; and when the resolution is reported and agreed to an instruction is given to the committee on the bill to make provision accordingly. If any such provision be included in the original bill, it must be printed in *italics;* and before the sitting of the committee, similar proceedings will be taken in the House." P. 789, 9th Ed.

(*j*) Bill to extend the time for paying debt of the county of Perth. Leg. Ass. J. (1866), 298-9.

(*k*) *Supra*, 577.

(*l*) Can. Hans. (1885), 428. In the case of land subsidies to railways they are brought down by the government with the recommendation of the governor-general, and incorporated in a special bill. See 48-49 Vict., c. 60, of the same session.

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, both parliament and the local legislatures have passed general statutes which provide all the necessary machinery by which a number of persons can form themselves into a body corporate. These are styled Joint Stock Companies Acts and provide generally that 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 parliament or legislature extends. The Dominion Joint Stock Companies Acts do not, however, extend to the construction of working of railways, the business of banking, the issue of paper money or insurance(*m*). 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 special acts respecting these works, unless they are expressly varied or excepted by the terms of such acts(*n*). In the same way the provisions of the Companies Clauses Act apply to every Joint Stock Company, except companies for the construc-

(*m*) 40 Vict., c. 43, Rev. Stat. of Can., c. 119; 50-51 Vict., c. 20. 2 Edw. VII., c. 15. See also 38 Vict., c. 26; Rev. Stat. of Can., c. 133.

(*n*) Rev. Stat. of Can., c. 109; am. by 50-51 Vict., c. 19; 51 Vict., c. 29; 53 Vict., c. 28.

tion of railways, banking, issue or paper money, and insurance, unless it is otherwise expressly provided in its special act of incorporation(*o*). 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(*p*).

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 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 recent years. The necessity of obtaining powers not included in the general acts, continually forces companies to seek special legislation. Indeed, on a review of the statute book, it will be seen that, in not a few cases, companies have found it necessary to obtain special exemption from provisions of the general acts.

(*o*) Rev. Stat of Can., c. 118.

(*p*) For legislation of the parliament of Canada on these subjects, in addition to acts already cited in the text, see Banks and Banking, 53 Vict., c. 31. Trading Corporations, winding up of, Rev. Stat. of Can., c. 129; am. by 52 Vict., c. 32. Carriers by water, Rev. Stat. of Can., c. 82. Copyrights, *Ib.* c. 62, am. by 53 Vict., c. 12. Electric Telegraph Companies, Rev. Stat. of Can., c. 132. Insurance, *Ib.* c. 124, am. by 51 Vict., c. 28. Interest, Rev. Stat. of Can., c. 127, am. by 52 Vict., c. 31. Loans in Canada by British Companies, Rev. Stat. of Can., c. 125. Patents, *Ib.* c. 61, am. by 53 Vict., c. 13. Pawnbrokers, Rev. Stat. of Can., c. 128. Savings Banks in Ontario and Quebec, 53 Vict., c. 32. Trade Marks and Designs, Rev. Stat. of Can., c. 63, am. by 53 Vict., c. 14. Trade Unions, Rev. Stat. of Can., c. 131.

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"(*q*). In the first session of the Dominion parliament it was enacted that "every act shall, unless by express provision it is declared a private act, be deemed a public act, and shall be judicially noticed," and consequently the public clause has been ever since omitted from private acts. It is also provided in the same statute(*r*) 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"(*s*).

(*q*) See Consol. S. C., c. 5, s. 6, sub-s. 27.

(*r*) 31 Vict., c. 1, s. 7, sub-s. 38. See Rev. Stat. of Can., c. 1, s. 7, sub-ss. 54, 55. 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.

(*s*) See Imp. Stat. 8 & 9 Vict., c. 113, s. 3.

CHAPTER XVIII.

PRIVATE BILLS.—*Continued.*

I. English compared with Canadian procedure.—II. Promotion of private bills in Parliament.—III. Private bill days in 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.—XII. Private bills in Senate imposing rates and tolls.—XIII. Bills not based on petitions.—XIV. Amendments made by either House.

I. English compared with Canadian Procedure.—The procedure in the Canadian parliament with respect to private bill legislation is more simple than that of the English Houses. In the Canadian Commons there are only twenty-six special rules or orders for the regulation of private bills, while in the English Commons alone, there are no less than two hundred and fifty-nine relating to that class of legislation. It is true that, in all unprovided cases, reference may be had to the practice of the Imperial parliament, but so far the British system has only been adopted in a modified form. The important and onerous duties of the chairman of ways and means in Great Britain, in private bill legislation, are in practice performed by individual members of the Canadian committees on private bills.

The work of private bill legislation in the mother country 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. In Canada, the promoters of private bills are free to introduce their bills in either House. By far the larger proportion is introduced in the Commons.

The Imperial House refers private bills to certain small committees, which may be compared to the sub-committees to which the large committees of the Canadian Commons find it occasionally convenient to refer some private bills. The committee on standing orders consists of only eleven members nominated at the commencement of each session of whom five are a quorum. There is also a "Committee of Selection," consisting of a chairman and seven other members, of whom three form a quorum, and a "General Committee on Railway and Canal Bills," nominated by the Committee of Selection. The General Committee appoints from among themselves the chairman of each special committee on a railway or canal bill.(*a*). The committee on every opposed railway, tramway, and canal bill or group of such bills, consists of four members and a referee, or four members not locally or otherwise interested in the bill or bills in progress. Committees on other opposed private bills consist of a chairman, three members and a referee, or a chairman and three members, not locally or otherwise interested, appointed by the committee of selection(*b*). Other committees of this character are equally small in numbers in both the Lords and the Commons.

(*a*) S. O. Eng. Com. 1902, R. 87, 91, 98 *et seq.*

(*b*) May, 715, 720.

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, 1903.

Committee on Standing Orders	9
Committee on Railways, Telegraphs and Harbours	35
Committee on Banking and Commerce	25
Committee on Miscellaneous Private Bills	25
Committee on Legislation	9

In the Commons, 1903.

Committee on Standing Orders	49
Committee on Railways, Canals and Telegraph Lines	182
Committee on Miscellaneous Private Bills	80
Committee on Banking and Commerce	130

The committees of the Houses are nominated at the commencement of each session by a committee of selection, composed of leading men representing the political divisions in each House.

The question of facilitating the business of the Canadian parliament, by the introduction in the Senate, during each session, of a larger number of private bills than has hitherto been the case, has been considered more than once in the latter chamber(*c*). The rules that have been adopted in Great Britain could be practically applied to the Canadian system with little difficulty. It is certain that if the promoters of bills are free to select the House for the initiation of their legislation, they will always go

(*c*) See Sen. Deb. (1885), 429-450; 705-711. In the session of 1890, Mr. Blake directed the attention of the government in the Commons to the same subject, but no steps have yet been taken in that desirable direction. Can. Hans. 2312.

to the Commons under the belief that if they pass the ordeal of that body, the consideration in the upper House will be a matter of secondary importance. Legislation should be divided without reference to the wishes of promoters(*d*). As the orders of the two Houses are for the most part the same, reference will be chiefly made to the rules and precedents of the Commons where the mass of this class of legislation is initiated. A separate chapter will be devoted to divorce bills in the Senate.

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 Imperial parliament that a member of the House "should be permitted to engage, either by himself or any partner in the management of private bills before this or the other House of parliament for pecuniary reward"(*e*). So strictly is this principle carried out in Great Britain, that it is provided in the standing orders that committees on opposed bills shall be composed "of four members not locally or otherwise interested in the bill or bills referred to them." Every mem-

(*d*) One of the plans suggested in England from time to time, avowedly for the purpose of facilitating public business, has been the substitution of a single inquiry, for the existing double inquiry into contested bills. It has been proposed that such bills be referred to a joint committee of the two Houses, but the sentiment of parliament has so far been in favour of each House acting as a court of appeal on the decisions of the other. See Clifford, Private Bill Legislation, ii., 900-913; Todd, i., 402, 403. In 1873, however, bills for railway amalgamations of great magnitude, it was agreed, should be referred to a joint committee, but this arrangement did not at all involve the principle of referring ordinary railway or other bills to a joint committee. 214 E. Hans. (3), 886.

(*e*) Res. of 26th Feb., 1830; 85 E. Com. J. 107. See *supra*, 509.

ber 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(*f*).

It is a recognized parliamentary principle that ministers of the Crown should not promote private bill legislation. 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(*g*).

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.

(*f*) Eng. S. O. 116-119, 139; Can. Hans. (1883), 36-37. While some members have been inclined to adopt the English standing orders in these particulars, others have argued that in a very large committee like that on railways in the Canadian House, it is to the public advantage and convenience that all the railway interests should be represented and heard; of course, in small committees like those in the English Commons, it is expedient to have such checks as are imposed by their rules. See remarks of Sir J. A. Macdonald; Can. Hans. (1883), 37.

(*g*) 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, 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.

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(*h*).

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. 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 in the evening. By general consent the time may be extended(*i*), but if objection be taken, the House must go on with the other business on the order paper(*j*). The rule is frequently suspended towards the close of the session by orders giving precedence to government or other business of importance. In case it is not proposed to supersede private bills, the motion to give priority to other matters, should be, strictly speaking, so worded(*k*), though

(*h*) Parl. Rep. No. 648, of 1833, p. 9; No. 606, of 1835, pp. 17-19. May, 693.

(*i*) Canada Southern railway bill, March 22; and April 10, 1878; when two hours and a half were devoted to private bills.

(*j*) Campbell relief bill, Hans. (1879), 1883; Can. Com. J. (1886), 323; *Ib.* (1888), 197; *Ib.* (1890), 134. The speaker almost invariably takes the chair from 8 to 8-15, and the hour, of course, commences at that time—not at half past seven.

(*k*) Can. Com. J. (1882), 231.

as a matter of practice, the hour for private bills is rarely interefered with.

IV. Petitions for Private Bills.—Every private bill, presented in either House, should be first based upon a petition which states, succinctly, the object which the promoters have in view(*l*). 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 jeopardize the measure he is applying for. As the subject of petitions is treated fully elsewhere(*m*), 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(*n*), that no member can present a petition from himself, but must do so through another member(*o*). A member will present the petition in his place—confining himself to a simple statement of its allegations or of the prayer—and a clear day must elapse between the days of presentation and reception(p), and it is then referred, as a matter of course to the committee on standing orders, and it is only after

(*l*) Sen. R. 54; Com. R. 56.

(*m*) Chapter viii.

(*n*) 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, 752. The Senate have a special rule (36) on the subject.

(*o*) Bank of Manitoba, Can. Com. J. 1875, p. 235; Metropolitan Bank, *Ib.* 1876, p. 141.

(*p*) Sen. Deb. (1879), 120; *Ib.* (1890), 33.

a favourable report from that committee that the bill can be presented.

Senate rule 52 and Commons rule 49 provide that no petition for any private bill may be received after the first three weeks of the session: petitions for divorce bills in the Senate excepted.

Nor may any private bill be introduced into the House or Senate after the first four weeks of each session(*q*).

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(*r*). The object of this rule is to bring the bulk of petitions and bills within the first part of the session, but, though there is a decided improvement as compared with former practice, promoters are still frequently obliged to appeal for special consideration and for an extension of time. When it becomes necessary to extend the time for receiving petitions, the regular course is for the committee on standing orders to make a report recommending such an extension. The rule provides:

"No motion for the suspension of the rules upon any petition for a private bill is entertained, unless the same has been reported upon by the committee on standing orders." (Sen. R. 17; 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 for private bills shall be entertained by the house until after reference is

(*q*) Can. Com. J. (1876), 108, 109.
(*r*) *Infra*, sec. vii.

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''(*s*).

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(*t*). 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(*u*). Subsequently the committee on standing orders reported in favour of extending the time for presenting bills, and the House agreed to the recommendation(*v*).

When the usual time for receiving petitions has expired, and the House is not disposed to extend it, occasions may arise when parties will be obliged to ask for legislation. Under such circumstances, the regular course is for the parties interested to present a petition praying

(*s*) 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. For cases of "pressing necessity," see Can. Com. J. (1887), 269, 295; *Ib.* (1890), 429, 464, 469.

(*t*) 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.

(*u*) Can. Com. J. (1879), 31; rule 55 was suspended by general consent.

(*v*) See also Senate journals (1879), 51, 52, 102; Com. J. (1879), 39.

to be permitted to lay before the House a petition for the passing of the necessary act, notwithstanding the expiration of the time for bringing up petitions for private bills. It is usual to allow (by general assent) such a petition to be read and received forthwith, and to refer it to the committee on standing orders. If 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(*w*). 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(*x*). 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(*y*). In these cases the rules have been suspended by unanimous consent, and the petition at once received. In one case, since 1867, a petition was immediately received, and the bill at once presented and referred(*z*). But such instances of departure from correct practice can only be justified "in cases of urgent and pressing necessity"(*a*). In another case

(*w*) Can. Com. J. (1877), 263, 267, 268; *Ib.* (1879), 357, 363; *Ib.* (1880-1), 208; *Ib.* (1883), 111, 214, 244, 254; *Ib.* (1884), 298, 331; *Ib.* (1890), 121. Sometimes the committee recommend suspension of other rules; *Ib.* (1886), 183, 186. In the Senate a preliminary petition has not been referred to the committee on standing orders, but has been received forthwith; Jour. (1879),175, 254. Then the petition for the act has been brought in and referred in due form to the standing orders committee; *Ib.* 208, 219.

(*x*) Can. Com. J. (1875), 246.

(*y*) Leg. Ass. J. (1852-3), 347; *Ib.* (1863, Feb. sess.), 320, 326.

(*z*) Can. Com. J. (1873), 280.

(*a*) R. 69.

stated to be of urgent necessity, the House consented to receive 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(*b*).

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. 57)(*c*). There is no rule laid down in the Canadian Houses as respects the time when such petitions should be presented(*d*); they are frequently brought up and received after the bill had been referred to a select committee(*e*).

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

(*b*) Can. Com. J. (1877), 79, 89, 90.

(*c*) Can. Com. J. (1873), 39; *Ib.* (1876), 170; Southern Railway petitions, Feb. 21, 1878.

(*d*) The time is limited for receiving petitions against bills in the English house. May, 730.

