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LAW AND USAGE OF PARLIAMENT.

TENTH EDITION.
WORKS by Sir REGINALD F. D. PALGRAVE,
K.C.B., Clerk of the House of Commons.

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ST. DUNSTAN'S HOUSE, FETTER LANE.
A TREATISE
ON THE
LAW, PRIVILEGES, PROCEEDINGS AND USAGE
OF
Parliament.

BY
SIR THOMAS ERSKINE MAY, K.C.B., D.C.L.,
CLERK OF THE HOUSE OF COMMONS;
AND BENCHER OF THE MIDDLE TEMPLE.

TENTH EDITION.

BOOKS I. AND II. EDITED BY
SIR REGINALD F. D. PALGRAVE, K.C.B.,
CLERK OF THE HOUSE OF COMMONS;

BOOK III. EDITED BY
ALFRED BONHAM-CARTER, ESQUIRE,
OF THE INNER TEMPLE, BARRISTER-AT-LAW;
A MEMBER OF THE COURT OF REFEREES ON PRIVATE BILLS (HOUSE OF COMMONS).

LONDON:
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1893.
To

THE RIGHT HONOURABLE

ARTHUR WELLESLEY PEEL,

SPEAKER OF THE HOUSE OF COMMONS,

&c., &c., &c.,

The Tenth Edition of

This Treatise

By His Kind Permission,

Is, with the Highest Respect and Admiration,

Inscribed by

The Editors.
INTRODUCTION
TO THE TENTH EDITION.

The text of the eminent author of this treatise, and his mode of treatment, so far as practicable, are preserved throughout this edition; though condensation became necessary to obtain the admission of much new matter within the compass of a book of fairly manageable dimensions, and revision and rearrangement, to a certain extent, became expedient.

The first edition of this book was in preparation exactly fifty years ago, during those halcyon days of parliamentary existence when the standing orders of the House of Commons, now 97 in number, were only 14; when no rule or order prescribed that previous notice should be given of a motion, however important; and when a motion might be met by any form of amendment,

1 In proof of this statement may be noticed the curious alteration in the following paragraph, as it appears in the first and second editions of this book.

First edition, 1844, p. 166. A member, "in order to give due notice of his intention, is required to state the form of his motion on a previous day, and to have it entered in the Order Book or Notice Paper."

Second edition, 1851, p. 210. "In order to give the house due notice of his intention, and to secure an opportunity of being heard, it is customary to state the form of his motion on a previous day, and to have it entered in the Order Book or Notice Paper."
however grotesquely irrelevant. Excluding the standing orders which require the recommendation of the Crown to motions involving a money charge (see p. 527), and which regulate the presentation of petitions (see p. 503), the parliamentary procedure of 1844 was essentially the procedure on which the House of Commons conducted business during the Long Parliament.

That is not so now. Since then Parliament has done much by way of self-reformation. The Lords no longer tolerate vote by proxy (see p. 350); they have substituted for the quorum of three a more suitable number (see p. 205); and a standing committee has been created to which every bill in its progress through the house may be referred (see p. 376). The Lords also have rearranged their hours of meeting to further the transaction of business (see p. 204). The Commons also have aggravated their labours by fixing three o'clock as the ordinary time for meeting (see p. 207); they have simplified their method of procedure so that the consideration of a bill, from the second reading stage until its third reading, proceeds automatically, freed, as far as possible, from opportunities for delay (see pp. 451, 466); and in other ways, of which a summary is given on p. 324, they have done their best to abate loquacity, and to hinder the waste of time.

To such an extent has this process been carried, that the hundreds of years which measure the existence of the House of Commons until the year

1 See n. 5, p. 278. It was not until this book reached the last edition, 1883, that the rule was laid down that an amendment must be relevant to the question before the house.
1888, did not occasion more changes in the orders and practice of the house, than have been effected during the ten years which have elapsed since the publication of the ninth edition of this book. An attempt to engraft into a treatise framed on the easy-going lines of 1844 the complex procedure of 1893, without some alteration of structure, proved, consequently, of no avail.

To the chapters, in the ninth edition, which treat of the proposal of motions, and amendments, the conduct of bills, or the rules of debate, a chapter has been added on the "method and order in the transaction of business in Parliament," dealing separately with certain customary occurrences in the daily routine of Parliament, which were formerly considered in connection with those matters of practice on which the procedure of the House is founded. Such, for instance, is the custom of putting questions to Ministers at the outset of each day's sitting (see p. 236). This practice has reached such a formidable dimension, provoking an almost equally formidable crop of rulings from the Chair, that if treated, following the author's arrangement, as a matter of debate, the pages devoted to questions would largely interrupt the consideration of that subject.

Chapter viii. has been framed on the lines appointed for the transaction of business from the time of meeting, until the welcome moment of adjournment; and it contains, by way of a sample of its contents, the conditions affecting the parliamentary quorum (see p. 221); the mode of giving notices of motion (see p. 228); the
commencement of public business (see p. 243); the reading of the orders of the day (see p. 247); and motions for the adjournment of the house under standing order No. 17 (see p. 240). The peremptory interruption of business, and adjournment to which the house is subjected on every day of the week, except Saturday and Sunday, (see p. 208) is also considered in this chapter; and with it the application of closure of debate (see p. 211) as that process is intimately associated with the fixed interruption of business.

Another chapter is devoted to a subject which hitherto appeared in various portions of the volume, namely, the responsibilities, relations, and procedure of Parliament affecting imperial and national expenditure. A combined consideration of the monetary duties of the Crown and of the Houses of Parliament facilitated the task of the editor, and, it is hoped, may afford corresponding aid to a possible student. Treatment, separate and yet inclusive, of this important subject is compelled by the requirements of the day, which have converted into a complex system the simple financial procedure of former times. Under these conditions the ancient freedom in the demand of "grievances" before supply is free no longer (see p. 571); whilst an enhanced difficulty has arisen in obtaining the supplies necessary for the service of each year. That difficulty is caused by those varied and renewed applications for money, known as supplementary grants, grants on account, excess grants, and Consolidated Fund Bills, which are, as is explained on p. 518, an annual necessity. Thus
INTRODUCTION TO THE TENTH EDITION.

these movements in opposite directions, though apparently inconsequent, are in fact consequential; for as these demands treble the financial labour of each session, it naturally follows that, by way of compensation, restrictions should be imposed on the right of free speech as a preface to the sitting of the committee of supply.

Chapter xxvi., which describes that remarkable and comparatively recent feature in private bill legislation, known as the "Provisional Order system," is an important addition to this treatise. Under that system, perhaps it may be explained, Parliament has empowered Government Departments and other public bodies, such as County Councils, to grant, on the application of a suitor, schemes and orders, which receive statutory force under the sanction conferred by an Act of Parliament. This method of delegation, which was initiated in 1845, has of late years been in a constant process of expansion, until it attained the varied and wide development which, as set forth in Chapter xxvi., may surprise even those who are conversant with the working of legislation by private bills.

The outbreak of instructions to public bill committees by which the house met the salutary provision, among the standing orders of 1888, whereby the Speaker leaves the chair forthwith whenever the house goes into such a committee (see p. 360), made of instructions a new feature in parliamentary practice. The pages in the edition of 1883, devoted to this subject, have consequently been reshaped (see p. 452). The Appendix also is furnished with a set of classified
examples, illustrating the principles which govern the proposal of an instruction, and is enriched by the citation of two of those wise and effective addresses from the Chair by which the Speaker has brought these motions under the control of law and order (see p. 843).

To the Appendix are added the standing orders of the House of Commons, and the sessional orders, accompanied by marginal references to the ancient resolutions on which the sessional orders are based—information of considerable historical importance. Examples also are given, drawn from the journals of the house, for the guidance of those who may desire to amend a proposed amendment.

An attempt has been made (see p. 187) to provide future Speakers with a summary of the varied duties which devolve upon them: though, as the help the Editor thus seeks to afford cannot be of use when help is most needed, he regards those pages with but slight satisfaction. A forty years' experience of parliamentary life was not needed to teach him that no epitome of the responsibilities cast upon the Chair of the House, however accurate and concise, can supply much inspiration wherewith to guide a Speaker in those critical moments thus described in language as impressive, as it is true: "The occasions are frequent, and they occur most unexpectedly, when the Speaker is called upon, unaided and alone, and at once, to decide upon difficult points which may have supreme consequences—points which require not only accurate knowledge of the forms and procedure of the house, but which demand the greatest courage and firmness to
apply those precedents to the exigencies of the moment."

To bring out this book with least possible delay, the text has been passed through the press whilst this session has run its course—a session that has been signalized by several remarkable incidents, and important rulings from the Chair. These incidents have been noted in the pages of the text, and, when its advanced state rendered insertion impossible, on an extra page (p. 853).

As this book is, when caught up from the table of the house to parry an objection, or to perplex an antagonist, expressly a book for rapid reference, it has been sought, by an ever-recurring insertion of marginal and other references, to make the book an index unto itself; and in this endeavour the publishers have joined, with generous readiness, by furnishing pages specially adapted for the purpose. Nor are these marginal signposts and signals supplied merely to meet the parliamentary occasion. An inherent difficulty besets a treatise which deals not only with the historical aspect of an august, many-sided institution, but with the conditions of its daily life. The rules laid down by practice and the standing orders, and the precepts and injunctions delivered from the Chair, act with such interwoven and varied application, that their results must appear and reappear in various portions of the text, either as an enforcement, or as a modification of the principle then under consideration. Thus it is the editor's duty, by every

1 Sir Matthew White Ridley, 4th August, 1892, 7 Parl. Deb. 4 s. 7.

P. b
possible means, to link together the various portions of the book, and to put each page into touch and union with its brother.

Due and grateful recognition must be made of the generous help and hearty co-operation which the editors have received from those who are specially qualified to offer wise criticism and counsel.

The Speaker most readily gave his careful consideration and attention to such portions of the text as were thankfully submitted to his judgment. Help of a similar kind was rendered by Mr. Milman and Mr. Jenkinson. They generously lent their aid towards the solution of many a difficult point of practice, and revised and improved Chapters viii. and xxii. If those abstruse matters, the propriety of an "instruction," the application of the closure, and the treatment of an "item" in the committee of supply, are treated with due explicitness and accuracy, that happy result is mainly due to them. Mr. Ferguson-Davie, Principal Clerk of the Public Bill Office, willingly devoted his sound judgment, trained by long experience in the financial procedure of Parliament, towards the preparation and completion of Chapter xxii.

Mr. Bull, the Clerk of the Journals, supplied most valuable precedents and suggestions drawn from his intimate knowledge of the history, journals, and procedure of the House of Commons; and the portions of the text dealing with the practice of the House of Lords, and the conduct of their business, have received the able revision of Mr. Malkin and Mr. Harrison. Equally useful care was most kindly bestowed by
the Clerk of the Council, Sir Charles Lennox Peel, on the pages which treat of the summons and prorogation of Parliament. Mr. Spring Rice, well equipped for the task by long and intimate acquaintance with the traditions and practice of the Treasury, examined Chapter xxii. with friendly and official solicitude; and Mr. Sydney Parry criticized the passages regarding the Chiltern Hundreds, according to information he had extracted by exhaustive researches among the records of Downing Street. This note of hearty thanks respecting the tenth edition of Books I. and II. would be very imperfect if it closed without an expression of the editor's indebtedness to Mr. S. H. Day, who devoted a lavish amount of time and trouble in rendering that assistance which, as editor of Rogers on Elections, Part ii., 16th edition, he was so well qualified to bestow.

The editor of Book III. desires to express his grateful acknowledgments for the valuable help given him by Mr. Munro, Clerk of Private Bills, House of Lords, and by Mr. Campion, Examiner (Private Bills), Mr. Austen Leigh, and Mr. Webber, Principal Clerks of the Committee, and the Private Bill Offices, House of Commons. The editor is also much indebted to gentlemen in the Government Departments, who courteously afforded him important suggestions, based on their official experience, regarding the procedure on Provisional Orders. Nor should the information derived from Mr. Clifford's treatise on Private Bill Legislation fail to receive that recognition which is so fully deserved.

R. F. D. P.
PREFACE TO THE FIRST EDITION.

It is the object of the following pages to describe the various functions and proceedings of Parliament, in a form adapted, as well to purposes of reference, as to a methodical treatment of the subject. The well-known work of Mr. Hatsell abounds with Parliamentary learning, and, except where changes have arisen in the practice of later years, is deservedly regarded as an authority upon all the matters of which it treats. Other works have also appeared, upon particular branches of parliamentary practice; or with an incidental rather than direct bearing upon all of them: but no general view of the proceedings of both Houses of Parliament, at the present time, has yet been published; and it is in the hope of supplying some part of this acknowledged deficiency that the present Treatise has been written.

A theme so extensive has only been confined within the limits of a single volume, by excluding, or rapidly passing over, such points of constitutional law and history as are not essential to the explanation of proceedings in Parliament; and by preferring brief statements of the general result of precedents, to a lengthened enumeration of the precedents themselves. Copious references are given, throughout the work, to the Journals of both houses, and to other original sources of information: but quotations have been restricted to resolutions and standing orders, to printed authorities, and to precedents which serve to elucidate any principle or rule of practice better than a more general statement in the text.

The arrangement of the work has been designed with a view to advance from the more general to the particular
and distinct proceedings of Parliament, to avoid repetition, and to prevent any confusion of separate classes of proceedings; and each subject has been treated, by itself, so as to present, first, the rules or principles; secondly, the authorities, if any be applicable; and, thirdly, the particular precedents in illustration of the practice.

It only remains to acknowledge the kind assistance which has been rendered by many gentlemen, who have communicated their knowledge of the practice of Parliament, in their several official departments, with the utmost courtesy: while the author is under peculiar obligations to Mr. Speaker (Shaw-Lefevre), with whose encouragement the work was undertaken, and by whose valuable suggestions it has been incalculably improved.

House of Commons,
May 2, 1844.
This work has continued to expand, in each successive edition; and the last four years have been unusually fruitful of parliamentary incidents. It will be sufficient to mention the case of Mr. Bradlaugh, the conflicts of the House of Commons with obstruction, the exceptional rules of urgency, the new standing orders for the regulation of procedure, and the appointment of standing committees for the consideration of bills relating to law and courts of justice, and to trade, shipping, and manufactures. During the same period, questions of order have also been frequent, beyond any previous experience; and many additional precedents, of earlier date, have been inserted in various parts of the work.

I gladly avail myself of this opportunity of acknowledging my obligations to many gentlemen, specially qualified to assist me,—to some of whom I am bound more particularly to allude. Mr. Speaker placed his valuable Note-books at my disposal. My colleagues, Mr. Palgrave and Mr. Milman, gave me the benefit of their judicious minutes of decisions from the Chair, and collections of precedents. Mr. Bull, the Clerk of the Journals, aided me with many skilful searches for precedents; and Mr. Bonham-Carter advised and assisted me in the review of cases of locus standi before the court of referees, and the practice of committees on private bills.

House of Commons,
June 6, 1883.
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CONSTITUTION, POWERS, AND PRIVILEGES
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CHAPTER I.

THE CONSTITUENT PARTS OF PARLIAMENT.

The present constitution of Parliament has been the growth of many centuries. Its origin and early history, though obscured by the remoteness of the times, and the imperfect records of a dark period in the annals of Europe, have been traced back to the free councils of our Saxon ancestors. The popular character of these institutions was subverted, for a time, by the Norman Conquest: but the people of England were still Saxons by birth, in language, and in spirit, and gradually recovered their ancient share in the councils of the State. Step by step the Legislature has assumed its present form and character; and after many changes, its constitution is now defined by—

"The clear and written law,—the deep-trod footmarks
Of ancient custom."

No historical inquiry has greater attractions than that which follows the progress of the British Constitution from the earliest times, and notes its successive changes and development: but the immediate object of this work is to display Parliament in its present form, and to describe its various operations under existing laws and custom. For this purpose the history of the past will be adverted to: but more for the explanation of modern usage than on account of the interest of the inquiry itself. Apart from the immediate functions of Parliament, the general constitution of the British Government is not within the design of this
treatise; and however great the temptation may be to digress upon topics which are suggested by the proceedings of Parliament, such digressions are rarely admitted. Within these bounds an outline of each of the constituent parts of Parliament, with incidental reference to their ancient history and constitution, will properly introduce the consideration of the various attributes and proceedings of the Legislature.

The Parliament of the United Kingdom of Great Britain and Ireland is composed of the King or Queen, and the three estates of the realm, viz. the Lords Spiritual, the Lords Temporal, and the Commons. These several powers collectively make laws that are binding upon the subjects of the British empire; and, as distinct members of the supreme legislature, enjoy privileges and exercise functions peculiar to each.

I. The Crown of these realms is hereditary, being subject, however, to special limitations by Parliament; and the king or queen has ever enjoyed various prerogatives, by prescription, custom, and law, which assign to the sovereign the chief place in Parliament, and the sole executive power. But as the collective Parliament is the supreme legislature, the right of succession and the prerogatives of the Crown itself are subject to limitations and change by the consent and authority of the sovereign, and the three estates of the realm in Parliament assembled. To the changes that have been effected, at different times, in the legal succession to the Crown, it is needless to refer, as the Revolution of 1688 is a sufficient example. The power of Parliament over the Crown is distinctly affirmed by the statute law, and recognized as an important principle of the constitution.

All the kings and queens since the Revolution have taken an oath at their coronation, by which they have "promised and sworn to govern the people of this kingdom, and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the

---

1 For statutory confirmation of the ancient right of females to inherit the Crown, see 1 Mar. St. 2, c. 1; and 1 Mar. St. 3, c. 1; 1 Eliz. c. 3.

For the form in which the accession of a sovereign is recognized, see 92 C. J. 488.
Chapter I. same. 1 The Act 12 & 13 Will. III. c. 2, affirms "that the laws of England are the birthright of the people thereof; and all the kings and queens who shall ascend the throne of this realm ought to administer the government of the same according to the said laws; and all their officers and ministers ought to serve them respectively according to the same." And the statute 6 Anne, c. 7, declares it high treason for any one "to maintain and affirm, by writing, printing, or preaching, "that the kings or queens of this realm, by and with the authority of Parliament, are not able to make laws and statutes of sufficient force and validity to limit and bind the Crown, and the descent, limitation, inheritance, and government thereof."

Nor was this a modern principle of constitutional law, established, for the first time, by the Revolution of 1688. If not admitted in its whole force, so far back as the great charter of King John, it has been affirmed by Parliament in very ancient times. In the 40th Edward III. the pope demanded homage of that monarch for the kingdom of England and land of Ireland, and the arrears of 1,000 marks a year that had been granted by King John to Innocent III. and his successors. The king laid these demands before his Parliament, and it is recorded that "The prelates, dukes, counts, barons, and commons, thereupon, after full deliberation, answered and said, with one accord, that neither the said King John, nor any other, could put himself, or his kingdom or people, in such subjection without their assent; and as it appears, by several evidences, that if this was done at all, it was done without their assent, and against his own oath on his coronation," they resolved to resist the demands of the pope with all their power. 2 From the words of this record it would appear, that whether the charter of King John submitted the royal prerogatives to Parliament or not, it was the opinion of the Parliament of Edward III. that even King John had been bound by the same laws which subsisted in their own time. 3

1 1 Will. & Mary, c. 6. Form and Order of H.M. Coronation. 2 See also coronation oath of Edw. II. in 1307, Foedera, vol. ii. p. 36; Book of Oaths, 1689, p. 195.
The same principle had been laid down by the most venerable authorities of the English law, before the limits of the constitution had become defined. Bracton, a judge in the reign of Henry III., declared that “the king must not be subject to any man, but to God and the law, because the law makes him king.”¹ At a later period, the learned Fortescue, the Lord Chancellor of Henry VI., thus explained the royal prerogative to the king’s son, whose banishment he shared: “A king of England cannot, at his pleasure ... make any alteration or change in the laws of the realm without the consent of the subject, nor burthen them, against their wills, with strange impositions.”² Later still, during the reign of Elizabeth, who did not suffer the royal prerogative to be impaired in her time, Sir Thomas Smyth affirmed that “the most high and absolute power of the realm of England consisteth in the Parliament;”³ and then proceeded to assign to the Crown exactly the same place in Parliament as that acknowledged by statute, since the Revolution.

Not to multiply authorities, enough has been said to prove that the Revolution defined, rather than limited, the constitutional prerogatives of the king, and that the Bill of Rights⁴ was but a declaration of the ancient law of England.⁵

An important principle of constitutional law was introduced at the Revolution, by which the sovereign is bound to an adherence to the Protestant faith, and to the maintenance of the Protestant religion, as established by law. He is required to swear, at his coronation, to maintain “the true profession of the Gospel, and the Protestant reformed

¹ Bracton, lib. 1, c. 8.
² De Laudibus Leg. Ang. c. 9.
³ De Republicâ Anglorum, book 2, c. 1, by Sir Thomas Smyth, kn.t.
⁴ “That the pretended power of suspending or dispensing with laws, or the execution of laws, without consent of Parliament, is illegal.”
⁵ “That levying money for or to the use of the Crown, by pretence of prerogative, without grant of Parliament for longer time or in other manner than the same is or shall be granted, is illegal.”—1st, 2nd, and 4th Articles of the Bill of Rights.
⁶ See Allen, Rise and Growth of Royal Prerogative in England; Stubbs, Const. Hist. i. 133; ii. 317. 354. 508.
Chapter I. religion established by law.” By the Bill of Rights,1 and the Act of Settlement,2 any person professing the popish religion, or who shall marry a papist, is incapable of inheriting or possessing the Crown, and the people are absolved from their allegiance. This exclusion is further confirmed by the second article of the Act of Union with Scotland;3 and, in addition to the coronation oath, every king or queen is required to make the declaration against the doctrines of the Roman Catholic Church prescribed by the 30 Chas. II. st. 2, either on the throne in the House of Lords, in the presence of both houses, at the first meeting of the first Parliament after the accession,4 or at the coronation, whichever shall first happen. By similar sanctions the sovereign is also bound to maintain the Protestant religion and Presbyterian church government in Scotland.5

The prerogatives of the Crown, in connexion with the legislature, are of paramount importance. The legal existence of Parliament results from the exercise of royal prerogative. As “supreme governor, as well in all spiritual or ecclesiastical things or causes as temporal,”6 the Queen virtually appoints the archbishops and bishops, who, as “lords spiritual,” form one of the three estates of the realm.7 All titles of honour are the gift of the Crown, and thus the “lords temporal” also, who form the remainder of the upper house, have been created by royal prerogative, and their number may be increased at pleasure. In early times the summons of peers to attend Parliament depended entirely on the royal will: but their hereditary titles have

1 1 Will. & Mary, sess. 1, c. 6; sess. 2, c. 2, s. 9.
2 12 & 13 Will. III. c. 2, s. 2.
3 5 & 6 Ann. c. 8.
4 20th Nov. 1837, 70 L. J. 10.
5 Act of Union, 5 & 6 Ann. c. 8, s. 2; 3 & 4 Ann. c. 7; Scotch Act, 5 Ann. c. 6 (for securing the Protestant religion and Presbyterian church government).
6 Act 1 Eliz. c. 1, s. 19; Gibson, Codex, i. 43. Concerning the use of the title “Supreme head of the Church,” see Coke, 4th Inst. 344; Hooker, Eccl. Pol. book viii. c. 4; Zurich Letters (Parker Society), i. 29. 33; and the preamble of 2 & 3 Ann. c. 20.
7 The order of precedence of the lords spiritual is as follows: princess of the blood, Archbishop of Canterbury, lord chancellor, Archbishop of York, lord president, lord privy seal, dukes, marquesses, earls, viscounts, bishops, barons.
long since been held to confer a right to sit in Parliament. To a Queen's writ, also, the House of Commons owe their election as the representatives of the people. Under the Royal Titles Act, 1876, her Majesty has further assumed the title of Empress of India. To these fundamental powers are added others, of scarcely less importance, which will be noticed in their proper place.

II. The Lords Spiritual and Temporal sit together, and jointly constitute the House of Lords, which is the second branch of the legislature in rank and dignity. 1. The lords spiritual are the archbishops and bishops of the Church of England having seats in Parliament by ancient usage and by statute. Before the Conquest, the lords spiritual held a prominent place in the great Saxon councils, which they retained in the councils of the Norman kings: but the right, or tenure, by which they have held a place in Parliament, since the Conquest, has not been agreed upon by constitutional writers. In the Saxon times, there is no doubt that they sat, as bishops, by virtue of their ecclesiastical office: but, according to Selden and to Blackstone, William the Conqueror, in the fourth year of his reign, first brought the bishops and abbots under the tenure by barony. 1 Lord Hale was of opinion that the bishops sit by usage; and Hallam maintains that the bishops of William the Conqueror were entitled to sit in his councils by the general custom of Europe, which invited the superior ecclesiastics to such offices, and by the common law of England, which the Conquest did not overturn. 2 Their presence in Parliament, except during the Commonwealth, 3 has been uninterrupted, and their right to sit there unquestioned, whatever nominal

1 Tit. of Hon. part 2, s. 20; 1 Comm. p. 156.
2 2 Middle Ages, 138; see also Stubbs, Const. Hist. i. 230; ii. 169. 194: Elsayne says, "ratione episcopalis dignitatis et tenent;" Hody, Treatise on Convocations, 126; see also Burn, Eccl. Law, 216, et seq.
3 They were excluded by Act 16 Car. I. c. 27, and did not resume their seats, after the Restoration, in the Convention Parliament, but were restored in the next Parliament, by statute 13 Car. II. c. 2. The four bishops added to the House of Lords, at the Union, to represent the episcopal body of Ireland, were withdrawn after the 1st January, 1871, on the disestablishment of the Irish Church (32 & 33 Vict. c. 42).
Chapter I. Changes may have been effected in the nature of their tenure.

There are two archbishops (of Canterbury and York) and twenty-four of the English bishops having seats in Parliament. By the Act 10 & 11 Vict. c. 108, it was enacted, that the number of lords spiritual shall not be increased by the creation of the bishopric of Manchester; and whenever there shall be a vacancy, by the avoidance of any one of the sees of Canterbury, York, London, Durham, or Winchester, or of any other see filled by the translation of a bishop already sitting, such vacancy shall be supplied by the issue of a writ of summons to the bishop elected to the same see; but if the vacancy be caused by the avoidance of any other see, such vacancy shall be supplied by the issue of a writ of summons to that bishop who shall not have previously become entitled to such writ; and no bishop elected to any see, not being one of the five sees above named, shall be entitled to a writ of summons, unless in the order and according to the conditions above prescribed. And similar provisions have been introduced into later acts, by which other bishoprics have since been created. A bishop may, under 32 & 33 Vict. c. 111, resign his see, and thereupon his seat in the House of Lords: but the coadjutor, his successor, does not acquire a title to sit in the upper house.

2. The lords temporal are divided into dukes, marquesses, earls, viscounts, and barons, whose titles are of different degrees of antiquity and honour. The title of duke, though first in rank, and a feudal title of high dignity in all parts of Europe in early times, is not the most ancient in this country. The title was first conferred, after the Conquest, by Edward III., upon his son Edward the Black Prince, whom he created Duke of Cornwall.

1 The Bishop of Sodor and Man has no seat in Parliament. The late bishop, Lord Auckland, sat as a peer amongst the barons.
2 Selden, Tit. of Hon. part 2, s. 9. 29, &c.
Marquesses were originally lords of the marches or borders, and derived their title from that office, which was anciently enjoyed without being attached to any distinct dignity in the peerage. The noblemen who governed the provinces on the borders of Wales and Scotland were called marchiones, and claimed certain privileges by virtue of their office: but the earliest creation of marquess, as a title of honour, was in the ninth year of Richard II. Robert de Vere, Earl of Oxford, was then created Marquess of Dublin for life; and the rank assigned to him in Parliament, by right of this new dignity, was immediately after the dukes, and before the earls.  

The title of Earl, in England, is equivalent to that of the Roman comes, or count in other countries of Europe. Amongst the Saxons there were ealdormen, to whom the civil, military, and judicial administration of shires was committed; and that title was often used by writers indifferently with comes, on account of the similarity of character and dignity denoted by those names. When the Danes had gained ascendancy in England, the ancient Danish title of eorle, which signified “noble by birth,” and was also used to indicate a similar dignity, was gradually substituted for that of ealdorman. At the Norman Conquest the title of eorle, or earl, was in universal use, and was so high a dignity, that in the earliest charters of William the Conqueror, he styles himself, in Latin, “Princeps Normanorum,” and in Saxon, Eorle or Earl of Normandy. After the Conquest, the Norman name of count distinguished the noblemen who enjoyed this dignity, from whence the shires committed to their charge have ever since been called counties. In the course of time the original title of earl was revived: but their wives, and peeresses of that rank in

1 Selden, Tit. of Hon. part 2, s. 47; 3 Rot. Parl. 488.  
2 West, Inquiry into the Manner of creating Peers, s. 4; Spelman on Feuds and Tenures, 13; Rep. on Dignity of the Peerage, 1820, 17; Kemble, Saxons, ii. 131-150; Palgrave, Engl. C. m. 592, et seq.  
3 Palgrave, Engl. Com. 11. 118, 326, 327; Kemble, Saxons in England, ii. 132; 2 Hallam, Middle Ages, 65, 9th ed.; Selden, Tit. of Hon. part 2, s. 2; Rep. on Dignity of the Peerage, 86.
Chapter I. their own right, have always retained the French or Norman name of countesses.

Between the dignities of earl and baron no rank intervened, in England, until the reign of Henry VI.; but in France the title of viscount, as subordinate to that of count, was very ancient. In England, the title of viscount was first conferred upon John Beaumont, Viscount Beaumont, by Henry VI., in the eighteenth year of his reign; and a place was assigned to him in Parliament above the barons.\(^1\) The rank and precedence of a viscount were more distinctly defined by patent, in the 23rd Henry VI., to be above the heirs and sons of earls, and immediately after the earls themselves.

Barons are often mentioned in the councils of the Saxon kings, and in the laws of Edward the Confessor were classed with the archbishops, bishops, and earls: but the name bore different significations, and no distinct dignity was annexed to it, as in later times. After the Conquest, every dignity was attached to the possession of lands, which were held immediately of the king, subject to feudal services. The lands which were granted by William the Conqueror to his followers descended to their posterity; and those who held lands of the Crown *per baroniam* were ennobled by the dignity of baron. By the feudal system, every tenant was bound to attend the court of his immediate superior; and hence it was the duty of the barons, as tenants *in capite* of the king, to attend the king's court or council: but although their obligation to attend the king's council was one of the services incident to their tenure, they received writs of summons from the king when their attendance was required. At length, when the lands became subdivided, and the tenants *per baroniam* were consequently more numerous and poor, some of them only were summoned by writ, and thus they were gradually separated into greater and lesser barons: of whom the former continued to receive particular writs of summons from the king, and the latter a general summons only through the sheriffs. The feudal tenure of

\(^1\) Selden, *Tit. of Hou.* part 2, ss. 19, 30.
the baronies afterwards became unnecessary to create the dignity of a baron, and the king's writ or patent, and occasionally an Act of Parliament, or creation "in pleno Parlamento," conferred the dignity and the seat in Parliament. The condition of the lesser barons, after their separation from their more powerful brethren, will be presently explained (see p. 15).

On the union of Scotland, in 1707, the Scottish peers were not admitted, as a class, to seats in the British Parliament: but, in pursuance of the provisions of several statutes, they elect for each Parliament sixteen representatives from their own body. The representative peers of Scotland enjoy all the privileges of Parliament, including the right of sitting upon the trials of peers; and all peers of Scotland are peers of Great Britain, and have rank and precedence immediately after the peers of the like orders and degrees in England, at the time of the union, and before all peers of Great Britain of the like orders and degrees created since the union, and are to be tried as peers, and enjoy all privileges as peers, except the right of sitting in Parliament, or upon the trials of peers. The Scottish peerage consists exclusively of the descendants of peers before the union, as no provision was made for any subsequent creation of Scottish peers by the Crown. An authentic list of the peerage was entered in the roll of peers, by order of the House of Lords, on the 12th February, 1708, to which other peerages have since been added by order of that house, when claims have been established; and in order to prevent the assumption of dormant and extinct peerages, it is provided, by 10 & 11 Vict. c. 52, that no title standing in that roll, in right of which no vote has been given since 1800, shall be called over at an

1 Selden, Works, 713-743; West, Inquiry into the Manner of creating Peers, 3.14. 36. 31. 36. 70. 71; 3 Rep. Dign. of Peerage, 97, &c.; 2 Hallum, Middle Ages, 261.
2 Act of Union, 5 & 6 Ann. c. 8, art. xxili. & xxiii.; Act of the Parliament of Scotland, 5 Ann. c. 8; 6 Ann. c. 23; 10 & 11 Vict. c. 52; 14 & 15 Vict. c. 87; 15 & 16 Vict. c. 35.
3 Act of Union, 5 Ann. c. 8, art. xxiii.
Chapter I.

election, without an order of the House of Lords. The House of Lords, when they have disallowed any claim, may also order that such title shall not be called over at any future election. A Scotch representative peer, if created a peer of the United Kingdom, does not cease to be one of the representatives of the peerage of Scotland.¹

Under the Act for the legislative union with Ireland, which came into operation in 1801, the Irish peers elect twenty-eight representatives for life from the peerage of Ireland.² By that Act, the power of the Queen to add to the number of Irish peers is subject to limitation. She may make promotions in the peerage at all times; but she can only create a new Irish peer as often as three of the peerages of Ireland, which were in existence at the time of the union, have become extinct.³ But if it should happen that the number of Irish peers,—exclusive of those holding any peerage of the United Kingdom, which entitles them to an hereditary seat in the House of Lords,—should be reduced to one hundred, then one new Irish peerage may be created as often as one of such hundred peerages becomes extinct, or as often as an Irish peer becomes entitled, by descent or creation, to an hereditary seat in Parliament. The object of that article of union was to keep up the Irish peerage to the number of one hundred, exclusive of Irish peers who may be entitled, by descent or creation, to an hereditary seat in the House of Lords of the United Kingdom.⁴ The representative peers of Ireland are

¹ In the case of the Duke of Queensberry and the Earl of Abercorn, created peers of the United Kingdom (13th Feb. 1787), the Lords resolved that they therefore ceased to sit as Scotch representative peers, 26 Parl. Hist. 597; 37 L. J. 594. Lord Colville, of Culross, a representative peer of Scotland, created a baron of the United Kingdom during the Parliament of 1886–92, sat throughout the Parliament as baron, and as representative peer of Scotland.

² By the 45 & 46 Vict. c. 26, the period from the date of the writ to the return was reduced from fifty-two days to thirty days.

³ See Fermoy Peerage case, 1856; 140 H. D. 3 s. 588; 88 L. J. 150. 336.

⁴ Of late years, vacancies in the Irish peerage have not been filled up. Rep. of Lords' Committee, 1874; 9th July, 1875, and address to the Queen; 225 H. D. 3 s. 1210; Lord Inchiquin's Irish Peerage Bills, 1876 and 1877; Lords' Parl. Return, 1877, No. 148.
entitled to the privileges of Lords of Parliament, and all the peers of Ireland have privilege of peerage. They may be elected as members of the House of Commons, for any place in Great Britain: but while sitting there, they do not enjoy the privilege of peerage. These, then, are the component parts of the House of Lords, of whom all peers and lords of Parliament, whatever may be their title, have equal voice in Parliament. By standing order No. 12 of the House of Lords, no peer is permitted to sit in the house until he is twenty-one years of age; and by the Act of Union the representative peers of Scotland are required to be of full age.

Life peerages were formerly not unknown in our constitution; and in 1856 her Majesty, having been advised to revive the dignity, with a view to improve the appellate jurisdiction of the House of Lords, created Sir James Parke, late one of the barons of the Court of Exchequer, by letters-patent, Baron Wensleydale, "for and during the term of his natural life." But the House of Lords referred these letters-patent to a Committee of Privileges, which, after examining all the precedents of life peerages, reported their opinion, "that neither the said letters-patent, nor the said letters-patent with the usual writ of summons issued in pursuance thereof, can enable the grantee therein named to sit and vote in Parliament." The house concurred in this opinion, and Lord Wensleydale, therefore, did not offer to take the oaths and his seat, but was shortly afterwards created an hereditary baron, in the usual form. The expediency of creating life peers, however, continued to be discussed; and, in 1876, three lords of appeal in ordinary were constituted by statute, enjoying the rank of baron for life, and the right of sitting and voting so long as they continue in office (see p. 49):

1 See COTES v. Lord Hawarden, 7 Barn. & Cr. 388.
2 Fourth art. of Union.
3 5 Ann. c. 8, art. xxv. s. 12.
4 See cases collected by Committee of Privileges, 1856.
5 Report of Committee of Privileges, 1856, No. 18; 140 H. D. 3 s. 263. 1290; 1 May, Const. Hist. 291-299.
6 142 H. D. 3 s. 780, &c.; 143 ib. 428, &c.
Chapter I.

The two estates of lords spiritual and lords temporal, thus constituted, may originally have had an equal voice in all matters deliberated upon, and had separate places for their discussion: but at a very early period they are found to constitute one assembly; and for many centuries past, though retaining their distinct character and denominations, they have been, practically, but one estate of the realm. Thus the Act of Uniformity, 1st Eliz. c. 2, was passed by the queen, the lords temporal, and the commons, although the whole estate of the lords spiritual dissented.

The lords temporal are the hereditary peers of the realm, whose blood is ennobled, and whose dignities can only be lost by attainder, or taken away by Act of Parliament: but the bishops, not being ennobled in blood, are, as declared by the Lords' standing order No. 73, only lords of Parliament, and not peers. The votes of the spiritual and temporal lords are intermixed, and the joint majority of the members of both estates determine every question: but they sit apart, on separate benches, the place assigned to the lords spiritual being the upper part of the house, on the right hand of the throne.

By constant additions to the peerage the number of members of the House of Lords, comprising the several orders, spiritual and temporal, of which it is constituted, has been raised to upwards of 500.  

III. The third estate is that of the Commons of the realm. The date of their admission to a place in the legislature has been a subject of controversy among historians and constitutional writers; of whom some have traced their claims up to the Saxon period, while others deny them any share in the government, until long after the Conquest. Without

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2 In February, 1892, there were 553.—Roll of Lords Spiritual and Temporal.
3 Until 1872, the ancient terms of knights, citizens, and burgesses, barons of the cinque ports and burgesses of the universities, were used in the writs and returns; but by the Parliamentary and Municipal Elections Act, 1872, these distinctions were discontinued, and all are alike termed members, in the writs and returns.
entering minutely into this subject, a brief statement will serve to unfold the ancient character of the House of Commons, and to render its present constitution the more intelligible.

It is agreed by writers of learning and authority, that the Commons formed part of the great synods or councils before the Conquest: but how they were summoned or selected, and what degree of power they possessed, is a matter of doubt and obscurity. Under the Saxon kings, the forms of local government were undoubtedly popular. The shire-gemót was a kind of county Parliament, over which the ealdorman, or earl of the shire, presided, with the bishop, the shire-gerieve, or sheriff, and the assessors appointed to assist their deliberations upon points of law. A shire-gemót was held at least twice a year in every county, when the magistrates, thanes, and abbots, with all the clergy and landowners, were required to be present; and a variety of business was transacted: but the proceedings of these assemblies generally partook more of the character of a court of justice, than of a legislative body.

That the constitution of the witen-gemót, or national council, was equally popular, cannot be affirmed with confidence. Although the smaller proprietors of land may not have been actually disqualified by law from taking part in the proceedings; yet the distance of the council from their homes must practically have prevented them from attending. It has been conjectured that they were represented by their tithing men, and the inhabitants of towns by their chief magistrates: but no system of election or political representation, properly so called, can be distinctly traced back to that time.

The clergy may have been virtually represented by the bishops and abbots, and the absent laity of each shire by the ealdorman, the sheriff, and such of the rich proprietors of land as may have been able to attend the gemót.¹ The people may thus have been held to be present at the making of laws, and their name accordingly introduced into the

¹ Komble, Saxons in England, ii. 193-201.
Chapter I. records. That they were actually present on some occasions, is certain: but their right to attend, either by themselves or by elected representatives, is incapable of historical proof.

But whatever may have been the position of the people in the Saxon government, the Conquest, and the strictly feudal character of the Norman institutions, must have brought them completely under the subjection of their feudal superiors; and it is probable that the commonalty, as a class, were not admitted to any share in the national councils, until some time after the Conquest, but were bound by the acts of their feudal lords; and that the Norman councils were formed of the spiritual lords, and mainly, if not exclusively, of the tenants in chief of the Crown, who held by military service.

Consistently with the feudal character of the Norman councils, the first knights of the shire are supposed to have been the lesser barons, who, though still summoned to Parliament, gradually forebore to attend, and selected some of the richest and most influential of their body to represent them. The words of the charter of King John favour this position; for it is there promised that the greater barons shall be summoned personally by letters from the king, and all other tenants in chief under the Crown by the sheriffs and bailiffs. The summons to the lesser barons being thus only general, no peculiar obligation of personal attendance was imposed; and, as their numbers increased, and their wealth was subdivided, they were naturally reluctant to incur the charge of distant journeys, and the mortification of being held in slight esteem by the greater barons. This position receives confirmation from the ancient law of Scotland, in which the small barons and free tenants were classed together, and jointly required to send representatives. To the tenants in chief by knight's service were

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3 1427, c. 102.
added, from time to time, the representatives of the richer cities and boroughs; and this addition to the legislature may be regarded as the origin of the Commons as a distinct estate of the realm in Parliament.

It is not known at what time these important changes in the constitution of Parliament occurred, for no mention is made of the Commons, in any of the early records after the Conquest. William the Conqueror, in the fourth year of his reign, summoned, by the advice of his barons, a council of noble and wise men, learned in the law of England, and twelve were returned out of every county to show what the customs of the kingdom were: but this assembly, although, in the opinion of Lord Hale, it was "as sufficient and effectual a Parliament as ever was held in England," bore little resemblance to a legal summons of the commonalty, as an estate of the realm.¹

After this period, the laws and charters of William and his immediate successors constantly mention councils of bishops, abbots, barons, and the chief persons of the kingdom, but are silent as to the Commons. But in the 22nd year of Henry II. (A.D. 1176), Benedict Abbas relates, that about the feast of St. Paul, the king came to Northampton, and there held a great council concerning the statutes of his realm, in the presence of the bishops, earls, and barons of his dominions, and with the advice of his knights and men. This is the first chronicle which appears to include the Commons in the national councils: but it would be too vague to elucidate the inquiry, even if its authority were of a higher order. And again, in the 15th of King John (A.D. 1213), a writ was directed to the sheriff of each county, "to send four discreet knights to confer with us concerning the affairs of our kingdom:" but it does not appear whether they were elected by the county, or picked, at pleasure, by the sheriff.²

Two years afterwards, the great charter of King John

¹ 1 Hoveden, 343; 1 Hale, Hist. of the Common Law, 202; 2 Hallam, Middle Age, 146. ² 2 Prynne, Register, 16; see also Palgrave, English Commonwealth, chap. ix.
Chapter I. defined the constitution of Parliament more clearly than any earlier record.

"The main constitution of Parliament, as it now stands," says Blackstone, "was marked out so long ago as the seventeenth year of King John, A.D. 1215, in the great charter granted by that prince, wherein he promises to summon all archbishops, bishops, abbots, earls, and greater barons personally, and all other tenants in chief under the Crown by the sheriff and bailiffs, to meet at a certain place, with forty days' notice, to assess aids and scutages when necessary."

Notwithstanding the distinctness of this promise, the Growth of its constitution of Parliament, as it now stands, was marked out so long ago as the seventeenth year of King John, A.D. 1215, in the great charter granted by that prince, wherein he promises to summon all archbishops, bishops, abbots, earls, and greater barons personally, and all other tenants in chief under the Crown by the sheriff and bailiffs, to meet at a certain place, with forty days' notice, to assess aids and scutages when necessary."

Notwithstanding the distinctness of this promise, the Growth of nothwithstanding the distinctness of this promise, the Growth of charters of Henry III. omitted the engagement to summon the tenants in chief by the sheriff and bailiffs; and it is doubtful whether they were summoned or not, in the early part of that reign. But a writ of the 38th year (A.D. 1254) is extant, which involves the principles of representation more distinctly than any previous writ or charter. It requires the sheriff of each county "to cause to come before the king's council two good and discreet knights of his county, whom the men of the county shall have chosen for this purpose, in the stead of all and each of them, to consider, along with the knights of other counties, what aid they will grant the king." This, however, was for a particular occasion only; and to appear before the council is not to vote as an estate of the realm. Moreover, the practice of summoning citizens and others before the council, for particular purposes, continued long after the regular summons of members to Parliament from cities and boroughs had commenced. Nevertheless, representation of some kind then existed, and it is interesting to observe how early the people had a share in granting subsidies. Another writ, in 1261, directs the sheriffs to cause knights to repair, from each county, to the king at Windsor. At length, in the 49th Henry III. (A.D. 1265), writs were issued to the sheriffs by Simon de Montfort, Earl of Leicester, in the king's name, directing them to return two knights for each county, and two citizens or burgesses for

2 For instances in the reign of Edward III. and Richard II. see 468. 469. 471. 741; Rym. Food. 186.
3 2 Prymme, Register, 27.
every city and borough; and from this time may be clearly dated the recognition of the Commons, as an estate of the realm in Parliament;¹ and there is evidence to prove that they were repeatedly assembled by Edward I., especially in the 11th, the 21st, 22nd, and 23rd years of his reign.² Passing over less prominent records of the participation of the Commons in the government, the statute of 25th Edward I., "De tallagio non concedendo," must not be overlooked. It was there declared that "no tallage or aid shall be taken or levied by us or our heirs in our realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land." This statute acknowledges the right of the Commons to tax themselves; and a few years later a general power of legislation was also recognized as inherent in them. A statute was passed in the 15th Edward II. (1322), which declares that "the matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in Parliament, by the king and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as had been before accustomed."³ It may be added, in conclusion, that during the reign of Edward III. the Commons were regularly mentioned in the enacting part of the statutes, having been rarely mentioned there in previous reigns.⁴

So far the constituent parts of Parliament may be traced; and the three estates of the realm originally sat together in one chamber. When the lesser barons began to secede from personal attendance, as a body, and to send representatives,

¹ See Lord Lyttelton, Hist. of Hou. II. ii. 276; iv. 79, et seq.; Stubbs, Const. Hist. ii. 33.
² See Table of Writs, Rep. Dig. Poerage, 489; Write of Summons to Parliament, by Palgrave, 1827-1834; Parry, Parliaments and Councils of England, Int.; and 49-69; Ruffhead, Pref. to Statutes. The writ of the 22nd Edward I. is for knights only. Lord Colchester's Diary, iii. 27. 40. 47. 54-66.
⁴ ² Hallam, Middle Ages, 180; Hakewel, 101; Cotton, Abridgment, Pref.
Chapter I. they continued to sit with the greater barons as before: but when they were joined by the citizens and burgesses, who, by reason of their order, had no claim to sit with the barons, it is natural that they should have consulted with the other representatives, although they continued to sit in the same chamber as the Lords. The ancient treatise, "De modo tenendi Parliamentum," if of unquestioned authority, would be conclusive of the fact that the three estates ordinarily sat together: but that when any difficult and doubtful case of peace or war arose, each estate sat separately, by direction of the king. But this work can claim no higher antiquity than the reign of Richard II., and its authority is only useful so far as it may be evidence of tradition, believed and relied on at that period. Misled by its supposed authenticity, Sir Edward Coke and Elsynge entertained no doubt of the fact as there stated; and the former alleged that he had seen a record of the 30th Henry I. (1130), of the degrees and seats of the Lords and Commons as one body; and that the separation took place at the desire of the Commons.¹

The union of the two houses is sometimes deduced from the supposed absence of a Speaker of the Commons in early times: but Sir Edward Coke is in error when he infers that the Commons had no Speaker so late as the 28th Edward I.;² for in the 44th Henry III., Peter de Montfort signed and sealed an answer of the Parliament to Pope Alexander after the Lords, "vice totius communitatis."³ Nor can any decided opinion be formed from the fact of Speakers of the Commons not having been mentioned in earlier times; for if they consulted apart from the Lords, a Speaker would have been as necessary to preside over their deliberations, as when a more complete separation ensued. The first Speaker of the Commons to whom that title was expressly given was Sir T. Hungerford, in the 51st Edward III. (1376).⁴

¹ 13 Howell, St. Trials, 1130. ² 4 Inst. 2. ³ Elsynge, 155 ; Hakewel, 200. ⁴ 2 Rot. Parl. 374; 2 Hatsell, 212, n.; 2 Hallam, Middle Ages, 190. In 1377 Sir Peter de la Mare was chosen Speaker, and is said in the Parliamentary History to be the first on record. 1 Parl. Hist. 339, 349; 2 Hatsell, 212.
LORDS AND COMMONS SEPARATED.

It appears from several entries in the rolls of Parliament in the early part of the reign of Edward III., that after the cause of summons had been declared by the king to the three estates collectively, the prelates with the clergy consulted by themselves; the earls and barons by themselves; and the Commons, and sometimes even the citizens and burgesses, by themselves; and that they all delivered their joint answer to the king.\(^1\)

The inquiry, however, is of little moment, for whether the Commons sat with the Lords in a distinct part of the same chamber, or in separate houses as at present, it can scarcely be contended that, at any time after the admission of the citizens and burgesses, the Commons intermixed with the Lords, in their votes, as one assembly. Their chief business was the voting of subsidies, and the bishops granted one subsidy, the lords temporal another, and the Commons again a separate subsidy for themselves. The Commons could not have had a voice in the grants of the other estates; and although the authority of their name was used in the sanction of Acts of Parliament, they ordinarily appeared as petitioners. In that character it is not conceivable that they could have voted with the Lords; and it is well known that down to the reign of Henry VI., no laws were actually written and enacted until the end of the Parliament.

Various dates have been assigned for the formal separation of the two houses, some as early as the 49th Henry III.,\(^3\) and others so late as the 17th Edward III.:\(^4\) but as it is admitted that they often sat apart for deliberation, parti-

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\(^1\) In the 46th Edward III., after the Parliament had granted supplies, and the petitions of the Commons had been read and answered, the knights of the shire had leave to depart, and writs for their wages and expenses were made out for them by the chancellor's order: but he commanded the citizens and burgesses to stay, who, being again assembled before the prince, prelates, and lords, granted for the safe conveying their ships and goods 2s. on every tun of wine imported or exported out of the kingdom, and 6d. in the pound on all their goods and merchandise for one year.—2 Rot. Parl. 310.

\(^2\) Rot. Parl. 5 & 6 Edw. III.; 4 Inst. 2; Elsyng, 102.

\(^3\) Per Lord Ellenborough, in Burdett v. Abbot.

Chapter I.icular instances in which they met in different places will not determine whether their separation, at those times, was temporary or permanent. When the Commons deliberated apart, they sat in the chapter-house of the abbot of Westminster; and they continued their sittings in that place, after their final separation.¹

The number of members admitted to the House of Commons has varied considerably at different periods. In addition to those boroughs which appear from the first to have returned burgesses to Parliament, many others had that privilege conferred upon them by charter, or by statute, in succeeding reigns; while some were omitted by the negligence or corruption of sheriffs, and others were discharged from what they considered a heavy burthen—the expense of maintaining their members. In the time of Edward III. 4s. a day were allowed to a knight of the shire, and 2s. to a citizen or burgess;² and this charge was, in the case of poor and small communities, too great an evil to be compensated by the possible benefit of representation. In the reign of Henry VI., there were not more than 300 members of the House of Commons, being about 25 more than in the reign of Edward I., and 50 more than in the reign of Edward III. The legislature added 27 for Wales,³ and four for the county and city of Chester,⁴ in the reign of Henry VIII., and four for the county and city of Durham, in the reign of Charles II.;⁵ while 180 new members were added by royal charter between the reigns of Henry VIII. and Charles II.⁶

Forty-five members were assigned to Scotland, as her pro-portion of members in the British Parliament, on the union of that kingdom with England; and one hundred to Ireland¹

¹ Elsyng, 104; 1 Parl. Hist. 91; 2 Rot. Parl. 289. 351. On the restoration of the Palace of Westminster after the fire, 16th Oct. 1834, the Chambers allotted to the Houses of Parliament were first used by the Lords, 13th April, 1847: by the Commons, 30th May, 1850, 105 C. J. 377.
² 4 Inst. 16; Prynne, 4th Register, pp. 53, 495.
⁴ 34 Hen. VIII. c. 13.
⁵ 25 Car. II. c. 9.
⁶ Christian’s Notes to Blackstone; 2 Hatsell, 413.
at the commencement of the present century, when her Parliament became incorporated with that of the United Kingdom. By these successive additions the number was increased to 658; and notwithstanding the changes effected in the distribution of the elective franchise by the Reform Acts in 1832, that number continued unaltered, except by the disfranchisement of certain cities and boroughs for corruption, until the year 1885, when the number of the house was raised to 670 by the operation of the Redistribution of Seats Act, 1885 (see p. 23).

The object of the English Reform Act of 1832, as stated in the preamble, was to correct divers abuses that had long prevailed in the choice of members. The right of returning members was taken from many inconsiderable places, and granted to large, populous, and wealthy towns. The number of knights of the shire was increased, and the elective franchise was considerably extended. To effect these changes, 56 boroughs in England and Wales were entirely disfranchised, and 30, which had previously returned two members, were restricted to one member; while 42 new boroughs were created, of which 22 were each to return two members, and 20 a single member. Several small boroughs in Wales were united for the purpose of contributing to return a member.

The result of these and other local arrangements, which it is not necessary to describe, was that the two universities and the several cities and boroughs contributed 341 citizens and burgesses for England and Wales.

By the Reform Act of 1867, the boroughs of Totnes, Reigate, Yarmouth, and Lancaster were disfranchised; 38 boroughs previously returning two members were reduced to one. Manchester, Liverpool, Birmingham, and Leeds each received a third member; Merthyr Tydfil and Salford each a second member; the Tower Hamlets were divided into two boroughs, each returning two members; 10 new boroughs were created, of which Chelsea returned two members, and every other borough one only. By these arrangements the representatives for boroughs were reduced
Chapter I. by 26; and the University of London became entitled to return one member. But before this Act came into operation, seven English boroughs, viz. Arundel, Ashburton, Dartmouth, Honiton, Lyme Regis, Thetford, and Wells, were disfranchised by the Scotch Reform Act of 1868, and the seats added to Scotland. Several of the counties were divided, by the Reform Act of 1832, into electoral districts or divisions, by which the number of knights of the shire was increased to 162; and by the Act of 1867, 13 counties were further divided, and received an addition of 25 members. By the Redistribution of Seats Act, 1885, the representation of England and Wales was subjected to the following rearrangement: 53 counties, in 253 divisions, return 253 members; 143 cities and boroughs, in 215 divisions, return 237 members; 3 universities return 5 members; making a total number of 495 for England and Wales.

The number of members for Scotland was increased by the Scotch Reform Act of 1832\(^1\) from 45 to 53; 30 of whom were commissioners of shires, and 23 commissioners of burghs, representing towns, burghs, or districts of small burghs. By the Reform Act of 1868, the number of members for Scotland was increased to 60; three new members being given to shires, two to the universities, and two to cities and burghs; and under the Act of 1885 Scotland returns for 34 counties, in 39 divisions, 39 members; for 7 cities and towns, 18 members; for 13 districts of burghs, 13 members; for 4 universities, 2 members; making a total number of 72 members for Scotland.

By the Irish Reform Act of 1832,\(^2\) the number of representatives for Ireland in the Imperial Parliament was increased from 100 to 105; 64 being for counties, 39 for cities and boroughs, and two for the University of Dublin. By the Irish Reform Act of 1868, no change was made in the number of members representing that part of the United Kingdom, nor in the distribution of seats: but the two disfranchised boroughs of Sligo and Cashel were left

\(^1\) 2 & 3 Will. IV. c. 65.
\(^2\) Ib. c. 88.
Constituency of English counties.

without representation; and under the Act of 1885 Ireland returns for 32 counties, 85 members; for 9 cities and boroughs, 16 members; for 1 university, 2 members; making a total number of 103 members for Ireland.

The classes of persons by whom these representatives are elected may be described, generally, in few words, if the legal questions connected with the franchise, which are both numerous and intricate, be avoided. To begin with the English counties. Before the 8th Henry VI. all freeholders or suitors present at the county court had a right to vote (or, as is affirmed by some, all freemen): but by a statute passed in that year (c. 7), the right was limited to "people dwelling and resident in the same counties, whereof every one of them shall have free land or tenement to the value of 40s. by the year, at the least, above all charges." By the Reform Act of 1832 this franchise of a 40s. freehold of inheritance was not disturbed: but limitations were imposed upon freehold tenures for life. No person, if not seised at the passing of the Act, was entitled to vote in respect of such tenures, unless he was in bona fide occupation of lands and tenements, or unless they came to him by marriage, marriage-settlement, devise, or promotion to any benefice or office, or unless they were of the clear yearly value of 10l., which value was reduced to 5l. by the Reform Act of 1867. Copyholders having an estate of 10l. a year; leaseholders of land of that value whose leases were originally granted for 60 years; leaseholders of 50l., with 20 years' leases; and tenants-at-will occupying lands or tenements paying a rent of not less than 50l. a year, had the right of voting conferred upon them by the Reform Act of 1832; and the Act of 1867 reduced the franchise of copyholders and leaseholders from 10l. to 5l., and the occupation franchise from 50l. to 12l.

In cities and boroughs the right of voting formerly varied according to the ancient custom prevailing in each. With certain modifications, some of these ancient rights were retained by the Reform Act of 1832, as that of freemen, and

1 See Act 7 Hen. IV. c. 15.
Chapter I. other corporate qualifications: but all occupiers of houses of the clear yearly value of 10l. were enfranchised by that Act. The Reform Act of 1867 extended the borough franchise to all occupiers of dwelling-houses\(^1\) who have resided for twelve months on the 31st July, in any year, and have been rated to the poor rates as ordinary occupiers, and have, on or before the 20th July, paid such rates up to the preceding 5th January,\(^2\) and to lodgers who have occupied, for the same period, lodgings\(^3\) of the annual value, unfurnished, of 10l. By the 32 & 33 Vict. c. 41, owners may pay the rates upon houses under 20l., without disqualifying the occupier; and vestries may rate the owner instead of the occupier.

The Scotch Reform Act of 1832 reserved the rights of all persons then on the roll of freeholders of any shire, or who were entitled to be put upon it, and extended the franchise to all owners of property of the clear yearly value of 10l., and to certain classes of leaseholders. In cities, towns, and burghs, the Act substituted a 10l. household franchise for the system of electing members by the town councils, which had previously existed. By the Scotch Reform Act of 1868, the county franchise was extended to owners of lands and heritages of 5l. yearly value, and to occupiers of the rateable value of 14l.; and the borough franchise to all occupiers of dwelling-houses paying their rates; and to tenants of lodgings of 10l. clear annual value, unfurnished.

In Ireland various classes of freeholders and leaseholders\(^4\) were invested with the county franchise, by the Reform Act of 1832, to whom were added, by the 13 & 14 Vict. c. 69, occupiers of land, rated for the poor rate at a net annual value of 12l.; and persons entitled to estates in fee, or in tail, or for life, of the rated value of 5l. And by the latter Act, in addition to the borough constituency under the Reform Act, the occupiers of lands or premises rated at

\(^1\) Dwelling-house defined by 41 & 42 Vict. c. 26, s. 5; and see 41 & 42 Vict. ec. 3 and 5 (House Occupiers’ Disqualification, England and Scotland).

\(^2\) 30 & 31 Vict. c. 102, s. 3.

\(^3\) Lodgings more fully defined by 41 & 42 Vict. c. 26, ss. 5, 6.
were entitled to vote for cities and boroughs. By the Irish Reform Act of 1868, the borough franchise was extended to occupiers of houses rated at 4l., and of lodgings of the annual value of 10l. unfurnished. No change was made in the qualification of county voters.

By the Representation of the People Act, 1884, 48 Vict. c. 3, a uniform household franchise, and a uniform lodger franchise are established in all counties and boroughs throughout the United Kingdom. The franchise is also extended to those who inhabit dwelling-houses by virtue of any office, service, or employment; and the county and borough 10l. occupation franchise is substituted, in the counties, for the 12l. rateable value occupation franchise of 1867, and, as regards boroughs, for the 10l. occupation franchise of 1832.

By whatever right these various classes of persons claim to vote, either for counties or for cities and boroughs, it is necessary that they shall be registered in lists prepared by the overseers of each parish. On certain days courts are held, by barristers appointed by the Lord Chief Justice of England and the Senior Judge of each Summer Circuit, to revise these lists, when claims may be made by persons omitted, and objections may be offered to any name inserted by the overseers. If an objection be sustained, the name is struck off the list; and the claimant will have no right to vote at any ensuing election unless he shall succeed, at a subsequent registration, in establishing his claim: but, in certain cases, there is an appeal to the Queen's Bench Division of the High Court of Justice from the decisions of revising barristers; and the register is corrected in accordance with the judgment of that court.

The last change which took place in the law relating to registration was effected by the Registration Act, 1885. The chief peculiarity of this Act is the extension of the borough system of registration to counties, the far greater

1 Stephen's Blackstone, ed. 1890; 2 & 3 Will. IV. c. 45; 6 & 7 Vict. ii. 364; Rogers on Elections, 15th ed. part i. xxx.
Chapter I. minuteness with which the duties of overseers are defined, and the elaborate instructions and directions given to them in the precepts in the schedules of the Act.¹

It has not been attempted to explain, in detail, all the distinctions of the elective franchise; neither is it proposed to state all the grounds upon which persons may be disqualified from voting. Aliens, persons under twenty-one years of age, of unsound mind, in receipt of parochial relief, or convicted of certain offences, are incapable of voting. Many officers, also, concerned in the collection of the revenue were formerly disqualified: but by recent statutes all these disabilities have been removed.²

The legal qualifications and disqualifications for sitting and voting in Parliament may now be briefly enumerated. The property qualification which, since the reign of Queen Anne,³ had been required for members sitting for places in England and Ireland, was in the year 1858 abolished by the Act 21 & 22 Vict. c. 26.

Formerly it was necessary that the member chosen should himself be one of the body represented.⁴ The law, however, was constantly disregarded, and in 1774 was repealed.⁵ An alien is disqualified to be a member of either House of Parliament.⁶ The Act 12 & 13 Will. III. c. 2, declared that “no persons born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen, except such as are born of English parents), shall be capable to be of the privy council, or a member of either House of Parliament.” The 1 Geo. I. stat. 2, c. 4, in order to enforce the provisions of the Act of William, required a special clause of disqualification to be inserted in every Naturalization Act: but as no clause of this nature could bind future Parliaments, occasional exceptions were

¹ Rogers on Elections, 15th ed. part i. xxxiv.
² By Acts 31 & 32 Vict. c. 73, and 37 & 38 Vict. c. 22, revenue officers were restored to the right of voting.
³ By 9 Anne, c. 5; 33 Geo. II. c. 20; 1 & 2 Vict. c. 48.
⁴ 1 Peck. 19; 1 Hen. V. c. 1; 8 Hen. VI. c. 7; 10 Hen. VI. c. 2; 23 Hen. VI. c. 15.
⁵ 14 Geo. III. c. 58.
⁶ 7 & 8 Vict. c. 66, s. 6.
permitted, as in the cases of Prince Leopold in 1816, and Prince Albert in 1840;¹ and this provision of the 1st George I. was repealed by the 7 & 8 Vict. c. 66, s. 2. Later Naturalization Acts have since been passed, without such a disqualifying clause.² And by the 33 & 34 Vict. c. 14, an alien to whom a certificate of naturalization is granted by the Secretary of State, becomes entitled to all political and other rights, powers, and privileges, and is subject to all the obligations of a British subject.³

By standing order No. 12, the Lords prescribe that no lord under the age of twenty-one years shall sit in their house. By the 7 & 8 Will. III. c. 25, s. 8, a minor was disqualified to be elected to the House of Commons. Before the passing of that Act, several members were notoriously under age, yet their sitting was not objected to. Sir Edward Coke said that they sat "by connivance: but if questioned would be put out;"⁴ yet on the 16th December, 1690, on the hearing of a controverted election, Mr. Trenchard, though admitted by his counsel to be a minor, was declared upon a division to be duly elected.⁵ And even after the passing of the Act of Will. III., some minors sat "by connivance." Charles James Fox was returned for Midhurst when he was nineteen years and four months old, and sat and spoke before he was of age;⁶ and Lord John Russell was returned for Tavistock a month before he came of age.⁷

By the law of Parliament a member already returned for one place, is ineligible for any other, until his first seat is vacated; and hence it is the practice for a member, desiring to represent some other place, to accept the Chiltern

¹ In 1765 the judges were unanimously of opinion, "That an alien married to a King of Great Britain is, by operation of the law of the Crown (which is part of the common law), to be deemed as a natural-born person from the time of such marriage, so as not to be disabled by the Act 12 Will. III." 31 L. J. 174.

² Lowther's Naturalization Act, 1866; Bischofsheim, Baron de Ferrières, and Lange's Acts, 1867; Bolokow's Act, 1868; De Virto's and Mackay's Acts, 1877; Ramingen's Act, 1880.

³ See also 33 & 34 Vict. c. 102; 35 & 36 Vict. c. 39.

⁴ 10th March, 1623; 1 C. J. 681.

⁵ 2 Hatsell, 9; 10 C. J. 508; sec, however, the case of Sir Wilfred Lawson, 1717, 18 C. J. 672.

⁶ 1 Memorials of Fox, 51.

⁷ Earl Russell, Recollections and Suggestions.
Chapter I. Hundreds, or other similar office under the Crown, in order to render himself eligible at the election.

Mental imbecility is a disqualification; and should a member, who was sane at the time of his election, afterwards become a lunatic, his seat may be dealt with under the provisions of the Lunacy Vacating of Seats Act, 1886 (see p. 600).1 English peers are ineligible to the House of Commons, as having a seat in the upper house; and Scotch peers, as being represented there, by virtue of the Act of Union:2 but Irish peers, unless elected as one of the representative peers of Ireland, may sit for any place in Great Britain.3 The English, Scotch, and Irish judges are disqualified,4 together with the holders of various offices particularly excluded by statutes.5 A large class of offices which incapacitate the holders for Parliament are new offices, or places of profit under the Crown, created since the 25th October, 1705,6 as defined by the 6 Anne, c. 41, s. 24; and also new offices in Ireland under the 33 Geo. III. c 41. 

1 For the law on this subject prior to 1886, see D'Ewes, 126; 1 C. J. 75; Mr. Alcock's case, 1811; 66 ib. 226. 265. App. (687). There is a curious entry in the Journal of 14th Feb., 1609, "Hassard — 69 — incurable—bed-rid—a new writ;" 1 ib. 392; case of Mr. A. Steuart, 162 H. D. 3 s. 1941; Rogers on Elections, part ii. 16th ed. pp. 3. 62. 

2 The provisions of the law are sufficiently distinct upon that point; and there are numerous precedents of new writs issued in the room of members becoming peers of Scotland; e.g. Earl of Dysart, 10th Nov. 1707; Lord Galloway, 13th Jan. 1774; Earl of Lauderdale, 22nd Jan. 1790; Earl of Eglinton, 3rd Nov. 1796; Marquess of Queensberry, 3rd Feb. 1857, &c. 

3 Act of Union, 39 & 40 Geo. III. c. 67. 

4 The English judges by the law of Parliament, 1 C. J. 257; and by the Judicature Act, 1873, s. 9; and ...
The holders of certain pensions from the Crown are disqualified by statute. But pensions granted under 4 & 5 Will. IV. c. 24 and 22 Vict. c. 26, for civil and diplomatic services, do not disqualify the holders from being elected, or sitting and voting (see p. 612).

The sheriff of a county is not eligible for that county: nor is a returning officer capable of being elected for his own city or borough. By the Scotch Reform Act, 1832 (s. 36), no sheriff substitute, sheriff clerk, or deputy sheriff clerk is entitled to be elected for his own shire; nor any town clerk, or deputy town clerk, for his own city, borough, town, or district.

By the 41 Geo. III. c. 63, which arose out of Mr. Horne Tooke’s election, it is declared that “no person having been ordained to the office of priest or deacon, or being a minister of the Church of Scotland, is capable of being elected;” and that if he should sit or vote, he is liable to forfeit 500£ for each day, to any one who may sue for the same. The Roman Catholic clergy were also excluded by 10 Geo. IV. c. 7, s. 9. But by the 33 & 34 Vict. c. 91, when a person has relinquished in due form his office of priest or deacon in the Church of England, he is discharged from all disabilities and disqualifications, including that of 41 Geo. III. c. 63, and is therefore eligible to sit in Parliament.

Government contractors, being supposed to be liable to the influence of their employers, are disqualified from serving in Parliament. The Act 22 Geo. III. c. 45 declares that any person who shall, directly or indirectly, himself, or by any one in trust for him, undertake any contract with a government department, shall be incapable of being elected, or of sitting or voting during the time he shall hold such contract, or any share thereof, or any benefit or 

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1 6 Anne, c. 41, s. 24; 1 Geo. I. stat. 2, c. 56.
2 Rogers on Elections, part ii. 16th ed. p. 5; 2 Hatsell, 30-34; 4 Doug. 87, 123; 3 C. J. 725 (Thetford Case); Wakefield Case, Barron & Austin, 295.

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Mr. Horne Tooke was excepted from the Act; 35 Parl. Hist. 1343. 1402. 1414. 1542. 1544. For the former law on this subject, see 8 C. J. 341. 346; 1 ib. 27 (13th Oct. 1553); 1 ib. 513 (8th Feb. 1620); 2 Hatsell, 12.
Chapter I. Emolument arising from the same: but the Act does not affect incorporated trading companies, contracting in their corporate capacity. The penalties for violations of the Act are severe. A contractor sitting or voting is liable to forfeit 500£ for every day on which he shall sit or vote, to any person who may sue for the same; and every person against whom this penalty shall be recovered, is incapable of holding any contract. The Act also imposes a penalty of 500£ upon any person who admits a member of the House of Commons to a share of a contract. The Act 41 Geo. III. c. 52 disqualifies in the same manner, and under similar penalties, all persons holding contracts with any of the government departments in Ireland.