(*e*) Can. Com. J. (1876), 139, 143, 171, 196.

to any matter therein which ought to have been specially referred to in the notice, the committee is to recommend to the House the course to be taken in consequence of such insufficiency of notice."

In the session of 1903 (Oct 10th) the following rules as to notices of applications for private bills were adopted upon a report of a joint committee (special) of the two Houses. The new rules replace rule 52 of the Commons and 49 of the Senate.

"All applications to parliament for private bills, of any nature whatsoever, shall be advertised by a notice published in the *Canada Gazette;* such notice shall clearly and distinctly state the nature and object of the application, signed by or on behalf of the applicants, with the addresses of the party signing the same; and when the application is for an Act of incorporation, the name of the proposed company shall be stated in the notice."

In addition to the notice in the *Canada Gazette* aforesaid, a similar notice shall also be published in some leading newspaper, as follows:—

"A. When the application is for an act to incorporate:

"1. *A Railway or Canal Company*:—In the principal city, town or village in each county through which the proposed railway or canal is to be constructed.

"2. *A Telegraph or Telephone Company*:—In the principal city or town in each Province or Territory in which the company proposes to operate.

"3. A company for the *construction of any works* which in their construction or operation might specially affect a particular locality; or for obtaining any *exclusive rights or privileges;* or for doing any matter or thing which in its operation would affect the rights or property of others:—In the particular locality or localities which may be affected by the proposed act.

"4. A Banking Company; An Insurance Company; A Trust Company; A Loan Company; or an Industrial Company without any exclusive powers:—In the *Canada Gazette* only.

"And if the works of any company (incorporated, or to be incorporated) are to be declared to be for the general advantage of Canada, such intention shall be specifically mentioned in the notice; and the applicants shall cause a copy of such notice to be sent by registered letter to the clerk of each municipality which may be specially affected by the construction or operation of such works, and also to the secretary of the Province in which such works are, or may be located; and proof of compliance with this requirement by the applicants shall be established by statutory declaration.

"B. When the application is for the purpose of amending an existing act:

"1. For the extension of any line of railway, or of any canal; or for the construction of branches thereto:—In the principal city, town or village in each county or district through which such extension or branch is to be constructed.

"2. For the extension of the time for the construction or completion of any line of railway, or of any canal, or of any telegraph or telephone line, or of any other works already authorized:—In the place where the head office of the company is, or is authorized to be.

"3. For the extension of the power of a company (when not involving the granting of any exclusive rights); or for the increase or reduction of the capital stock of any company; or for increasing or altering its bonding or other borrowing powers, or for any amendment which would in any way affect the rights or interests of the shareholders

or bondholders or creditors of the company:—In the place where the head office of the company is situated.

"All such notices, whether inserted in the *Canada Gazette* or in a newspaper, shall be published at least once a week, for a period of five consecutive weeks; and when published in the Provinces of Quebec and Manitoba, shall be in both the English and French languages; and *marked* copies of each issue of all newspapers containing such notice shall be sent to the clerk of the House [or Senate] endorsed 'Private Bill Notice'; or a statutory declaration as to due publication may be sent in lieu thereof."

"51*c*. No petition praying for the incorporation of a railway company, or of a canal company, or for the extension of the line of any existing or authorized railway or canal, shall be considered by the standing orders committee, until there has been filed with the committee a map or plan, showing the proposed location of the works, and each county or district through which the proposed railway or canal, or any branch or extension thereof, is to be constructed."

By rule 52 of the Commons (51 of the Senate), before any petition praying for leave to bring in a private bill for the erection of a toll-bridge, is presented to the House, the person or persons intending to petition for such bill shall, upon giving the notice prescribed by the standing orders, at the same time and in the same manner, give notice also of the rates which they intend to ask, the extent of the privilege, the height of the arches, the interval between the abutments or piers, for the passage of rafts and vessels, and shall also state whether they intend to erect a draw-bridge or not, and the dimensions of the same.

With a view to give full information of the orders on this subject, it is provided by the 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 unfrequently 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 a study of the precedents referred to in the notes below, where they have considered the notice sufficient or have considered that the circumstances justified a departure from strict usage(*g*).

From an examination of these 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 publication of notice(*h*). In the case of the Niagara Falls Gas Company in the state of New York, for authority to supply the town of Clifton with gas, no notice was given, but the committee recommended a suspension of the rule in view of the fact that there was before the House a petition from the latter place, representing that it would be of great advantage to the town, and that no private rights would be interfered with(*i*). 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

(*g*) Can. Com. J. (1867-8), 35, 36, 168; *Ib.* (1869, 99; *Ib.* (1869), 113; *Ib.* (1871), 139; *Ib.* (1873), 82; *Ib.* (1870), 237; *Ib.* (1873), 67, 110; *Ib.* (1877), 74, 272; *Ib.* (1889), 66; *Ib.* (1870), 52; *Ib.* (1874), 54, 89, 147, 148, 219; *Ib.* (1883), 100; *Ib.* (1867-8), 177; *Ib.* (1876), 102, 126; *Ib.* (1871), 66, 78, 139, 140; *Ib.* (1888), 80, 128, 137; *Ib.* (1889), 66, 85, 90, 99, 106, 112; *Ib.* (1890), 26, 34, 58, 68, 76, 98, 99.

(*h*) Can. Com. J. (1867-8), 39.

(*i*) *Ib.* 177.

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(*j*).

The committee have also dispensed with a notice altogether under circumstances where such notice would be manifestly absolutely unnecessary for the protection of any interests likely to be affected by the measure(*k*).

The precedents cited illustrate clearly the principles that guide the committee in coming to a conclusion with respect to the absence or insufficiency of notice. They show that such irregularities are overlooked only when the committee are made fully aware that all parties interested have had sufficient notice, or that no interests are affected except those of the petitioners. In the case of banks or other incorporated companies, the consent of the shareholders is provided for by the insertion of a clause in the bill. When the committee have believed that the notice was really insufficient(*l*), or that the consent of the share-

(*j*) *Ib.* 207.

(*k*) See the following precedents: *Ib.* (1867-8), 210; *Ib.* (1869), 85, 162, 185; *Ib.* (1870), 82, 113; Can. Com. J. (1870), 44. In this case the company first applied to the Quebec legislature and gave the requisite notices; and then they determined to ask legislation from the dominion parliament. *Ib.* (1871), 78, 102; *Ib.* (1872), 52, 80; *Ib.* (1873), 123, 162; *Ib.* (1874), 166, 218, 255; *Ib.* (1875), 303; Can. Com. J. (1875), 216; *Ib.* (1876), 102; *Ib.* (1876), 170; *Ib.* (1879), 83, 136; Sen. J. 83 (Geographical Society); Sen. J. (1883), 188, 232; Sen. J. (1883), 76, 94, 116, 202, 232; *Ib.* (1889), 99, 100, 119; *Ib.* (1890), 116, 185, 203. See also Woodstock Literary Institute, 1857. Montreal Natural History Society, 1862. Society of Canadian artists, Can. Com. J. (1870), 83; Sen. J. 145. Canadian Academy of Arts, Can. Com. J. (1882), 83; Sen. J. 72-3. Sisters of Charity in N.W.T., 7th March, 1882, Can. Com. J. Royal Society of Canada, Can. Com. J. (1883), 67; Sen. J. 76. Royal Victoria College, Can. Com. J. (1888), 214. Presbyterian Church bills, 2nd March, 1882.

(*l*) Can. Com. J. (1869), 162; *Ib.* (1874), 148; *Ib.* (1883), 100.

holders had not been given(*m*), or certain rights or interests are injuriously affected(*n*), or the petitioners show no good reasons for exemption from the rule(*o*), 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 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(*p*).

The report of the committee is almost invariably accepted by the House as conclusive, and there are no instances since 1867-8 where the House has directly overruled their decision, though they have themselves reversed their report on a further consideration of the question(*q*). 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(*r*).

(*m*) *Ib.* (1876), 170.

(*n*) *Ib.* (1888), 138. In one of the two cases here cited the matter was referred back to the committee for further consideration, and when the parties who had before opposed the petition came forward, and did not press their claims for protection at that stage, the rule was suspended. *Ib.* 185, 194.

(*o*) *Ib.* (1890), 133.

(*p*) Todd's Private Bill Practice, 49, 50.

(*q*) *Infra*, ch. xviii., sec. v.

(*r*) Act for the relief of Robert and Eliza Maria Campbell; Can. Com. J. (1877), 313, 335.

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(*s*).

The same respect is paid in the Imperial Parliament to the conclusions of the committee, and very few cases are reported of their decision having been reversed(*t*).

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(*u*). When a petition had been reported by mistake, the committee have asked that it be referred back to them for further consideration(*v*). They have also reconsidered and amended a report, when further evidence has been adduced to satisfy them(*w*).

(*s*) Sen. J. (1883), 210, 221.

(*t*) "In some few cases (May, 701-2), the decision of the standing orders committee has been excepted to and overruled by the House, either upon the consideration of petitions from the promoters, or by a direct motion in the House, not founded upon any petition. But as the House has been generally disposed to support the committee, attempts to reverse or disturb its decisions have rarely been successful." See 80 E. Hans. (3), 158, 175.

(*u*) Elora Incorporation, 1856.

(*v*) Can. Com. J. (1876), 136.

(*w*) St. Bonaventure municipality, 1866; Galt and Guelph R.R. amendment, 1858; British Farmer's Insurance Co., 1859. Can. Com. J. (1887), 210, 211, 228; *Ib.* (1888), 181, 194. In 1885, a petition was referred back to the committee for further consideration, as the notice for a bill was insufficient and they had neglected to set forth

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(*x*). 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(*y*). The correct practice, however, is to move formal concurrence in the report(*z*), before the introduction of the bills founded on the petitions referred to the committee(*a*).

In the session of 1880-1, the time for the reception of reports on private bills in the Commons lapsed accidentally, and it was not competent for the standing orders committee to recommend an extension of time. It was then considered necessary to give formal notice of a motion to revive the committee. The standing orders committee then met and made a report to extend the time for petitions as soon as the House had agreed to the above motion(*b*).

In accordance with English practice, all inquiries as to compliance with the standing orders affecting private

the fact and recommend a suspension of the rule in the usual form. On the following day the committee reported unfavourably on the petition. *Ib.* (1885), 165, 168.

(*x*) Sen. Jour. (1879), 71, 83, 99, &c.; *Ib.* (1883), 188; Com. Jour. (1873), 267; *Ib.* (1877), 89, 90; *Ib.* (1878), 84, 85; *Ib.* (1879), 38, 324-5, 326, 373.

(*y*) Can. Com. J. (1875), 146, 147.

(*z*) 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.

(*a*) Can. Com. J. (1880-1), 60, 68; *Ib.* (1883), 100, etc.

(*b*) V. & P. 196; Jour. 150, 156.

bills properly fall within the sphere of the functions of this committee, and not of the committee on a particular bill(*c*).

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. 54).

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(*d*). All the rules that apply to public bills are applicable to private bills in their progress through the Houses(*e*), 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(*f*). If a bill has been presented and read a first time before the committee 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(*g*). If the committee on standing orders

(*c*) May, 788.

(*d*) See *infra*, sec. vii., where explanations are given as respects fees and charges.

(*e*) See chapter xvi. on public bills.

(*f*) Com. R. 42; Can. Com. J. (1877), 143, 144, 169; Sen. J. (1883), 49.

(*g*) Can. Com. J. (1877), 50.

recommend a suspension of the rule respecting notice, the member in presenting the bill should also move in accordance with that recommendation(*h*). 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(*i*). 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 practice(*j*).

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(*k*). The bill "must also have attached to it a copy of any letters-patent or agreement" when its object is to confirm such(*l*). When the rule has not been complied with, a private bill committee

(*h*) *Ib.* (1876), 103; *Ib.* (1877), 90.

(*i*) 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. *Ib.* (1890), 139, &c.

(*j*) 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.

(*k*) Todd's Private Bill Practice, 55; May, 796-7. In 1886, a bill was amended in committee of the whole by adding a clause fixing rates of tolls. Sable and Spanish Boom and Slide Company of Algoma. Hans. 782; 49 Vict., c. 108, s. 4.

(*l*) Com. R. 57; Sen. R. 58.

has reported adversely; but in such a case the omission may be rectified in committee of the whole on the bill(*m*).

In the session of 1887(*n*), the House of Commons adopted rules with respect to the incorporation of railway companies, which have decidedly facilitated the work of legislation. It is now provided that all bills of this character shall be drafted in accordance with a Model Bill under the following rules:

51A. All private bills for acts of incorporation of, or in amendment of acts incorporating railway companies, shall be drawn in accordance with the Model Bill adopted by the House on 23rd June, 1887, copies of which may be obtained from the clerk of the House.

(*a*). The provisions contained in any bill which are not in accord with the Model Bill, shall be inserted between brackets, and when revised by the proper officer shall be so printed, and bills which are not in accordance with this rule shall be returned to the promoters to be recast before being revised and printed;

(*b*). Any sections of existing acts which are proposed to be amended shall be reprinted in full with the amendments inserted in their proper places and between brackets;

(*c*). Any exceptional provisions that it may be proposed to insert in any bill shall be clearly specified in the notice of application for the same.

51B. No bill for the incorporation of a railway company, or for changing the route of the railway of any company already incorporated, shall be considered by the railway committee until there has been fyled with the

(*m*) Bessemer's patent, 1857.

(*n*) Can. Com. J. (1887), 195, 203, 313, 320, 412; Hans. 1115. 1270. The provisions of the new rules were copied in certain particulars from similar rules in the Ontario Legislature.

committee at least one week before the consideration of the bill:

(*a*). A map or plan drawn upon a scale of not less than half an inch to the mile, showing the location upon which it is intended to construct the proposed work, and showing also the lines of existing or authorized works of a similar character within, or in any way affecting the district, or any part thereof, which the proposed work is intended to serve, and such map or plan shall be signed by the engineer or other person making the same;

(*b*). An exhibit showing the total amount of capital proposed to be raised for the purposes of the undertaking, and the manner in which it is proposed to raise the same, whether by ordinary shares, bonds, debentures, or other securities, and the amount of each, respectively.