But the provisions of these Acts have been held not to apply to contractors for government loans. In June, 1855, the attention of the house was directed to the fact that Messrs. Rothschild had entered into a contract with the government for a loan of 16,000,000£ for the public service; and a committee was appointed to inquire whether Baron Lionel Nathan de Rothschild, who was a partner in that house, had vacated his seat by reason of this contract. The committee, after hearing Baron Rothschild by counsel, reported their opinion that there was no contract, agreement, or commission between Messrs. R. and the Treasury within the true intent and meaning of the 22 Geo. III. c. 45; and a clause to this effect has been introduced into the Acts since passed for raising loans.

By the Bankruptcy Act, 1883, ss. 32, 33, if a member of the House of Commons is adjudged bankrupt, he is incapable of being elected to or of sitting or voting in the house, or on any committee thereof, until the adjudication is annulled, or until he obtains from the court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune, without any misconduct on his part. If the disqualifications imposed by the Act are not removed within six months from the date of the order, the court is required

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1 See Report, 15th March, 1869; 2 110 C. J. 325; Report, 1855 on case of Sir Sydney Waterlow.
to certify the bankruptcy to the Speaker: the seat of the member thereupon becomes vacant; and, if the house be then sitting, a new writ is issued; or if the Speaker receives the certificate during a parliamentary recess, he issues his warrant for a new writ to supply the vacancy which the bankruptcy has created (see p. 600). As no penalty attaches to a bankrupt for sitting and voting, and as no official notice of his bankruptcy is required to be given to the Speaker for six months, a bankrupt member may sit with impunity, unless the house take notice that he is incapable of sitting and voting, and order him to withdraw. The disqualification created by the Bankruptcy Act, 1883, s. 32, is, by the Bankruptcy Act of 1890, s. 9, limited to the period of five years from the date of a discharge under either Act.

These Bankruptcy Acts do not extend to Scotland or Ireland, except so far as regards persons adjudicated bankrupt in England: but the provisions of ss. 32 and 33 are, with modifications framed to meet the bankruptcy procedure of Scotland, applied, by 47 & 48 Vict. c. 16, to persons who have been adjudged bankrupt in Scotland. Members who become bankrupt in Ireland are subject to the provisions of 52 Geo. III. c. 144, and 35 & 36 Vict. c. 58, s. 41, regarding the incapacity of a member from sitting and voting, which in effect resemble the provisions of the Bankruptcy Act of 1883, except that the certificate of the court and consequent vacancy of the seat is postponed until one year after the bankruptcy. A person adjudged bankrupt, in England or Scotland, accordingly is ineligible as a member for any constituency; whilst a person adjudged bankrupt under the law in force in Ireland, is capable of being elected by any constituency; though it would seem, judging by the language of s. 43 of 35 & 36 Vict. c. 58, that such a person could not be re-elected to the parliamentary seat of which he had been deprived by his bankruptcy.

1 See 85 C. J. 3, for the form of proceeding in such cases.
2 See the proceedings taken on the bankruptcy of Mr. Townsend, 15th June, 1858, 113 C. J. 229.
3 See Rogers, 16th ed. part ii. p. 28; Williams, Bankruptcy Practice, 5th ed. 93.
Chapter I. A debtor adjudged bankrupt is by the Bankruptcy Act, Bankrupt peers.
1883, s. 32, disqualified for sitting and voting in the House of Lords, or on any committee thereof, or being elected as a peer of Scotland or Ireland, to sit and vote in the House of Lords: though the disqualification can be removed if the adjudication is annulled, or if the bankrupt obtains his discharge, with a certificate that the bankruptcy was caused by misfortune, and not by misconduct. In England a peer becomes bankrupt when an order has been made under any Act adjudging him a bankrupt: in Scotland, when sequestration of his estate has been awarded: in Ireland, when he is adjudged bankrupt. When a bankruptcy has been determined in the manner prescribed by the law, these disqualifications cease. The seat of a representative peer for Scotland and Ireland, unless his bankruptcy is determined within one year, is vacated at the end of the year, and a new election is to be held. The court certifies the bankruptcy to the Speaker of the House of Lords, and the Clerk of the Crown; and a writ of summons is not to be issued to any peer for the time being disqualified: but a disqualified peer is not deprived of his privileges of peerage, or entitled to be elected to or to sit in the House of Commons.¹

By the Bankruptcy Disqualification Act, 1871, ss. 6, 7, 8, a disqualified person who sits or votes in the House of Lords, or attempts to sit or vote, is guilty of a breach of privilege; and by the Bankruptcy Act, 1883, s. 124, and the Bankruptcy (Ireland) Amendment Act, 1873, s. 40, if a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with as if he had not such privilege.

A person attainted,² or adjudged guilty,³ of treason or persons attainted.

¹ Applications of the Act to peers, 9th and 25th April, 1872, 104 L. J. 138. 206; 4th and 25th June, 1872, ib. 321. 322. 342. 429. In the case, 27th Jan. 1881, the certificate was rescinded, 118 ib. 24. 140.
² Lord Oke, 4th Inst. 47.
³ W. Smith O'Brien, 1849; O'Donovan Rossa, 10th Feb. 1870. As O'D. Rossa was convicted under the Treason-Felony Act, 11 & 12 Vict. c. 12, it was contended that, not being attainted, there was no disqualification; but the house determined that J. O'D. R. "having been adjudged guilty of felony, and sentenced to penal servitude for life, and being now imprisoned under such sentence,
felony, and not having endured the punishment to which he
was adjudged, or received a pardon, is disqualified: but an
indictment for felony causes no disqualification until con-
viction; and even after conviction a new writ will not be
issued, when a writ of error is pending, until the judgment
has been affirmed.

These are the chief but not the only grounds of disqualifi-
cation for sitting in the House of Commons; as for instance,
at an election a person may be disqualified for being elected,
by reason of corrupt practices committed at an election
previous thereto (see p. 621).

To these explanations concerning the persons of whom
Parliament is composed, it is not necessary to add any par-
ticulars as to the mode of election; further than that the
elections are held by the sheriffs or other returning officers,
in obedience to the Queen's writ out of Chancery, and are
has become, and continues incapable of being elected or returned as a
member of this house."

1 Case of John Mitchel, 18th Feb. 1875; Acts 9 Geo. IV. c. 32, s. 3;
9 Geo. IV. c. 54, s. 33; 33 & 34 Vict. c. 22, s. 2; Parl. Paper, No. 50,
1875; 222 H. D. 3 s. 493. John Mitchel having been re-elected, after
a contest, a petition was filed against his return, and praying for the seat,
when this ground of disqualification was confirmed by the Court of Com-
mon Pleas in Ireland, and the peti-
tioner, who had given due notice of
the disqualification, was seated as
member for Tipperary; 3 O'Malley
& Hardcastle, Reports, 37; case of
Michael Davitt, 28th Feb. 1882;
187 C. J. 77; Hans. Deb. 27th and
28th Feb. 1882.

2 21st Jan. 1850; 1 C. J. 118. 119.

3 See Rogers on Elections, part ii.
16th ed. 31.

4 By 16 & 17 Vict. c. 68, writs are
now directed to the returning officers
of boroughs instead of to the sheriff
of the county. The poll at the Uni-
versities is also restricted to five days.
By 24 & 25 Vict. c. 53, amended by
31 & 32 Vict. c. 65, voting papers
are allowed in University elections.
By 16 Vict. c. 15, c. 28, the poll at
county elections in England and
Wales and Scotland, was reduced to
one day. By 25 & 26 Vict. cc. 62
and 92, similar provision was made
for Ireland. By the Parliamentary
and Municipal Elections Act, 1872,
a new form of writ was introduced,
and the present mode of conducting
elections, and the several duties of
returning officers, are prescribed.
On the 27th Feb. 1880, a new writ
was issued for West Norfolk. On
the previous day, the Queen in Coun-
cil had pricked the list of sheriffs
for the year; and by the post which
bore the writ to Norwich, was de-
spatched the warrant to the new
sheriff. Meanwhile, however, the
outgoing sheriff received the writ
and endorsed it, and a question arose
whether it should be executed by the
outgoing or the incoming sheriff.
On reference to the 3 & 4 Will. IV.
Chapter I. determined by the majority of registered electors. By the Parliamentary and Municipal Elections Act, 1872, the public nomination of candidates was discontinued, and the votes of electors are taken by ballot. In the case of a county, the Returning Officer is to give notice of the day of election within two days after he receives the writ, and in a borough, on the day on which he receives the writ, or the following day. In the case of a county or district borough election, the day of election is to be fixed by the Returning Officer, not later than the ninth day after the day on which he receives the writ, with an interval of not less than three clear days between the day on which he gives the notice and the day of election; and in a borough, not later than the fourth day after the day on which he receives the writ, with an interval of not less than two clear days between the notice and the election.¹ In counties, or district boroughs, the poll is to be taken not less than two, nor more than six clear days after the nomination; and in boroughs, not more than three clear days after the nomination. In reckoning time for all election proceedings, Sunday, Christmas Day, Good Friday, and public fast and thanksgiving days are to be excluded.²

¹ Ballot Act 1872, 1st Schedule, ss. 1. 2.
² Ib. sect. 56.

Casting vote of returning officer, see p. 615.
CHAPTER II.

POWER AND JURISDICTION OF PARLIAMENT.

The legislative authority of Parliament extends over the United Kingdom, and all its colonies and foreign possessions; and there are no other limits to its power of making laws for the whole empire than those which are incident to all sovereign authority—the willingness of the people to obey, or their power to resist. Unlike the legislatures of many other countries, it is bound by no fundamental charter or constitution: but has itself the sole constitutional right of establishing and altering the laws and government of the empire.

In the ordinary course of government, Parliament does not legislate directly for the colonies; and the introduction of responsible government has necessarily limited the occasions for such legislation. For some colonies the Queen in council legislate, while others have legislatures of their own, which propound laws for their internal government, subject to the approval of the Queen in council: but these may afterwards be repealed or amended by statutes of the Imperial Parliament; for their legislatures and their laws are both subordinate to the supreme power of the mother country.¹ For example, the constitution of Lower Canada was suspended in 1838; and a provisional government, with legislative functions and great executive powers, was established by the British Parliament.² Slavery, also, was abolished by an Act of Parliament, in 1833, throughout all

¹ "Parliamentary legislation, on any subject of exclusively internal concern to any British colony, possessing a representative assembly, is, as a general rule, unconstitutional. It is a right of which the exercise is reserved for extreme cases, in which necessity at once creates and justifies the exception." — Lord Glenelg. (Parl. Pap. 1839 (118), p. 7.)

² 1 & 2 Vict. c. 9; 2 & 3 Vict. c. 33. See also the Parliament of Canada Act, 1875, and the Canada Copyright Act, 1875, as examples of the interposition of Parliament in colonial legislation.
the British possessions, whether governed by local legislatures or not: but certain measures for carrying into effect the intentions of Parliament were left for subsequent enactment by the local bodies, or by the Queen in council. In 1838, the house of assembly of Jamaica had neglected to pass an effectual law for the regulation of prisons, which became necessary upon the emancipation of the negroes; when Parliament immediately interposed and passed a statute for that purpose. The assembly, resenting the interference of the mother country, withheld the supplies, and otherwise neglected their functions: but Parliament reduced them to submission by an Act to suspend the colonial constitution, unless within a given time they should resume their duties. And again, in 1846, that ancient constitution was surrendered by acts of the local legislature, confirmed by an Act of the Imperial Parliament. In 1849, the constitutions of the Australian colonies were defined by statute: but the colonial governors and legislative councils were permitted to amend them, with the assent of the Queen in council. The vast territories of British India, which had long been subject to the anomalous government of the East India Company, were transferred, by statute, to the Crown, in 1858, and have since been under the immediate legislative authority of Parliament. In 1867, the dominion of Canada was constituted by statute; and in like manner, in 1890, a constitution was conferred upon Western Australia.

There are some subjects upon which Parliament, in familiar language, is said to have no right to legislate: but the constitution has assigned no limits to its authority. A law may be unjust, and contrary to sound principles of government: but Parliament is not controlled in its discretion, and when it errs, its errors can only be corrected by itself. To adopt the words of Sir Edward Coke, the power of Parliament "is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds." ¹

¹ 4 Inst. 36.
This being the authority of Parliament collectively, the laws and usage of the constitution have assigned peculiar powers, rights, and privileges to each of its branches, in connection with their joint legislative functions.

It is by the act of the Crown alone that Parliament can be assembled. The only occasions on which the Lords and Commons have met by their own authority, were previously to the restoration of King Charles II., and at the Revolution in 1688. The first Act of Charles the Second's reign declared the Lords and Commons to be the two houses of Parliament, notwithstanding the irregular manner in which they had been assembled; and all their Acts were confirmed by the succeeding Parliament summoned by the king, which however qualified the confirmation of them, by declaring that "the manner of the assembling, enforced by the difficulties and exigencies which then lay upon the nation, is not to be drawn into example." In the same manner, the first Act of the reign of William and Mary declared the convention of Lords and Commons to be the two houses of Parliament, as if they had been summoned according to the usual form; and the succeeding Parliament recognized the legality of their Acts.

But although the Queen may determine the period for calling Parliaments, her prerogative is restrained within certain limits; as she is bound by statute to issue writs within three years after the determination of a Parliament; while the practice of providing money for the public service by annual enactments, renders it compulsory upon her to meet Parliament every year.

The annual meeting of Parliament, now placed beyond the power of the Crown by a system of finance rather than by distinct enactment, had, in fact, been the law of England from very early times. By the statute 4 Edw. III. c. 14, "it is recorded that Parliament shall be holden every year once, [and] [or] more often if need be." And again, in the 36 Edw. III. c. 10, it was granted "for redress of divers mischiefs and grievances which daily happen [a Parliament

1 16 Chas. II. c. 1; and 6 & 7 Will. & Mary, c. 2.
Chapter II.

shall be holden or] be the Parliament holden every year, as another time was ordained by statute." 1

It is well known that by extending the words, "if need be," to the whole sentence instead of to the last part only, to which they are obviously limited, the kings of England constantly disregarded these laws. It is impossible, however, for any words to be more distinct than those of the 36th Edward III., and it is plain from many records that they were rightly understood at the time. In the 50th Edward III., the Commons petitioned the king to establish, by statute, that a Parliament should be held each year; to which the king replied, "In regard to a Parliament each year, there are statutes and ordinances made, which should be duly maintained and kept." So also to a similar petition in the 1st Richard II., it was answered, "So far as relates to the holding of Parliament each year, let the statutes thereupon be kept and observed; and as for the place of meeting, the king will therein do his pleasure." And in the following year the king declared that he had summoned Parliament, because at the prayer of the Lords and Commons it had been ordained and agreed that Parliament should be held each year. 2

In the preamble of the Act 16 Chas. I. c. 1, it was also distinctly affirmed, that "by the laws and statutes of this realm, Parliament ought to be holden at least once every year for the redress of grievances: but the appointment of the time and place of the holding thereof hath always belonged, as it ought, to his majesty and his royal progenitors." 3 Yet by the 16 Chas. II. c. 1, a recognition of these ancient laws was withheld: for the Act of Charles I. was repealed as "derogatory of his majesty's just rights and prerogative;" and the statutes of Edward III. were incorrectly construed to signify no more than that "Parliaments

1 Record Comm. Statutes.
2 By an ordinance in the 5th Edward III., the object of the law had been more clearly explained; viz. "Qe le roi tiigne Parlement une foiz p an', ou deu foiz si mestier soit."
3 1 Rot. Parl. 285; 2 ib. 335; 3 ib. 23. 32. 2 "Act for preventing of inconvenience happening from long intermission of Parliaments."
MEETING OF PARLIAMENT.

are to be held very often." All these statutes, however, were repealed, by implication, by this Act, and also by the 6 & 7 Will. & Mary, c. 2, which declares and enacts "that from henceforth Parliament shall be holden once in three years, at the least."

The Parliament is summoned by the Queen's writ or letter issued out of Chancery, by advice of the privy council. By the 7 & 8 Will. III. c. 25, it was required that there shall be forty days between the teste and the return of the writ of summons; and since the union with Scotland this period was extended to fifty days, such being the period assigned in the case of the first Parliament of Great Britain after the Union. But by the 15 & 16 Vict. c. 23, the time between the proclamation and the meeting of Parliament may be any time not less than thirty-five days; subject, however, to a prorogation of the meeting of Parliament by proclamation, from the day to which it shall stand summoned to any further day, not being less than fourteen days from the date of the proclamation, under the Act 30 & 31 Vict. c. 81. The writ of summons has always named the day and place of meeting, without which the requisition to meet would be imperfect and nugatory.

The demise of the Crown is the only contingency upon which Parliament is required to meet without summons in the usual form. By the 6 Anne, c. 7, on the demise of the Crown, Parliament, if sitting, is immediately to proceed to act: and, if separated by adjournment or prorogation, is immediately to meet and sit. Before the passing of this Act, Parliament met on a Sunday, 8th March, 1701, on the

1 Forty days were assigned for the period of the summons by the great charter of King John, in which are these words: "Faciemus summoneri...ad certum diem, seilicii ad terminum quadraginta dierum ad minus, et ad certum locum."

2 See 22 Art. of Union, 5 Anne, c. 8; 2 Hatsell, 290.

3 This period was specially reduced to twenty-eight days by the Registration Act, 1868, s. 11, in regard to the dissolution of 1868, in order to ensure an earlier meeting of the new Parliament.

4 The power of accelerating the meeting of Parliament for despatch of business by proclamation, given by Statutes 37 Geo. III. c. 127, and 33 & 34 Vict. c. 81, see p. 48, applies only to a meeting of Parliament pursuant to a prorogation.
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death of William III.;¹ and has since met three times, on similar occasions, on Sunday.² By the 37 Geo. III. c. 127, in case of the demise of the Crown after the dissolution or expiration of a Parliament, and before the day appointed by the writs of summons for assembling a new Parliament, the last preceding Parliament is immediately to convene and sit at Westminster, and be a Parliament for six months, subject in the mean time to prorogation or dissolution. In the event of another demise of the Crown during this interval of six months, before the dissolution of the Parliament thus revived, or before the meeting of a new Parliament, it is to convene again and sit immediately, as before, and to be a Parliament for six months from the date of such demise, subject, in the same manner, to be prorogued or dissolved. If the demise of the Crown should occur on the day appointed by the writs of summons for the assembling of a new Parliament, or after that day and before it has met and sat, the new Parliament is immediately to convene and sit, and be a Parliament for six months, as in the preceding cases. This statute, however, needs revision in reference to the latest enactment concerning the demise of the Crown (see p. 46).

As the Queen appoints the time and place of meeting, so also at the commencement of every session she declares to both houses the causes of summons, by a speech delivered to them in the House of Lords by herself in person, or by commissioners appointed by her. Until she has done this, neither house can proceed with any business: but the causes of summons, as declared from the throne, do not bind Parliament to consider them alone, nor to proceed at once to the consideration of any of them (see p. 170).

On two occasions, during the illness of George III., the name and authority of the Crown were used for the purpose of opening the Parliament, when the sovereign was personally incapable of exercising his constitutional functions.

¹ 13 C. J. 782. ² Queen Anne, 18 ib. 3; Geo. II., 28 ib. 292, 933; Geo. III., 75 ib. 82, 89. For other occasions of the demise of the Crown, see 20 ib. 866 (Geo. I.); 85 ib. 589 (Geo. IV.); 92 ib. 490 (Will. IV.)
On the first occasion, Parliament had been prorogued till the 20th November, 1788, then to meet for the despatch of business. When Parliament assembled on that day, the king was under the care of his physicians, and unable to open Parliament, and declare the causes of summons. Both houses, however, proceeded to consider the measures necessary for a regency; and on the 3rd February, 1789, Parliament was opened by a commission, to which the great seal had been affixed by the lord chancellor, without the authority of the king. Again, in 1810, Parliament stood prorogued till the 1st November, and met at a time when the king was incapable of issuing a commission. His illness continued, and on the 15th January, without any personal exercise of authority by the king, Parliament was formally opened, and the causes of summons declared in virtue of a commission under the great seal, and “in his Majesty’s name.”

It may here be incidentally remarked, that the Crown has also an important privilege in regard to the deliberations of both houses. The Speaker of the Lords is the lord high chancellor or lord keeper of the great seal,—an officer more closely connected with the Crown than any other in the state; and even the Speaker of the Commons, though elected by them, is submitted to the approval of the Crown (see p. 152).

Parliament, it has been seen, can only commence its deliberations at the time appointed by the Queen; neither can it continue them any longer than she pleases. She may prorogue Parliament by having her command signified, in her presence, by the lord chancellor or Speaker of the House of Lords, to both houses; by commission, or by proclamation. Prior to 1867, the prorogation of Parliament from the day to which it stood summoned or proroged to any further day, was effected by a writ or commission under the great seal: but by the 30 & 31 Vict. c. 81, the royal proclamation alone prorogues the Parliament, except at the

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1 For a full statement of these proceedings, see May, Const. Hist. i. 175-195 (7th ed.).
Chapter II.

For prorogation at the close of a session, see p. 202.

The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed, except impeachments by the Commons, and appeals before the House of Lords. Every bill must therefore be renewed after a prorogation, as if it had never been introduced. William III. prorogued Parliament from the 21st to the 23rd October, 1689, in order to renew the Bill of Rights, concerning which a difference had arisen between the two houses, that was fatal to its progress. As it is a rule that a bill of the same substance cannot be passed in either house twice in the same session, a prorogation has been resorted to on three occasions to enable another bill to be brought in (see p. 294).

When Parliament stands prorogued to a certain day, her Majesty may, by Act 37 Geo. III. c. 127, amended by 33 & 34 Vict. c. 81, issue a proclamation, giving notice of her intention that Parliament shall meet for the despatch of business on an earlier day, not less than six days from the date of the proclamation; and Parliament then stands prorogued to that day, notwithstanding the previous prorogation. Pursuant to the first of these Acts, Parliament was assembled in September, 1799; and again on the 12th December, 1854, Parliament then standing prorogued to the 14th; and, in 1857, in consequence of the suspension of the Bank Act of 1844, a proclamation was issued on the 16th November, assembling Parliament on the 3rd December. Parliament, notwithstanding a proclamation having been issued for its meeting, can also, under Acts 30 & 31 Vict. c. 81, and 33 & 34 Vict. c. 81, be further prorogued, by proclamation, from the day to which it stands prorogued, to meet for despatch of business upon a further day not less than six days from the date of the proclamation. Thus, Parliament, which stood prorogued by 1 Geo. IV. c. 101, an Indian divorce bill is, in certain cases, excepted from this rule, p. 812. See also an exception regarding documents laid before Parliament, p. 514; appeals (House of Lords), p. 49. 10 C. J. 271. 54 ib. 745; 55 ib. 3.
to the 30th November, 1878, was further prorogued, on
the 27th, to the 5th December, on account of the Afghan
war, and again, in consequence of a change in the Ministry,
from the 13th to the 27th January, 1887, by proclamation
dated 31st December, 1886. And other Acts have pro-
vided that whenever the Crown shall cause the supple-
mentary militia to be raised and enrolled, or drawn out and
embodied, either in England or Scotland, when Parliament
stands prorogued or adjourned for more than fourteen days,
the Queen shall issue a proclamation for the meeting of
Parliament within fourteen days. In compliance with this
law, on the 1st December, 1792, Parliament, which stood
prorogued till the 1st January, was summoned by procla-
mation to meet on the 13th December. By the Militia
Acts Consolidation Act, 1882, this period of fourteen days
is reduced to ten.

When her Majesty, by the advice of her privy council,
has determined upon the prorogation of Parliament, a pro-
clamation is issued, declaring that on a certain day Parliament
will be prorogued until a day mentioned; and when it is
intended that Parliament shall meet on that day, for
despach of business, the proclamation states that Parliament
will then "assemble and be holden for the despach of
divers urgent and important affairs." It was formerly
customary to give forty days' notice, by proclamation, of a
meeting of Parliament for despach of business; but under
the 37 Geo. III. c. 127, amended by 33 & 34 Vict. c. 81,
Parliament can be assembled for that purpose upon any day
not being less than six days from the date of the procla-
mation. In December, 1877, Parliament having been
recently prorogued to Thursday, 17th January (not for
despach of business), a further proclamation was issued on
the 22nd December, declaring the royal will and pleasure
that Parliament should assemble on the said 17th January
for despach of business.

1 142 C. J. 2. 2 42 Geo. III. c. 90, s. 147, and
s. 31. 3 Hatsell, 230; 3 Chatham Corr.,
c. 91, s. 142; 15 & 16 Vict. c. 50, 126 n.
When Parliament has been dissolved and summoned for a certain day, it meets on that day for despatch of business, if not previously prorogued, without any proclamation for that purpose, the notice of such meeting being comprised in the proclamation of the dissolution, and the writs then issued.

Adjournment is solely in the power of each house respectively: though the pleasure of the Crown has occasionally been signified in person, by message, commission, or proclamation, that both houses should adjourn; and in some cases such adjournments have scarcely differed from prorogations. But although no instance has occurred in which either house has refused to adjourn, the communication might be disregarded. Business has been transacted after the King's desire has been made known; and the question for adjournment has afterwards been put, in the ordinary manner, and determined after debate, amendment, and division. Such interference on the part of the Crown is impolitic, as it may meet with opposition, and unnecessary, as ministers need only assign a sufficient cause for adjournment, when each house could adjourn, of its own accord, and for any period, however extended, which the occasion may require. The pleasure of the Crown was last signified on the 1st March, 1814; and it is probable that the practice will not be revived.

A power of interfering with adjournments in certain cases has been conceded to the Crown by statute. The 39 & 40

\[1\] Adjournment by royal commission, 1621; 1 C. J. 639; 9 ib. 158; 2 Rapin's Hist. 205.

\[2\] 2 Hatsell, 312. 316. 317; 1 C. J. 807. 808. 809; 10 ib. 694; 17 ib. 26. 275. In 1799, 55 ib. 49; 34 Parl. Hist. 1196; Lord Colchester's Diary, i. 192.

\[3\] In 1785 there was an adjournment from the 2nd August to the 27th October, in order to give time to the Irish Parliament to consider the commercial resolutions. 25 Parl. Hist. 934. In 1799 an adjournment extended from the 12th October to the 21st January; and in 1813 from the 20th December to the 1st March.

In 1820, while the Bill of Pains and Penalties against the Queen was pending in the House of Lords, the Commons adjourned, by four successive adjournments, from the 26th July to the 23rd November, when Parliament was prorogued. On the 18th August, 1882, both houses adjourned until the 24th October, in order to enable the Commons to conclude the consideration of new rules of procedure.

\[4\] 49 L. J. 747; 69 C. J. 132.
Geo. III. c. 14, amended by 33 & 34 Vict. c. 81, enacts that when both houses of Parliament stand adjourned for more than fourteen days, the Queen may issue a proclamation, with the advice of her privy council, declaring that the Parliament shall meet on a day not less than six days from the proclamation; and the houses of Parliament then stand adjourned to the day and place declared in the proclamation; and all the orders which may have been made by either house, and appointed for the original day of meeting, or any subsequent day, stand appointed for the day named in the proclamation.

The Queen may also close the existence of Parliament by a dissolution. She is not, however, entirely free to define the duration of a Parliament. Before the Triennial Act, 6 Will. & Mary, c. 2, there was no constitutional limit to the continuance of a Parliament but the will of the Crown: but under the Statute 1 Geo. I. c. 38, commonly known as the Septennial Act, it ceases to exist after seven years from the day on which, by the writ of summons, it was appointed to meet. Before the Revolution of 1688, a Parliament was dissolved by the demise of the Crown: but by the 7 & 8 Will. III. c. 15, and by the 6 Anne, c. 37, a Parliament was determined six months after the demise of the Crown (see p. 41), and so the law continued until, by the Reform Act of 1867, it was provided that the Parliament in being, at any future demise of the Crown, shall not be determined by such demise, but shall continue as long as it would have otherwise continued, unless dissolved by the Crown.

Parliament is usually dissolved by proclamation under the great seal, after having been prorogued to a certain day. This proclamation is issued by the Queen, with the advice of her privy council; and announces that the Queen has given order to the lord chancellor of Great Britain and

1 Blackstone, Com. i. 177.
2 Even the privy council expired at the demise of the Crown, and its members were reappointed in the new reign, and Queen Anne omitted the names of the Whig chiefs, Somers, Halifax, and Orford. Lord Stanhope, Reign of Anne, p. 44.
3 30 & 31 Vict. c. 102, s. 51.
the lord chancellor of Ireland to issue out writs in due form, and according to law, for calling a new Parliament; and that the writs are to be returnable in due course of law.

Since the dissolution of the 28th March, 1681, by Charles II., the sovereign had not dissolved Parliament in person until the 10th June, 1818, when it was dissolved by the Prince Regent in person. Parliament has not since been dissolved in that form: but proceedings not very dissimilar have occurred in recent times. On the 22nd April, 1831, William IV., having come down to prorogue Parliament, said, "I have come to meet you for the purpose of proroguing Parliament, with a view to its immediate dissolution;" and Parliament was dissolved by proclamation on the following day. On the 17th July, 1837, Parliament was prorogued and dissolved on the same day. On the 23rd July, 1847, the Queen, in proroguing Parliament, announced her intention immediately to dissolve it; and it was accordingly dissolved by proclamation on the same day, and the writs were despatched by that evening’s post; and this course is now the ordinary, but not the invariable, practice.

The interval between a dissolution and the assembling of the new Parliament varies according to the period of the year, the state of public business, and the political conditions under which an appeal to the people may have become necessary. When the session has been concluded, and no question of ministerial confidence or responsibility is...
at issue, the recess is generally continued, by prorogations, until the usual time for the meeting of Parliament.

In addition to these several powers of calling a Parliament, appointing its meeting, directing the commencement of its proceedings, determining them from time to time by prorogation, and finally of dissolving it altogether, the Crown has other parliamentary powers, which will hereafter be noticed in treating of the functions of the two houses.

Peers of the realm enjoy rights and exercise functions in five distinct characters: First, they possess, individually, titles of honour which give them rank and precedence; secondly, they are, individually, hereditary counsellors of the Crown; thirdly, they are, collectively, together with the lords spiritual, when not assembled in Parliament, the permanent council of the Crown; fourthly, they are, collectively, together with the lords spiritual, when assembled in Parliament, a court of judicature; and lastly, they are, conjointly with the lords spiritual and the Commons, in Parliament assembled, the legislative assembly of the kingdom, by whose advice, consent, and authority, with the sanction of the Crown, all laws are made.¹

The most distinguishing characteristic of the Lords is their judicature, of which they exercise several kinds. They have a judicature in the trial of peers (see p. 629); and another in claims of peerage and offices of honour, under references from the Crown, but not otherwise.² Since the union with Scotland, they have also had a judicature for controverted elections of the sixteen representative peers of Scotland;³ and by the act of union with Ireland, all questions touching the rotation or election of lords spiritual or temporal of Ireland were to be decided by the House of Lords:⁴ but part of this judicature was superseded in 1869,

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¹ See 1 Rep. Dig. of Peerage, 14. 
² See Knolly's case, 12 St. Tr. 1167–1207; 1 Lord Raym. 10; Salk. 509; Carth. 297; 2 Lord Campbell, Lives of Ch. Just. 148; Lord Campbell's Speeches, 326; but see Debates and Proceedings upon the Wensleydale Life Peerage, 1856. 
³ Act of the Parl. of Scotland, 5 Ann. c. 8; 6 Ann. c. 23; 10 & 11 Vict. c. 52. 
⁴ 4th Art. of Union; 89 L. J. 289; 295. 329, &c.
Chapter II. When Irish bishops ceased to have seats in Parliament. In addition to these special cases, they have a general judicature, as a supreme court of appeal from other courts of justice. This high judicial office has been retained by them as the ancient consilium regis, which, assisted by the judges, and with the assent of the King, administered justice in the early periods of English law. Their appellate jurisdiction would also appear to have received statutory confirmation from the 14 Edw. III. c. 5, A.D. 1340. In the 17th century they assumed a jurisdiction, in many points, which has since been abandoned.

They claimed an original jurisdiction in civil causes, which was resisted by the Commons, and has not been enforced for the last century and a half. They claimed an original jurisdiction over crimes, without impeachment by the Commons: but that claim was also abandoned. Their claim to an appellate jurisdiction over causes in equity, on petition to themselves, without reference from the Crown, has been exercised since the reign of Charles I.; and notwithstanding the resistance of the Commons in 1675, they have since remained in undisputed possession of it. They had a jurisdiction over causes brought, on writs of error, from the courts of law, originally derived from the Crown, and confirmed by statute, and to hear appeals from courts of equity. In 1873, indeed, their ancient appellate jurisdiction was surrendered by the Judicature Act: but before that Act came into operation this provision was repealed; their jurisdiction was restored and defined, while their efficiency as a court of appeal was increased by the addition of three lords of appeal in ordinary. The power of hearing causes during a prorogation or dissolution of Parliament was also given; and in pursuance of this authority, at the close of each session, the lords appoint a day, irrespective of the session of Parliament, when the house meets for the purpose of hearing appeals.

1 Hale, Jurisdiction of the House of Lords, c. 14; Barrington on the Statutes, 244.
2 See 5 Howell, St. Tr. 711; 4 Parl. Hist. 431. 443; 3 Hatsell, 336.
3 8 C. J. 38.
4 See 6 Howell, St. Tr. 1121.
5 27 Eliz. c. 8; see also Intr. to Sugden, Law of Real Prop. 2.
6 37 & 38 Vict. c. 83.
and empowers the appeal committee to meet and choose their own chairman. An appeal now lies to the House of Lords from the Court of Appeal in England, and from any Court in Scotland and Ireland from which a writ of error or appeal previously lay by common law or by statute. But appeals in ecclesiastical, maritime, or prize causes, and colonial appeals, both at law and in equity, are determined by the privy council. The powers which are incident to the House of Lords, as a court of record, will claim attention in other places.

A valuable part of the ancient constitution of the consilium regis has never been withdrawn from the Lords, viz. the assistance of the judges (see p. 192).

In passing Acts of attainder and of pains and penalties, the judicature of the entire Parliament is exercised (see p. 632); and there is another high parliamentary judicature in which both houses also have a share. In impeachments, the Commons, as a great representative inquest of the nation, first find the crime, and then, as prosecutors, support their charge before the Lords; while the Lords, exercising at once the functions of a high court of justice and of a jury, try and adjudicate upon the charge preferred.

The most important power vested in any branch of the legislature, is the right of imposing taxes upon the people, and of voting money for the exigencies of the public service. The exercise of this right by the Commons is practically a law for the annual meeting of Parliament for redress of grievances; and it may also be said to give to the Commons the chief authority in the state. In all countries the public purse is one of the main instruments of political power: but with the complicated relations of finance and public credit in England, the power of giving or withholding the supplies at pleasure, is one of absolute supremacy.

Another important power peculiar to the Commons is that of determining all matters touching the election of their own

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1. 39 & 40 Vict. c. 59. s. 8 & 9; see also 50 & 51 Vict. c. 70; 119 L. J. 451, &c.
2. Appellate Jurisdiction Act, 1876; Judicature (Ireland) Act, 1877.
Chapter II.

JURISDICTION OF THE COURTS OF LAW, see p. 128.

members. This right had been regularly claimed and exercised since the reign of Queen Elizabeth, and probably in earlier times, although such matters had been ordinarily determined in chancery. Their exclusive right to determine the legality of returns and the conduct of returning officers in making them, was fully recognized in the case of Barnardiston v. Soame, by the Court of Exchequer Chamber in 1674, by the House of Lords in 1689, and also by the courts, in the cases of Onslow in 1680, and of Prideaux v. Morris in 1702. Their jurisdiction in determining the right of election was further acknowledged by Statute 7 Will. III. c. 7: but in regard to the rights of electors, a memorable contest arose between the Lords and Commons in 1704. Ashby, a burgess of Aylesbury, brought an action at common law against William White and others, the returning officers of that borough, for having refused to permit him to give his vote at an election. A verdict was obtained by him: but it was moved in the Court of Queen's Bench, in arrest of judgment, “that this action did not lie;” and in opposition to the opinion of Lord Chief Justice Holt, judgment was entered for the defendant, but was afterwards reversed by the House of Lords upon a writ of error. Upon this the Commons declared that “the determination of the right of election of members to serve in Parliament is the proper business of the House of Commons; that they cannot judge of the right of election without determining the right of the electors; and if electors were at liberty to prosecute suits touching their right of giving voices, in other courts, there might be different voices in other courts, which would make confusion, and be dishonourable to the House of Commons; and that the action was therefore a breach of privilege.” In addition to the ordinary exercise of their jurisdiction, the Commons relied upon the Act 7 Will. III. c. 7, by which it had been declared that “the last determination of the House of Commons concerning the right of elections is to be pursued.” On the other hand, it was

1 6 Howell, St. Tr. 1092. 1119. 502; 1 Lutw. 82; 7 Mod. 13.
2 2 Vent. 37; 3 Lev. 39; 2 Salk.
 objected, in the report of a Lords' Committee, 27th March, 1704, that "there is a great difference between the right of the electors and the right of the elected: the one is a temporary right to a place in Parliament, pro hac vice; the other is a freehold, to which a man has a right by common law."

Encouraged by the decision of the House of Lords, five other burgesses of Aylesbury, familiarly known as "the Aylesbury men," commenced actions against the constables of their borough, and were committed to Newgate, by the House of Commons, for a contempt of their jurisdiction. The contest that hence arose was closed by the prorogation of Parliament, which put an end to the contest, and to the imprisonment of the Aylesbury men and their counsel. The plaintiffs, no longer impeded by the interposition of privilege, and supported by the judgment of the House of Lords, obtained verdicts and execution against the returning officers.

The question which was agitated at that time has never since brought the Commons into conflict with the courts of law. Complaints, however, have been made to the house, of proceedings in courts of law, having reference to elections; and in 1767, certain electors of the county of Pembroke, having brought actions of trespass on the case against the high sheriff for refusing their votes, were ordered to attend the house: but having discontinued their actions, no further proceedings were taken against them. In 1857, a complaint was made, by petition, that certain voters had brought actions against the returning officer of the borough of Sligo for refusing their votes at the last election: but the committee to whom the matter was referred reported that there were no circumstances affecting the privileges of the house. In 1784, Mr. Fox obtained a verdict, with damages,
against the high bailiff of Westminster, for vexatiously withholding his return when he had a majority of votes; and this proceeding, being clearly free from any question of privilege, did not call for the interposition of Parliament. The Commons have continued to exercise (what was not denied to them by the House of Lords) the sole right of determining whether electors had the right to vote, while inquiring into the conflicting claims of candidates for seats in Parliament; until, in 1868, the house delegated its judicature in contested elections to the courts of law, but retaining its jurisdiction over cases not otherwise provided for by statute.

Although all writs are issued out of chancery, every vacancy after a general election is supplied by the authority of the Commons. During the sitting of the house, vacancies are supplied by warrants issued by the Speaker, by order of the house; and during a recess, after a prorogation or adjournment, the Speaker issues warrants in certain cases (see p. 599).

But notwithstanding their extensive jurisdiction in regard to elections, the Commons have no control over the eligibility of candidates, except in the administration of the laws which define their qualifications. No power exercised by the Commons is more undoubted than that of expelling a member from the house, as a punishment for grave offences; yet expulsion, though it vacates the seat of a member, and a new writ is immediately issued, does not create any disability to serve again in Parliament. John Wilkes was expelled, in 1764, for being the author of a seditious libel. In the next Parliament (3rd February, 1769) he was again expelled for another libel; a new writ was ordered for the county of Middlesex, which he represented, and he was re-elected without a contest; upon which it was resolved, on the 17th of February, "that, having been in this session of Parliament expelled this house, he was and is incapable of being elected a member to serve in this present Parliament." The election was declared void: but Mr. Wilkes was again elected, and his election was once more declared void, and another writ issued.

1 3 Hughes' Hist. 245.  
2 32 C. J. 229.
A new expedient was now tried: Mr. Luttrell, then a member, accepted the Chiltern Hundreds, and stood against Mr. Wilkes at the election, and, being defeated, petitioned the house against the return of his opponent. The house resolved that, although a majority of the electors had voted for Mr. Wilkes, Mr. Luttrell ought to have been returned, and they amended the return accordingly. Against this proceeding the electors of Middlesex presented a petition, without effect, as the house declared that Mr. Luttrell was duly elected. These proceedings were proved by unanswerable arguments to be illegal; and on the 3rd May, 1782, the resolution of the 17th February, 1769, was ordered to be expunged from the journals, as “subversive of the rights of the whole body of electors of this kingdom.” In 1882, Mr. Bradlaugh, having been expelled, was immediately returned by the electors of Northampton; and no question was raised as to the validity of his return.

To expulsion, in former times, was added occasionally disability of sitting in Parliament or of serving the state. On the 27th May, 1641, Mr. Taylor, a member, was expelled, and adjudged to be for ever incapable of being a member of the house. During the Long Parliament, incapacity for serving in the Parliament then assembled was frequently part of the sentence of expulsion. On the Restoration, in 1660, the house went so far as to expel Mr. Wallop, and resolve him to be “made incapable of bearing any office or place of public trust in this kingdom.” In 1711, Mr. Robert Walpole, on being re-elected after his expulsion, was declared incapable of serving in the present Parliament, having been expelled for an offence. But these cases can only be regarded as examples of an excess of their jurisdiction by the Commons; for one house of Parliament cannot create a disability unknown to the law.

The suspension of members from the service of the house is another form of punishment. On the 27th April, 1641, Mr.
Gervaise Hollis, a member, was suspended the house during the session. On the 6th November, 1643, Sir Norton Knatchbull was suspended the house during the pleasure of the house. During nearly two centuries this form of punishment was left in abeyance, no case of suspension having occurred between 1692 and recent times. On the 25th July, 1877, it was laid down from the chair that any member guilty of a contempt "would be liable to such punishment, whether by censure, by suspension from the service of the house, or by commitment, as the house may adjudge." And by standing order No. 21 of session 1880, suspension was adopted for the punishment of offences such as disregard to the authority of the chair, or obstruction; and has since been imposed in numerous cases.

Expulsion is generally reserved for offences which render members unfit for a seat in Parliament, and which, if not so punished, would bring discredit upon Parliament. Members have been expelled, as being in open rebellion; as having been guilty of forgery; of perjury; of frauds and breaches of trust; of misappropriation of public money; of conspiracy to defraud; of corruption in the administration of justice, or in public offices, or in the execution of their duties as members of the house; of conduct unbecoming the character of an officer and a gentleman; and of contempts, libels, and other offences committed against the house itself.

1 2 C. J. 128.
2 3 ib. 302; also the cases of Mr. Frye, 6 ib. 123; Mr. Love, 8 ib. 289; Sir G. Carteret, 9 ib. 120; Sir J. Prettiman, 9 ib. 156; Mr. Cullingford, 10 ib. 846.
3 132 ib. 375.
4 Mr. Foster and Mr. Carnegy, 1715, 18 ib. 336. 467.
5 Mr. Ward, 1726, 20 ib. 702.
6 Mr. Atkinson, 1783, 39 ib. 770.
7 South Sea Directors, 1720, 19 ib. 406. 412. 413; Commissioners of Forfeited Estates, 1732, 21 ib. 871; Benjamin Walsh, 1812, 67 ib. 176; Lord Colchester's Diary, ii. 373; Mr. Hastings, 1892, 147 ib. 120.
Evidence of offences.

Where members have been legally convicted of any offences, it is customary to lay the record of conviction before the house.¹ In other cases the proceedings have been founded upon reports of commissions, or committees of the house, or other sufficient evidence.² And it is customary to order the member, if absent, to attend in his place, before an order is made for his expulsion. Service is made upon him of the order of the house for his attendance; or evidence is furnished proving that service is impossible. Lord Cochrane, imprisoned in the King’s Bench for conspiracy to defraud (see p. 113), was brought, in deference to the order of the house, to the bar by the marshal of the prison. Lord Cochrane was desired by the Speaker to take his place, whence he addressed the house in support of his innocence. In the cases of Mr. Verney and Mr. Hastings, lying in prison under sentence for their offences, a communication was made, through the Home Office, of the order for their attendance, and of the intended motion for their expulsion.³

Members have also been expelled who have fled from justice, without any conviction, or judgment of outlawry. On the 18th July, 1856, a true bill was found against James Sadleir for fraud, and a warrant was then issued for his apprehension. On the 24th, a motion was made for his expulsion, on the ground of his having absconded, which, being considered premature, the house refused to entertain. But on the 16th February, 1857, when the reports of the Crown solicitor and officers of the constabulary, showing the measures which had since been ineffectually taken to apprehend Mr. Sadleir, and bring him to trial, had been laid before the house, he was expelled, as having fled from justice.⁴

¹ 431; 17 C. J. 513; 18 ib. 411; 20 ib. 391; 137 ib. 61. See also Report of Precedents, 1897.
² 39 ib. 770; 67 ib. 176; 69 ib. 433.
³ 11 ib. 283; 20 ib. 141. 391; 21 ib. 870; 65 ib. 433, &c.
⁴ 51 ib. 661; 65 ib. 399; 67 ib. 176; 69 ib. 433; 111 ib. 367. See Mr. Speaker’s remarks (Mr. Verney’s case), 12th May, 1891, 333 H. D. 3 s. 574.
⁵ 143 H. D. 3 s. 186; 144 ib. 702; 111 C. J. 379; 112 ib. 48. See also the case of Mr. De Cobain, 1891, 146 ib. 456. 460; 26th Feb. 1892, 147 ib. 67.
CHAPTER III.

GENERAL VIEW OF THE PRIVILEGES OF PARLIAMENT.

Both houses of Parliament enjoy various privileges in their collective capacity, as constituent parts of the High Court of Parliament; which are necessary for the support of their authority, and for the proper exercise of the functions entrusted to them by the constitution. Other privileges, again, are enjoyed by individual members; which protect their persons and secure their independence and dignity.

Some privileges rest solely upon the law and custom of Parliament, while others have been defined by statute. Upon these grounds alone all privileges whatever are founded. The Lords have ever enjoyed them, simply because "they have place and voice in Parliament:"¹ but a practice has obtained with the Commons, that would appear to submit their privileges to the royal favour. At the commencement of every Parliament since the 6th Henry VIII., it has been the custom for the Speaker,

"In the name, and on behalf of the Commons, to lay claim by Speaker's humble petition to their ancient and undoubted² rights and privileges; particularly that their persons and servants³ might be free from arrests and all molestations; that they may enjoy liberty of speech in all their debates; may have access to her Majesty's royal person whenever occasion shall require; and that all their proceedings may receive from her Majesty the most favourable construction."

To which the lord chancellor replies that

"Her Majesty most readily confirms all the rights and privileges

¹ Hakewel, 82.
² See the protestation of the Commons, in answer to James I., who took offence at the Speaker's prayer for their privileges as "their antient and undoubted right and inheritance," 5 Parl. Hist. 512; 2 Proceedings of the Commons, 1620-1, 353.
³ The claim of privilege in respect of their estates was omitted for the first time on the 5th Nov. 1852. The claim for servants was retained until the 5th Aug. 1892, when the claim was omitted, their privileges being wholly abolished (see p. 105). The officers of the house are still privileged, within its precincts, 7 Parl. Deb. 18; 2 Hatsell, 225; Lord Colchester's Diary, i. 64.
which have ever been granted to or conferred upon the Commons, by her Majesty or any of her royal predecessors."  

The authority of the Crown in regard to the privileges of the Commons, is further acknowledged by the report of the Speaker to the house, "that their privileges have been confirmed in as full and ample a manner as they have been heretofore granted or allowed by her Majesty, or any of her royal predecessors."  

This custom probably originated in the ancient practice of confirming laws in Parliament, that were already in force, by petitions from the Commons, to which the assent of the king was given, with the advice and consent of the Lords.  

But whatever may have been the origin and cause of this custom, and however great the concession to the Crown may appear, the privileges of the Commons are nevertheless independent of the Crown, and are enjoyed irrespectively of their petition. Some have been confirmed by statute, and are, therefore, beyond the control either of the Crown or of any other power but Parliament; while others, having been limited or even abolished by statute, cannot be granted or allowed by the Crown.  

Every privilege will be separately treated, beginning with such as are enjoyed by each house collectively, and proceeding thence to such as attach to individual members: but, before these are explained, two of the points enumerated in the Speaker's petition may be disposed of, as being matters of courtesy rather than privilege. The first of these is "freedom of access to her Majesty;" and the second "that their proceedings may receive a favourable construction."

1. The first request, for freedom of access to the sovereign, is recorded in the 28th Henry VIII.: "but," says Elsynge, "it appeareth plainly they ever enjoyed this, even when the kings were absent from Parliament;" and in the  

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Footnotes:
1 78 L. J. 571; 80 ib. 8, &c.
2 112 C. J. 119, &c.
3 See statement in the Commons' petition, 17th Edward IV., Atwyll's case (p. 101), that their liberties and franchises had been confirmed to them by the royal authority, 6 Rot. Parl. 191.
Chapter III.

“times of Richard II., Henry IV., and downwards, the Commons, with the Speaker, were ever admitted to the king’s presence in Parliament to deliver their answers; and oftentimes, under Richard II., Henry IV., and Henry VI., they did propound matters to the king which were not given them in charge to treat of.”¹ The privilege of access is not enjoyed by individual members of the House of Commons, but by the house at large, with their Speaker; and the only occasion on which it is exercised is when an address is presented to her Majesty by the whole house. Without this privilege, it is undeniable that the Queen might refuse to receive such an address presented in that manner; and that so far as the attendance of the whole house may give effect to an address, it is a valuable privilege. Addresses of the house may also be communicated to the sovereign by any members who have access to her Majesty as privy councillors.

The only right claimed and exercised by individual members, in availing themselves of the privilege of access to her Majesty; is that of accompanying the Speaker with addresses, and entering the presence of royalty, in their ordinary attire. Such a practice is, perhaps, scarcely worthy of notice, but it is probably founded upon the concession to the House of Commons, of a free access to the throne, which may be supposed to entitle them, as members, to dispense with the forms and ceremonies of the court.

Far different is the privilege enjoyed by the House of Peers. Not only is that house, as a body, entitled to free access to the throne, but each peer, as one of the hereditary counsellors of the Crown, is individually privileged to have an audience of her Majesty (see p. 48).

2. That all the proceedings of the Commons may receive favourable construction of the Commons’ proceedings.

³ Elysyne, 175. 176.
are guarded against any interference, on the part of the
Crown, not authorized by the laws and constitution of the
country. The occasions for this courtesy are also limited;
as by the law and custom of Parliament the Queen cannot
take notice of anything said or done in the house, but by
the report of the house itself (see p. 312).

Each house, as a constituent part of Parliament, exercises
its own privileges independently of the other. They are
enjoyed, however, not by any separate right peculiar to each,
but solely by virtue of the law and custom of Parliament.
There are rights or powers peculiar to each, as explained
in the last chapter: but all privileges, properly so called,
appertain equally to both houses. These are declared and
expounded by each house; and breaches of privilege are
 adjudged and censured by each: but still it is the law of
Parliament that is thus administered.

The law of Parliament is thus defined by two eminent
authorities: "As every court of justice hath laws and cus-
toms for its direction, some the civil and canon, some the
common law, others their own peculiar laws and customs,
so the High Court of Parliament hath also its own peculiar
law, called the lex et consuetudo Parliamenti." This law of
Parliament is admitted to be part of the unwritten law of the
land, and as such is only to be collected, according to the
words of Sir Edward Coke, "out of the rolls of Parliament
and other records, and by precedents and continued expe-
derience;" to which it is added, that "whatever matter arises
concerning either house of Parliament, ought to be discussed
and adjudged in that house to which it relates, and not
elsewhere."¹

Hence it follows that whatever the Parliament has con-
stantly declared to be a privilege, is the sole evidence of its
being part of the ancient law of Parliament. "The only
method," says Blackstone, "of proving that this or that
maxim is a rule of the common law, is by showing that it
hath always been the custom to observe it;" and "it is laid
down as a general rule that the decisions of courts of justice

¹ Coke, 4 Inst. 15; 1 Blackstone, 163.
BREACHES OF PRIVILEGE.

Chapter III. are the evidence of what is common law." The same rule is strictly applicable to matters of privilege, and to the expounding of the unwritten law of Parliament.

But although either house may expound the law of Parliament, and vindicate its own privileges, it is agreed that no new privilege can be created. In 1704, the Lords communicated a resolution to the Commons at a conference, "That neither house of Parliament have power, by any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of Parliament;" which was assented to by the Commons.

Both houses act upon precisely the same grounds in matters of privilege. They 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. The modes of punishment may occasionally differ, in some respects, in consequence of the different powers of the two houses: but the principle upon which the offence is determined, and the dignity of Parliament vindicated, is the same in both houses.

The right to commit for contempt, though universally acknowledged to belong to both houses, has been regarded with jealousy. But whilst the particular acts of both houses should, undoubtedly, be watched with vigilance when they appear to be capricious or unjust, it is unreasonable to cavil at privileges which are established by law and custom, and are essential to the dignity and power of Parliament.

The power of the House of Lords to commit for contempt by the Lords was questioned in the cases of the Earl of Shaftesbury, in 1675, and of Flower, in 1779: but was admitted without hesitation by the Court of King's Bench.

1 1 Comm. 68. 71.
2 14 C. J. 555. 560.
3 S Grey's Debates, 282.
4 For the exercise of the right of commitment by the House of Representatives, United States, though the right is not embodied in the constitution, see 2 Story's Comm. 305-317.
5 6 Howell, St. Tr. 1269, et seq.
6 S Durnf. & East, 314.
The power of commitment by the Commons is established upon the ground and evidence of immemorial usage. It was distinctly admitted by the Lords, at the conference between the two houses, in the case of Ashby and White, in 1704, and it has been repeatedly recognized by the courts of law. The power is also virtually admitted by the Statute 1 Jas. I. c. 13, s. 3, which provides that nothing therein shall "extend to the diminishing of any punishment to be hereafter, by censure in Parliament, inflicted upon any person."

The house has also the power to send for persons whose conduct has been brought before the house on a matter of privilege by an order for their attendance, without specifying in the order the object or the causes whereon their attendance is required; and in obedience to the order members attend in their places, and other persons at the bar (see p. 86).

The right of compelling the attendance of persons before Parliament, and of commitment being admitted, it becomes an important question to determine what authority and protection are acquired by officers of either house, in executing the orders of their respective courts.

Resistance to the Serjeant-at-arms, or his officers, or others acting in execution of the orders of either house, has always been treated and punished as a contempt.

The Lords will not suffer any persons, whether officers of the house or others, to be molested for executing their orders, or the orders of a committee, and will protect them from actions.

The house was informed, 28th November, 1768, that an action had been commenced against Mr. Hesse, a justice

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1 Nearly 1000 instances of its exercise occurred between 1547 and the first half of this century. Mr. Wynn's Treatise, p. 7.

2 17 L. J. 714.

3 The Aylesbury case, 2 Lord Raym. 1103; 3 Wils. 205; Murray's case, 1 Wils. 299 (1751); Crosby's, 3 ib. 203 (1771); Oliver's, 14 East, 1; Mr. Hobhouse's, 2 Chit. Rep. 207; 3 Barn. & Ald. 420; Sheriff of Middlesex, 11 Adolphus & Ellis, 273; Howard's case, Printed Papers, 2nd Report, 1845 (305), (397); 1847 (39).

4 5 Ap. 1892, 147 C. J. 157; 3 Parl. Deb. 4 s. 700.

5 18 L. J. 104. 412; 15 ib. 565; 21 ib. 190; 38 ib. 649; 45 ib. 840. 610.
of the peace for Westminster, who had acted under the orders of the house in suppressing a riot at the doors of the house, in Palace-yard; and Biggs, the plaintiff, and Aylett, his attorney, were ordered to attend, and were imprisoned.¹

On the complaint of Aldern, a constable, 26th June, 1788, that having, under an order of the house, refused Mr. Hyde admittance to Westminster Hall during the trial of Warren Hastings, he had been indicted for an assault, Mr. Hyde was ordered to attend, and committed.² The last case of the kind was that commonly known as "the umbrella case," when, 26th March, 1827, John Bell was summoned before the Lords, and admonished, because he had served F. Plass, a doorkeeper, when attending on the house, with a process from the Westminster Court of Requests, to pay a debt and costs awarded against him by that court, for the loss of an umbrella which was left with the doorkeeper during a debate.³

In the case of Ferrers, in 1543, the Commons committed the sheriffs of London to the Tower, for having resisted their Serjeant-at-arms, with his mace, in freeing a member who had been imprisoned in the Compter.⁴

In 1689, after a dissolution of Parliament, an action was brought against Topham, the Serjeant-at-arms attending the Commons, for executing the orders of the house in arresting certain persons. Topham pleaded to the jurisdiction of the court, but his plea was overruled, and judgment was given against him. The house declared this to be a breach of privilege, and committed Sir F. Pemberton and Sir T. Jones, who had been the judges in the case, to the custody of the Serjeant-at-arms.

In 1771, the House of Commons ordered Miller, a printer concerned in publishing the debates, to be taken into custody; and he was arrested by a messenger, under the Speaker's warrant. The messenger was brought before the Lord Mayor's court, who set the prisoner at liberty, and committed the messenger of the house for an assault. For this

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¹ 32 L. J. 187. 197.
² 38 ib. 249. 250. 251.
³ 59 ib. 199. 206.
⁴ 1 Hatsell, 53.
Resistance to the orders of the house, Mr. Alderman Oliver and the lord mayor (Brass Crosby) were committed to the Tower.¹

When the house has ordered the Serjeant to execute a warrant, the house sustains his authority, and punishes those who resist him.² But a question arises concerning the authority with which the Serjeant is invested by law, when executing a warrant, authorized by the order of the house, and the assistance he can demand from the civil power. Both houses consider every branch of the civil government as bound to assist, when required, in executing their warrants and orders, and have repeatedly required such assistance.

In 1640, all mayors, justices, &c., in England and Ireland were ordered by the Commons to aid in the apprehension of Sir G. Ratcliffe.³ In 1660, the Serjeant was expressly empowered "to break open a house in case of resistance, and to call to his assistance the sheriff of Middlesex, and all other officers, as he shall see cause; and who are required to assist him accordingly." And on the 23rd October, 1690, the Lords authorized the Black Rod to break open the doors of any house, in the presence of a constable, and there search for and seize Lord Keveton.⁴

On the 24th January, 1670, and again on the 5th April, 1679, the House of Commons directed, by resolution, that the Speaker should issue warrants requiring sheriffs, bailiffs, constables, and all other his Majesty's officers and subjects, to aid and assist the Serjeant-at-arms in his execution of the orders of the house.⁵ The Lords also have frequently required the assistance of the civil power in a similar manner.⁶ And at the present time, by the Speaker's warrant to the Serjeant-at-arms for taking a person into custody, "all mayors, sheriffs, under-sheriffs, bailiffs, constables, headboroughs, and officers of the house are required

¹ 33 C. J. 263. 285. 289; Report of Committee, 1771; see also 1 May, Const. Hist. (7th ed.) 429.
² See other cases, 9 C. J. 341. 587; 13 ib. 826.
³ 2 ib. 29.
⁴ 8 ib. 222; 14 L. J. 530.
⁵ 9 C. J. 193; 8 ib. 586; see also 2 ib. 371; 9 ib. 353.
to be aiding and assisting in the execution thereof." Before the year 1810, however, no case arose in which the legal consequences of a Speaker's warrant, and the power of the Serjeant-at-arms in the execution of it, were distinctly explained and recognized by a legal tribunal, as well as by the judgment of Parliament, in punishing resistance.

In the case of Sir Francis Burdett, in 1810, a doubt arose concerning the power of the Serjeant-at-arms to break into the dwelling-house of a person against whom a Speaker's warrant had been issued. The Serjeant-at-arms, when upon the execution of a warrant, was turned out of Sir Francis Burdett's private dwelling-house by force. The opinion of the attorney-general was consequently required to determine whether the Serjeant was justified in breaking open the outer or any inner door of the private dwelling-house of Sir F. Burdett, or of any person in which there is reasonable cause to suspect he is concealed, for the purpose of apprehending him; whether the Serjeant might take to his assistance a sufficient civil or military force for that purpose, such force acting under the direction of a civil magistrate; and whether such proceedings would be justifiable during the night as well as in the daytime.\(^1\)

The attorney-general answered all these questions, except the last, in the affirmative; and acting upon his opinion, the Serjeant-at-arms forced an entrance into Sir F. Burdett's house, down the area, and conveyed his prisoner to the Tower, with the assistance of a military force. Sir F. Burdett brought actions against the Speaker and the Serjeant-at-arms, in the Court of King's Bench, and verdicts were obtained for the defendants.

The opinion of the attorney-general, upon which the Serjeant had acted, was thus confirmed. This judgment was afterwards affirmed, on a writ of error, by the Exchequer Chamber, and ultimately by the House of Lords.\(^2\)

But although the Serjeant-at-arms may force an entrance, it was established by the action brought by Mr. Howard, in the 1st Action, 1842.

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\(^1\) 65 C. J. 264; Ann. Reg. 1810, p. 344, &c.; 16 H. D. 1 s. 257. 454. 14 East, 157; 4 Taunt. 401; 5 Dow, 915, &c.; Lord Colchester's Diary, 165. ii. 245. 283, &c.

\(^2\) See Lord Ellenborough's opinion, 14 East, 157; 4 Taunt. 401; 5 Dow, 915, &c.; Lord Colchester's Diary, 165.
1842, that the Serjeant or his messengers are not authorized to remain in the house, if they know that the person to be arrested is from home, in order to await his return.¹

If the officer should not exceed his authority, he will be protected by the courts, even if the warrant should not be technically formal, according to the rules by which the warrants of inferior courts are tested. In 1843, Mr. Howard commenced another action of trespass against Sir W. Gosset, the Serjeant-at-arms, and the Court of Queen's Bench gave judgment for the plaintiff, on the ground that the warrant was technically informal, and did not justify the acts of the Serjeant. This judgment was reversed by the Court of Exchequer Chamber, by whom the privileges of Parliament were thus expounded: "They construe the warrant as they would that of a magistrate; we construe it as a writ from a superior court; the authorities relied upon by them relate to the warrants and commitments of magistrates; they do not apply to the writs and mandates of superior courts, still less to those of either branch of the High Court of Parliament." Writs issued by a superior court, not appearing to be out of the scope of their jurisdiction, are valid of themselves, without any further allegation, and a protection to all officers and others in their aid, acting under them; and that, although on the face of them they be irregular.² And this principle was extended, by the decision of the Lord Chief Baron, in the action brought in 1852 by Mr. Lines against Lord C. Russell, the Serjeant-at-arms, who, authorized by a warrant issued by the chairman of a committee under the Election Petitions Act, 1848, had taken Mr. Lines into custody for misbehaviour in giving evidence before the committee.³

The power of commitment, with all the authority which can be given by law, being thus established, it becomes the key-stone of parliamentary privilege. Either house may

¹ Carrington & Marshman, 382. ² 10 Q. B. 359; shorthand writer’s notes, 1847 (39), p. 166. 168. ³ Shorthand writer’s notes, 25th June, 3rd and 13th Nov. 1852; 16 Lord Raymond, Queen v. Pety; 2 Lord Raymond, Salk. 503.
adjudge that any act is a breach of privilege and contempt; and if the warrant recites 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 High Court of Parliament, by which he stands committed.

The Habeas Corpus Act is binding upon all persons whatever, who have prisoners in their custody; and it is therefore competent for the judges to have before them persons committed by the Houses of Parliament for contempt; and it is the practice for the Serjeant-at-arms and others, by order of the house, to make returns to writs of habeas corpus.

But although the return is made according to law, the parties who stand committed for contempt cannot be admitted to bail, nor the causes of commitment inquired into, by the courts of law. It had been so adjudged by the courts, during the Commonwealth, in the cases of Captain Streeter and Sir Robert Pye. The same opinion was expressed in Sheridan’s case, by many of the first lawyers in the House of Commons, shortly after the passing of the Habeas Corpus Act; and it has been confirmed by resolutions of the House of Commons, and by numerous subsequent decisions of the courts of law, given on applications for the release, or for the discharge on bail, of persons committed by the Houses of Lords and Commons.

It may be considered, accordingly, as established, beyond

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1 31 Car. II. c. 2.
2 Sheriff of Middlesex, 95 C. J. 25, 24th January, 1840; 51 H. D. 3 s. 550; Lines’s case, 106 C. J. 147. 145. 153. In 1675 and 1704, the Commons endeavoured to resist the operation of a writ of habeas corpus by orders to the lieutenant of the Tower and to the Serjeant-at-arms, to make no return therefor, 9 ib. 356; 14 ib. 565.
3 2 ib. 960; 5 ib. 221; 5 Howell, St. Tr. 365. 948; Styles, 415.
5 Lord Shaftesbury’s case, 6 Howell, St. Tr. 1269; 1 Freem. 153; 1 Mod. 144; 3 Keble, 792; Paty’s case, 2 Lord Raymond, 1109; Mr. Murray’s case, 1 Wils. 200; Brass Crosby’s, 19 Howell, St. Tr. 1137; 3 Wils. 188. 203; Flower’s case, 8 Duruf. & East, 314; Hobhouse’s case, 2 Chit. Rep. 207; 3 Barn. & Ald. 420; sheriff of Middlesex, 95, C. J. 25; 11 Adol. & Ellis, 273; case of W. Lines, 106 C. J. 147. 148. 153.
all question, that the causes of commitment by either house of Parliament, for breaches of privilege and contempt, cannot be inquired into by courts of law: but that their "adjudication is a conviction, and their commitment, in consequence, an execution." No other rule could be adopted consistently with the independence of either house of Parliament; nor is the power thus claimed by Parliament greater than the power conceded by the courts to one another.¹

One qualification of this doctrine, however, must not be omitted. When it appears, upon the return of the writ, simply that the party has been committed for a contempt and breach of privilege, it has been universally admitted that it is incompetent for the courts to inquire further into the nature of the contempt: but if the causes of commitment were stated on the warrant, and appeared to be beyond the jurisdiction of the house, it is probable, judging by the opinion expressed by Lord Ellenborough, in Burdett v. Abbot,² and by Lord Denman in the case of the sheriff of Middlesex, that their sufficiency would be examined.

The same principle may be collected from the judgment of the Exchequer Chamber in Gosset v. Howard, where it is said, "It is presumed, with respect to such writs as are actually issued by superior courts, that they are duly issued, and in a case in which they have jurisdiction, unless the contrary appear on the face of them."

But it is not necessary that any cause of commitment should appear upon the warrant, nor that the prisoner should have been adjudged guilty of contempt.³ It has been a very ancient practice in both houses to send for persons in custody to answer charges of contempt;⁴ and in the Lords, to order

¹ See the decision of the Court of Common Pleas, 18th Nov. 1845, in the case of William Cobbett detained under a writ of attachment issued by the Court of Chancery; and also In re W. Dimes, 17 Jan. 1850, 14 Jurist, 198.
² 14 East, 1.
⁴ 2 L. J. 201 (26th Nov. 1597); ib. 256 (17th Dec. 1601); ib. 296; 11 ib. 252, &c.; 1 C. J. 175. 680. 886 (1623 and 1628); 9 ib. 351 (1675); 21 ib. 705 (1731); 35 ib. 233 (1775); 80 ib. 445 (1825); 82 ib. 561 (1827); 95 ib. 30. 56. 59 (1849); Mr. Grissell, 1880, 135 ib. 70.
them to be attached and brought before the house to answer complaints of breaches of privilege, contempts, and other offences. This practice is analogous to writs of attachment upon mesne process in the superior courts, and is unquestionably legal.

In earlier times it was not the custom to prepare a formal warrant for executing the orders of the House of Commons; but the Serjeant arrested persons with the mace, without any written authority; and at the present day he takes strangers into custody who intrude themselves into the house, or otherwise misconduct themselves, in virtue of the general orders of the house, and without any specific instructions. The Speaker has also directed the Serjeant to take offenders into custody (see p. 85).

The Lords attach and commit persons by order, without any warrant. The order of the house is signed by the Clerk of the Parliaments, and is the authority under which the officers of the house and others execute their duty.

Wilful disobedience to orders, within its jurisdiction, is a contempt of any court, and disobedience to the orders and rules of Parliament, in the exercise of its constitutional functions, is treated as a breach of privilege. Insults and obstructions, also, offered to a court at large, or to any of its members, are contempts; and in like manner, by the law of Parliament, are breaches of privilege. It would be vain to attempt an enumeration of every act which might be construed into a breach of privilege: but certain principles may be collected from the journals, which will serve as general declarations of the law of Parliament.

Breaches of privilege may be divided into: 1. Disobedience to general orders or rules of either house; 2. Disobedience to particular orders; 3. Indignities offered to the character or proceedings of Parliament; 4. Assaults or

1 See precedents collected in App. to 2nd Rep. on Printed Papers, 1845 (397), p. 104.
3 29 C. J. 23; 74 ib. 537; 85 ib. 461; 88 ib. 323; 88 ib. 246; 102 ib. 99.
BREACHES OF PRIVILEGE.

insults upon members, or reflections upon their character and conduct in Parliament; or interference with officers of the house in discharge of their duty.

1. Disobedience to any of the orders or rules which regulate the proceedings of the house, is a breach of privilege. But if such orders should appear to clash with the common or statute law of the country, their validity is liable to question, as will be shown hereafter (see p. 128).

As examples of general orders, the violation of which will be regarded as breaches of privilege, the following may be sufficient.

The publication of the debates of either house has been repeatedly declared to be a breach of privilege, and especially false and perverted reports of them; and no doubt can exist that if either house desire to withhold their proceedings from the public, it is within the strictest limits of their jurisdiction to do so, and to punish any violation of their orders; and under the Lords' standing order No. 80 it is a breach of privilege for any person, without the leave of the house, to print, or publish in print, anything relating to its proceedings.1

In 1801, Allan Macleod and John Higginbottom were fined respectively 100l. and 6s. 8d., and were committed to Newgate for six months, for publishing and vending certain paragraphs purporting to be a proceeding of the house, which had been ordered to be expunged from the journal, and the debate thereupon. In the same year, H. Brown and T. Glassington were committed to the custody of the Black Rod, for printing and publishing, in the Morning Herald, paragraphs purporting to be an account of what passed in debate, but which the house declared to be a scandalous misrepresentation.2

On the 13th and the 22nd July, 1641, it was ordered by the Commons, "That no member shall either give a copy, or publish in print anything that he shall speak here, without leave of the house;" and "that all the members of the house are enjoined to deliver out no copy or notes of any-

thing that is brought into the house, or that is propounded or agitated in the house.” 1

Repeated orders also have been made by the house for- bidding the publication of the debates and proceedings of the house, or of any committee thereof, and of comments thereon, or on the conduct of members in the house, by newspapers, newsletters, or otherwise, and directing the punishment of offenders against such rules. 2 These orders have long since fallen into disuse; though the Speaker has ruled that a member cannot be required to state whether expressions alleged to have been made by him in the house were correctly reported in a newspaper. 3 Debates are daily cited in Parliament from printed reports; galleries are constructed for the accommodation of reporters; 4 committees have been appointed to provide increased facilities for reporting; a place is reserved for a reporter near the table of the House of Lords; and grants are annually voted to further the publication of the debates. When a wilful misrepresentation of the debate arises, or if it may be necessary to enforce the restriction, the house censures or otherwise punishes the offender, whether he be a member of the house or a stranger admitted to its debates. 5 But as orders prohibiting the publication of debates are still retained upon the journals, the action of the house, in dealing with the misrepresentation of its debates, is some- what anomalous. The ground of complaint is the incorrect report of a speech: but the motion for the punishment of the printer assumes that the publication of the debate at all is a breach of privilege. 6 The principle, however, by which

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1 2 C. J. 209. 220. Publication of Lord Digby's speech.
2 2 C. J. 501; Orders, 22nd Dec. 1694; 11th Feb. 1695; 19th Jan. 1697; 3rd Jan. 1708; 23rd Jan. 1722; 11 C. J. 193; ib. 439; 12 ib. 48. 661; 13 ib. 767; 14 ib. 270; 20 ib. 99; 21 ib. 238; 29 ib. 207; 45 ib. 508; 75 ib. 57; see also the Second Report on Sir F. Burdett, in 1810.
3 17th April, 1837, 92 C. J. 270.
4 Reporters' Gallery, House of Lords, since 15th Oct. 1831; in the House of Commons, since 19th Feb. 1835, 3 Walpole's Hist. 287.
5 67 C. J. 432; 71 ib. 537; 88 ib. 606.
6 See Debate on Mr. Christie's motion, 12th Feb. 1844; 72 H. D. 3 s. 580; Debate, 1st May, 1849; 104 H. D. 3 s. 1054.
both houses are governed is now sufficiently acknowledged. So long as the debates are correctly and faithfully reported, the privilege which prohibits their publication is waived: but when they are reported malá fide, the publishers of newspapers are liable to censure. And by the 44 & 45 Vict. c. 60, fair and accurate newspaper reports of the proceedings of public meetings, published without malice and for the public benefit, are privileged.

It is declared to be a breach of privilege for a member, or any other person, to publish the evidence taken before a select committee, until it has been reported to the house; and the publisher of a newspaper has been committed for this offence by the House of Commons. On the 13th April, 1875, complaint was made of the publication in two newspapers of the proceedings and evidence taken before the select committee on Foreign Loans. The publication was declared a breach of privilege; and the printers were ordered to attend: but as it appeared in debate that the publication had not been unauthorized by the committee, they were directed to report the circumstances under which the documents had been communicated to the newspapers. A special report was accordingly made, and no further proceedings were taken.

On the 31st May, 1832, complaint was made of the publication of a draft report of a committee, in a Dublin newspaper: the proprietor admitted that he had sent the copy, but he declined to give information which might implicate any other person. He was accordingly committed to the Serjeant for a breach of privilege.

In 1850, a draft report of the committee on Postal Com-

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1 See Lord Hartington's proposed resolution, 4th May, 1875, 224 H. D. 3 s. 48. Regarding the taking of notes in the side gallery, by an officer of the house, July, 1879, see 248 ib. 47. 163. 228; see also Report of Lords' Committee on the Privilege of Reports, 1857; 149 H. D. 3 s. 947; 13th April, 1858.

2 See Wason v. Walter, 21st Dec. 1867.

3 See Resolution 21st April, 1837, 92 C. J. 282.

4 See also Report on Postal Communication with France, 1850 (381).

5 A newspaper proprietor is not liable for publishing a faithful report of a parliamentary debate.
munication with France was published in two newspapers, while it was under consideration. The committee vainly endeavoured to trace the parties from whom the copy had been obtained, but recommended improved regulations for the printing, distribution, and custody of such documents.¹

2. Resolutions are agreed to at the beginning of each session, which declare that the house will proceed with the utmost severity against persons who tamper with witnesses, in respect of evidence to be given to the house, or any committee thereof; who endeavour to deter or hinder persons from appearing or giving evidence; and who give false evidence before the house or any committee thereof.

The house has acted on these resolutions with severity; and the journals abound with cases in which witnesses have been punished by commitment to the Serjeant-at-arms, and to Newgate, for prevaricating or giving false testimony, or suppressing the truth; for refusing to answer questions, or to produce documents in their possession. If a witness be guilty of such misbehaviour before a committee of the whole house, or a select committee, the circumstance is reported to the house, by whom the witness is dealt with.²

There are various other orders and rules connected with parliamentary proceedings; for example, to prevent the forgery of signatures to a petition (see p. 497); for the protection of witnesses (see p. 120); for the protection of the officers of the house (see p. 62); and for other purposes which will appear in different parts of this work. A wilful violation of any of these orders or rules, or general misconduct in reference to the proceedings of Parliament, will be censured, or punished, at the pleasure of the house whose orders are concerned.³

3. Indignities offered to the character or proceedings of Libels upon the house.

¹ 87 C. J. 360; Report, p. vi. sess. 1850 (331).
² 21 C. J. 842; 64 ib. 54; 95 ib. 504; 29 H. D. 3 s. 1279; Orange Lodges (Colonel Fairman), 90 C. J. 504. 520. 564; 103 ib. 258; 112 ib. 354; 134 H. D. 3 s. 452; 82 C. J. 473; 88 ib. 218; 90 ib. 504; 121 ib. 239.
³ 34 C. J. 800; 22 ib. 146; 4 L. J. 705; 37 ib. 613; 38 ib. 338. 649.
⁴ Lords Journal, 12th April, 1850 (Mr. Nash); 13th Aug. 1850 (Liverpool Corporation Waterworks).
Parliament, by libellous reflections, have been punished as breaches of privilege. Some offenders have escaped with a reprimand, or admonition; others have been committed to the custody of the Black Rod, or the Serjeant-at-arms; while many have been confined in the Tower and in Newgate; and in the Lords, fine, imprisonment, and the pillory have been adjudged. Prosecutions at law have also been ordered against the parties. The cases are so numerous, that only a few of the most remarkable need be given.

For offences, not directly concerning the house, the House of Lords addresses the Crown to direct the attorney-general to prosecute, and the practice of the House of Commons is substantially the same. In some cases, it orders the attorney-general to prosecute, of its own authority, and in other cases addresses the Crown to direct such prosecutions. The principle of this distinction, though not invariably observed, appears to have been, that in offences against the house, or connected with elections, the attorney-general has been directed to prosecute: but in offences of a more general character against the public law of the country, addresses have been presented to the Crown.

Severe punishments were formerly awarded by the Lords in cases of libel, as fine, imprisonment, and pillory: but in modern times commitment, with or without fine, has been the ordinary punishment. On the 15th December, 1756, George King was fined 50£, and committed to Newgate for six months, for publishing "a spurious and forged printed paper, dispensed and publicly sold as his Majesty's speech to both houses of Parliament." In 1798, Messrs. Lambert

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1 72 C. J. 245; 77 ib. 432, &c.
2 34 L. J. 380; 11 C. J. 774; 23 ib. 546; 26 ib. 9, 304; 34 ib. 464; 44 ib. 463; Report Lords' Committee, 18th May, 1716; 20 L. J. 362.
3 16 L. J. 286; 17 ib. 114; 21 ib. 344; 30 ib. 420; 36 ib. 143; 52 ib. 881.
4 1 Hatsell, 128, n.; 96 C. J. 394, 413; 109 ib. 159; 112 ib. 355.
5 From 1711 to 1832 there were 20 addresses, two only being election cases; and 17 orders to prosecute, all being libel or election cases except one, which was for a riot.
6 4 L. J. 615; 5 ib. 241. 244; 20 ib. 363; 22 ib. 353, 354.
7 22 ib. 351, 367, 380.
8 29 ib. 16; 15 Parl. Hist. 779.
and Perry were fined 50£ each, and committed to Newgate for three months, for a newspaper paragraph highly reflecting on the honour of the house.¹

In the Commons, William Thrower was committed to the custody of the Serjeant, in 1559, for a contempt in words against the dignity of the house. In 1580, Mr. Arthur Hall, a member, was imprisoned, fined, and expelled, for having printed and published a libellons paper containing "matter of infamy of sundry good particular members of the house, and of the whole state of the house in general, and also of the power and authority of the house." In 1628, Henry Aleyn was committed to the custody of the Serjeant for a libel on the last Parliament.² In 1643, the Archdeacon of Bath was committed for abusing the last Parliament. In 1701, Thomas Colepepper was committed for asserting that members of the previous House of Commons had received money from France; and the attorney-general was directed to prosecute him. In 1805, Peter Stuart was committed for printing, in his newspaper, severe comments on the treatment of Lord Melville by the house. In 1810, Sir F. Burdett, a member, was sent to the Tower for publishing an address to his constituents denying the right of the house to imprison for breach of privilege. In 1819, Mr. Hobhouse, having acknowledged himself the author of a pamphlet denouncing the resistance offered by the House of Commons to parliamentary reform, was committed to Newgate.³ On the 26th February, 1838, complaint was made of expressions in a speech of Mr. O’Connell, a member, at a public meeting, as containing a charge of foul perjury against members of the house, in the discharge of their judicial duties in election committees. Mr. O’Connell was heard in his place, and avowed that he had used the expressions complained of. He was declared guilty of a breach of privilege, and, by order of the house, was reprimanded in his place by the Speaker.⁴ A charge that the

¹ 41 L. J. 506. ² 2 C. J. 63; 13 ib. 735; 60 ib. ³ 1 C. J. 60. 126. 925; D’Ewes, 113; 65 ib. 252; 75 ib. 57. ⁴ 93 ib. 307. 312. 316.
Commons permitted the presence amongst them of men "whose political existence depends on an organized system of midnight murder," has been held to be not a case of privilege.¹

The power of the house to commit the authors of libels was questioned before the Court of King's Bench, in 1811, by Sir F. Burdett, but was admitted by all the judges of that court, without a single expression of doubt.²

4. Interference with or reflections upon members have been resented as indignities to the house itself.

In the Lords, this offence has been visited with peculiar severity, of which numerous instances are to be found in the earlier volumes of their journals.³ On the 22nd March, 1623, Thomas Morley was fined 1000l., sent to the pillory, and imprisoned in the Fleet, for a libel on the Lord keeper; and on the 9th July, 1663, Alexander Fitton was fined 500l., and committed to the King's Bench, for a libel on Lord Gerard of Brandon, and ordered to find sureties for his behaviour during life.⁴

In later times, parties have been attached for libels on peers, as in 1722, for printing libels concerning Lord Strafford and Lord Kinnoul; and fined and committed, as in the case of Flower, in 1799, for a libel on the Bishop of Llandaff. In 1776, Richard Cooksey was attached for sending an insulting letter to the Earl of Coventry, reprimanded, and ordered into custody until he gave security for his good behaviour. In 1834, Thomas Bittleston, editor of the Morning Post, was committed to the custody of the usher of the Black Rod for a paragraph in that newspaper reflecting upon the conduct of Lord Chancellor Brougham, in the discharge of his judicial duties in the House of Lords.⁵

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¹ Times, 22nd Feb. 1887, 311 H. D. 3 s. 286; see also 2nd Aug. 1888, 143 C. J. 420.
² Burdett v. Abbot, 14 East, 1.
³ 3 L. J. 842. 851; 4 ib. 131; 5 ib. 24.
⁴ 3 ib. 276; 11th ib. 554; W. Carr was also punished by fine, the pillory, and imprisonment, for the same offence, 12 ib. 174; Downing imprisoned and fined, 14 ib. 144.
⁵ 22 ib. 129; ib. 149; 42 ib. 181; 39 ib. 314. 321; 66 ib. 704. 737. 743. 764; Hansard, 27th, 28th, and 30th June, 1834.
In the Commons, on the 12th April, 1783, and 1st June, 1780, it was resolved that it was a high infringement of the privilege of the house, a crime and misdemeanour, to assault, insult, or menace any member of the house, in his coming or going from the house, or upon the account of his behaviour in Parliament; or 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.\(^1\)

And in numerous instances, as well before as after these resolutions, persons assaulting, challenging, threatening, or otherwise molesting members on account of their conduct in Parliament, have been committed or otherwise punished by the house.

On the 22nd June, 1781, complaint was made that Sir J. Wrottesley had received a challenge for his conduct as a member of the Worcester election committee; and Swift, the person complained of, was committed to the custody of the Serjeant.\(^2\) Daniel Butler, a sherriff’s officer, was committed to Newgate, 13th April, 1809, for arresting and insulting Sir Charles Hamilton.\(^3\)

On the 11th July, 1824, the Speaker, having received information that a member had been assaulted in the lobby, ordered the Serjeant to take the person into custody; and doubts being entertained of his sanity, he was ordered to stand committed to the custody of the Serjeant.\(^4\)

In 1827, complaint was made of three letters which had been sent to Mr. Secretary Peel, threatening to contradict his speeches from the gallery of the house. The letters were read, and the writer, H. C. Jennings, ordered to attend. He acknowledged the letters, was declared guilty of a breach of privilege, and received a reprimand from the Speaker.\(^5\) On the 12th June, 1876, complaint was made of a letter to a member, intimating that, under the rules of the Reform Club, he was liable to be removed for his

\(^1\) 22 C. J. 115; 37 ib. 902.
\(^2\) 38 ib. 535. 537; see also 15 ib. 405; 16 ib. 562, &c.
\(^3\) 64 ib. 210. 213.
\(^4\) 79 ib. 483.
\(^5\) 82 ib. 395. 399.
political conduct: but no action was taken by the house.¹

On the 10th February, 1888, a member, who was mis-
taken for another person, on quitting the precincts of the house, was wrongfully arrested by a police officer upon a warrant issued under the Criminal Law (Ireland) Act, 1887.

At the next sitting of the house the matter was brought forward, and a motion proposed that a high infringement of the privilege of Parliament had been committed. This motion was, however, set aside by an amendment expressing the regret of the house for the occurrence, and stating that, as it arose from a mistake, it was unnecessary to proceed further with the matter.² Again, on the 26th November, 1888, a complaint that an attempt had been made to serve a summons, also issued under the above-mentioned Act, upon a member in the outer lobby of the house, was brought before the house in committee. Report of progress was made; the Speaker resumed the chair; and a select committee was appointed to consider the matter. The committee reported (8th December) that the attempted service of a summons upon a member within the precincts of the house, whilst the house was sitting, without the leave of the house first obtained, was a breach of the privileges of the house; but that the committee did not recommend the interposition of the house in any proceedings against the constable who had made the attempted service, as the committee were satisfied that no violation of the privileges of the house was intended; and subsequently (13th December) when, upon the consideration of the report, a motion was made “that this house doth concur in the report of the committee,” an amendment was carried, “that the house do now proceed to the orders of the day.”³

¹ 131 C. J. 252; 220 H. D. 3 a. 1670.
² 143 C. J. 30; 322; H. D. 8 s. 262.
³ 143 C. J. 494. 505. 511; Parl. Paper, 1882, No 411. The case of Bogo de Clare, who cited the Earl of Cornwall in Westminster Hall, during Parliament time, 18 Edw. I. (1290), and who, in consequence, suffered fine and imprisonment, is the earliest example of breach of privilege by the service of a citation in a royal palace, and not of freedom from arrest, p. 109, n. 4, 1 Rot. Parl. 17. It has been doubted whether a writ of
An accusation of partiality in the administration of the closure, directed against the Speaker by a member at a public meeting, was informally brought before the house by a question addressed to the chair. The Speaker, in his reply, explained the nature of the offence which had thus been committed against the house by the member's conduct towards the Speaker; and the member made, in consequence, an apology in terms that averted the consequences of the offence. Subsequently, however, the same member published in a newspaper a letter which contained a repetition of the same offence against the Speaker. The house thereupon, having heard the member in his place, resolved that the letter was a gross libel upon Mr. Speaker, deserving the severest condemnation of the house, and that the member be suspended from the service of the house for the remainder of the session, or for one calendar month, whichever should first terminate.¹

Libels upon members have also been constantly punished: but to constitute a breach of privilege they must concern the character or conduct of members in that capacity; and, as is explained on p. 261, the libel must be based on matters arising in the actual transaction of the business of the house. Aspersions upon the conduct of members as magistrates, or officers in the army or navy, or as counsel,² or employers of labour, or in private life, or otherwise than in relation to Parliament, are within the cognizance of the courts, and are not fit subjects for complaints to the House of Commons. In 1680, A. Yarrington and R. Groome were committed for a libel against a member. In 1689, 1696, and 1704, Christopher Smelt, John Rye, and J. Mellot were committed for libelling members. In 1733, William Noble was com-

1 143 C. J. 385; 313 H. D. 3 s. 371; 329 ib. 48; 27th July, 1891, 146 C. J. 481; complaints, 13th March, 4th July, 1893. See also p. 833.
² Dr. Kenealy's case, 4th March, 1875; 222 H. D. 3 s. 1185.
mitted for asserting that a member received a pension for his voting in Parliament. In 1774, H. S. Woodfall was committed for publishing a letter reflecting on the character of the Speaker. In 1821, the author of a paragraph in the *John Bull* newspaper, containing a false and scandalous libel on a member, was committed to Newgate.¹

On the 1st March, 1824, Mr. Abercromby made a complaint to the house that the lord chancellor in his court had used offensive expressions with reference to what had been said by himself in debate: but on division the matter was not allowed to proceed any further.²

Other cases, too numerous to mention, have occurred, in some of which the parties have been committed or reprimanded.³ In 1844, a member having made charges at a public meeting against two members of the house, was ordered to attend in his place; and after he had been heard, the house resolved that his imputations were wholly unfounded and calumnious, and did not effect the honour and character of the members concerned.⁴

A complaint was made 17th February, 1880, of the publication of printed placards throughout the city of Westminster, reflecting upon the conduct of Sir Charles Russell, member for that city, and signed by Mr. Plimsoll, a member. On the 20th February, Mr. Plimsoll, having withdrawn and apologized for the expressions complained of, the house condemned his conduct as a breach of privilege: but, having regard to the withdrawal of the expressions complained of, resolved that no further action was necessary.⁵

¹ 9 C. J. 654. 656; 10 ib. 244; 11 ib. 656; 14 ib. 565; 23 ib. 245; 34 ib. 456; 76 ib. 335.
² 10 H. D. n. s. 571.
³ See the head of Privileges in the General Journ. Ind. 1517-1713, and Complaints in the other Journal Indexes; and the cases of Mr. Aston in 1872; Mr. Plimsoll and Pall Mall Gazette in 1873; Mr. O'Donnell and the *Globe* in 1878; Sir S. Northcot and Mr. Callan; Speeches by John Bright, 130 C. J. 280; 140 ib. 358; see also Mr. Speaker's observations, 15th March, 1883, 277 H. D. 3 s. 570. Charges by the *Times* against a member of giving to the house a false explanation (3rd May, 1887), 142 C. J. 208. 215. 218; complaint that the *Times* had published a letter attributed to Mr. Parnell (11th Feb. 1890), 145 C. J. 7; also charges against members, 16th Feb. 1898.
⁴ Mr. Ferrand's case, 24th and 26th April, 1844, 99 C. J. 235. 239.
⁵ 135 C. J. 46. 54; 250 H. D. 3 s. 797. 1108.
On some occasions the house has also directed prosecutions against persons who have published libels reflecting upon members, in the same manner as if the publications had affected the house collectively.¹

Scandalous charges or imputations directed against members of a select committee are equivalent to libellous charges brought against the house itself.²

In 1832, Messrs. Kidson & Wright, solicitors, were admonished for having addressed to the committee on the Sunderland Dock Bill, a letter reflecting on the conduct of members of the committee, copies of which were circulated in printed handbills.³ On the 1st June, 1874, Mr. France was admonished at the bar, by the Speaker, for addressing a letter to the chairman of the committee on explosive substances, imputing unfair conduct to him and other members of the committee.⁴

On the 2nd May, 1695, the house resolved that “the offer of money, or other advantage, to a member of Parliament for the promoting of any matter whatsoever, depending or to be transacted in Parliament, is a high crime and misdemeanour.”⁵

And in the spirit of this resolution, the offer of a bribe, in order to influence a member in any of the proceedings of the house, or of a committee, has been treated as a breach of privilege, being an insult not only to the member himself, but to the house.⁶

So also the acceptance of a bribe by a member has ever, by the law of Parliament, been a grave offence, which has been visited by the severest punishments. In 1677, Mr. John Ashburnham was expelled for receiving 500l. from the French merchants for business done in the house.⁷ In 1694, Sir John Trevor was declared guilty of a high crime and

¹ 13 C. J. 230; 14 ib. 37. ¹ 1022. 1063. 1198, &c.
³ 87 C. J. 278. 294. For similar cases of libels upon committees, see 72 ib. 232 (Police Committee, 1816). 34 ib. 496 (Shaftesbury Election); 113 ib. 189, &c. (Carlisle and Hawick Railways); 150 H. D. 3 s.
⁴ 11 C. J. 331. ⁵ 11 ib. 274. 275; 14 ib. 474; 17 ib. 493. 494; 19 ib. 542.
misdemeanour, in having, while Speaker of the house, received a gratuity of a thousand guineas from the City of London, after the passing of the Orphans Bill, and was expelled.¹

In 1695, Mr. Guy, for taking a bribe of two hundred guineas, was committed to the Tower,² and Mr. Hungerford was expelled, for receiving twenty guineas for his service as chairman of the committee on the Orphans Bill.³

Nor has the law of Parliament been confined to the repression of direct pecuniary corruption. To guard against indirect influence, it has further restrained the acceptance of fees by its members, for professional services connected with any proceeding or measure in Parliament.⁴

A member is accordingly incapable of practising as counsel before the house, or any committee. By resolution, 26th February, 1830, members of the House of Commons are prohibited from engaging, either by themselves or by a partner, in the management of private bills, before this or the other house of Parliament, for pecuniary reward.⁵ Nor is it consistent with parliamentary or professional usage for a member to advise, as counsel, upon any private bill, or other proceeding in Parliament.

By resolution 6th November, 1666, members are prohibited from acting as counsel on either side, in bills depending in the House of Lords, before such bill shall come down there from the House of Commons.⁶ In the case, however, of the bill then pending against her Majesty Queen Caroline, Mr. Brougham and Mr. Denman, the queen’s attorney and

² 5 ib. 886.
³ 11 C. J. 283; 5 Parl. Hist. 911. Reprimand was administered to Mr. Bird for offering to a member one guinea for preparing a petition, 5 Parl. Hist. 910.
⁴ By resolution 22nd June, 1858, 113 C. J. 247, the Commons declared that it is derogatory to the dignity of the 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.” See Mr. Speaker’s ruling regarding the scope of this resolution, reported Times, 11th Feb. 1858. Proceedings and report on the petition of Edward Coffey, 1858, 148 H. D. 3 s. 1855, &c.
⁵ See complaint 18th April, 1884, of a circular sent by a member to the members of the house soliciting their votes for the third reading of a private bill, for which his son was the solicitor, 139 C. J. 167.
⁶ 8 ib. 646.
solicitor-general, and the king's attorney and solicitor-

Chapter III.

solicitor-general, and Dr. Lushington, were permitted to plead as
counsel at the bar of the House of Lords: but such leave
was not to be drawn into a precedent.\(^1\) It was also
understood that, if the bill should be received by the
Commons, none of those gentlemen would be permitted to
vote upon it.\(^2\)

It was formerly the custom to give leave to members to
plead at the bar of the House of Lords on appeals, the last
instance being in 1710, since which time members have been
accustomed to plead without leave, in all judicial cases
before the House of Lords, and before the committee of
privileges.\(^3\)

Assaults, or interference with officers of the house, while
in the execution of their duty, have also been punished as
breaches of privilege.\(^4\)

To commence proceedings in a court of law against any
person for his conduct in obedience to the orders of Parlia-
ment, or in conformity with its practice, is a breach of
privilege. According to present usage, however, if such an
action be commenced against an officer of the house, the
Commons have given leave to the officer to appear in the
action, when the law officers of the Crown, either by the
order of the house,\(^5\) or upon direction given by a minister
of the Crown, undertake the officer's defence; or, if it seems
expedient, the Speaker can, at his discretion, place the
defence of the officer in the hands of the Government.
The courts of law have refused to entertain actions brought
against members of Parliament, or against an officer of the

\(^1\) 12th July, 1820, 75 C. J. 444; 2 H. D. n. s. 400.

\(^2\) Leave was given to Mr. Roebeck to plead at the Lords' bar in support
of the Sudbury Disfranchisement Bill; but leave was refused to Mr. C.
Buller to plead before the Lords upon the Bolton Waterworks Bill,
18th July, 1842, 97 C. J. 499; 4th May, 1846; 101 ib. 627; 86 H. D.
3 s. 92; see also 8 C. J. 322; 9 ib. 86 (Dean Forest Bill).

\(^3\) 3 ib. 88; 10 ib. 336; 16 ib. 486; see also 1 H. D. v. s. 402.

\(^4\) 19 C. J. 365. 370; 20 ib. 185.

\(^5\) This course was pursued in the cases of Burdett v. Abbot, Howard
v. Gosset (see p. 65); of Lines v. Russell (p. 141); of Bradlaugh v.
Erskine, and Bradlaugh v. Gosset (p. 141). See also the second report
from the committee on printed papers, cited, p. 140.
house, for acts done in the transaction of parliamentary business. A person forwarded to two members a petition for presentation; and the petitions were returned to the sender, because they infringed the rules of the house. That person in consequence brought actions against the members and the clerk who had acted in the matter: but the actions were dismissed on the ground that the causes of complaint were not cognizable by a court of law.¹

To tamper with a witness in regard to the evidence to be given by him before the house, or any committee of the house, is a breach of privilege. On the 9th February, 1809, during the inquiry into the conduct of the Duke of York, Mrs. Clarke read a letter addressed to her which suggested that she should leave the country. The writer of the letter was taken into custody: during his examination, he was closely pressed and obliged to answer all the questions relating to his interviews with Mrs. Clarke, and his objects in giving her advice as to her evidence. He appealed to the chairman, whether he was bound to answer questions to prove himself guilty of a breach of privilege. No actual decision was given upon this appeal: but throughout his examination, questions of that character had been addressed to him.²

On the 19th June, 1857, a petition was presented, complaining that Peter Johnson had offered the sum of 50l. to Rothwell, a witness, who had been served with the Speaker's warrant to attend before the Rochdale election committee, to induce him to go abroad for the purpose of avoiding giving evidence before the committee. Newall, the petitioner, and Rothwell, being ordered to attend the house forthwith, were examined; and a select committee was appointed to continue the inquiry, which resulted, however, in no definite conclusion. Out of this case there arose, incidentally, a question how far a person accused of a breach of privilege is bound to answer questions tending to criminate

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¹ Chaffers v. Goldsmid, Westminster County Court, 13th Aug. 1891; Chaffers v. Simeou, Div. Court Queen's Bench; Chaffers v. Gibbs, Lord Mayor's Court, Times reports, 1st April and 20th May, 1892.
² 12 H. D. 461.
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himself, on which considerable differences of opinion were entertained.¹

When the Speaker is accompanied by the mace, he has power to order persons into custody for disrespect, or other breaches of privilege committed in his presence, without the previous order of the house. Mr. Speaker Onslow ordered a man into custody who pressed upon him in Westminster Hall; and a case is mentioned by D'Ewes in which a member seized upon an unruly page and brought him to the Speaker, by whom he was committed prisoner to the Serjeant. In 1675, Sir Edward Seymour, the Speaker, seized Mr. Serjeant Pemberton, and delivered him into the custody of a messenger: but in that case Pemberton had already been in custody, and had escaped from the Serjeant-at-arms.²

In all these classes of offences, both houses will commit, inquire into alleged breaches of privilege, or otherwise punish, in the manner described: but not without due inquiry into the alleged offence.

The Lords, by standing orders Nos. 82 & 83, have endeavoured to impose restraint upon frivolous complaints of breach of privilege.³

Before the year 1845, it had been customary for the House of Lords, when inquiring into an alleged breach of privilege, to conduct the inquiry with closed doors: ⁴ but, in later cases, strangers have not been ordered to withdraw.

In the Commons, under resolutions, 31st January, 1694, and 3rd January, 1701, no person should be taken into custody, upon complaint of breach of privilege, before the matter be first examined by the committee of privileges, and reported to the house, though it was also declared, "That the said order is not to extend to any breach of privilege upon the person of any member of this house." ⁵

¹ 146 H. D. 3 s. 97. In 1857, the Congress of the United States passed a bill making it a misdemeanour to refuse to answer questions put in either House of Legislature.
³ See also Commons' resolution to the same effect, 11th Feb. 1768, 31 C. J. 602.
⁵ 11 C. J. 219; 13 ib. 648.
It is no longer the practice to refer such matters to the committee of privileges, although that committee is still nominally appointed. Its appointment, at the commencement of each session, was discontinued in 1833, together with that of the ancient grand committees: but has since been revived, pro forma. It has not been customary, however, to nominate the committee: but in 1847, a complaint having been made of the interference of a peer in the West Gloucester election, the order for the appointment of the committee of privileges was read, and the committee was nominated, consisting of nine members, and of all knights of the shire, gentlemen of the long robe, and merchants in the house. In 1857, a committee, constituted in a similar manner, was appointed to consider the oaths of members, and consisted of twenty-five members, nominated by the house, and all gentlemen of the long robe.¹

It is the present practice, when a complaint is made, to order the person complained of to attend the house;² and on his appearance at the bar, or, if a member, in his place, he is examined and dealt with, according as the explanations of his conduct are satisfactory or otherwise; or as the contrition expressed by him for his offence, conciliates the displeasure of the house. If there be any special circumstances arising out of a complaint of a breach of privilege, it is usual to appoint a select committee to inquire into them, and the house suspends its judgment until their report has been presented;³ and although any member may bring the matter so reported before the house, it is usual to leave this duty to the charge of the chairman of the committee.⁴ An order has been made that the incriminated person might appear by counsel before the committee, on the consideration of

¹ 103 C. J. 139; 112 ib. 369. This term is understood to comprise all members who, at the time, would be qualified to practise as counsel, according to the rules and usage of the profession, whether actually practising or not.
² 112 C. J. 231; 113 ib. 189, &c.
³ Rochdale Election case, 19th June, 1857, 112 C. J. 232; 146 H. D. 3 s. 97, &c.; Tower High Level Bridge Bill, 1873, cases of Grissell and Ward, 134 C. J. 326; Cambrian Railway case, see p. 124.
⁴ 4th April, 1892, 3 Parl. Deb. 4 s. 598.
When a complaint is made of a newspaper, the newspaper itself must be produced, in order that the paragraphs complained of may be read. And a member complaining of the report of his speech in a newspaper, has been stopped by the Speaker, when it appeared that he had no copy of the newspaper on which to found his complaint. Complaint being made on the 23rd February, 1880, of a series of articles in several newspapers, the Speaker said that if he called upon the Clerk to read all those articles he should be trifling with the house, and that he should therefore take leave to depart from the ordinary course. The member who makes the complaint must also be prepared with the names of the printer or publisher; and it is irregular to make such a complaint, unless the member intends to follow it up with a motion. But such a motion has been confined to declaring the article, or letter, to be a breach of privilege, without further action.

Proceedings against a member have been occasionally commenced by a question addressed to him upon the subject; and where an apology or retraction is expected, a more formal proceeding may thus be averted. But generally the most convenient course is to make the complaint, and to found a motion upon it. The matter may then be regularly discussed by the house. On the 4th March, 1875, Dr. Kenealy having addressed a question to

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1 22nd March, 1771, 33 C. J. 279.
2 113 ib. 189; 150 H. D. 3 s. 1022. 1063. An article complained of (Times, 2nd May, 1887) was, by the Speaker’s direction, circulated with the notice paper, 3rd May, 1887, 314 H. D. 3 s. 758.
3 On the 4th April, 1878, Mr. Parnell, having complained of three newspapers, brought up to the table certain extracts pasted upon paper, and upon the Clerk calling Mr. Speaker’s attention to the irregularity, further proceedings were at once arrested, 239 H. D. 3 s. 532–536.
4 135 C. J. 57.
5 104 H. D. 3 s. 1056.
6 59 ib. 507.
7 Mr. Ferrand’s case, 99 C. J. 235.
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239; complaint (Times) report of committee of privileges, 109 ib. 318; 136 ib. 272; complaint (Times), 16th Feb. 1893.
8 Mr. Sullivan and Mr. Lopes, 12th Feb. 1875; 222 H. D. 3 s. 269; Mr. Yorke and Mr. H. Gladstone, 16th March, 1883.
Mr. Evelyn Ashley, and received an answer, proceeded to give notice to bring the matter forward on the following day. But Mr. Lowe rose to discuss it at once, in moving an adjournment. Upon that question a debate ensued, and, on the withdrawal of the motion, a resolution was agreed to, that the house, having heard the explanations of the two members, should proceed to the orders of the day.¹

Either house will punish in one session offences that have been committed in another.² In 1879, C. E. Grissell, having neglected to attend the house to answer for a breach of privilege (see p. 397), was ordered into the custody of the Serjeant, but evaded the execution of the Speaker’s warrant, by going abroad, until two days before the close of the session, when he was committed to Newgate.³

On the 2nd March, 1880, a petition submitting himself to the house was presented, when he was ordered to be sent for in the custody of the Serjeant. Being taken into custody, he was ordered to stand committed to the Serjeant, and to be brought in custody to the bar on the following day; when, having failed to satisfy the house by his apologies, it was ordered that “having evaded punishment for his offences, until the close of the last session, he be committed to the gaol of Newgate.”⁴

It also appears that a breach of privilege committed against one Parliament may be punished by another; and libels against former Parliaments have been punished.⁵

In all the cases that have been noticed as breaches of privilege, both houses have agreed in their adjudication: but in several important particulars there is a difference in their modes of punishment. The Lords have claimed to be a court of record, and, as such, not only to imprison, but to impose fines. They also imprison for a fixed time, and order security to be given for good conduct; and their customary form of commitment is by attachment. The Commons, on

¹ 222 H. D. 3 s. 1185.
² 21 L. J. 189; 15 C. J. 376. 386; 17 ib. 293; 20 ib. 549; 22 ib. 210; Mr. Murray’s case, 26 ib. 303.
³ 134 ib. 366. 432. 435.
⁴ 135 ib. 70. 73. 77.
⁵ 1 ib. 923; 2 ib. 63; 13 ib. 735; see also Mr. Selden’s statement, 1 Hatsell, 184.
the other hand, commit for no specified period, and during
the last two centuries, have not imposed fines (see p. 90).

There can be no question that the House of Lords, in its
judicial capacity, is a court of record: but, according to Lord
Kenyon, "when exercising a legislative capacity, it is not a
court of record." 1 However this may be, instances too
numerous to mention have occurred, in which the Lords
have sentenced parties to pay fines. Many have already
been noticed in the present chapter, as well as cases in
which they have ordered security to be given for good
conduct, even during the whole life of the parties. 2

The Lords have power to commit offenders to prison for
a specified term, even beyond the duration of the session; 3
and thus on the 13th August, 1850, being within two days of
the prorogation, certain prisoners were committed for a fort-
night. 4 If no time were mentioned, and the commitment
were general, it has been said that the prisoners could not
be discharged on habeas corpus even after a prorogation: 5
but in the case of Lord Shaftesbury, a doubt was expressed
by one of the judges whether the imprisonment, which was
for an uncertain time, would be concluded by the session;
and another said, that if the session had been determined,
the prisoner ought to have been discharged. 6

Whether the House of Commons be, in law, a court of
record, it would be difficult to determine; for this claim,
once firmly maintained, has latterly been virtually abandoned,
although never distinctly renounced. In Fitzherbert's case,
in 1592, the house resolved, "That this house being a court
of record, would take no notice of any matter of fact at all
in the said case, but only of matter of record;" and the
record of Fitzherbert's execution was accordingly sent to the
house by the lord keeper. The apology of the Commons,

1 Flower's case, 1779; 8 Durnf. &
East, 314.
2 Resolution, 3rd April, 1624, 3
L. J. 276; 11 ib. 554; 12 ib. 174; 14
ib. 144; 30 ib. 493 (Report of Pre-
cedents); 42 ib. 181; 43 ib. 60; 105;
39 ib. 331.
3 43 L. J. 105.
4 Lords' Minutes, 13th Aug. 1850.
5 Lord Denman's judgment in
147.
6 6 Howell, St. Tr. 1296; 1 Mod.
Rep. 144; see report by the Serjeant
of a prisoner's discharge, "of course"
by a prorogation, 26 L. J. 420.
1604, contains these words: "We avouch also that our house is a court of record, and ever so esteemed." On the other hand, in Jones v. Randall, Lord Mansfield said the House of Commons was not a court of record; yet acting as a court of record, the Commons formerly imposed fines and imprisoned offenders for a time certain.

In Floyd's case, in 1621, the Commons clearly exceeded their jurisdiction. That person had spoken offensive words concerning the daughter of James I. and her husband, the elector palatine. In this he may have been guilty of a libel, but certainly of no breach of parliamentary privilege. Yet the Commons took cognizance of the offence, and sentenced Floyd to pay a fine of 1000l., to stand twice in the pillory, and to ride backwards on a horse, with the horse's tail in his hand. Upon this judgment being given, first the king and then the Lords interfered, because the offence was beyond the jurisdiction of the Commons. The Commons perceived their error, and left the offender to be dealt with by the Lords. But if the Commons exceeded their jurisdiction in this case, the Lords equally disregarded the limits of their own, and proceed to still more disgraceful severities. Floyd was sentenced that he should be incapable of bearing arms as a gentleman; that he should ride twice to the pillory with his face to the horse's tail, holding the tail in his hand; that he should be branded with the letter K on his forehead, be whipped at the cart's tail, be fined 5000l. to the king, and be imprisoned in Newgate for life.

The last case of a fine by the Commons occurred in 1666, when a fine of 1000l. was imposed upon Thomas White, who had absconded after he had been ordered into the custody of the Serjeant-at-arms.

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1 D'Ewes, 502; 1 Hatsell, 293; see also Sir Ed. Coke's statement, 1 C. J. 604; 1 Cowp. 17.

2 Smalley's case, 1757; Hall's case, 1550; 1 C. J. 112, 113, 125, 126; also 7 ib. 531, 591; 9 ib. 543, 687, 737; 10 ib. 84; 12 ib. 235, 256; D'Ewes, J. 306.

3 1 C. J. 609; 1 Hans. Parl. Hist. 7250.

4 1 C. J. 619; 3 L. J. 134; "Proceedings and Debates of the Commons," 1620, 1621 (Oxford); and 1 Hans. Parl. Hist. 1269; see also the treatment of Nayler by the Protectorate Parliament, 7 C. J. 465; Waller's Oliver Cromwell, 187.

5 8 C. J. 690.
The modern practice of the Commons is to commit persons to the custody of the Serjeant-at-arms, to Newgate, or to the Tower, during the pleasure of the house; and to keep offenders there until they present petitions praying for their release, and expressing contrition for their offences; or until, upon motion made in the house, it is resolved that they shall be discharged. It is then usual for the parties to be brought to the bar, by the Serjeant with his mace, and, after a reprimand from the Speaker, to be discharged on payment of their fees (see p. 92). But occasionally their attendance at the bar, and the reprimand, have been dispensed with. A member, if in custody of the Serjeant, is reprimanded at the bar; but, otherwise, in his place.

It is not customary to order a person to be reprimanded unless he be in custody, though there are some examples of a different practice; and orders have been made that the person incriminated do attend to receive a reprimand. When the offence has not been so grave as to cause the commitment of the offender, he is generally directed to be "admonished;" the Serjeant, bearing the mace, standing by whilst the admonition is pronounced. The Speaker's reprimand or admonition is always ordered to be entered in the journals. Where the offence has been slight, or the apology is accepted as satisfactory, even an admonition has been dispensed with; and the house has resolved to proceed no further in the matter (such resolution being communicated to the person concerned, by the Speaker).

1 It has been customary to order such petitions to be printed and considered on a future day. 97 C. J. 180. 209; 106 ib. 151; 113 ib. 196; 134 ib. 381; 150 H. D. 3 s. 1108.
2 95 C. J. 291. 337; 97 ib. 224.
3 On the 8th May, 1694, it was "delivered for a rule, that no delinquent is to be brought in, but by the Serjeant with his mace;" 1 ib. 204; 82 ib. 399; 87 ib. 365; 97 ib. 240; 106 ib. 289.
4 75 ib. 457; 108 ib. 263; 113 ib. 203; 150 H. D. 3 s. 1313. 1404. John Sandilands Ward, 29th July, 1879; 134 C. J. 385; Mr. Bradlaugh, 24th June, 1880; 135 ib. 241; 86 ib. 333; 90 ib. 532; 95 ib. 96; 101 ib. 768.
5 21 ib. 872; 45 ib. 516; 93 ib. 316; 147 ib. 167.
6 5 Parl. Hist. 910; 82 C. J. 395. 399; 93 ib. 316; 147 ib. 166.
7 Bidmead's case, 20th June, 1887, 142 C. J. 306.
8 87 ib. 294; 88 ib. 218; 97 ib. 143.
9 Case of Mr. Hope, 17th July, 1822, 77 ib. 432; 7 H. D. 2 s. 1668.
or that the person be excused or discharged from further attendance.  

Payment of fees was formerly remitted, by order, under special circumstances: but, according to present usage, no order for the payment of fees is made, unless called for by the nature of the offence.

No period of imprisonment is named by the Commons, and the prisoners committed by them, if not sooner discharged by the house, are immediately released from their confinement on a prorogation, whether they have paid the fees or not. If they were held longer in custody, they would be discharged by the courts, upon a writ of habeas corpus.

It was formerly the practice to make prisoners receive the judgment of the house, kneeling at the bar: in both houses, however, this practice has long since been discontinued. The discontinuance of this practice arose from the refusal of Mr. Murray to kneel, when brought up to the bar of the House of Commons, on the 4th February, 1750. For this refusal he was declared "guilty of a high and most dangerous contempt of the authority and privilege of this house;" was committed close prisoner to Newgate, and not allowed the use of pen, ink, and paper. It appears that there had previously been only one other instance of such a refusal to kneel.

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1 Case of Mr. Menzies, 17th July, 1822; case of Mr. Reed, 27th Feb. 1863, 118 C. J. 106.
2 55 ib. 221; 74 ib. 192; 80 ib. 470; 83 ib. 199; 85 ib. 465; 90 ib. 592; 106 ib. 147; 107 ib. 301; 108 ib. 595, &c.
3 See last three cases, 113 ib. 298; 114 ib. 342; 134 ib. 385.
4 Lord Denman's judgment in Stockdale v. Hansard, 1839 (289), p. 142. But this law never extended to an adjournment, even when it was in the nature of a prorogation; see 10 C. J. 537.
5 Resolution 16th March, 1772, 33 ib. 594.
7 Report of Precedents, 26 C. J. 48. There had, however, been similar cases before the Lords, 2 Parl. Hist. 844. 880.
CHAPTER IV.

PRIVILEGE OF FREEDOM OF SPEECH.

Freedom of speech is a privilege essential to every free council or legislature. Its principle was well stated by the Commons, at a conference on the 11th December, 1667: "No man can doubt," they said, "but whatever is once enacted is lawful; but nothing can come into an Act of Parliament, but it must be first affirmed or propounded by somebody: so that if the Act can wrong nobody, no more can the first propounding. The members must be as free as the houses; an Act of Parliament cannot disturb the state; therefore the debate that tends to it cannot; for it must be propounded and debated before it can be enacted."¹

This important privilege has been recognized and confirmed as part of the law of the land. According to Elsynge, the Commons did oftentimes, under Edward III., discuss and debate amongst themselves many things concerning the king's prerogative, and agreed upon petitions for laws to be made directly against his prerogative, as may appear by divers of the said petitions; yet they were never interrupted in their consultations, nor received check for the same, as may appear also by the answers to the said petitions."²

In the 20th Richard II., however, a case occurred in Haxey's case which this ancient privilege was first violated, and afterwards signally confirmed. Haxey, a member of the Commons, having displeased the king, by offering a bill for reducing the excessive charge of the royal household, was condemned in Parliament as a traitor. But on the accession of Henry IV., Haxey exhibited a petition to the king in Parliament to reverse that judgment, as being "against the law and custom which had been before in Parliament;" and the judgment was reversed and annulled accordingly by the king, with the advice and assent of all the lords spiritual.

¹ 12 L. J. 166.  
² Elsynge, 177.
and temporal. This was unquestionably an acknowledgment of the privilege, by the highest judicial authority—the king and the House of Lords; and in the same year the Commons took up the case of Haxey, and in a petition to the king affirmed "that he had been condemned against the law and course of Parliament, and in annihilation of the customs of the Commons;" and prayed that the judgment might be reversed, "as well for the furtherance of justice as for the saving of the liberties of the Commons." To this the king also assented, with the advice and assent of the lords spiritual and temporal; and thus the whole legislature agreed that the judgment against Haxey, in derogation of the privileges of Parliament, "should be annulled and held to be of no force or effect."

Again, in the 4th Henry VIII. (1512), Mr. Strode, a member of the House of Commons, was prosecuted in the Stannary Court, for having proposed certain bills to regulate the tanners in Cornwall, and was fined and imprisoned in consequence. Upon which an Act was passed, which, after stating that Strode had agreed with others of the Commons in putting forth bills, "the which here, in this High Court of Parliament, should and ought to be communed and treated of," declared the proceedings of the Stannary Court to be void, and further enacted that all suits, and other proceedings against Richard (Strode), and against every other person that now be of the present Parliament, or of any Parliament hereafter, for any bill, speaking, or declaring of any matter concerning the Parliament, to be communed and treated of, be utterly void and of none effect. As the proceedings which had already taken place against Strode were declared to be void, it is evident that freedom of speech was then admitted to be a privilege of Parliament, and was not at that time first enacted; and that the statute was intended to have a general operation in future, and to

1 1 Hen. IV.; 3 Rot. Parl. 490. 2 "Si bien en accomplissement de droit, como pur salvacion des libertes de lez ditz communes." 3 3 Rot. Parl. 431; also the case of

Thomas Young, 33rd Henry VI.; 5 Rot. Parl. 337. 4 4 Parl. Hist. 85; 1 Hatsell, 86. 5 4 Hen. VIII. c. 8.
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Petition by the Speaker to the sovereign in behalf of the Commons' privileges, see p. 57.

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protect all members, of either house, from any question on account of their speeches or votes in Parliament.

Thirty years afterwards the petition of the Commons to the king, at the commencement of the Parliament, appears for the first time to have included this privilege amongst those prayed for of the king, which has since become the established practice.

But notwithstanding the repeated recognition of this privilege, the Crown and the Commons were not always agreed upon its limits. In reply to the usual petition of the Speaker, Sir Edward Coke, in 1593, the lord keeper said, “Liberty of speech is granted you, but you must know what privilege you have; not to speak every one what he listeth, or what cometh in his brain to utter: but your privilege is ‘aye’ or ‘no.’” In 1621, the Commons, in their protestation, defined their privilege more consistently with its present limits. They affirmed “that every member hath freedom from all impeachment, imprisonment, or molestation, other than by censure of the house itself, for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the Parliament or Parliament business.”

It is needless to recount how frequently this privilege was formerly violated by the power of the Crown. The Act of the 4th Henry VIII. extended no further than to protect members from being questioned, in other courts, for their proceedings in Parliament: but its principle should equally have saved them from the displeasure of the Crown. The cases of Mr. Strickland, in 1571, of Mr. Cope, Mr. Wentworth, and others, in 1586, and of Sir Edwin Sandys, in 1621, will serve to remind the reader how imperfectly members were once protected against the unconstitutional exercise of prerogative.

1 The petition 33rd Henry VIII. (1541), by Thomas Moyle, Speaker, Elsynge, 176. See also the Commons’ petition for freedom of speech, and King Henry IV.'s answer, and his subsequent confirmation of the right of free discussion in Parliament in the second and ninth years of his reign, 3 Rot. Parl. 456. 611; 4 Inst. 15.

2 1 Parl. Hist. 862.

3 Hat. 79; D'Ewes, 166. 410; 4 Parl. Hist. 153; 1 C. J. 635; 1 Hatsell, 136. 137.
Sir J. Eliot and others. The last occasion on which the privilege of freedom of speech was directly impeached, was in the celebrated case of Sir John Eliot, Denzil Hollis, and Benjamin Valentine, against whom a judgment was obtained in the King’s Bench, in the 5th Charles I., for their conduct in Parliament. On the 8th July, 1641, the House of Commons declared all the proceedings in the King’s Bench to be against the law and privilege of Parliament.¹ The judgment had been given against the privilege of Parliament, upon the false assumption that the Act of the 4th Henry VIII. had been simply a private statute for the relief of Strode, and had no general operation. To condemn this construction of the plain words of the statute, the Commons resolved, 12th and 13th November, 1667, “That the Act of Parliament in the 4th Henry VIII., commonly intituled ‘An Act concerning Richard Strode,’ is a general law,” extending to all members of both houses of Parliament; “and is a declaratory law of the ancient and necessary rights and privileges of Parliament,” and “That the judgment given, 5 Car., against Sir John Eliot, Denzil Hollis, and Benjamin Valentine, in the King’s Bench, was an illegal judgment, and against the freedom and privilege of Parliament.” The Lords, at a conference agreed to the resolutions of the Commons; and, upon a writ of error, the judgment of the Court of King’s Bench was reversed by the House of Lords, on 15th April, 1668.²

Its recognition by statute.

This would have been a sufficient recognition by law of the privilege of freedom of speech; but a further and last confirmation was reserved for the Revolution of 1688. By the 9th Article of the Bill of Rights it was declared, “That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.”³

But, although by the ancient custom of Parliament, as well as by the law, a member may not be questioned out of Parliament, he is liable to censure and punishment by the

¹ 2 C. J. 203; 3 St. Tr. 235-365. ² 9 C. J. 19. 25; 12 L. J. 166. 223. ³ 1 Will. & Mary, sess. 2, c. 2.
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house itself, of which he is a member. The cases in which members have been called to account and punished for offensive words spoken before the house, are too numerous to mention. Some have been admonished, others imprisoned, and in the Commons some have been expelled. Members using unparliamentary language are promptly called to order, and generally satisfy the house with an explanation or apology; if not, they will be dealt with under standing order No. 21 or 27, or punished as the house may think fit.\(^1\)

If a member should say nothing disrespectful to the house or the chair, or personally opprobrious to other members, or in violation of other rules of the house, he may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege from any action for libel, as well as from any other question or molestation. In the case of an action brought by an Irish midwife against Mr. Arthur Balfour for words spoken in the house, the court, being satisfied that those words constituted the cause of action, ordered that the writ and statement should be taken off the records of the court, the court having no jurisdiction in the matter.\(^2\) But if a member should publish his speech, his printed statement becomes a separate publication, unconnected with any proceedings in Parliament. This view of the law has been established by two remarkable cases.

In 1795, an information was filed against Lord Abingdon for a libel. He had accused his attorney of improper professional conduct, in a speech delivered in the House of Lords, which he afterwards published in several newspapers, at his own expense. Lord Abingdon pleaded his own case in the Court of King's Bench, and contended that he had a right to print what he had, by the law of Parliament, a right

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\(^1\) L. J. 475; 5 ib. 77; Sir R. Canne, 1680, 9 C. J. 642; Mr. Manley, 1696, 11 ib. 581; Mr. Shepherd, 1 ib. 524.

\(^2\) Case of Mr. O'Donnell, 30th June and 3rd July, 1882; 137 C. J. 323. 323.

to speak: but Lord Kenyon said, that "a member of Parliament had certainly a right to publish his speech, but that speech should not be made a vehicle of slander against any individual; if it was, it was a libel." The court gave judgment that his lordship should be imprisoned for three months, pay a fine of 100l., and find security for his good behaviour.1

In 1813, a much stronger case occurred. Mr. Creevey, a member of the House of Commons, had made a charge against an individual in the house, and incorrect reports of his speech having appeared in several newspapers, Mr. C. sent a correct report to the editor of a newspaper, with a request that he would publish it. Upon an information filed against him, the jury found the defendant guilty of libel, and the King's Bench refused an application for a new trial.2 Mr. Creevey, who had been fined 100l., complained to the house of the proceedings of the King's Bench: but the house refused to admit that they were a breach of privilege.3

The Lord Chief Justice of England, in a more recent case, further laid it down, that "if a member publishes his own speech, reflecting upon the character of another person, and omits to publish the rest of the debate, the publication would not be fair, and so would not be privileged," but that a fair and faithful report of the whole debate would not be actionable.4

The privilege which protects debates, extends also to reports and other proceedings in Parliament. In the case of Rex v. Wright,5 Mr. Horne Tooke applied for a criminal information against a bookseller for publishing the copy of a report made by a Commons' committee, which appeared to imply a charge of high treason against Mr. Tooke, after he had been tried for that crime and acquitted. The rule, however, was discharged by the court, partly because the report did not appear to bear the meaning imputed to it,

1 1 Esp. N. P. C. 228. 1813.
2 See Lord Ellenborough's judgment, 1 M. & S. 273. 4 Wason v. Walter, 21st Dec.
3 68 C. J. 704; H. D. 25th June, 1867. 5 8 Term Reports, 298.
and partly because the court would not regard a proceeding of either house of Parliament as a libel.

By the 3 & 4 Vict. c. 9, passed in consequence of the decision of the Court of Queen’s Bench in the case of Stockdale v. Hansard (see p. 137), it was enacted that proceedings, criminal or civil, against persons for the publication of papers printed by order of either house of Parliament, shall be immediately stayed, on the production of a certificate, verified by affidavit, to the effect that such publication is by order of either house of Parliament. Proceedings are also to be stayed, if commenced on account of the publication of a copy of a parliamentary paper, upon the verification of the correctness of such copy; and in proceedings commenced for printing any extract from, or abstract of, a parliamentary report or paper, the defendant may give the report in evidence under the general issue, and prove that his own extract or abstract was published bona fide and without malice; and if such shall be the opinion of the jury, a verdict of not guilty will be entered.¹

¹ The action of Harlow v. Hansard was stayed 14th July, 1845, by Mr. Justice Wightman in chambers, on the production of the Speaker’s certificate. In the case of Houghton and others v. Plimsoll, tried at Liverpool, 1st April, 1874, Baron Amphlett directed the jury that the report of a Royal Commission, presented to Parliament in a printed form, came within the provisions of the Act, “since it was a report which had been adopted by Parliament, and of which a distribution of copies had been ordered by Parliament.”
Chapter V.

Freedom from Arrest or Molestation.

The privilege of freedom from arrest or molestation is of great antiquity, and dates, probably, from the first existence of parliaments or national councils in England. By some writers its recognition by the law has been traced so far back as the time of Ethelbert, at the end of the sixth century, in whose laws it is said, "If the king call his people to him (i.e. in the wita-gemōt), and any one does an injury to one of them, let him pay a fine." 1 Blackstone has shown that it existed in the reign of Edward the Confessor, in whose laws we find this precept, "Ad synodos venientibus, sive summoniti sint; sive per se quid agendum habuerint, sit summa pax;" and so, too, in the old Gothic constitutions, "Extenditur hæc pax et securitas ad quatuordecim dies, convocato regni senatu." 2 In later times there are various precedents explanatory of the nature and extent of this privilege, and of the mode in which it was sustained. From these it will be seen that not only are the persons of members of both Houses of Parliament free from arrest on mesne process or in execution, but that formerly the same immunity was enjoyed in regard to their servants and their property. The privilege was strained still further, and even claimed to protect members and their servants from all civil actions or suits, during the time over which privilege was supposed to extend. The privilege of freedom from arrest has also been construed to discharge members and their servants from all liability to answer subpœnas in other courts and to serve on juries, and in some cases to relieve them from commitments by courts of justice.

1 Wilkins, Leges Anglo-Sax. p. 2; 2 Comm. 165; Stiernh. de Jure
2 Hallam, Middle Ages, 231; 2 Goth.
Kemble, Saxons in England, 33.
These various immunities have undergone considerable changes and restrictions; and being now defined, for the most part, with tolerable certainty, they will be best understood by considering them in the following order: 1. Privilege of members and their servants from arrest and distress, and the mode of enforcing it. 2. Their protection from being imploaded in civil actions. 3. Their liability to be summoned by subpoena, or to serve on juries. 4. Their privilege in regard to commitments by legal tribunals. 5. Privilege of witnesses and others in attendance on Parliament. It may, however, be stated at once, that although many cases that will be given apply equally to members and to their servants, according to the privilege existing in those times, the latter have at present no privilege whatever (see p. 105). These cases, though at variance with modern usage, could not be omitted consistently with a complete view of the privilege of freedom from arrest and molestation.

So far back as the 19th Edward I., in answer to a petition of the Master of the Temple for leave to distress for the rent of a house held of him by the Bishop of St. David's, the king said, "It does not seem fit that the king should grant that they who are of his council should be distracted in time of Parliament." The privilege was also acknowledged very distinctly by the Crown in the case of the Prior of Malton, in the 9th Edward II.¹

The freedom, both of the Lords and Commons, and their servants, from all assaults or molestation, when coming to Parliament, remaining there, and returning thence, was distinctly recognized in the case of Richard Chedder, a member, by Statute 5 Hen. IV. c. 6, and again by another Statute, 11 Hen. VI. c. 11. This privilege, however, was not created by statute. In the 17th Edward IV., the Commons affirmed, in Atwyll's case, that the privilege, "that they should not be imploaded in any action personal," had existed "whereof tyme that mannys mynde is not the contrarie;" thus placing it on the ground of prescription, and not on the authority of statutes then in force.

¹ 1 Rot. Parl. 61; 4th Inst. 21 E.; 1 Hatsell, 12.
The only exception to the recognition of this privilege was in the extraordinary case of Thorpe, the Speaker of the Commons, who was imprisoned in 1452, under execution from the Court of Exchequer, at the suit of the Duke of York; and who was retained in prison by the order of the House of Lords, although the judges advised them that Thorpe was entitled to his release (see p. 129). The case, however, has been regarded as irregular and "begotten by the iniquity of the times." Down to 1543, although the privilege had been recognized by statute, by declaration of both houses, by the frequent assent of the king, and by the opinions of the judges, the Commons did not deliver their members out of custody by their own authority: but when the members were in execution, in order to save the rights of the plaintiff, they obtained special statutes to authorize the lord chancellor to issue writs for their release; and when confined on mesne process only, they were delivered by a writ of privilege issued by the lord chancellor.

At length the Commons, for the first time, vindicated the privilege of Parliament, and acted independently of any other power. In 1543, George Ferrers, a member, was arrested in London, by a process out of the King's Bench, at the suit of one White, as surety for the debt of another. The house, on hearing of his arrest, ordered the Serjeant to go to the Compter and demand his delivery. The Serjeant was resisted by the city officers, who were protected by the sheriffs; and he was obliged to return without the prisoner. The Commons laid their case before the Lords, "who, judging the contempt to be very great, referred the punishment thereof to the order of the Commons' house." They ordered the Serjeant to repair to the sheriffs, and to require the delivery of Ferrers, without any writ or warrant. The lord

1 See also Henry IV.'s reply to the Commons' petition of the 5th year of his reign, 3 Rot. Parl. 541; 5 lb. 239; Atwill's case, 6 lb. 191.
2 1 C. J. 546.
3 Larke's case, "Le Roi, par advis des seigneurs espirituelx et tempo-

relx, et a les especiales requestes des communes," 4 Rot. Parl. 337; also 5 lb. 374; Atwill's case, 6 lb. 191; Parr's case, 5 lb. 111; Hyde's case, 6 lb. 160; Thorpe's case, 5 lb. 239; Sadcliff's case, 1 Hatsell, 51.
Chapter V. chancellor had offered them a writ of privilege, but they refused it, "being of a clear opinion that all commandments and other acts proceeding from the neather house were to be done and executed by their Serjeant without writ, only by show of his mace, which was his warrant." The sheriffs, in the mean time, had surrendered the prisoner: but the Serjeant, by order of the house, required their attendance at the bar, together with the clerks of the Compter, and White, the plaintiff; and they were all committed for their contempt.  

The practice of releasing members by a writ of privilege was still continued, notwithstanding the course pursued in the case of Ferrers: but henceforward no such writ was suffered to be obtained without a warrant previously signed by the Speaker.  

The principal cases in the Lords, up to this period, show an uncertainty in their practice similar to that of the Commons; privileged persons being sometimes released immediately, and sometimes by writs of privilege. On the 1st December, 1585, they ordered to be enlarged and set at liberty James Diggs, servant to the Archbishop of Canterbury, "by virtue of the privilege of this court;" and again, in the same year, a servant of Lord Leicester; and in 1597, the servants of Lord Chandois and the Archbishop of Canterbury. In the two last cases the officers who had arrested the prisoners were committed by the house.  

The modifications of the ancient privilege which have been effected by statute, and the modern practice of Parliament, in protecting members from arrest, must now be considered. In 1603, the case of Sir Thomas Shirley occasioned a more distinct recognition of the privilege by statute, and an improvement in the law. He had been

1 See also the king's statement and the lord chief justice's declaration confirming the Commons' privileges, 1 Hollingshed, 824; 1 Hatsell, 57. See also Smalley's case, 27th Feb. 1575, 1 C. J. 108; see also the cases of Mr. Fitzherbert and Mr. Neale, D'Ewes, 482. 514. 518. 520; 1 Hatsell, 107.

2 2 L. J. 66; ib. 93; ib. 201. 205; see also the cases of William Hogan, released by the order of the house; and of Vaughan, released by a writ of privilege, 2 L. J. 230. 238. 241; D'Ewes, 603. 607.
imprisoned in the Fleet, in execution, before the meeting of Parliament, and the Commons first tried to bring him into the house by habeas corpus, and then sent their Serjeant to demand his release. The warden refused to give up his prisoner, and was committed to the Tower, and to the cell therein called “Little Ease,” for his contempt. At length the warden delivered up the prisoner, and was discharged, after a reprimand.¹ So far the privileges of the house were satisfied: but there was still a legal difficulty to be overcome, that had been common to all cases in which members were in execution, viz. that the warden was liable to an action of escape, and the creditor had lost his right to an execution.² In former cases a remedy had been provided by a special Act, and the same expedient was now adopted: but in order to provide for future cases of a similar kind, a general Act, 1 Jas. I. c. 13, was passed, which, while it recognized the privilege of freedom from arrest, the right of either house of Parliament to set a privileged person at liberty, and the right to punish those who make or procure arrests, enacted that after such time as the privilege of that session in which privilege is granted shall cease, parties may sue forth and execute a new writ; and that no sheriff, &c., from whose arrest or custody persons shall be delivered by privilege, shall be chargeable with any action.

But although the privilege of either house of Parliament was admitted to entitle a prisoner to his release, the manner of releasing him was, during the 17th century, still indefinite, whether by warrants for a writ of privilege, or a writ of habeas corpus, or by the order of the house.³

During the same period also, when the property of peers or of their servants was distrainted, the Lords were accustomed to interfere by their direct authority, as in 1628; ⁴ but privilege did not attach to property held by a peer as

¹ 1 C. J. 155, et seq.; 5 Parl. Hist. 113, &c.; 1 Hatsell, 157.
² See 1 C. J. 173. 195; and Collection of Precedents, 10 ib. 401.
³ 2 L. J. 270. 296. 299. 302. 588; 3 ib. 50; 4 ib. 654; 8 ib. 635. 639; 1 C. J. 820; 9 ib. 411; 1 Hatsell, 167.
⁴ Cases of Lords Warwick and Montague, 3 L. J. 776. 777; 10 ib. 611.
Chapter V. a trustee only. In cases of arrest on mesne process, the practice of releasing the prisoners directly by a warrant, or by sending the Black Rod or Serjeant, in the name of the house, to demand them, was continually adopted.

At length, in the year 1700, an Act was passed, which, while it maintained the privilege of freedom from arrest with more distinctness than the 1 Jas. I., made the goods of privileged persons liable to distress infinite and sequestration, between a dissolution, or prorogation, and the next meeting of Parliament, and during adjournments for more than fourteen days. In suits against the king's immediate debtors, execution against members was permitted even during the sitting of Parliament, and the privilege of freedom from arrest in such suits was not reserved to servants. Again, by the 2 & 3 Anne, c. 18, executions for penalties, forfeitures, &c., against privileged persons, being employed in the revenue or any office of trust, were not to be stayed by privilege. Freedom from arrest, however, was still maintained for the members of both houses, in such cases, but not for their servants.

By the 10 Geo. III. c. 50, a very important limitation of the freedom of arrest was effected. Down to that time the servants of members had been entitled to all the privileges of their masters, except as regards the limitations effected by the two last statutes: but by the 3rd section of the 10 Geo. III., the privileges of members to be free from arrest upon all suits, authorized by the Act, was expressly reserved; while no such reservation was introduced in reference to their servants. And thus, without any distinct abrogation of the privilege, it was, in fact, put an end to, as executions were not to be stayed in their favour, and their freedom from arrest was not reserved.

By these several statutes the freedom of members from arrest has become a legal right rather than a parliamentary privilege. The arrest of a member has been held, therefore, present.
to be irregular, \textit{ab initio}, and he may be discharged immediately, upon motion in the court from which the process issued.\textsuperscript{1}

For the same reason writs of privilege have been discontinued. In 1707, a few years after the passing of the 12 & 13 Will. III., the Serjeant was sent with the mace to the warden of the Fleet, who obeyed the orders of the house, and discharged Mr. Asgill, a member then in execution.\textsuperscript{2} Peers, peeresses, and members are now discharged directly by order or warrant, and the parties who cause the arrest are liable to censure and punishment, as in the case of the Baroness Le Cale, in 1811; and Viscount Hawarden, in 1828.\textsuperscript{3}

In 1807, Mr. Mills had been arrested on mesne process, and was afterwards elected. The house determined that he was entitled to privilege, and ordered him to be discharged out of the custody of the marshal of the King's Bench. In 1819, Mr. Christie Burton had been elected for Beverley, but being in custody on execution, and also on mesne process, was unable to attend his service in Parliament. The house determined that he was entitled to privilege, and ordered his discharge from the custody of the warden of the Fleet. An action was brought against the warden by the assignees of a creditor of Mr. Burton, for his escape, who were declared guilty of a breach of privilege, and ordered to attend the house.\textsuperscript{4}

It now only remains to inquire what is the duration of the privilege of freedom from arrest; and it is singular that this important point has never been expressly defined by Parliament. The person of a peer (by the privilege of peerage) "is for ever sacred and inviolable." This immunity rests upon ancient custom, and is recognized by the Acts 12 & 13 Will. III. c. 3 and 2 & 3 Anne, c. 18. It would seem to have been an ancient feudal privilege of the barons, the law assuming that there would always be, upon the demesnes of their baronies, sufficient to detain for the satisfaction of any

\begin{itemize}
  \item \textsuperscript{1} Colonel Pitt's case, 2 Strange, 985; K. B. Cases, temp. Hard. 28.
  \item \textsuperscript{2} 62 C. J. 654; 74 ib. 44; 75 ib. 286.
  \item \textsuperscript{3} 48 L. J. 60. 63; 60 ib. 34 (and
\end{itemize}
Chapter V. Debt. Peeresses are entitled to the same privilege as peers, whether they be peeresses by birth, by creation, or by marriage: but if a peeress by marriage should afterwards intermarry with a commoner, she forfeits her privilege. It is also ordered and declared by the Lords, that privilege of Parliament shall not be allowed to minor peers, noblewomen, or widows of peers (saving their right of peerage).

And by the 23rd Article of the Act of Union with Scotland (5 Anne, c. 8), the sixteen representative peers are allowed all the privileges of the peers of the Parliament of Great Britain; and all other peers and peeresses of Scotland, though not chosen, enjoy the same privileges. In the same manner, by the Act of Union with Ireland, the peers and peeresses of Ireland are entitled to the same privileges as the peers and peeresses of Great Britain.

The Lords, under standing orders Nos. 64 and 67, claim privileges for themselves “within the usual times of privileges of Parliament,” and for their servants, for twenty days before and after each session. With regard to members of the House of Commons, “the time of privilege” has been repeatedly mentioned in statutes, but never explained. It is stated by Blackstone and others, and has been the general opinion (founded, probably, upon the ancient law and custom, by which writs of summons for a Parliament were always issued at least forty days before its appointed meeting), that the privilege of freedom from arrest remains with a member of the House of Commons “for forty days after every prorogation, and forty days before the next appointed meeting;” and this extent of privilege has been

1 1 Blackstone, Comm. 165; 1 West. Inq. 27; Countess of Rutland’s case, 6 Co. 52; cases of Lady Purbeck, 1625; Lady Della Warr, 1642; Lady D’Acre, 1660; Lady Petre, 1664; Countess of Huntingdon, 1676; Countess of Newport, 1699; Lady Abergavenny, 1727; 60 L. J. 28–31.

2 Co. Litt. 166; 4 Bacon’s Abridg. 229; Lords’ standing order No. 63; 11 L. J. 298; 15 ib. 241; see also 12 ib. 714; 13 ib. 67. 79. 80. 659.

3 2 Strange, 390; 60 L. J. 28; case of Viscount Hawarden, an Irish Peer, 31st Jan. 1828; 60 ib. 15; Rep. Com. of Privileges, ib. 28: 18 H. D. 2 s. 69; Lord Colchester’s Diary, iii. 544. 545.

4 2 Stephen’s Blackstone, 11th ed. 353. The right of franking letters, formerly enjoyed by members, was by
allowed by the courts of law, on the ground of usage and
universal opinion. Thus in Mr. Duncombe's case, 7th Septem-
ber, 1847, who was, by a judge's order, allowed his
privilege, extending to forty days, the chief baron, on a
motion for rescinding the order, maintained the privilege,
and stated as the judgment of the court that "the period of
forty days before and after the meeting of Parliament has
for about two centuries, at least, been considered the time
to be allowed; and such, we think, is the law" (see
also p. 119).

It has been determined by the courts of law, that the
privilege, even after a dissolution, is still enjoyed for a con-
venient and reasonable time for returning home. Thus this
convenient time may be, has never been determined; but
the general claim of exemption from arrest, eundo et redeundo,
extends as well to dissolutions as to prorogations, as no dis-

These cases apply to arrests made after the privilege has
accrued: but the effect of the election of a person already in
execution still remains to be considered. In Thorpe's case
the judges excepted from privilege the case of "a condemna-
tion had before the Parliament:" but their opinion has not
been sustained by the judgment of Parliament itself. Unless
a member has incurred some legal disability, or has subjected
himself to processes more stringent than those which result
from civil actions, it has been held that his service in Parlia-
ment is paramount to all other claims. Thus in 1677, Sir
Robert Holt was discharged, although he had been "taken
in execution out of privilege of Parliament:" and, not to
mention intermediate cases, or any which are of doubtful
authority, Mr. Christie Burton obtained his release in 1819,
although he had been in the custody of the warden of the
Fleet before his election.