59A. Before any private bill is considered by the committee to which it may be referred, a report shall first be submitted to the committee by the examiner, stating that he has examined the same and has noted, opposite each section, any variations from the provisions contained in the Model Bill; and, to insure uniformity, the examiner shall revise and certify every private bill passed by the committees, and the reports thereon, before they are presented to the House.

Previous to 1867, private bills were referred to the select standing committee 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(*o*). In 1873 the House of Commons reverted to the old practice of referring all bills after the second read-

(*o*) Can. Com. J. (1867-8), 120 (Rule 59).

ing(*p*). The Senate, however, never deviated from this practice(*q*).

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 there have been no instances of this practice since 1867(*r*). 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(*s*). 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(*t*), or if there are other reasons of a public nature against the passage of a bill, objection may be taken at this or at any other stage of the measure(*u*). The principles which should guide the House

(*p*) Can. Com. J. (1873), 351, 384.

(*q*) 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.

(*r*) King's College, 1843, 1844-5 and 1846; Montreal Consumers' Gas Co., 1846; Great Southern R. R., 1857.

(*s*) This practice has been found particularly convenient in the case of railway bills, involving necessarily many diverse interests of a complicated character in not a few instances. "If it was understood with regard to banking, insurance, canal and railway bills, that they were to have a long discussion in the house, on the principle involved, these committees would lose their chief practical value."—Sir J. A. Macdonald. See Can. Hans. 1879), 107-9; 1391-7. *Ib.* (1880), 588 (Mr. Holton).

(*t*) Bridge over the river L'Assomption, 1875; Hans. 893-4.

(*u*) Street R. R. Co. bill in E. Commons, 16th April, 1861; 162 E. Hans. (3), 641.

on the second reading of a private bill are thus 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 forma*, or in connection with the standing orders; and if the bill be opposed upon its principle it is the proper time for attempting its defeat"(*v*).

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 57(w).

"Every private bill, after its second reading, is referred to the standing committee on private bills if appointed, or to some other committee of the same

(*v*) May, 708. See remarks of Sir J. Macdonald (1889), 170.

(*w*) Rule 56 of the Senate contains a provision for reference of private bills to a standing Committee on Legislation in case of a question of jurisdiction arising.

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(*x*), 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 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

(*x*) For instance, bills respecting bridges, not railway bridges, are referred to the committee on private bills. Can. Com. J. (1880), 100. But bills for incorporation of navigation and steamship companies [*Ib.* (1867-8), 216; *Ib.* (1873), 281; *Ib.* (1875), 153; *Ib.* (1880-1), Acadia S.S. Co.; *Ib.* (1882), 71, 146; *Ib.* (1885), 129], have been generally sent to banking and commerce committee. In 1889, a steamship bill was referred to railways and canals because it was connected with the Canadian Pacific Railway Company. Jour., 109.

to sit." This book is open to public inspection daily during office hours(*y*).

Sometimes, when the House discovers that a bill has been referred to the wrong committee, or that it can be more conveniently considered by another committee, a motion will be made to discharge the previous order of reference, and send it to the proper committee(*z*). Sometimes the committee will themselves report that it should be so referred and a motion will be made accordingly(*a*). Instructions are sometimes given to committees with reference to particular bills. In 1863, the committee on banking having under consideration a bill to repeal the acts incorporating the Colonial and certain other banks, that had forfeited their charters, made a report that they be empowered to extend their inquiries to any other banks that might be similarly situated; and the House immediately gave the necessary instructions(*b*). If it should be necessary to withdraw a bill after it has been referred,

(*y*) Sen. R. 61; Com. R. 70.

(*z*) Can. Com. J. (1877), 127; *Ib.* (1880), 77; *Ib.* (1882), 290. In 1884 a bill respecting pilots, first referred to the committee on banking and commerce, was subsequently sent to private bills, as it was simply a bill regulating the affairs of pilots among themselves. See Hans. 131. In 1891 two bills respecting a benevolent society were sent first to private bills, and subsequently to banking and commerce, because they contained provisions affecting insurance. Jour. June 5. In case of a new reference after the bill has been posted for a week, the terms of rule 60 providing for such posting are considered sufficiently complied with. If the full week's notice has not been given when a new reference is made, then it will be necessary only to post it for the time required to make up a full week. Votes and P., 1875, p. 235; *Ib.* 1882, p. 370. 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.

(*a*) Niagara District Bank, 1863.

(*b*) Ass. Jour. (1863, August session), 102. See also *Ib.* (1852-3), 290, 340; *Ib.* (1854-5), 177, 197, 229.

a motion should be made first to discharge the order and then to withdraw the bill(*c*).

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(*d*).

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:

58. "Any person seeking to obtain any private bill, *giving any exclusive privilege or profit, or private or corporate advantage, or for 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 contractors"(*e*).

The concluding part of the same rule provides for the payment of a fee after the second reading:

(*c*) Can. Com. J. (1878), 60.

(*d*) Sen. J. (1882), 178; Hans. 285-6.

(*e*) Sen. R. 59; Com. R. 58. The rule is not well observed in the Commons; in 1886, there were 30 bills sent in before the session out of 62 presented; in 1887, 20 out of 81; in 1888, 17 out of 62; in 1889, 29 out of 68; in 1890, 34 out of 85 presented. The Senate rule omits the words in italics; but it is practically the same as that of the Commons.

"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"(*f*).

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(*g*) or otherwise fails to become law, the fee of $200 is refunded, generally, and properly, on the recommendation of the committee on the bill(*h*). 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.(*i*) Because the necessity for its passage arose from no fault of the promoter, but from circumstances beyond his control(*j*). Because the committee have materially diminished the powers asked for(*k*). Because it is not liable to the fee and charges

(*f*) In 1890, the fees collected on private bills in the Commons amounted to $17,135.05, the average amount for five years being $14,000. The amount, each year, in the Senate is about $1,500. The amount received in the Commons on this account in 1903 was $30,921.57.

(*g*) 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, 267. Preamble not proven (1880), 299, 300; *Ib.* (1880-1), 215; *Ib.* (1882), 425.

(*h*) Can. Com. J. (1879), 224, 344; *Ib.* (1880), 99, &c.; *Ib.* (880-1), 215, &c.; *Ib.* (1882), 297, &c.; Sen. J. (1882), 171.

(*i*) Can. Com. J. (1870), 175.

(*j*) *Ib.* (1873), 212.

(*k*) *Ib.* (1874), 167.

levied on private bills(*l*). Because it is a mere amendment to the general act respecting banks and banking(*m*). Because a project is a great public benefit to a locality(*n*). Because the promoters of the bill have agreed to accept the provisions of a general act passed that session(*o*). Because it has to a great extent been superseded by the provisions of a public bill(*p*). Because a bill has been consolidated with another, on which fees are paid(*q*). Because it is a mere amendment to a previous act"(*r*).

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"(*s*). 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(*t*). When a bill is lost in the House itself by an adverse motion, the fees are also generally refunded(*u*). The fees paid on a bill that had not become law have been refunded in a subsequent

(*l*) Geographical Society, 1879; Baptist Union, 1880; Sisters of Charity in the N.W.T., 1882; Royal Society of Canada, 1883; Society of Civil Engineers, 1887.

(*m*) Can. Com. J. (1877), 93.

(*n*) *Ib.* (1877), 147; *Ib.* (1879), 425.

(*o*) *Ib.* (1877), 245.

(*p*) *Ib.* (1878), 148; Hans. April 5.

(*q*) Can. Com. J. (1879), 325; *Ib.* (1880-1), 213.

(*r*) *Ib.* (1883, 192.

(*s*) *Ib.* (1875), 343; *Ib.* (1880), 289 (no quorum).

(*t*) *Ib.* (1874), 349; *Ib.* (1880-1), 334; *Ib.* (1882), 409; *Ib.* (1886), 321; *Ib.* (1889), 240. The same course is followed in the Senate when a bill is lost by the action of the other House. Jour. (1890), 235.

(*u*) Can. Com. J. (1877), 353.

session(*v*). 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(*w*). It is also usual, though not necessary, to add, "less the cost of printing and translation"—the fee to be refunded being the $200 paid after the second reading. In 1882, at the end of the session, a bill was deferred for three months on motion of the member in charge, who was unwilling to agree to amendments made by the Senate, and the fees were thereupon ordered to be refunded(*x*).

VIII. Committees on Private Bills.—Lists of the committees to which private bills are referred under the rules (*y*) 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. 60).

This rule is often suspended on the recommendation of one or more of the committees charged with the consideration of private bills(*z*). In a case of urgency it is suspended on motion, especially in the case of Senate bills; but

(*v*) *Ib.* (1875), 170; *Ib.* (1882), 207 (bill lost in the Senate).

(*w*) *Ib.* (1887), 245.

(*x*) *Ib.* (1882), 511; Hans. 1571-2 (telegraph bill).

(*y*) *Supra*, 764, 765.

(*z*) Can. Com. J. (1874), 201, 203; *Ib.* (1880-1), 254 (S. O. Com.); *Ib.* (1883), 221; Sen. J. (1880), 220; Deb. 456-7.

only when the session is drawing to a close, and there is no opposition to the bill(*a*).

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"(*b*).

And under a rule common to both Houses:

"The clerk of the House shall cause lists of all private bills and petitions for such bills upon which any committee is appointed to sit, to be prepared daily by the clerk of the committee to which such bills are referred, specifying the time of the meeting and the room where the committee 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(*c*). 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(*d*).

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. 64, 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

(*a*) Can. Com. J. (1876), 231; Northern R. R. (1877), 267; Manitoba Junction R. R. (1877), 284; Senate bills (1878), 160.

(*b*) See V. & P. (1878), 101, 114, &c.

(*c*) Chapter xiv.

(*d*) 31 Vict., c. 24.

an arrangement between the parties interested. The committee may in such a case make the bill the first order of the day, just as is done in the House itself in similar matters.

All petitions for or against a bill are laid before the committee, and the petitioners, either by themselves or by their agents, will be present to promote their respective interests. Petitioners may pray to be heard against the preamble or clauses of the bill; some against certain clauses only, others may ask the insertion of protective clauses, or for compensation for damages which will arise under the bill. Unless petitioners pray to be heard against the preamble they will not be entitled to be heard, nor to cross-examine any of the witnesses of the promoters upon the general case, nor otherwise to appear in the proceedings of the committee until the preamble has been disposed of. Nor will a general prayer against the preamble entitle a petitioner to be heard against it, if his interest be merely affected by certain clauses of the bill(*e*). 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(*f*). 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(*g*). Sometimes petitions relative to a bill under the consideration of a committee will be received as soon as presented in the

(*e*) May, 734.

(*f*) May, 734; E. Com. S. O. 128; Todd's Private Bill Practice, 73.

(*g*) 83 E. Hans. (3), 487.

House, so that they may go immediately before the committee(*h*).

It is ordered by the rule of the Senate and Commons:

"All persons whose interest or property may be affected by any private bill shall, when required so to do, appear before the standing committee touching their consent, or may send such consent in writing, proof of which may be demanded by such committee. And in every case the committee upon any bill for incorporating a company may require proof that the persons whose names appear in the bill as composing the company are of full age and in a position to effect the objects contemplated, and have consented to become incorporated." (Sen. R. 63, 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 committee as well as in a committee of the whole(*i*). As the preamble of a private bill sets forth the facts upon which it is founded, it is necessary that they should fully and truly stated and substantially proved and admitted(*j*). 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(*k*).

(*h*) Can. Com. J. (1876), *Mail* Printing Co., 171. *Ib.* (1879), Ottawa Agricultural Insurance Co., 28 March.

(*i*) Grand Trunk Arrangements Act, 1867-8, App. No. 3; Royal Canadian Bank, 1869, App. No. 8.

(*j*) The reasons upon which a public statute is passed are not generally of such a nature that they can be defined with perfect precision, or enumerated in full, hence there may be reasons for the passing of a public act, which are not given in the preamble. Cushing, s. 2100.

(*k*) Todd, Private Bill Practice, 76.

Any petitions against the bill are then read, and an understanding arrived at with respect to the course of procedure. The promoters or their agents will first address the committee on the preamble; and then (if required) proceed to call witnesses, and examine them. At the conclusion of the evidence, when the counsel or agent for any petitioner rises to cross-examine a witness or to address any observations to the committee, this is the proper time for taking objections to the *locus standi* of such petitioner. Petitioners are said to have no *locus standi* before a committee, when their property or interests are not directly and specially affected by the bill, or when, for other reasons, they are not entitled to oppose it(*l*). For instance, it is provided by a standing order of the British 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"(*m*).

Preference shareholders are excepted from this rule, when it is shown that they have a special interest in the bill(*n*).

The English authorities give very full detail of the various proceedings before committees on opposed private bills. The reports of the committees of the Canadian legislatures, on the other hand, have always been very meagre, and it is impossible to make up any satisfactory summary of their procedure from the records of the two Houses. The following summary, chiefly taken from Sir Erskine May's exhaustive treatise, will probably be sufficient for general purposes(*o*).

(*l*) May, 734.
(*m*) Com. S. O. 131.
(*n*) May, 749.
(*o*) 774 *et seq.*

"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 for 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 concluded, 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 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. If peti-

tions 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"(*p*).

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. 68, 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 arrived at such a decision(*q*), and no bill so reported upon shall be placed on the orders of the day, unless by special order of the House." (Sen. R. 67, 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

(*p*) Grand Trunk Arrangements Act (1867-8), App. No. 3.

(*q*) Can. Hans. (1880), 1685, (Mr. Blake); Sen. J. (1880-81), 211; Hans. 621. Can. Com. J. (1885), 244, 258.

the preamble(*r*). Insufficient information or antagonistic evidence(*s*). No proof of the consent of the parties interested(*t*). That the petitioners against the measure are as numerous as those in its favour or more numerous(*u*). That there is great difference of opinion in the locality affected, as to the expediency of the measure(*v*). That legislative interference is not desirable or necessary(*w*). That it would interfere with law suits pending(*x*), or with existing rights(*y*). That the powers sought for would not advance the interests of the locality(*z*). That the bill asked for an extension of the powers of a certain company to purposes entirely foreign to its original charter(*a*). That it contained most unusual provisions(*b*). That it was in the power of the executive government to carry into effect the objects contemplated by the bill(*c*), or in the power of the court of chancery to do so(*d*). That the information was insufficient as to the possible effect upon the navigation of a navigable stream and upon private

(*r*) Gatien estate, 1857; La Banque Jacques Cartier (1878), 99.