Act granted for the above-mentioned
forty days. For a history of this
right, see Report, 16th April,
1735.

1 Welsby, H. & G. 430.
2 Barnardo v. Mordaunt, 1 Lord

Ken. 125.
3 9 C. J. 411; see Reports of Pre-
cedents, 10 C. J. 401; 62 ib. 642.
653. 654; 2 Hatsell, 37; 74 C. J. 44;
75 ib. 230.
Chapter V. A person succeeding to a peerage while under arrest, is entitled to his discharge in virtue of his privilege. On the 1st January, 1849, Lord Harley having succeeded, by the death of his father, to the earldom of Oxford, applied to a judge in chambers (Mr. Baron Platt), for his discharge from the Queen's Prison. It was submitted that he was not entitled to privilege until he had taken his seat as a peer: but this position could not be supported by any authorities, and the earl was ordered to be discharged. It has been decided by the Lords that a peer is entitled to privilege when he has not qualified himself to sit, by taking the oaths.

As a consequence of the immunity of a member of Parliament, it has been held that he cannot be admitted as bail; for not being liable to attachment, by reason of his privilege, he cannot be effectually proceeded against, in the event of the recognizances being forfeited.

The privilege of not being impleaded was formerly maintained, as, for instance, during 8th Edward II., by the issue of writs of supersedeas to the justices of assize, to prevent actions from being maintained against members in their absence, by reason of their inability to defend their rights while in attendance upon the Parliament.

At the beginning of the reign of James I., another practice was adopted. Instead of resorting to writs of supersedeas, the Speaker was ordered to stay suits by a letter to the judges, and sometimes by a warrant to the party also; and the parties and their attorneys who commenced the actions were brought, by the Serjeant, to the bar of the house.

1 McCabe v. Lord Harley.
2 L. J. 24th Feb. 1691; 13th May, 1720.
3 Duncan v. Hill (1 Dowling & Ryland's Rep. 126); Graham v. Sturt (4 Taunton's Rep. 249); Burton v. Atherton (2 Marsh. 232); and case of Mr. Peargus O'Connor, who offered himself as bail for Mr. Ernest Jones, 11th June, 1848, at Bow Street.
4 The case of Bogo de Clare, formerly cited as the earliest recorded case of the privilege of not being impleaded, turned on service of a citation in a privileged place (see p. 78, n. 3).
5 1 Hatsell, 41. 42. 43; D'Ewes, 436.
6 1 C. J. 236. 331. 421. 804, &c.
7 1 ib. 304. 525; Prynne's 4th Register, 810; 1 C. J. 861; 1 Hatsell, 184. 185; 1 C. J. 378. 421. 595.
The privilege insisted upon in this manner continued until the end of the seventeenth century, when it underwent a considerable limitation by statute. The 12 & 13 Will. III. c. 3, enacted, that any person might commence and prosecute actions against any peer, or member of Parliament, or their servants, or others entitled to privilege, in the courts at Westminster, and the duchy court of Lancaster, immediately after a dissolution or prorogation, until the next meeting of Parliament, and during any adjournment for more than fourteen days; and that during such times, the court might give judgment and award execution.

Soon afterwards, it was enacted, by the 2 & 3 Anne, c. 18, that no action, suit, process, proceeding, judgment, or execution, against privileged persons, employed in the revenue, or any office of public trust, for any forfeiture, penalty, &c., should be stayed or delayed by or under colour or pretence of privilege of Parliament. The Act of William III. had extended only to the principal courts of law and equity: but by the 11 Geo. II. c. 24, all actions in relation to real and personal property were allowed to be commenced and prosecuted in the recess and during adjournments of more than fourteen days, in any court of record.

Still more important limitations of the privilege were effected by the Act 10 Geo. III. c. 50, whereby any person may at any time commence and prosecute an action or suit in any court of law against peers or members of Parliament and their servants; and no such action or process shall be interfered with under any privilege of Parliament. It is also, however, enacted that nothing in the Act should subject the person of any member of Parliament to arrest or imprisonment.¹

Under this Act, and under the Acts 45 Geo. III. c. 124, and 47 Geo. III. sess. 2, c. 40, members of Parliament may be coerced by every legal process, except the attachment of &c.; 10 ib. 280. 300. 356; 11 ib. 507, &c.

¹ The 4th Article of the Act of
Chapter V. their bodies. By sect. 124 of the Bankruptcy Act, 1883, persons having privilege of Parliament are subject to the processes of the court.

The claim to resist subpœnas upon the same principle as other personal privileges, viz. the paramount right of Parliament to the attendance and service of its members, was maintained in former times. Of late years, so far from withholding the attendance of members as witnesses in courts of justice, the Commons grant leave of absence to their members on the ground that they have been summoned as witnesses, and have admitted the same excuse for defaulters at calls of the house. But although this claim of privilege is not now enforced as regards other courts, one house will not permit its members to be summoned by the other, without a message desiring his attendance, nor without the consent of the member whose attendance is required (see p. 402); and it may be doubtful whether the house would not protect a member served with a subpœna, 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. No officer of either house should be served with a subpœna to give evidence concerning any proceedings in Parliament, or to produce documents in his custody, until leave has been given to him to attend (see p. 407).

As the withdrawal of a witness may affect the administration of justice, the privilege has properly been waived: but the service of members upon juries not being absolutely necessary, their more immediate duties in Parliament are held to supersede the obligation of attendance in other courts.

On the 20th February, 1826, Mr. Holford complained that he had been fined for non-attendance as a juryman by

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1 C. J. 34. 48; 1 Parl. Hist. 630; D'Ewes, 347; 1 Hatsell, 96. 97. 109. 175; 3 L. J. 690; 1 C. J. 203. 205. 211. 363. 1040, &c.; 9 ib. 339. 56 ib. 122; 68 ib. 218. 243. 292; 71 ib. 110; 82 ib. 306. 379; sec also H. D. 1st March, 1844 (Earl of Devon); 48 C. J. 318. 78 C. J. 132. 3 91 L. J. 508; 92 ib. 590; 103 C. J. 106 ib. 277, &c. 4 51 West, Inq. 28.
the Court of Exchequer, his excuse that he was attending Chapter V.
the service of Parliament not being admitted; and Mr. Ellice, another member, stated that he had also been fined for non-attendance, in the same court. A committee of privileges was immediately appointed, and the house, on receiving its report, resolved, nem. con., that it is "amongst the most ancient and undoubted privileges of Parliament, that no member shall be withdrawn from his attendance on his duty in Parliament to attend on any other court." Exemption, held good during an adjournment, was not ordinarily claimed by members after a prorogation; and there was no distinct authority for its existence at that time: but by the Juries Act, 1870, peers and members of Parliament, and the officers of both houses, are included among the persons exempted from serving on juries, without reference to the sitting of Parliament; and their privilege has since become a legal exemption.

The privilege of freedom from arrest has always been limited to civil causes, and has not been allowed to interfere with the administration of criminal justice. In Larke's case, in 1429, the privilege was claimed, "except for treason, felony, or breach of the peace;" and in Thorpe's case, the judges made exceptions to such cases as be "for treason, or felony, or surety of the peace." The privilege was thus explained by a resolution of the Lords, 18th April, 1626: "That the privilege of this house is, that no peer of Parliament, sitting the Parliament, is to be imprisoned or restrained, without sentence or order of the house, unless it be for treason or felony, or for refusing to give surety of the peace;" and again, by a resolution of the Commons, 20th May, 1675, "that by the laws and usage of Parliament, privilege of Parliament belongs to every member of the

1 Case of Tracey, 1597, D'Ewes, 560; 1 Hatsell, 112; Sir W. Alford, 1628; 1 C. J. 898; Mr. Rolfe and Mr. Ellice, 1826; 14 H. D. n. s. 568. 642; 81 C. J. 82. 87; Mr. Bennett, 14 H. D. n. s. 643; Mr. Macleod, 21 H. D. n. a. 1770. In the case of Viscount Enfield, 6th Feb. 1861, Chief Justice Erle stated, that "his lordship ought not to have been summoned as a juror, as members were not bound to serve in any other court than that in which they had been returned to serve, viz. the High Court of Parliament."
CRIMINAL COMMITMENTS.

Chapter V. House of Commons, in all cases except treason, felony, and breach of the peace.”

On the 14th April, 1697, it was resolved, “That no member of this house has any privilege in case of breach of the peace, or forcible entries, or forcible detainers;” 1 and in Wilkes’ case, 29th November, 1763, although the Court of Common Pleas had decided otherwise, 2 it was resolved by both houses,

“That privilege of Parliament does not extend to the case of writing and publishing seditious libels, nor ought to be allowed to obstruct the ordinary course of laws in the speedy and effectual prosecution of so heinous and dangerous an offence.” 3

“Since that time,” said the committee of privileges, in 1831, “it has been considered as established generally, that privilege is not claimable for any indictable offence.” 4

These being the general declarations of the law of Parliament, one case will be sufficient to show how little protection is practically afforded by privilege, in criminal offences. In 1815, Lord Cochrane, a member, having been indicted and convicted of a conspiracy, was committed by the Court of King’s Bench to the King’s Bench Prison. Lord Cochrane escaped, and was arrested by the marshal, whilst he was sitting on the privy councillors’ bench, in the House of Commons, on the right hand of the chair, at which time there was no member present, prayers not having been read. The case was referred to the committee of privileges, who reported that it was “entirely of a novel nature, and that the privileges of Parliament did not appear to have been violated, so as to call for the interposition of the house, by any proceedings against the marshal of the King’s Bench.” 5

Thus the house will not allow even the sanctuary of its walls to protect a member from the process of criminal law;

1 4 Rot. Parl. 357; 5 ib. 339; 3 L. J. 369. 562; see also Declaration by the Commons, 17th Aug. 1641, 2 C. J. 261; 11 ib. 784.
2 2 Wils. Rep. 150; 19 St. Tr. 981.
4 Sess. Paper, 1831 (114); see also case of Lord Oliphant, in 1709, 19 L. J. 31. 34; and 26 ib. 492 (Gaming-houses).
5 Sess. Paper, 1814–15 (293); 30 H. D. 1 s. 309. 336; Lord Colchester’s Diary, ii. 534–536.
though, as has been mentioned (p. 78), service of a criminal process on a member within the precincts of Parliament, whilst the house is sitting, may be a breach of privilege. But in all cases in which members are arrested on criminal charges, the house must be informed of the cause for which they are detained from their service in Parliament. Several Acts which have suspended for a time the Habeas Corpus Act, have contained provisions to the effect that no member of Parliament shall be imprisoned during the sitting of Parliament, until the matter of which he stands suspected shall be first communicated to the house of which he shall be a member, and the consent of the said house obtained for his commitment. By the Protection of Person and Property Act, 1881, it was provided that "if any member of either House of Parliament be arrested under this Act, the fact shall be immediately communicated to the house of which he is a member, if Parliament be sitting at the time, or if Parliament be not sitting, then immediately after Parliament reassembles, in like manner as if he were arrested on a criminal charge." And the arrests of members, under this Act, were communicated to the House of Commons accordingly. In cases not affected by Acts of this special character, it has been usual to communicate the cause of commitment, after the arrest, as in the cases of Lord George Gordon in 1780, and Mr. Smith O'Brien in 1848, for high treason; and whenever members are in custody in order to be tried by naval or military courts martial, or have been committed for any criminal offence by a court or magistrate. In

1 See 17 Geo. II. c. 6; 45 Geo. III. c. 4, s. 2; 57 Geo. III. c. 3, s. 4; 57 Geo. III. c. 55, s. 4; 3 Geo. IV. c. 2, s. 4.

2 Mr. Dillon, 4th May, 1881, 136 C. J. 213; 260 H. D. 3 s. 1744. Mr. Parnell, Mr. Sexton, Mr. O'Kelly, and Mr. Dillon, also the release of Mr. Sexton, 7th Feb. 1882. A motion for a committee of inquiry was negatived, 137 C. J. 8; 263 H. D. 3 s. 98; arrest of Mr. W. O'Brien, 16th Sept. 1887, 142 C. J. 552.

3 37 ib. 903.

4 103 ib. 888.

5 37 ib. 57; 39 ib. 479; 51 ib. 139. 557; 58 ib. 597; 59 ib. 33; 67 ib. 246, &c.; 70 ib. 70; 47 L. J. 349 (Lord Gambier); and see case of Lord Torrington, 14 ib. 521. 523. 525. 527.

6 Mr. Healy, 15th Feb. 1883, 138 C. J. 4. A motion for a committee of inquiry was negatived. Captain Verney, 146 ib. 268; Mr. Hastings, 147 ib. 101.

7 Mr. F. O'Connor, 107 ib. 28.
the case of commitments for high treason, or for military offences, the communication is made by royal message (see p. 422).¹ In the case of naval courts martial this communication is made by the lord high admiral or the Lords Commissioners of the Admiralty, by whom the warrants are issued for taking the members into custody; and copies of the warrants are, at the same time, laid before the house.²

The committal of a member for a criminal offence is brought before the house by a letter addressed to the Speaker by the committing judge or magistrate. On these occasions, the first communication to the Speaker is made when the member is committed to prison, bail not being allowed; and subsequently, if the member be not released from custody, or acquitted, the judge informs the Speaker of the offence for which the member was condemned, and the sentence that has been passed upon him. In the case of an attachment order for contempt of court (see p. 118), the judge informs the Speaker that such an order has been issued, but cannot certify to him when the arrest actually takes place, for the issue of the order is left at the discretion of the applicant for such an order, which is placed, when issued, in the sheriff’s hands for execution.

The same distinction between civil and criminal processes has been observed in the case of bankrupts. By the Bankrupt Law Consolidation Act, 1849, s. 66, it was enacted that, “If any trader having privilege of Parliament shall commit any act of bankruptcy, he may be dealt with under the Act in like manner as any other trader: but such person shall not be subject to be arrested or imprisoned during the term of such privilege, except in cases made felonies and misdemeanours by this Act.” By the Bankruptcy Act, 1869, s. 120, and by the Bankruptcy Act, 1883, s. 124, a person having privilege of Parliament is to be dealt with as if he had not such privilege.

¹ The communication regarding Mr. Smith O’Brien was made by a letter from the Lord-Lieutenant of Ireland to the Speaker.
² 62 C. J. 145; 64 ib. 214; 67 ib. 240.
Another description of offence, partaking of a criminal character, is a contempt of a court of justice; and it was for some time doubtful how far privilege would extend to the protection of a member committed for a contempt. For instance, in the case of Henry Lord Cromwell, 30th June, 1572, who had been attached by the sheriff of Norfolk, by a writ of attachment from the Court of Chancery, for not obeying an injunction of that court, though the Lords ordered Lord Cromwell to be discharged of the attachment, they declared that if at any future time cause should be shown that by the queen's prerogative, or by common law or custom, or by any statute or precedents, the persons of lords of Parliament are attachable, the order in this case should not affect their decision in judging according to the cause shown.¹

On the 9th February, 1625, the Lord Vaux claimed his privilege, for stay of the proceedings in an information against him in the Star Chamber; and it was granted.² But by standing order No. 79, 8th June, 1757, no peer or lord of Parliament has privilege of peerage, or of Parliament, against being compelled to pay obedience to a writ of habeas corpus directed to him. And it was decided, in the case of Earl Ferrers, that an attachment may be granted, if a peer refuses obedience to the writ.³

In 1605, in the case of Mr. Brereton, who had been committed by the Court of King's Bench for a contempt, the Commons brought up their member by a writ of habeas corpus, and received him in the house.⁴

In more recent cases, members committed by courts for

¹ 1 L. J. 727; 4 ib. 27; 12 ib. 122; 4th Reg. 792; case of Duchess of Sutherland, 18th April, 1893.
² 3 L. J. 496; see also the case of Lord Arundel, 3 ib. 558 (Report of Precedents), 502, &c.
³ Burr. 631; see statement in Bacon's Abridgment, vol. 6, p. 546; 2 Hawk. P. C. 22, s. 33; 1 Burr. 634. The courts will not grant a new attachment against a peer or member of Parliament (see p. 119) for non-payment of money according to award." 7 Term. Rep. 171. 448. See dicta of Lord Brougham, in Westmeath v. Westmeath, 8 Law Journ. (1st s. Chancery), 177. Contempt of court committed by privileged persons was formerly punished by sequestration of their property. The Countess of Shaftesbury, 2 Peere Williams, 110.
⁴ 1 C. J. 269; also Bampfield's case, ib. 466.
Chapter V. open contempt have failed in obtaining their release by
virtue of privilege.

In 1831, Mr. Long Wellesley, a member, having confessed
in the Court of Chancery, that he had taken his infant
daughter, a ward in chancery, out of the jurisdiction of
the court, Lord Brougham, C., at once committed him for
contempt.

The lord chancellor acquainted the Speaker of this com-
mitment; and Mr. Wellesley also appealed, through the
Speaker, to the House of Commons, and claimed his
privilege. His case was referred to the committee of
privileges, who reported, "that his claim to be discharged
from imprisonment, by reason of privilege of Parliament,
ought not to be admitted." 1

The next case was that of Mr. Lechmere Charlton, in Mr. Lech-
1837. That member had been committed by the lord
chancellor, for a contempt, in writing a letter to one of the
masters in chancery, "containing matter scandalous with
respect to him, and an attempt improperly to influence his
decision." The lord chancellor stated the grounds of this
commitment, in a letter to the Speaker, to whom Mr.
Charlton also complained of his commitment. These letters
were referred to a committee of privileges, and after a full
inquiry into the nature of the contempt, the committee
reported that Mr. Charlton's claim to be discharged from
imprisonment ought not to be admitted. 2

The case of Mr. Whalley, in 1874, was, in some respects, Mr.
exceptional. On the 23rd January, he was committed by the
Court of Queen's Bench for a contempt, Parliament not
then being sitting. On the 26th, Parliament was dissolved,
and, in the mean time, Mr. Whalley had been discharged
from custody. Doubts were raised whether, under these
circumstances, it was necessary for the court to communicate
this commitment to the house; but, on the meeting of the

1 86 C. J. 701.
2 92 ib. 3, et seq.; 1 Parl. Rep. 1837,
No. 45. As the lord chancellor's
order did not set forth the letter, the
committee directed it to be produced,
as "it was necessary that the House
of Commons should be informed of
the particulars of the contempt."
new Parliament, the lord chief justice addressed a letter to the Speaker, explaining all the facts of the case. A committee on privilege, to whom this letter was referred, reported that it did not demand the further attention of the house, and they also expressed their opinion "that the lord chief justice fulfilled his duty in informing the house that a member of the House of Commons had been imprisoned by the Court of Queen's Bench." ¹

On the 17th August, 1882, Mr. Speaker acquainted the house that he had received a letter from Mr. Justice Lawson, sitting under a commission in Dublin, informing him that he had committed Mr. Gray, a member, for contempt of court, in publishing certain articles, calculated to prejudice the administration of justice. As the house was on the eve of a long adjournment, no further action was taken: but on the next meeting of the house, on the 24th October, a select committee was appointed to consider the matter. Meanwhile Mr. Gray had been discharged; and his discharge was communicated to the house. The committee, having examined Mr. Gray and other witnesses, and considered various documents, reported, in the terms of former committees, that the matters referred to them do not demand the further attention of the house.²

On the 28th November, 1888, under an attachment order issued against Mr. Gent Davis, a member, he was imprisoned for contempt of court in appropriating and neglecting to pay into court money received by him as receiver appointed by the Court of Chancery.³

It must not, however, be understood that either house has waived its right to interfere when members are committed for contempt. Each case is open to consideration when it arises; and although protection has not been extended to flagrant contempts, privilege might still be allowed against commitment under any civil process, or if

¹ Report of Committee, 1874 (77); 218 H. D. 3 s. 52. 108.
² 137 C. J. 487. 491; 273 H. D. 3 s. 1978. 3049; 274 ib. 84. Report of Committee on Privilege (Mr. Gray), 1882, Parl. No. 406; see also case of Mr. T. M. Healy’s imprisonment, 138 C. J. 4.
³ Judge’s letter to the Speaker, 143 C. J. 488.
the circumstances of the case appeared otherwise to justify it. By 2 & 3 Will. IV. c. 93, an Act for enforcing the process of contempts in matters ecclesiastical, an exception is made from committal for contempt of court in behalf of peers or members of Parliament.

In January, 1873, the Court of Queen's Bench fined Mr. Onslow and Mr. Whalley, two members of the House of Commons, for a contempt of that court, when Chief Justice Cockburn took occasion to state that the court would not have been restrained by privilege from committing these members, if it had thought fit.

But it is only in cases of quasi criminal contempts that members of either house may be committed, without an invasion of privilege. Such a commitment, as part of a civil process for the recovery of a debt, will not be resorted to by a court, nor would it be allowed in Parliament.\(^1\)

On the 24th March, 1880, application was made to Vice-Chancellor Hall for an order for the committal of Mr. Fortescue Harrison, a member, for contempt, in not having complied with an order of the court for payment of certain moneys, and the delivery of documents to the liquidator of a company. The vice-chancellor, however, held that privilege protected a member, except in cases of a gross character, and that the contempt, in this case, was not such as to justify the court in committing a member. On that same day Parliament was dissolved, and Mr. Fortescue Harrison did not seek re-election. On the 15th April, application was again made to the court for his commitment: but the vice-chancellor held that privilege extended to a period of forty days after a prorogation or dissolution of Parliament, and as that time had not yet expired, he refused to entertain the motion, on the ground of privilege, and without reference to the merits of the case.\(^2\)

A similar case affecting a peer had been decided, after full

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\(^1\) Mr. Judge Bayley (Westminster County Court) refused to grant an order for the committal of a member for non-payment of a judgment debt on the ground of privilege, Report in Times, 10th Feb. 1892; see also p. 116. n. 3.

\(^2\) Times, 16th April, 1880.
consideration, by the judge of the Brompton County Court, in 1879. On the same ground, Mr. Justice Vaughan Williams refused an order of committal for contempt of court against a member who declined to be examined pursuant to a summons issued by the court in a matter of bankruptcy, because the member's conduct contained "no element of personal contempt, or any offence for which he could be sent to prison as a punishment." 1

As yet the personal privilege of members, and the ancient privilege of their servants, have alone been noticed. These were founded upon the necessity of enabling members freely to attend to their duties in Parliament. Upon the same ground, a similar privilege of freedom from arrest and molestation is attached to all witnesses summoned to attend before either house of Parliament, or before parliamentary committees, and to others in personal attendance upon the business of Parliament, in coming, staying, and returning; and to officers of either house, in immediate attendance upon the service of Parliament. In the early journals there are numerous orders that all persons attending in obedience to the orders of the house, and of committees, shall have the privilege or protection of the house. 2 A few precedents will serve to explain the nature and extent of this privilege.

Instances of protections given by the Lords to witnesses and to parties, while their causes or bills were depending, appear very frequently on the journals of that house.

In 1640, Sir Pierce Crosbie, sworn as a witness in Lord Strafford's cause, being threatened with arrest, was allowed privilege, "to protect him during the time that this house examine him." In 1641, it was ordered that Sir T. Lake, who had a cause depending, should "have liberty to pass in and out unto the house, and to his counsel, solicitor, and attorney, for and during so long time only as his cause shall be before their lordships in agitation;" and many

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1 Queen's Bench Division (Bankruptcy). *In re Armstrong, ex parte* Lindsay, *Times*, 8th Aug. 1891; Morrell, Bankruptcy Reports.

2 1 Lex Parl. 380; 1 Hatsell, 9. 11. 172; 1 C. J. 505; 2 ib. 107; 9 ib. 62; 13 ib. 521, &c.
similar orders have been made in the case of other parties, who have had causes depending, or bills before the house.¹

On the 12th May, 1624, the master and others of the felt-makers were ordered, by the Commons, to be enlarged from the custody of the warden of the Fleet, for the prosecution of a bill then depending, "till the same be determined by both houses."² In the same manner, privilege was extended to persons who had petitions or bills depending, on 22nd and 29th January, 1628, 23rd January, 1640, 3rd May, 1701, and 11th May, 1758.³ Numerous instances have occurred, in which witnesses, who have been arrested on their way to or from Parliament, or during their attendance there, have been discharged out of custody;⁴ and the same protection is extended, not only to parties, but to their counsel, solicitors, and agents, in prosecuting any business in Parliament.⁵

The last case that need be mentioned is that of Mr. Petrie, in 1793. That gentleman was a petitioner in a controverted election, and claimed to sit for the borough of Cricklade. Having received the usual notice to attend, by himself, his counsel, or agents, he attended the sittings of the election committee as a party in the cause. He was arrested before the committee had closed their inquiries; and on the 20th March the house, after receiving a report of precedents, ordered, nem. con., that he should be discharged out of the custody of the sheriff of Middlesex.⁶

Witnesses, petitioners, and others, being thus free from arrest while in attendance on Parliament, are further protected, by privilege, from the consequences of any statements which they may have made before either house; and any

¹ 4 L. J. 143. 144. 262; ib. 263. 289. 330. 477; 5 ib. 476. 563. 574. 653. 680; 25 ib. 625; 27 ib. 19. 538; 28 ib. 512.
² 1 C. J. 702; Bryer's case, ib. 863.
³ Ib. 921. 924; 13 ib. 512; 28 ib. 244; 2 ib. 72.
⁴ 8 ib. 925; 9 ib. 20. 366. 472; 12 ib. 361. 610; 66 ib. 226. 232; 30 ib. 521.
⁵ 88 L. J. 189; 92 ib. 75. 76; cases of Mr. Gardener and of Mr. Douglas, 9 C. J. 472; 24 ib. 170; 26 ib. 797; 27 ib. 447. 537. 543. Similar protection is given by courts of law, even in arbitration cases, to witnesses, &c., Court of Q. B. in banco, 7th Nov. 1837.
⁶ 48 C. J. 426.
molestation, threats, or legal proceedings against them, will be treated by the house as a breach of privilege. The House of Commons resolved, 26th May, 1818, "That all witnesses examined before this 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;" and persons who punish, damnify, or injure witnesses before committees of either house of Parliament on account of their evidence may, under the Witnesses (Public Inquiries) Protection Act, 1892, be convicted of a misdemeanor, fined, imprisoned, and condemned to pay the costs of the prosecution, as well as a sum by way of compensation to the injured persons.

On the 23rd November, 1696, "A complaint being made that Sir G. Meggott had prosecuted at law several persons for what they testified, the last session, at the committee of privileges and elections," it was referred to that committee to examine the matter of the complaint. It appeared from their report, 4th December, that Sir G. Meggott had thought that he might lawfully bring the action; "but as soon as he was better advised, he desisted, and suffered himself to be nonsuited, and had paid them their costs." Notwithstanding his submission, the house agreed with the committee in a resolution, that he had been guilty of a breach of privilege, and committed him to the Serjeant; and, the same year, under similar circumstances, the house committed Mr. Gee to the custody of the Serjeant, for prosecuting at law certain hackney coachmen for petitioning the house.

On the 8th April, 1697, the Lords attached T. Stone, for striking and insulting a witness, below the bar, who had been summoned to attend a committee, and directed the attorney-general to prosecute him for his offence. On the 5th March, 1710, on the report from a committee that John Hare, a soldier, was afraid of giving evidence, the Commons resolved, "that this house will proceed with the utmost severity against any person that shall threaten, or any way injure, or send away the said J. Hare, or any other person

1 73 C. J. 389. 2 11 ib. 591. 613, 3 Ib. 699. 4 16 L. J. 144.
and on the 9th February, 1715, a complaint being made that C. Medlycot, Esq., had been abused and insulted, "in respect to the evidence by him given" before a committee, the person complained of was committed to the custody of the Serjeant.¹

On the 28th February, 1728, it was reported to the house, by a committee appointed to inquire into the state of the gaols, that Sir W. Rich, a prisoner in the Fleet, had been misused by the warden of the Fleet, in consequence of evidence given by the former to the committee. The house declared, nem. con., that the warden was guilty of contempt, and committed him to the Serjeant-at-arms.²

On the 10th May, 1733, complaint was made that Jeremiah Dunbar, Esq., had been censured by the House of Representatives of Massachusetts Bay, for evidence given by him before a committee on a bill, upon which the house resolved, nem. con., "That the presuming to call any person to account, or to pass a censure upon him, for evidence given by such person before this house, or any committee thereof, is an audacious proceeding, and a high violation of the privileges of this house."³

In 1819, Thomas Stinton, a soldier examined before the Worcester Election Committee, was arrested by the sergeant of his regiment, in the lobby, for absenting himself from drill. There were, however, other circumstances in the case, which induced the house not to regard this as a breach of privilege.⁴

On the 2nd July, 1845, Mr. Jasper Parrott complained to the house, by petition, that an action had been commenced against him in respect of evidence which he had given before a committee. The plaintiff and his solicitors, having been ordered to attend, disclaimed any intention of violating the privileges of the house, and declared that the action would be discontinued. They were, in consequence, dis-

¹ 16 C. J. 535; 18 ib. 371; see also Mr. Goold's case, 12th March, 1819, 74 ib. 223.
² 21 ib. 247.
³ 22 ib. 146.
⁴ 39 H. D. 1 s. 1168. 1226.
charged from further attendance, although the commencement of the action was declared to be a breach of privilege.\(^1\) It is worthy of remark, that the plaintiff’s solicitor stated, in a petition to the house, that the declaration had been framed upon the assumption that a witness would not be protected, by privilege, in respect of any evidence which was wilfully and maliciously false, any more than the powers of the superior courts at Westminster would be exerted to protect any witness from an indictment for perjury. The house, however, did not recognize any such analogy: but resolved to protect the witness from all proceedings against him, in respect of the evidence given by him before a committee.

In the same year, a similar case occurred in the House of Lords. Peter Taite Harbin had brought an action, by John Harlow, his attorney, against Thomas Baker, for false and malicious language uttered before the House of Lords, in giving evidence before a committee. On the 14th July, the plaintiff and his attorney were summoned to the bar, and on their refusal to state that the action should not be proceeded with, were both declared guilty of a breach of privilege, and committed.\(^2\)

On the 7th April, 1892, a member of the house, who was a director of the Cambrian Railway Company, attended the house, in his place, and two other directors and the manager of the company, at the bar, under an order of the house made in consequence of a special report from the select committee on Railway Servants (Hours of Labour). The committee reported that, in the course of their inquiry, it came to their knowledge that allegations were made that certain persons had been reduced or dismissed from the service of the company, in consequence of the evidence they had given before the committee, and that in the case of one person, John Hood, he was dismissed by the company mainly in consequence of charges arising out of the evidence given by him before the committee. The committee also reported that the manager of the company laid the evidence

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\(^1\) 100 C. J. 672. 680. 697; 81 H. D. 3 s. 1436.  
\(^2\) 82 H. D. 3 s. 431. 494.
Chapter V. relating to John Hood before the directors of the company, and that they, the directors of the company then present, when John Hood asked for a rehearing of the case, called him to account, and censured him for the evidence which he gave before the committee, in a manner calculated to deter other railway servants from giving evidence before a committee of the house.

The member was heard in his place, in behalf of himself and the other directors and the manager of the Cambrian Railway Company, and stated that they had not the slightest intention of deterring any railway servant from giving evidence before the committee; and that if they had, by the course they had adopted, unintentionally infringed any of the rules or privileges of the house, they asked the house to accept the unqualified expression of their regret; and one of the directors expressed his entire concurrence with the member's statement. They then withdrew; and the house resolved that, while recognizing that the directors and manager of the company had disclaimed any intention to deter any railway servant from giving evidence before its committee, and had expressed their unqualified regret for having unintentionally infringed any of its rules and privileges, the house was of opinion that they had committed a breach of the privileges of the house in their action towards John Hood, and that they be called in and admonished by Mr. Speaker for the breach of privilege that they had committed. The directors and the manager were accordingly called in, the member standing in his place, and the other directors and manager standing at the bar, received the admonition of the Speaker; which, by the order of the house, was entered upon the journal.

The privilege of protection from molestation in respect of what they have stated professionally, is also extended to counsel. On the 21st March, 1826, complaint was made that an insulting letter had been written by John Lee Wharton to Mr. Fonblanque, Q.C., in relation to a speech made by him, at the bar of the House of Lords, on the 16th

1 147 C. J. 166.
March. Mr. Wharton attended, according to order, and on Chapter V. making a proper submission and apology, was discharged from further attendance.¹

And apart from the protection afforded by privilege, it appears that statements made to Parliament in the course of its proceedings are not actionable at law. In Lake v. King,² which was an action upon the case for printing a false and scandalous petition to the committee of Parliament for grievances, it was agreed by the court, "that the exhibiting the petition to a committee of Parliament was lawful, and that no action lies for it, although the matter contained in the petition was false and scandalous, because it is in a summary course of justice, and before those who have power to examine whether it be true or false. But the question was, whether the printing and publishing of it, in the manner alleged by the defendant in his plea," viz. by delivering printed copies to the members of the committee, "according to custom used by others in that behalf, and approved of by the members of the said committee," was justifiable or not? Judgment was given for the defendant, by Hale, C.J., upon the ground, "that it was the order and course of proceedings in Parliament to print and deliver copies, whereof they ought to take judicial notice."

In Rex v. Merceron, an indictment against a magistrate for misconduct in his office, in having corruptly granted licences to public-houses, which were his own property, it was proposed, in behalf of the prosecutor, to prove what had been said by the defendant, in the course of his examination before a committee of the House of Commons, appointed for the purpose of inquiring into the police of the metropolis. The defendant had been compelled to appear before this committee, and had, upon examination, delivered in a list of certain public-houses, with the names of the owners and other particulars. On the part of the defendant it was

¹ 58 L. J. 128. 145. 659. 801. See also 2 Inst. 228, as to evidence before a jury being privileged.
² 1 Saunders' Reports, 131 b; 1 Lev. 240; 2 Keb. 361. 383. 462. 496.
Chapter V. objected, that since this statement had been made under a compulsory process from the House of Commons, and under the pain of incurring punishment as for a contempt of that house, the declarations were not voluntary, and could not be admitted for the purpose of criminating the defendant: but Abbott, C.J., was of opinion that the evidence was admissible.¹

¹ 2 Starkie's Nisi Prius Cases, 366.
Difficulty of the question.
The precise jurisdiction of courts of law in matters of privilege, is one of the most difficult questions of constitutional law that has ever arisen. Upon this point the precedents of Parliament are contradictory, the opinions and decisions of judges have differed, and the most learned and experienced men of the present day are not agreed. It would, therefore, be presumptuous to define the jurisdiction of the courts, or the bounds of parliamentary privilege: but it may not be useless to explain the principles involved in the question; to cite the chief authorities, and to advert to some of the leading cases that have occurred.

Principles stated.
It has been shown already (see p. 57), that each house of Parliament claims to be sole and exclusive judge of its own privileges, and that the courts have repeatedly acknowledged the right of both houses to declare what is a breach of privilege, and to commit the parties offending, as for a contempt: but, although the courts will neither interfere with Parliament in its punishment of offenders, nor assume the general right of declaring and limiting the privileges of Parliament, they are bound to administer the law of the land, and to adjudicate when breaches of that law are complained of. The jurisdiction of Parliament, and the jurisdiction of the courts, are thus liable to be brought into conflict. The House of Lords, or the House of Commons, may declare a particular act to have been justified by their order, and to be in accordance with the law of Parliament; while the courts may decline to acknowledge the right of one house to supersede, by its sole authority, the laws which have been made by the assent, or which exist with the acquiescence, of all the branches of the legislature. It is
true that, in a general sense, the law of Parliament is the law of the land: but if one law should appear to clash with the other, how are they to be reconciled? Is the declaration of one component part of Parliament to be conclusive as to the law; or are the legality of the declaration, and the jurisdiction of the house, to be measured by the general law of the land? In these questions are comprised all the difficulties attendant upon the conflicting jurisdictions of Parliament, and of the courts of law.

It is contended, on the one hand, that in determining matters of privilege the courts are to act ministerially rather than judicially, and to adjudicate in accordance with the law of Parliament, as declared by either house; while, on the other, it is maintained that, although the declaration of either house of Parliament, in matters of privilege within its own immediate jurisdiction, may not be questioned, its orders and authority cannot extend beyond its jurisdiction, and influence the decision of the courts, in the trial of causes, legally brought before them. From these opposite views it naturally follows that, in declaring its privileges, Parliament may assume to enlarge its own jurisdiction, and that the courts may have occasion to question and confine its limits.

The claim of each house of Parliament to be the sole and exclusive judge of its own privileges has always been asserted, in Parliament, upon the principles, and with the limitations which were stated on p. 60, and is the basis of the law of Parliament. This claim has been questioned in the courts of law: but before the particular cases are cited, it will be advisable to take a general view of the legal authorities which are favourable or adverse to the claim, in its fullest extent, as asserted by Parliament.

The earliest authority on which reliance is usually placed, in support of the claim, is the well-known answer of the judges in Thorpe's case (see p. 102). In the 31st Henry VI., on the Lords putting a case to the judges, whether Thomas Thorpe, the Speaker of the Commons, then imprisoned upon judgment in the Court of Exchequer, at
the suit of the Duke of York, "should be delivered from prison by virtue of the privilege of Parliament or not," the Chief Justice Fortescue, in the name of all the justices, answered—

"That they ought not to answer to that question, for it hath not been used aforetime, that the justices should in anywise determine the privilege of this High Court of Parliament; for it is so high and so mighty in its nature, that it may make law, and that that is law it may make no law; and the determination and knowledge of that privilege belongeth to the Lords of the Parliament, and not to the justices."¹

In regard to this case it must be observed that no legal question had come before the judges for trial, in their judicial capacity: but that, as assistants of the House of Lords, their opinion was desired upon a point of privilege which was clearly within the immediate jurisdiction of Parliament, and was awaiting its determination. Under these circumstances it was natural that the judges should be reluctant to press their own opinions, and desirous of leaving the matter to the decision of the Lords. That part of their answer which alleges that Parliament can make and unmake laws, as a reason why the judges should not determine questions of privilege, can only apply to the entire Parliament, and not to either house separately, nor even to both combined; and, consequently, it has no bearing upon the jurisdiction of Parliament, except in a legislative sense.

Sir E. Coke. The principle of this answer was adopted and confirmed by Sir Edward Coke, who lays it down that "whatever matter arises concerning either house of Parliament, ought to be discussed and adjudged in that house to which it relates, and not elsewhere;"² and again, that "judges ought not to give any opinion of a matter of privilege, because it is not to be decided by the common laws, but secundum leges et consuetudinem Parliamenti; and so the judges, in divers Parliaments, have confessed."³

¹ 5 Ret. Parl. 240; see also Lord Ellenborough's observations upon this case, 14 East, 29.
² 4th Inst. 15.
Chapter VI

In the case of Barnardiston v. Soame, in 1674, Lord Chief Justice North said—

"I can see no other way to avoid consequences derogatory to the honour of the Parliament but to reject the action, and all others that shall relate either to the proceedings or privilege of Parliament, as our predecessors have done. For if we should admit general remedies in matters relating to the Parliament, we must set bounds how far they shall go, which is a dangerous province; for if we err, privilege of Parliament will be invaded, which we ought not in any way to endanger." But in the same argument he alleged "that actions may be brought for giving Parliament protections wrongfully; actions may be brought against the Clerk of the Parliaments, Serjeant-at-arms, and Speaker, for aught I know, for executing their offices amiss, with averments of malice and damage; and then must judges and juries determine what they ought to do by their officers. This is in effect prescribing rules to the Parliament for them to act by." 1

In the case of Paty, one of the Aylesbury men, brought up by habeas corpus, Mr. Justice Powell thus defined the jurisdiction of the courts in matters of privilege—

"This court may judge of privilege, but not contrary to the judgment of the House of Commons." Again, "This court judges of privilege only incidentally; for when an action is brought in this court, it must be given one way or other." "The court of Parliament is a superior court; and though the King's Bench have a power to prevent excesses of jurisdiction in courts, yet they cannot prevent such excesses in Parliament, because that is a superior court, and a prohibition was never moved for to the Parliament." 2

It is laid down by Hawkins that

"There can be no doubt but that the highest regard is to be paid to all the proceedings of either of those houses; and that wherever the contrary does not plainly and expressly appear, it shall be presumed that they act within their jurisdiction, and agreeably to the usages of Parliament, and the rules of law and justice." 3

And Lord Chief Baron Comyn, following the opinion of Sir Edward Coke, affirms that

"All matters moved concerning the Peers and Commons in Parliament, ought to be determined according to the usage and customs of Parliament, and not by the law of any inferior court." 4

In several other cases which related solely to commit-

1 6 Howell, St. Tr. 1110.
2 2 Lord Raym. 1105; see also the opinions of Mr. Justice Blackstone and Lord Kenyon in the cases of Brass Crosby and Rex v. Wright.
3 2 Pleas of the Crown, c. 15, s. 73.
4 Digest, "Parliament" (G. 1).
ments by either house of Parliament, very decided opinions have been expressed by the judges, in favour of privilege (see p. 65), and adverse to the jurisdiction of the courts of law: but most of these may be taken to apply more especially to the undoubted right of commitment for contempt, rather than to general matters of law in which privilege may be concerned.

These authorities are sufficient, for the present purpose, to show the general confirmation of the exclusive jurisdiction of Parliament, in matters of privilege: but even here the parliamentary claim is occasionally modified and limited, as in the opinions of Lord Clarendon, Chief Justice North, and Lord Kenyon. In other cases, the jurisdiction of courts of law has been more extensively urged, and the privileges of Parliament proportionately limited. In Benyon v. Evelyn, the Lord Chief Justice, Sir Orlando Bridgman, came to the conclusion—

"That resolutions or resolves of either house of Parliament, singly, in the absence of parties concerned, are not so conclusive upon courts of law, but that we may, nay (with due respect, nevertheless, had to their resolves and resolutions), we must, give our judgment according as we upon our oath conceive the law to be, though our opinions fall out to be contrary to those resolutions or votes of either house." ¹

On another occasion Lord Chief Justice Willes said—

"I declare for myself, that I will never be bound by any determination of the House of Commons, against bringing an action at common law for a false or double return; and a party may proceed in Westminster Hall, notwithstanding any order of the house." ²

Lord Mansfield, in arguing for the exclusive right of the Commons to decide upon elections, said—

"That, in his opinion, declarations of the law by either house of Parliament were always attended with bad effects: he had constantly opposed them whenever he had an opportunity; and, in his judicial capacity, thought himself bound never to pay the least regard to them: " "but he made a wide distinction between general declarations of law, and the particular decision which might be made by either house, in their judicial capacity, on a case coming regularly before them, and properly the subject of their jurisdiction."

¹ Benyon v. Evelyn, Bridgman, ² Wynne v. Middleton, 1 Wils. 324. 128.
At another time the same great authority declared that "a resolution of the House of Commons, ordering a judgment to be given in a particular manner, would not be binding in the courts of Westminster Hall." And in Burdett v. Abbot, Lord Ellenborough said, "The question in all cases would be, whether the House of Commons were a court of competent jurisdiction, for the purpose of issuing a warrant to do the act."

Passing now to the most recent judicial opinions, the cases of Stockdale v. Hansard and Howard v. Gosset present themselves. An outline of all the proceedings in these cases (the most important that had arisen since that of Ashby and White), will be presently attempted: but, for the present, the expositions of the judges, in reference to the general jurisdiction of the courts, will be necessary to close this summary of authorities.

In giving judgment in the former case on the 31st May, 1839, Lord Denman used these words—

"But having convinced myself that the mere order of the house will not justify an act otherwise illegal, and that the simple declaration that that order is made in exercise of a privilege, does not prove the privilege; it is no longer optional with me to decline or accept the office of deciding whether this privilege exist in law."

In the same trial Mr. Justice Littledale argued—

"It is said the House of Commons is the sole judge of its own privileges; and so I admit, as far as proceedings in the house, and some other things, are concerned: but I do not think it follows that they have a power to declare what their privileges are, so as to preclude inquiry whether what they declare are part of their privileges. I think that the mere statement that the act complained of was done by the authority of the House of Commons is not of itself, without more, sufficient to call at once for the judgment of the court for the defendant."

In giving judgment upon the case of Bradlaugh v. Gosset, expressed by Judges Patteson and Coleridge, in Stockdale v. Hansard, and Howard v. Gosset, pp. 169, 174. 188; Arguments and Judgment, as printed by the House of Commons, 1845 (305), p. 105.

1 16 Hansard, Parl. Hist. 653; 24 ib. 517.
2 14 East, 128.
3 Proceedings, printed by the Commons, 1839 (283), pp. 155, 161, 162; see also the concurrent opinions.
Mr. Justice Stephen affirmed the principle that the House of Commons has the exclusive power of interpreting a statute, “so far as the regulation of its own proceedings within its own walls is concerned; and that even if that interpretation should be erroneous, this court has no power to interfere with it directly or indirectly.” He moreover stated that “a resolution of the house, permitting Mr. Bradlaugh to take his seat on making a statutory declaration, would certainly never have been interfered with by this court,” and that “if we had been moved to declare it void, and to restrain Mr. Bradlaugh from taking his seat until he had taken the oath, we should undoubtedly have refused to do so.” The judge, however, declared that “on the other hand, if the house had resolved ever so decidedly that Mr. Bradlaugh was entitled to make the statutory declaration instead of taking the oath, and had attempted by resolution or otherwise to protect him against an action for penalties, it would have been our duty to disregard such a resolution, and if an action for penalties were brought, to hear and determine it according to our own interpretation of the statute”\(^1\) (see also p. 142).

With these conflicting opinions as to the limits of parliamentary privilege, and the jurisdiction of courts of law, if either house of Parliament insist upon precluding other courts from inquiring into matters which are held to be within its own jurisdiction, the proper mode of effecting that object, is the next point to be determined. If the courts were willing to adopt the resolutions of the house as their guide, the course would be clear. The authority and adjudication of the house would be pleaded, and the courts, acting ministerially, would at once give effect to them. But if the courts regard a question of privilege as any other point of law, and assume to define the jurisdiction of the house,—in what manner, and at what point, can their adverse judgments be prevented, overruled, or resisted? The

\(^1\) 12 Q. B. 280. See also the judge’s opinion upholding the jurisdiction of the courts over a criminal act committed within the walls of Parliament. Anson, “Parliament,” vol. i. p. 166.
several modes that have been attempted, will appear from
the following cases: but it must be premised that when a
privilege of the Commons is disputed, that house labours
under a peculiar embarrassment. If the courts admit or
deny the right of the privilege, their decisions are liable to be
reversed by the House of Lords; and thus, contrary to the
law of Parliament, one house would be constituted a judge
of the privileges claimed by the other. With these per-
plexities before them, it is not surprising that the Commons
should frequently have viewed all legal proceedings, in
derogation of their authority, as a breach of privilege and
contempt. They have restrained suitors and their counsel
by prohibition and punishment, they have imprisoned the
judges, they have coerced the sheriff: but still the law
has taken its course.

Having opened the principles of the controversy respect-
ing parliamentary jurisdiction, it is time to proceed with a
narrative of the most important cases in which the privileges
of Parliament have been called in question.

Sir William Williams, Speaker of the House of Commons, in
the reigns of Charles II. and James II., had printed and
published, by order of the house, a paper well known in the
histories of that time as Dangerfield's Narrative. This paper
contained reflections upon the Duke of York, afterwards
James II., and an information for libel was filed against the
Speaker, by the attorney-general, in 1684. He pleaded to
the jurisdiction of the court, that as the paper had been
signed by him, as Speaker, by order of the House of Com-
mons, the Court of King's Bench had no jurisdiction over
the matter. On demurrer, this plea was overruled, and a
plea in bar was afterwards made, but withdrawn; his plea,
that the order of the house was a justification, was set aside
by the court, without argument, as "an idle and insignificant
plea;" and he was fined 10,000L. Two thousand pounds of
this fine were remitted by the king, but the rest he was
obliged to pay. The Commons were indignant at this con-
tempt of their authority, and declared the judgment to be
an illegal judgment and against the freedom of Parliament.
It was also included in the general condemnation by the Bill of Rights, of "prosecutions in the Court of King's Bench for matters and causes cognizable only in Parliament." 1

The next important case is that of Jay v. Topham, in 1689. After a dissolution of Parliament, an action was brought in the Court of King's Bench against John Topham, Esq., Serjeant-at-arms, for executing the orders of the house in arresting certain persons. Mr. Topham pleaded to the jurisdiction of the court the said orders; but his plea was overruled, and judgment given against him. The house declared this judgment to be a breach of privilege, and committed Sir F. Pemberton and Sir T. Jones, who had been the judges in the cause, to the custody of the Serjeant-at-arms.

They had protested, in their examination, that they had not questioned the legality of the orders of the house, but had overruled, on technical grounds, the plea to the jurisdiction. They averred also, that if there had been a plea in bar, the defendant would have been entitled to a judgment. Assuming the truth of their statements, it has been generally acknowledged that these proceedings against the judges were liable to great objection. Lord Ellenborough said, that it was surprising "how a judge should have been questioned, and committed to prison by the House of Commons, for having given a judgment which no other judge who ever sat in his place could have differed from." And Lord Denman, in Stockdale v. Hansard, said that this judgment was righteous, and that the judges "vindicated their conduct by unanswerable reasoning;" and again, in Howard v. Gosset, he called the commitment of these judges "a flagrant abuse of privilege:" but, on the other hand, Lord Campbell has pointed out that there had been a plea in bar, which had been overruled, as stated in the petition of Topham to the House of Commons, and that the authority of that house had, in fact, been questioned by the judges.2

1 12th July, 1689, 10 C. J. 146. 177. 205. 215; 2 Shower, 471; 13 Howell, St. Tr. 1370.
The remarkable cases of Ashby and White, and the Aylesbury men, in 1704, are next worthy of a passing notice. They have been already mentioned (p. 51), with reference to the right of determining elections: but they must again be cited, to point out the course adopted by the Commons to stay actions derogatory to their privileges. Enraged by a judgment of the House of Lords, which held that electors had a right to bring actions against returning officers, touching their right of voting, the Commons declared that whoever shall presume to commence or to prosecute such an action, was guilty of a breach of privilege. In spite of this declaration, five burgesses of Aylesbury, commonly known as "the Aylesbury men," commenced actions against the constables of their borough, for not allowing their votes. The House of Commons obtained copies of the declarations, and resolved that the parties were "guilty of commencing and prosecuting actions ... in breach of the known privileges of this house:" for which offence, the parties and their attorney were committed to Newgate. Thence they endeavoured to obtain their release by writs of habeas corpus, but without success; and the counsel who had pleaded for the prisoners, on the return of the writs, were committed to the custody of the Serjeant-at-arms. The Lords took part with the Aylesbury men against the Commons; and after a tumultuous session, occupied with addresses, conferences, and resolutions upon privilege, the queen prorogued the Parliament.

At a later period a series of cases arose, in which the authority of the House of Commons, and the acts of its officers, were questioned. They have caused so much controversy, and have been so fully debated and canvassed, that nothing is needed but a succinct statement of the proceedings, and a commentary upon the present position of parliamentary privilege and jurisdiction.

Messrs. Hansard, the printers of the House of Commons, had printed, by order of that house, the reports of the inspectors of prisons, in one of which a book published by V. Hansard.

1 14 C. J. 444. 445. 552.
John Joseph Stockdale was described in a manner which he conceived to be libellous. He brought an action against Messrs. Hansard, during the recess in 1836, who pleaded the general issue, and proved the order of the house to print the report. This order, however, was held to be no defence to the action: but Stockdale had a verdict against him upon a plea of justification, as the jury considered the description of the work in question to be accurate. On that occasion Lord Chief Justice Denman, who tried the cause, made a declaration adverse to the privileges of the house, which Messrs. Hansard had set up as part of their defence. In his direction to the jury, his lordship said "that the fact of the House of Commons having directed Messrs. Hansard to publish all their parliamentary reports is no justification for them, or for any bookseller who publishes a parliamentary report containing a libel against any man." In consequence of these proceedings, a committee was appointed, in 1837, to ascertain the law and practice of Parliament in reference to the publication of papers, printed by order of the house. The result of these inquiries was the passing of resolutions by the house, declaring that the publication of parliamentary reports, votes, and proceedings was an essential incident to the constitutional functions of Parliament; that the house had sole and exclusive jurisdiction to determine upon the existence and extent of its privileges; that to dispute those privileges by legal proceedings was a breach of privilege; and that for any court to assume to decide upon matters of privilege inconsistent with the determination of either house of Parliament was contrary to the law of Parliament.¹

Stockdale, however, immediately commenced another action, and the house, instead of acting upon its resolutions, directed Messrs. Hansard to plead, and the attorney-general to defend them. In this action the privileges and order of the house were alone relied upon in the defence of Messrs. Hansard; and the Court of Queen’s Bench unanimously decided against the claim of privilege.

Still the House of Commons was reluctant to act upon its

¹ 92 C. J. 418.
own resolutions, and instead of punishing the plaintiff, and his legal advisers, it ordered the damages and costs to be paid, "under the special circumstances of the case;" though it was determined that, in case of future actions, Messrs. Hansard should not plead, and that the parties should suffer for their contempt of the resolutions and authority of the house. Another action was brought by the same person, and for the publication of the same report. Messrs. Hansard did not plead, the judgment went against them by default, and the damages were assessed by a jury, in the Sheriff's Court, at 600£. The Sheriffs of Middlesex levied for that amount, but having been served with copies of the resolutions of the house, they delayed paying the money to Stockdale as long as possible. At the opening of the session of Parliament in 1840, the money was still in their hands.

The House of Commons at once entered on the consideration of these proceedings, and committed Stockdale to the custody of the Serjeant. The sheriffs were desired to refund the money, and, on their refusal, were also committed. Stockdale, while in prison, commenced a fourth action by the same solicitor, and with him was committed to Newgate for the offence. Messrs. Hansard were again ordered not to plead, and once more judgment was entered up against them.

Meanwhile, as the imprisonment of the plaintiff and his attorney did not prevent the prosecution of further actions, protection was obtained for the publication of parliamentary papers by the statute 3 & 4 Vict. 9 (see p. 99).

In the contest with the House of Commons carried on by Stockdale and by his attorney, an action was commenced by Mr. Howard against Sir William Gosset and other officers of the house, known as Howard's second action, for taking him into custody, and conveying him to Newgate, in obedience to orders of the house, and the Speaker's warrants. The house gave the defendants leave to appear, and directed the attorney-general to defend them.

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1 The sheriffs paid the money to Stockdale under an attachment, 11 C. J. 59.
2 98 C. J. 59.
circumstances which originated this action, and the results to which it led, may be briefly described. When Mr. Howard commenced his fourth action against Messrs. Hansard (see p. 139), he was ordered to attend the house; but having willfully evaded the service of the order, the house, instead of resolving that he was in contempt, adopted the precedent of 31st March, 1771, and, according to ancient custom, ordered that he should be sent for in the custody of the Serjeant, and that Mr. Speaker should issue his warrant, which directed the Serjeant-at-arms “to take into your custody the body of the said Thomas Burton Howard.” Howard was taken into custody on this warrant, and brought to the bar; and it was for this arrest that the action of trespass was brought. In the argument it was contended, not only that the warrant was informal, but that the house had exceeded its jurisdiction in sending for a person in custody, without having previously adjudged him guilty of a contempt. The house might have sent for him, it was urged, and when he did not appear, have declared him in contempt, and committed him for his offence: but they had no right to bring him in custody, and thus imprison him upon a charge instead of on conviction. This doctrine, however, was not supported by the court: but judgment was given for the plaintiff because according to the judgment of the court the warrant was technically informal. The judges, however, considered that no question of privilege was involved in their decision; and “that the form of the warrants issued by Mr. Speaker, by order of the house, may be questioned and adjudged to be bad, without impugning the authority of the house, or in any way disputing its privileges.” From this doctrine a committee of the Commons entirely dissented. “They could not admit the right of any court of law to decide on the propriety of those forms of warrants which the house, through its highest officer, has thought proper to adopt on any particular occasion: but, in considering the course to be

1 21 C. J. 705.  
2 95 ib. 30.  
Chapter VI.

Present Position of Privilege.

adopted by the house in consequence of this judgment, the committee recommended to the house that every legitimate mode of asserting and defending its privileges should be exhausted before it prevented, by its own authority, the further progress of the action."

The house concurred in the opinion of the committee, and ordered that a writ of error be brought upon the judgment of the Court of Queen's Bench, though, to avoid "submitting to abide by the judgment of the court of error, in the event of its being adverse," the Serjeant was not authorized to give bail, and execution was levied on his goods. Judgment was given by the Court of Exchequer Chamber, on the writ of error, on the 2nd February, 1847, when the judgment of the court below was reversed by the unanimous opinion of all the judges of whom the court was composed. They found, "that the privileges involved in this case are not in the least doubtful, and the warrant of the Speaker is, in our opinion, valid, so as to be a protection to the officer of the house." 3

In the case of Lines v. Russell (see p. 66), on the information of the Serjeant-at-arms, that he had been served with a writ and declaration, at the suit of William Lines, the house resolved, that the Serjeant have leave to plead to and defend the action. He pleaded accordingly, and it was held that he was justified by the warrant. 4

In like manner, the Serjeant having informed the house, Bradlaugh v. Erskine, 5th May, 1882, that an action had been commenced against Mr. Erskine, the deputy Serjeant, by Mr. Bradlaugh, for an assault in removing him from the lobby, the house gave leave to Mr. Erskine to appear and plead in the action, and directed the attorney-general to defend him. 5 Judgment was given for the defendant on demurrer, it being held by the court that the order of the house furnished a sufficient justification of anything done by the defendant under it, and within its scope, and on the 20th February, 1883, final

1 100 C. J. 642; see also H. D. (39), p. 164.
2 100 C. J. 562.
3 Shorthand writer's notes, 1847

Legal proceedings against members and officers of Parliament, see p. 83.

Power to commit, see p. 66.
judgment was given for the defendant.\(^1\) A subsequent attempt was made by Mr. Bradlaugh, in the form of an action against the Serjeant, to obtain an injunction from the High Court of Justice to restrain him from using force to prevent Mr. Bradlaugh from entering the house for the purpose of taking his seat. The house made the usual order for the defence of the Serjeant;\(^2\) and on the 9th February, 1884, the Queen's Bench Division decided against Mr. Bradlaugh on the ground that the order under which the Serjeant acted related to the internal management of the procedure of the house, and that the Court of Queen's Bench had no power to interfere\(^3\) (see also p. 133).

Thus far the course adopted by the house has led, for the present, to a fortunate termination of its contests with the courts of law: but it must be acknowledged that the position of privilege is unsatisfactory. Assertions of privilege are made in Parliament, and denied in the courts; the officers who execute the orders of Parliament are liable to vexatious actions; and if verdicts are obtained against them, the damage and costs are paid by the Treasury. The parties who bring such actions, instead of being prevented from proceeding with them, by some legal process acknowledged by the courts, can only be coerced by an unpopular exercise of privilege, which does not stay the actions.

A remedy has already been applied to actions connected with the printing of parliamentary papers (see p. 99); and a well-considered statute, founded upon the same principle, is the only mode by which collisions between Parliament and the courts of law can be prevented for the future. It is not desired that Parliament should, on the one hand, surrender any privilege that is essential to its dignity, and to the proper exercise of its authority; nor, on the other, that its privileges should be enlarged.\(^4\) But some mode of enforcing them should be authorized by law, analogous to

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\(^1\) *Times* report, 12th Jan. and 21st Feb. 1883.
\(^2\) 138 C. J. 364. 370.
\(^3\) 12 Q. B. D. 271.
\(^4\) These views, expressed long since, receive confirmation from a letter of Lord Jeffrey, 2 Cockburn's Life, 333.
an injunction issued by a court of equity to restrain parties from proceeding with an action at common law, and even with a private bill, or an opposition to a private bill, in Parliament (see p. 645); and such a prohibition should be made binding, not only upon the parties, but upon the courts.
BOOK II.

PRACTICE AND PROCEEDINGS IN PARLIAMENT.

CHAPTER VII.

INTRODUCTORY REMARKS. MEETING OF A NEW PARLIAMENT, &c.

The proceedings of Parliament are regulated by ancient usage, by established practice, and by the standing orders. Ancient usage, when not otherwise declared, is collected from the journals, from history and early treatises, and from the continued experience of practised members. Modern practice is often undefined in any written form; it is not recorded in the journals; it is not to be traced in the published debates; nor is it known in any certain manner but by personal experience, and by the daily practice of Parliament, in conducting its various descriptions of business.

The orders and resolutions for regulating the proceedings of Parliament are recorded in the journals of both houses, which may be divided into: 1, standing orders; 2, sessional orders; and 3, orders or resolutions, undetermined in regard to their permanence.

1. Both houses have agreed, at various times, to standing orders for the permanent guidance and order of their proceedings; which, if not vacated or repealed,\(^1\) endure from one Parliament to another.\(^2\)

\(^1\) In the Lords, the rescinding of a standing order is termed "vacating;" in the Commons, "repealing." The earliest example of a standing order being repealed was on the 21st Nov. 1722, 20 C. J. 61.

\(^2\) The resolutions of the House of Commons, 1st Dec. 1882, constituting standing committees, were made standing orders until the end of the next session; and these standing orders were subsequently revived for the session of 1884. 139 C. J. 73 (see p. 572).
Both houses, the Lords, under standing order No. 61, and the Commons, pursuant to usage, require that notice should be given of a resolution whereby a standing order is suspended; though, in the Commons, the rule is relaxed if necessity should arise.\(^1\) In the Lords, the suspension of a standing order is obtained by a distinct resolution to that effect: in the Commons, besides suspension by resolution, the provisions of a standing order can be temporarily set aside by an order of the house, made without previous notice, which prescribes a course of action inconsistent with the provisions of a standing order.\(^2\) The standing orders of the House of Lords are published from time to time by order of the house. The standing orders of the House of Commons relating to public and private business were first printed in a collected form by the order of the house during the session of 1810;\(^3\) and the publication of the standing orders has been continued ever since.\(^4\)

2. At the commencement of each session both houses agree to orders and resolutions, which are renewed from year to year.

3. The operation of orders or resolutions of either house, of which the duration is undetermined, is not settled upon any certain principle. By the custom of Parliament they would be concluded by a prorogation: but many of them are, as part of the settled practice of Parliament, observed in succeeding sessions, and by different Parliaments, without any formal renewal or repetition.\(^5\)

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1 See also S. O. No. 224, Priv. Bus. 1st May, 1891, 352 H. D. 3 s. 1854.
3 A manual of "Rules, Orders, and Forms of Proceeding of the House of Commons, relating to Public Business," drawn up by the Clerk of the house, and laid upon the table by the Speaker, has, since 1854, been printed by order of the house for each succeeding Parliament.
4 For examples of resolutions being observed as permanent, without being made standing orders, may be cited the formal reading of a bill at the opening of a session; several resolutions regarding procedure on petitions; the resolution prohibiting members from engaging in the management of private bills; the time for presenting estimates; the rules of the committee of supply; and the means of securing a seat in the house by a member on a select committee. See also the
In addition to these several descriptions of internal authority, by which the proceedings of both houses are regulated, they are governed, in some few particulars, by statutes and by royal prerogative.

In this chapter it is proposed to present an outline of the general forms of procedure, in reference to the meeting of a new Parliament, adjournments, and prorogations; and, in future chapters, to proceed to the explanation of the various modes of conducting parliamentary business, with as close an attention to methodical arrangement as the diversity of the subjects will allow. Where the practice of the two houses differs, the variation will appear in the description of each separate proceeding; but wherever there is no difference, one account of a rule or form of proceeding may be understood as applicable equally to both houses of Parliament.

On the day appointed by royal proclamation for the first meeting of a new Parliament for despatch of business (see p. 44), the members of both houses assemble in their respective chambers. In the House of Lords, the lord chancellor acquaints the house "that her Majesty, not thinking it fit to be personally present here this day, has been pleased to cause a commission to be issued under the great seal, in order to the opening and holding of this Parliament." The five lords commissioners, being in their robes, and seated on a form between the throne and the woolsack, then command the gentleman usher of the Black Rod to let the Commons know "the lords commissioners desire their immediate attendance in this house, to hear the commission read."

Meanwhile, the clerk of the Crown in chancery has delivered to the Clerk of the House of Commons a Return Speaker's statement after he had put in force the resolution regarding the exclusion of strangers, 4th March, 1876, 227 H. D. 3 s. 1405. 1420.

1 It may be observed that Parliament is generally summoned to meet on a Tuesday or Thursday, which are convenient days for the arrival of members. In 1809, Monday having been proposed for the meeting, Mr. Wilberforce protested that it would involve travelling on Sunday, and the day was accordingly changed. 3 Wilberforce's Diary, 397. 398; 1 Walpole, Life of Spencer Perceval, 302.
Chapter VII.

Book of the names of the members returned to serve in the Parliament; after which, on receiving the message from the Black Rod, the Clerk, and the House of Commons, go up to the House of Peers. The lord chancellor there addresses the members of both houses, and acquaints them that her Majesty has been pleased "to cause letters patent to be issued, under her great seal, constituting us, and other lords therein named, her commissioners, to do all things in her Majesty's name, on her part necessary to be performed in this Parliament." The letters patent are next read at length by the Clerk; after which the lord chancellor, acting in obedience to these general directions, again addresses both houses, and acquaints them:

"That her Majesty will, as soon as the members of both houses shall be sworn, declare the causes of her calling this Parliament; and it being necessary a Speaker of the House of Commons should be first chosen, that you, gentlemen of the House of Commons, repair to the place where you are to sit, and there proceed to the appointment of some proper person to be your Speaker; and that you present such person whom you shall so choose, here, to-morrow (at an hour stated), for her Majesty's royal approbation." 2

In 1868, an exceptional course, in the opening of Parliament, was rendered necessary by peculiar circumstances. Parliament had been dissolved in November, and was summoned to meet on Thursday, 10th December. A week before this time, however, the ministers had resigned, and a new administration was formed, which was sworn in on the 9th December. To have prorogued Parliament, at so short a notice, would have been inconvenient; while without any

1 On the opening of a new Parliament, the commissioners, without express directions to that effect in the commission, direct the Commons to elect a Speaker, and afterwards signify her Majesty's approval. But whenever a vacancy occurs in the office of Speaker, during a session, a special commission is required to signify the Queen's approval. Mr. Speaker Shaw Lefèvre, 1839; Mr. Speaker Brand, 1872, 127 C. J. 23.

2 The forms here described have been in use, with little variation, since the 12th Anne (1713). Before that time the sovereign usually came down on the first day of the new Parliament, a custom continued by George III until 1790. 46 C. J. 6.

On one occasion Queen Anne came down three times, viz. to open Parliament, to approve the Speaker, and to declare the causes of summons in a speech from the throne (1707), 15 lb. 398.
ministers in the House of Commons, and without previous consultation, it was not possible to open Parliament in the accustomed manner, with a Queen's speech and addresses from both houses. A precedent was found in December, 1765, when the Rockingham ministry having come into office during the recess, the king opened Parliament in a speech, in which he stated that, as matters of importance had occurred in the American colonies, he had called Parliament together to give an opportunity of issuing writs to supply the many vacancies which had happened in the House of Commons, in order that Parliament might be full for the consideration of the weighty matters which would, after the Christmas recess, be brought before them. This precedent, however, was open to objection, as the speech, having all the usual solemnities, required addresses in answer, and was, in fact, the occasion of amendments and debates. The following course was therefore taken on this and on several subsequent occasions. Instead of a Queen’s speech, the lords commissioners, under the great seal for opening and holding the Parliament, announced that, as soon as the members of both houses were sworn, the causes of her Majesty’s calling this Parliament would be declared, and directed the Commons to choose their Speaker. After the election of the Speaker, and some days were spent in the swearing in of members of both houses, the lords commissioners informed Parliament that they had it further in command to acquaint both houses that since the time when her Majesty had deemed it right to call them together, several vacancies had been caused by the acceptance of office from the Crown; and that it was her Majesty’s pleasure that an opportunity should be given to issue writs for supplying the vacancies so caused, and that after a suitable recess they might proceed to the consideration of such matters as would then be laid before them. This proceeding obviated the necessity of an address; the new writs were issued, and both houses adjourned. On a similar occasion, when a sitting of the

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1 17th Dec. 1765, 31 L. J. 225; 30 ib. 5; 1880, 135 ib. 123; 1886, 141 C. J. 437; 1868, 124 ib. 5; 1874, 129 ib. 315.

Regarding writs when election petitions are pending, see pp. 596, 600.
house was appointed for the issue of the new writs occasioned by a change of ministry, it has been ruled that no debate can be raised, nor business transacted of a contentious character.¹

But, to proceed with the accustomed forms, the Commons withdraw immediately after the Queen's pleasure for the election of a Speaker has been signified, and return to their own house, while the House of Lords is adjourned during pleasure, to unrobe. On that house being resumed, the prayers, with which the business of each day is commenced, Prayers. are read, for the first time, by a bishop, or if no bishop be present, by any peer in holy orders; or if there be none present, then by the lord chancellor or lord on the woollen sack, or by any peer who may be in the house.² The lord chancellor first takes and subscribes the oath singly, at the table. The clerk of the Crown delivers a certificate of the return of the sixteen representative peers of Scotland; and Garter king-of-arms the roll of the lords temporal; after which the lords may present their writs³ at the table, and take and subscribe the oath required by law (see p. 157). A peer of the blood royal takes the oath singly, like the lord chancellor.⁴

At this time also peers are introduced who have received writs of summons, or who have been newly created by letters patent, and they present their writs or patents to the lord chancellor, kneeling on one knee.⁵ They are introduced in their robes, between two other peers of their own dignity, before he can take his seat for the first time, proves his right, to the satisfaction of the lord chancellor.