(*s*) Onslow survey, 1862.

(*t*) Lennox and Addington separation, 1860; Russell estate, 1865.

(*u*) Stanbridge division, 1866; Berlin town limits, 1865.

(*v*) Clifton division, 1866.

(*w*) Quebec stevedores' incorporation, 1861; Montreal licensed victuallers, 1865; Thunder Bay & Minnesota R. R. Co., 1882; St. Lawrence Bridge and Manufacturing Co., 1883.

(*x*) Peterborough & Port Hope R. R., 1862.

(*y*) Etchemin bridge, 1862; Clifton suspension bridge, 1858.

(*z*) St. Lawrence and Bay Chaleurs land and lumber company, 1858.

(*a*) St. Clair and Rondeau plank road company, 1857.

(*b*) Richelieu Co., 1862.

(*c*) Bill to vest in certain persons a portion of Church Street, London, 1852-3.

(*d*) Watson's Ayr mill dam, 1856.

rights(*e*). Because it was necessary to give certain bondholders abundant opportunity of considering the effect on their securities of the provisions of a bill(*f*). 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(*g*). Because a bill was inconsistent with the provisions of an act respecting the Canadian Pacific Railway and the contract thereby made and ratified(*h*). Because a bill embodied the objectionable principle known as assessment endowment assurance, and also sought to avoid inspection by the insurance department(*i*).

A committee will sometimes make changes in the preamble, and in such a case they must also report the fact to the House in conformity with the rules as follows:

"The committee to which a private bill is referred, shall report the same to the House in every case, and when any material alteration has been made in the preamble of the bill, such alteration, and the reasons for the same, are to be stated in the report"(*j*). (Sen. R. 66, 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 commit-

(*e*) Cordwood on River St. Francis (1877), 245.

(*f*) Canada Southern R. R. Co. (1876), 231.

(*g*) Can. Com. J. (1880-1), 215.

(*h*) *Ib.* (1885), 258, 317.

(*i*) Order of Canadian Home Circles, July 6, 1891.

(*j*) 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; Banque du Peuple (1885), 234.

tee were unwilling to recommend its passage unless the promoters were prepared to provide a guarantee capital with not less than $50,000 paid up—a provision which was not accepted by the parties interested(*k*).

By a rule of the two Houses,

"It is the duty of the committee to which any private bill may be referred by the House to call the attention of the House specially to any provision inserted in any such bill that does not appear to have been contemplated in the notice for the same(*l*), as reported upon by the committee on standing orders." (Sen. R. 65, 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 contemplated in the notice for the same, he may raise a point of order, and it will be for the speaker to decide. In such a case it is the more regular course to discharge the order for consideration in committee of the whole, and then refer the bill to the committee on standing orders(*m*).

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 effect the interests of the parties interested, without due notice having been given to the same(*n*). 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(*o*).

The committee have also frequently struck out certain

(*k*) Can. Com. J. (1867-8), 345.

(*l*) *Ib.* (1887), 245.

(*m*) *Ib.* (1870), 116, 119.

(*n*) May, 781; Todd's Private Bills, 91.

(*o*) Can. Com. J. (1867-8), 212. The committee on standing orders had previously recommended a suspension of the rule respecting notices, p. 177.

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(*p*). 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 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(*q*); or they have expunged certain provisions, and recommended an amendment of the general law in these respects(*r*).

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. 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(*s*). 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.

In the session of 1883, some important amendments made by the Senate to the Credit Valley Railway bill were

(*p*) Building and saving societies (1874), 307, 335.

(*q*) Mining companies bills, 1854-5; Joliette incorporation, 1863.

(*r*) De Lery gold mining company, 1865; Quebec corporation, 1865.

(*s*) May, 787; 105 E. Com. J. 446, 481, 485; 108 *Ib.* 557; 230 E. Hans. (3), 1679-80.

referred on its return, in accordance with the rule governing such cases, to the committee on railways, who made a report, calling attention to the fact that "no mention of the new provisions was contained in the notice, or in the petition for the said bill." The House, however, agreed to the amendments, though a motion was proposed to disagree to them for the reasons, among others, that no notice had been given of any intention to apply to parliament for the legislation contained in the amendments, and that in the absence of petition and notice, it was not expedient to sanction such legislation(*t*). 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.

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(*u*). 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(*v*). When the committee have found it advisable to alter the title of the bill they will report the fact to the House(*w*); and it will be amended on the motion for the final passage(*x*). 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(*y*). If a committee find that a bill should more pro-

(*t*) Can. Com. J. (1883), 317, 325; Sen. J. 187.

(*u*) Detroit River Bridge and Tunnel Co., 1869, App. No. 4.

(*v*) Civil Service Building Society, (1867-8), 60.

(*w*) Can. Com. J. (1874), 240, 262; *Ib.* (1883), 172, 214; *Ib.* (1885), 244.

(*x*) *Infra*, sec. xi.

(*y*) Can. Com. J. (1877), 136. The bills are invariably reprinted in the Imperial Parliament before consideration by the House.

perly, or would more conveniently be considered by another committee, they will make a recommendation to that effect, and it will be so referred(*z*). If the committee are of opinion that the bill falls under that class which requires the consent of the governor-general before its passage, they will report the fact to the House; and the consent will be signified by a privy councillor at a future stage of the proceedings(*a*).

In the session of 1883(*b*), 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*." (Added to Rule 51.)

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

(*z*) Can. Com. J. (1875), 246, 247.
(*a*) Northern R. R. (1871), 135, 160.
(*b*) Res. of 20th April; Hans. p. 741 (Sir H. Langevin).

confine themselves to the giving of the result of their deliberations. In important cases, however, they have reported their proceedings *in extenso*, and then it is the regular course for the committee to agree to a formal motion that they be so reported(*c*).

A select committee may consolidate two bills into one or divide a bill into two, but only on receiving instructions to that effect from the House.

IX. Reports of Committees.—By the rule previously cited the committee to which a bill may have been referred, "shall report the same to the House in every case"; and when parties have decided not to go on with their bill, the fact is reported and an order is made in the House for its withdrawal(*d*). 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(*e*), "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"(*f*).

(*c*) First report of railway committee (1867-8), App. No. 3; banking and commerce (1869), App. No. 8; railways (1869), App. No. 4.

(*d*) Can. Com. J. (1877), 169, &c.; *Ib.* (1883), 205, 215. *Ib.* (1890), 199, 208, 269. Sen. J. (1889), 134, 135. Lords J. (1887), 103, 109. 104 E. Com. J. 501; 131 *Ib.* 372. After the preamble of a bill has been proved, the promoters have abandoned the bill, rather than consent to the introduction of a clause insisted upon by the committee. May, 785.

(*e*) May, 785.

(*f*) 80 E. Com. J. 474; 91 *Ib.* 195.

When a committee cannot meet for want of a quorum, the attention of the House may be called to the fact, and its interposition invoked. In such a case, the House will order: That the committee be revived and that leave be given to sit and proceed on a certain day(*g*). Or the House may order: That the committee have leave to sit and proceed with two or more members, in case there is no likelihood of a quorum(*h*). 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 dropped(*i*). In the session of the House of Commons of 1877, a bill respecting the Albert Railway Company came up from the Senate with amendments and was referred to the committee on railways in accordance with the rules of such cases(*j*). 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(*k*).

(*g*) 105 *Ib.* 201.
(*h*) 128 *Ib.* 133.
(*i*) Speak. D. p. 70.
(*j*) *Infra*, sec. xiv., p. 794.
(*k*) Can. Com. J. (1877), 343, 350; Can. Hans. April 27, 1877.

Bills have also been referred back for reconsideration(*l*).

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(*m*). The time is, as a rule, practically extended to the end of the session(*n*), 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 the presentation 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 practice in this respect being similar to that of the English Houses—but when a select committee reports a bill with amendments, these are considered as if they came from committee of the whole, and when they have been agreed to the bill is appointed for a third reading(*o*). On consideration of a bill as amended, it may be further amended as in case of a bill reported from committee of the whole(*p*). When a bill is reported without amendment, it is usually read a third time and passed forthwith(*q*).

(*l*) Can. Com. J. (1880), 252, 265; *Ib.* (1887), 150; *Ib.* (1888), 209, 210.

(*m*) *Ib.* (1877), 38, 42, 44, 198, 237; Sen. J. (1882), 144.

(*n*) Can. Com. J. (1879), 155; *Ib.* (1883), 214, 235, 249, 282.

(*o*) 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.

(*p*) *Ib.* (1876), 190, 193, 197; *Ib.* (1877), 141.

(*q*) *Ib.* (1883), 140, 145, 179, &c.

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"(*r*). 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(*s*).

Whenever a committee reports unfavourably on the preamble of a bill, it has no place on the order paper in either house. 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(*t*). Or the House may give instructions to the committee to strike out certain provisions and report the same as amended(*u*).

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 recommitted for that purpose"(*v*).

(*r*) Can. Com. J. (1877), 188; *Ib.* (1879), 344. The practice of the Senate is different, as shown above.

(*s*) *Ib.* (1887), 289.

(*t*) 91 E. Com. J. (S. W. Durham R. R.), 396; 116 *Ib.* (Midland & Denbigh Junction R. R.), 285; 129 *Ib.* (Midland & N. E. R. R.), 217, 225; Peterborough & Port Hope R. R., 1862, Can. Leg. Ass. Can. Com. J. (1885), 244, 258. In this case the committee gave no reasons in their first report, but subsequently on reconsideration they stated why the preamble was not proven to their satisfaction. Attention was called to the error of the committee on moving reconsideration. Hans., 713.

(*u*) Richelieu Co., 1862; 129 E. Com. J. (Bolton Le Sands, &c.), 174.

(*v*) May, 778; Shrewsbury & Welchpool R. R. bill, 1858.

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(*w*). 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(*x*), 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(*y*). Such amendments must be read a second time and concurred in, as in the case of public bills. But the right of a committee of the whole to make any important amendment is limited by the following rule:

"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"(*z*). (Sen. R. 71; 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, instead of considering the proposed changes in committees of the whole(*a*).

(*w*) Todd's Private Bill P., 101-3.

(*x*) Can. Com. J. (1877), Springhill & Parrsborough R. R., 122.

(*y*) *Ib.* (1878), Fishwick's Express Co., 160.

(*z*) V. & P. (1878), 160, 178; Sen. Deb. (1878), 460.

(*a*) Can. Com. J. (1877), 149, 178 (Springhill and Parrsborough, and Pickering harbour bills).

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(*b*).

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 amendments at this stage. A bill may, however, be amended in the Senate on the third reading after notice(*c*). In accordance with English practice, the consent of the governor-general may now be signified in the case of a bill affecting the interests of the crown; but in the Canadian Commons this consent is given most frequently at the second reading. The member in charge of the bill will move: "That the bill be now read a third time;" and when that motion has been agreed to, the final motion will be made. "That the bill do pass, and that the title be, etc.;" and now is the usual time to amend the

(*b*) 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.

(*c*) Sen. J. (1882), 277; *Ib.* (1883), 205.

title(*d*). 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(*e*).

It sometimes happens at the very end of the session that there may be urgent necessity to pass a private bill through all its stages, without reference to the usual committees, and in such a case the first motion must be to suspend the rules—the House being only ready to acquiesce when the circumstances are such as to justify such a procedure, and there is no time for consideration in the proper standing committee(*f*).

XII. Private Bills in the Senate Imposing Rates and Tolls.—Private bills, which impose rates and tolls, may be introduced in the Senate and accepted by the House of 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"(*g*). 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

(*d*) Can. Com. J. (1876), 217.

(*e*) Springhill & Parrsborough Co.; Can. Hans. (1877), 813-4. The ground was taken that the allegation made in this bill, that the work was for the general advantage of Canada, was not strictly true.

(*f*) P. E. Island Bank, Com. Jour. (1882), 66; Hans. 72. Ontario Bank, 1882, Votes and Proceedings, 573. Sen. J. (1883), 270 Railway Trust and Construction bill); Sen. Deb., 595. Also Can. Com. J. (1887), 269; *Ib.* (1888), 294.

(*g*) S. O. No. 226, May, 547.

regularly added in the Senate and agreed to by the Commons(*h*).

XIII. 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(*i*). If the member in charge of the bill is absent, and no motion is consequently made for the second reading, he must take the first opportunity he has for placing it on the orders. If no petition has been presented to the Senate and reported upon by the committee on standing orders, it must go before the second reading to that committee in accordance with the following rule, common to both Houses.

59. "Any private bill from the House of Commons (not being based on a petition which has already been so reported on by the committee on standing orders) shall be taken into consideration and reported on by the said committee in like manner as a petition after the first reading of such bill, and before its consideration by any other standing committee." (Com. R. 54).

In 1881 the Acadia Steamship Company bill was referred in the Senate 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(*j*).

In 1883 the Winnipeg and Hudson's Bay Railway and

(*h*) 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.

(*i*) Sen. J. (1880-1), 195, etc.

(*j*) Sen. J. (1880-1), 223, 227.

Steamship Company Bill was so referred in the Senate, 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(*k*).

In such cases the proper practice is first to move the suspension of the rule in accordance with the report, and, when that is agreed to, to move the second reading of the 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 was not at all regular to order the second reading before the committee reported whether or not the rule with respect to notice should be suspended and the bill proceeded with. The procedure in the Commons, under the same rule, is to move the second reading after the report, if favourable, of the standing orders committee(*l*). 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 in the Senate reported adversely, without giving any reason except that no notice had been published in the *Canada Gazette*, or in any local newspaper. There-

(*k*) Sen. J. (1883), 181, 188. Also European, American and Asiatic Cable Co., 232.

(*l*) It will also be seen that in the Senate in 1883 — but not in previous cases — a motion for the reference to the standing orders committee was made after the first reading. The rule seems to provide for a reference, as a matter of course, without a motion; and it is understood as *imperative* in the Commons. But it is immaterial, whether the motion is made or not; the bill must go to committee.

upon, notice was given of a motion to suspend the rules (52, 59 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(*m*).

In the case of the "act to incorporate the board of management of the church and manse building fund of the Presbyterian Church in Canada, for Manitoba and the Northwest," no petition was presented in 1883 in the Senate, but no difficulty arose because the regular notices required by the rules had been given(*n*). The committee's report to this effect was adopted, and the bill was ordered at once, by motion, for a second reading on a future day.

In 1884, the Hamilton and Northwestern Railway Company's bill came up from the Commons, and as there was no petition presented in the upper chamber, it was referred to the committee on standing orders who reported favourably, but it was objected that they had not specially reported a suspension of the fifty-seventh rule which sets forth that "all private bills are introduced on petition." The report was referred back for reconsideration, with the result that the committee recommended a suspension of the fifty-seventh rule in this particular case. During the discussion in the Senate on the subject, stress was properly laid on the regularity and convenience of having petitions presented in each House in every case of private legislation(*o*).

(*m*) Sen. J. (1883), 208, 210, 221, etc.; Min. of P., p. 359. Notice to suspend the rules in pursuance of rule 17, *supra*, 307.

(*n*) Sen. J. (1883), 145.

(*o*) Sen. Deb. (1884), 405, 406, 472, 502; Jour. 215, 228, 242, 246. In this case the journals incorrectly give the fifty-sixth rule as

As a rule, however, petitions for private bills are simultaneously presented and reported upon in both Houses; and in this way the progress of a bill is facilitated. It is only in exceptional cases that a petition is presented in one House and not in the other. Care should be taken to present petitions in each House.

When a 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(*p*). 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 would immediately be made for the second reading on a future day, as the rules of the Commons do not contain any provision for placing a bill on the orders after such report(*q*). 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(*r*). If there is a petition favourably reported on by the standing orders committee

suspended; it should be the fifty-seventh, as stated in the discussion on the report, Hans. 405. See also case of Niagara Frontier Bridge Co., and of Winnipeg and Hudson's R.R. & S.S. Co.; Sen. J. (1884), 224, 247; 264, 266. See remarks of Mr. Dickey and Sir A. Campbell as to presentation of petitions in the Senate, Deb. (1884), 142.

(*p*) Can. Com. J. (1883), 141.

(*q*) *Ib.* (1878), 98, 109; *Ib.* 1891, July 7, 8 and 9. For cases in legislative assembly, see Toronto Boys' Home, 1861; Huron College, 1863.

(*r*) *Ib.* (1877), 313, 335.

of the House of Commons, the bill can be immediately ordered for a second reading after the first reading(*s*).

XIV. Amendments made by either House.—When a bill is returned from one House to the other with amendments, they are generally considered forthwith if they are merely verbal and not important(*t*). 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 72 of the Senate, however, provide a different course in the case of material amendments to a private bill:

"When any private bill is returned from the Senate [or House of Commons] with amendments, the same not being merely verbal or unimportant, such amendments are, previous to their second reading, referred to the standing committee to which such bill was originally referred(*u*), [or, by the Senate rule, to a committee of the whole, *or* to the standing committee to which the bill was originally referred."]

If the committee report favourably, the amendments will be immediately read a second time and agreed to, and returned with the usual message. If the committee report that the amendments should be disagreed to for certain reasons, the House will consider the amendments forthwith, and having read them a second time will disagree to those on which the committee have reported unfavourably for the reasons set forth in their report(*w*). The House will then either "insist" or "not insist" on their amend-

(*s*) *Ib.* (1877), 54, 62, 131-2 (*Globe* Printing Co. bill), etc.

(*t*) Sen. J. (1877), 152. Com. J. (1878), 120.

(*u*) *Ib.* (1883), 308; *Ib.* (1886), 176.

(*w*) London & Ontario Investment Co. (1877), 246, 262; Wesleyan Missionary Society (1883), 317, 326.

ments when the message is received that the other House disagrees to them(*x*). Or the committee may recommend that certain amendments be made to the Senate amendments(*y*).

The necessity of referring amendments, made by one House to a bill passed by the other, was shown in 1884, in the case of a Commons bill respecting the Grand Trunk Railway. This bill came back to the Commons with apparently unimportant amendments which were hastily agreed to, but it afterwards transpired that though verbal they involved important consequences, and it was decided to adhere strictly thereafter to the rules of the House which require that all such amendments shall be placed on the order paper for another day, so that full opportunity may be given to all those interested in the measure to consider the character of the changes(*z*). This rule has consequently been observed since that time, and only deviated from in rare cases of urgency at the end of the session when no objection is taken to the amendments.

Sometimes in the Senate, as in the Commons, it may be necessary to suspend all the rules guarding the passage of private bills, but urgency will have to be shown before so grave a departure from correct procedure can be permitted, and the rules can only be suspended with the unanimous consent of the House(*a*).

(*x*) Can. Com. J. (1877), 289, 298, 299; Sen. J. 269, 282. (Union Life & Accident Assurance Co.)

(*y*) Can. Com. J. (1886), 255, 270 (Guelph Junction Railway Co.). See also c. xvi.

(*z*) Rule 23. See Can. Hans. (1884), 1511, 1514.

(*a*) Wood Mountain & Qu'Appelle Railway; Sen. Deb. (1890), 865-868. In the case of the Winnipeg & Hudson's Bay R. R. Co. Bill, objection was taken to the suspension of the rules; *Ib.* 868-872. In the case of both these bills, the rules were suspended in the Commons. Can. Com. J. (1890), 464, 469.

CHAPTER XIX.

Divorce Bills.

I. Divorce Bills in the Senate.—II. Rules and Practice in the Senate—Notice of Application—Service of Notice—Deposit of Bill and Fees—Presentation of Petition—Statutory Declarations—Meeting of Committee—Examination of Notice, Petition, Bill, and other Papers—Presentation and adoption of Committee's Report—Presentation of Bill—Second Reading of Bill—Proceedings before Committee after Second Reading—Report of the Committee—Third Reading of Bill.—III. Divorce Bills in the House of Commons.

I. Divorce Bills in the Senate.—The legislatures of the old provinces of Canada from 1839 to 1867, exercised the power of legislating upon applications for divorces(*a*), but all bills were reserved for her Majesty's approval, in conformity with the instructions issued to the several governors-general. By the British North America Act, 1867, the subject of marriage and divorce is placed under the exclusive jurisdiction of the parliament of Canada(*b*), but, while that body has, in the due exercise of its legal authority, passed a number of bills nullifying marriage in numerous cases, the law courts of several provinces continue to exercise the power they possessed previous to confederation, by virtue of provincial statutes, of affording

(*a*) The first case in Canada was that of John Stuart, 1839. Only four other applications were granted from 1840 to 1867. Harris, 1845; Beresford, 1853; McLean, 1859; Benning, 1864. For the history of these cases, see Treatise on Divorce by J. A. Gemmill, Esq., barrister, of Ottawa.

(*b*) Sec. 91, sub-s. 26.

persons relief in matters of marriage and divorce. These provinces are Nova Scotia(*c*), New Brunswick(*d*), and Prince Edward Island(*e*), while in the case of British Columbia, which entered the Union in 1871, the Supreme Court of that province has held that it possesses all the jurisdiction conferred on the court of divorce and matrimonial causes in England(*f*). Accordingly, as the law now stands, the parliament of Canada exercises its power to dissolve marriage in the provinces of Quebec and Ontario, Manitoba and the North-West Territories. The provincial courts of law and equity of Ontario, however, have jurisdiction to deal with the validity of a marriage contract on the ground of its being a civil contract, and in cases of fraud, mistake, duress and lunacy, and possibly, want of age, it may be declared void(*g*). The courts of the North-West Territories and of Manitoba, appear to have the same powers in similar cases(*h*). In Quebec, while the civil code declares marriage indissoluble, the courts may order a separation of husband and wife—*separation de corps*—but such separation can be allowed only for adultery or ill-usage, or for other specific causes, and not by the mutual consent of the parties themselves. The courts have also jurisdiction to annul a marriage where there is no consent, or the parties are within certain prohibited degrees, and in other cases very limited, in a country where the

(*c*) See B.N.A. Act, 1867, ss. 129, 146. Appendix A to the Rev. Stat. of N.S., 5th ser., c. 126, as amended by c. 13, 1866, and c. 22, 1870.

(*d*) Cons. Stat. of N.B., c. 50.

(*e*) 5 Wm. IV. (1836), c. 10; 29 Vict. (P.E.I.) (1866), c. 11; Gemmill, 36, 37.

(*f*) *Ib.* 37-39.

(*g*) *Ib.* 39.

(*h*) *Ib.* 42, 43.

Roman Catholic Church declares marriage a sacrament, and the law merely gives civil effect to a religious ceremony validly celebrated by regularly ordained ministers authorized to keep marriage registers(*i*).

From 1867 to 1902 inclusive, the parliament of Canada has exercised the powers assigned to it in express terms by the fundamental law in thirty-eight cases. In the exercise of its legal powers as one branch of the general legislature, the Senate has generally(*j*) acted on certain well defined principles. Applications for divorce have been based upon a specific charge, and the facts necessary to support that charge established by satisfactory evidence. Divorce has been substantially recognized as a matter involving the happiness and morality of society, and consequently to be treated in the spirit of the judge and moralist. If errors have occurred in the discharge of such onerous and delicate functions, they are those inseparable from a legislative body not always sufficiently controlled by legal rules and judicial responsibility. As a principle, divorce has been recognized as a moral and legal consequence of adultery and other adequate causes, which, by the general sanction of law, nullify marriage. The Senate has never admitted that it should accept the decree of an American court as effectually dissolving a marriage and binding the Canadian parliament in its action upon a particular case before it. On the contrary, it has been laid down by eminent authorities in that body, and parliament by its action

(*i*) See Code Civil (de Bellefeuille's Ed.), arts. 115-127; 186 *et seq.;* 1311 *et seq.* (Séparation de biens).

(*j*) In the Walker case, 1890, there was a departure from the general principle as a rule adhered to by the Senate. Here there was a marriage between minors, without the consent of the parents, but the parties never co-habited. See debate on this peculiar case, Sen. Deb. 403-18. The House of Commons negatived the bill.

has admitted the truth of the doctrine(*k*), that as the parliament of Canada has not yet recognized the power of any court to deal with the subject of divorce, there is nothing binding in the argument which claims, by the comity between nations, for a judgment by a foreign court that kind of consideration and recognition by the Senate which that judgment would have before an ordinary tribunal upon a matter, the subject-matter of which was common to both(*l*). The Senate has endeavored, to a considerable degree, to shape its action on that of the House of Lords, but, at the same time, it has never bound itself to accept the decisions of that body as authoritative and conclusive. On the contrary, the Senate has exercised its own judgment according to the circumstances of each case. For instance, it has acknowledged the right of the wife to equal relief with her husband, and has in this respect laid down a principle only very recently recognized in the imperial legislature.

The fact that the subject of divorce is now in England under the jurisdiction of the courts, except in Indian and Irish cases, no doubt assists the Senate in the exercise of what is a quasi-judicial as well as a legislative power. But as a general principle, while paying every respect to English precedent, the Senate must be largely governed by its own discretion, and will always grant relief according to the exigency of each case(*m*).

(*k*) In the Ash case, 1887.

(*l*) Mr. Abbott (leader of the Senate) in the Ash case; Deb. (1887), 224. See also Mr. Scott's and Mr. Gowan's remarks, 172, 174, 211, 213.

(*m*) "In shaping action or legislation on a bill of divorce upon facts in evidence before us, we naturally look to the House of Lords, but we have never bound ourselves to accept their decisions as conclusive. We follow precedents, where they commend themselves to our judgment, and we decline to follow them where they do not; and rightly so, for the decisions of the House of Lords on bills of divorce

The rules and practice of the legislative councils of the old provinces of Canada, and of the Senate of the Parliament of the Dominion have followed, as closely as the circumstances of the country would permit, the procedure of the House of Lords in England. In all unprovided cases, the rules and usages of that body have guided the Senate. Until 1888, however, the Canadian system of procedure was exceedingly defective. In that year at the instance of a learned senator who had had large experience as a judge (*n*), the Senate adopted a code of procedure, which gives a more judicial character to investigations of this class and provides greater safeguards against indiscreet legislation in a matter so deeply involving the happiness of society at large. The special feature of the new rules is the formation, at the beginning of each session, of a committee of nine members, to whom must be referred all petitions, bills, and all other matters affecting cases of divorce, with a view of relieving the Senate itself of functions which the former practice showed it could not satisfactorily discharge(*o*).

The first rule of the new code of rules provides as follows for the appointment of this committee(*p*), whose func-

have not the weight that attaches to the regular legal tribunals. The majority determines, and in a minority on a vote may be found men of learning, wisdom and experience, expressing opinions adverse to the determination, more in accordance with the eternal principles of truth and justice." Senator Gowan, Sen. Deb. (1888), 600.

(*n*) Senator Gowan, who was judge in the large district of Simcoe from 1843 until 1883.

(*o*) See Sen. Deb. (1888), 55, 68-75, 112, 293-299, 300-306, 306-309; Sen. Rules, as revised in 1896, 79, 101-123. The advisability of placing divorce jurisdiction exclusively in the courts has been several times discussed in parliament, but the proposal has never received any considerable support. See remarks of Mr. Britton on the subject, Can. Com. Hans., 13th March, 1901. Mr. Charlton, 1903.

(*p*) The committee was originally composed on the principle not only of choosing men believed to be especially qualified for such

tions, as set forth by rules and usage, will be explained hereinafter in their proper place:

All petitions and bills for divorce, and all matters arising out of such petitions and bills shall be referred to the standing committee on divorce, and no reference to any committee other than the said committee shall be necessary with respect to such petitions, bills and matters.

This committee is composed of nine senators (Rule 80).

Rules and Practice.

The nature and operation of the system of procedure can be best understood by following it through its various stages, from the publication of the application for a divorce until the bill itself has passed the Senate. In doing this it will be necessary to take up the rules of the Senate, not in their printed order, but rather with regard to the regular course of proceeding in a divorce case.

Notice of Application.