¹ Mr. Speaker's ruling, 18th Aug. 1892, 7 Parl. Deb. 3 s. 451.
² Usually the junior bishop, i.e. the bishop last admitted to the house, 73 L. J. 568; on the 19th July, 1879, the 17th Jan. 1861, and again on the following day, prayers were read by the lord chancellor, no bishop being present, Lords' Minutes; 26 L. J. 138. 157.
³ A new writ is issued to every peer, except Scotch representative peers, at the commencement of each new Parliament. A peer by descent, ⁴ Prince of Wales, 95 L. J. 6; Duke of Edinburgh, 98 ib. 392; 118 ib. 6. ⁵ 73 ib. 569; 89 ib. 6. The lord chancellor lays his patent, kneeling, on the chair of state. For proceedings on the introduction of the Prince of Wales, also of the Duke of York, see Lords' Minutes, Feb. 5th, 1863; 14th and 17th June, 1892.
also in their robes, and are preceded by the gentleman usher of the Black Rod (or in his absence by the yeoman usher), by Garter king-of-arms (or in his absence by Clarenceux king-of-arms, or any other herald officiating for Garter king-of-arms), and by the earl marshal, and lord great chamberlain. It is not necessary, however, that the two last officers should be present. Being thus introduced, peers are conducted to their seats, according to their dignity.

When a new representative peer of Ireland has been elected, he is not introduced, but simply takes and subscribes the oath. The clerk of the Crown in Ireland attends with the writs and returns, with his certificate annexed, which certificate is read and entered on the journal.

A bishop is introduced by two other bishops, presents his writ, on his knee, to the lord chancellor, and is conducted to his seat amongst the spiritual lords, but without some of the formalities observed in the case of the temporal peers.

Peers by descent, or by special limitation in remainder, are introduced under standing orders Nos. 13 and 14—

"All peers of this realm by descent, being of the age of one and twenty years, have right to come and sit in the House of Peers without any introduction: no such peers ought to pay any fee or fees to any herald upon their first coming into the House of Peers: no such peers may or shall be introduced into the House of Peers by any herald, or with any ceremony: every peer of this realm claiming by virtue of a special limitation in remainder, and not claiming by descent, shall be introduced."

The lord chancellor explains to the house the descent of a peer who comes to take the oath, on occasions when such explanation is necessary.

The Commons, in the mean time, proceed to the election of their Speaker. A member, addressing himself to the Clerk (who, standing up, points to him, and then sits down), proposes to the house some other member then present, and moves that he "do take the chair of this house as Speaker," which motion is seconded by another member.

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1 73 L. J. 575.
2 120 ib. 6.
3 Mr. Pitt was desirous of proposing Mr. Addington himself: but
If no other member be proposed as Speaker, the motion is ordinarily supported by an influential member (generally the leader of the House of Commons), and the member proposed is called by the house to the chair, without any question being put. He now stands up in his place, and expresses his sense of the honour proposed to be conferred upon him, and submits himself to the house; the house again unanimously call him to the chair, when his proposer and seconder take him out of his place and conduct him to the chair. If another member be proposed, a similar motion is made and seconded in regard to him; and both the candidates address themselves to the house. A debate ensues in relation to the claims of each candidate, in which the Clerk continues to act the part of the Speaker, standing up and pointing to the members as they rise to speak, and then sitting down. When this debate is closed, the Clerk puts the question that the member first proposed "do take the chair of this house as Speaker," and if the house divide, he directs one party to go into the right lobby, and the other into the left lobby, and appoints two tellers for each. If the majority be in favour of the member first proposed, he is at once conducted to the chair: but if otherwise, a similar question is put in relation to the other, which being resolved in the affirmative, that member is conducted to the chair by his proposer and seconder. According to usage, the two members who are proposed for the chair take part in the division, each member giving his vote in favour of his rival.

Mr. Hatsell, on being consulted, said, "I think that the choice of the Speaker should not be on the motion of the minister. Indeed, an invidious use might be made of it, to represent you as the friend of the minister, rather than the choice of the house." Mr. Pitt acknowledged the force of this objection. 1 Pellow, Life of Lord Sidmouth, 78. 79. A county and a borough member are generally selected for proposing and seconding the Speaker. In 1868, a borough and a university member performed this office. When a Speaker is re-elected without opposition, it has been usual for the proposer and seconder to be taken from different sides of the house, as in 1832, 1839, 1866, 1868, 1874, 1880; and 4th Aug. 1892. 147 C. J. 412.

1 2 Hatsell, 218; 112 C. J. 119; 121 ib. 9; 139 ib. 74; 147 ib. 412.
2 90 ib. 5.
3 Election of Mr. Abercromby, 19th Feb. 1835, 26 H. D. 3 s. 56. Elec-
The Speaker elect, on being conducted to the chair, stands on the upper step, and expresses "his grateful thanks," or "his humble acknowledgments," "for the high honour the house had been pleased to confer upon him;" and then takes his seat. The mace, which up to this time has been under the table, is now laid upon the table, where it is always placed during the sitting of the house, with the Speaker in the chair. Mr. Speaker elect is then congratulated by some leading member; he puts the question for adjournment, and leaves the house without the mace.

The house meets on the following day, and Mr. Speaker elect takes the chair and awaits the arrival of the Black Rod from the lords commissioners. When that officer has delivered his message, Mr. Speaker elect, with the house, goes up to the House of Peers, and acquaints the lords commissioners

"That in obedience to her Majesty’s commands, her Majesty’s faithful Commons, in the exercise of their undoubted right and privilege, have proceeded to the election of a Speaker, and as the object of their choice he now presents himself at your bar, and submits himself with all humility to her Majesty’s gracious approbation."

In reply, the lord chancellor assures him of her Majesty’s sense of his sufficiency, and "that her Majesty most fully approves and confirms him as the Speaker." When the Speaker has been approved, he lays claim, on behalf of the Commons, "by humble petition to her Majesty, to all their ancient and undoubted rights and privileges,"
which being confirmed, the Speaker, with the Commons, retires from the bar of the House of Lords.

The Speaker thus elected and approved, continues in that office during the whole Parliament, unless in the mean time he resigns or is removed by death. If the vacancy in the chair is caused by the Speaker's acceptance of office, protracted illness, or death, the Clerk, at the ensuing meeting of the house, announces the death of the Speaker, or reads a letter which the Speaker, stating the cause of his retirement, has addressed to the Clerk. Immediately after the announcement has been made, the mace is brought into the house by the Serjeant, and is laid under the table. A member then rises, and, addressing the Clerk, moves the adjournment of the house, who puts the question "by the direction of the house." The Speaker, on other occasions, informs the house of the cause that compels his retirement from the chair.¹

In the event of a vacancy during the session, similar forms are observed in the election and approval of a Speaker;² except that, instead of her Majesty's desire being signified by the lord chancellor in the House of Lords, a minister of the Crown, in the Commons, acquaints the house that her Majesty "gives leave to the house to proceed forthwith to the choice of a new Speaker;"³ and when the Speaker has been chosen, the same minister acquaints the house that it is her Majesty's pleasure that the house should present their Speaker to-morrow (at an hour stated) in the House of Peers, for her Majesty's royal approbation. Mr. Speaker elect puts the question for adjournment, and when

¹ 44 C. J. 45; 56 ib. 33; 57 ib. 92; 72 ib. 306; Mr. Speaker Shaw Lefevre, 112 ib. 89; Mr. Speaker Evelyn Denison, 127 ib. 9; Mr. Speaker Brand, 139 ib. 68.
² These forms preclude the proposal of any member as Speaker during the session, who has not taken the oaths and his seat. See case of Mr. Charles Dundas, proposed by Mr. Sheridan, 11th Feb. 1801, 35 Parl. Hist. 951. In 1822, this consideration prevented Mr. Speaker Manners Sutton from vacating his seat in order to stand for the University of Cambridge. 1 Court and Cabinets of Geo. IV. 394; Lord Colchester's Diary, iii. 260.
³ 94 C. J. 274; 127 ib. 23. For probably the earliest instance of proceedings on the death of a Speaker, see 1 ib. 116; 1 Parl. Hist. 811.
the house adjourns, he leaves the house, without the mace before him. On the following day, the royal approbation
is given by the lords commissioners under a commission
for that purpose, with the same forms as at the meeting
of a new Parliament, except that the claim of privileges is
omitted.\(^1\)

The ceremony of receiving the royal permission to elect a
Speaker, and the royal approbation of him when elected,
has been constantly observed, except during the Civil War,
and the Commonwealth, and on three other occasions, when
from peculiar circumstances it could not be followed.

1. Previous to the Restoration in 1660, Sir Harbottle
Grimston was called to the chair without any authority
from Charles II., who had not yet been formally recognized
by the Convention Parliament. 2. On the meeting of the
Convention Parliament on the 22nd January, 1688, James
II. had fled, and the Prince of Orange had not yet been
declared king; when the Commons chose Mr. Henry Powle
as Speaker, by their own authority. 3. Mr. Speaker Corn-
wall died on the 2nd January, 1789, at which time George
III. was mentally incapable of attending to any public
duties; and on the 5th, the house proceeded to the choice
of another Speaker, who immediately took his seat, and
performed all the duties of his office.\(^2\)

So strong had been the sense of the Commons, of the
necessity of having their choice confirmed, that in 1647,
when the king had been delivered up by the Scots, and
was under the guard of the Parliament and the army, they
resorted to the singular expedient of presenting their
Speaker, Mr. Henry Pelham, to the Lords, who signified
their approval.\(^3\)

The only instance of the royal approbation being refused
was in the case of Sir Edward Seymour, in 1678.\(^4\) Sir John

\(^1\) 71 L. J. 308; 11 C. J. 272; 94 ib. 274; 127 ib. 23. On the election
of Mr. Addington, in 1789, the king himself came down to the House of
Lords, to signify his approbation in person, 44 C. J. 435; 1 Pellew,
Life of Lord Sidmouth, 68.
\(^2\) 8 C. J. 1; 10 ib. 9; 44 ib. 45.
\(^3\) 5 ib. 259. 260; 5 Clarendon,
Hist. 462.
\(^4\) 6th March, 1678-79, 4 Parl. Hist.
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Popham, indeed, had been chosen Speaker in 1449, but his excuse (see p. 152, n. 3) being admitted by the king, another was chosen by the Commons in his place; and Sir Edward Seymour, who knew that it had been determined to take advantage of his excuse, purposely avoided making any, so as not to give the king an opportunity of treating him as his predecessor had been treated in a former reign.

The Speaker, on returning from the Lords, reports to the house his approval by her Majesty, and her confirmation of their privileges, and "repeats his most respectful acknowledgments to the house for the high honour they have done him." He then puts the house in mind that the first thing to be done is to take and subscribe the oath required by law; and himself first, alone, standing upon the upper step of the chair, takes and subscribes the oath accordingly; in which ceremonies he is followed by the other members who are present. On the following day, the daily prayers are read, for the first time, by Mr. Speaker's chaplain; and

Mr. Parry inadvertently states that Mr. Serjeant Gregory was elected on that day, and rejected by the king (Parliaments and Councils of England, 586): but the latter was not elected until the 17th, after a short prorogation, by which the contention between the court and the Commons, arising out of the disapproval of Sir E. Seymour, had been compromised.

1 1 Hans. Parl. Hist. 385; 5 Rot. Parl. 171. The excuse was genuine. Sir J. Popham had been wounded in the wars of the late reigns. See also the case of John Cheyne, 1st Henry IV., 1399, who excused himself on account of illness, after he had been approved by the king, 3 Rot. Parl. 424.

2 In case of the accidental absence of the chaplain, Mr. Speaker reads prayers, as took place 8th May, 1856, 28th July, 1858, and 31st March, 1860. No entry is made of the occasion in the journal. Both houses of Parliament use the same form of prayer, which was prepared in 1660 for the House of Lords, and was, presumably, in the absence of direct evidence, adopted, at that time, by the Commons (Memorandum prepared by Mr. Bull, the clerk of the journals). Chaplains, or ministers, were first appointed "to pray with the house daily," during the Long Parliament, 3 C. J. 363; 7 ib. 366. 424. 595. Before that time prayers had been read by the Clerk, and sometimes by the Speaker. On the 23rd March, 1603, prayers were read by the Clerk of the house (to whose place that service anciently appertains), and one other special prayer, fitly conceived for that time and purpose, was read by Mr. Speaker; which was not of duty or necessity, though heretofore of late time the like hath been done by other Speakers," 1 C. J. 150. On the 8th June, 1657, there being no minister present, and it being uncertain whether the Speaker or Clerk should read prayers, the house proceeded to business without any prayers, 2 Burton, Diary, 191.
the Speaker, if the necessity arises, counts the house, and cannot take the chair unless forty members are present; as the oath must, by statute, be taken whilst a full House of Commons is duly sitting, with their Speaker in his chair. The members continue to take the oath on that and the succeeding day, after which the greater part are sworn, and qualified to sit and vote.

The oaths of allegiance, supremacy, and abjuration, were formerly prescribed by the statutes 30 Chas. II. stat. 2, the 13 Will. III. c. 6, and 1 Geo. I. stat. 2, c. 13; and were required to be taken by every member. By the 10 Geo. IV. c. 7, a special oath was provided for Roman Catholic members. But by the 21 & 22 Vict. c. 48, one oath for Protestant members was substituted for the oaths of allegiance, supremacy, and abjuration; and by the 29 & 30 Vict. c. 19, a single oath was prescribed for members of all religious denominations, which, by the 31 & 32 Vict. c. 72, is now in the following form:—"I do swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria, her heirs and successors, according to law. So help me God."

Under standing order No. 86, members may take and subscribe the oath, at any time during the sitting of the house, before the orders of the day and notices of motions have been entered upon, or after they have been disposed of: but no debate or business can be interrupted for that purpose.

Members who object to be sworn, may avail themselves of the power granted by sect. 1 of the Oaths Act, 1888, which enacts that a solemn affirmation may be made in lieu of an oath by every person who states, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief.

1 Certain members took the oath, 5th June, 1855, while the chair was occupied by the chairman of ways and means, as deputy Speaker, before the arrangement was confirmed by statute. Doubts were raised as to the validity of an oath administered in the absence of the Speaker. An Act was accordingly passed to establish the legality of the proceeding (see p. 191).
Chapter VII

On the occasion of a member coming to the table to be sworn, 26th July, 1858, a member rose to speak upon a point of order: but Mr. Speaker Denison maintained "that the taking of his seat by a member is a matter of privilege, and ought not to be interrupted by any discussion whatever." Nor can any appeal be made to obtain the interference of the Speaker (see p. 164) to stay a member from taking the oath on any ground whatever.²

Pursuant to the 6 & 7 Vict. c. 6, and under standing order No. 16, the oath or affirmation is taken or made by members of the House of Peers betwixt the hours of nine and five.

When the oaths of allegiance and supremacy were required, members who refused to take them were adjudged by the house to be disqualified by the statutes from sitting, and new writs were issued in their room. Soon after the Revolution of 1688, Sir H. Mounson and Lord Fanshaw refused to take the oaths, and were discharged from being members of the house; and on the 9th January following, Mr. Cholmly, who said he could not yet take the oaths, was committed to the Tower for his contempt.³ But the most remarkable precedent is that of Mr. O'Connell, who had been returned for the county of Clare, in May, 1829, before the passing of the Roman Catholic Relief Act. On the oaths being tendered to him by the Clerk, he refused to take the oath of supremacy, and claimed to take the new oath contained in the Roman Catholic Relief Act, 10 Geo. IV. c. 7, which had been substituted for the other oaths, as regards Roman Catholic members to be returned after the passing of the Act. Mr. O'Connell was afterwards heard upon his claim: but the house resolved that he was not entitled to sit or vote, unless he took the oath of supremacy.

¹ 151 H. D. 3 s. 2106. For the circumstances which arose on Mr. Bradlaugh's first claim to take the oath, see p. 160.
² In one case, an attempt was made to obtain from a member, who was about to bring forward a motion, a repudiation of statements made elsewhere, which were alleged to be at variance with the oath he had taken: but the Speaker stated that it was no part of his duty to determine what was consistent with that oath, and that the terms of the motion were not in violation of any rules of the house. 210 H. D. 3 s. 252.
Mr. O'Connell persisted in his refusal to take that oath, and a new writ was issued for the county of Clare.¹

The only legal obstacle which, prior to 1858, prevented a Jew from sitting and voting in Parliament, arose from the words, "upon the true faith of a Christian," at the end of the oath of abjuration. In 1850, Baron Lionel Nathan de Rothschild, who during the two previous sessions had been one of the members for the city of London, but had not taken the oaths and his seat, was admitted to be sworn on the Old Testament, being the form most binding on his conscience. Having taken the oaths of allegiance and supremacy, he proceeded to take the oath of abjuration, but omitted the concluding words, "on the true faith of a Christian," "as not binding on his conscience," adding the words, "so help me God;" whereupon he was directed to withdraw. After debate, the house resolved that he was "not entitled to vote in this house, or to sit in this house during any debate, until he shall take the oath of abjuration, in the form appointed by law."² No new writ, however, was issued, as it appeared that the statutes by which the oath of abjuration was appointed to be taken did not attach the penalty of disability to the refusal to take that oath, but solely to the offence of sitting and voting without having taken it.³

In 1851, Mr. Alderman Salomons, having been returned for the borough of Greenwich, pressed his claim even further than Baron Rothschild. He was sworn on the Old Testament, and omitting the words, "upon the true faith of a Christian," in the oath of abjuration, concluded with the words, "so help me God." This omission being reported to the Speaker, he directed Mr. Salomons to withdraw. On a subsequent day, while further proceedings in this case were under discussion, Mr. Alderman Salomons entered the house and took his seat within the bar, which he retained, although ordered by the Speaker and by the house to with-
draw, until the Speaker directed the Serjeant to remove him below the bar; and the Serjeant having placed his hand upon Mr. Salomons, he was conducted below the bar. In the mean time, however, he had not only sat during debates in the house, but had voted in three divisions. In this case, as in the last, the house did not think fit to issue a new writ; but, having refused to hear counsel on the matter, agreed to a resolution in the same form, declaring that he was not entitled to sit or vote. The legal validity of this resolution was afterwards established, beyond further question, by judgments in the Court of Exchequer and the Court of Exchequer Chamber.

After repeated attempts to remove this disability from the Jews by legislation, an Act was at length passed in 1858, by which it was provided, that either house might resolve that henceforth any person professing the Jewish religion may omit the words, “and I make this declaration on the true faith of a Christian.” And finally, by the 29 & 30 Vict. c. 19, the words, “on the true faith of a Christian,” were removed from the form of oath prescribed for the members of the House of Commons.

In 1693, John Archdale, a Quaker, having declined to take the oaths, “in regard to a principle of his religion,” a new writ was issued in his room. But subsequently to that case, several statutes permitting Quakers to make affirmations instead of oaths were passed; and upon a general construction of these statutes, in 1833, Mr. Pease, a Quaker, was admitted to sit and vote, upon making affirmation to the effect of the oaths directed to be taken at the table. This privilege was extended by various Acts, not

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1 18th and 21st July, 1851, 106 C. J. 372. 373. 381. 407.
3 Salomons v. Miller, 11th May, 1853, Law Journ. vol. 22, n. s. p. 169; 8 Exch. Rep. 778. A writ of error was lodged in the House of Lords, but the parties did not apply for a hearing, 147 H. D. 3 s. 168.
4 Proceedings on admission of the Barons de Rothschild, 113 C. J. 345; 114 ib. 59. 192.
5 12 C. J. 386. 388.
6 6 Anne, c. 23; 1 Geo. I. st. 2, c. 6 and c. 13; 8 Geo. I. c. 6; 22 Geo. II. c. 46.
7 88 C. J. 41. See also report of the committee on his case, 1833 (6).
only to Quakers, but also to Moravians and Separatists; \(^1\) and now by the Oaths Act, 1888, the right to substitute an affirmation for an oath is conferred, not only on those who entertain a religious objection to an oath, but also to those who assert that they have no religious belief (see p. 156).

On the 3rd May, 1880, Mr. Bradlaugh, member for Northampton, claimed to make the affirmation by virtue of the Evidence Amendment Acts, 1869 and 1870. A select committee appointed to consider this claim reported that persons entitled, under these Acts, to make a declaration in courts of justice cannot be admitted to make an affirmation or declaration in the House of Commons. After this decision, Mr. Bradlaugh, on the 21st May, came to the table to take the oath; but this being objected to, on the ground of his claim to make an affirmation, which implied that an oath would have no binding effect on his conscience, a select committee was appointed to consider the matter.\(^2\) The committee reported that “the house can, and, in the opinion of the committee, ought to prevent Mr. Bradlaugh going through the form” of taking the oath; though they recommended that he should be allowed to make the affirmation, subject to its legality being tested in a court of justice.\(^3\) In accordance with this report, a motion was made, on the 21st June, to admit Mr. Bradlaugh to make an affirmation; to which, however, an amendment was made, that, having regard to the reports of two select committees, he be not permitted to take the oath or make the affirmation.\(^4\)

Being now refused either the oath or affirmation, Mr. Bradlaugh again came to the table, on the 23rd June, and claimed to take the oath. On being formally acquainted with the recent resolution of the house, he desired to be heard upon his claim; and the house having resolved that

\(^1\) 3 & 4 Will. IV. c. 49; 1 & 2 Vict. c. 77; 3 & 4 Will. IV. c. 82; 29 & 30 Vict. c. 19; 31 & 32 Vict. c. 72.

\(^2\) 135 C. J. 124. 137; Report (159, sess. 2).

\(^3\) Report (226, sess. 2).

\(^4\) 135 C. J. 228. 234. This resolution was, by order of the house, 27th Jan. 1891, expunged from the journal (see p. 198); 146 C. J. 45.
he be heard at the bar, he was heard accordingly, and withdrew. When afterwards informed, by Mr. Speaker, that the house had made no further order concerning his claim, and directed him to withdraw, Mr. Bradlaugh insisted upon his right, as a duly-elected member, to take the oath and his seat, and refused to withdraw. The house ordered his withdrawal, but he refused to obey the order; and upon a direction given by the Speaker, the Serjeant placing his hand upon Mr. Bradlaugh, conducted him below the bar. Mr. Bradlaugh, however, again advanced within the bar, asserting his determination to resist the order of the house, and he was committed to the custody of the Serjeant. On the following day Mr. Bradlaugh was discharged.

On the 1st July, standing order No. 87 was passed, which allows a member claiming to be a person, for the time being, permitted to make an affirmation, to make it without question, subject to any liability by statute, and under this order, on the 2nd July, Mr. Bradlaugh took his seat: but upon an action for penalties, the High Court of Justice adjudged that Mr. Bradlaugh had not qualified himself to sit by taking the affirmation, and this judgment was affirmed by the Court of Appeal. Having already sat and voted, his seat was vacant, unless the judgment should be reversed by the House of Lords; and, without awaiting further steps in the suit, he agreed to the issue of a new writ, because by his action he had vacated his seat.

Being returned a second time, he came to the table, on the 26th April, to take the oath; and henceforward, until the close of the Parliament, November, 1885, the house enforced the decisions expressed by the two select committees who had considered Mr. Bradlaugh's claim first to take an affirmation, and then to take the oath (see p. 160); and whenever Mr. Bradlaugh came to the table, time after time, to assert his right to take his seat, the house determined, 1883, that, under the statute creating the penalty, the Crown alone could maintain a suit for its recovery. Law Reports, Appeal Cases, viii. 385.

P. M
by repeated resolutions, that he be not permitted to take
either the oath or an affirmation.\footnote{1}{26th April, 10th May, 4th July,
1881, 136 C. J. 198. 227. 426; 7th
Feb., 6th March, 1882, 137 ib. 3.
87; 4th May, 9th July, 1883, 138
ib. 184. 332; 11th and 21st Feb.
1884; 139 ib. 40. 63; 6th July,
1883, 140 ib. 289. Mr. Bradlaugh
was heard at the bar, on the 26th
April, 1881, 7th Feb. 1882, and 4th
May, 1883.}

Mr. Bradlaugh, on the other hand, sought by every means
in his power to resist the action taken by the house. He
insisted on his right to take the oath and his seat, by pre-
senting himself at the table for that purpose, though not
called up by the Speaker,\footnote{2}{267 H. D. 3 s. 590.} by refusing to obey the directions
given from the chair, and the orders of the house, that he
should withdraw below the bar, pursuant to the resolutions
of the house. He thus asserted his determination to refuse
obedience to the orders of the house, and to resist by force
the methods used to maintain those orders. The house, in
consequence, ordered the Serjeant to remove Mr. Bradlaugh
from the house until he undertook to create no further dis-
turbance.\footnote{3}{10th May, 1881, 136 C. J. 227.
Under this order for exclusion, Mr.
Bradlaugh was not permitted to
take the oath, but was not per-
mitted to enter the house, or to
have any access to the other parts
of the building.}

On one occasion, by the direction of the Speaker,
with the subsequent approval of the house, Mr. Bradlaugh
was conducted by the Serjeant beyond the precincts of the
house; \footnote{4}{136 C. J. 426; 264 H. D. 3 s.
695.} and Mr. Bradlaugh was subsequently expelled
(see p. 54).

Mr. Bradlaugh also sought to test the validity of his ex-
clusion from a seat in the house, by bringing an action
against the deputy Serjeant for an assault, and another
action against the Serjeant (see p. 141). And on two occa-
sions, Mr. Bradlaugh suddenly advanced to the table, and read
from a paper in his hand the words of the oath, and, having
kissed a copy of the New Testament which he had brought
with him, signed the paper, leaving the paper and the copy
61; 11th Feb. 1884, 199 ib. 40.
On 7th March, 1882, the Speaker
stated that, having regard to the re-
solution of the house, if an attempt
was made to introduce Mr. Brad-
laugh, he was bound not to call upon

\section{VII.}

\footnote{1}{}
Bradlaugh’s conduct was not, on the first occasion, subjected to the decision of a court of justice. On the 11th February, 1884, however, he voted twice during the proceedings caused by the course that he had taken; and an action was brought against him by the Crown, to enforce the penalty consequent upon the vote of an unsworn member. The Court of Appeal decided, 28th January, 1885, that the parliamentary "oath must be taken by a member, with the assent of the house, according to the requirements of the standing orders, and after he has been called upon by the Speaker to be sworn." The court also decided that a member of Parliament who does not believe in the existence of a Supreme Being, and upon whom an oath has no binding effect as an oath, but only as a solemn promise, is, owing to his want of religious belief, incapable by law of making and subscribing the parliamentary oath; and that if he took his seat and voted as a member, although he has gone through the form of making and subscribing the oath appointed by those statutes, he would be liable, upon information at the suit of the attorney-general, to the penalty imposed by the Parliamentary Oaths Act, 1866, s. 5.

On the opening of the new Parliament, 13th January, 1886, the Speaker, directly after he had taken the oath, informed the house that he had received an appeal, in the form of letters addressed to him by several members, suggesting that the oath should not be administered to Mr. Bradlaugh until the house had expressed an opinion on the matter, in consequence of the decision by the Court of Appeal, that Mr. Bradlaugh was incapable of taking an oath. The Speaker then stated that no case had been cited showing that a Speaker had, in the administration of the parliamentary oath, taken upon himself original and independent authority. If the Speaker had intervened in the
matter, it was in consequence of the action of the house, based on something that had occurred during that Parliament. On this occasion, however, the Speaker reminded the house that they had met as a new Parliament. He knew nothing of the resolutions of the past; those resolutions had lapsed, and were of no effect. It was the right, the Speaker stated, the legal, statutable obligation, of members when returned to this house, to come to the table and take the oath prescribed by statute; and that if a member came to the table, and offered to take the oath, the Speaker knew of no right whatever to intervene between the member and the performance of a legal and statutable duty; and that it would be his duty neither to prohibit Mr. Bradlaugh from coming, nor to permit a motion to be made standing between him and his taking the oath.\footnote{1}

By the 30 Chas. II. stat. 2, 13 Will. III. c. 6, and 1 Geo. I. stat. 2, c. 13, severe penalties and disabilities were inflicted upon any member of either house who sat or voted without having taken the oaths. By the 29 & 30 Vict. c. 19, any peer voting by himself or his proxy, or sitting in the House of Peers without having taken the oath, is subject, for every such offence, to a penalty of 500\textpounds.; and any member of the House of Commons who votes as such, or sits during any debate after the Speaker has been chosen, without having taken the oath, is subject to the same penalty, and his seat is also vacated in the same manner as if he were dead. When members have neglected to take the oaths from haste, accident, or inadvertence, it has been usual to pass Acts of indemnity, to relieve them from the consequences of their neglect.\footnote{2} In the Commons, however, it is necessary to move a new writ immediately the omission is discovered, as the member’s seat is vacated.\footnote{3}

\footnote{1} 141 C. J. 5; 302 H. D. 3 s. 21. On 9th March, 1882, the Speaker stated that to object to any member taking the oath except on grounds public or notorious, or within the cognizance of the house, would be simply vexatious, 267 H. D. 3 s. 442.

\footnote{2} 45 Geo. III. c. 5 (Lord J. Thynne); 56 Geo. III. c. 48 (Earl Gower); 1 Will. IV. c. 8 (Lord R. Grosvenor); 5 Vict. c. 3 (Earl of Scarborough); Lord Plunket, 1880.

\footnote{3} 60 C. J. 148; 67 ib. 286; 69 ib. 144; 71 ib. 42; 86 ib. 353. In Mr. Exception in the case of Mr. Salmons, see p. 159.
Chapter VII.

Acceptance of the Chiltern Hundreds, see p. 605.

An unsworn member may not present a petition, see p. 501.

But although a member may not sit and vote until he has taken the oath, he may vacate his seat by the acceptance of the Chiltern Hundreds, and is entitled to all the other privileges of a member, being regarded, both by the house and by the laws, as qualified to serve, until some other disqualification has been shown to exist. Thus, on the 13th April, 1715, it was resolved "that Sir Joseph Jekyll was capable of being chosen of a committee of secrecy, though he had not been sworn at the Clerk's table." 1 On the 11th May, 1858, acting upon this precedent, the house added Baron Rothschild, who had then continued a member for eleven years without having taken the oaths, to the committee appointed to draw up reasons to be offered to the Lords for disagreeing to the Lords' amendments to the Oaths Bill,² at a conference of which he was appointed one of the managers.³ On the 11th May, 1880, Mr. Bright, who had not yet made his affirmation, was appointed a member of the Parliamentary Oath Committee, upon which he served and voted, before he had made his affirmation.

It is usual for members who have not yet taken the oaths, to sit below the bar; and care must be taken that they do not, inadvertently, take a seat within the bar, by which they would render themselves liable to the penalties and disqualifications imposed by the statute.

At the beginning of a Parliament, the Return Book, Certificate of a return, received from the clerk of the Crown (see p. 146), is sufficient evidence of the return of a member, and the oaths are at once administered. If a member be elected after a general election, the clerk of the Crown sends to the Clerk of the house a certificate of the return received in the Crown Office;⁵ and the member must obtain a certificate

Bradlaugh's case (see p. 161), he was allowed to accept the Chiltern Hundreds (see p. 608).

1 18 C. J. 59; Chandler's Debates; 7 Parl. Hist. 57; 2 Hatsell, 88, n.
² 113 C. J. 167; 150 H. D. 3 s. 336. 439.
³ 113 C. J. 162.
⁴ When, 18th May, 1849, notice was taken that strangers were present, Baron Rothschild retained his seat below the bar, although he had not taken the oath; and Mr. Bradlaugh was present below the bar, during many divisions, while forbidden to take the oath.
⁵ During the session of 1889, the return of a member for Kennington,
from the Public Bill Office of the receipt of that certificate for production at the table, before the Clerk of the house will administer the oath. The neglect of this rule in 1848 gave rise to doubts as to the validity of the oaths taken by a member. Mr. Hawes was elected for Kinsale on the 11th March; on the 15th, he was sworn at the table; but his return was not received by the clerk of the Crown until the 18th; and it was questioned whether the oaths which he had taken before the receipt of the return, had been duly taken. A committee was appointed to inquire into the matter, who reported that the non-return of the indenture to the Crown Office cannot affect the validity of the election, nor the right of a person duly elected, to be held a member of the house.\(^1\) The committee, at the same time, recommended a strict adherence to the practice of requiring the production of the usual certificate.

On the 10th May, 1858, Baron Rothschild having been returned upon a new writ, and not having brought up the certificate of his return, the certificate from the clerk of the Crown was ordered to be read, before a motion was made for adding Baron Rothschild to a committee.\(^2\)

So soon as a member has been sworn, or has made his affirmation; he subscribes at the table the “test-roll,” which is a roll of parchment folded into the shape of a book, headed by the oath or affirmation which he has taken or made; and the member is then introduced to the Speaker by the Clerk of the house.

Members returned upon new writs issued after the general election, take the oath or make their affirmation in the same manner; and, under the resolution of the 23rd February, 1888, “in compliance with an ancient order and

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\(^1\) Parl. Paper, sess. 1848, No. 256.

\(^2\) 113 C. J. 162.
custom, they are introduced to the table between two members, making their obeisances as they go up, that they may be the better known to the house:1 but this practice is not observed in regard to members who, having been chosen at a general election, have established their claim to a seat by an election petition;2 for they are supposed to have been returned at the beginning of the Parliament, when no such introduction is customary.

Another difference of form is to be remarked, in reference to new members, and members seated on petition, when coming to be sworn. The former not being in the original Return Book, must bring with them, as already stated, a certificate of their return from the clerk of the Crown: but the latter having become members by the adjudication of an election judge, the clerk of the Crown amends the return by order of the house (see p. 620); and he does not certify to the house the return of such members.

In the event of the demise of the Crown, all the members of both houses again take the oath.3

To return to the ordinary business of the session. When the greater part of the members of both houses are sworn, the causes of summons are declared by her Majesty in person, or by commission. This proceeding is the commencement of the session; and in every session but the first of a Parliament, as there is no election of a Speaker, nor any general swearing of members, the session is opened at once by the Queen's speech, without any preliminary proceedings in either house. Both houses usually meet at two o'clock in the afternoon. In the Commons, prayers are said before the Queen's speech, but in the Lords usually not until their second meeting, later in the afternoon.4 The

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1 10 C. J. 34. 18th Feb. 1874, Dr. Kenealy, a new member, came to the table to be sworn, without the introduction by two members. The Speaker acquainted him with the order of the house, and, refusing to hear any comments from him, directed him to withdraw; whereupon the house resolved that the order be dispensed with, on this occasion. 130 C. J. 52; 222 H. D. 3 s. 486.
2 2 Hatsell, 85, n.
3 6 Anne, c. 7; 37 Geo. III. c. 137; 92 C. J. 490, &c.
4 When a prince of the blood is to be introduced, prayers are said before the arrival of her Majesty.
Speaker, after prayers, sits in the Clerk's chair until Black Rod approaches the door, when he proceeds to his own chair to receive him. This form is observed, because no business can be commenced until Parliament has been opened by the Crown. In case a quorum was not present, the message from the Crown would make a house (see p. 224).

When the Queen meets Parliament in person, she proceeds in state to the House of Lords, where, seated on the throne, adorned with her crown and regal ornaments, and attended by her officers of state, the Prince of Wales (in his robes) sitting in his chair on her Majesty's right hand (all the lords being in their robes, and standing until her Majesty desires them to be seated), she commands the gentleman usher of the Black Rod, through the lord great chamberlain, to let the Commons know "it is her Majesty's pleasure they attend her immediately, in this house." The usher of the Black Rod goes at once to the door of the House of Commons, which he strikes three times with his rod; and, on being admitted, he advances up the middle of the house towards the table, making three obeisances to the chair, and says, "Mr. Speaker, the Queen commands this honourable house to attend her Majesty immediately in the House of Peers." He then withdraws, still making obeisances; nor does he turn his back upon the house, until he has reached the bar. The Speaker, with the house, immediately goes up to the bar of the House of Peers; upon which the Queen reads her speech to both houses of Parliament, which is delivered into her hands by the lord chancellor, kneeling upon one knee.

When the Queen met Parliament in person, on every occasion since the year 1866, the form of these proceedings was so far changed that her Majesty's speech, instead of being delivered by herself, was read by her chancellor, taking directions from her Majesty. This was no more,

1 If deemed expedient, the precedence of members in going to the House of Lords on the opening and prorogation of Parliament by her Majesty, can be determined by ballot, in pursuance of resolutions, 7th Aug. 1851, 106 C. J. 443, 445.

2 In 1871, 1876, 1877, 1880, and 1886, 118 L. J. 15; 141 C. J. 8.
Chapter VII.

indeed, than the revival of an ancient custom, there being numerous precedents of the lord chancellor or lord keeper addressing both houses, in the presence of a sovereign, and by his command. Henry VIII., proud as he was of his royal state and personal accomplishments, always entrusted to his chancellor the task of addressing the Parliaments assembled in his presence. On the 9th November, 1605, the chancellor made a speech concerning the recent plot, in the presence of James I. Charles I. also made his chancellors, and sometimes other councilors, his spokesmen. And the same practice was pursued by Charles II. But the example exactly followed by her Majesty was that of George I., throughout whose reign the royal speech was delivered by the chancellor.¹

When her Majesty is not personally present, the causes of summons are declared by the lords commissioners. The usher of the Black Rod is sent, in the same manner, to the Commons, and acquaints the Speaker that the lords commissioners desire the immediate attendance of this honourable house in the House of Peers, to hear the commission read;² and when the Speaker and the house have reached the bar of the House of Peers, the lord chancellor reads the royal speech to both houses. Until the end of the session of 1867, the lords commissioners' speech was framed as proceeding from themselves; and her Majesty's name was used throughout in the third person. But on that and subsequent occasions, the speech has been that of the Queen herself, in the first person, and delivered by the lord chancellor, or one of the commissioners,³ by her command.

When the speech has been delivered, either by her Majesty in person, or by commission, the House of Lords is adjourned during pleasure. The Commons retire from the bar, and,

² On the 19th May, 1880, attention being drawn to inadvertent use by the usher of the Black Rod of the word "require," the proper form was explained from the chair, 251 H. D. 3 a. 1221.
³ 97 L. J. 639. At the prorogation, 10th Aug. 1872, the lord chancellor's sight being impaired, the speech was read by Earl Granville.
returning to their own house, pass through it, the mace being placed upon the table by the Serjeant, and the house reassembles at four o'clock.

When the houses are resumed in the afternoon, the main business is for the lord chancellor in the Lords, and the Speaker in the Commons, to report her Majesty's speech. In the former house, the speech is read by the lord chancellor, and in the latter by the Speaker, who states that, for greater accuracy, he had obtained a copy. But before this is done, it is the practice, in both houses, to read some bill a first time pro forma, in order to assert their right of deliberating, without reference to the immediate cause of summons. This practice, in the Lords, is enjoined by standing order No. 2. In the Commons, the same form is observed pursuant to ancient custom.\(^1\) In the Commons, other business is constantly entered upon before the reading of the bill, as the issue of new writs, the consideration of matters of privilege,\(^2\) the presentation of papers, and the usual sessional orders and resolutions. No petitions are presented; though questions may be asked of the ministers, generally relating to the business of the house, to urgent matters in foreign affairs, or recent action taken by the government.\(^3\) In 1794, Mr. Sheridan raised a debate upon the first reading of this bill, and the Speaker decided that he was in order;\(^4\) but such a proceeding is prohibited by standing order No. 31.

When the royal speech has been read, an address in answer thereto is moved in both houses. Two members in each house are selected by the administration for moving and seconding the address; and they appear, in their places,

\(^1\) Resolved, 22nd March, 1603, "That the first day of every sitting, in every Parliament, some one bill, and no more, receiveth a first reading for form sake," 1 C. J. 150; see also 1 ib. 47.

\(^2\) 95 ib. 4; Mr. T. Healy's imprisonment, 1883, 138 ib. 4; the letter termed "the forged letter" (Mr. Farnell), 145 ib. 7; Mr. Bradlaugh's affirmation, 3rd May, 1880, 135 ib. 124; and his oath, 7th Feb. 1882, 137 ib. 3. See also proceedings on the opening of the session, in 1706, relative to the reading of the bill before the consideration of the question of privilege arising out of the *North Briton*, No. 45, 15 Parl. Hist. 1354.

\(^3\) 254 H. D. 3 n. 39; 293 ib. 571. 58; 341 ib. 41.

\(^4\) 31 Parl. Hist. 994.
in levee dress, for that purpose. The form of the address used to be an answer, paragraph by paragraph, to the Queen’s speech. In both Lords and Commons, since the commencement of session 1890–91, the answer to the royal speech has been moved in the form of a single resolution, expressing their thanks to her Majesty for the most gracious speech which she had addressed to both houses of Parliament. Amendments to the address, drawn in this manner, are moved by way of addition thereto; and the Speaker decided, session 1893, that the arrangement of the amendments upon the notice paper should follow, as far as possible, the order in which the subjects touched by the amendments stand in the speech from the throne.¹

The transaction of public business is carried on whilst the proceedings on the address are in progress. Bills are introduced, committees are appointed, and, in session 1884, debate on the address was adjourned from day to day, unresumed, whilst a motion of censure on the government, regarding “Events in the Soudan,” was under consideration.² After the address has been agreed to, it is ordered to be presented to her Majesty. When the speech has been delivered by the Queen in person, and she remains in town, the address is presented by the whole house: but when it has been read by the lords commissioners, or the Queen is in the country, the address of the upper house is presented “by the lords with white staves;”³ and the address of the Commons by “such members of the house as are of her Majesty’s most honourable privy council.”⁴ When the ad-

¹ Since 1861, the appointment of a committee to prepare the address has been discontinued in the House of Lords. The committee formerly appointed in the Commons, to “draw up” an address, has been discontinued since Feb. 1888, pursuant to standing order No. 9 (see Appendix, p. 825), as the address is moved in a form suitable for presentation, 146 C. J. 7. The resolution was, in session 1892, accompanied, both in Lords and Commons, by an expression of condolence on the death of H.R.H. the Duke of Clarence, 147 ib. 10; 1 Parl. Deb. 4 s. 13. In 1812, the address was moved as an amendment to a question for an address proposed by Sir F. Burdett, 21 H. D. 18. 34.

² 159 C. J. 46–69.

³ Of the royal household.

⁴ On the 22nd Jan. 1806, an address, in answer to a speech of the lords commissioners, on the battle of Trafalgar, and the death of Nel-
dressed is to be presented by the whole house, the “lords with
white staves” in the one house, and the privy councillors
in the other, are ordered “humbly to know her Majesty’s
pleasure when she will be attended” with the address.
Each house meets when it is understood that this ceremony
will take place, and, after her Majesty’s pleasure has been
reported,\(^1\) proceeds separately to the palace; and care
must be taken to make a house at the proper time, to
receive the communication of her Majesty’s pleasure.\(^2\)
If before the presentation of the address, by the whole
house, any circumstance should be communicated which
would make it inconvenient for her Majesty to receive the
house, the address is presented by the “lords with white
staves” and privy councillors, as was done on the 3rd
February, 1844.\(^3\) The procedure upon the reception of the
sovereign’s answer to an address by Parliament is described
more fully on p. 430.\(^4\)

In the upper house, under standing order No. 4, “the
lords are to sit in the same order as is prescribed by the
Act of Parliament, except that the lord chancellor sitteth
on the woolsack as Speaker to the house.”\(^5\) But this order
is not usually observed with any strictness. The bishops

\(^1\) 74 L. J. 10; 96 C. J. 11; 101 ib.
10; 111 ib. 184, &c.
\(^2\) From a neglect of this precaution,
6th Feb. 1845, her Majesty was kept
waiting by the Commons for upwards
of half an hour.
\(^3\) 99 C. J. 12; and again, 1869, 124
ib. 32. 37. 42.
\(^4\) Her Majesty’s answer to the ad-
dress, 10th June, 1859, which con-
tained the paragraph, added by way
of amendment, affirming that her
Majesty’s then present advisers did
not possess the confidence of the
House of Commons, stated that her
Majesty had thereupon taken mea-
sures for the formation of a new
administration, 114 C. J. 219. On
the occasion when, 11th Aug. 1892, a
paragraph similar in form was added
to the address, the usual order was
made for the presentation of the ad-
dress; but no answer from her
Majesty was presented to the house.
When, 26th Jan. 1886, an amendment
which occasioned a change of admini-
istration was added to the address,
his Majesty’s answer was of a wholly
formal character, 141 C. J. 57.

\(^5\) By 31 Hen. VIII. c. 10, the pre-
cedence of princes of the blood roya,
and of the bishops, peers, and high
officers of state, is defined. See also
1 Will. & Mary, c. 21, c. 2; 5 Ann.
c. 8; 10 Ann. c. 4. Report from the
committee of privileges on the place
H.R.H. the Duko of Clarence and
Avondale should occupy in the house,
122 L. J. 361.
always sit together in the upper part of the house, on the right hand of the throne: but the lords temporal are too much distributed by their offices, by political divisions, and by the part they take in debate, to be able to sit according to their rank and precedence. The members of the administration sit on the front bench, on the right hand of the woolsack, adjoining the bishops; and the peers who usually vote with them occupy the other benches on that side of the house. The peers in opposition are ranged on the opposite side of the house; while many who desire to maintain a political neutrality sit upon the cross benches which are placed between the table and the bar.¹

If the eldest son of a peer be summoned to Parliament by the style of an ancient barony held by his father, he takes precedence amongst the peers according to the antiquity of his barony; whereas, if he be created by patent a baron, by a new style or title, he ranks as a junior baron.²

In the Commons no place is allotted to any member: but by custom the front bench, on the right hand of the chair, called the Treasury, or privy councilors' bench, is appropriated for the members of the administration. The front bench on the opposite side, though other members occasionally sit there, is reserved for the leading members of the opposition who have served in offices of state. And on the opening of a new Parliament, the members for the city of London claim, and generally exercise, the privilege of sitting on the Treasury, or privy councilors' bench.³ It is not uncommon for old members, who are constantly in the habit of attending in one place, to be allowed to occupy it without disturbance.

Members who enjoy no place by usage or courtesy, except members serving on select committees, must, pursuant to standing orders Nos. 84 and 85, be present at prayers if they are summoned by writ, and sat as premier baron, West, Inq. 49; and Lord Stanley, in 1845, 77 L. J. 18.

¹ The standing order was enforced, 20th Jan. 1640, 10th Feb. 1640, and 1st Feb. 1771; 25 L. J. 572. 593; 33 ib. 47; see also 69 H. D. 3 s. 1806.
² Baron Mowbray, eldest son of the Duke of Norfolk, 32 Chas. II., was summoned by writ, and sat as premier baron, West, Inq. 49; and Lord Stanley, in 1845, 77 L. J. 18.
³ Members thanked by the house, by courtesy retain their seats, 2 Hat-sell, 94.
PLACES IN THE COMMONS.

desire to secure a seat until the rising of the house; nor may a member's name be affixed to a seat in the house before the hour of prayers.\(^1\) Attempts to secure a seat, by placing cards on the seats before prayers, were prevented by order of the Speaker to the Serjeant.\(^2\) But under rule No. 50, a member, who remains within the precincts of the house, may leave his hat upon a seat, in order to indicate his intention of acquiring a right to the seat by a subsequent attendance at prayers;\(^3\) and pursuant to resolution, 23rd March, 1888, a member serving on a select committee, whilst in attendance on the committee, may, without being present at prayers, retain a seat in the house by affixing thereto a card, which is delivered to him for that purpose on his application. No seat can be secured by a card, paper, or gloves, placed thereon, except as a matter of courtesy, and not of right.\(^4\)

Every member of the Parliament is under a constitutional obligation to attend the service of the house to which he belongs. A member of the upper house has the privilege of serving by proxy, by virtue of a royal licence which authorizes him to be personally absent, and to appoint another lord of Parliament as his proxy: but since 1868, the use of this privilege has been discontinued (see p. 350). In the House of Commons, the personal service of every member is required. By the 5 Rich. II. c. 4, “if any person summoned to Parliament do absent himself, and come not at the said summons (except he may reasonably and honestly excuse himself to our lord the king), he shall be amerced, or otherwise punished according as of old times hath been used to be done within the said realm, in the said case.” And by an Act, 6 Hen. VIII. c. 16, it was declared that no member should absent himself “without the licence of the Speaker

\(^1\) Cards, with the words, “at prayers,” printed on them, are upon the table, to receive the names of members seeking to secure their seats, pursuant to the standing orders, by placing the card in the receptacle on the back of the seat.

\(^2\) 20th April, 1866, 132 H. D. 3 s. 1765.

\(^3\) See 20th June, 1807, 188 ib. 163; 2nd April, 1808, 161 ib. 698; 26th Jan. 1886, 302 ib. 427.

\(^4\) 62 H. D. 3 s. 489; 252 ib. 1200.
and Commons, which licence was ordered to be entered of record in the book of the Clerk of the Parliaments appointed for the Commons' house." The penalty upon a member for absence was the forfeiture of his wages; and although that penalty is no longer applicable, the legislative declaration of the duty of a member remains upon the statute-book. In 1554, informations were filed in the Court of Queen's Bench against several members who had seceded from Parliament, of whom six submitted to fines. And numerous orders are to be found in the journals, for summoning absent members to attend the service of the house.

On ordinary occasions, however, the attendance of members upon their service in Parliament is not enforced by the house: but when any special business is about to be undertaken, means have been taken to secure their presence. In the upper house, a method formerly in use for obtaining a larger attendance than usual, was to order the lords to be summoned; upon which a notice is sent to each lord who is known to be in town, to acquaint him "that all the lords are summoned to attend the service of the house" on a particular day. No notice is taken of the absence of lords who do not appear: but the name of every lord who is present during the sitting of the house, is taken down each day by the Clerk of the house, and entered in the journal.

When any urgent business was deemed to require the attendance of the lords, under a usage now in abeyance, an order was made that the house be called over; and this order has been enforced by fines and imprisonment upon absent lords. On some occasions the lord chancellor has addressed letters to all the peers, desiring their attendance, as on the illness of George the Third, 1st November, 1810. The most important occasion on which the house was called

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1 Parl. Hist. 625; 15th Aug. 1643, 3 C. J. 206; 6th Feb. 1688, 10 ib. 20; 15th March, 1715, 18 ib. 401; 17th Dec. 1783, 39 ib. 841; 18th April, 1785, &c.

2 16 L. J. 16. 26. 31. 40, &c. All
over in modern times, was in 1820, when the bill for the degradation of Queen Caroline was pending; and by a resolution of the house, fines and imprisonment were imposed on such lords as should not attend the sittings of the house.\(^1\) The lords were accordingly called over by the Clerk on each day during the pendency of that bill, beginning, according to ancient custom, with the junior baron. The custom of beginning with the junior baron applies to every occasion upon which the whole house is called over for any purpose, within the house, or for the purpose of proceeding to Westminster Hall, or upon any public solemnity. But when the house appoints a select committee, the lords appointed to serve upon it are named in the order of their rank, beginning with the highest; and in the same manner, when a committee is sent to a conference with the Commons, the lord highest in rank is called first, and the other lords follow in the order of their rank.

When the House of Commons is ordered to be called over, it is usual to name a day which will enable the members to attend from all parts of the country, the interval between the order and the call varying from one day to six weeks.\(^2\) If it be intended to enforce the call, not less than a week or ten days should intervene between the order and the day named for the call. The order for the house to be called over is accompanied by a resolution, "that such members as shall not then attend, be sent for, in custody of the Serjeant-at-arms."\(^3\) On the day appointed for the call, the order of the day is read and is dealt with at the pleasure of the house. If proceeded with, the names are called over from the Return Book, according to the counties, which are arranged alphabetically. The members for a county are called first, and then the members for every city or borough within that county.\(^4\) The counties in England and Wales

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\(^1\) 53 L. J. 364.
\(^2\) 77 C. J. 101; 87 ib. 311.
\(^3\) 12 ib. 552; 16 ib. 563; 17 ib. 184, &c. It was formerly the custom to desire Mr. Speaker to write to the sheriffs, to summon the members to attend.
\(^4\) Who is senior member for a place? He who has sat longest in the house, or he who was returned at the head of the poll? This question arose in 1866, between the lord
are called first, and those of Scotland and Ireland in their order. This point is mentioned, because it makes a material difference in the time at which a member is required to be in his place.

The names of members who do not answer when called, are taken down by the Clerk of the house, and are afterwards called over again. If they appear in their places at this time, or in the course of the evening, it is usual to excuse them for their previous default: but otherwise, no excuse being offered, they are ordered to attend on a future day. It is also customary to excuse them if they attend on that day, or if a reasonable excuse be then offered. Non-attendance, no excuse being offered, may be punished by committal to the custody of the Serjeant, and to payment of his fees. But, instead of committing the defaulters, the house sometimes names another day for their attendance, or orders their names to be taken down. The attendance of members is generally ample; and a call is of little avail in taking the sense of the house, as there is no compulsory process by which members can be obliged to vote; hence calls of the house have long since ceased to find favour; and no call of the house has been enforced since 1836. On several subsequent occasions calls of the house have been ordered: but in every case the order was discharged or negatived. On the 10th July, 1855, and again on the 23rd March, 1882, motions for a call of the house were negatived.

advocate (Mr. Moncrieff) and Mr. M'Laren, members for Edinburgh; and also between Mr. Hastings Russell and Colonel Gilpin, members for Bedfordshire. In each case the junior member, in point of service, being returned at the head of the poll, was entered first in the Return Book. Earl Russell and the Speaker concurred in opinion that the member who stands first in the Return Book must be accounted the senior member.—Mr. Speaker's Note-book.

180 C. J. 147; 84 ib. 106.

Illness of the member or of a near relation, or public service, 80 ib. 130; absence abroad, 80 ib. 150. 153. 157; 90 ib. 132; 91 ib. 278; see also 1 ib. 300. 862; 2 ib. 294; 9 ib. 75.

2 See H. D. 19th and 22nd Nov. 1852, 123 n. s. 266. 302.

4 Mr. Whittle Harvey's motion on the Pension List, 19th April, 1836, 91 C. J. 265.

5 Motions discharged: 22nd Feb. 1838, 93 C. J. 309; Repeal of the Corn Laws, 15th March, 1839, 94 ib. 121; National Education, 4th June, 1839, 94 ib. 302; 24th March, 1840,
On the 3rd March, 1801, when a call of the house was deferred for a fortnight, it was ordered "that no member do presume to go out of town without leave of the house."\(^1\) And, in the absence of any specific orders to that effect, members are presumed to be in attendance upon their service in Parliament. When they desire to remain in the country, they should apply to the house for "leave of absence;" for which sufficient reasons must be given, such as urgent business, ill health, illness in their families, or domestic affliction. Upon these and other grounds, leave of absence is given, though it has been refused.\(^2\) A member forfeits his leave of absence if he should attend the service of the house before its expiration.

Attendance upon the service of Parliament includes the obligation to fulfil the duties imposed upon members by the orders and regulations of the house. And unless leave of absence has been obtained, a member cannot excuse himself from attending on a committee, when his attendance, as in the case of a private bill committee, is made compulsory by standing or other orders.\(^3\) In 1846, Mr. Smith O’Brien declined serving as a selected member of a railway committee, and the committee of selection, not being satisfied with his excuses, nominated him to a committee, in the usual manner. He did not attend the committee; his absence was reported to the house; and he was ordered to attend the committee on the following day. Being again absent, his absence was reported to the house; he attended in his place, and stated that he refused to attend the committee; upon which he was declared guilty of a contempt, and committed to the custody of the Serjeant-at-arms.\(^4\)

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\(^1\) 56 C. J. 103.

\(^2\) 75 ib. 385; 82 ib. 376; 86 ib. 863. Leave of absence has also been enlarged, 126 ib. 266; 127 ib. 96.

\(^3\) Commons’ standing order, private business, No. 120. See debates on the absence of Lord Gardner from a private bill committee in the House of Lords, 24th and 26th June, 1845, 81 H. D. 3 s. 1194. 1190.

\(^4\) 101 C. J. 566. 582. 603; and Special Rep. of Committee of Selection, 24th April, 1846, ib. 555; see also case of Mr. Hennessy, March,
To facilitate the attendance of members without interruption, both houses, at the commencement of each session, by order, give directions that the commissioners of the police of the metropolis shall keep, during the session of Parliament, Appendix, the streets leading to the houses of Parliament free and open, and that no obstruction shall be permitted to hinder the passage thereto of the lords or members. And when tumultuous assemblages of people have obstructed the thoroughfares, lobby, or passages, orders have been given to the local authorities to disperse them.

With the same object, it is enacted that not more than ten persons shall repair together to the houses of Parliament for the purpose of the presentation of a petition; and that not more than fifty persons shall meet together within the distance of one mile from the gate of Westminster Hall, save and except such parts of the parish of St. Paul's, Covent Garden, as are within the said distance, to consider or prepare a petition or other address to both houses, or either house of Parliament, on any day on which those houses shall meet and sit.

The hours and regulations of the meeting of both houses on ordinary occasions, and on morning sittings, are dealt with in Afiiea.

1860; 115 ib. 106; 156 H. D. 3 s. 2047.

1 31 L. J. 206. 209. 213; 32 ib. 147. 187; 36 ib. 142; 11 C. J. 667; 13 ib. 230; 17 ib. 661; 33 ib. 285; 37 ib. 901.

2 13 Car. II. stat. 1, c. 5; 57 Geo. III. c. 19, s. 23.

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Extraordinary sittings.

"Pairs" during protracted sittings, see p. 351, n. 1.

The history of the House of Commons, more especially during recent years, contains examples of sittings rendered extraordinary by their excessive length. On Tuesday, 31st July, 1877, the house, having met at a quarter before four, continued sitting until Wednesday afternoon at a quarter past six—a period of twenty-six and a half hours, and the longest sitting in the previous history of Parliament. This long sitting was held to overcome an obstructive opposition to the South Africa Bill. As there was no adjournment of the house on Tuesday, the ten o'clock Wednesday sitting, under the standing orders, was superseded, and absorbed in the prolonged sitting of the previous day. On Monday, 31st Jan. 1881, the house, having met at a quarter before four, continued sitting until Wednesday morning at half-past nine—a continuous sitting of upwards of forty-one and a half hours, 136 C. J. 49–51. Among the longest sittings previously on record were the following—On the 14th Feb. 1764, on Wilkes' case, till half-past seven in the morning; the 17th Feb. 1783, on the address concerning the peace with France, Spain, and America, till nearly eight; on the 12th May,
with on p. 206. Saturday not being an ordinary day of meeting in the House of Commons, it was usual, until 1861, at an early hour on Friday, to resolve that the house, at its rising, do adjourn till Monday next, lest the Speaker should be obliged, by the want of members, to adjourn the house till Saturday: but, while the committees of supply and ways and means are open, the adjournment of the house until Monday is now effected by standing order No. 18, unless the house shall otherwise resolve.

It need scarcely be stated that the meeting of either house on a Sunday is a rare occurrence. On the demise of the Crown (see p. 40), Parliament has occasionally been assembled on a Sunday. During the Commonwealth period the Commons met, on several occasions, on a Sunday; as well as on Good Friday and Christmas-day. During the mania of the popish plot, also, both houses met occasionally on Sundays. On the 18th May, 1794, the debate on the bill for securing suspected persons was not concluded until nearly three o’clock on Sunday morning. The Reform Bill was read a second time by the Commons on Sunday morning, the 18th December, 1831. The royal assent was signified to the Habeas Corpus Suspension (Ireland) Act at a quarter before one o’clock on Sunday morning, the 18th

1785, on commercial intercourse with Ireland, till after eight; on the 30th March, 1810, on the Scheldt expedition, till after seven; and on the 5th April, on the commitment of Sir F. Burdett, till half-past seven; on the 12th July, 1831, on the Reform Bill till after seven; on the 13th May, 1878, until half-past nine; and on the 11th Aug. 1879, to a quarter past seven.

1 8th Aug. 1641, to stay the king’s journey into Scotland, 2 C. J. 245; 6th and 13th June, 1647 (chiefly for prayer), 5 ib. 200, 209; 1st Aug. 1647, for secular affairs, 5 ib. 263; 8th May, 1659, for prayers and a sermon, 7 ib. 616.

2 23rd April, 1641, 2 C. J. 126. In 1689, the House of Commons met on Easter Monday, as the Puritans and Latitudinarians objected to the usual adjournment, 3 Macaulay, Hist. 113; see C. J. 28th March, 1st April, 1689.

3 25th Dec. 1656, 1 Burton’s Diary, 229–243; 7 C. J. 475; Hist. Rec. MSS. Com. 6th report, 441; Pulgrave’s Oliver Cromwell, the Protector, 192.

4 1st Dec. 1678, the House of Commons met to take the oaths of allegiance and supremacy under the Act 30 Car. II., recently passed, 9 C. J. 551; and again 27th April and 11th May, 1879, 9 ib. 605, 619. On the latter day the Lords also met, 13 L. J. 506.

5 49 C. J. 613.

6 9 H. D. 3 s. 546.
February, 1866; and on some later occasions, the house has continued its sitting until Sunday morning.

Sunday, the 4th May, 1856, having been appointed a day of thanksgiving, in respect of the treaty of peace with Russia, the House of Lords met and proceeded to Westminster Abbey; and the Speaker and the members of the House of Commons met at the house, and thence proceeded to St. Margaret's Church, to attend divine service: but in the mean time the house had adjourned from Friday till the Monday following; and this precedent was followed when the Commons attended at St. Margaret's Church, on the 22nd May, 1887, in celebration of the fiftieth year of her Majesty's reign.

Whenever a day of thanksgiving, or of fast and humiliation, is appointed during the sitting of Parliament, it is customary for both houses to attend divine service: the Lords at Westminster Abbey, and the Commons at St. Margaret's Church. Each house appoints a preacher: the Lords appoint a bishop, the Commons a dean, a doctor of divinity, or the Speaker's chaplain. On the 31st January, 1699, the house resolved "that for the future no person be recommended to preach before this house, who is under the dignity of a dean in the Church, or hath not taken his degree of doctor of divinity." On the 4th June, 1762, this resolution was repeated, making an exception, however, in favour of the chaplain of the house: but a bachelor of divinity has also been selected for this honour. It is customary to thank the preacher, and to desire him to print his sermon.

On some occasions of special solemnity, the king and...
both houses of Parliament have attended divine service at St. Paul's Cathedral; as on the king's recovery from his illness in 1789, after the naval victories in 1797, on the conclusion of peace in 1814, in 1852 at the funeral of the Duke of Wellington, and on the recovery of the Prince of Wales in 1872. On the latter occasion the house was represented in the royal procession by the Speaker; and in like manner, when both houses attended the service held in Westminster Abbey, on the 21st June, 1887, the Commons were, on the desire of her Majesty, and pursuant to a resolution of the house, represented by the Speaker; and the presence of the members was regulated by a select committee.\(^1\)

If Parliament be sitting at the time of a coronation, it has been customary for both houses to attend the ceremony in Westminster Abbey; and to make orders concerning such attendance.\(^2\)

Sometimes an adjournment is agreed to as a mark of respect to a deceased member. On the 15th September, 1646, both houses adjourned to mark their sense of the loss of the Earl of Essex.\(^3\) On the 3rd July, 1850, an adjournment was agreed to by the Commons, **nem. con.**, as a suitable mode of expressing the grief of the house on hearing of the death of its most distinguished member, Sir Robert Peel;\(^4\) and on the 14th April, 1863, the like tribute was paid to the memory of Sir George Cornwallis Lewis.\(^5\) On Friday, 31st May, 1878, the house adjourned, in the course of a

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1 23rd April, 1789; 38 L. J. 397; 44 C. J. 288; 53 ib. 140; 7th July, 1814; 49 L. J. 1046; 69 C. J. 441; 108 ib. 29; 127 ib. 52. 61; 142 ib. 293; 119 L. J. 253.
2 William & Mary, 1689, 10 C. J. 82, &c.; Anne, 1702, 13 ib. 551; William IV., 1831, 86 ib. 793, &c.; her Majesty, 1838, 93 ib. 621, &c.
3 4 ib. 70.
4 105 ib. 484. The French Assembly, in their Proceeding Verbal, expressed regret at the loss of this eminent statesman, 168 H. D. 3 a. 772.
5 Notwithstanding the universal regard for Sir G. Lewis, the propriety of this proceeding was questioned, in private, by eminent statesmen, as invidious distinctions might be drawn between the claims to such an honour.—Mr. Speaker's Note-book.
\(\dagger\) Marriage of her Majesty, 10th Feb. 1840; of the Prince of Wales, 10th March, 1863, the house adjourned. Marriages of the Dukes of Connaught, Albany, and York, 15th March, 1879, 27th April, 1882, 6th July, 1883, no adjournment. See also Mr. Gladstone's statement, 19th June, 1883.
debate, in consequence of the sudden death of one of its members, Mr. Wykeham-Martin, in the library of the house, where his body was then lying.¹ On Monday, 8th May, 1882, the house adjourned, nem. con., at a quarter past four, without transacting any public business, on account of the assassination of Lord Frederick Cavendish, chief secretary to the Lord-Lieutenant of Ireland, and Mr. Burke, under secretary, on the previous Saturday, in Phoenix Park, Dublin.² On the 24th June, 1861, the Lords adjourned, nem. diss., on the death of the lord chancellor, Lord Campbell.

Occasionally the house adjourns on the occasion of royal funerals. The funeral of the Duke of Sussex was appointed for 4th May, 1843, and the house adjourned over that day. The Duke of Cambridge was buried on the 16th July, 1850, when the house sat from twelve till three, and then adjourned in consequence of the funeral. But on the funeral of the Princess Sophia, 5th June, 1848, the house did not adjourn; and again, the Duchess of Gloucester was buried on Friday, the 8th May, 1857 (the day after the lords commissioners' speech had been delivered), but the house sat on that day as usual; and not without due consideration. The funeral was at Windsor, at twelve; and the house did not meet until a quarter before four.

On Ash Wednesday, since the passing of the standing order No. 2, session 1853, which appoints the meeting of the house on Wednesdays at twelve o'clock, it has been customary for the House of Commons to meet at two o'clock, in order to give members an opportunity of attending divine service.³ And on Ascension-day, since 1849,⁴ orders are usually made, for the same purpose, that no committees shall have leave to sit until two o'clock.⁵ This

¹ 133 C. J. 264.
² 137 ib. 183.
³ 28th Feb. 1854, 109 ib. 106; 214 H. D. 3 s. 901; and debate, Times, 15th Feb. 1893.
⁴ So far back as 15th May, 1604, it "being put to question whether we should sit on Ascension-day," upon division "resolved to sit." But on the 1st June, 1614, it was resolved, upon division, not to sit.⁵ 122 C. J. 255; 126 ib. 202; 146 ib. 264; 147 ib. 283. This order was repeated on nine occasions between 1856 and 1871 inclusive.
motion was negatived in 1872. In 1873, however, it was
carried by a large majority, and has since been repeated
in every succeeding year. On the 19th March, 1866, ap-
pointed by the Bishop of London as a day of prayer and
humiliation, it was ordered that no committees do meet
before one o'clock.

When the Queen's birthday is kept on any day except
Saturday, the house has adjourned over that day; and
for many years it has been customary to adjourn over
the Derby day, though latterly not without a debate and
division.

The duties of the Lord Speaker of the upper house, and
of the Speaker of the Commons, will appear in the various
proceedings of both houses, as they are explained in different
parts of this work: but a general view of the office is neces-
sary, in this place, for understanding the forms of parlia-
mentary procedure.

The lord chancellor, or lord keeper of the great seal of
England, is Prolocutor or Speaker of the House of Lords
by prescription; and by standing order No. 9, it is de-
clared to be his duty ordinarily to attend as Speaker: but
if he be absent, or if there be none authorized under the
great seal to supply that place in the House of Peers, the
Lords may choose their own Speaker during that vacancy.

It is singular that the president of this deliberative body
is not necessarily a member. It has even happened that
the lord keeper has officiated, for years, as Speaker, without
having been raised to the peerage. On the 22nd Novem-

1 20th May, 1873.
2 Tuesday, 24th May, 1864; Wed-
nesday, 24th May, 1865; Wednesday,
2nd June, 1869.
3 This adjournment was generally
moved by the leader of the house
from 1856 until 1873, and on subse-
quent occasions the adjournment was
moved by independent members (see
p. 243). The motion was negatived,
Tuesday, 31st May, 1892, 147 C. J.
306; again 1893. House counted out,
Wednesday, 1st June, 1892
4 Lord Ellesmere, Office of Lord
Chancellor, ed. 1651.
5 See also observations as to the
obligations of the lord chancellor to
attend, 23rd Aug. 1831, and 20th
June, 1834, 6 H. D. 3 s. 453; 7 ib.
646-652; 24 ib. 597. 600, 604.
6 "When Sir Robert Henley was
keeper of the great seal, and pre-
sided in the House of Lords as lord
keeper, he could not enter into de-
bate as a chancellor, being a peer,
does, and therefore, when there was
Chapter VII.

ber, 1830, Mr. Brougham sat on the woosack as Speaker, being at that time lord chancellor, although his patent of creation as a peer had not yet been made out.1

When the great seal has been in commission, it was usual for the Crown to appoint (if he be a peer) the chief justice of the Court of Queen's Bench or Common Pleas, the chief baron of the Exchequer, or the master of the Rolls, to be Lord Speaker.2 In 1827, Sir John Leach, master of the Rolls, and Sir William Alexander, chief baron of the Court of Exchequer,3 and in 1835, Sir L. Shadwell, vice-chancellor,4 though not peers, were appointed Lord Speakers, while the great seal was in commission. On the meeting of Parliament, in 1819, the lord chancellor being absent, the prince regent appointed Sir R. Richards, lord chief baron of the Exchequer, to supply his place, as Speaker.5

At all times there are deputy Speakers, appointed by commission to officiate as Speaker during the absence of the lord chancellor or lord keeper. When the lord chancellor and all the deputy Speakers are absent at the same time, the Lords elect a Speaker pro tempore;6 but he gives place immediately to any of the lords commissioners, on their arrival in the house; who, in their turn, give place to each other according to their precedence, and all at last to the lord chancellor. In 1824, Lord Gifford, chief justice of the Common Pleas, was appointed sole deputy Speaker.7 And

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1 63 L. J. 114; so also Sir E. Sugden, 1852, 84 ib. 34; Sir F. Thesiger, 1858; Lords' Minutes, 1858, p. 123; Sir R. Bethell, 1861; Sir W. Page Wood, 1868; Sir Hardinge Giffard, 25th June, 1885.
2 66 L. J. 113; 70 ib. 42; 82 ib. 71; 84 ib. 126.
3 59 L. J. 278.
4 67 ib. 291. On the 25th Oct. 1566, Sir R. Cattelyn, C. J. of Q. B., was appointed Lord Speaker, by commission, which appears to be the first instance of a commoner holding that office, 1 ib. 637.
5 Ib. 7. This was said to be in accordance with the precedent of Sir Robert Atkins, in the reign of King William, Lord Colchester's Diary, iii. 68.
6 Lord Sheffield, 80 L. J. 10; 24th Feb. 1873, Lord Chelmsford; and again in 1882.
7 56 L. J. 39; Lord Colchester's Diary, iii. 311.
on the 22nd. April, 1831, when the king was approaching to prorogue Parliament, the lord chancellor suddenly left the woolsack to attend his Majesty, upon which Lord Shaftesbury was appointed Speaker *pro tempore*, and the debate, which had been interrupted for a time, proceeded until his Majesty entered the house.¹ For several years from 1851, there was only one deputy Speaker in the commission—the chairman of the Lords' committees: but on the 24th April, 1881, the lord chancellor acquainted the house that her Majesty had appointed four peers to be deputy Speakers, in the absence of the lord chancellor and the chairman of committees.² On the 6th July, 1865, the lord president of the council, being unanimously chosen Lord Speaker *pro tempore*, in the absence of the lord chancellor, and of Lord Redesdale, the deputy Speaker, sat as Lord Speaker, and, as one of the lords commissioners, delivered the royal speech, and prorogued the Parliament.³

The duties of the office are thus generally defined by standing order No. 20—

"The lord chancellor, when he speaks to the house, is always to speak uncovered, and is not to adjourn the house, or to do anything else as mouth of the house, without the consent of the Lords first had, except the ordinary thing about bills, which are of course, wherein the Lords may likewise overrule; as, for preferring one bill before another, and such like; and in case of difference among the Lords, it is to be put to the question; and if the lord chancellor will speak to anything particularly, he is to go to his own place as a peer."⁴

The position of the Speaker of the House of Lords is somewhat anomalous; for though he is the president of a deliberative assembly, he is invested with no more authority than any other member. Upon points of order, if a peer, he may address the house; though, if not a member, his office is limited to the putting of questions, and other formal proceedings.⁵

¹ 63 L. J. 511.
² 267 H. D. 3 s. 1204. The last appointment of deputy Speakers took place, 7th Feb., 1887, 119 L. J. 28.
³ 97 ib. 639.
⁴ But if lord chancellor, he goes, by virtue of his office, to the left of the chamber, above all dukes not being of the blood royal, 31 Hen. VIII. c. 10, s. 4.
⁵ See Debate in the Lords, 22nd June, 1869, in which it was suggested
Chapter VII. The duties of the Speaker of the House of Commons are as various as they are important. He presides over the deliberations of the house, and enforces the observance of all rules for preserving order in its proceedings; he puts every question, and declares the determination of the house. As "mouth of the house," he communicates its resolutions to others, conveys its thanks, and expresses its censure, its reprimands, or its admonitions. He issues warrants to execute the orders of the house for the commitment of offenders, for the issue of writs, for the attendance of witnesses in custody, for the bringing up prisoners in custody, and giving effect to other orders requiring the sanction of a legal form. He is, in fact, the representative of the house itself, in its powers, its proceedings, and its dignity. When he enters or leaves the house, the mace is borne before him by the Serjeant-at-arms; when he is in the chair, it is laid upon the table; and at all other times, when the mace is not in the house, it remains with the Speaker, and accompanies him upon all state occasions.