As in the case of all private bills, an applicant for divorce must give notice of the proposed application to parliament, in accordance with the following rule:

inquiries into law and fact, but also of giving every province a representation thereon. But already it has been shown that it is not always practicable to adhere to this novel idea of provincial representation in proceedings of a quasi-judicial character. Case of Mr. Kaulback of Nova Scotia, appointed in 1889, in place of Mr. Haythorne of Prince Edward Island, who declined, and consequently left his province unrepresented. Sen. Deb., 41-43. In 1895 several members of the Committee resigned on the ground that there was always a certain objection to divorce among Roman Catholic Senators, and an inadequate appreciation of their efforts to do justice in every case submitted to them. Afterwards the Senators in question reconsidered their position in view of the parliamentary principle that no one could resign from a committee unless excused by the House. In the debate, Senator Miller explained freely the attitude of the Roman Catholic Senators on this subject. Sen. Deb. (1895), 220, 230, 269, 301, 354, 359.

104. "Every applicant for a bill of divorce shall give notice of his or her intended application, and shall specify therein from whom and for what cause such divorce is sought, and shall cause such notice to be published during six months before the presentation of his or her petition for the said bill in the *Canada Gazette* and in two newspapers published in the district of Quebec, Manitoba, British Columbia or the North-West Territories, or in the county or union of counties in other provinces wherein such applicant usually resided at the time of the separation of the parties; but if the requisite number of papers cannot be found therein, then in an adjoining district, or county, or union of counties. Notices given in the provinces of Quebec and Manitoba are to be published in one English and one French newspaper, if there be such newspapers published in the district, but otherwise shall be published in each newspaper in both languages. The notice may be in the subjoined form(*q*). If a notice given for any session of parliament is not completed in time to allow the petition to be dealt with during the session, the petition may be presented and dealt with during the next ensuing session, without any further publication of such notice."

This notice should be as clear and comprehensive as possible, since its object is to advise all parties concerned of the nature and scope of the application. A notice once a week in the *Canada Gazette* and also in the local newspapers will be deemed sufficient, but these notices must be identical(*r*). It is advisable that copies of the newspapers containing the notices should be forwarded by the solicitor or agent of the applicant to the clerks of the two Houses, for the information of the clerk of the committees by whom the notices are considered under the rules.

(*q*) See App. H., Form A.

(*r*) Gemmill, 84.

Service of Notice.

The notice having been thus duly advertised, the next proceeding is to give information, under the following rule, to the person whose rights are affected by the proposed application. The respondent should be served personally when practicable, with a copy of the notice; but if such personal service cannot be effected, the rules provide for a legal declaration, as will be shown later.

105. "A copy of the said notice shall, not less than one month before the date of the presentation of the petition, at the instance of the applicant, be served personally on the person from whom the divorce is sought, when that can be done. If the residence of such person is not known, or personal service cannot be effected, then if, on the report of the committee, as hereinafter provided for, it be shown to the satisfaction of the Senate that all reasonable efforts have been made to effect personal service, and, if unsuccessful, to bring such notice to the knowledge of the person from whom the divorce is sought, what has been done may be deemed and taken as sufficient service"(*s*).

(*s*) 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. 50-51; Deb. 30, 31. A similar recommendation was made in 1900, Jour. 37, 38. In Cox's case, 1885, the Senate accepted a declaration producing a telegram from the respondent's attorney in California admitting that he had received notice of the application. Jour. 55-7. In this case the Senate was very particular in demanding a strict adherence to the rule requiring notice. Sen. Deb. 49. The declarations in the Ash case, in 1887, show the ineffectual attempts to find respondent and the services upon his relatives. *Ib.* 30; Gemmill, 87. In the Tudor-Hart case, 1888, the publication in the *Canada*

Before presenting a petition, a copy of the proposed bill of divorce must be deposited in the Senate and certain fees paid, in conformity with the following rule:

108. "The applicant shall deposit with the clerk of the Senate, eight days before the opening of parliament, a copy in the English or French language of the proposed bill of divorce, and therewith a sum sufficient to pay for translating and printing 600 copies thereof in English and 200 copies in French. The translation shall be made by the translators of the Senate.

"No petition for a bill of divorce shall be presented unless the applicant has paid into the hands of the clerk of the Senate the sum of two hundred dollars ($200), towards expenses which may be incurred during the progress of the bill(*t*), [and the said sum shall be subject to the order of the Senate"(*u*).]

Gazette, though complete in the end, was not simultaneous with that in the local papers, but the queen's printer made a declaration that the error had been on his part, and as the personal service of the notice had been duly made on the respondent, the Senate concluded that the publication was sufficient. Deb. 167, *et seq.*

(*t*) In case of the poverty of the respondent, a petition may be presented to the House, praying that the applicant for 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, they can report to the House a recommendation 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 expenses of living at Ottawa. Sen. J. (1883), 95, 99, 105; Hans. 121-4. In 1882 the committee in the Gardiner case 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. See case of Catherine Morrison, Sen. J. (1888), 73, 98. Also White case, Sen.

Presentation of Petition.

The three following rules are laid down with respect to petitions of this class, and a form has been provided for the guidance of applicants(*v*). The grounds for the application should be clearly and succinctly set forth, in accordance with the exact terms of the published notice, and the preamble of the bill itself. The rules and usage of the Senate with respect to petitions generally apply also to these petitions, in cases where there is no specific rule or order or practice made applicable to them.

106. "No petition of divorce shall be received after the first thirty days of the session"(*w*).

107. "The petition of an applicant for divorce must be fairly written and must be signed by the petitioner(*x*), and should briefly set forth the marriage, when, where, and by whom the ceremony was performed, the grounds on which relief is asked, and the nature of the relief prayed, and should also negative condonation, collusion and connivance. The allegations of the petition must be verified by declaration of the petitioner under The Canada Evidence Act, 1893."

Deb. (1888), 717; Jour. 209. In the Campbell case, 1876, Mrs. Campbell was allowed counsel fees and witnesses' expenses, to be paid by Mr. Campbell, petitioner. See Gemmill, 168. In 1879 she was allowed to proceed *in formâ pauperis*. Jour. 86, 91. Fees have also been remitted on account of the inability of the promoter of a divorce bill to pay them. See Chute case, 1895, and Stock case in 1899. In the Rosamond case, 1889, respondent was refused counsel fees as she was known to have means of her own.

(*u*) The passage in brackets has been modified by 56 Vict. c. 8, requiring all such parliamentary fees to be "forthwith deposited by the accountant of either House to the credit of the minister of finance or receiver general."

(*v*) See App. H., Form C.

(*w*) Time extended, June 1, 1891, on Committee's report.

(*x*) For rules governing generally signing of petitions, see ch. viii. A solicitor or counsel cannot sign on behalf of petitioner.

109. "The petition, when presented, shall be accompanied by the evidence of the publication of the notice as required by rule 104, and by declaration in evidence of the service of a copy thereof as provided by rule 105, and by a copy of the proposed bill. The petition, notice, and evidence of publication and service, the proposed bill, and all papers connected therewith, shall thereupon stand as referred, without special order to that effect, to 'the standing committee on divorce.'"

A senator must present a petition in his place, and should be provided with all papers and information necessary to facilitate the proceedings in the Senate. Not only should he see that the rule is complied with as above, but he should also present the clerk's certificate of receipt of fee as prescribed by rule 108, before submitting the petition(*y*). The petition, when presented, goes as a matter of course (without special reference) to the committee(*z*).

Statutory Declarations.

The following rule is laid down for declarations in divorce suits:—

121. "Declarations allowed or required in proof may be made under The Canada Evidence Act, 1893"(*a*).

(*y*) Sen. J. (1890), 21 *Ib.* 1891, May, 4th; *Ib.* (1900), 24, 42. In 1889 there is no entry in the journals of such certificate before presentation of petition. Before 1889, and the adoption of the new practice, it was usual to enter the clerk's certificate on the journals immediately after the presentation of the petition. *Ib.* (1877), 36, 43; *Ib.* (1883), 38, &c. But the practice is now uniform in accordance with the rule as set forth above.

(*z*) Sen. J. (1899), 51, 63; 37, 62; *Ib.* (1900), 24, 57.

(*a*) In 1893 an act was passed respecting witnesses and evidence (56 Vict. c. 31), cited as "The Canada Evidence Act, 1893," slightly altering, as follows, the form of declaration previously required by c. 141, Rev. Stat. of Can. See Sen. Deb., 58-60, when attention was directed to the irregularity that had prevailed for some time in

Meeting of Committee.

The following order regulates the meeting of the committee which, as already explained, is duly appointed at the commencement of the session:—

101. "Notice of the day, hour and place, of every sitting of the said committee shall be given by affixing the same in the lobby of the Senate not later than the afternoon of the day before the time appointed for such sitting.

102. "One of the official reporters of the Senate, when notified by the chairman, shall be in attendance at the sittings of the said committee, and shall take down in shorthand(*b*), and afterwards extend the evidence of witnesses examined before the committee,—which evidence shall be printed, under the supervision of the clerk of the English journals."

Examination of Notice, Petition, Bill and other Papers.

The committee here commence to discharge an important part of their functions—the stage preliminary to all subsequent proceedings. Rule 110 directs as follows:—

"It shall be the duty of the committee to examine the notice of application to parliament, the petition, the proposed bill, the evidence of publication and of the service of a copy of said notice, and all other papers referred therewith, and if the said notice, petition and proposed bill, are found regular and sufficient, and due proof has been made

accepting an affidavit sworn before a commissioner for taking affidavits in the high court of justice of Ontario, as proof of the service of notice on the person whose rights were affected by the proceedings in the Senate. Such an affidavit was only evidence in a proceeding before the high court. See Patterson, J.A., *Regina* v. *Monnk*, Armour on Titles, 1887, p. 95.

(*b*) The reporters are sworn.

of the publication and service of the said notice, the committee shall report the same to the Senate(*c*).

"If any proof is found by the committee to be defective the petitioner may supplement the same by statutory declaration to be laid before the committee.

"The committee may, if the circumstances of the case seem to require it, recommend a particular mode of service of a copy of the bill upon the party from whom the divorce is sought, before the second reading of the bill"(*d*).

The committee must compare the notice, petition and bill to see that they are thoroughly consistent with one another, and also examine into the sufficiency of the publication, on which rests the validity of all proceedings. Every possible care must be taken to prove the personal identity of the respondent, in case a question is raised in the course of the proceedings. It will be seen that the rules provide for supplementing any defective proof. In case the committee find that the petition is irregular, on the ground that it does not negative condonation, collusion or connivance between the parties, they may recommend that leave be granted to withdraw the petition and present another(*e*).

(*c*) Sen. J. (1889), 31, 32, 33, 34; *Ib.* (1890), 29, 31, 32; *Ib.* (1900), 157.

(*d*) In the Middleton case, 1889, the committee recommended service of bill and notice of its second reading on counsel of respondent as the circumstances of the case seemed to require it, Jour. 31. In the Rosamond case, 1889, for the same reason, service was to be effected on counsel in Toronto and Ottawa, Jour. 32. In the Bagwell case, 1889, for the same reason, the bill and notice were to be mailed by registered letter, post paid, to respondent, in the State of Alabama, and service was to be effected on the daughter of the petitioner at London, Ontario, who had been in correspondence with the respondent, Jour. 33, 34. Service on relatives has been deemed sufficient when it was clearly impossible to serve a copy of the bill, &c., on the respondent, Sen. J. (1900), 54, 55, 68.

(*e*) Emily Walker case, 1890; Jour. 32, 40. The original deposit of the fee is made applicable to the new petition in such a case. *Ib.* 32.

Presentation and Adoption of Committee's Report—Presentation of Bill.

The report of the committee must be presented and formally adopted by the Senate. Then the Senator in charge of the formal proceedings in the House may introduce the bill under the following rule:

111. "Upon the adoption of the report of the committee, the bill may be presented and read a first time"(*f*).

Care must be taken to have the bill consistent in every particular with the notice and the petition. The bill, like all other private bills, has a preamble, setting forth in definite terms the facts and circumstances on which the bill is based. Until 1891 it contained three clauses, the first of which declared the marriage dissolved, and thenceforth null and void, the second left the petitioner free to contract a new marriage thereafter, and the third legalized the rights of all issue of any second marriage. But the latter provision has disappeared from such acts since 1891, when the House of Commons struck it out from the four divorce bills that came from the Senate on the ground that it was merely declaratory and had no legal effect—the two previous clauses being sufficient to maintain the offspring of any second marriage in their legitimate rights. Other provisions of relief or justice to the parties in the case may be added in a bill according to the discretion of the Senate(*g*).

(*f*) Sen. J. (1889), 34, 35; *Ib.* (1890), 29, 32; *Ib.* (1900), 166, 169.

(*g*) See Gemmill, 96-98. In the Harrison case, 1892 (55-56 Vict. c. 80, s. 3) the mother (the applicant) was given the custody of the children, but doubts have been expressed as to the legality of such a provision on the ground that it is an interference with civil rights and provincial jurisdiction. This view prevailed in the Evans case, Sen. Hans. (1885), 365-367; also in the Ellis case, *Ib.* (1891), 155-160. See *Ib.* (1892), 201, for opinions of Sen. Kaulbach in the Harrison case.

Second Reading of the Bill.

It is then the duty of the clerk of the committee to fill up the notice of the second reading under rule 112, to procure the signature thereto of the clerk of the Senate, and to affix it to the door of that House. But before the second reading can take place, it will be necessary for the committee to enquire into and report on the service of the aforesaid notice and a copy of a bill, so that the respondent may have full information of all proceedings and be enabled to make such defence or answer as he or she may deem expedient:

112. "The second reading of a bill of divorce shall not take place till after fourteen days from the adoption of the report of the committee, and a notice of the second reading shall be affixed to the door of the Senate during that period. A copy of such notice and of the bill shall, at the instance of the petitioner, be served personally, if practicable, on the party from whom the divorce is sought, or served in such other manner as may have been prescribed on report of the committee, and proof of such service shall be adduced before the committee, who shall report thereon to the Senate(*h*). Upon the adoption of the report of the committee as to the sufficiency of such service, the bill may be read a second time."