The Speaker is responsible for the due enforcement of the rules, rights, and privileges of the house, and when he rises he is to be heard in silence (p. 332). In accordance with his duty, he declines to submit motions to the house, which obviously infringe the rules which govern its proceedings; such as a motion which would create a charge upon the people and is not recommended by the Crown (p. 527); a motion touching the rights of the Crown, which has not received the royal consent (p. 424); a motion which anticipates a matter which stands for the future consideration of the house, which raises afresh a matter already decided during the current session, or is otherwise out of order (p. 264). If a proposed instruction to a committee be out that the chancellor should be invested with more extended powers: but it was pointed out, on the other side, by some peers and by the chancellor himself, that as he was a minister of the Crown, not chosen by the house itself, and was often a member of the least experience in the house, he could not properly exercise the same powers as those of the Speaker of the Commons.

Summary of duties.

1 112 G. J. 157; 115 ib. 494; 20th Jan. 1880, 257 H. D. 3 s. 1040.
of order, the Speaker explains the nature of the irregularity (p. 453).

Amendments by the Lords to a bill which trench upon the privileges of the House of Commons, are submitted to the Speaker; and, if occasion requires, he calls the attention of the house to the nature of the amendments, and gives his opinion thereon (pp. 545, 792). The Speaker also has decided that motions, which were brought forward as a matter of privilege, did not come within that category (p. 261).

When the Speaker is made aware that a member proposes to bring forward a motion, or to engage in a proceeding which would infringe the rules and usages of the house, the Speaker, if it seems desirable, deals with the matter by conveying to the member an intimation regarding the irregularity of the course which the member proposes to follow.

Appeal may be made to the Speaker regarding the practice or privileges of the house (p. 331), though such inquiry may not be addressed to him in the form of a question printed upon the notice paper (p. 236); nor can the opinion of the Speaker be sought regarding an occurrence in a committee, although a committee, to obtain the advice of the Speaker, has reported progress for that purpose under the exceptional circumstances stated on p. 365, n. 3.

Reflections made in debate, or outside the house, on the conduct of the Speaker, or letters addressed to him criticizing the course he had taken in the proceedings of the house, may be punished by suspension or otherwise; and if the necessity should arise, the Speaker informs the house that such letters have been addressed to him. Nor, according to the rule stated on p. 279, can the decision of the house regarding the conduct of the Speaker be obtained upon an amendment, but must be sought for by a substantive motion.

The Speaker, whenever it seems to him the suitable occasion, communicates to the house letters and documents

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DUTIES OF THE SPEAKER.

addressed to him as Speaker, such as letters acknowledging a vote of the thanks of the house, or which relate to the rights and privileges of the house or of its members, such as communications announcing the arrest or imprisonment of a member (p. 115); and when the Speaker has communicated a document to the house, it is entered on the votes and proceedings of the house, and on the journal, without motion made, or question put; though a motion of a breach of privilege has been raised on the form of the document (p. 260). The Speaker is not obliged to read to the house every letter or communication that may be addressed to him as Speaker, but he may at his discretion withhold the same from publication.

To forward the transaction of the business of the house, the Speaker represses irrelevance or repetition in debate (p. 300), deals summarily with dilatory motions (p. 301), and with a claim for a division (p. 350) which, in his opinion, is made in abuse of the rules of the house, or is unduly demanded. When the occasion arises, he directs that words uttered in debate be taken down for consideration by the house, if, in his opinion, the words are disorderly (pp. 320. 329).

The Speaker represses disorder in the house, by enforcing the withdrawal of a member below the bar, who disobeys the order of the house (pp. 161. 162); by calling members to order (p. 327), when the offence is committed in his presence; by putting in force standing order No. 21 (the suspension of members) (p. 323); by naming a member, under the ancient usage of the house (p. 320); and by directing him to withdraw from the precincts, under standing order No. 27 (p. 332). The committal of a member to the custody of the Serjeant is effected by an order of the house; yet, for the maintenance of order, the Speaker has,

1 99 C. J. 3.
2 5th July, 1881, 263 H. D. 3 s. 45-49; 13th Nov. 1882, 274 ib. 1328. A motion, once made, that a letter communicated by the Speaker be laid upon the table (138 C. J. 4) cannot be reckoned as a precedent.
3 31st May, 1881, 261 H. D. 3 s. 1785.
4 His jurisdiction does not extend to words outside the house. Times, 17th March, 1893; sec also p. 330.
upon information that a man had assaulted a member in the lobby, directed the Serjeant to take the offender into custody.¹

The Speaker has overruled opposition to formal questions essential to the completion of the transaction of business, which were unavoidably put from the chair during the time set apart for unopposed business, or after the moment fixed for the interruption of business. The Speaker also may decline to count the house (see p. 224). If the occasion arises, he expresses his opinion regarding cases of personal interest in a vote (see p. 353).

Among the duties laid upon the Speaker respecting the issue of writs to fill up vacancies in the house (p. 599), he appoints at the commencement of every Parliament a panel of members to execute those duties, if need for their intervention should arise (p. 601). The Speaker, also, at the commencement of every session, nominates a panel of members to act as temporary chairmen of committees (p. 361).

By the Lunacy (Vacation of Seats) Act, 1886, the Speaker may be called upon to issue his warrant for the election of a member in the place of the member of unsound mind (p. 600). It may also be his duty to transmit to the officials of the Bank of England a certificate in writing, notifying that the house had agreed to a resolution for the redemption of stock forming part of the National Debt.²

His rank.

In rank, the Speaker takes precedence of all commoners, both by ancient custom and by legislative declaration. The Act 1 Will. & Mary, c. 21, enacts that the lords commissioners for the great seal “not being peers, shall have and take place next after the peers of this realm, and the Speaker of the House of Commons.”³

By 2 & 3 Will. IV. c. 105, an Act for the better support

¹ 11th June, 1824, 79 C. J. 483.
² 228 H. D. 3 s. 525; 143 C. J. 345; National Debt Act, 1870, first schedule.
³ See also 2 Hatsell, 249, n.; and regarding the precedence between the Speaker and a peer of Ireland, whilst a member of the House of Commons, see Lord Colchester’s Diary, i. 418. At Mr. Pitt’s funeral, “My place was after the eldest sons of viscounts, and before barons’ sons,” ib. ii. 40.
of the dignity of the Speaker of the House of Commons, and by 9 & 10 Vict. c. 77, an Act relating to the officers of the house, it is provided that, in case of a dissolution, the then Speaker shall be deemed to be the Speaker, for the purposes of those Acts, until a Speaker shall be chosen by the new Parliament.

Formerly, no provision was made for supplying the place of the Speaker by a deputy Speaker or Speaker pro tempore, as in the upper house; and when he was unavoidably absent, no business could be done, but the Clerk acquainted the house with the cause of his absence, and put the question for adjournment (see p. 153). When the Speaker by illness was unable to attend for a considerable time, it was necessary to elect another Speaker, with the usual formalities of the permission of the Crown, and the royal approval. On the recovery of the Speaker, the latter would resign, or "fall sick," and the former was re-elected, with a repetition of the same ceremonies.

In 1855, on the report of a select committee, standing order No. 83 was agreed to, which enables the chairman of ways and means, as deputy Speaker, to take the chair during the unavoidable absence of the Speaker, and perform his duties. The provisions of this standing order received statutory authority by Act 18 & 19 Vict. c. 84.

1 During the Protectorate, Speakers pro tempore were appointed, 7 C. J. 482. 483. 612. 811.
2 1 ib. 353; 25 ib. 532; 39 ib. 841; 44 ib. 45; 83 ib. 547.
3 9 ib. 463. 476; 11 ib. 271. 272.
4 The sanction of the consent of the Crown was given to the appointment of the committee and to the standing order, 106 C. J. 758. 766; 110 ib. 395; Report on the office of Speaker, 1853; Parl. Paper (478).
5 The Speaker, 20th June, 1870, asked the indulgence of the house to enable him to receive the degree of D.C.L. at Oxford, when the chairman of ways and means was ordered to take the chair, as deputy Speaker, during his absence; and again in 1887, 125 C. J. 265; 142 ib. 306.
6 See also Speaker's statement and journal, 5th and 6th July, 1893.

^ The Serjeant, accompanied by the chaplain, enters the house with the mace, which he places upon the table. The Clerk informs the house of the Speaker's unavoidable absence. The chairman of ways and means then proceeds to the table, and, after prayers, counts the house if necessary, and takes the chair. If the house goes into committee, the deputy Speaker takes the chair thereof, and subsequently, having put the question for reporting progress, he returns to the chair of the house, and a member makes to him the report of the committee.
On the 31st January, 1881, during a protracted sitting, the Speaker retired, and the Clerk informed the house of his unavoidable absence. The chairman of ways and means then took the chair, which, after several hours, was resumed by the Speaker. Objection was immediately taken that the Speaker, having once left the chair, was, according to the terms of the standing order, unable to resume it until the following day: but the objection was overruled by the Speaker, because the standing order could not restrain the inherent authority of the Speaker in the event of his resuming the chair and exercising the authority of his office.

When the debate had further continued for many hours, the Speaker was again replaced by the chairman of ways and means, but resumed the chair in the morning, and occupied it until the close of the debate. And now, the Speaker, under standing order No. 1, after he has taken the chair at the commencement of a sitting, without any formal communication to the house, can request the chairman of ways and means to take the chair, either temporarily, or until the adjournment of the house.

A brief notice may now be given of the principal officers whose duties are immediately connected with the proceedings of Parliament.

The assistants of the House of Lords are the judges, the attorney and solicitor generals, and such of the privy council as are called by writ from the Crown to attend. The judges, as assistants of the Lords, held a more important place in Parliament, in ancient times, than that which is now assigned to them, having had a voice of suffrage, as well as a voice of advice. They were also occasionally

1 136 C. J. 50; 257 H. D. 3 s. 1707. On other occasions the Speaker vacated and resumed the chair during a sitting, 121 C. J. 234. 261. 331. 339.
2 144 ib. 393. 394; 145 ib. 550. 580.
3 Lords' standing orders Nos. 6 and 7. Formerly judges of the Courts of Queen's Bench and Common Pleas, barons of the Exchequer, the master of the Rolls, the attorney and solicitor-generals, and the Queen's serjeants, were summoned, at the beginning of every Parliament, to be "present in Parliament, with us and with others of our council to treat and give advice" (Macqueen, 86, n.).
4 Hale, Hist. of House of Lords;
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made joint committees with the lords of Parliament—a practice which continued until the latter end of the reign of Queen Elizabeth. Their attendance was formerly enforced on all occasions, but they are now summoned by a special order, when their advice is required.

The chief officers of the upper house are—the Clerk of the Parliaments, the gentleman usher of the Black Rod, the clerk assistant, the reading clerk, and the Serjeant-at-arms.

The Clerk of the Parliaments is appointed by the Crown, by letters patent. On entering office, he makes a declaration, under the Promissory Oaths Act, 1868, at the table, before the lord chancellor, to make true entries and records of the things done and passed in the "Parliaments, and to keep secret all such matters as shall be treated" therein, "and not disclose the same before they shall be published, but to such as it ought to be disclosed unto." The clerk assistant and the reading clerk are appointed by the lord chancellor, the appointments being subject to the approbation of the house, and, when appointed, they cannot, under standing order No. 62, be suspended or removed without an order of the house. They attend at the table, with the Clerk, and take minutes of the proceedings, orders, and judgments of the house. These have been published daily.

Introd. to Sugden’s Law of Real Property, 2; see also Lord Lyndhurst’s speech, 23rd June, 1851, 117 H. D. 3 s. 1069.

1 1 L. J. 586. 606, 26th Jan., 20th March, 1563; West, Inq. 48.

2 Their place is on the woolsacks. The last attendance of the judges was during sessions 1880 and 1881, 112. 113 L. J. 405. 102. If the Scotch judges are called upon to deliver their opinions, the house orders chairs to be placed for the judges below the bar, 25 L. J. 99; 46 ib. 172. 189.

3 The masters in ordinary in chancery, until the abolition of their offices, attended the House of Lords, and carried bills and messages to the House of Commons.

4 57 L. J. 44.

5 Geo. IV. c. 82, s. 3. Regarding these appointments, the select committee on the office of the Clerk of the Parliaments made the following report: "The committee strongly recommend that the appointment to one of these clerkships should revert to the Clerk of the Parliaments; and that he should promote one of the senior clerks of his department, whom he shall consider most fit for the post;" 2nd report, cl. 17 (217), sess. 1889; report considered and agreed to, 15th Aug. 1889, 121 L. J. 403.

6 Holders of office in the departments of the Lords and Commons are not subject to clause 10 of the order in council relating to the com-
since 1824, as the "Minutes of the Proceedings," and they are printed, in a corrected and enlarged form, as the Lords' Journals, after being examined "by the sub-committees on the journals." ¹

Black Rod. The gentleman usher of the Black Rod is appointed by letters patent from the Crown, and he, or his deputy, the yeoman usher, is sent to desire the attendance of the Commons in the House of Peers, at the opening and proroguing of Parliament, when the royal assent is given to bills by the Queen or the lords commissioners, and on other occasions. He executes orders for the commitment of parties guilty of breaches of privilege and contempt, and assists at the introduction of peers, and other ceremonials.

The Serjeant-at-arms is also appointed by the Crown. He attends the lord chancellor with the mace, and executes the orders of the house for the attachment of delinquents, when they are in the country. He is, however, the officer of the lord chancellor, rather than of the house.

The shorthand writer to the houses of Parliament is appointed by the Clerk of the Parliaments and by the Clerk of the House of Commons, pursuant to a resolution agreed to by both houses during the session of 1813. He attends at the bar of the House of Lords when persons are summoned to attend the house, when evidence is tendered on the second reading of divorce bills, and on peerage cases. He also records the opinions given by the lords of appeal, when the house sits as a judicial court. The shorthand writer attends at the bar of the House of Commons when members or other persons are summoned to attend the house, and whenever the Speaker, by order, gives utterance to the opinion of the house; and it is the duty of the shorthand writer on these occasions to record the words uttered by the Speaker, and by the persons who have been summoned to attend the house.

¹ 56 L. J. 363, a.; 84 ib. 91; Lords' off. 63.
² 49 L. J. 449, 482; 68 C. J. 497; House of Commons' officers, &c., report of committee, sess. 1833, question 973.
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The chief officers of the House of Commons are the Clerk of the house, the Serjeant-at-arms, the clerk assistant, and second clerk assistant. The Clerk of the house is appointed by the Crown, for life, by letters patent, in which he is styled "Under Clerk of the Parliaments, to attend upon the Commons." He makes a declaration, under the Promissory Oaths Act, 1868, before the lord chancellor, on entering upon his office, "to make true entries, remembrances, and journals of the things done and passed in the House of Commons." He signs the addresses, votes of thanks, orders of the house, endorses the bills sent or returned to the Lords, and reads whatever is required to be read in the house. He is addressed by members, and puts such questions as are necessary on an election of a Speaker (p. 150), and for the adjournment of the house in case of the absence of the Speaker (see p. 153). He has the custody of all records or other documents, and is responsible for the conduct of the business of the house in the official departments under his control. He also assists the Speaker, and advises members, in regard to questions of order and the proceedings of the house. The clerks assistant are appointed by the Crown, under the sign manual, on the recommendation of the Speaker, and are removable only upon an address of the House of Commons. They sit at the table of the house, on the left hand of the Clerk.

A record of the proceedings of the house, entitled "The Votes and Proceedings," made by the clerks at the table, is printed and distributed every day (see p. 224). From these the journal is afterwards prepared, in which the entries are made at greater length, and with the forms

¹ 2 Hatsell, 255; London Gazette, 1st Oct. 1850, 3rd Feb. 1871, 4th May, 1886; see also 3 C. J. 54. 57. First appointment of the clerk assistant, 2 ib. 12; of the second clerk assistant, 58 ib. 7.
² 6th Feb. 1811, 66 ib. 82.
³ 1 ib. 306; 6 ib. 542; 17 ib. 724, &c.
⁴ 19 & 20 Vict. c. 1; Treasury Minute, 1856 (Sess. Paper No. 132).
⁵ They had been printed, with some interruptions, since 1680. A delay of several days formerly took place in the printing and circulation of the "Votes, &c.," until 1817, when their publication, every morning after the sitting to which the "Votes, &c." related, was established by Mr. John Rickman, clerk assistant. — Mem. Gent’s Mag. 1841.
more distinctly pointed out. These records are confined to the votes and proceedings of the house, without any reference to the debates. The earlier volumes of the journals contain short notes of speeches, which the Clerk had made, without the authority of the house: but all the later volumes record nothing but the res gestae. It was formerly the practice for a committee "to survey the Clerk's book every Saturday," and to be entrusted with a certain discretion in revising the entries: but now the "votes" are prepared on the responsibility of the Clerk; and after "being first perused by Mr. Speaker," 1 are printed for the use of members, and for general circulation. But no person may print them, who is not authorized by the Speaker.

The Journals of the House of Lords have always been held to be public records. They were formerly "recorded every day on rolls of parchment," and in 1621 it was ordered that the Journals of the House of Commons "shall be reviewed and recorded on rolls of parchment." But this practice has long since been discontinued by the Lords, and does not appear to have been adopted by the Commons. Persons have access to the printed Journals of the House of Commons in the same manner as to the journals of the other house. The Journals of the House of Commons, 2 however, are not regarded as records, although their claim to that character has been upheld by weighty arguments. 3

When the Journals of the House of Lords are required as evidence, a party may have a copy or extract, authenticated by the signature of the Clerk of the Parliaments, which it may be as well that he should be able to prove on oath, by having been personally present when the copy

1 1 C. J. 673. 885; 2 ib. 12. 42. For a history of the early journals, see 24 ib. 262; 1 ib. 676. 683; 2 ib. 42; sess. order since 1680, 3 ib. 649.

2 Before the commencement of the Lords' Journals, the proceedings of Parliament were recorded in the Rolls of Parliament, A.D. 1278-1503, 6 Edward I. to 19 Henry VII. The Lords' Journals commence in 1503, 1 Henry VIII.; 2 Oxford Debts. 22; 1 C. J. 608; 3 Hatsell, 37. The Journals of the Commons commence in 1547, 1 Edward VI.; and, with the exception of a short period during the reign of Elizabeth, are complete to the present time.

3 Coke, 4th Inst. 23.
was signed by that officer; and, if necessary, the Lords have allowed an officer of their house to attend a trial with the original journal. In the Commons, it is usual for an officer of the house to attend with the printed journal, when a cause is tried in London: but when it is tried at the assizes, or at a distance, a party 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 recess, of the Speaker, he may secure the attendance of an officer to produce the printed journal, or extracts which he certifies to be true copies. 1 By Act 8 & 9 Vict. c. 113, s. 3 (which does not extend to Scotland), it is enacted that all copies of the journals of either house of Parliament, purporting to be printed by the printers to either house of Parliament, shall be admitted as evidence thereof by all courts, justices, and others, without proof being given that such copies were so printed.

Entries in the journal have occasionally been ordered to be expunged. 2 When the resolution of the 17th February, 1769, affirming the incapacity of Wilkes, was ordered to be expunged, on the 3rd May, 1782, “the same was expunged by the Clerk at the table accordingly;” 3 and the entry was erased in the manuscript journal of that day: but the printed journal, though reprinted since that time, still contains the resolution.

On the 16th May, 1833, a motion was made by Mr. Cobbett, impugning the conduct of Sir Robert Peel. Lord Althorp moved, “That the resolution which has been moved be not entered in the minutes;” but the Speaker put the question thus, “That the proceedings be expunged,” on the ground that the minutes had already been entered in the Clerk’s book. The question thus put was carried by

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1 L. J. 13th and 15th Feb. 1844; 593; 29 Howell, St. Tr. 685; Chubb v. Salomon, 3 Carrington v. Kirkwan, 75.

2 For cases where the production of the original MS. journal was required, see 99 C. J. 128; 100 ib. 114; Lord Melville’s case, 29 Howell, St. Tr. 688; R. v. Lord G. Gordon, 2 Doug. 317; 11 ib. 210; 33 ib. 569.

3 4 C. J. 397, &c.; 5 ib. 197; 7 ib. 210; 33 ib. 569.

4 38 ib. 977.
295 to 4, and no entry of the motion or other proceedings was made in the "votes." ¹

On the 6th March, 1855, a motion was made relative to the appointment of a recorder for Brighton; and on proceeding to a division the mover was left alone, his seconder, pro forma, declining to vote with him. A member immediately rose and moved that the motion should not be entered in the votes, which was agreed to by all the members except the mover of the original motion. Accordingly, there is no entry of either motion in the votes.²

The house, 27th January, 1891, resolved that the resolution of the 22nd June, 1880,³ which debarred Mr. Bradlaugh from taking the oath or affirmation, be expunged from the journals; and accordingly the Clerk passed a red line through that resolution, in the volumes preserved in the library and Journal Office of the house, and noted on the margin of the page that the paragraph was expunged pursuant to the resolution of the house.⁴ The Clerk also addressed letters to the librarians of the British Museum, the Universities of Oxford, Cambridge, and Dublin, and the Advocate's Library at Edinburgh, requesting them to note the proceeding on the copies of the journal in their libraries.

This notice with regard to the journals has necessarily interrupted the account of the chief officers of the House of Commons, to which it is now time to return.

The appointment of the Serjeant-at-arms is in the gift of the Queen, under a warrant from the lord chamberlain, and by patent under the great seal, "to attend upon her Majesty's person when there is no Parliament; and, at the time of every Parliament, to attend upon the Speaker of the House of Commons:" but after his appointment he is the servant of the house, and may be removed for misconduct. On the 2nd June, 1675, the house committed Sir James Norfolke to the Tower, for "betraying his trust," and addressed the Crown to appoint another Serjeant-at-

¹ 2 Peel's Speeches, 704; 17 H. D. 3 s. 1324. ² 135 C. J. 234. ³ 137 H. D. 3 s. 202. ⁴ 146 ib. 45.
The Serjeant-at-Arms.

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Order in the House, see p. 325.

Arms "in his stead." His duties are to attend the Speaker, with the mace, on entering and leaving the house, or going to the House of Lords, or attending her Majesty with addresses. It is his duty to keep the gangway-at and below the bar clear, and to desire the members to take their places, and not to stand with their backs to the chair, nor to stand, nor remove from their places, with their hats on, when the house is sitting. He takes strangers into custody who are irregularly admitted into the house, or who misconduct themselves there; causes the removal of persons directed to withdraw; gives orders, to the doorkeepers and other officers under him, to lock the doors of the house upon a division; introduces, with the mace, peers or judges attending within the bar, and messengers from the Lords; attends the sheriffs of London at the bar, on presenting petitions; brings to the bar prisoners to be reprimanded by the Speaker, or persons in custody to be examined as witnesses. For the better execution of these duties, he has a chair close to the bar of the house, and is assisted by a deputy Serjeant. Out of the house, he is entrusted with the execution of all warrants for the commitment of persons ordered into custody by the house, and for removing them to the Tower or Newgate, or retaining them in his own custody. He serves, by his messengers, all orders of the house, upon those whom they concern. He also maintains order in the lobby and passages of the house.

It is another of the Serjeant's duties to give notice to all committees, when the house is going to prayers (see p. 390). He has the appointment and supervision of the several officers in his department; and, as housekeeper of the house, has charge of all its committee-rooms and other buildings, during the sitting of Parliament.

By the ancient custom of Parliament, and by orders of Admission of the House of Commons.

1 See Mr. Disraeli's statement, 1st March, 1875, 222 H. D. 3 s. 998; officers and usages of the house, MS. 1805; 9 C. J. 331.

2 MS. account of the office and duty of the Serjeant-at-arms attending strangers.

3 9 H. D. 1.

4 1 C. J. 165. 118. 417. 484; 2 ib. 74. 433, &c.
both houses, strangers are supposed not to be admitted while the houses are sitting. The Lords' standing order No. 8 prescribes that no person shall be in any part of the house during the sitting of the house, except lords of Parliament and peers of the United Kingdom not being members of the House of Commons, and heirs apparent of peers or of peeresses of the United Kingdom in their own right, and the attendants on the house.

Strangers, however, are regularly admitted below the bar, and in the galleries: but the standing order may at any time be enforced.

Until 1845, the Commons, by a sessional order, maintained the exclusion of strangers from every part of the house: but since that time that order has not been made, and the presence of strangers has been recognized in those parts of the house not appropriated to the use of members. On the 3rd May, 1836, the house, in pursuance of the report of a select committee, ordered that arrangements should be made for the accommodation of ladies during the debates.

By the standing orders of the Commons, the Serjeant is directed to take into his custody strangers who are in any part of the house or gallery appropriated to members, and strangers who misconduct themselves by a refusal to withdraw, or otherwise; and members of the house are forbidden to bring a stranger, during the sitting of the house, into any part of the house or gallery appropriated to members. And in compliance with the general orders

1 The admission of strangers to the house and its products was considered by a select committee, sess. 1888, No. 132.
2 91 C. J. 319.
3 The clerks and officers of the house are not "strangers."
4 Stow says, "In the year 1584, a new Parliament sat in November, when one Robinson, a lewd fellow, and a skinner, had the confidence to sit in the house all the day, though no member. . . . He remained for some time in the Serjeant's custody, and so, it seems, was dismissed."—Survey of London and Westminster (Skinners' Company). See also 15 C. J. 527, from which it appears that members had been prevented from sitting by the pressure of strangers; see also H. D. 12th Feb. 1844 (Mr. Christie's motion). On the 9th March, 1875, two strangers passed into the body of the house, with a number of members pressing in to a division, and being discovered after the doors were locked and the division was proceeding, the Serjeant
Chapter VII.

of the house, the Serjeant has accordingly taken strangers into custody who have come irregularly into the house, or have misconducted themselves there. According to ancient usage, the exclusion of strangers could, at any time, be enforced without an order of the house; for, on a member taking notice of their presence, the Speaker was obliged to order them to withdraw, without putting a question. On the 18th May and 8th June, 1849, a member took notice that strangers were present, who were ordered to withdraw. The doors were accordingly closed for upwards of two hours, and no report of the debates, during that time, appeared in the newspapers. Strangers were readmitted without any order of the Speaker. The revival of this exceptional practice led to the appointment of a committee, which unanimously declared against any alteration of the rules of the house.

It was not until the 23rd May, 1870, that strangers were again ordered to withdraw, in order to avoid publicity being given to a debate upon the Contagious Diseases Acts. This led to further discussion: but the house still adhered to the old rule of exclusion, which was again enforced on the 19th March, 1872. The inconvenience of the rule prompted the house to agree to a resolution, 31st May, 1875, now standing order No. 93, which provided that, if notice was taken that strangers were present, the Speaker, or the chairman, should forthwith put the question that strangers be ordered to withdraw; reserving to the Speaker, or the chairman, the power, whenever he thought fit, to order the withdrawal of strangers from any part of the house.

removed them, and reported their intrusion to the Speaker. After the division they were let out, without any report to the house.

1 29 C. J. 23; 74 ib. 537; 86 ib. 323; 88 ib. 246. Pamphlets having been thrown from the strangers' gallery into the house, the offender was taken into custody by the Serjeant, and being conducted by a constable beyond the precincts, was set at liberty, with a caution, Times, 20th July, 1891.

2 15 H. D. 310 (Walcheren Expedition, 1810); 77 H. D. 3 s. 138 (see Mr. Speaker's explanation of the rule).

3 105 H. D. 3 s. 662; ib. 1320.

4 Rep. 1849 (498).

5 201 H. D. 3 s. 1307; 30th May, 1870, ib. 1640; 203 ib. 831.
An order for the withdrawal of strangers does not extend to the ladies' gallery, which is not supposed to be within the house. Ladies can therefore only be informed of the subject of debate, and left to withdraw or not, at their own discretion. Upon divisions of the house, strangers were entirely excluded until 1853, but are now merely desired to withdraw from below the bar.

On the 3rd August, 1855, notice was taken that two soldiers in uniform, lately returned from the Crimea, had been refused admission to the strangers' gallery. The Speaker stated that there was no rule for their exclusion; and soldiers in uniform, but unarmed, have since been freely admitted.

A description may now be given of the forms observed on the prorogation of Parliament at the close of a session.

If her Majesty attends in person to prorogue Parliament at the end of the session, the same ceremonies are observed as at the opening of Parliament: the attendance of the Commons in the House of Peers is commanded; and, on their arrival at the bar, the Speaker addresses her Majesty on presenting the supply bills, and adverts to the most important measures that have received the sanction of Parliament during the session. The royal assent is then given to the bills which are awaiting that sanction, and her Majesty reads her speech to both houses of Parliament herself, or by her chancellor (see p. 168); after which the lord chancellor, having received directions from her Majesty for that purpose, addresses both houses in this manner: "My lords and gentlemen, it is her Majesty's royal will and pleasure that this Parliament be prorogued to" a certain day, "to be then here holden; and this Parliament is accordingly prorogued," &c. When her Majesty is not present at the end of the session, Parliament is prorogued by a commission under the great seal, directed for further prorogations by proclamation, see p. 43.

For assent given to bills, see p. 480; to supply bills, see pp. 482, 563.

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1 230 H. D. 3 s. 1553–1555. Speaker Abbot's speech, referring to a bill which had not received the assent of the house, 69 C. J. 203; 27 H. D. 466; Lord Colchester's
2 139 ib. 1748.
3 The last occasion, 12th Aug. 1854, 135 H. D. 3 s. 1549.
4 See debate in 1814, on Mr. Diary, ii. 453–459. 483–496.
to certain peers, who, by virtue of their commission, prorogue the Parliament. The attendance of the Commons is desired in the House of Peers; and, on their coming, with their Speaker, the lord chancellor states to both houses, that her Majesty, not thinking fit to be personally present, has caused a commission to be issued under the great seal, for giving the royal assent to bills. The commission is then read, and the Speaker, without any speech, delivers the money bills to the Clerk of the Parliaments, who comes to the bar to receive them. The royal assent is signified to the bills in the usual manner; after which the lord chancellor, in pursuance of her Majesty’s commands, reads the royal speech to both houses. The commission for proroguing the Parliament is next read by the Clerk; and the lord chancellor, by virtue of that commission, prorogues the Parliament accordingly.
CHAPTER VIII.

METHOD AND ORDER IN THE TRANSACTION OF BUSINESS
IN PARLIAMENT.

Time of meeting.—The Lords formerly met, for despatch of legislative business, at five o'clock in the afternoon: but on the 24th March, 1882, they resolved to meet at a quarter past four, and that the public business for the day should commence at half-past four o'clock, in order to extend the time for debate;¹ and this arrangement has since been continued, with the following alteration. To meet the convenience of the lords who are members of the standing committees which meet on Tuesdays, the sitting of the house commences on that day at half-past five o'clock.²

The Lords, as a rule, adjourn over Ash Wednesday, and Ascension-day: but if the Lords meet on those days, they commence proceedings by attending divine service at Westminster Abbey.³ The Lords also rarely meet, except for formal business, on any Wednesday or Saturday.⁴

Adjournment.—No hour is appointed for the rising of the house; and the adjournment cannot take place save upon a question proposed by the Speaker, and agreed to by the house under standing order No. 20.

Rules of procedure.—Formerly, the pressure of business in the House of Lords had not been so great as to require strict rules in regard to notices: but by standing order No. 21, the following regulations are established:

"That all notices of proceedings on public bills, and of other matters, be inserted in the minutes of each day, according to the priority of every such notice, or as the lords giving the same may have agreed, and that the house do always proceed with the same in the order in

¹ 267 H. D. 3 s. 1784.
² 122 L. J. 64.
³ 2nd March, 1881; 27th Feb. 1884.
⁴ On Saturday, the 4th April, 1829, the debate in the House of Lords, on the second reading of the Catholic Relief Bill, was adjourned from two o'clock in the morning till two o'clock the same afternoon.
which they shall so stand, unless the lord who shall have given any such notice shall withdraw the same, or shall, with the leave of the house, consent to its postponement, or shall be absent at the appointed time after the house shall have entered upon the consideration of the said notices, in which latter case it shall be held to be a lapsed order, and not be proceeded with, until after the notice shall have been renewed.

"That on all occasions notices to suspend any of the standing orders of the house, and notices relating to private bills, shall be disposed of before the house proceeds to the other notices.

"That on Tuesdays and Thursdays the bills which are entered for consideration on the minutes of the day, shall, with the before-mentioned exception, have precedence of all other notices: but petitions relating to any such bill may be presented immediately before the motion is made to proceed with the bill.

"That any business for which notice is not required, and all proceedings relating to private bills, may, in accordance with present usage, be entered upon before the notices of the day are called for: but the house will proceed with the notices in preference to other matters at any time after half-past four o'clock, at the request of any lord who may have a notice on the minutes."

**Precedence of adjourned business.**—By standing order No. 22, if procedure on business then in hand be adjourned, or if, the house being in committee, it is ordered that the house be resumed, it shall be lawful for the house thereupon, without notice given, to make further order that the business in question be taken first, either at some later hour of the evening, or on some future sitting day to be then fixed.

**Quorum.**—The upper house may proceed with business if only three lords be present, of whom one may be a lord attending to take the oath. If, however, on a division upon any stage of a bill in the house or in committee, it shall appear that thirty lords are not present, then by standing order No. 33, the Speaker, or the chairman, shall declare the question not decided. The debate thereon is accordingly adjourned to the next sitting of the house, or, the house being resumed, the committee is set down for the next sitting of the house.

**Questions to ministers and others.**—Questions are put before the commencement of public business to ministers of the Crown concerning measures pending in Parliament,
or public affairs, or matters of administration, and to other lords who have charge of a bill, or who have given notices of motions, or are otherwise concerned in some business before the house.\footnote{Perhaps the earliest example of a question to ministers is to be found on the 9th Feb. 1721, when Lord Cowper asked a question of the administration, and was answered by the Earl of Sunderland, 7 Parl. Hist. 709; 192 H. D. 3 s. 717.} Interference on the part of the house with these questions is of infrequent occurrence: but on one occasion, 7th June, 1858, when a noble lord proposed to renew a notice of putting certain questions, the house resolved “that the said questions had been sufficiently answered and ought not to be renewed;” and, accordingly, the proposed notice was not received by the Clerk. And again, 12th March, 1883, notice having been given of certain questions, it was resolved “that such questions be not put.”

In the Lords, debate is permitted in putting and answering questions, and in commenting upon them, without any question being before the house. In 1867, the Lords’ committee on public business, while recognizing and approving this practice, recommended that notice of questions should be given in the minutes, except in cases of urgency. In consequence, it was resolved, by standing order No. 21, that where “it is intended to make a statement, or raise a discussion on asking a question, notice of the question should,” in that case, “be given in the orders of the day and notices.” And under these conditions important debates are frequently raised.\footnote{14th Dec. 1847, 100 L. J. 103.}

The meeting of the house.—The house formerly met at an early hour in the morning, generally at eight o’clock, but often even at six or seven o’clock, and continued till eleven, the committees being appointed to sit in the afternoon. In the time of Charles II., nine o’clock was the usual hour for commencing public business, and four o’clock for its conclusion. At a later period ten o’clock was the ordinary time of meeting; and the practice of nominally adjourning the house until that hour continued until 1806,
though so early a meeting had long been discontinued.1 Until the year 1888, by a custom then in force for about a century, a quarter before four o’clock was the usual hour of meeting. This hour was chosen to provide that the house should meet as late in the day as possible, and yet enable a new member to take the oath between the hours of nine in the morning and four in the afternoon, pursuant to statutory regulations then in force.

The statutes which prescribed those hours have been repealed; and new members can now be sworn in, either at the opening or the close of a sitting (see p. 156), yet the influence of these regulations still exists in the usage that no adjournment of the house caused by the absence of a quorum can take place before four o’clock (see p. 222). Hence also arose the practice that, when the house desires to meet at an hour earlier than four o’clock, no order is made to that effect, and the Speaker fixes, in accordance with the known intention of the house, the hour when the next sitting would be held; whilst if the house meets at an hour later than four, the hour is fixed by an order of the house.2

The house when in session must, unless the house orders otherwise, meet every day of the week except Sunday: but its freedom as regards the hour and time for sitting, working, and rising, except on Wednesdays and the sittings held at two o’clock, was almost wholly uncontrolled prior to the year 1888. The system then established prescribes the hours for the meeting of the house, for the interruption of business, and for the adjournment of the house, during every day of the week except Saturday and Sunday. On Monday, Tuesday, Thursday, and Friday the hour of meeting, pursuant to standing orders Nos. 1 and 2, is three o’clock in the afternoon. 3 S. O. 1. 2, Appendix, 1853, to ten o’clock at night, 106 C. J. 189; 108 ib. 816; and on P. 823. Thursday, 11th May, 1882, the house met at nine o’clock, in order to enable ministers and members to attend the funeral of Lord Frederick Cavendish, at Chatsworth (137 C. J. 190).

Meeting on first day of session, see p. 146.

Extra-ordinary sittings, see p. 179.

1 Vowel’s Order and Usage of the Parliaments in England, 1572; 1 C. J. 156. 705; 2 ib. 116. 120; 8 ib. 271; 9 ib. 606; 13 ib. 858.

2 On the opening of the Great Exhibition, 1st May, 1851, the house adjourned to six o’clock p.m.; on the naval review at Spithead, 11th Aug. 1853, to ten o’clock at night, Appendix, 106 C. J. 189; 108 ib. 816; and on P. 823.
the afternoon,\(^1\) and twelve at noon on Wednesday.\(^2\) The meeting of the house on Saturday \(^3\) does not take place, save by order, or unless business be appointed for that day, when, if the house has not ordered otherwise,\(^4\) the Speaker, according to usage, fixes twelve o'clock for the meeting of the house, that being the customary hour. The sittings of the house, known as "morning sittings," held pursuant to standing orders Nos. 4–8, commence at two o'clock in the afternoon, and are usually held on Tuesday and Friday.

The official announcement of the hour appointed for the next meeting of the house is made by an entry placed, under the Speaker's authority, at the close of the daily record of the sittings of the house, styled "The Votes and Proceedings;" as the announcement of the appointed hour of meeting in the motion which adjourns the house is an exceptional occurrence.\(^5\)

**Interruption of business under the standing orders.**—On every day of the week, except Saturday and Sunday, the working hours of the house are subject to the following regulations. Business is interrupted on Monday, Tuesday, Thursday, and Friday, at midnight.\(^6\) At that moment, if the house be not engaged on exempted business (see p. 211), the Speaker rises from the chair, and interrupts the business then under consideration; or if the house be in committee, the chairman leaves the chair to make his report to the house. On Wednesday the moment of interruption is half-past five o'clock, and on sittings commencing at two o'clock at ten minutes to seven.\(^7\)

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\(^1\) The house met, 27th Feb. 1888, for the first time at three o'clock in pursuance of standing order No. 1, 143 C. J. 65.

\(^2\) The sitting of the house on Wednesday, 1 Aug. 1877, was absorbed by a continuous sitting of the house begun on the day previous (see extraordinary sittings of the house, p. 173, n. 3).

\(^3\) This holiday is said to have arisen from Sir Robert Walpole's devotion to hunting, 1 Lecky, Hist. of Eighteenth Century, 331; 27th Feb. 1880, 250 H. D. 3 s. 1668.

\(^4\) 128 C. J. 122; 145 ib. 222.

\(^5\) 108 ib. 816; 127 ib. 411; 128 ib. 122; 146 ib. 178.

\(^6\) The standing order which prohibited the transaction of opposed business after half-past twelve o'clock at night was repealed, 7th March, 1888, 143 C. J. 86.

\(^7\) On Wednesday, 28th March, 1860, at the appointed moment of interruption, the chairman reported pro-
The business under consideration at the moment of interruption stands adjourned; and the Speaker calls upon the member in charge thereof to name the day when debate thereon shall be resumed.

No opposed business can be taken after the time prescribed for the interruption of business; consequently, if objection be taken to the day named for the resumption of the interrupted business, or for the consideration of any business subsequently appointed, the matter on which objection arose must be set down for the next day on which the house shall sit, unless the Speaker ascertains, by the preponderance of voices, that a majority of the house desires that the order should be deferred until a later day. 1

The transaction of business can be carried on during the time set apart for unopposed business, although debate may arise thereon, until a division be challenged upon a question proposed from the chair, or objection taken to further proceeding. The business then becomes opposed business; and further consideration thereof must be adjourned in accordance with the provisions of the standing order. 2

If, during the time when no opposed business can be taken, an order of the day for a committee on a bill, not yet in progress, is read, the Speaker, although objection be signified to his leaving the chair, nevertheless quits the chair forthwith in pursuance of standing order No. 51. If, however, the bill is already in progress, when the order of the day is read, and objection be taken to proceeding with the bill, the Speaker does not quit the chair, but calls on the member in charge of the bill to name a day for its future consideration. When objection is taken in

1 19th June, 1891, 145 ib. 405; 2 8th April, 1892, 147 ib. 171.
2 As during the time for unopposed business no division can be taken, the Speaker has disregarded a challenge to the question put on a motion for the adjournment of the house, and, treating the motion like a formal motion, he declared that the ayes had it, and left the chair.

When Mr. Speaker leaves the chair.

gress on the Income Tax Bill, when, as there was no opposition to it, the house again resolved itself into committee on the bill, and the committee proceeded through the bill, and reported it. The same course was adopted on Tuesday, 12th June, 1888, 143 C. J. 278.

Chapter VIII. Transaction of business after moment of interruption.
committee, the chairman forthwith leaves the chair to report progress.¹

Formal motions after the moment of interruption.—The Speaker has overruled an objection that no opposed business could be taken, because the moment for the interruption of business was passed; and has not permitted opposition to formal questions which are essential to the completion of the transaction on which the house is engaged, such as the committal of a bill to a committee of the whole house, when a bill has been read a second time, or the addition of the words, “upon this day six months,”² when the house has disagreed to the second reading of a bill; or the entry of the Speaker’s reprimand or admonition upon the journal of the house;³ or motions for the appointment and nomination of a select committee consequent upon the business then before the house.⁴ Nor can a formal motion for the purpose of carrying on the business of the house be stopped by an objection that the proceeding takes place during the time set apart for unopposed business, such as a motion for the first reading of a bill from the Lords; motions consequent upon a message from their house; appointing a day for the consideration of their amendments to bills;⁵ ordering the presentation of papers moved by a minister of the Crown;⁶ or for the withdrawal of a bill by the member in charge thereof.⁷

Dilatory motions pending at the moment of interruption, i.e. motions for the adjournment of the house or of the debate, or that the chairman do report progress, or do leave the chair, lapse without question put.⁸ At that moment closure also may be moved; and if closure be moved, or

¹ 31st May, 1888, 143 C. J. 243.
² 143 ib. 143.
³ 7th April, 1892, 3 Parl. Deb. 4 s. 963.
⁴ 17th Feb. 1887, 310 H. D. 3 s. 1854; 336 ib. 1101; 30th July, 1889, 338 ib. 1789.
⁵ 3rd Aug. 1888, 329 ib. 1552.
⁶ 27th Feb. 1882, copy record, Mr. Davitt, 266 H. D. 3 s. 1811; 30th July, 1888, Mr. Speaker’s ruling (private).
⁷ 19th July, 1888, 328 H. D. 3 s. 1883; Vehicles Lights Bill, 8th May, 1893.
⁸ On adjournment at six o’clock on Wednesday, 144 C. J. 55; interruption at midnight, 144 ib. 134; 145 ib. 252; progress, at midnight, 145 ib. 370.
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if proceedings under the closure rule be then in progress, the Speaker, or chairman, does not leave the chair until the questions consequent thereon, and on any further question, as provided in standing order No. 25, have been decided (see p. 213).

At the interruption of business appointed for a two o'clock sitting, dilatory motions lapse, and no opposed business can be taken according to the rules applicable to a midnight interruption of business. Business interrupted at ten minutes before seven, and orders of the day not then disposed of, are placed upon the notice paper for the evening sitting at nine o'clock, after the orders of the day fixed for that sitting, subject to the right of the government to arrange their business mentioned on p. 249.

Exempted business.—It is provided, by standing order No. 1, that at the commencement of business on any day, except Wednesday or Saturday, a motion may be made by a minister of the Crown, and decided without debate, that the proceedings on any specified business, if under discussion at midnight, be not interrupted; and if this motion is carried, such business is exempt from the provisions of the standing order which regulates the interruption of business, and the adjournment of the house.

Proceedings on a ways and means bill, or pursuant to a standing order, or an Act of Parliament, are also permanently exempt from interruption.

As the most critical use of the closure motion arises upon the moment for the interruption of business, a statement of the practice of the house under standing order No. 25 (closure of debate) shall preface the consideration of the treatment of questions pending at the moment of interruption (see p. 214).

Closure.—The method of procedure known as closure,

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1 144 C. J. 139, 139.
2 If a two o'clock sitting of the house is protracted up to seven o'clock, the Speaker suspends the sitting until nine o'clock. If the house be at that moment in committee, he does not return to the chair, and the chairman, under standing order No. 7, makes his report at nine o'clock. 8th June, 1888, 326 H. D. 3 s. 1600; 4th and 29th March, 1892, 147 C. J. 82, 141.
which brings debate to a conclusion, and compels the house
to decide upon the matter under discussion, which was first
authorized by the urgency rule of 3rd February, 1881 (see
p. 324), was permanently established by a standing order
agreed to in the year 1882. By this standing order the
house was enabled to vote forthwith upon a motion,
"That the question be now put;" and the initiative in
the proceeding was entrusted to the Speaker, or the
chairman of ways and means, whilst the presence of more
than two hundred members was required to make the
vote effectual. These conditions in the application of the
closure were subsequently modified in the sessions 1887
and 1888.

Pursuant to standing orders Nos. 25 and 26, whilst the
Speaker, or the chairman of ways and means, is in the
chair, after a question has been proposed, if a member
rising in his place moves, "That the question be now put,
that question shall be put forthwith without amendment
or debate, unless it appears to the chair that the motion
is an abuse of the rules of the house, or an infringement
of the rights of the minority; and if, when a division is
taken, it appears by the numbers declared from the chair,
that not less than a hundred members voted in the majority
in support of the motion, it is decided in the affirmative.

Closure may be moved, as the conclusion of a speech, or
whilst a member is addressing the house, and intercepts
any motion which it was his intention to move. The
intervention of the chair regarding closure is restricted to
occasions when the motion is made in abuse of the rules
of the house, or infringes the rights of the minority. A

1 136 C. J. 57.
2 Attempts made by the house to close debate in former times are
traceable on the journals: 9th May, 1694, resolution that Sir R. Litton
should not speak any more; 31st March, 1610, resolution to stay
further debate, 1 C. J. 205, 417, 968; and subsequently on the 20th June,
1880, the motion that Mr. O'Donnell be not now heard, 135 H. D. 3 s.
3 A motion failed, insufficient majority, 142 C. J. 506; another was
negatived, 143 ib. 232.
4 Speaker's ruling, 12th May, 1893.
Closure motion may therefore be sanctioned by the chair, either immediately upon, or within a few minutes after, the proposal to the house of the question to be closed; as, in the discharge of the duty thus imposed upon him, the discretion of the Speaker is absolute, and is not open to dispute.1

As—without some further provision, the house might, even with the help of the closure, be unable to complete the matter then immediately in hand—directly after the motion, “That the question be now put,” has been carried, and the question consequent thereon has been decided, without having recourse to any further closure motion, the right is given to claim, subject to the discretion of the chair, that such further question be put which may be requisite to bring to a decision any question already proposed from the chair.2 The utility of this power is specially proved by its application at the moment, when, pursuant to standing order, an interruption of business, or the adjournment of the house would otherwise immediately take place.3

An analogous, but wholly distinct, power is also conferred by standing order No. 25, whereby, subject to the closure upon the words of a clause.

1 31st March, 1887, 313 H. D. 3 s. 177. Speaker's statements, 20th July, 1888, 329 ib. 57; 28th June, 1889, 337 ib. 1623; 354 ib. 481; Votes, 13th March, 1893; of deputy Speaker, 28th April, 1892, 3 Parl. Deb. 4 s. 1693.

2 28th March, 1892, 3 Parl. Deb. 4 s. 133.

3 On two occasions, since the inauguration of closure, with the sanction of the Speaker, a form of motion, analogous to a closure motion, but not within the provisions of standing order No. 25, were submitted to the house. The first met the case of an excessive number of amendments placed upon the notice paper on the report stage of a private bill. The motion moved and agreed to, on this occasion, was, “That inasmuch as this bill has been carefully considered by a select committee, this house declines to entertain amendments which ought to have been brought before that committee, and that the bill be ordered to be read a third time.” The second example of an exceptional closure motion was occasioned by an unprecedented multiplication of instructions to the committees upon certain bills. It assumed the form of an amendment to be moved upon the first instruction which stood upon the notice paper, to the committee on Allotments Act Amendment Bill, 1890, to the effect “That this house declines by any instruction to extend the scope of the bill in question.” The amendment was not moved, upon the understanding that it was reserved for use, in case more than one instruction to the bill was moved. 2nd July, 1888, 328 H. D. 3 s. 57; 2nd May, 1890, 344 ib. 18; see Appendix, p. 844.
discretion of the chair, when a clause is under consideration, motions may be made, to be acted upon forthwith—that the question, "That certain words of the clause" defined in the motion "stand part of the clause, be now put," or that the questions, "That a clause stand part of (or be added to the bill), be now put." These motions, if the questions put thereon are carried, override all power of amendment to the words included in their scope: thus, for instance, in committee upon a bill, after certain additions proposed to subsection 3 of the fifth clause had been negatived, a member rose and moved, "That the question, 'That the word *where*" (being the initial word of subsection 4) "stand part of the clause, be now put." The closure motion, and the question consequent thereon, were carried, and thereby all further additions to subsection 3 were excluded.¹

The closure motions that certain words should stand part of a clause, or that a clause should stand part of a bill, are in form and use equally applicable when the house is in committee, and when the Speaker is in the chair. These motions also can be moved although closure has not been previously enforced during the consideration of the clause; nor is it necessary that closure should have been moved on the question last proposed from the chair. Thus on consideration of a bill as amended, no antecedent closure having been moved, a member rose and moved, "That the question, 'That certain specified words of a clause stand part of the bill,' be now put," and the question on the closure motion was put from the chair.²

Questions pending at the interruption of business.—By a convenient, and indeed necessary, elasticity of practice, which arose in consequence of the introduction of fixed hours for the transaction of business upon Wednesdays, the standing orders which prescribe a limit to the time for the transaction of business are not so strictly enforced as to

¹ 6th May and 9th June, 1891, 1893. 146 C. J. 264. 344; also 2nd June, 2 388 H. D. 3 s. 639. 644; 144 1892, Clergy Discipline Bill, 147 C. J. 343; also 9th June, 1891, 145 ib. 317; Army, &c., Bill, 24th March, ³ ib. 344.
prevent the house from completing, when the fixed hour arrives, the proceeding on which a decision is in process of being taken.\(^1\) Procedure thereon is, under this practice, extended, not only beyond the hour appointed for the interruption of business, but also beyond the hour appointed for the suspension of a sitting, or for the adjournment of the house. Consequently, whenever a question is under decision, either by collecting the voices, or by a division, at an hour appointed by the standing orders for a cessation in the transaction of business, or of the sitting of the house, the decision of the house is announced and acted upon after that fixed hour. Nor does the fact that the moment is passed when business should be interrupted, or the house adjourned, prevent the proposal from the chair of the main, original, or any further questions consequent upon that decision of the house, which may be decided, if necessary, by a division.\(^2\)

If, however, when such a question is proposed from the chair, a member rises to object to further proceeding, or offers to speak to such question, his action converts the business then under transaction into opposed business;\(^3\) as his interference brings into force the provisions of the standing order. The Speaker therefore proceeds to adjourn the debate, or in committee the chairman proceeds to leave the chair to make his report to the house;\(^4\) and the consequent interruption of business is inevitable, unless thereupon closure be moved, pursuant to paragraph 3 of standing order No. 1 (see p. 217).

The practice of completing business begun before the amendment, at ten minutes past midnight (19th March, 1891), 146 moment of interruption.

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\(^1\) Post-Office Balances, 29th July, 1873, 217 H. D. 3 s. 1230–1232; 128 C. J. 403; Land Tenure (Ireland) Bill, 21st March, 1877, 228 H. D. 3 s. 306.

\(^2\) The case is unusual, so it may be mentioned that the Speaker, on consideration of the amendments by the Lords to a bill, when a proposed amendment to a Lords' amendment was disposed of, proposed the question for agreeing to the Lords' amendment, at ten minutes past midnight (19th March, 1891), 146 at moment of interruption.

\(^3\) To create an interruption of business, a motion to adjourn the debate is out of order, Tuesday, 14th May, 1889. Mr. Speaker's ruling not reported.

\(^4\) Criminal Law Amendment (Ireland) Bill, 18th May, 1887, 315 H. D. 3 s. 483; 142 C. J. 249; 29th March, 1892, 147 lb. 141.
fixed hour by putting successively all questions pending at the moment of interruption, is best elucidated by examples.

Unopposed business after moment of interruption.—The first examples will show the practice of the house regarding questions put from the chair after the time prescribed for the interruption of business, or for the adjournment of the house, when neither objection is taken to further proceeding, nor closure moved. (1) A division was in progress, at the time fixed for the adjournment of the house, on an amendment to the main question to leave out therefrom all the words after the first word, “That,” in order to add other words. The question, that the words proposed to be left out stand part of the question, was negatived; and then the questions for the addition of the words of the amendment, and the main question, so amended, were successively put from the chair.¹ (2) A division was in progress, at the time fixed for the interruption of business, on the question that the word “now” should stand part of the question for the second reading of a bill. The question upon the word “now” was negatived; the words, “upon this day six months,” were added: the main question so amended was agreed to, and the bill was put off for six months.² (3) On another occasion, when a division on an instruction to a committee on a bill was continued until after midnight, and notice of another instruction stood upon the paper, which was out of order, the Speaker, having pointed out the informality of that notice, left the chair forthwith, under standing order No. 51, stating that he did so in order to complete the business begun before midnight.³

Opposed business after the moment of interruption.—Examples shall now be given of the adjournment of further proceedings, upon objection taken, the time prescribed for the transaction of opposed business having elapsed, and when the right to move closure at the moment of the interruption of business, was not exercised. (1) For instance, if the question decided after the prescribed time

¹ 144 C. J. 180. ² 132 ib. 111; 233 H. D. 3 s. 306. ³ 4th April, 1892, 3 Parl. Deb. 4 s. 669; 147 C. J. 154.
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Closure at moment of interruption.

When the interruption arises.

be that a bill be now read the second time, the bill is committed to a committee of the whole house, or, on the motion of the member in charge of the bill, to a select committee; but, in the latter case, as reference to a select committee is not the ordinary form of motion, on such an occasion, if objection were taken, or debate arose thereon, the Speaker would interrupt the business and declare that the debate stood adjourned.  

(2) When to the question that a bill be read a second time, an amendment was moved to leave out those words, and to substitute, instead, a statement urging reasons why the bill should not be read a second time, and the house had decided that the words proposed to be left out should not stand part of the question, the question for the addition of the words of the amendment was proposed from the chair: but, as the hour for interruption was passed, and objection was taken to the proceeding, the debate was immediately adjourned.  

(3) Again, on the consideration of a bill on report, when a division on the second reading of a new clause was concluded after midnight, the Speaker announced that if no amendments were offered, he would put the question, "That the clause be added to the bill:" but on a member intimating that he had an amendment to offer, the Speaker adjourned further proceedings on the clause, and the consideration of the bill was appointed for the morrow.

Closure at moment of interruption.—It now remains to explain the manner in which, under paragraph 3 of standing order No. 1, closure may be moved at the moment for the interruption of business. Under ordinary circumstances, on the fixed hour being reached, the Speaker or chairman says, "Order, order," and proceeds to interrupt the business. The Speaker announces that the debate stands adjourned, and the chairman proceeds to leave the

1 22nd May, 1889, 336 H. D. 3 s. 767; 28th March, 1892, 147 C. J. 138. Closure might be moved on this interruption; but the propriety of the motion, and the probability of the Speaker’s withholding his assent, would depend on the character of the opposition.

2 30th March, 1892, 147 C. J. 141.

3 18th June, 1891, 146 ib. 372; 354 H. D. 3 s. 877.
chair to make his report to the house. These proceedings on the part of the Speaker and the chairman create the moment of the interruption of business, when closure may be moved.

The moment for the interruption of business is, however, as has been mentioned on p. 214, projected forward beyond the hour fixed by the standing orders, if the house at that hour is engaged in a division. The Speaker, therefore, after the question thereby decided has been put, continues the proposal of such further questions as are necessary to complete the proceeding, until a member rises to speak, or says, "I object to further proceedings." It is then that the moment for the interruption of business arrives, and that the closure motion may be moved. For instance, in the committee of supply the proceedings on a division to decide the question for the reduction of a grant were not completed until after midnight; the chairman thereupon proposed the original question, namely, the grant itself: but as a member offered to speak thereto, the chairman was proceeding to interrupt the business, when closure was moved, and carried: the original question was put accordingly; and the chairman left the chair to report the resolution to the house. The Speaker resumed the chair; and the report and the committee of supply were appointed for the following sitting of the house.¹

Questions claimed under a previous closure motion.—As has been explained on p. 213, after a closure motion has been moved and acted upon, any member may claim that such further questions be put forthwith as are requisite to bring to a decision the question already proposed from the chair, no second closure motion being necessary.² In that case, unless the assent of the chair be withheld, the Speaker, or the chairman of ways and means, puts seriatim each such question forthwith, regardless of the fact that the hour for the interruption of business is overpast.

¹ 31st May, 1888, 326 H. D. 3 s. 1889, 333 ib. 711. 800. 872; see also ib. 999; 8th June, 1888, 326 ib. 1600; 14th Nov. 1888, 330 ib. 1217; 6th and 8th Aug. May, 1892, 147 C. J. 249.
² 10th Dec. 1888, 331 H. D. 1703; 6th March, 1889, 333 ib. 1101; 13th
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Of this procedure the following examples may be given. Illustrations of

(1) When a resolution reported from a committee was under the consideration of the house, and an amendment thereto had been negatived upon a closure motion, the question, "That this house doth agree with the committee in the said resolution," was claimed and put accordingly.  

(2) When a closure motion had been carried which disposed of an amendment to an amendment, first the question on the amendment itself, and then on the main question, were forthwith claimed, and decided by the house.  

(3) When the house had negatived the question for the Speaker's leaving the chair, for the committee of supply, upon the consequent question that the words proposed by way of amendment to the main question be there added, closure was moved and acted upon; the words were added; and then closure on the main question, so amended, was claimed, and put from the chair.  

The practice regarding pending questions and closure procedure, which may be enforced at the moment of the interruption of business, is, if need be, equally applicable when the moment is reached for the adjournment of the house, as fixed by the standing orders. Procedure in a committee of the whole house regarding questions pending at the moment of interruption, follows the procedure of the house, including the power of moving closure on the interruption of business.  

The adjournment of the house.—Pursuant to standing orders No. 1 and No. 8, on Monday, Tuesday, Thursday, and Friday, and on evening sittings held after a sitting at two o'clock, the house, if not previously adjourned, sits till one of the clock a.m., unless a bill or proceeding exempted from the operation of the standing order (see p. 211) be at that moment under consideration. In such a case the Speaker does not quit the chair until the exempted business

1 25th July, 1890, 145 C. J. 512.  
2 7th and 28th April, 1892, 147 ib. 166, 196.  
3 13th May, 1892, 147 ib. 249.  
4 Naval Defences, 1st April, 1889, 144 ib. 102.  
5 Unless a notice of motion so exempted has been reached at one o'clock, the Speaker thereupon adjourns the house.
is concluded, after which the unopposed business that stands upon the notice paper is disposed of, under the conditions imposed by standing order No. 1 on business taken after midnight (see p. 209); when the Speaker adjourns the house without question put.

If more than one exempted motion stands upon the notice paper, and the first is not disposed of until after one o'clock, other exempted business may be brought forward;¹ and in that case, adjournment without question put is postponed, until that matter and the remaining business upon the notice paper for that sitting has been disposed of.

On a Wednesday sitting, the adjournment of the house takes place at six o'clock in the afternoon; and as standing order No. 1 makes no provision for the consideration, on that sitting of exempted business, the house cannot sit on a Wednesday beyond six o'clock, save to complete business (see p. 215), or by order. In that case, if the house continues sitting on Wednesday beyond six o'clock for the consideration of a special matter, the Speaker, immediately upon the conclusion thereof, adjourns the house forthwith.²

The time for the adjournment of the house on Saturday is not prescribed by standing order.

**Adjournment beyond the next day of sitting.**—When it is intended that the house should be adjourned to a day beyond the next sitting day, a motion is made, by a member of the government, with or without notice (see p. 244, n. 1), that the house, at its rising, do adjourn until the specified day.³

**Adjournment from Friday till Monday.**—Pursuant to standing order, while the committees of supply and ways and means are open, the house, when it meets on Friday, stands adjourned, at its rising, until the following Monday, unless the house shall otherwise resolve.

**Adjournment on question.**—Except on occasions when a quorum of the house is not present (see p. 222), or when the Speaker, in pursuance of a standing or other order, adjourns

¹ 26th July, 1888, 143 C. J. 404; 20th Aug. 1889, 144 ib. 446.
² 145 ib. 546.
³ The house, 11th Aug. 1892, adjourned on this form of motion, "That this house do now adjourn till Thursday next," 147 ib. 419; see also 30th March, 1893.
the house without question put, the house can only be adjourned upon a question put from the chair.¹

Suspension of a sitting.—The sitting of the house is occasionally suspended with the intention of resuming the transaction of business at a later hour. A suspension of the sitting always occurs on the opening day of a session (see p. 167), and whenever, pursuant to standing orders Nos. 4 and 5, the house meets at two o’clock.² A sitting also may be suspended on other occasions, as when a bill from the Commons is under consideration by the House of Lords,³ or whilst the house waits for a message from the lords commissioners.⁴ During the suspension of a sitting, the Speaker, the mace being left upon the table, retires from the house, and returns at the appointed hour, when business is resumed without counting the house. As, technically, the house continues sitting, these occurrences are not noted in the journal.

Quorum, presence of.—Forty members, including the House Speaker, form the quorum of the house.⁵ If the absence of

¹ 9 C. J. 560.
² Also, when the house has met at ten o’clock to receive a royal assent message, 3rd July, 1891, 18th Aug. 1892, 7 Parl. Deb. 4 s. 450.
³ 12th June, 1885, 298 H. D. 3 s. 1552.
⁴ On the 17th Feb. 1866, the Lords sent a message to the Commons, requesting them to continue sitting for some time, to which the latter agreed, the object being to ensure the passing of the Habeas Corpus Suspension (Ireland) Bill on that day, 121 C. J. 88.
⁵ 5th Jan. 1640, 2 ib. 63. “Forty maketh a House of Commons,” Gaudy’s Notes of the Long Parliament, MSS. Brit. Mus. “Awhile we had a less number present (in the grand committee on subsidies) than forty, which we account, by the orders of the house, to be the least number present at a grand committee,” D’Ewes, 5th June, 1641, Harleian MSS. From an entry, 20th April, 1607, it would appear that sixty was not then a sufficient number, 1 C. J. 384. A motion was made by Mr. Pierrepont, 18th March, 1801, being the first Parliament of the United Kingdom, “That Mr. Speaker do not take the chair until at least sixty members are present in the house;” but negatived, 35 Parl. Hist. 1203. In both houses of Congress, and the greater part of the state legislatures of the United States, a majority of the house forms a quorum.—Cushing, on Legislative Assemblies, 96. This rule, which dates from the year 1640, is only one of usage, and may be altered at pleasure. The rule was suspended by order of the house, 1st March, 1793, 48 C. J. 305, for the purpose of receiving messages from the Lords relating to proceedings on the trial of Warren Hastings. And such messages were received when even one member only was present, 48 C. J. 305. 310. 660. 804. In 1803, it was determined that sittings of the
a quorum be proved after four o'clock, the immediate adjournment of the house takes place: 1 but if before four o'clock, presumably under the usage already mentioned (see p. 207), the sitting of the house is suspended until four o'clock, unless forty members be sooner present. 2 At that hour, if the number of members in the house remains below forty, the adjournment must take place.

At the meeting of the house it is the duty of the Speaker to consider whether a quorum is present; 3 but

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1 First recorded count out, 22nd April, 1729, 21 ib. 351.
2 The importance attached to the hour of four has been said to arise from the provisions of the Acts which required the oaths to be taken between the hours of nine in the morning and four in the afternoon (2 Hatsell, 90): but is, perhaps, more properly referable to usage; four o'clock having been the customary hour for the rising of the house when those Acts were passed. In all times, the proceedings of the house have been liable to such interruptions from the engagements or recreations of members. Writing of the grave Long Parliament in 1641, Mr. Palgrave relates that "one day's discourse" was stopped because 'the Earl of Strafford came in his barge to the upper house from the Tower, and divers ran to the east windows of the house, who, with them that sat by, looked out at the said windows, and opened them; and others quitted their seats with noise and tumult;" and another sitting was, in like manner, broken up, in the very crisis of national anxiety, because such members preferred 'the play-houses and bowling-alleys' to the committee of supply."—Death of the Earl of Strafford, in Fraser's Magazine for April, 1873, citing D'Ewes Harleian MSS. I have myself seen the benches nearly deserted during a boat-race, which could be seen from the same east windows, before the great fire of 1834. In Dec. 1648, so many members were in prison, that sometimes there were not enough to make a house, and the Speaker was "obliged to send to the guards to bring in some of their prisoners to make up the number of 40; and when the jobb was done, to receive them again into custody," Carte, iv. 601.—Author's note.

3 On Wednesday sittings the Speaker takes the chair although a quorum is not present, and the trans- action of business is commenced when the house is made. If, as occasionally happens on a Wednesday morning, the commencement of business by the house is prevented for some time by the absence of a quorum, the Speaker can request the Serjeant to inform the members in the committee-rooms that the house is waiting to form a quorum. According to ancient usage, the Speaker used to send the Serjeant with the mace to desire the members attending select committees to attend to help to make a house; and the committees were dissolved by the presence of the Serjeant with the mace.—(MS. Account of the office and duty of the Serjeant-at-arms attending the House of Commons.) 245 H. D. 3 s. 1500; 18th May, 1892, 4 Parl. Deb. 4 s. 1181.
when he has taken the chair, that responsibility rests upon
the house. Accordingly, the only occasion when the
Speaker takes the initiative in this matter is immediately
after prayers. At that moment, therefore, if the necessity
should arise, the Speaker refrains from taking the chair,
and, standing in the place which the Clerk of the house
occupies at the table, he counts the house. The Speaker
announces that the house is made by taking the chair, if
he ascertains that forty members are present: but if that is
not the case, he waits, seated in the Clerk's chair, or he
retires from the house, either until a quorum is present, or
until four o'clock, when, standing on the upper step of the
chair, he again counts the house; and, if a quorum is not
present when he has ceased counting, he adjourns the house,
without question put, until the next day of sitting;¹ on a
Saturday, therefore, he adjourns the house until Monday.²

After the house has been made, if notice be taken that
forty members are not present, the Speaker directs strangers
to withdraw; the two-minute sand-glass upon the table is
turned, and members are summoned as if for a division.
Then, after the sand-glass has run down, the Speaker
proceeds to count the house, the outer door being kept
open throughout the proceeding.³ As has been explained,
if it be after four o'clock that the absence of a quorum is
proved, the Speaker at once adjourns the house until the
next sitting day:⁴ but if before that hour, the Speaker
takes the Clerk's chair, and the sitting is suspended until
four o'clock, unless the requisite number of members has
previously appeared in the house.⁵ The same course of
action is followed, if the non-presence of a quorum is
proved by the report of the tellers of a division.