It will be seen that the Senate attach every importance to the requirement that the service in this matter, as in the case of the notice, be personal whenever legally practicable. It is advisable also that evidence be ready, in case it is required, of the identity of the person served at one and same time with the bill and notice. The committee generally report on the sufficiency of service a day or two before the time fixed for the second reading. The report must be

(*h*) Sen. J. (1889), 66; *Ib.* (1890), 57; *Ib.* (1900), 214.

adopted and the certificate of the clerk of the Senate presented to show that the notice was duly affixed to the door of the chamber for fourteen days(*i*). All essential preliminaries of this kind having been duly carried out, the bill may be formally read a second time and referred, on motions duly made by the senator in charge(*j*).

Proceedings before the Committee after Second Reading.

So far all proceedings have been preliminary to the trial of the case. All parties immediately interested in the matter having been duly notified of the application and of the various stages so far in the proceeding, have now to appear for the prosecution, and defence if there be any, of the suit before the committee, to which the Senate has delegated certain judicial functions absolutely essential to the ascertainment of the facts and the finding of a just judgment in the premises. Both petitioner and respondent may be and are necessarily represented by counsel(*k*), in what is at this stage a largely legal proceeding. The petitioner can appear, if required, to answer questions with respect to connivance or collusion. The rules of evidence, followed as closely as practicable, are those which are of general application throughout the Dominion; that is to say, the principles of evidence that obtain in criminal trials(*l*). Orders are given for the attendance of witnesses and the production of papers shown to be necessary to the inquiry. Summonses for this purpose are signed by the speaker of the Senate and are served generally by a person duly authorized under the hand of the gentleman usher of

(*i*) *Ib.* (1889), 76, 77, 78; *Ib.* (1890), 61; *Ib.* (1900), 214, 215, 216.

(*j*) *Ib.* (1889), 76, 77, 78; *Ib.* (1890), 60, 61; *Ib.* (1900), 216.

(*k*) Who should appear robed as in any court of law.

(*l*) Remarks of Senator Gowan, Sen. Deb. (1888), 67.

the black rod. The witnesses give their testimony under oath or affirmation(*m*). The reporters are also sworn to take down the evidence faithfully(*n*). The necessary oaths may be administered by any member of the committee(*o*). Witnesses are entitled to fees for their time and expenses on the basis of those allowed in courts of law, and fixed by the chairman of the committee. In case a witness refuses to obey the order of the committee, application must be made in proper form to the Senate itself, which will take the steps necessary in all such cases(*p*).

The following rules provide very fully for procedure before the committee:

113. "When the bill is read a second time, it shall be referred to the standing committee on divorce, who shall proceed with all reasonable despatch to hear and to enquire into the allegations set forth in the preamble of the bill and to take evidence touching the same and the right of the petitioner to the relief prayed.

115. "If adultery be proven, the party from whom the divorce is sought may nevertheless be admitted to prove condonation, collusion, connivance or adultery on the part of the petitioner.

(*m*) Rev. Stat. of Can., c. 11, s. 21.

(*n*) The form of their oath is as follows: "You swear that you will truly and faithfully take down and transcribe the evidence to be given by the witnesses, who shall be examined in this matter. So help you God." In case of affirmation, "you solemnly, and sincerely, and truly affirm, &c."—the last sentence in first form being omitted. See Gemmill, 126.

(*o*) Gemmill, 129. In the Martin case, a witness residing at Barrie would not give evidence until his expenses were paid, and the committee sustained his demand. See Sen. Deb. (1879), 250, 278; remarks of Sir A. Campbell.

(*p*) See case of Martin ordered to be taken into custody in 1872 on report of committee that he refused to be sworn, but he eluded the warrant of the speaker. Sen. J. 96, 101, 130.

"Condonation, collusion or connivance between the parties is always a sufficient ground for rejecting a bill of divorce and shall be enquired into by the committee. And should the committee have reason to suspect collusion or connivance and deem it desirable that fuller enquiry should be made, the same shall be communicated to the minister of justice, that he may intervene and oppose the bill should the interest of public justice, in his opinion, call for such intervention.

116. "The applicant for divorce, as well as the party from whom the divorce is sought, may be heard before the committee by counsel learned in the laws of the bar of any province of Canada.

117. "The applicant for divorce, as well as the party from whom the divorce is sought, and all other witnesses produced before the committee, shall be examined upon oath or upon affirmation, in cases where witnesses are allowed by the law of Canada to affirm; and the rules of evidence in force in Canada in respect of indictable offences shall, subject to the provisions in these rules, apply to proceedings before the said committee, and shall be observed in all questions of fact.

118. "Summonses for the attendance of witnesses and for the production of papers and documents before the Senate or the select committee on divorce shall be under the hand and seal of the speaker of the Senate, and may be issued at any time to the party applying for the same by the clerk of the Senate. Such summonses shall be served, at the expense of the party applying therefor, by the gentleman usher of the black rod or by anyone authorized by him to make such service. The reasonable expenses of making such service and the reasonable expenses of every witness for attending in obedience to such summons shall be taxed by the chairman of the committee.

119. "In case any witness upon whom such summons has been served refuses to obey the same, such witness may by order of the Senate be taken into custody of the gentleman usher of the black rod, and shall not be liberated from such custody except by order of the Senate and after payment of the expenses incurred."

Report of the Committee.

The committee having come to a conclusion, their next step is to report it to the Senate(*q*). The report is that of the majority as in all cases of committees, but for divorce cases the rules depart from the practice that governs generally in English parliamentary law(*r*), and provides for a minority report. The following rules apply to the report of the committee and the evidence taken on the bill:

114. "The committee after such hearing and enquiry shall report thereon to the Senate and such report shall be accompanied by the testimony of the witnesses examined and by all papers and instruments put in evidence before the committee. The minority may bring in a report stating the grounds upon which they dissent from the report of the committee.

"When any alteration in the preamble or otherwise in the bill is recommended, such alteration and the reasons for the same shall be stated in the report(*s*).

67. "When the committee report that the preamble of the bill has not been proved to their satisfaction, the report shall state the grounds on which they have arrived at such

(*q*) Sen. J. (1889), 86, 98, 113, 114, 134; *Ib.* (1890), 73, 79, 180; *Ib.* (1900), 88, 220.

(*r*) As in Dillon case, 1894. It is always in the power of a senator to place his "protest" on record.

(*s*) Sen. J. (1889), 82, 86; *Ib.* (1890), 180; *Ib.* (1900), 157, 158.

a decision, and no divorce bill so reported upon shall be placed on the orders of the day, unless by special order of the Senate(*t*).

68. "The chairman of the committee shall sign, with his name at length, a printed copy of the bill, on which the amendments recommended shall be fairly written, and shall also sign, with the initials of his name, the several amendments made and clauses added in committee, to be attached to the report; and another copy of the bill with the amendments written thereon shall be prepared by the clerk of the committee and filed.

103. "Evidence taken before the said committee shall be printed apart from the minutes of proceedings of the Senate, and only in sufficient numbers for the use of senators and members of the House of Commons, that is to say, one copy for distribution to each senator and member, and twenty-five copies to be kept by the clerk of the Senate for purposes of record and reference"(*u*).

Third Reading of the Bill.

When the report has been received by the Senate, it is ordered as a rule to be taken into consideration on a future day—it being in accordance with correct usage in all such cases that every proceeding should be cautiously and deliberately taken(*v*). When the order is reached, the report is considered and adopted or rejected according to

(*v*) Sen. J. (1889), 114; *Ib.* (1890), 180; *Ib.* (1900), 220.

(*t*) This is the rule [Sen. J. (1883), 164], applicable to all private bills.

(*u*) In 1885 newspaper reporters were not allowed admission to the committee meetings, and consequently no press reports of the evidence are now given to the public. See Sen. Deb. 323. Gemmill, 82. Printing was dispensed with in 1892, and type-written copies prepared for perusal of senators before consideration of report, Jour. 257.

the pleasure of the House, after a discussion of the facts and circumstances of the case whenever necessary(*w*). The report being adopted, the bill is not committed to a committee of the whole, but is ordered at once for a third reading, and that being agreed to it is sent to the Commons for their concurrence(*x*). In case a report is negatived, it may be restored to the orders by a motion of which due notice has been given(*y*). In all cases, whether the report sets forth that the preamble is not proven, or that the bill is not proceeded with, the report must be formally adopted(*z*). In case a bill is not proceeded with, the committee recommend that leave be granted for its withdrawal and for the return of all exhibits(*a*). Fees are also generally returned, less the actual expenses incurred, on motion in the House, when a bill does not become law(*b*).

All rules of the Senate which "by reasonable intendment" are applicable to proceedings in divorce, shall, except in so far as they are altered or modified by the new

(*w*) *Ib.* (1889), 105, 135, 140; *Ib.* (1890), 107, 112; *Ib.* (1900), 244. In 1890 the report was negatived in the case of Clapp's application, as the evidence involved certain contradictions which decided a majority to give the respondent the benefit of the doubt. Deb. 498-513.

(*x*) Sen. J. (1889), 106, 132, 140; *Ib.* (1890), 107, 112, 194; *Ib.* (1900), 244.

(*y*) As in the Dillon case (Sen. J., 1894, pp. 168, 186, 213), which evoked much difference of opinion, and should be read to show views of Senators on divorce, and the proper reasons for granting relief to applicants.

(*z*) Sen. J. (1883), 173; *Ib.* (1889), 135. As no further proceedings were necessary in this case—the bill not being proceeded with by the applicant—the report was adopted at once.

(*a*) *Ib.* 135.

(*b*) *Ib.* 204; *Ib.* (1890), 235; *Ib.* (1892), 307, 308, 310, 311. It has been decided in the Senate that a motion to refund fees is special, and notice may be required. Sen. Deb. (1890), 646.

rules or are inconsistent with the same, continue to be applicable to these proceedings(*c*).

The rules also provide that in cases to which they do not apply "the general principles upon which the imperial parliament proceeds in dissolving marriage and the general prinicples of the rules, usages and forms of the House of Lords in respect of bills for divorce may be applied to divorce bills before the Senate and before the select committee on divorce"(*d*).

III. Divorce Bills in the House of Commons.—The proceedings in the Commons relative to such bills are substantially the same as in the case of all other private bills. When a petition is read and received, it is referred, like all other applications for private legislation, to the committee on standing orders(*e*); 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(*f*).

Divorce bills follow the practice usual in the case of all other private bills in the Commons, and are referred after second reading to a standing committee(*g*).

Until the session of 1877 it was the practice to refer these bills to a select committee in accordance with English

(*c*) Rule 122.

(*d*) *Ib.* 120.

(*e*) Can. Com. J. (1875), 82, 83; *Ib.* (1877), 54, 62; *Ib.* (1878), 27, 35.

(*f*) Can. Com. J. (1891), 313, 320; *Ib.* (1900), 145, 162. In the Campbell case (1877), the committee reported the notice insufficient, Jour. 313.

(*g*) Walter Scott and M. J. Bates relief bills, 1877; March 16, 19, 21, Can. Hansard; Com. Journals, 148, 159, 171; 144, 153, 160, 172

practice(*h*), but it is now usual to refer them to the standing committee on private bills(*i*). All the papers and evidence are referred with the bill to the committee(*j*). It has not been usual for the committee to take additional testimony in the case, but the practice has been to base its report on the facts submitted to them by the Senate. In case, however, the House is not satisfied with the evidence on which the Senate has passed the bill, it is always competent for the committee on private bills to go into such further examination of the facts as may be deemed desirable in the interests of justice and society(*k*).

When the bill comes back from committee, it is referred to the committee of the whole, and proceeded with like other private bills. It was the practice until 1879 for the governor-general to reserve such bills for the signification of her Majesty's pleasure thereon, but this need not now be done since the change in the royal instructions with reference to bills.

(*h*) Eng. Com. S. O. 189, 190, 191, 192.

(*i*) Can. Com. J. (1877), 171, 179; *Ib.* (1878), 119, 120; *Ib.* (1890), 323, 324; *Ib.* (1900), 167, 334.

(*j*) Can. Com. J. (1878), 120; *Ib.* (1890), 323, 324; *Ib.* (1900), 167, 334.

(*k*) In the Lowry case, 1889, the Commons Committee re-examined the witnesses, but without eliciting new facts. See Hans. 1160, 1264, 1265; Jour. 253. In 1894 the Dillon bill was referred back to the Private Bills Committee for further inquiry, but the Committee took no additional evidence, Jour. 445, 448; Hans., 6048.

APPENDIX.

A. An Act respecting the establishment of Provinces in the Dominion of Canada .....
B. An Act to remove doubts with respect to the powers of the Dominion Parliament under sec. 18 of the B.N.A. Act, 1867. . . . .
C. An Act respecting the Representation of Territories in the Parliament of Canada .....
D. Proclamation for summoning Parliament for despatch of business. . . . . .
E. Forms of Motions and Amendments.....
F. Forms of Petitions for private bills .....
G. Notification of Vacancies, Forms of Resignation of Members, etc. . . . . .
H. Forms for Petitions and other proceedings for Divorce.

INDEX.

A.

34-35 VICTORIA.

CHAP. XXVIII.

An Act respecting the establishment of Provinces in the Dominion of Canada.

[*29th 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. *Short Title.*—This Act may be cited for all purposes as "The British North America Act, 1871."

2. *Parliament of Canada may establish new Provinces and provide for the constitution, etc., thereof.*—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.

3. *Alteration of limits of Provinces.*—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 the effect and operation of any such increase or diminution or alteration of Territory in relation to any Province affected thereby.

4. *Parliament of Canada may Legislate for any territory not included in a Province.*—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.

5. *Confirmation of Acts of Parliament of Canada,* 32 & 33 *Vict. (Canadian) ch.* 3, 33 *V. (Canadian) ch.* 3.—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.

6. *Limitation of powers of Parliament of Canada to legislate for an established Province.*—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.

B

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.]

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 Parliament 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:—

1. *Substitution of new Section for Section* 18 *of* 30 & 31 *Vict., ch* 3.—Section eighteen of the British North America Act, 1867, is hereby repealed without prejudice to anything done under that action, 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 powers 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.

2. *Confirmation of Act of Canadian Parliament.*—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.

3. This Act may be cited as "The Parliament of Canada Act, 1875."

C.

49-50 VICTORIA.

CHAP. XXXV.

An Act respecting the Representation in the Parliament of Canada of Territories which for the time being form part of the Dominion of Canada, but are not included in any Province.