In the duty respecting the presence of a quorum that
Speaker said it was the duty of the
Serjeant to keep free access to the
house, and he believed that duty had
been properly discharged, 219 H. D.
3 s. 1304.

¹ 6th Dec. 1864, 140 C. J. 39; 1st
June, 1892, 147 ib. 309.
² 78 ib. 8.
³ On the 10th June, 1874, com-
plaint was made that members had
been obstructed on their return to
the house during a count. The
⁴ 128 C. J. 321.
⁵ 100 ib. 721; 140 ib. 39.
devolves upon the chairman of a committee of the whole house, he follows, in every respect, the course pursued by the Speaker. If the chairman ascertains that forty members are not present, he leaves the chair, the house is resumed, and, on his report, the Speaker counts the house. If forty members be then present, the house again resolves itself into the committee: but if not, the Speaker either suspends the sitting until four o’clock, or adjourns the house forthwith.

The Speaker has declined to count the house again, when he had recently satisfied himself regarding the presence of forty members. Nor would he count the house after a question has been put from the chair, as the division will prove the number of members present.

A message from the sovereign, or the lords commissioners, for the purpose of giving the royal assent to bills, makes a house, without regard to the number present. Accordingly, when it is known that the attendance of the house in the House of Peers will be desired, the house meets at the time appointed and, if forty members are not present, the Speaker takes the chair of the Clerk of the house; and when the knock of the Black Rod upon the outer door of the house is heard, the Speaker, although forty members are not present, takes the chair, receives the message delivered by the Black Rod, and passes onward to the House of Peers. On his return the Speaker resumes the chair, makes his report to the house; and, as the house has been made, business may be proceeded with, until, on notice taken, it is proved that forty members are not present.

Order in the transaction of business.—On the morning following a sitting of the house, the record of the transactions of the past sitting, styled “The Votes and Proceedings,” is delivered at every member’s residence, together with the notice paper of the house, which con-
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Order in transaction of business.

Tains the appointed business for the next sitting, both private and public, together with the notices of motion which were handed in at the table during the past sitting. On every Saturday during the session each member receives a notice paper which contains all the notices of motion, and orders of the day, that are set down for the consideration of the house during the remainder of the session; and both these notice papers, namely, for the business of the day, and for the business of the session, are placed upon the table during the sitting of the house, and are distributed to members.

When the house meets on ordinary occasions, daily prayers having been read (see p. 155), the private and public business of the house is taken in their appointed order: 1. Private business; 2. Public petitions; 3. Unopposed motions for returns; and such motions as may be taken either before the commencement, or at the close of public business (see p. 235); 4. Motions for leave of absence; 5. Notices of motions; 6. Questions to members; 7. Motions for the adjournment of the house under standing order No. 17; 8. Motions at the commencement of public business; followed by the orders of the day, and notices of motions, as set down on the notice paper for that day's sitting.

The consideration of these matters, in their appointed order, is followed by an explanation of the procedure of the house regarding the orders of the day (p. 247), and on notices of motions (p. 250); the revival of a proceeding taken off the notice paper by the action of the house (p. 250); and the orders and other arrangements made by the house to forward the transaction of business (p. 252).

A statement of the practice regarding incidental interruptions that may arise during the transaction of business, and motions relating to privilege, forms the concluding portion of this chapter (p. 256).

1 Since Feb. 1865, the notice paper has comprised the orders of the day for the whole session, 177 H. D. 3 s. 323. The daily printing of the notice paper was begun in 1856.
1. **Private business.**—So soon as prayers are concluded, the private business of the house commences by the presentation of petitions for private bills. Then the Speaker calls upon the Clerk at the table to read the titles of the private bills appointed for that day's sitting; and members rise to move the motions relating to private business of which they have given notice, according to the order in which the motions are arranged on the paper.

The notice paper containing the orders of the day, and notices of motions relating to private business, and to provisional order bills, is prepared by the Private Bill Office, in pursuance of the provisions of standing orders (Private Business) Nos. 225 and 225a, and of the orders of the house, and under instructions received from the chairman of ways and means, and from the parliamentary agents.

Pursuant to the rule prescribed by standing order No. 207 (Private Business) (see p. 694), if an order of the day, or a notice of motion placed upon the notice paper of private business, when read or called on, is met by an announcement, made by a member rising in his place, that it is opposed, the proceeding is deferred until a subsequent day, which may again be deferred before that day is reached. When the member who gave a notice of motion, which has been deferred on account of opposition, materially alters the form of such notice, the motion becomes subject to this rule; and, if objection be taken, the consideration of the altered motion is again postponed to a future day. On the other hand, when a notice of motion, which had been deferred on account of opposition, appeared the next sitting day upon the notice paper in the same form, but in the name of another member, an objection, that it was therefore a new notice, was overruled.

When, in breach of an arrangement that the second reading of a private bill should be postponed, by inadvertence the bill was read a second time, on notice taken

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1 142 C. J. 286.  
2 Sutton Water Bill, 142 ib. 181.  
197; Birmingham Corporation Water Bill; Notices, Private Business, pp. 239. 265; 1st and 4th April, 1892, 147 C. J. 152; 3 Parl. Deb. 4 s. 585.
thereof, the entry of the second reading was read, the proceeding was rendered null and void, and the bill was set down for second reading upon a future day.\(^1\)

Motions and orders of the day relating to provisional order bills are, when opposed, dealt with by the house in conformity with the procedure which regulates the transaction of private business.

2. \textit{Presentation of public petitions}.—When private business is concluded, the Speaker calls on the members to present petitions who have intimated to him their desire to do so; or who have entered their names on a list headed "Public Petitions," which is placed on the table of the house. When all the names on the list have been called, any member may rise and present a petition in the interval between the close of private business and the commencement of public business;\(^2\) but not so as to interrupt the giving of notices, or the asking of questions; nor is the public presentation of petitions permitted after five o'clock, unless they relate to a motion upon the notice paper, or to an order of the day. In those cases petitions may be presented when the mover of the motion is called on, or when an order of the day is read for the first time, but not after the question consequent thereon has been proposed, or on resuming an adjourned debate.\(^3\)

3. \textit{Unopposed returns}.—From the time when the presentation of petitions begins, until the commencement of public business, if the house be not otherwise engaged, motions may be made for unopposed returns of which notice stands upon the notice paper for the day, which, when the house meets at two o'clock, includes for this purpose the notices set down for the nine o'clock sitting.

If a member who desires to make such a motion enters his name upon a paper which lies upon the table, headed "unopposed returns," his name will be called by the

\(^{1}\) 19th Feb. 1884, 139 C. J. 57.

\(^{2}\) Speaker's ruling, 19th March, 1868, 190 H. D. 3 a. 1893.

\(^{3}\) On one occasion the motion made upon an order of the day was temporarily withdrawn in order to enable a member to present a petition relating thereto, 10th April, 1856, Education, 111 C. J. 131.
NOTICES OF MOTIONS.

Speaker before the time appointed for giving notices of motions (see p. 230). A member may, if duly authorized, make this motion in behalf of another member, in his absence. Before an unopposed return can be moved, the Speaker should be made aware that the department which furnishes the return has notified its consent; and if an order for a return is obtained as unopposed, without such consent, the order may be struck out of the minute books by the Speaker's direction, or on a subsequent day the order may be read and discharged. If a motion for an unopposed return, made during the time before the commencement of public business, is opposed, though official consent may have been given, the motion must be deferred until, during the course of the sitting, notices of motions are called on in their regular order.

4. Motions for leave of absence.—These motions, notice having been given (see p. 235), may be moved before the commencement, or after the close, of public business.

5. Notices of motions.—By a practice dating from the beginning of this century, the terms of a substantive motion, when moved in the House of Commons, should be stated, and printed on the notice paper of the house. It is not sufficient, in the case of a substantive motion, or of an amendment on going in to the committee of supply (see p. 571), to give notice that attention will be called to a matter, and that a resolution, or a return, or a select committee will be moved thereon, unless the actual terms are stated of the motion that is to be submitted to the house. Of charges affecting personal character or conduct, no form of notice is permitted, save a specific notice of a substantive motion, which distinctly formulates the charges (see p. 263). No debate is permitted when notice of an intended motion is given to the house. A substantive

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1 3rd and 27th Feb. 1806, Lord Colchester's Diary, ii. 35, 41; 6 H. D. 1 s. 229; see also 12th March, 1836, 31 H. D. 3 s. 1154.
2 28th March, 1871, 205 lb. 774.
3 On the 30th April, 1792, the Speaker allowed Mr. Grey to make a speech on giving notice of a motion on the subject of parliamentary representation, which was followed by a debate. He said to Mr. Pitt, "that in strictness it was not allowable;
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motion, as a rule, must be moved by the member in whose name the notice stands (see p. 250).

No notice of motion may be fixed, under standing order No. 19, for a day which lies beyond the interval of time included within the “four days next following on which notices have precedence; due allowance being made for any intervening adjournment of the house.” Tuesday is the day on which notices of motions have precedence over the orders of the day (see p. 246); and for the purposes of this rule, Friday, when amendments can be moved on going into the committee of supply, is also held to be a day on which notices have precedence.¹

Following this method of computation, no notice can be given for a day beyond the fourth Tuesday or Friday that occurs after the day on which the notice is given in the house. The “due allowance” in that calculation “for any intervening adjournment of the house,” permitted by the standing order, is designed to meet the occasion of a lengthened adjournment of the house, such as an Easter or Whitsuntide adjournment. Under this provision, so soon as the motion for the adjournment is agreed to, notice can be given for any Tuesday or Friday which is not beyond the fourth Tuesday or Friday upon which the house will sit, including in that calculation such Tuesdays and Fridays as occur after the conclusion of the period of adjournment. Thus, for example, if it be intended, on the Thursday, to move the adjournment of the house until the Monday next after Easter Monday, a member cannot, on the preceding Tuesday, give notice for a day beyond the fourth Tuesday in advance: but so soon as the house has agreed, on Thursday, to adjourn, at its rising, over the next ten days, notices may be given for the four next notice days which occur after the adjournment.

but that it was the spirit of his duty to consult the wishes of the house," Lord Sidmouth's Life, 88. On the 5th July, 1872, a member, on rising to give a notice, proposed to raise a debate thereon, but was at once stopped by the Speaker, 212 H. D. 3 s. 698. And so again 7th July, 1876, 230 ib. 1135; 28th June, 1887, 316 ib. 1222.

¹ 191 ib. 20. 53.
Public notice may be given of an intended motion, if the time of the house be not otherwise engaged, after the consideration of private business is concluded, and before the commencement of public business, or subsequently, after the close of public business. Notices of motion may also be given at any time during the sitting of the house, by delivering the terms of the motion, in writing, at the table.\(^1\)

If a member desires to obtain precedence upon the day when he proposes to bring on a notice of motion, he enters his name on the ballot paper, which is, at the meeting of the house, placed upon the table for that purpose. Notice may be given in behalf of a member, at that moment absent from the house;\(^2\) and in that case, the member who gives the notice enters upon the paper the name of the member for whom he acts, answers for him when the name is called, and delivers at the table the written notice in his behalf. The name or signature of a member must not appear more than once upon the ballot paper.

As has been mentioned (p. 170), it is at four o'clock that the house, on the opening day of a session, resumes the transaction of business; and the ballot for notices of motion on the first day of a session is accordingly taken at half-past four o'clock. Members of the government can claim priority in giving notice, whenever they make announcements relative to public business; and on the first day of the session they give their notices before the ballot.\(^3\) But they do not avail themselves of this privilege to anticipate other members on the Tuesday or Wednesday sittings,

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\(^1\) On the 11th April, 1854 (the last day before the Easter recess), it was ordered “that members wishing to move amendments to the Oxford University Bill, do send them to the Clerk of the house on or before Monday, the 24th day of this instant April, and that the same be printed and circulated with the votes.”

\(^2\) 27th April, 1843, 68 H. D. 3 s. 1002.

\(^3\) On the 26th Feb. 1867, this privilege gave ministers a strategic advantage over their opponents. Mr. Gladstone desired to give notice of an amendment for the 28th, on going into committee to consider resolutions on the representation of the people; but before the ballot, he was anticipated by the chancellor of the exchequer, who rose and announced, with reference to public business, that he should not ask the house to proceed with that committee.
days that are set apart for the business of unofficial members (see p. 246).

When the house meets at three o’clock, if private business is concluded, the ballot takes place at half-past three, or at a quarter past towards the close of the session. At other sittings of the house the ballot is taken immediately after the close of private business, or, if no private business is set down for consideration, so soon after prayers as suits the convenience of the house.

Numbers are assigned by the ballot paper to the names or signatures of the members intending to give a notice, and slips of paper bearing corresponding numbers are folded up and placed in the ballot box. When the Speaker has called on members to give their notices of motions, the clerk assistant, having shuffled the slips of paper, draws them out, one by one, and notifies to the house the number that has been drawn out. The Speaker thereupon announces the name of the member to whose signature that number is attached upon the ballot paper; and, following the Speaker’s call, each member, in his turn, rises and states the notice which he gives, and the day that he has chosen for the motion. He afterwards hands to the second clerk assistant the notice, fairly written out, specifying the day for which the notice is given. When the ballot paper has been called over, members whose names were thereon, and other members, may give further notices.

Notice of a motion may be given in general terms, unless it involves a personal charge, and, with this exception, it is not necessary that the written notice should originally comprise all the words of the intended motion: but if the subject be generally stated in the first instance, a notice of the motion, precisely as it is intended to be proposed, should be delivered at the table some days before, or, at latest, during the sitting preceding the day appointed

1 In 1876, attention being called to a combination by several members to give notice of the same motion, to secure an undue priority for that motion in the ballot, the practice was condemned from the chair as irregular, and an evasion of the rules of the house, 9th March, and 19th and 22nd June, 1876, 227 H. D. S. s. 1718; 230 ib. 14. 260; 277 ib. 376.
for the motion.\(^1\) And this practice applies to notices of
amendments on going into committee of supply, which in
this respect are treated as motions (see p. 574).

A modification of a notice of motion standing upon the
notice paper is permitted, if the amended notice does not
exceed the scope of the original notice. If a motion is
proposed, which differs materially from the terms of the
notice, it can only be made with the consent of the house,
or upon a renewal of the notice.\(^2\)

No positive rule has been laid down as to the time which
should elapse between the notice and the motion;\(^3\) but
some interval is generally assigned to motions that may
provoke debate. Notices of motions for leave to bring in
bills, or for other matters to which probably no opposition
will arise, are frequently given during the day before the
sitting on which they are submitted to the house. Notices,
unless consequent on government business (see p. 249),
cannot be given during a two o'clock sitting for the nine
o'clock meeting of the house.\(^4\)

Should a member desire to change the day for which he
first gave notice, he must defer the notice to a more distant
day, it being irregular to fix an earlier day than that
originally chosen;\(^5\) nor can this rule be evaded by
changing the motion into an amendment to another
question.

As the notice paper is published by authority of the
house, a notice of a motion or of a question to be put to a
member, containing unbecoming expressions, infringing its
rules, or otherwise irregular, may, under the Speaker's
authority, be corrected by the clerks at the table.\(^6\) These
alterations, if it be necessary, are submitted to the Speaker,
or to the member who gave the notice. A notice wholly out of order, as, for instance, containing a reflection on a vote of the house,\textsuperscript{1} may be withheld from publication on the notice paper, or, if the irregularity be not extreme, the notice is printed, and reserved for future consideration; though, in such cases, it is not the duty of the clerks at the table to inform the member who gave the notice, of an informality that it may contain.\textsuperscript{2} When a notice, publicly given, is obviously irregular or unbecoming, the Speaker has interposed, and the notice is not received in that form;\textsuperscript{3} and he has also directed that a notice of motion should not be printed, as being obviously designed merely to give annoyance.\textsuperscript{4} If an objection be raised to a notice of motion upon the notice paper, the Speaker decides as to its regularity; and, if the objection be sustained, the notice will be amended or withdrawn.\textsuperscript{5} The house has also, by order, directed that a notice of motion be taken off the notice paper.\textsuperscript{6}

Except in the case of an unopposed return, a motion for a leave of absence, and of a notice standing in the name of a member of the government, which may be moved by a colleague (see p. 250), no notice of motion, or amendment which requires notice, can be moved by a member other than the member in whose name the notice stands.

*Motions made without notice.*—The house can waive the Waiver of notice.

\begin{itemize}
\item \textsuperscript{1} 29th July, 1888, 329 H. D. 3 s. 158.
\item \textsuperscript{2} 7th April, 1892, Mr. Speaker's ruling; communication regarding an irregular question is made to members if the pressure of business permits, 16th June, 1882, 270 H. D. 3 s. 1409; 1st April, 1887, 313 ib. 232–234.
\item \textsuperscript{3} 12th Feb. 1861, 161 H. D. 3 s. 342; Mr. Rearden's notice, 22nd May, 1868, 192 ib. 711; 212 ib. 706; 223 ib. 607; Dr. Kenealy, 5th April, 1878, 239 ib. 669; and similar cases, 15th July and 25th Aug. 1881, and 2nd Nov. 1882, 263 ib. 1012; 265 ib. 880; 274 ib. 632.
\item \textsuperscript{4} Notice of a return of the conviction of Mr. King-Harman for an assault, 21st Feb. 1888, Mr. Speaker's ruling.
\item \textsuperscript{5} 228 H. D. 3 s. 1183; 250 ib. 1313; 267 ib. 388.
\item \textsuperscript{6} 90 C. J. 435.
\end{itemize}
following illustrations can be cited, taken from motions relating to public business. The house, 6th May, 1836, by general concurrence, resolved itself into the committee of ways and means to receive the financial statement of the session, although the order for that committee had not been appointed for that day.\(^1\) Motions have been made without notice, which altered the time when the next sitting of the house was held, or which regulated the adjournment of the house,\(^2\) or gave precedence either to orders of the day or to notices of motions, such motions being made either at the close of the sitting prior to the day when the order would operate, or at the opening thereof.\(^3\) So also, without previous notice, the standing order regulating a Wednesday sitting was read and suspended upon the foregoing Tuesday; and in like manner, on a Friday, an order was made whereby priority was given to the consideration of a bill at nine o'clock, over the order of the day for the committee of supply.\(^4\) A notice of motion which stood on the notice paper for the day's sitting, to be taken at nine o'clock, has been moved at the commencement of the two o'clock sitting;\(^5\) and, as is mentioned elsewhere (see p. 577), estimates were considered in the committee of supply, without the customary notice.\(^6\) A motion to give immediate effect to a resolution of the house has also been moved without notice; for instance, when the house having rescinded and discharged the order for the appointment of a select committee, an order was made immediately for the reappointment of the committee with altered terms of reference;\(^7\) and a motion to rescind the committal of a bill to a standing committee was made in like manner.\(^8\)

\(^{1}\) 91 C. J. 330.
\(^{2}\) 128 ib. 355. 397; 146 ib. 410; 147 ib. 137. The resolution, 11th Feb. 1893, that the Speaker should adjourn the house without question put, was moved without notice.
\(^{2}\) 107 C. J. 520; 10th Feb. 1880, 250 H. D. 3 s. 386; 9th May, 1892, 147 C. J. 229.
\(^{4}\) 120 ib. 449; 122 ib. 365.
\(^{5}\) 27th July, 1875, 226 H. D. 3 s. 94. 127; 133 C. J. 183.
\(^{6}\) See also Mr. Ducane's motion, 156 H. D. 3 s. 1473.
\(^{7}\) Committee Conventual Institutions, 2nd May, 1870, 201 ib. 79.
\(^{8}\) Employers' Liability Bill, 4th May, 1893.
Certain formal motions which are necessary for the due transaction of business are also made without notice, before the commencement, or after the close of public business, such as motions for a new writ (see p. 598); for the first reading of bills received from the House of Lords (see p. 441); for the consideration of Lords' amendments forthwith, or upon a future day (see p. 475); for the postponement, the discharge, or the revival of an order of the day (see p. 250); for the presentation of a new bill in lieu of a bill for which the order has been discharged (see p. 444); for the appointment of a committee, upon a future day, to consider a charge upon the public exchequer (see p. 528); for returns or papers to be presented forthwith (see p. 512). On the presentation of a petition for the production of evidence in the possession of the house (see p. 407), unless objection be taken, a motion is made thereon to carry out the object of the petitioners.¹

Motions arising out of a matter of privilege (see p. 258), or to appoint a committee on a matter of privilege (see p. 383), are also moved without notice.²

Motions of which notice is requisite.—Previous notice of certain motions is prescribed by the standing orders, namely, notice must be given of new clauses on the report of a bill; of a motion or an amendment regarding the nomination of members for service on select committees, or for constituting a select committee of more than fifteen members; of a proposed addition to a committee (see p. 383); and for the circulation of a petition with the notice paper of the house (see p. 505).

Pursuant to established usage, notice is requisite in the following cases, namely, a motion granting leave of absence to a member; to discharge a member from attendance on a select committee,³ when not moved pursuant to

¹ 12th June, 1882, 270 H. D. 3 s. 805.
² For restriction on motions affecting the service of members on select committees who have been nominated by the committee of selection, see p. 382.
³ No notice can be given of an intention to move the adjournment of the house under standing order No. 17 (see p. 240).
the report of a committee; an amendment to the question for going into the committee of supply (see p. 571); an instruction to a committee, and an amendment which enlarges the scope of an instruction (see p. 445); and motions to rescind a resolution of the house, or to expunge or alter the form of an entry in "The Votes and Proceedings," except under certain conditions, as in the case of a privilege motion (see p. 287).

6. Questions put to members.—Notice of a question to a member is usually placed upon the notice paper,\(^1\) unless the question relates to a matter of urgency or to the course of public business. The custom, formerly in vogue, of giving notice of questions by reading the question aloud, is, under standing order No. 20, no longer allowed. Consequently, notice of a question is given by delivering the terms thereof in writing to the clerks at the table, though, the sanction of the Speaker having been first obtained, a notice of a question may be read to the house.

Irregularities in a notice of a question are dealt with in the manner adopted regarding notices of motions (see p. 232), and are corrected at the table, or reserved for consideration.\(^2\) By the Speaker's order, when the number of questions addressed by a member to a minister exceeded a reasonable limit, the notices have been removed;\(^3\) and questions of excessive length have not been permitted.\(^4\) The Speaker also has called the attention of the house to an alteration made by his direction in a question.\(^5\) As regards questions addressed to the Speaker, no written or public notice of such a question is permissible; nor can any appeal be

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\(^1\) For the earliest known example of a question put in Parliament, see n. 1, p. 206. It was not until 1849 that a special place was assigned to questions on the notice paper. No example of a printed question exists before 27th Feb. and 25th March, 1835.

\(^2\) 24th May, 1878, Dr. Kenealy, 212 H. D. 3 s. 700; 223 ib. 607; 240 ib. 651; 15th July, 25th Aug. 1881, 263 ib. 1012; 265 ib. 880; 2nd Nov. 1882, 274 ib. 632; 1st April, 1887, 313 ib. 232-234.

\(^3\) See twenty-eight notices of questions placed by a member on the notice paper, 19th March, 1890, removed owing to a communication from the Speaker.

\(^4\) 26th July, 1887, 318 H. D. 3 s. 43.

\(^5\) 12th Feb. 1861, 161 ib. 342.
made to the chair by a question, save on points of order as they arise, or on a matter which urgently concerns the proceedings of the house.¹

Questions addressed to ministers should relate to the public affairs with which they are officially connected, to proceedings pending in Parliament, or to any matter of administration for which the minister is responsible. Within these lines an explanation can be sought regarding the intentions of the government, but not for an expression of their opinion upon matters of policy.² An answer to a question cannot be insisted upon, if the answer be refused by a minister on the ground of the public interest;³ nor can the question be replaced upon the notice paper. Questions may be asked of the ministers who are the confidential advisers of the Crown, regarding matters relating to those public duties for which the sovereign is responsible: but no question can be put which brings the name of the sovereign or the influence of the Crown directly before Parliament, or which casts reflections upon the sovereign.⁴

By usage also questions may be addressed to members who are placed on royal commissions, or are trustees of the British Museum, if relevant to their official duties or position.⁵ This usage, which formerly included members of the Metropolitan Board of Works, is not extended to members of the London County Council,⁶ nor to members of the London School Board.

Questions addressed to unofficial members must relate to a bill, motion, or other matter connected with the business of the house.

¹ 155 H. D. 3 s. 870; 198 ib. 368; 17th May, 1881, 261 ib. 695; 3rd and 6th July, 1882, 271 ib. 1264. 1622; 24th March, 1884, 286 ib. 616.
² See Speaker's ruling, 22nd Feb. 1849, 102 H. D. 3 s. 1100; and 155 ib. 1345; 203 ib. 242; 204 ib. 1764; and 22nd May, 1862, 168 ib. 2027; 29th April, 1864, 174 ib. 1914; 17th Dec. 1878; 23rd June, 1879, 247 ib. 430. See also p. 853.
⁴ 22nd May, 1863, 192 H. D. 3 s. 711; 5th Aug. 1887, 318 ib. 1373.
⁵ To the chairman or other members of royal commissions, 18th Feb., 12th March, 1868, 12th April, 1869, 15th Feb., 11th April, 30th June, 1870, 28th March and 25th May, 1871. To trustees of the British Museum, 26th April, 1869, 6th and 16th May, 1870, 234 H. D. 3 s. 1239; 235 ib. 684.
⁶ 25th March, 1889, 334 ib. 712.
of the house in which such members are concerned;\(^1\) though a question addressed to a member, the leader of the opposition, inquiring the course he intended to adopt regarding a motion by the government, was not allowed.\(^2\) Although questions may not be asked regarding statements made by members outside the house,\(^3\) a question to an unofficial member has been permitted regarding a circumstance alleged to have happened outside Parliament, because it impugned the veracity of a member in respect to a statement made by him in the house.\(^4\)

The purpose of a question is to obtain information, and not to supply it to the house.\(^5\) A question may not contain statements of facts, unless they be necessary to make the question intelligible, and can be authenticated; nor should a question contain arguments, inferences, imputations, epithets, nor ironical expressions. Nor may a question refer to debates, or answers to questions in the current session.\(^6\) Discussion in anticipation upon an order of the day or other matter, by means of a question, is not permitted;\(^7\) nor can a question be asked regarding proceedings in a committee which have not been placed before the house by a report from the committee.\(^8\) A question cannot be placed upon the notice paper which publishes the names of persons or statements not strictly necessary to render the question intelligible.\(^9\) The expression of an opinion cannot be sought for by a question, nor the solution of an abstract legal case, or of a hypothetical proposition. Nor is it in order to ask merely whether certain things, such as statements made in a newspaper, are true: but attention may be drawn to such

\(^1\) 29th April, 1864, 174 H. D. 3 s. 1914; 192 ib. 717.
\(^2\) 28th June, 1880, 253 ib. 974.
\(^3\) 8th Feb. 1872, 209 ib. 141; 27th April, 1876, 228 ib. 1738; 3rd April, 1882, 268 ib. 556; 5th Aug. 1887, 318 ib. 1382.
\(^4\) 19th April, 1887, 313 ib. 1249.
\(^5\) The Speaker, Times, 11th March, 1893.
\(^6\) H. D. 12th June, 1853 (Sir F. Baring); 4th, 11th, and 18th May, 1855, 17th July, 1857, 25th Aug. 1860, 160 ib. 1827; 6th May, 1864, 175 H. D. 3 s. 101; 14th July, 1870, 203 ib. 242; 10th March, 1871, 204 ib. 1764; 206 ib. 1602; 208 ib. 781; 783. 842; 210 ib. 1088; 247 ib. 430; 270 ib. 1132.
\(^7\) 228 ib. 1557. 1766.
\(^8\) 21st June, 1883, 280 ib. 1147.
\(^9\) 5th July, 1880, 253 ib. 1632.
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statements, if the member, who puts the question, makes himself responsible for their accuracy.¹ No question can be asked which reflects on the character or conduct of those persons whose conduct, as stated on p. 263, can only be dealt with on a substantive motion;² and for the same reason, a question is not permitted, which makes or implies charges of a personal character.³ Nor can any question be asked regarding character or conduct except of persons in their official or public capacity.

In 1880, the practice of reading questions was discontinued, and the usage was established that members should put their questions by referring to the number it bears upon the notice paper.⁴ The Speaker calls on the members who have given notices of questions immediately before public business is entered upon, and after the ballot for notices of motions. As each member is called, he rises to put the question, or another member may do so at his request; and, without such request, a question should not be asked by a member who has not given notice of the question;⁵ although in case the member responsible for a question does not answer to the Speaker's call, a minister may rise and make such statement upon the question as the public interest demands. In like manner, a member, other than the member in whose name a question stands, which contains allegations affecting personal character or conduct, and therefore requiring prompt reply, may ask for an answer to the question,⁶ or a statement may be made thereon, although the question is not asked. Sometimes replies have been given to questions addressed to ministers on a previous day, without a repetition of the question.

An answer should be confined to the points contained in the question, with such explanation only as renders the

¹ 14th June, 1882, 270 H. D. 3 s. 1182; 26th Jan. 1886, 302 ib. 422.
² See Mr. Speaker's observations, 210 ib. 39; 213 ib. 554.
⁴ 253 ib. 1920; 235 ib. 411.
⁵ 5th June, 1883, 279 ib. 1756.
⁶ 1st April, 1886, 304 ib. 437.
answer intelligible, though a certain latitude is permitted to ministers of the Crown;¹ and further questions, without debate or comment, may, within due limits, be addressed to them, which are necessary for the elucidation of the answers that they have given.² The Speaker has called the attention of the house to the inconvenience that arises from an excessive demand for further replies,³ and, to hinder the practice, he has occasionally felt it necessary to call upon the member in whose name the next question stands upon the notice paper, to put his question.⁴ A question fully answered cannot be renewed.⁵

7. Motions for the adjournment of the house before the commencement of public business.—According to past usage, it was in the power of two members to move, and second, a motion for the adjournment of the house, rising for that purpose either whilst questions to members were being put, or at any moment before the commencement of public business, and to raise thereon a general debate.

Experience impressed upon the house the necessity of placing upon that power some restrictions.⁶ Accordingly, in 1882, standing order No. 17 was passed, and the following procedure and practice have been founded thereon. A motion for the adjournment of the house for the purpose of raising debate, may only be made when all the questions to members upon the notice paper have been disposed of, and before the commencement of public business. The member who desires to make such motion, having previously delivered to the Speaker a notice in writing of the definite matter of urgent public importance which is to be discussed,⁷ rises in his place, and asks leave to move for that purpose the adjournment of the house.

¹ 161 H. D. 3 s. 497; 174 ib. 1423; 209 ib. 466; 210 ib. 153. 596; 240 ib. 1617; 241 ib. 964.
² 211 ib. 1994; 212 ib. 298. 1624.
⁴ 6th March, 1888, 323 H. D. 3 s. 374.
⁵ 225 ib. 792. 952. 1142; 235 ib. 1797; 5th April, 1878, ib. 239; 7th March, 1884, 285 ib. 877.
⁶ 233 ib. 978; 234 ib. 33. 1301; 237 ib. 1589; 238 ib. 1951; 241 ib. 130.
⁷ 30th Nov. 1882, 275 ib. 407.
If the leave of the house be not unanimously given, the Speaker desires those members who support the motion to rise in their places; and if forty or more members rise accordingly, the Speaker calls on the member to make the motion. If, however, fewer than forty members, and not less than ten have so risen, the member may, if he thinks fit, demand a division, upon question put forthwith, to determine whether such motion may be made.

A motion under standing order No. 17 must be restricted to a single specific matter of recent occurrence; and as the matter to be discussed must be of an urgent nature, no notice should be given of an intention to resort to the motion on a future occasion. A matter submitted to the house in pursuance of this standing order, which fails to obtain the requisite support, cannot, during the same session, be again brought forward in the same manner; nor can more than one such motion for adjournment be made during the same sitting of the house. Though the responsibility of bringing forward a matter, as a matter of urgency, rests with the member who desires to exercise the right given by the standing order, still there must be some colour of urgency in the proposal; and the Speaker has declined to submit a motion for adjournment to the house because, in his opinion, the subject to be brought forward was not a "definite matter of urgent public importance." The Speaker also is bound to apply to these motions the established rules of debate, and to enforce the principle that subjects excluded by those rules cannot be brought forward thereon; such as a matter under adjudication by a court of law, or matters already discussed during the current session, whether upon a previous motion...

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1 30th Nov. 1882, 275 ib. 409; see Mr. Speaker's remarks, 13th June, 1892.
2 22nd March, 1887, 312 ib. 1196; 1st Sept. 1887, 320 ib. 751; 12th April, 1888, 324 ib. 1063; 24th April, 1888, 325 ib. 347.
3 22nd Jan. 1891, Speaker's ruling.
4 The Speaker's ruling (private), 10th April, 1891; also debates, 17th April, 1893.
5 14th Nov. 1882, 274 H. D. 3 a. 1447.
6 4th July, 1887, 316 ib. 1613; 12th June, 1890, 345 ib. 738.
7 275 ib. 26; 337 ib. 699.
MOTIONS FOR ADJOURNMENT.

for adjournment, upon a substantive motion, upon an amendment, or upon an order of the day. Equally, discussion cannot be raised on a motion for adjournment on any matter already appointed for consideration, or of which notice has been given; nor can exemption from this rule be obtained by a withdrawal of such matter from the notice paper at the commencement of the sitting on which the motion for adjournment is sought to be made.

In accordance, therefore, with this principle, when it was proposed to call attention, on a motion for adjournment, to the conduct of the government in deferring a statement of their intentions regarding the course of business, the Speaker declared that he should decline to put the motion, because it would anticipate an announcement of which notice had been given. The Speaker, also, when it was proposed to discuss the form of the estimates upon an adjournment motion, pointed out that the subject could be considered in the committee of supply for which he was about to leave the chair; and for the same reason motions for adjournment regarding the health of a prisoner, and upon the conduct of an official, subjects which were comprised in estimates appointed for that day's consideration, were ruled to be out of order.

So also the debates of the same session, or the terms of a bill before the House of Lords; a matter of privilege or order; or matters debatable only upon a substantive motion, cannot be submitted to the house under this standing order (see p. 263).

The provisions of standing order No. 17, which prescribe that a motion for the adjournment of the house cannot be made until the questions to members set down for the sitting are disposed of, do not preclude a motion for the immediate adjournment of the house made by a minister of the Crown, at any time before the commencement of public business, if occasion for the motion has arisen.

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1 8th July, 1889, 337 H.D. 3 s. 1697.
2 3rd March, 1891, Speaker's ruling (private).
3 12th June, 1890, 345 H.D. 3 s. 738.
4 341 ib. 1522.
5 339 ib. 1639; Speaker's ruling (private).
6 Newfoundland Fisheries Bill, sess. 1891, Speaker's ruling (private).
7 184 H. D. 3 s. 445.
8 6th Dec. 1884, 294 ib. 843-847.
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Commencement of public business.—Public business commences when the Speaker has called the member in charge of the first motion appointed to be taken at the commencement of public business, or which stands first upon the notice paper, or upon the Clerk, to read an order of the day. Consequently, after the Speaker’s call, no motion can be made for the adjournment of the house under standing order No. 17; nor, until the business set down for that sitting is concluded, can a notice be given, or, save with the indulgence of the house, can a question be asked.


—All motions relating to the business of the house, set down for consideration at the commencement of public business, must stand in the name of a minister of the Crown, except, by custom, the motion for the adjournment of the house over the Derby day. These motions are placed in the following order:

Firstly. Whenever, to meet the requirements of public business, immediate action on the part of the house is needed, upon an order obtained by a minister, orders of the day relating to the stages of a bill, such as a Consolidated Fund Bill, or to the consideration of a resolution on which the introduction of a bill is founded, are set down at the commencement of public business before all other orders of the day, or notices of motions.

Secondly. Motions relating to the business, or the arrangements of the house, come next in order upon the notice paper; and a motion for a vote of thanks, when moved by a minister of the Crown, is placed among these motions relating to the trans-
motions. These motions have precedence over any bill or other matter to which the house, by order, has given precedence over all the other orders of the day and notices of motions.

Thirdly. Pursuant to standing order No. 16, motions for leave to bring in bills, and for the nomination of select committees, are set down at the commencement of public business after the foregoing motions. The standing order sets apart for this purpose, Tuesdays and Fridays for unofficial members, and Mondays and Thursdays for members of the government. Such bills must be presumably non-contentious; and when such motions are opposed, the Speaker, after permitting, if he thinks fit, a brief explanatory statement from the member who moves, and from the member who opposes the motion, puts the question thereon without further debate, or else the question that the debate be now adjourned. The Speaker, pursuant to the standing order, reserves to himself the power of proposing the question for an adjournment of the debate, and only permits a brief reply to a speech from an opposer of the motion.

Motions and orders of the day touching a matter of privilege are placed upon the notice paper after these motions, and before the appointed business of the sitting.

The ordinary course of business.—The ordinary public business of the house consists of orders of the day, i.e. a bill or other matter which the house has ordered to be


1 Although, as a rule, previous notice is given of motions relating to the business of the house, previous notice is not essential in the case of motions for the adjournment of the house over Christmas, Easter, or Whit Sunday holidays (4th Dec. 1884, 4th April, 1871, 19th April, 1886, 13th May, 1869, 11th May, 1880, 15th May, 1891); and if notice is given of such motions, the notice may be placed either at the commencement of public business, or among the other notices of motion. Motion, 12th April, 1892, fixing the adjournment till 24th April at the conclusion of the sitting, 147 C. J. 182; also motion, 24th March, 1891, 146 ib. 178.

2 137 ib. 492; 14th May, 1887, 316 H. D. 3 s. 60.

3 6th March, 1893, Speaker’s ruling, Duration of Parliament Bill.

4 15th March, 1892, 147 C. J. 105.

5 10th Feb. 1891, 146 ib. 81.

6 14th July, 1891, 346 H. D. 3 s. 1615.

7 252 ib. 422. 438.
taken into consideration on a particular day; and notices of motions.

The relative precedence of orders of the day, and of notices of motions, is prescribed by the standing orders, or by such orders as the house may make from time to time.

According to the arrangement prescribed by the standing orders, upon Monday, Wednesday, Thursday, Friday, and two o'clock sittings, orders of the day are disposed of before notices of motions, not being motions set down at the commencement of public business. Upon Tuesdays, the notices of motions which are placed upon the notice paper for that sitting, are considered before the orders of the day. The orders of the day set down for Tuesday or Wednesday are usually, but not exclusively, the orders in the charge of unofficial members. By established usage, orders of the day are taken first when the house sits upon a Saturday.

The days on which government business has precedence are Monday, Thursday, Friday, and Saturday, when the orders of the day or notices of motions are placed in such sequence as the government may think fit, before other business set down upon the notice paper for those sittings; subject, on a Friday, to the priority of motions set down by unofficial members at the commencement of public business (see p. 244), and of the order of the day for the committees of supply or ways and means (see p. 246). When the house meets at two o'clock, subject to the power given to unofficial members by standing order No. 16, priority is given to government business, until the seven o'clock suspension of business takes place.

1 The first resolution giving precedence to orders of the day was in 1811, and applied to Monday and Friday only, 66 C. J. 148; 19 H. D. 106. 244. In 1885, it was extended to Wednesday.

2 117 H. D. 3 s. 1150. 1254; 212 ib. 22. 704.

3 The origin of government nights may probably be traced to the following order, 15th Nov. 1670: "That Mondays and Fridays be appointed for the only sitting of committees to whom public bills are committed; and that no private committee do sit on the said days," 9 C. J. 164; see also 1 ib. 523. 640 (Committee of Grievances, 1621).

4 Government bills on Saturdays, 9th Aug. 1878, 242 H. D. 3 s. 1640.
Priority, therefore, is given on Wednesdays to the orders of the day of unofficial members, and on Tuesdays to their notices of motions, and to their orders of the day, after such motions or orders as may be appointed for the commencement of public business. The Friday sitting is also practically placed at the disposal of unofficial members, as, unless the house shall otherwise order, while the committees of supply and ways and means are open, the first order of the day on Friday must be either supply or ways and means, and on that order being read, the question must be proposed for the Speaker’s leaving the chair. Friday is, in consequence, devoted to the motions of unofficial members, their motions assuming the form of amendments on going into committee of supply, with a contingent residue of time for the consideration of government business; and on this occasion an exception is made to the rule that government tellers should act, in support of the question that the Speaker should leave the chair for that committee, in case a division be taken thereon.\(^1\)

When two o’clock sittings are held, the orders of the day and notices of motions which would otherwise have been brought forward at the three o’clock sitting, are placed upon the notice paper for the nine o’clock sitting of the house. Notices of motions, previously appointed for a Tuesday, are therefore set down upon the notice paper for the nine o’clock sitting; and the committee of supply is placed first order for the sitting on Friday evening.\(^2\)

Bills and motions of unofficial members on government sittings. — Orders of the day in charge of unofficial members may be set down for every sitting devoted to government business, subject to the rights of the government, and to an arrangement usually made, on sittings on special occasions, such as a sitting on Saturday, that the

\(^1\) Mall Contracts, 12th March, 1869, 124 C. J. 80; Monastic Institutions, 31st March, 1876, 131 ib. 182; East India (Duty on Cotton Goods), 4th April, 1879, 134 ib. 136; Sale of Intoxicating Drinks on Sunday, 25th June, 1880, 135 ib. 247, also 138 ib. 154. 167; Contagious Diseases Acts, 20th April, 1883, 278 H. D. 3 a. 855.

\(^2\) Standing order No. 11 does not apply to morning sittings, 171 ib. 707.
time thus made available for business shall be devoted exclusively to government business: but a minister may give to a bill or motion, in charge of an unofficial member, a position among the government business.¹

Notices of motions, both official and unofficial, are placed upon the notice paper in the order imparted by the ballot, or in which they are handed in at the table, no priority as regards notices of motions being accorded to the government, save under the power of arranging their business given by standing order No. 10 (see p. 254).

Order of bills, other than government bills, after Whitsuntide.—After Whitsuntide, public bills, other than government bills, are arranged on the notice paper so as to give priority to the most advanced. Lords' amendments to bills received from the Commons are placed first, followed by third readings, the consideration of bills on report, bills in progress in committee, bills appointed for committee, and second readings. The order of bills standing at the same stage is decided, inter se, by the priority of their appointment for the day on which they appear upon the notice paper, and not by the date on which they reached their present stage.

Procedure upon the orders of the day.—Whenever orders of the day are the appointed business of the house, pursuant to standing orders Nos. 13 and 14, the Speaker directs the Clerk at the table to read the orders of the day, without any question being put; and the orders are thereupon disposed of, following the order in which they stand upon the notice paper, subject, however, to an interruption to the proceedings of the house (see p. 256).

A motion was formerly permitted, moved when an order of the day was read, that it, either singly or coupled with other orders of the day, be postponed to give priority to a notice of motion, or to another order of the day.² Such

¹ 30th July, 1873, 217 H. D. 3 s. 1256; 19th March, 1886, 303 ib. 1874; Land Tenure (Ireland) Bill, 151 C. J. 265; Sale of Intoxicating Liquor on Sunday (Ireland) Bill, 138 ib. 156; Contagious Diseases Acts Repeal (No. 2) Bill, 141 ib. 118.
² 3rd May, 1833, 107 ib. 186; 25th July, 1856, 111 ib. 386.
motion, however, is at variance with the provision of standing order No. 14, which prescribes that the orders of the day shall be disposed of in their appointed order; and the same objection applies to attempts that have been made, after an order of the day has been read, to obtain precedence for other orders of the day by means of an amendment moved to the question proposed from the chair.1

Accordingly, whilst the Clerk is reading the orders of the day, the proceedings thereon may not be interrupted by any other business or debate which members may endeavour to interpose.2 Nor can a motion for the adjournment of the house be made whilst the orders of the day are being read, i.e. neither upon an order of the day, nor in the interval between the reading one order and another.3 A motion for adjournment can, under such circumstances, only be made by a member of the government, because it is desirable that the house should adjourn forthwith.

When an order of the day has been read, it must thereupon be proceeded with, or appointed for a future day, or be discharged. The Speaker, therefore, calls upon the member in charge thereof, no other member being allowed to interpose, unless with his consent;4 or upon the member, in the case of an adjourned debate, who has moved the adjournment, if he rises to address the chair (see p. 298); and the Speaker, therefore, will not permit any question to be asked of a minister or other member when an order of the day has been read, unless it relates thereto.

As an order of the day results from the vote of the house upon a question put from the chair, the right to move an order of the day, to a certain extent, belongs to the house at large, and is not vested solely in the member who has charge of the order.5 In his absence, the question thereon

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2 7th Aug. 1872, 213 H. D. 3 s. 644.
4 Refreshment Houses Bill, 26th March, 1880, 157 H. D. 3 s. 1801; see also 160 ib. 349. Sir J. Ferguson, on the Representation of the People Bill, 7th June, 1860, 159 ib. 26.
5 5th May, 1886, 305 ib. 353.
may be moved by another member; or, in like manner, a
motion may be made that the order be deferred to a future
day, though not to a remote date, in order to defeat the
bill. Nor, on these occasions, can a motion be made in
contradiction to any intimation regarding an order of the
day, which the member in charge thereof has made at the
table. The revival of an order of the day (see p. 251), when
it has been removed from the notice paper by an adjourn-
ment or other action on the part of the house, is usually
reserved for the member in charge thereof.

When the house has appointed a day for the consideration
of a bill or other matter, no earlier day can afterwards be
substituted. This rule is enforced, even when a day had
been named by mistake, and though no objection was raised
to the appointment of an earlier day. If, however, an
error has arisen in the postponement of an order of the
day, whilst the orders are being read, by an appeal to the
Speaker, the transfer of the order of the day to an earlier
day than that originally named has, under the circumstances,
been allowed.

Orders of the day which, owing to the suspension of a
sitting, or to an adjournment of the house, have not been
read at the table, are, pursuant to the standing orders, set
down upon the notice paper after the orders of the day
appointed for the next sitting of the house; subject to the
right of the government to arrange the order of their
business, whenever such business has priority. Orders of
the day not disposed of at a two o'clock sitting are ac-
cordingly set down for the sitting at nine, when the con-

1 420 H. D. 3 s. 1157.
2 Mr. Speaker's ruling (private),
13th May, 1866. In the absence of
the member in charge, a motion has
sometimes been made, without notice,
to discharge the order for the second
reading of the bill. This practice
has been strongly discountenanced
from the chair, 22nd May, 1873, 216
H. D. 3 s. 276. An amendment to
the same effect, to a formal question
for the postponement of a bill, has
been discouraged no less distinctly,
4th June, 1875, 224 ib. 1236, and
again, 240 ib. 1675.
3 London, Chatham and Dover
Railway Bill, 6th July, 1863. In
this case the standing orders were
suspended in order to accelerate the
next stage of the bill, 118 C. J. 287;
172 H. D. 3 s. 246; 305 ib. 379.
* Vehicles Lights Bill, 31st July,
1898, Parl. Deb.
4 16th March, 1888, 323 ib. 1538.
sideration of estimates in the committee of supply, of
which notice stood upon the notice paper for the two
o'clock sitting, can be resumed; and the government can,
at seven o'clock on a Friday, in other respects, rearrange
their orders of the day upon the notice paper for the sitting
of the house at nine o'clock.

Procedure on motions.—Motions, not being on a matter of
privilege (see p. 258), or for unopposed returns, are called
over by the Speaker according to the order in which the
notices stand upon the notice paper; and if a member
does not rise when his name is called, he cannot subse-
sequently ask that his name should be called again, for the
purpose of moving the motion of which he had given notice.
A member of the government may act in behalf of a col-
league, in all cases, including the proposal of new clauses
on the report stage of a bill;¹ but, with this exception, or
in the case of an unopposed return, or of a motion for a
leave of absence, no motion can be moved save by the
member in whose name the notice stands. The power of
moving a motion, in terms that differ from the notice
standing upon the paper, has been defined on p. 232.

Revival of orders of the day.—When an order of the day
has been read, the proceedings thereon may be cut short
by the adjournment of the house whilst those proceedings
are in course of transaction. An order of the day, in such
a case, or if, when the order is read, no day is appointed
for its future consideration, drops from off the notice paper,
as the house has made no order thereon; and in committee
the same result may be produced, either by a failure of a
quorum of the house,² or by a resolution directing the

¹ On the 12th May, 1864, in the
absence of Lord Palmerston, Sir G.
Grey was permitted to move the
postponement of the orders of the
day, and make a motion relating to
inspectors of schools. On the 28th
Nov. 1867, in the absence of the
chancellor of the exchequer, Mr.
Hunt, the secretary of the treasury,
made his financial statement in
committee of ways and means. On
the 24th Feb. 1881, in the absence
of Mr. Gladstone, first lord of the
treasury, the Speaker ruled that it
would be competent for any minister
of the Crown to make the motion
that stood in Mr. Gladstone's name,
258 H. D. 3 s. 1864; 176 lb. 2034.
² 110 C. J. 449.
chairman to leave the chair (see p. 369). To replace a dropped order of the day upon the notice paper, a motion is made before the commencement, or after the close, of public business, to appoint the order for a subsequent day; and these motions are made without notice (see p. 235). If on such order of the day procedure had been commenced and interrupted, the proceeding thus revived is set down for resumption at the position indicated by the last decision of the house entered upon the votes and proceedings. If, however, it is essential that proceedings on an order of the day, cut short by an unexpected adjournment, should be resumed at the next sitting, to obtain that object a notice of motion is placed for that purpose, in the name of a minister of the Crown, upon the notice paper for the next sitting, at the commencement of public business; and the dropped order is placed, printed in italics, at the head of the list of the orders of the day. A motion for the resumption of a dropped order is usually put as a purely formal motion. If debate thereon occurs, it must be strictly limited to the precise object of the motion.

An order of the day may be superseded by the vote of the house, as, for instance, when an amendment embodying an abstract proposition is substituted for the question that a bill be read a second time, or for the question that Mr. Speaker do leave the chair for the committee of supply. In such a case, if it be deemed expedient to revive the order for the second reading of a bill (see p. 448), a motion can be made to that effect at a subsequent sitting; though, when the order for the committee of supply is superseded by

1 Joint Stock Companies Bill, 22nd and 23rd June, 1864, 176 H. D. 3 s. 99. 101; see also Court of Chancery (Ireland) Bill, 119 C. J. 348. 351; 120 ib. 225. 352; 121 ib. 78; 122 ib. 377. 404; Supply, 125 ib. 280. 284; 145 ib. 305. 307.


3 26th June, 1876, 230 H. D. 3 s. 431; Mr. Speaker's explanation, 235 ib. 203. 261; 131 C. J. 282. 283; 132 ib. 294. 296; 133 ib. 212. 213; 140 ib. 239. 240; 144 ib. 112. 115; debate on Special Commission Report, 1888; 10th March, 1890, 342 H. D. 3 s. 347; 145 C. J. 81. 83.

4 14th July, 1884, 290 H. D. 3 s. 934.
an amendment, an immediate sitting of the committee can be appointed (see p. 575).

Renewal of notices of motions.—A notice of motion standing upon the notice paper for the day's sitting which is not brought on before the adjournment of the house, disappears from the paper, unless the member in whose name the notice stands, or a member in his behalf, gives a direction at the table for the replacement of the notice upon the notice paper for a future day.

Special arrangements for the transaction of government business.—Soon after the commencement of each session the general regulations established by standing order No. 1 for the meeting of the house at three o'clock, are partially set aside by those sittings held on Tuesday and Friday, when the house meets at two o'clock in the afternoon, suspends sitting at seven o'clock, and resumes the sitting at nine in the evening. By this arrangement, as has been explained, the first portion of those sittings is placed at the disposal of the government for motions, or orders of the day, whilst the nine o'clock sittings are assigned to unofficial business, though, on Friday, the time after the debate on going into committee of supply, is at the disposal of the government.

The appointment of these two o'clock sittings, to be held every week during a fixed time, is made pursuant to an order of the house obtained upon a motion made, upon a printed notice, at the commencement of public business. An occasional two o'clock sitting may be obtained, in like manner, or by a motion made when the order of the day is called on, that it be set down for consideration at two o'clock upon a future day,—a motion that should be made during the time set apart for opposed business, as after midnight opposition might prevent a decision being taken on the proposal. When a two o'clock sitting has been fixed, and it proves desirable that the house should revert to a three o'clock sitting, the change is made by an order of the house.

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1 Debates, 21st March, 1893. 2 Speaker's ruling, 3rd March, 1898. 3 145 C. J. 239; 147 ib. 200. 4 145 ib. 226.
A Saturday sitting may be obtained upon the motion of a minister of the Crown, namely, that the house shall sit on that day, or the appointment of an order of the day, or of other matter of business for an ensuing Saturday, or by a motion made on a Friday, that the house at its rising do adjourn till to-morrow.

Motions to facilitate the transaction of the business of the house are, as has been explained (p. 243), set down upon the notice paper to be taken at the commencement of public business. Priority is sometimes sought for government business, either generally or for specified orders of the day, whenever the same are set down upon the notice paper; and this object is attained, either by the actual suspension of a standing order, or by an order of the house which prescribes a course of action inconsistent therewith (see p. 145). Thus the Tuesday and Friday sittings, which, when the house meets at three o'clock, are, by standing orders Nos. 10 and 11, devoted to motions, or to debate on going into committee of supply, may be appropriated for a specified order of the day, or for government business generally.

As the provisions of standing order No. 11, which assign priority on a Friday to the order for the committee of supply, are thereby set aside, the order for supply is not of necessity placed second on the list of orders of the day, as it is wholly freed from the conditions imposed by the standing order. On Tuesdays, however, notices of motions are called on as soon as the specially appointed business for the sitting has been disposed of.

As it is prescribed by standing order that the committee of supply must be the first order of the day on a Friday, the displacement of that order of the day to make room for the transaction of other business should be effected by a

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1 7th Dec. 1888, 331 H. D. 1486.
2 25th March, 1870, 2nd Aug. 1872, 212 H. D. 3 s. 1853.
3 On an occasion of this kind, the notices of motions and certain orders of the day, which were deprived of their priority on a Tuesday, were, by order, placed first upon the succeeding Thursday, 11th March, 1873, 128 C. J. 91.
4 143 ib. 153. 169. 354; 147 ib. 325.
5 17th June, 1887, 816 H. D. 3 s. 417; 1st May, 1891, 352 ib. 1833.
motion set down for the commencement of public business. On Tuesdays formerly, when priority was sought for an order of the day, the practice was either to persuade the members whose notices of motions stood upon the notice paper to waive their rights, or else to effect the desired arrangement by a resolution of the house, proposed without previous notice, at the commencement of the sitting, that the house do pass to the orders of the day, or that a bill or motion have precedence. Such a mode of procedure is not consonant to present usage; and though persuasion occasionally may obtain, on a Tuesday, priority for an order of the day, that position is generally procured by a resolution of the house, agreed to, upon notice given, at the commencement of business.

As on sittings devoted to government business, the government has the power, under standing orders Nos. 14 and 15, to arrange their business, whether orders of the day or notices of motion, as they may think fit, a motion to give priority to a notice of motion over the orders of the day is now rarely needed on those sittings; though such a motion might be rendered necessary if, in case the occasion arose, the government desired to take the opinion of the house, whether priority should be given to an unofficial motion (see p. 256).

When priority has been given by the order of the house to a notice of motion over the orders of the day, the Speaker calls on the member in whose name the notice stands, and when the motion has been considered, the house reverts to the orders of the day.

The arrangements fixed by the standing orders for Wednesday sittings are rarely disturbed. Still those

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2 Tuesday, 6th May, 1856, adjourned debate on the Treaty of Peace; Tuesday, 3rd March, 1857, adjourned debate on China; Tuesday, 8th May, 1877, adjourned debate on the Eastern Question; Tuesday, 15th May, 1877, Universities of Oxford and Cambridge Bill, 132 C. J. 208. 226; 11th Jan. 1881, 136 ib. 18, &c.; 23rd April, 1860, third reading of Church Rates Abolition Bill, 115 ib. 199; 111 ib. 167; 23rd June, 1863, 118 ib. 308; 171 H. D. 3 s. 1253.
standing orders have been wholly suspended, or suspended as regards the interruption of business, and the rising of the house at six o'clock, in the case of certain orders of the day, subject to the immediate adjournment of the house when those orders were disposed of. Government orders have also occasionally been given precedence on Wednesdays, and, towards the close of the session, Wednesday, and also Tuesday sittings are so appropriated. Sittings on Saturdays are occasionally held subject to the standing orders which regulate the Wednesday sittings, or to an order that, as soon as government business is concluded, the adjournment of the house shall take place without question put.

Besides the orders made from time to time to appropriate the time of the house for government business, precedence is occasionally given to certain orders of the day over all other orders of the day and notices of motion. Orders also are made, during the progress of each session, to extend the provisions of standing order No. 56, by which the Speaker, on Monday and Thursday, leaves the chair forthwith for the committee of supply, to other sittings of the house. Proceedings on the reports of the resolutions of the committees of supply and ways and means, have always, early in each session, been exempted by a sesssional order from all interruption under any standing order, except standing order No. 5, "suspension of sitting at seven

1 4th July, 1865, the house sat on the 5th, at a quarter before four, instead of twelve, 120 C. J. 449; 140 ib. 407.
2 7th Aug. 1872, 127 ib. 426; 15th July, 1874, 129 ib. 303; 144 ib. 293. 447.
3 8th Aug. 1853, 2nd Aug. 1869, 6th Aug. 1872; see debate, 129 H. D. 3 s. 1463; 124 C. J. 387; 127 ib. 421; 126 ib. 397; 14th July, 1879, 134 ib. 349; 143 ib. 114.
4 143 ib. 427. 493; 144 ib. 494. 433; 145 ib. 531. 533; see resolution moved, 11th Feb. 1893, p. 224, n. 2.
5 Protection of Persons, &c. (Ireland) Bill, 1881, 136 ib. 32; 258 H. D. 3 s. 1744; Prevention of Crime (Ireland) Bill, Arrears of Rent (Ireland) Bill, 1882, 187 C. J. 224. 259. Criminal Law Amendment (Ireland) Bill, 142 ib. 72; Consolidated Fund, &c., Bill, 144 ib. 73; Customs, &c., Bill, n. 5. 145 ib. 334; Tithe Rent-Charge Bill, 146 ib. 81; Purchase of Land, &c., Bill, 146 ib. 247; Financial Business, 18th March, 1892, 147 ib. 114; (Government business) 30th March, 4th Sept. 1893.
o'clock;"¹ and as the day for the prorogation draws nigh, all the government business is set free, during the remainder of the session, from every restriction on the transaction of business imposed by the standing orders;² and an objection taken to the form of the motion on which these orders are obtained on the ground that the provisions contained in those motions include several, and, to a certain extent, distinct, propositions was overruled.³

Amendments to motions relating to the business of the house must be strictly relevant to the terms and purpose of the motion; and amendments stating, as an argument against the motion, that the house had no confidence in the government, or that motions giving precedence to government business might be rendered unnecessary by altering the procedure of the house, were therefore ruled to be out of order.⁴

Except in the case of motions amounting to a distinct vote of want of confidence in the government, proposed or sanctioned by the leader of the opposition, the question whether the government should concede priority to a notice of motion, or to an order of the day in the charge of an unofficial member, is left entirely to their discretion.⁵

**Incidental interruptions to proceedings.—** Besides the interruption of business, at the moment prescribed by the standing orders (see p. 208), or by a member rising to move the closure of debate (see p. 210), proceedings in Parliament may be interrupted by a matter of privilege, or order, which calls for the immediate interposition of the house on a matter of recent occurrence (see p. 258); by occasions of sudden disorder in the house, and by the suspension of motions (Derby day adjournment), 30th May, 1892 and 1893, Notices, pp. 1593. 1890. See also p. 853.

¹ 144 C. J. 145; 145 ib. 239; 147 ib. 95.
² 16th July, 1891, 146 ib. 449; 9th June, 1892, 147 ib. 325.
³ 19th March, 1889, 334 H. D. 3 s. 142.
⁴ 19th March, 30th April, 1889, Mr. Bradlaugh's and Mr. E. Robertson's notices of amendments; 16th July 1891, 335 H. D. 3 s. 1433. Amendments, "gambling," &c., to

¹ Facilities were afforded, 1888, to Uruguay Rules, see Mr. Gladstone's resolutions upon the Irish Church, 191 H. D. 3 s. 31-35. P. 324.
² 825. 1746; 24th April, 1872, Dublin University Tests Bill; 26th Feb. 1888, Kilmainham prisoners, 210 H. D. 3 s. 1754; 277 ib. 850; Mr. Gladstone's remarks, 24th March, 1893.
members, or other proceedings thereby occasioned (see p. 323); by a message from the sovereign or the lords commissioners, commanding or desiring the attendance of the house in the House of Peers;¹ by the presentation of the answer to an address to the Crown² (see p. 430); by a message from the other house, and by proceedings taken thereon³ (see p. 476); by a conference with the Lords;⁴ by a report of reasons for disagreeing to Lords' amendments⁵ (see p. 479); by the clerk of the Crown attending by order of the house to amend a return⁶ (see p. 620); and by a report from the Serjeant-at-arms regarding the execution of the orders of the house.⁷

Examples occur of an interruption caused by a motion for reading an Act of Parliament, an entry in the journal, or other public document: but the practice by which such documents have been permitted to be read, after the commencement of the debate, though not absolutely without recognition in modern times, may be regarded as obsolete.⁸

When the cause of interruption has ceased, or the proceeding thereon has been disposed of, the debate, or the business in hand which was interrupted, is resumed at the point where the interruption had occurred; though the

¹ 93 C. J. 227; 106 Ib. 443. On the 26th April, 1863, the reading of a petition was so interrupted, and was resumed on the return of the Speaker from the Lords.

² 108 C. J. 438; 125 Ib. 377; 17th Dec. 1873. This rule, however, does not apply to a message from the Crown. On the 5th June, 1866, a message relating to the marriage of Princess Mary of Cambridge was brought up between one motion and another: but not so as to interrupt a debate.

³ By the recent practice, a message brought by the Clerk does not ordinarily interrupt the business under discussion; but there are occasions when such an interruption can arise, 126 C. J. 87.

⁴ 98 Ib. 347. 484.

⁵ Ground Game Bill, 3rd Sept. 1880, 135 C. J. 431; 137 Ib. 452.

⁶ 93 Ib. 276, 303.

⁷ 135 Ib. 236. The business of the house was in former times interrupted by a motion that candles be brought in: but, by order 6th Feb. 1717, the Serjeant was charged with the duty of having the house lighted when “daylight be shut in,” 18 Ib. 718; and now the direction to that effect is given by the Speaker or the chairman.

⁸ 2 Hatsell, 121. 164; 80 C. J. 557; 93 Ib. 204; 97 Ib. 129; 98 Ib. 112; 123 Ib. 148; 124 Ib. 57. In one case certain Acts were directed to be read, by way of amendment to the original question, 19th March, 1854, 109 Ib. 124.
resumption of a proceeding, subjected to an interruption, has been sometimes delayed by the occurrence of further interruptions.¹

Consideration of matters of privilege.—The proceedings of the house may be interrupted at any moment,² save during the progress of a division (see p. 328), by a motion based on a matter of privilege, when a matter has recently arisen which directly concerns the privileges of the house;³ and in that case, the house will entertain the motion forthwith.⁴

If complaint of a breach of privilege be made whilst the house is in committee, the committee reports progress thereon ⁵ (see pp. 78. 366); or, upon an act of disorder committed in his presence, the chairman has quitted the chair and sent for the Speaker ⁶ (see p. 366). Such an interruption may arise if a member be insulted or assaulted, or by a sudden act of disorder in the house ⁷ (see p. 328).

A privilege matter may also be brought forward without notice, before the commencement of public business, and is

¹ 163 C. J. 551. 755.
² This ancient rule was thus expressed in debate by an eminent authority: "Nothing can be so regular, according to the practice of this house, as when any member brings under the consideration of the house a breach of its privileges, for the house to hear it—nay, to hear it with or without notice—whether any question is or is not before it; and even in the midst of another discussion, if a member should rise to complain of a breach of the privileges of the house, they have always instantly heard him," Mr. Williams Wynn, 11th Feb. 1836, 31 H. D. 3 s. 274.
³ See the Speaker’s ruling, 17th July, 1860, 159 H. D. 3 s. 2035; 17th March, 1864, 174 ib. 190; 21st June, 1880, 235 ib. 439; 17th May, 1881, 261 ib. 694; 16th Feb. 1882, 266 ib. 788.
⁴ 12th May, 1848, interference of a peer with the election for Stamford, 95 ib. 931; 22nd May, 1848, Sligo election compromise, 98 ib. 1296; Peterborough election, appointment and nomination of committee, 18th and 21st July, 1853, 108 C. J. 691. 703; Ameer Ali Moccad’s claim, 22nd Feb. 1858, 113 ib. 68; Lisburn election, 21st April, 1864, 119 ib. 184; Azeem Jah (forged signatures to petitions), 8th May, 1865, 120 ib. 247; King’s County election, 12th Feb. 1866, 121 ib. 55; complaint of Mr. Plimsoll’s book, 20th Feb. 1873; complaint of Mr. Sullivan against Dr. Kenealy, 11th April, 1877; 132 ib. 144; forged signatures to petitions, 21st March, 1878, 298 H. D. 3 s. 1741; Clare writ, 17th April, 1879; see Mr. Speaker’s ruling, 245 H. D. 518, &c.; forgery of a petition, 1829, 84 C. J. 187; complaints against newspapers, 93 ib. 306; 106 ib. 320, &c.; complaints regarding petitions, 225 H. D. 3 s. 1400.
⁵ 143 C. J. 183.
⁶ 142 ib. 407.
⁷ 79 ib. 483; 65 ib. 134.
Chapter VIII.

Appointment of committees on privilege, see p. 235.

Orders for attendance in the house, see p. 62.

Position on notice paper of privilege matters, see p. 262.

When notice is requisite, see p. 598.

considered immediately, on the assumption that the matter is brought forward without delay, and that its immediate consideration is essential to the dignity of the house; yet, though, in some respects, a matter of privilege properly does not admit of notice, if a member can give notice, and the matter is a question of privilege, precedence is conceded to it.\textsuperscript{1} The right of complaint is not restricted to the member affected by the breach of privilege.\textsuperscript{2} Motions founded on a breach of privilege are also entertained upon the consideration of the report from the select committee which has considered the matter (see p. 124).

The quality of privilege, and the consequent right of immediate consideration, does not depend solely on the nature and object of the motion, but may be imparted or withdrawn by the circumstances that attend the motion. As a matter affecting the seat of a member of the house is a matter of privilege,\textsuperscript{3} precedence is accorded to a motion for a new writ, when such motion is made without notice:\textsuperscript{4} but that right ceases when notice of a motion for a new writ is prescribed by a resolution of the house, in cases of seats declared void for bribery and treating (see p. 598). Again, on the 24th March, 1882, precedence was claimed for a motion for a new writ for the borough of Northampton; but the Speaker stated that such motions were founded upon recent events, \textit{e.g.} the death of a member, his acceptance of office, or the report of election judges: but as the object of the motion was to raise an irregular debate upon the claim of Mr. Bradlaugh to take the oath, it was not entitled to privilege.\textsuperscript{5} So also, when, during the session

\textsuperscript{1} Election 'compromises, 12th and 22nd May, 1848, 98 H. D. 3 s. 931. 1236; Peterborough election, 18th and 21st July, 1853, 108 C. J. 691. 703; expulsion of James Sadler, 24th July, 1856, and 16th Feb. 1857, 148 H. D. 3 s. 1386; 144 ib. 702; Mr. Townsend's bankruptcy, 1858, 113 C. J. 229; case of Mr. Bradlaugh, 11th and 12th May, 1881, 261 H. D. 3 s. 218. 282. 431; Mr. Davitt, 27th Feb. 1882, 266 ib. 1811. 1842.

\textsuperscript{2} Complaint, Sir C. Lewis, 3rd May, 1887, 142 C. J. 208.

\textsuperscript{3} 16th April, 1864; seat of fifth under secretary of state, 119 C. J. 174.

\textsuperscript{4} 17th April, 1879, 245 H. D. 3 s. 518; 25th Aug. 1881, 265 ib. 886. The right of privilege was also accorded to a motion to rescind a resolution of the house affecting the seat of a member, 23rd June, 1880, 253 ib. 644.

\textsuperscript{5} 267 ib. 1821.
of 1887, a motion was brought forward based on charges brought by the *Times* newspaper against certain members of the house, the motion was ruled not to be a motion of privilege, because it was not a matter requiring immediate consideration, and because the charges did not touch the conduct of members in the house:¹ but subsequently, in the year 1890, a motion bearing on the subject of those charges, asserting that they were a libel on the house, was treated as of privilege, being brought forward at the earliest moment, the first day of the session, and because the charges were undoubtedly designed to influence the proceedings of the house.² Nor does a motion embodying a matter of privilege, such as a motion to rescind a resolution of the house affecting the seat of a member, lose its right of privilege, because the motion may have been deferred some days to suit the convenience of the house.³

A question of order in the house, or in a committee thereof, cannot be treated as a matter of privilege;⁴ and, as the privilege of freedom from arrest is limited to civil causes, and cannot be pleaded to arrests made on a criminal charge, or to enforce the administration of justice, the circumstances attending such arrest or imprisonment cannot be brought before the house as a matter of privilege.⁵ Nor can a letter addressed by a member to the Speaker regarding his arrest be treated as a matter of privilege;⁶ though, an objection having been taken to the terms of a magistrate's letter communicating to the house the imprisonment of a member, a motion made without notice was permitted, that the letter was a breach of privilege.⁷ The circumstances connected with the committal of members for contempt of court have, however, been considered as a matter of privilege (see p. 114). A motion to

¹ 22nd Feb. 1887, 311 H. D. 3 s. 286.
² 11th Feb. 1890, the *Times* and Mr. Parnell, 341 ib. 43.
⁴ 2nd Feb. 1881, 258 ib. 8; 5th April, 1878, 239 ib. 671; 2nd Feb. 1881, 258 ib. 8-14; 339 ib. 1223.
⁶ 31st May, 1881, 261 ib. 1785.
⁷ 14th May, 1888, 326 ib. 177. 183; 143 C. J. 222.
rescind a resolution for the suspension of a member is not entitled to the position of a matter of privilege.\(^1\)

To justify the claim of privilege for a motion complaining of alleged libels on members, the conduct and language on which the libel is based must be actions performed or words uttered in the actual transaction of the business of the house.\(^2\) On this ground a charge made by a newspaper against a member, that a statement he made in the house was false, received the priority accorded to a matter of privilege.\(^3\) And although privilege cannot be claimed for a motion containing imputations upon the character of a member which are not immediately connected with his conduct in Parliament, yet, owing to attendant circumstances, these motions occasionally have been treated as privileged motions.\(^4\) For instance, when, 22nd July, 1861, a motion was proposed concerning the conduct of a member in connection with a joint stock company, such conduct being wholly unconnected with matters arising in the house, the Speaker said it was doubtful whether the motion was properly a matter of privilege, but as it affected the character of a member, it could be proceeded with, if it was the pleasure of the house.\(^5\)

Because a motion has been treated as of privilege, that right cannot be claimed for subsequent motions bearing on the same subject. On the 5th July, 1860, Lord Palmerston proposed resolutions founded on the report of the committee on Tax Bills, as a matter of privilege, before the orders of the day: but on the 17th, Lord Fermoy having given notice of another resolution on that subject, the Speaker held that he was not entitled to precedence, his object being merely to review a former determination of the house; and the same

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\(^1\) 18th April, 1887, 313 H. D. 3 s. 1124.
\(^2\) See Speaker's rulings, case of the postal clerks, 22nd June, 1881, 262 H. D. 3 s. 1036; complaint against the Times, 22nd Feb. 1887, 311 ib. 286; complaint by Mr. Sexton against Mr. Brodrick, 25th April, 1887, 313 ib. 1803; Mr. J. M. Cameron's complaint, 15th March, 1888, 323 ib. 1312; complaint by Mr. Sexton against Sir W. Marriott (after excepted passages had been read at the table), 28th March, 1890, 343 ib. 181–187; 145 C. J. 221.
\(^3\) 2nd May, 1887, 314 H. D. 3 s. 717.
\(^4\) 16th March, 1884, 174 ib. 306;
\(^5\) 5th July, 1877, 235 ib. 829.
\(^5\) 164 ib. 1286.
ruling was applied to a motion to add names to a select committee appointed as a matter of privilege. In like manner, when the house has decided upon the principle raised by a privileged motion, the same principle cannot be brought forward as privilege, in another form, during the same session.