[25*th June*, 1886.]

WHEREAS it is expedient to empower the Parliament of Canada to provide for the representation in the Senate and House of Commons of Canada or either of them, of any Territory which for the time being forms part of the Dominion of Canada, but is not included in any Province.

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:—

1. *Provision by Parliament of Canada for representation of Territories.*—The Parliament of Canada may, from time to time, make provisions for the representation in the Senate and House of Commons of Canada, or in either of them, of any Territories which for the time being form part of the Dominion of Canada, but are not included in any province thereof.

2. *Effect of Acts of Parliament of Canada.*—Any Act passed by the Parliament of Canada before the passing of this Act for the purpose mentioned in this Act shall, if not disallowed by the Queen, be, and shall be deemed to have been, valid and effectual from the date at which it received the assent, in Her Majesty's name, of the Governor-General of Canada.

34 *and* 35 *Victoria, ch.* 28. 30 *and* 31 *Victoria, ch.* 3.—It is hereby declared that any Act passed by the Parliament of Canada, whether before or after the passing of this Act, for the purpose mentioned in this Act or in the British North America Act, 1871, has effect, notwithstanding anything in the British North America Act, 1867, and the number of Senators or the number of members of the House of Commons specified in the last mentioned Act is increased by the number of Senators or of members, as the case may be, provided by any such Act of the Parliament of Canada for the representation of any provinces or territories of Canada.

D.

PROCLAMATION FOR ASSEMBLING PARLIAMENT FOR THE DESPATCH OF BUSINESS.

MINTO.

[L.S.]

CANADA.

EDWARD the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the seas, King, Defender of the Faith, Emperor of India.

To Our Beloved and Faithful the Senators of the Dominion of Canada, and the Members elected to serve in the House of Commons of Our said Dominion, and to each and every of you—GREETING:

A PROCLAMATION.

Whereas the Meeting of Our Parliament of Canada stands Prorogued to the Second day of the month of March next, Nevertheless, for certain causes and considerations, We have thought fit further to prorogue the same to Thursday the Twelfth day of the month of March next, so that neither you nor any of you on the said Seventeenth day of December next at Our City of Ottawa to appear are beheld and constrained: for we do will that you and each of you, be as to Us, in this matter, entirely exonerated; commanding, and by the tenor of these presents, enjoining you, and each of you, and all others in this behalf interested, that on Thursday, the Twelfth day of the month of March next, at Our City of Ottawa aforesaid, personally be and appear, for the DESPATCH OF BUSINESS, to treat, do, act, and conclude upon those things which in Our said Parliament of Canada, by the Common Council of Our said Dominion, may, by the favour of God, be ordained.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent and the Great Seal of Canada to

be hereunto affixed. WITNESS, Our Right Trusty and Right Well-beloved Cousin and Councillor the Right Honourable Sir GILBERT JOHN ELLIOT, Earl of Minto and Viscount Melgund of Melgund, County of Forfar, in the Peerage of the United Kingdom, Baron Minto of Minto, County of Roxburgh, in the Peerage of Great Britain, Baronet of Nova Scotia, Knight Grand Cross of Our Most Distinguished Order of St. Michael and St. George, etc., etc., Governor-General of Canada.

At Our Government House, in Our City of OTTAWA, this THIRD day of FEBRUARY, in the year of our Lord one thousand nine hundred and three and in the third year of our Reign.

By command,

H. G. LAMOTHE,
Clerk of the Crown in Chancery,
Canada.

E.

MODE OF PROPOSING MOTIONS AND AMENDMENTS.

Mr. Blake moves, seconded by Mr. Mills,

"That a humble address be presented to Her Most Gracious Majesty, praying that she will be pleased to cause a measure to be submitted to the Imperial Parliament providing that the Parliament of Canada shall not have power to disturb the Financial relations, established by the British North America Act (1867) between Canada and the several Provinces, as altered by the Act respecting Nova Scotia."

Mr. Archibald moves in amendment, seconded by Mr. Macdonald (E. Huron).

That all the words after "That" to the end of the question be left out, and the following words inserted instead thereof:—

"This House adheres to the decision of the Parliament of Canada at its last session, as embodied in the Act intituled:—'An Act respecting the Territories.'"

Sir John Macdonald moves in amendment to the amendment, seconded by Sir George E. Cartier,

That all the words after "thereof" in the said amendment be left out, and the following words inserted instead thereof:—

"It is the undoubted privilege of Parliament to fix and determine the amount of all expenditure chargeable on the public funds of the Dominion."

And the question having been put on the amendment to the said proposed amendment, it was resolved in the affirmative.

And the question on the amendment to the original question, so amended, being again proposed,

Mr. Oliver moves, in amendment thereto, seconded by Mr. Magill:—

That the following words be added at the end thereof:

"But this House is of opinion that no further grant or provision, beyond those made by the Union Act and the Act respecting Nova Scotia, should in future be made out of the Revenues of Canada, for the support of the Government or Legislature of any of the Provinces."

And the question being put, that those words be there added, the House divided, and it was so resolved in the affirmative.

And the question on the amendment to the original question, so amended, being again proposed;

Mr. Wood moved in amendment thereto, seconded by Mr. Brown:

That the following words be added at the end thereof:

"And that such steps should be taken, as to render impossible any such grant or provisions."

And the question being put that those words be there added, it passed in the negative.

And the question being put on the amendment to the original question, as amended, it was resolved in the affirmative.

Then the main question, as amended, being put:

"That it is the undoubted privilege of Parliament to fix and determine the amount of all expenditure chargeable on the public funds of the Dominion; but this House is of

opinion that no further grant or provision beyond those made by the Union Act and the Act respecting Nova Scotia, should in the future be made out of the revenues of Canada, for the support of the Government or Legislature of any of the Provinces."

The House divided; and it was resolved in the affirmative.

AMENDMENTS TO SUPPLY AND WAYS AND MEANS.

The order of the day being read for the House again in the Committee of Supply,

And the question being proposed, that Mr. Speaker do now leave the chair,

Mr. Laurier moves, in amendment, seconded by Mr. Blake:

"That all the words after 'That' to the end of the question be left out, and the following words added instead thereof: 'In the opinion of this House, the public interests would be promoted by the repeal of the duties imposed on coal, coke and breadstuffs, free under the former tariff,' etc."

On Second Reading.

Certain resolutions having been reported from Committee of Supply,

And a motion being made, and the question being proposed, That the said resolutions be now read a second time,

Mr. Borden (Halifax), moves, in amendment, seconded by Mr. Sproule:

"That all the words after 'That' to the end of the question, be left out in order to add the following words instead thereof, etc."

On Concurrence.

A resolution having been read a second time, and the question being proposed, That the House do concur with the Committee in the said resolution;

Mr. Douglas moves in amendment, seconded by Mr. Scott,

"That all the words after 'That' to the end of the question be left out, etc."

MOTIONS RESPECTING PUBLIC BILLS.

On Introduction.

Mr. Richey moves, seconded by Mr. Daly, for leave to bring in a bill to amend the Acts respecting Cruelty to Animals.

At Other Stages.

Mr. Richey moves, seconded by Mr. Daly, that the bill to amend the Acts respecting Cruelty to Animals, be now read a second time (or committed to a committee of the 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. Fitzpatrick moves, seconded by Mr. Carroll,

"That it be an instruction to the Committee, that they have power to make provision for the extension of the Equity jurisdiction of the Courts."

On Second Reading.

The order of the day being read for the second reading of the Thames River bill;

And a motion being made, and the question being proposed, That the bill be now read a second time:

Mr. 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-Canadien."

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. 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."

F.

FORM OF PETITION TO THE THREE BRANCHES OF PARLIAMENT FOR A PRIVATE BILL.

To His Excellency the Right Honourable Sir Gilbert John Elliot, Earl of Minto, Governor-General of Canada, etc., etc., etc., in Council.

The Petition of the undersigned of the of humbly sheweth:

That (*here state the object desired by the petitioner in soliciting an Act*).

Wherefore your petitioner humbly prays that Your Excellency may be pleased to sanction the passing of an Act (*for the 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.*)

G.

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 , 19 .

Member for the Electoral District of

Member for the Electoral District of

---

2. *Notification by two members in case of absence of Speaker.*

Dominion of Canada.
To wit: } HOUSE OF COMMONS.

To the Clerk of the Crown in Chancery.

The Speaker of the House of Commons being absent from Canada, these are to require you, under and in virtue of the 49th Vict., ch. 13, sec. 8, sub-section 2, (Revised Statutes of Canada) to make out a new writ for the election

of a Member to serve in the present Parliament for the Electoral District of in the Province of in the room and place of who, since his election for the said Electoral District, hath

Given under Our hands and Seals, at , this day of in the year of Our Lord one thousand nine hundred and

Member for the Electoral District of

Member for the Electoral District of

3. *Resignation of a Member.*

Dominion of Canada. } HOUSE OF COMMONS.
To wit: }

To the Honourable Speaker of the House of Commons:

I, member of the House of Commons of Canada, for the Electoral District of , do hereby resign my seat in the said House of Commons, for the constituency aforesaid.

Given under my hand and seal at the this day of , 19 .

.....[L.S.]

Witness, &c.

SPEAKER'S WARRANTS FOR NEW WRITS OF ELECTION.

1. *In case of death, resignation or acceptance of office.*

Dominion of Canada. } HOUSE OF COMMONS.
To wit: }

To the Clerk of the Crown in Chancery.

These are to require you to make out a new writ for the election of a Member to serve in this present Parliament for the Electoral District of in the room of who, since the election for the said Electoral District hath (*here state reason for issue of warrant; acceptance of office, resignation or decease.*

Given under my hand and seal at this day of in the year of Our Lord one thousand nine hundred and

Speaker.

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 nine hundred and

Speaker.

H.

FORMS IN PROCEEDINGS FOR DIVORCE.

RULE 123 OF SENATE.

The subjoined forms, varied to suit the circumstances of the case, or forms to the like effect, may be used in proceedings for Divorce.

FORMS.

"A"

NOTICE OF APPLICATION FOR DIVORCE.

Notice is hereby given that (*name of applicant in full*) of the of , in the county

(*or district*) of , in the Province of , (*here state the addition or occupation, if any, of applicant*), will apply to the Parliament of Canada, at the next session thereof, for a Bill of Divorce from his wife (*or her husband*), (*here state names in full, residence or addition or occupation, if any, of the person from whom the divorce is sought*), on the ground of (*adultery, adultery and desertion, or as the case may be*).

Dated at , Province of , day of 190 , } *Signature of applicant or of solicitor for applicant.*

(*When any particular relief is to be applied for, the nature thereof should be briefly indicated in the notice.*)

"B"

DECLARATION AS TO SERVICE OF NOTICE WHEN MADE PERSONALLY.

PROVINCE OF
COUNTY (*or district*) OF
TO WIT:

I, A.B., of the of in the county (*or district*) of in the Province of (*occupation*) do solemnly declare:

1. That on the day of A.D. 189 , I personally served C.D. (*name of person served*) with a true copy of the notice hereto attached and marked "A," by giving the said copy to and leaving it with the said C.D. at (*state place of service*).

2. That I know the said C.D. and that I believe him (*or her*) to be the person described in the said notice as the husband of E.F. therein named.

(*Add any statements made by* C.D. *to the person effecting the service shewing identity.*)

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the "*Canada Evidence Act*," 1893.

Declared before me, at the of in the county of , in the Province of , this day of A.D. 190 . } *Signature of declarant.*

NOTE.—*Exhibits attached to the declaration should be verified under the hand of the public functionary before whom the declaration is made.*

"C"

GENERAL FORM OF PETITION.

To the Honourable the Senate of Canada in Parliament assembled:

The petition of A.B., of the of , in the County of in the Province of , the lawful wife of C.D., of, &c. (*state names in full, residence and occupation*).

HUMBLY SHEWETH:

1. That on or about the day of , A.D. 18 , your petitioner, then A.X., (*spinster or as the case may be*), was lawfully married to the said C.D. at

2. That the said marriage was by license duly obtained (*or as the case may be*) and was celebrated by

That at the time of the said marriage your petitioner and the said C.D. were domiciled in Canada, and have ever since continued to be and are now domiciled in Canada.

(*All facts as to the residence and domicile of the parties at and since their marriage should be stated with particularity.*)

4. That after her said marriage your petitioner lived and co-habited with her said husband at , and that there are now living issue of the said marriage children, viz.: Mary D., born the day of , 18 , and Elizabeth D., born the day of A.D. 18 .

5. That on or about the day of , A.D. 18 , at the in the , the said C.D. committed adultery with one G.H.

of , spinster, and since then on divers occasions has committed adultery with the said G.H.

6. That your petitioner ever since she discovered her said husband had committed the said adultery has lived separate and apart from him and the said C.D. has not since co-habited with your petitioner.

7. That your petitioner has not in any way condoned the adultery committed by the said C.D., and that no collusion or connivance exists between myself and the said C.D. to obtain a dissolution of our said marriage.

Your petitioner therefore humbly prays:

That your Honourable House will be pleased to pass an Act dissolving the said marriage between your petitioner and the said C.D., and enabling your petitioner to marry again, and giving to your petitioner the custody of the said Mary D. and Elizabeth D., and granting your petitioner such further and other relief in the premises as to your Honourable House may seem meet.

And as in duty bound your petitioner will ever pray.

Signature of Petitioner.

"D"

DECLARATION VERIFYING PETITION.

I, A. B., of the

PROVINCE OF of in the county
COUNTY (*or district*) OF of , in the Province
TO WIT: of , (*occupation, if any. In the case of the wife being the applicant, say "wife of C.D." and give names, residence and occupation or addition of the husband*), the petitioner in the foregoing petition named, do solemnly declare:—

1. That, to the best of my knowledge and belief, the allegations contained in the paragraphs of the foregoing petition, numbered respectively , are, and each of them, is true.

2. (*If any matter is alleged, of which the petitioner has not personal knowledge, add "That, with respect to the matters alleged in the paragraphs of the foregoing petition, numbered respectively , I am credibly informed and believe them, and each of them, to be true."*)

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of The Canada Evidence Act, 1893.

Declared before me, at the of
, in the County of of *Signature of*
in the Province of *declarant.*
day of A.D. 19 .

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