Opposition by a direct vote given against a motion involving a matter of privilege, is not essential: these motions can be set aside indirectly, as, for instance, by an amendment proposing that the house should pass on to the appointed business of the sitting.

A motion or an order of the day relating to a matter of privilege is either placed at the head of the notice paper, above the other orders of the day, and without a number, below the motions that may be set down for consideration at the commencement of public business (see p. 243); or the order is called on before the other orders of the day, or before notices, if the order has not received that precedence upon the notice paper.

As precedence is naturally desired by members, care has been taken, by rulings from the chair, not to extend that claim to any motion which does not strictly relate to an urgent matter of privilege, properly so called; and many motions, more or less affecting privilege, have been brought on in their turn, with other notices of motions.

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1 28th May, 1880, 252 H. D. 3 s. 667. 788.
2 20th July, 1887, 317 ib. 1489.
3 8th April, 1884, 287 ib. 22.
4 To adjourned debates on privilege cases are assigned a similar position. Case of the printers, 1837, 1840, 92 C. J. 450; 38 H. D. 3 s. 1249; 95 C. J. 13. 15. 19. 23. 70; 51 H. D. 3 s. 196. 251. 358. 422; 52 ib. 7; case of Azem Jab, 1865, 120 C. J. 252; Mr. Plimsoll's case, 226 H. D. 3 s. 178; see also 238 ib. 1741.
5 Carlow and other election cases, 91 C. J. 24. 42, and votes; 81 H. D. 3 s. 272; 97 C. J. 263; Mr. Roebuck (Chiltern Hundred), 155 H. D. 3 s. 945, &c.; Mr. Bright (Pontefract election), ib. 1254; 114 C. J. 357. 362. 376; case of printers, 92 ib. 436; case of Washington Wilks: votes, 1st and 2nd June, 1838; 3rd July, 1882, 271 H. D. 1303; Report on Yorkshire, &c., Insurance Company, 23rd July, 1889, 338 ib. 1089.
6 146 H. D. 3 s. 769; 159 ib. 2035; 174 ib. 190. 306; 187 ib. 14; 235 ib. 829; 239 ib. 671; 252 ib. 667. 788; 261 ib. 694. 1785; 262 ib. 1085; 263 ib. 788; see also n. 2, p. 261.
7 Mr. Isaac Butt's notice relating to the Times newspaper, 7th Feb. 1854, 109 C. J. 40; Mr. C. Forster's notice for a committee on the forgery of signatures to petitions, 23rd March, 1865, 120 ib. 156; Mr. Callan's motion for a committee to inquire how Mr. Newdegate's name was affixed to a petition, 7th April, 1876, &c.
CHAPTER IX.

MOTIONS AND QUESTIONS.

Every matter is determined, in both houses, upon questions put by the Speaker, and resolved in the affirmative or negative, as the case may be.

When a member is at liberty to make a motion, he may speak in its favour, before he actually proposes it: but a speech is only allowed upon the understanding, first, that he speaks to the question; and, secondly, that he concludes by proposing his motion formally.

In the upper house, 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: but in the Commons, after a motion has been made, it must be seconded by another member; otherwise it is immediately dropped, and further debate must be discontinued, as no question is before the house. When a motion is not seconded, no entry appears in "The Votes and Proceedings," as the house is not put in possession of it, and res gestae only are entered. In the case of a substantive motion, the Speaker satisfies himself that the motion has been formally seconded, before he puts the question: but where an unopposed return is moved, or other formal motion made, the formality of seconding the motion is not generally observed, but is taken to be tacitly complied with. Orders of the day, and motions in committee, do not require a seconder.

The motion should be placed, in print or writing, in the Speaker's hands; as, except in the event of any informality in the form of the motion, which may necessitate the Speaker's intervention, or may compel him to decline to put the question from the chair, the Speaker proposes the question in the words of the mover. Certain matters cannot be debated, save upon a substantive motion which...
can be dealt with by amendment, or by the distinct vote of the house, such as the conduct of the sovereign, the heir to the throne, the Viceroy and Governor-General of India, the Lord-Lieutenant of Ireland, the Speaker, the chairman of ways and means, members of either house of Parliament, and judges of the superior courts of the United Kingdom, including persons holding the position of a judge, such as a judge in a court of bankruptcy, and of a county court. These matters cannot, therefore, be questioned by way of amendment, nor upon a motion for adjournment under standing order No. 17* (see p. 242). For the same reason, no charge of a personal character can be raised, save upon a direct and substantive motion to that effect.\(^2\) No statement of that kind can, therefore, be embodied in a notice stating that the attention of the house will be called to a matter of that nature.\(^3\)

A matter, whilst under adjudication by a court of law, should not be brought before the house by a motion or otherwise.\(^4\) Nor can a motion be brought forward which is the same, in substance, as a question which, during the current session, has been decided in the affirmative or negative (see p. 286), nor which anticipates a matter already set down or appointed for consideration by the house. Thus, according to this principle, a motion is out of order which anticipates, not only a matter standing on the notice paper as an order of the day, or as a notice of a motion, or an amendment appointed for a future day, but also a

\(^1\) (Speaker) 15th July, 1881, 263 H. D. 3 s. 1012; 3rd March, 1885, 294 ib. 1912; 140 C. J. 78; 4th April, 1887, 315 H. D. 3 s. 371; 28th June, 1889, 337 ib. 1020-1023. (Chairman of ways and means) 3rd July, 1882, 271 ib. 1290. (Judges) 16th and 21st March, 1887, 312 ib. 736, 1110; 6th April, 1887, 313 ib. 637; 9th June, 1887, 315 ib. 1530; 2nd Sept. 1887, 320 ib. 1024-1025; see also “Questions,” p. 239.

\(^2\) 23rd Feb. 1848, 96 ib. 1206.

\(^3\) 5th April, 1883, 277 ib. 1500.

\(^4\) May, 1889, 335 H. D. 3 s. 992. 1254. 1267; 27th June, 1889, 337 ib. 899; see also Lord J. Russell and Sir R. Peel (Mr. O'Connell's case), Feb. 1844, 72 ib. 85. 98.

\(^5\) 207 ib. 500. 1640; Mr. Speaker’s ruling on Mr. Dillwyn’s motion, 25th May, 1875, 224 ib. 915; 17th Feb. 1887, 310 ib. 1777; 311 ib. 15; 16th July, 1888, 328 ib. 1417; 27th June, 1889, 337 ib. 899; 5th June, 1874, 219 ib. 1054; 6th May, 1890, 344 ib. 307; 28th April, 1891, 352 ib. 1696.
motions made.

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Principle applied to amendments, p. 279; and to instructions, p. 455.

Motion expanded, see p. 197.

matter of which public notice has been given in the house, at the time when notices are given, or a notice of motion standing as a notice for which no special day is fixed. A motion is also equally out of order which anticipates a motion for leave to bring in a bill that includes the subject proposed to be dealt with by the motion, or a bill appointed for consideration, though the bill may not have been printed. The reference, however, of a matter to a select committee does not prevent the consideration of the same matter by the house.

Formerly it was customary for the Speaker, when he thought fit, to frame a motion out of the debate. This ancient custom, however, was open to abuses and misconception, and has long since been disused. In 1794, Earl Stanhope had proposed a resolution with a long preamble, which, on putting the question, the lord chancellor omitted. On a subsequent day, a complaint and a motion were made regarding this omission. After a debate, from which it appeared that the words omitted had been of an objectionable character, and that the lord chancellor had collected the unanimous opinion of the house for their omission, the motion was superseded by adjournment.

In the Lords, when a motion has been made, a question is generally proposed "that that motion be agreed to:" but on the stages of bills, and on some other occasions, the

1 233 H. D. 3 s. 1492; 27th June, 1880, 337 ib. 899.
2 23rd June, 1871, 207 ib. 500.
3 16th July, 1888, 328 ib. 1411; 341 ib. 762. See also the Speaker's opinion regarding a proposed amendment, mentioned by Mr. Chamberlain in debate, with reference to Mr. Parnell's amendment on the address, 11th Jan. 1881, 136 C. J. 11, after notice had been given of the Protection, &c. (Ireland) Bill, Times, 3rd Feb. 1883.
4 13th March, 1891, 351 ib. 933.
5 Scobell, 22; 2 Hatsell, 112.
6 Burnet relates of Mr. Speaker Seymour, that, if the court party was not well gathered together, he kept the house from doing anything by a wilful mistaking or misstating the question. By that he gave time to those who were appointed for that mercenary work to go about and gather in all their party; and then he would very fairly state the question, when he saw he was sure to carry it."—2 Burnet's Own Time, 72.
7 The last example, 15th Feb. 1770, was by Sir Fletcher Norton, on the Sudbury election petition, 1 Cavendish Deb. 458.
8 31 Parli. Hist. 149. 197; 6 Campbell's Chancellors, 271.
motion is put directly as a question. In the Commons, when the motion has been seconded, it merges in the question, which is proposed by the Speaker to the house, and read by him; after which the house are in possession of the question, and must dispose of it in one way or another before they can proceed with any other business. At this stage of the proceeding, the debate upon the question arises in both houses. The mode in which the determination of the house upon a question is expressed and collected, is explained hereafter (see p. 272).

The member who has proposed a motion can only withdraw it by leave of the house, granted without any negative voice. This leave is signified, not upon question, as is sometimes erroneously supposed, but by the Speaker taking the pleasure of the house. He asks, "Is it your pleasure that the motion be withdrawn?" If no one dissent, he says, "The motion is withdrawn:" but if any dissentient voice be heard, he proceeds to put the question. Occasionally, a motion is, by leave, withdrawn, and another motion substituted, in order to meet the views of the house, as expressed in debate: but that course can only be taken with the general assent of the house. Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first withdrawn or negatived; as the question on the amendment stands before the original question. Neither a motion, nor an amendment, can be withdrawn in the absence of the member who had proposed it.

The modes of evading or superseding a question are—

(1) by adjournment of the house; (2) by moving the

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\[1\] A motion cannot be withdrawn in the absence of the member who proposed it, 159 H. D. 3 s. 1310; 186 ib. 887; 247 ib. 841.

\[2\] See discussion on Fiji Islands, 23rd June, 1872, 212 ib. 219; Church Patronage, 1877, 132 C. J. 301.

\[3\] 86 ib. 913; 227 H. D. 3 s. 787; 230 ib. 1026.

\[4\] 151 ib. 952.

\[5\] The motion, "That the orders of the day be read," is obsolete as a substantive motion; though it survives in the form of an amendment, "That this house do pass the orders of the day," moved upon a motion interposed before the ordinary business of the day, such as a privilege motion, 133 C. J. 196; 142 ib. 358.
previous question (see p. 268); and (3) by amendment, a subject which is dealt with on p. 271, and also in the following chapter, p. 275.

1. In the midst of the debate upon a question, any member may move, "That this house do now adjourn," not by way of amendment to the original question, but as a distinct question, which interrupts and supersedes that already under consideration. It need scarcely be explained that such a motion cannot be made while a member is speaking, but can only be offered by a member who, on being called by the Speaker in the course of the debate, is in possession of the house. If this second question be resolved in the affirmative, the original question is supersedes; the house must immediately adjourn, and all the business for that day is at an end. In the Commons, the motion for adjournment, in order to supersede a question, must be simply that the house do now adjourn, and cannot be coupled with any prefatory words; nor is it allowable to move that the house do adjourn to any future time specified, nor to move an amendment to that effect to the question of adjournment. But in the Lords, a future day may be specified in the motion for adjournment. A motion for the adjournment of the debate, upon a question for the adjournment of the house, being an obvious solecism, will not be entertained; nor can a motion for the adjournment of the house be made while a question for the adjournment of the debate is under discussion. The house may also be adjourned while a member is speaking, by notice being taken that forty members are not present (see p. 223). If the original question had not at that moment been proposed to the house by the Speaker, it is not entered in the votes, as the house was not in possession of the question before the adjournment:

1 Justices of the Peace Qualification Bill, 10th July, 1855, 110 C. J. 367; Volunteers (Ireland) Bill, 17th July, 1860, 115 ib. 393.
2 353 H. D. 3 s. 1246.
3 2 Hatsell, 113–115.
4 Supreme Court of Judicature Act, Address, 25th Feb. 1881, Lords' Minutes, 306.
5 Speaker's ruling, 5th March, 1857, 144 H. D. 3 s. 1906.
6 260 ib. 1617.
question, having been entered on the minutes, is, of course, printed in the votes. If the proceeding superseded by adjournment be a motion, to bring the matter again before the house, a notice of the motion must be renewed (see p. 252); if an order of the day, &c., is so superseded, the order of the day must be revived (see p. 250).

When a motion for adjournment has been negatived, it may not be proposed again without some intermediate proceeding; \(^1\) hence arises the practice of moving alternately, "That this house do now adjourn," and "That the debate be now adjourned." \(^2\) But a member who has moved the adjournment of the house is not entitled to move the adjournment of the debate, as he has already spoken to the main question. \(^3\) The latter motion, if carried, merely defers the decision of the house, while the former, as already explained, supersedes the question altogether; and therefore members who only desire to postpone the debate to another day, should refrain from voting for an adjournment of the house, as that motion, if carried, would supersed the question which they may be prepared to support. \(^4\) If, at the moment for the interruption of business under the standing orders (see p. 210), a motion for the adjournment of the house, or of the debate, has been proposed from the chair, such motion lapses without question put, pursuant to the provision in standing order No. 1; and other restrictions placed upon the use of these motions, for purposes of obstruction, are treated among the rules of debate \(^5\) (see p. 301).

2. The object of the previous question is to withhold from the decision of the house a motion that has been proposed

\(^1\) See proceedings, 23rd Nov. 1819, 41 H. D. 136; Ecclesiastical Titles Bill, 12th May, 1851, 106 C. J. 216; Election Petitions Bill, 29th June, 1857; Night Poaching Prevention Bill, 1st Aug. 1862, 117 ib. 388; Protection of Person and Property (Ireland) Bill, 1881, 136 ib. 49-51, &c.

\(^2\) 184 H. D. 3 s. 1450.

\(^3\) An instance of this occurred on the 23rd March, 1848, on a motion relative to the game laws, 97 ib. 963; and again on the 2nd March, 1875, on Mr. Fawcett's motion relating to education in rural districts.

\(^4\) See Mr. Speaker's evidence before committees on public business, 1848, 1854; and Report of Committee on Public Business, 1858.

\(^5\) See Colchester's Diary, ii. 129.
from the chair, by a motion which compels the house to decide, in the first instance, whether the original motion shall or shall not be submitted to the vote of the house. In the Lords, the Lord Speaker puts the question, “whether the original question be now put.” 1 In the Commons, the words of this motion are, “That that question be not now put;” 2 and, if it be resolved in the affirmative, the Speaker is prevented from putting the main question, as the house have thus refused to allow it to be put. The motion may, however, be brought forward again on another day, as the decision of the house merely binds the Speaker not to put the main question thereon at that time. If the previous question be resolved in the negative, the original question on which it was moved must be put forthwith, no amendment, nor debate, nor motion for adjournment being allowed, because, as the house have negatived the proposal, “That that question be not now put,” the question must accordingly be put at once to the vote.

The previous question has been moved upon the various stages of a bill, 3 but it cannot be moved upon an amendment; 4 though, after an amendment has been agreed to, the previous question can be put on the main question, as amended. 5 Nor can the previous question be moved upon a motion relating to the transaction of public business or

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1 71 L. J. 581; 74 ib. 87; motion respecting Russia, &c., 26th Jan. 1806, 110 ib. 22. This form of previous question was used by the Commons, 6th Sept. 1641, 2 C. J. 281.

2 146 ib. 96. The Speaker, with the concurrence of the house, first put the previous question in these words, 26th March, 1888, 143 ib. 112, because the motion, “That the question be now put,” is akin to the closure motion (see p. 211). The new form of motion also enables the members who support the previous question to vote “aye,” when that question is put from the chair. For illustrations of the former practice, see 2 Hatsell, 122, n.; Lex Parl. 292; Harbours of Refuge, 19th June, 1860, 115 C. J. 316; 2 Lord Sidmouth’s Life, 136; 1 Twiss, Life of Eldon, 232.

3 1 C. J. 226. 825; 7 ib. 420; 8 ib. 421; 30 ib. 418; 99 ib. 504; 113 ib. 220; 116 ib. 103. 135. 177; 130 ib. 356; 135 ib. 261, &c.

4 2 Hatsell, 116.

5 Previous question moved, after amendments proposed and negatived, 117 C. J. 129; 118 ib. 269. Previous question moved to main question as amended, 94 ib. 496. See also proceedings relative to Kagosima, 119 ib. 45; Denmark, ib. 179; 174 H. D. 3 s. 1376; Malt Duty, 120 C. J. 117; 212 H. D. 3 s. 326.
QUESTIONS SUPERSEDED BY AMENDMENT.

the meeting of the house, nor in any committee (see pp. 364, 374, 394). Nor can the motion be amended. As, if the previous question be moved, no amendment is admissible to the main question, an arrangement may be made to give priority to the proposal of an amendment thereto.

The motion for the previous question may be superseded by a motion for adjournment, and debate thereon may be adjourned.

3. The general practice in regard to amendments is explained on p. 275: but here such amendments only will be mentioned as are intended to evade an expression of opinion upon the main question, by entirely altering its meaning and object. This is effected by moving the omission of all the words of the question after the word “that” at the beginning, and by the substitution of other words of a different import. If this amendment be agreed to by the house, it is clear that no opinion is expressed directly upon the main question, because it is determined that the original words “shall not stand part of the question;” and the sense of the house is afterwards taken directly upon the substituted words, or practically upon a new question. There are many precedents of this mode of dealing with a question: but the best known in parliamentary history are those relating to Mr. Pitt’s administration, and the Peace of Amiens, in 1802. On the 7th May, 1802, a motion was made in the Commons for an address, “expressing the thanks of this house to his Majesty for having been pleased to remove the Right Hon. W. Pitt from his councils;” upon which an amendment was proposed and carried, which left out all the words after the first, and substituted others in direct opposition to them, by which the whole policy of Mr. Pitt was commended. Immediately afterwards an address was moved

1 Speaker's private ruling, 30th May, 1892.
2 The report of the committee on privilege (Mr. Gray), 1882, was recommitted to enforce this rule, 137 C. J. 509.
3 Lord-Lieutenant of Ireland, 25th March, 1858, 149 H. D. 3 s. 712.
4 131 C. J. 45, &c.
5 24 lb. 650; 30 ib. 70; 52 lb. 203; 93 ib. 418; Mr. Churchward, 10th March, 1867; employment of Indian Troops in Europe, 1878, 133 lb. 240, &c.
Questions superceded by amendment.

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in both houses of Parliament, condemning the Treaty of Amiens, in a long statement of facts and arguments; and in each house an amendment was substituted, whereby an address was resolved upon which justified the treaty.¹

This practice has often been objected to as unfair; but the objection is unfounded, as the weaker party must always anticipate defeat, in one form or another. If no amendment be moved, the majority can negative the question itself, and affirm another in opposition to the opinions of the minority. On the very occasion already mentioned, of the 7th May, 1802, after the address of thanks for the removal of Mr. Pitt had been defeated by an amendment, a distinct question was proposed and carried by the victorious party, "That the Right Hon. W. Pitt has rendered great and important services to his country, and especially deserves the gratitude of this house."² Thus, if no amendment had been moved, the position of Mr. Pitt's opponents would have been but little improved, as the majority could have affirmed or denied whatever they pleased. It is in debate alone that a minority can hope to compete with a majority. The forms of the house can ultimately assist neither party: but, so far as they offer any intermediate advantage, the minority have the greatest protection in forms, while the majority are met by obstructions to the exercise of their will.

These are the modes by which a question may be intentionally avoided or superseded: but the consideration of a question is also liable to casual interruption and postponement from other causes, which are described on p. 256.

The ancient rule that when a complicated question is proposed to the house, the house may order such question to be divided, is observed in the following manner.

When two or more separate propositions are embodied in a motion or in an amendment, the Speaker calls the atten-

² A case precisely similar occurred on the 14th May, 1806, when a vote of censure on Earl St. Vincent's naval administration having been negatived, was followed by a vote of approbation immediately moved by Mr. Fox, 7 H. D. 208.
tion of the house to the circumstance; and, if objection be taken, he puts the question on such propositions separately, restricting debate to each proposition in its turn; 1 though to this course resort is unfrequent, because it is generally recognized that, if a motion formed of a series of paragraphs is submitted to the house, the question should be proposed on the principal paragraph, which determines the decision of the house upon the various proposals contained in the whole motion. If the necessity should arise, separate subjects contained in a motion can be placed *seriatim* before the house by way of amendment.

When debate on a question is closed, 2 the question must be put, which is done in the following manner. The Speaker, rising from the chair, 3 states or reads the question to the house, beginning with "The question is, that." This form of putting the question is always observed, and precedes (or is supposed to precede) every vote of the house, except in cases where a vote is a formal direction, in virtue of previous orders. 4

In the Lords, when the question has been put, the Speaker says, "As many as are of that opinion say, 'Content;'") and "As many as are of a contrary opinion say, 'Not content;'") and the respective parties exclaim, "Content," or "Not con-

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1 324 H. D. 3 s. 1828. For references to the ancient and obsolete practice by which a complicated question was divided by order of the house, see 2 C. J. 43; 32 ib. 710; 83 ib. 89; 34 ib. 330; 35 ib. 217 (a question divided into five): 17 Hans. Parl. Hist. 429; 2 Hatsell, 118; see also 1 Cavendish Deb. 469-475; 2 Woodfall’s Junius, 139; 22 L. J. 73; 24 ib. 468-467; 4 Timberland’s Debates of the Lords, 392.

2 Debate was, on a memorable occasion, closed by the action of Mr. Speaker Brand, who, on the morning of Wednesday, 2nd Feb. 1881, when the house had held a continuous sitting from the previous Monday, put the question on the motion for leave to bring in the Protection of Person and Property (Ireland) Bill, although members were desirous of continuing the debate, 136 C. J. 50; H. D. 31st Jan., 1st and 2nd Feb. 1881.

3 On the 9th April, 1866, the Speaker, on returning to the house after an illness, said that he should claim the indulgence of sitting while putting the questions, 121 C. J. 197.

4 "Order, that nothing pass by order of the house without a question, and that no order be without a question, affirmative and negative" (1614), 1 C. J. 464. "Resolved, that when a general vote of the house concurr in a motion pronounced by the Speaker, without any contradiction, there needeth no question" (1621), ib. 650.
tent," according to their opinions. In the Commons, the Speaker takes the sense of the house by desiring that "As many as are of that opinion say, 'Aye,'" and "As many as are of the contrary opinion say, 'No.'" On account of these forms, the two parties are distinguished in the Lords as "contents" and "not contents," and in the Commons as the "ayes" and "noes." When each party have exclaimed according to their opinion, the Speaker endeavours to judge from the loudness and general character of the opposing exclamations, which party have the majority. As his judgment is not final, he expresses his opinion thus: "I think the ('contents,' or) 'ayes' have it;" or, "I think the ('not contents,' or) 'noes' have it." If the house acquiesce in this decision, the question is said to be "resolved in the affirmative" or "negative," according to the supposed majority on either side: but if the party thus declared to be the minority dispute the fact, they say, "The 'contents' (or 'not contents'), the 'ayes' (or 'noes') have it," as the case may be; in which case the Speaker puts the question a second time, in order that the numbers may be counted, by the process which is termed a division (see p. 335).

Members must bear in mind that their opinion is collected from their voices in the house, and not merely by a division; and that if their voices and their votes should be at variance, the voice will bind the vote. A member therefore who gave his voice with the "ayes" (or "noes") when the Speaker took the voices, is bound to vote with them.1

On the report of the Holyrood Park Bill, 10th August, 1843, a member called out with the "noes," "The 'noes' have it," and thus forced that party to a division, although he was about to vote with the "ayes" and went out into the lobby with them. On his return, and before the numbers were declared by the tellers, Mr. Brotherton addressed the

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1 Practice on this point was formerly unsettled. It was debated in the house, 29th Feb. 1796. Mr. Pitt maintained that a member was at liberty to force his opponents to a division; whilst the Speaker pronounced such conduct to be "unbecoming and contrary to the rules and practice of Parliament," 2 Hatsell, 201, n. The debate is not to be found in the Parl. Hist.
Speaker, sitting and covered (the doors being closed), and claimed that the member's vote should be reckoned with the "noes." The Speaker put it to the member, whether he had said, "The 'noes' have it;" to which he replied that he had, but without any intention of voting with the "noes." The Speaker, however, would not admit of his excuse, but ordered that his vote should be counted with the "noes," as he had declared himself with them in the house. This decision was repeated on two subsequent occasions, and on the 4th June, 1866, the Speaker condemned this practice of forcing a division as "irregular and unparliamentary." The objection that a member's vote was contrary to his voice should be taken either before the numbers are reported by the tellers, or immediately afterwards; and will not be entertained after the declaration of the numbers from the chair. It would seem, however, that by the ancient rules of the house, a member was at liberty to change his opinion upon a question. On the 1st May, 1606, "A question moved, whether a man saying 'yea' may afterwards sit and change his opinion. A precedent remembered in 39 Eliz., of Mr. Morris, attorney of the Court of Wards, by Mr. Speaker, that changed his opinion. Misliked somewhat, it should be so; yet said that a man might change his opinion." A member who has made a motion is afterwards entitled to vote against it, provided he gives his voice with the "noes" when the question is put from the chair. Every question, when agreed to, assumes the form either of an order or a resolution of the house. By its orders, the house directs its committees, its members, its officers, the order of its own proceedings, and the acts of all persons whom they concern; by its resolutions, the house declares its own opinions and purposes.

1 7th July, 1854, 109 C. J. 373; 23rd June, 1864, 119 ib. 359; 176 H. D. 8 s. 235; 183 ib. 1919.
2 15th April, 1856, 141 ib. 1103.
* 1 C. J. 303.
CHAPTER X.

AMENDMENTS TO QUESTIONS, AND AMENDMENTS TO PROPOSED AMENDMENTS.

The object of an amendment may be to effect such an alteration in a question as will obtain the support of those who, without such alteration, must either vote against it or abstain from voting thereon, or to present to the house an alternative proposition, either wholly or partially opposed to the original question. This may be effected by moving to omit all the words of the question after the first word, "That," and to substitute in their place other words of a different import (see p. 270). In that case the debate that follows is not restricted to the amendment, but includes the motive of the amendment and of the motion, both matters being under the consideration of the house as alternative propositions. If the amendment be to leave out or to add words only, debate should be restricted to the desirability of the omission or the addition of those words.

The confusion which must arise from any irregularity in the mode of putting amendments, is often exemplified at public meetings, where fixed principles and rules are not observed; and it would be well for persons in the habit of presiding at meetings of any description to make themselves familiar with the rules of Parliament in regard to questions and amendments, which, tested by long experience, are as simple and efficient in practice as they are logical in principle.¹

Previous notice of a matter brought before the house by way of amendment is, as a rule, unnecessary. Notice, however, must be given of amendments on going into committee of supply (p. 236); of clauses on the consideration of a bill by the house (p. 235); of the names of members to be nominated by way of amendment, on a select committee.

¹ Mr. Reginald Palgrave has done publication of "The Chairman's good service in this respect, by the Handbook."—Author's Note.
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(p. 380); and, under certain conditions, of an amendment to an instruction (p. 455).

The time for moving an amendment is after a question has been proposed by the Speaker, and before it has been put. A member who has given notice of an amendment is not entitled to precedence on that account, and to be heard before a member who rises to speak to the question;¹ as, according to the rules of debate, the member who first rises and is called by the Speaker, being in possession of the house, is entitled to conclude with any motion which may properly be made at that time. Nor, though a contrary practice prevails in proceedings on a bill (see p. 457), if a series of amendments are proposed to a motion, can members claim, unless they rise to speak, to be called in the order in which their notices stand upon the notice paper (see p. 574). The order and form in which the points arising out of amendments are determined are as follows:—

An amendment may be made to a question, (1) by leaving out certain words; (2) by leaving out certain words in order to insert or add others; (3) by inserting or adding certain words.

1. When the proposed amendment is to leave out certain words, the Speaker says, "The original question was this," stating the question at length; "Since which, an amendment has been proposed to leave out the words," which are proposed to be omitted. He then puts the question, "That the words proposed to be left out stand part of the question." If that question be resolved in the affirmative, it shows that the house prefer the original question to the amendment, p. 275. and the question, as first proposed, is put by the Speaker. If, however, the question, "That the words stand part of the question," be negatived, the question is put with the omission of those words; unless another amendment be then moved for the insertion or addition of other words.

2. When the proposed amendment is to leave out certain words² in order to insert or add others, the proceeding

¹ 84 H. D. 3 s. 641; 163 ib. 1424. ib. 1869.
1486; 246 ib. 265; 250 ib. 80; 282 ² It is not competent to move to
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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. It is sometimes erroneously supposed that a member who is adverse both to the original question and to the proposed amendment, would express an opinion favourable to the question, by voting "That the words proposed to be left out stand part of the question." By such a vote, however, he merely declares his opinion to be adverse to the amendment.\(^1\)

After the amendment has been disposed of, the question itself remains to be put, upon which each member votes as if no amendment whatever had been proposed. If, however, he be equally opposed to the question and to the amendment, it is quite competent for him to vote with the "noes" on both.

A misunderstanding, however, sometimes arises in the application of this rule. On Tuesday, 9th March, 1886, on a motion of Mr. Dillwyn, condemning the continuance of the Church of England in Wales, an amendment was moved by Mr. Albert Grey, when the government and other members, being equally opposed to the motion and the amendment, voted that the words proposed to be left out should stand part of the question, intending to vote against the main question when proposed. They accordingly went into the lobby with the supporters of the original motion. Hence it was defeated by a small majority of 12 (ayes 229, noes 241). This was generally represented, in the press, as a near approach to the success of the principle of disestablishment: but when the question, with the amendment added, was put to the vote, it was negatived by a very large majority (ayes 49, noes 346).\(^2\)

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1 191 H. D. 3 s. 708.
2 141 C. J. 85. Again, see 19th March, 1886, 141 ib. 106.
On the 19th June, 1822, the house having struck out all the words of a question after "That" relative to tithes in Ireland, an amendment to add other words was superseded by the house passing to the other orders of the day; and the original question was thus left, reduced to the initial word "That." Again, on the 8th December, 1857, a majority of the house being adverse to a motion relating to joint-stock banks, and also to a proposed amendment, the original question was ultimately reduced to the word "That;" when, no other amendment being proposed, the Speaker called upon the member whose notice stood next upon the paper.

On the 21st June, 1870, a motion being made "That it is undesirable that opposed business should be proceeded with after twelve o'clock," an amendment was proposed to leave out "twelve" and insert "one." Upon division, the house resolved, first, that "twelve" should not stand part of the question; and secondly, that "one" should not be inserted. The question thus stood with a blank, which no one proposed to fill up with any other words; when the house was relieved from its embarrassment by the withdrawal of the original motion.

3. In the case of an amendment to insert or add words, the proceeding is more simple. The question is merely put, that the proposed words "be there inserted" or "added." If it be carried, the words are inserted or added accordingly, and the main question, so amended, is put: but if negatived, the question is put as it originally stood, unless it be afterwards proposed to insert or add other words.

It is an imperative rule that every amendment must be relevant to the question on which the amendment is proposed, 

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1 77 C. J. 356.
2 113 ib. 10. For examples of similar proceedings, see 131 ib. 139; 132 ib. 49; 135 ib. 60. 74; 136 ib. 163; 138 ib. 10; 140 ib. 72.
3 123 ib. 270.
4 119 ib. 201.
5 This principle was asserted for the first time in the 9th edition, p. 225; 70 H. D. 3 a. 213; 266 ib. 1846; 11th May, 1882, 269 ib. 461. An illustration may be given of the former licence in amendments. To the question for the Speaker's leaving the chair for the committee on the Reform Bill, 6th Aug. 1831, an amendment was moved for the production of papers on the state of
except in the case of amendments moved to the question for the Speaker's leaving the chair for the committees of supply, or ways and means (see p. 571). As the conduct of the persons mentioned on p. 263 can only be debated upon a substantive motion, embodying therein a specific charge, reflections upon their conduct cannot be brought before the house by way of amendment. Nor, following the principle laid down regarding motions (see p. 264), can an amendment be moved which revives a question already decided, which anticipates a motion or amendment of which notice has been given, or matters contained in an order of the day, or which is inconsistent with words in the motion which have been already agreed upon. The Speaker has also ruled that an amendment that was merely an expanded negative, or otherwise irregular in form, could not be proposed from the chair.

Several amendments may be moved to the same question, but subject to these restrictions. 1. No amendment can be made in the first part of a question, after the latter part has been amended, or has been proposed to be amended, if a question has been proposed from the chair upon such amendment: but if an amendment to a question be withdrawn, by leave of the house, the fact of that amendment having been proposed will not preclude the proposal of another amendment, affecting an earlier part of the question, so long as it does not extend further back than the last words upon which the house have already expressed an opinion; for the withdrawal of the first amendment leaves the question in precisely the same condition as if no amendment had been proposed. Each amendment should be proposed in the order in which, if agreed to, it would stand in the amended question; and should a member be in the act of moving an

Poland; and on an analogous proceeding, 9th May, 1884, the Speaker stated "that, according to the forms of the house and the law of Parliament, there was no necessity that an amendment should be akin to the question," 86 C. J. 758; 89 ib. 271; 23 H. D. 3 s. 785.


2 136 C. J. 26; ruling, 28th Feb. 1893.

3 2 Hatsell, 123.
amendment, another member, before the question upon such amendment has been proposed from the chair, may intimate his wish to move an amendment to an earlier part of the question, and that wish may be carried out, if the member, who is in possession of the house, consents to resume his seat.\(^1\) But if the question has been already proposed from the chair upon an amendment, no other amendment can be moved, unless the first be, by leave of the house, withdrawn. 2. When the house have agreed that certain words shall stand part of a question, it is irregular to propose any amendment to those words, as the decision of the house has already been pronounced in their favour: but this rule does not exclude an addition to the words, if proposed at the proper time.\(^2\) In the case of a second reading or other stage of a bill, however, it is not allowable to add words to the question, after the house has decided that words proposed to be left out should stand part of that question. Every stage of a bill, being founded upon a previous order of the house, is passed by means of a recognized formula, and may be postponed or arrested by acknowledged forms of amendment: but when any such amendment has been negatived, no other amendment, by way of addition to the question, can be proposed, which is not, in some degree, inconsistent with the previous determination of the house; and it has, therefore, never been permitted.\(^3\) Nor can an amendment be made, by the addition of words to the question, for reading a bill a second time. In like manner, an established form of amendment, such as the “six months” formula used to obtain the rejection of a bill (see p. 446), is not capable of amendment.\(^4\) The same rule applies to the question for the Speaker’s leaving the chair on going into committee of

\(^1\) 22nd Aug. 1887, 319 H. D. 3 s. 1475; 26th May, 1892, 4 Parl. Deb. 4 s. 1991. On the occasion when the two members who proposed to move amendments rose almost simultaneously, although his call had been given to the other member, the Speaker has given priority of speech to the mover of the prior amend-

\(^2\) 65 C. J. 480; 129 ib. 52; 138 ib. 191.

\(^3\) 4th June, 1866, 183 H. D. 3 s. 1918; 186 ib. 1285; 240 ib. 1602.

\(^4\) 384 H. D. 3 s. 929.
supply. 3. 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 those words: but here, again, other words may be added. Such words, however, may not be to the same effect as those omitted by the amendment.

The principle applied to amendments to the questions proposed on the stages of a bill, namely, that established forms of procedure can only be dealt with by recognized forms of amendment, is also applied to motions for adjournment; for whilst motions for the adjournment of the house or of the debate, moved as dilatory motions (see p. 267), cannot be amended, so to a motion that the house at its rising do adjourn till a future day, no amendment is permissible unless it relates to the time of adjournment. On the question of adjournment from Friday till Monday, an amendment was proposed relating to a day of thanksgiving on the restoration of peace, the Speaker ruled such an amendment to be out of order, as the only amendment which could be moved was that the house shall adjourn to some other day than Monday. On Tuesday, the 27th May, 1856, it was ruled, privately, that on the question, “That the house, at its rising, do adjourn till Friday,” an amendment to leave out the words, “at its rising,” in order to insert the word “now,” was not admissible; the question, “That this house do now adjourn,” being always put as a distinct question, having no reference to the time at which it is proposed that the house should meet again. Accordingly, as soon as the question had been agreed to, a motion was made, “That this house do now adjourn.”

But when a member desires to move an amendment to a part of the question proposed to be omitted by another amendment, or to alter words proposed to be inserted, it is sometimes arranged that only the first part of the original amendment shall be formally proposed, in the first instance, so as not to preclude the consideration of the second amend-

1 25th April, 1856, 141 H. D. 3 s.  2 111 C. J. 221. 1541; 242 ib. 2076.
ment. This course, though followed in committees on bills (see p. 457), or when a bill, as amended, is being considered, is not resorted to in the house, except upon the consideration of extended resolutions. For instance,—in order to obtain freedom of discussion and amendment on the consideration of the rules of procedure, the rule that no member may speak twice to the same question, save in committee, has been relaxed, to enable members to speak first on the main question, and then subsequently to move amendments thereto.¹ The convenience of the house may also be consulted by the withdrawal of an amendment (see p. 266), and, if permitted, by the substitution of another the same in substance as the first, but omitting words to which objections are entertained.² An amendment may, at any time, as is the case regarding a motion, be withdrawn, and be subsequently again proposed ³ (see p. 289). On the 2nd May, 1882, an amendment was, by leave of the house, withdrawn, after the words of the original motion had been negatived, and the question had been proposed for adding the words of the amendment.⁴ An amendment, following the practice regarding a motion (see p. 266), cannot be withdrawn in the absence of the member who moved it.

Another proceeding may also be resorted to, by which an amendment is intercepted, as it were, before it is offered to the house, in its original form, by moving to amend the first proposed amendment. In such cases the questions put by the Speaker deal with the first amendment as if it were a distinct question, and with the second as if it were an ordinary amendment. The original question is, indeed, for a time, laid aside; and the amendment becomes, as it were, a substantive question itself. Unless this were done, there would be three points under consideration at once, viz. the question, the proposed amendment, and the amendment of

¹ Resolutions relating to public business, 26th Feb. 1880, 250 H. D. 3 s. 1450; and in 1882, 274 ib. 46. 247. 232; Feb. 1887, 311 ib. 294. 207; 10th June, 1887, 315 ib. 1616–1619; 29th June, 1893.

² Mr. Duncombe’s amendment (Education), 22nd April, 1847, 91 ib. 1236; Votes, 16th June, 1893.
³ 142 C. J. 111. 116.
⁴ Wigan writ, 137 ib. 172.
that amendment: but when the question for adopting the words of an amendment is put forward distinctly, and apart from the original question, no confusion arises from moving amendments to it, before its ultimate adoption is proposed.\(^1\)

Where the original amendment is either simply to insert, add, or omit words, an amendment may at once be proposed to it, without reference to the question itself, which will be dealt with, when the amendment has been disposed of.

The most difficult form, perhaps, is when the amendment first proposed is to leave out certain words of the original question; and an amendment is proposed to such proposed amendment, by leaving thereout some of the words proposed to be omitted, and thus, in effect, restoring them to the original question. In such a case a question is first

\(^1\) It appears, from a curious letter of the younger Pliny (Plinii Epistolæ, lib. viii. ep. 14), that the Roman senate were perplexed in the mode of disentangling a question that involved three different propositions. It was doubtful whether the consul, Afranius Dexter, had died by his own hand or by that of a domestic; and if by the latter, whether at his own request or criminally; and the senate had to decide on the fate of his freedmen. One senator proposed that the freedmen ought not to be punished at all; another, that they should be banished; and a third, that they should suffer death. As these judgments differed so much, it was urged that they must be put to the question distinctly, and that those who were in favour of each of the three opinions should sit separately, in order to prevent two parties, each differing with the other, from joining against the third. On the other hand, it was contended that those who would put to death, and those who would banish, ought jointly to be compared with the number who voted for acquittal, and afterwards among themselves. The first opinion prevailed, and it was agreed that each question should be put separately. It happened, however, that the senator who had proposed death at last joined the party in favour of banishment, in order to prevent the acquittal of the freedmen, which would have been the result of separating the senate into three distinct parties. The mode of proceeding adopted by the senate was clearly inconsistent with a determination by the majority of an assembly; being calculated to leave the decision to a minority of the members then present, if the majority were not agreed. The only correct mode of ascertaining the will of a majority is to put but one question at a time, and to have that resolved in the affirmative or negative by the whole body. The combinations of different parties against a third cannot be avoided (which after all was proved in the senate); and the only method of obtaining the ultimate judgment of a majority, and reconciling different opinions, is by amending the proposed question until a majority of all the parties agree to affirm or deny it, as it is ultimately put to the vote.—(Information supplied by the late Mr. Rickman.) See also Professor Long's Plutarch's Life of Pompey, p. 80.
put, that the words proposed to be omitted, stand part of the proposed amendment. If that question be affirmed, the question is then put, that all the words proposed to be omitted by the first amendment, stand part of the original question. But if it be negatived, a question is put, that the words comprised in the amendment, so amended, stand part of such original question.\footnote{1}

But where the original amendment is to leave out certain words, in order to insert or add other words, no amendment can be moved to the words proposed to be substituted, until the house have resolved that the words proposed to be left out shall not stand part of the question. But so soon as the question is proposed for inserting or adding the words of the amendment, an amendment may be moved thereto.

A short example will make this latter proceeding more intelligible. To avoid a difficult illustration (of which there are many in the journals\footnote{2}), let the simple question be, "That this bill be now read a second time;" to which an amendment has been proposed, by leaving out the word "now," and adding "upon this day six months;" and let the question that the word "now" stand part of the question, be negatived, and the question for adding "upon this day six months," be proposed. An amendment may then be proposed to such proposed amendment, by leaving out "six months," and adding "fortnight" instead thereof. The question will then be put, "That the words 'six months' stand part of the said proposed amendment." If that be affirmed, the question for adding "this day six months" is put, and, if carried, the main question, so amended, is put, viz. "That this bill be read a second time this day six months." But if it be resolved that "six months" shall not stand part of the proposed amendment, a question is put that "fortnight" be added; and, if that be agreed to, the first amendment, so amended, is put, viz. that the words "this day fortnight" be added to the original question.

\footnote{1}{27 C. J. 298; 39 ib. 842; 64 ib. tit. Amendments; 108 C. J. 516; 123 181; 134 ib. 136. ib. 160.}
\footnote{2}{See Com. Gen. Journ. Indexes,}
That being agreed to, the main question, so amended, is put, viz. "That this bill be read a second time this day fortnight."\(^1\) Several amendments may be moved, in succession, to a proposed amendment—subject to the same rules as amendments to questions.\(^2\) An amendment to a proposed amendment cannot be moved, if it proposes to leave out all the words of such proposed amendment: but in such a case the first amendment must be negatived before the second can be offered.\(^3\)

Every amendment proposed to be made, either to a question or to a proposed amendment, should be so framed that, if agreed to by the house, the question, or amendment as amended, would be intelligible and consistent with itself.

In the Commons, every amendment must be proposed and seconded in the same manner as an original motion; and, if no seconder can be found, the amendment is not proposed by the Speaker, but drops, as a matter of course, and no entry of it appears in the votes.\(^4\)

Except in the case of amendments of which previous notice is required (see p. 275), an amendment of which notice stands upon the notice paper can be moved by any member entitled to speak to the question before the house, if the member who gave notice of the amendment does not rise and move the same.\(^5\)

\(^1\) Dublin Waterworks Bill, 27th Feb. 1849, 104 C. J. 98; 102 H. D. 3 s. 1314.
\(^2\) 6th March, 1840 (Supply), 95 C. J. 153; 101 ib. 865; 134 ib. 136; 145 ib. 53.
\(^3\) Education in rural districts (Mr. Pell and Mr. Wilbraham Egerton), 2nd March, 1875, 130 ib. 70.
\(^4\) 177 H. D. 3 s. 1528.
\(^5\) Supply (Newfoundland Fisheries), Speaker's ruling, Times, 11th March, 1893.
CHAPTER XI.

THE SAME QUESTION OR BILL MAY NOT BE TWICE OFFERED IN A SESSION.

Object of the rule.

It is a rule, in both houses, which is essential to the due performance of their duties, that no question or bill shall be offered that is substantially the same as one on which their judgment has already been expressed in the current session.¹

A resolution may, however, be rescinded,² and an order of the house discharged, notwithstanding a rule urged (2nd April, 1604), “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.”³ Technically, indeed, the rescinding of a vote is the matter of a new question; the form being to read the resolution of the house, and to move that it be rescinded; and thus the same question which had been resolved in the affirmative is not again offered, although its effect is annulled.

To rescind a negative vote, except in the different stages of bills, is a proceeding of greater difficulty, because the same question would have to be offered again. The only means, therefore, 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.

There is a difficulty in discharging an order for an address to the Crown, after it has been presented to her Majesty. Thus, in 1850, an address having been agreed to for dis-

¹ 1 C. J. 305. 434. Cases when the Speaker has intervened to enforce this rule, 95 C. J. 495; 76 H. D. 3 s. 1021; 201 ib. 824; 214 ib. 287.
² Baron Smith, 89 C. J. 59; Edu-
³ 1 C. J. 162.
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continuing the collection and delivery of letters on Sunday, and for inquiry into the subject, another address was agreed to, some time afterwards, for inquiring whether Sunday labour might not be reduced in the post-office, without completely putting an end to the collection and delivery of letters.¹ Again, in 1856, when an address had been voted on the subject of national education in Ireland, in which the majority of the house did not concur, instead of discharging the order for the address, a resolution was agreed to, for the purpose of qualifying the opinions embodied in the address; and her Majesty's answer was framed in the spirit of the resolution, as well as of the address.² 

Notice is required of a motion to rescind a resolution;³ or to expunge or alter an entry in the "Votes and Proceedings."⁴ This rule, however, was not held to apply to a motion to rescind a resolution which affected the seat of a member, as being a matter of privilege, and which arose out of the proceedings in which the house was then engaged:⁵ but under no circumstances is it competent for the house to rescind a resolution during the sitting when the resolution was agreed to.⁶ 

Sometimes the house may not be prepared to rescind a resolution, but may be willing to modify its judgment, by considering and agreeing to another resolution relating to the same subject. Thus, a resolution having been agreed to which condemned an official appointment, the house, by a subsequent resolution, withdrew the censure which the previous resolution had conveyed.⁷ 

Again, the effect of a resolution, by which the house determined that no legislation should be entertained, during the session, regarding traffic in intoxicating liquor, of the People Bill on the "Votes," was brought forward without notice as privilege, 139 C. J. 324.
¹ 105 C. J. 383. 509.
² 111 ib. 272. 289. 298; 111 H. D. 3 s. 1404.
³ 18th April, 1887, 313 ib. 1124.
⁴ 26th Feb. 1885, 294 ib. 1423; 27th June, 1884, a motion to omit "Nem. Con." from the entry of the third reading of the Representation
⁵ 253 H. D. 3 s. 644.
⁶ 138 ib. 1367.
until provisions dealing with that subject had been placed before the house by the government, was modified by a subsequent resolution, which declared that, as the house was made aware that the government did not intend to undertake legislation regarding the liquor traffic, the house was free to deal therewith.¹

A mere alteration of the words of a question without any substantial change in its object, will not be sufficient to evade this rule. On the 7th July, 1840, Mr. Speaker called attention to a motion for a bill to relieve dissenters from the payment of church rates, before he proposed the question from the chair.² Its form and words were different from those of a previous motion, but the object was substantially the same; and the house agreed that it was irregular, and ought not to be proposed from the chair. Again, on the 15th May, 1860, the order for the second reading of the Charity Trustees Bill was withdrawn, as it was discovered to be substantially the same as the Endowed Schools Bill, which the house had already put off for six months.³ So, also, on the 17th May, 1870, a motion for an address in favour of emigration was not allowed to be made, being substantially the same as a resolution which had been negatived in the same session.⁴ On the 9th May, 1882, it was ruled by Mr. Speaker that a motion affirming the necessity of legislation to enable members duly elected to take their seats, was inadmissible, as an amendment to the same effect, but in different words, had been negatived on the 7th March.⁵

It is also possible, in other ways, so far to vary the character of a motion, as to withdraw it from the operation of the rule.⁶ Thus, in the session of 1845, no less than five

¹ 26th March, 22nd April, 1890, 145 C. J. 214. 257; 343 H. D. 3 s. 1170. ² 95 C. J. 495; 55 H. D. 3 s. 553. ³ 115 C. J. 249; Mr. Speaker Denison's Note-book. ⁴ 201 H. D. 3 s. 824. ⁵ See also Parliamentary Affirmation, 253 ib. 1266; Mr. O'Donnell's Suspension, 261 ib. 1983; Railway Servants (Hours of Labour), Speaker’s ruling, 27th Jan. 1891, 349 ib. 1176. ⁶ See, for example, General Conway’s motions on the American war, 22nd and 27th Feb. 1782, 38 C. J. 814. 861; proceedings upon the malt duty in 1833, 88 ib. 195. 317; and upon the sugar duties in 1845, 100 ib. 59. 69. 81.
distinct motions were made upon the subject of opening letters at the post-office, under warrants from the secretary of state. They all varied in form and matter, so far as to place them beyond the restriction: but in purpose they were the same, and the debates raised upon them embraced the same matters. But the rule cannot be evaded by renewing, in the form of an amendment, a motion which has been already disposed of. On the 18th July, 1844, an amendment was proposed to a question, by leaving out all the words after "that," in order to add, "Thomas Slingsby Duncombe, esq., be added to the committee of secrecy on the post-office:" but Mr. Speaker stated that, on the 2nd July, a motion had been made, "that Mr. Duncombe be one other member of the said committee;" that the question had been negatived; "and that he considered it was contrary to the usage and practice of the house that a question which had passed in the negative should be again proposed in the same session." The amendment was consequently withdrawn.

Nor can a proposal contained in an amendment, which has been practically negatived by a decision of the house, whereby it was determined that the words of the original motion, on which that amendment was moved, shall "stand part of the question," be again submitted to the house during the same session.

As a motion which has been withdrawn, or has not been seconded, has not been submitted to the judgment of the house, the motion may, therefore, be repeated.

On the 7th December, 1857, a resolution was proposed for extending limited liability to joint-stock banks, to which an amendment was proposed affirming the same principle in a modified form. The house refused to permit either of these propositions to form part of the question, which was, consequently, reduced to the single word "that." On the 11th February following, a bill to the same effect was brought in without objection, the house having pronounced its judgment

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1 100 C. J. 42. 54. 185. 199. 214.  
2 76 H. D. 3 s. 1021.  
3 10th Feb. 1873; Business of the house, 214 ib. 287; 303 ib. 1708.  
4 See motion on Railway Bills withdrawn 16th, and renewed 23rd May, 1845, 80 ib. 432. 798.
upon a question not substantially the same. So, again, on the 31st March, 1859, an amendment was proposed, but not made, to a proposed amendment on the second reading of the Representation of the People Bill, expressing an opinion in favour of the ballot: but this was held not to preclude a motion, on a later day, for bringing in a bill for the taking of votes by way of ballot.

On the 5th March, 1872, a resolution was moved impugning the general operation of the Elementary Education Act, 1870, and enumerating several points in which it failed, including the payment of school fees to denominational schools. In opposition to it, an amendment was carried, affirming that it was too soon to review the provisions of the Act. On the 23rd April, Mr. Candlish brought forward a motion for leave to bring in a bill to repeal the 25th clause of the Education Act, which authorized the payment of school fees to denominational schools. Exception was taken to this motion, on the ground that substantially it had been embraced in the resolution of the 5th March, and was excluded from consideration by the amendment. But it was held that a resolution in terms so general could not prevent a member from moving for leave to bring in a bill to repeal a single clause of the Act. Moreover, a motion for leave to bring in this bill differed essentially from a resolution condemning, in general terms, the operation of the Act. Nor does the rejection of an instruction to a committee on a bill prevent the house from entertaining a separate bill during the same session, which deals with the object of such instruction.

So also, when an objection was taken, 20th July, 1870, that one of the objects of the bill then under discussion was to effect the repeal of an Act, a proposal which the house had negatived during that session, and that the bill, therefore, could not be considered, the Speaker overruled the objection. As he pointed out, the bill had been introduced

1 See also proceedings on Negro Apprenticeship, 1838, 93 C. J. 418. 541.
2 114 ib. 145. 170.
3 127 ib. 78. 156.
4 Medical Relief Disqualification Parliamentary Elections Bill, 1885, 294 H. D. 3 s. 1938; 140 C. J. 78. 317; see also p. 292.
before the house had arrived at that decision, and that the provision for the repeal of the Act might be struck out of the schedule by the committee on the bill.¹

In passing bills, a greater freedom is admitted in proposing questions, as the object of different stages is to afford the opportunity of reconsideration; and an entire bill may be regarded as one question, which is not decided until it has passed. Upon this principle, it is laid down by Hatsell, and is constantly exemplified, "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."² The same clauses or amendments may be decided in one manner by the committee, in a second by the house on the report, and, formerly, might have been dealt with again on the third reading; and yet the inconsistency of the several decisions will not be manifest when the bill has passed.

On the 8th August, 1836, a clause, which was added on the report of the Pensions Duties Bill, to exempt the pension of the Duke of Marlborough from the provisions of that bill, was struck out by amendment on the third reading of the bill.³ In 1864, in committee on the Poisoned Flesh Prohibition Bill, a clause was added, providing that the bill should not extend to Ireland. This clause was left out on the consideration of the bill, as amended, and lastly, on the third reading, the bill was recommitted, when a proviso was introduced imposing restrictions upon the operation of the bill in Ireland.⁴

When bills have ultimately passed, or have been rejected, the rules of both houses are positive, that they shall not be introduced again: but the practice is not strictly in accord-

¹ 203 H. D. 3 s. 563.
² 2 Hatsell, 135.
³ 91 C. J. 762. 817. In 1844, an amendment of Lord Ashley's (for ten hours' labour) having been carried against the government in the Factories Bill (which limited the hours of labour to twelve), the government withdrew the bill, and brought in another to the same effect, which was ultimately carried; and thus the decision of the house, upon Lord Ashley's amendment, was virtually reversed, 3 Lord Dalling, Life of Lord Palmerston, 138, n.
⁴ 119 C. J. 425. 436, &c.; 176 H. D. 3 s. 1611.
ance with them. The principle is thus stated by the Lords, 17th May, 1606—

"That when a bill hath been brought into the house, and rejected, another bill of the same argument and matter may not be renewed and begun again in the same house in the same session where the former bill was begun; but if a bill begun in one of the houses, and there allowed and passed, be disliked and refused in the other, a new bill of the same matter may be drawn and begun again in that house whereunto it was sent; and if, a bill being begun in either of the houses, and committed, it be thought by the committees 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."

It was also declared, in a protest, signed by seven lords, 23rd February, 1691, in reference to the Poll Bill, in which a proviso contained the substance of a bill which had dropped in the same session, "that a bill having been dropped, from a disagreement between the two houses, ought not, by the known and constant methods of proceedings, to be brought in again in the same session." The Lords, nevertheless, agreed to that bill, but with a special entry, declaring that they would not hereafter admit, upon any occasion whatsoever, of a proceeding so contrary to the rules and methods of Parliament.

In the Commons, it was agreed for a rule, 1st June, 1610, that "no bill of the same substance be brought in the same session." But a second bill has been ordered, with a special entry of the reasons which induced the house to depart from the usage of Parliament. 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. Thus when the Lords struck out a provision in the Parliamentary Elections Redistribution Bill, 1885, which enacted that the receipt of medical poor law relief should not disqualify a voter, the Commons agreed to that amendment, and passed a bill which effected the object of that provision.
Chapter XI

A method of procedure, moreover, has been adopted, with the sanction of both houses, by which these rules are partially disregarded. When the Lords, out of regard for the privileges of the Commons, defer the consideration of the amendments made by the committee on a bill received from the Commons, for a period beyond the probable duration of the session, if such amendments be otherwise acceptable, the Commons appoint a committee to inspect the Lords' Journals; and, on receiving their report, which explains the position of the bill in the Lords, to order another bill to be brought in. This bill often has precisely the same title, but its provisions are so far altered as to conform to the amendments made in the Lords. With these alterations, it is returned to the Lords, received by them without any objection, and passed as if it were an original bill. Such a bill is not identically the same as that which preceded it: but it is impossible to deny that it is "of the same argument and matter," and "of the same substance." This proceeding can be resorted to when the Lords pass a bill and send it down to the Commons, with clauses that trench upon their privileges. The Commons can lay the bill aside, and order another, precisely similar, to be brought in, which, in due course, is sent up to the Lords.

A proceeding somewhat similar may arise, when a bill is returned from the Lords to the Commons, with amendments which the Commons cannot, consistently with their own privileges, entertain. In that case, if the Commons be willing to adopt the amendments, they can order the bill to be laid aside, and another to be brought in.¹

If a bill has been postponed or laid aside in the House of Lords, the Lords have sometimes appointed a committee to search the Votes and Proceedings of the Commons, and may, if they think fit, introduce another bill, and send it to the Commons.²

But in all the preceding cases, the disagreement of the two houses is only partial and formal, and there is no difficulty.

¹ 91 C. J. 777. 810; 100 ib. 664.
² 75 L. J. 590; 77 ib. 505.
ference in regard to the entire bill. 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, the bill cannot be revived in the same session. Hence, in 1707, Parliament was prorogued for a week, in order to admit the revival of a bill which had been rejected by the Lords;¹ and in 1831, Parliament was prorogued from the 20th October to the 6th December, in order to bring in the third Reform Bill.²

By a rule, annulled by 13 & 14 Vict. c. 21, a second bill, at variance with the provisions of a bill passed during the same session, could not be introduced; and thus, in 1721, a prorogation for two days was resorted to, in order to enable Acts relating to the South Sea Company to be passed, contradictory to clauses contained in another Act of the same session.³

Proposals have been made for a provision, either by statute or by standing orders, for the suspension of bills, from one session to another, or for resuming proceedings upon such bills, notwithstanding a prorogation. These schemes have been discussed in Parliament, and carefully considered by committees: but various considerations have restrained the legislature from disturbing the constitutional law by which parliamentary proceedings are discontinued by a prorogation.⁴

¹ 2 Burnet’s Own Times, 467; 2 Coxe’s Walpole, 8; 2 Hatsell, 127.
² 86 C. J. 983.
³ 19 ib. 639.
⁴ Earl of Derby’s Parliamentary Proceedings Adjournment Bill, 1848, 98 H. D. 3 a. 329. 981. 1255; 99 ib. 246; 100 ib. 131; Report of Commons’ Committee on Public Business, 1848; Report of Lords’ Committee on Public Business, 1861; Report of Commons’ Committee on Business of the House, 1861; Marquess of Salisbury’s Parliamentary Proceedings Bill, 1869, 194 H. D. 3 a. 588; again, 7th May, 1883, 279 ib. 2; Report of Joint Committee on Despatch of Business in Parliament, 1869; Reports of Commons’ Committees on Public Business, 1878, and on abridged procedure in 1890 [No. 288].
CHAPTER XII.

RULES OF DEBATE.

In the House of Lords, pursuant to standing order No. 25, a peer addresses his speech "to the rest of the lords in general." In the Commons, a member addresses the Speaker; and it is irregular for him to direct his speech to the house, or to any party on either side of the house. A member is not permitted to read his speech, but may refresh his memory by a reference to notes. The reading of written speeches, which has been allowed in other deliberative assemblies, has never been recognized in either house of Parliament. A member may read extracts from documents, but his own language must be delivered bona fide, in the form of an unwritten composition. Any other rule would be at once inconvenient and repugnant to the true theory of debate.¹

In both houses every member who speaks, rises in his place, and stands uncovered. The only exception to the rule is in cases of sickness or infirmity, when the indulgence of a seat is allowed, at the suggestion of a member, and with the general acquiescence of the house.² The only occasion, in both houses, when a member speaks sitting and covered is a question of order which has arisen during a division, when the doors are closed.³ A member

¹ 1 C. J. 272. 494; 7 H. D. 208; 83 ib. 3 a. 1169. 1281; see also Lord Colchester’s Diary, ii. 60. 432; 223 H. D. 3 a. 178; 235 ib. 773. Although on one occasion, during the debate on the Household Franchise Bill, 1873, a letter from Mr. Gladstone was read to the house, containing statements regarding the bill under discussion (217 H. D. 3 a. 842–844), when it was proposed, in like manner, to use in debate a letter from Mr. Gladstone touching the Customs and Inland Revenue (No. 2) Bill, 1885, the Speaker, in private consultation, expressed his disapproval, pointing out that the proceeding would be an attempt to carry on debate by proxy; and deference was observed to the Speaker’s opinion.

² Lord Wynford, 64 L. J. 167; Mr. Wynn, 67 H. D. 3 a. 658. Questions proposed by the Speaker sitting owing to illness, 121 C. J. 197.

³ 20th April, 1883, 278 ib. 854; 2nd Sept. 1886, 308 ib. 1165.
may speak from the side galleries, appropriated to members, but not from below the bar. ¹

Debate arises when a question has been proposed by the Speaker, and before it has been fully put.

In the House of Lords, under standing order No. 30, "when a question hath been entirely put by the Speaker, no lord is to speak against the question before voting;" and a question being entirely put implies that the voices have also been given. In the Commons, no member may speak to any question after the same has been fully put by the Speaker; and a question is fully put when he has taken the voices both of the ayes and of the noes. ²

From the limited authority of the Speaker of the House of Lords, in directing the proceedings of the house, and in maintaining order, the right of a peer to address their lordships depends solely upon the will of the house. When two rise at the same time, unless one immediately gives way, the house call upon one of them to speak; and if each be supported by a party, there is no alternative but a division. Thus, on the 3rd February, 1775, the Earl of Dartmouth and the Marquis of Rockingham both rising to speak, it was resolved, upon question, that the former "shall now be heard." ³ If the lord chancellor rises from the woosack to address the house, it is customary to give him precedence over other peers who may rise at the same time. ⁴

In the Commons, when two or more members rise to speak, the Speaker calls on the member who, on rising in his place, is first observed by the Speaker. If the Speaker's call be questioned by the house, a motion can be made that

¹ 246 H. D. 3 s. 1369. Speaking from the galleries is inconvenient, and rarely resorted to.
² 12th May, 1606, "Any man may speak after the affirmative and before the negative." Also 40 H. D. 79. Speaker's ruling, 3rd May, 1819, that debate could not be reopened after he had fully put the question, saying that he thought the "noes" had it. ³ Lord Colchester's Diary, iii. 74; 2 Hatsell, 102, n. ⁴ 34 L. J. 306; see also 18 H. D. 719, n.; proceedings on motion that the Earl Cairns be heard, 11th June, 1884, 116 L. J. 325. ⁵ Debate on Roman Catholic Relief Bill, 3rd April, 1829, when the lord chancellor and Lord Kenyon rose together.
one among the members who have risen to speak "be now heard" or "do now speak."

On the 20th March, 1782, Lord North and the Earl of Surrey rose together; and on Mr. Fox moving that the latter be now heard, Lord North adroitly spoke to that question, and announced his resignation, which he had been anxious to communicate to the house. A similar contest arose between Mr. Pitt and Mr. Fox, on the 20th February, 1784; and more recently between Sir R. Peel and Sir F. Burdett; and between Lord Sandon and Mr. Duncombe. On the 9th July, 1850, Mr. Locke being called upon by Mr. Speaker to proceed with a motion, of which he had given notice, and several members objecting on account of the lateness of the hour, Mr. Forbes Mackenzie rose in his place to speak upon the question that certain petitions do lie upon the table, and objection having been made to his proceeding, a motion was made, "that Mr. Mackenzie do now speak," which was put and negatived; and Mr. Locke proceeded with his motion. On the 18th May, 1863, in committee of supply, the solicitor-general and Mr. Nicol both rising, the former was called by the chairman: but several members calling upon the latter, a motion was made that Mr. Solicitor-General do now speak. This motion, however, was withdrawn, and Mr. Nicol proceeded to address the committee.

This mode of proceeding is not supported by present usage. It is the Speaker's duty to watch the members as they rise to speak; and the decision should be left with him. In the Commons, not less than twenty members have often been known to rise at once, and order can only be maintained by acquiescence in the call of the Speaker,

1 12th March, 1771, 2 Cavendish Deb. 386; 1 Memorials of Fox, 295.
2 39 C. J. 943. On the 12th Jan. another dispute had arisen. Mr. Pitt claimed precedence, as having a message from the king; but as Mr. Fox had been in possession of the house before Mr. Pitt rose, and was interrupted by members coming to be sworn, the Speaker decided in his favour, 24 Hans. Parl. Hist. 299.
3 86 C. J. 517; 95 lb. 557.
4 105 lb. 509; 112 H. D. 3 s. 1190.
5 On the 26th Feb. 1872, observations were made concerning a supposed "Speaker's List" by which his choice was governed. Such a
who, to elicit discussion in the most convenient form, calls, as a rule, upon members on either side of the house alternately, who answer one another.¹

A new member who has not previously spoken, is generally called upon, by courtesy, in preference to other members rising at the same time: but this privilege will not be conceded unless claimed within the Parliament to which the member was first returned.²

On resuming an adjourned debate, the member who moved its adjournment is, by courtesy, entitled to speak first on the resumption of the debate:³ but for that purpose, he must rise in his place in order to avail himself of his privilege, as, unless he rises, it is not the duty of the Speaker to call upon him;⁴ though if, having obtained this advantage, he does not avail himself thereof at the resumption of the debate, he is not thereby debarred from subsequently joining therein.⁵ A member who moves the adjournment of a debate, with a view to speaking upon the main question on a future day, must, to obtain this privilege, confine himself to that formal motion. When a member has moved or seconded a motion for the adjournment of a debate, and his motion has been negatived, he is not entitled to speak again to the main question;⁶ and the member whose subsequent motion for adjournment has been agreed to, is, therefore, entitled to be called upon, on resuming the debate:⁷ but if a motion

Hat, however, was disclaimed by the Speaker himself, and by Mr. Gladstone on behalf of himself and the secretary to the treasury, 209 H. D. 3 s. 1052.

¹ An obsolete rule exists on the journal, 6th June, 1604, that if two stand up to speak to a bill, he against the bill be first heard, 1 C. J. 232.

² On the 25th March, 1859, it was claimed in vain for Mr. Beaumont, who had sat in the previous Parliament.

³ 26th May, 1891, 333 H. D. 3 s. 1132. 1284.

⁴ Speaker's ruling, 6th May, 1853, 126 ib. 1243. This rule has since been repeatedly maintained by the Speaker, as in the case of Mr. Warren, 9th Feb. 1858.

⁵ 26th Aug. 1886, 308 ib. 614.

⁶ Mr. Beresford Hope and Mr. Cavendish Bentinck, 15th and 16th March, 1869, 194 ib. 1451. 1497; 227 ib. 1098; 232 ib. 1841; 5th Feb. 1880, case of Mr. Shaw, 250 ib. 126. 130.142; 17th and 18th March, 1892, 2 Parl. Deb. 4 s. 1172. 1201.

⁷ Galway Election, 8th Aug. 1872 (Sir Colman O'Loghlen), 218 H. D. 3 s. 761. On the 6th July, 1874, Mr. Jenkins having moved the adjournment of the debate upon the
for adjournment to secure the power of first speech on the
resumption of the debate, be discussed until the business of
the house is interrupted and adjourned pursuant to the
standing orders, the mover of the motion, although his
motion has lapsed (see p. 210), does not on that account lose
the privilege which he sought by making the motion for
adjournment. In like manner, when a debate has been
adjourned, while a member was speaking, upon the inter-
ruption of business prescribed by the standing orders, he
has been allowed, on the next occasion, to resume the
adjourned debate, and continue his speech.

When a member, who, having received the Speaker’s call,
is “in possession of the house,” unless he chooses to give
way, his speech cannot be interrupted by a member who
desires to gain priority in moving an amendment (see p.
279) or to make an explanation (see p. 305). He must
direct his speech to the question then under discussion,
or to a motion or amendment he intends to move, or to
a point of order. The precise relevancy of an argument
is not always perceptible; when, however, a member
wanders from the question, the Speaker reminds him that
he must speak to the question. It follows, therefore, that

second reading of the Church Pa-
tronage (Scotland) Bill, which was
negatived, and Mr. Anderson having
moved the adjournment of the house,
which was also negatived, Mr. Cam-
eron moved the adjournment of the
debate, which was agreed to; and
accordingly, on the resumption of
the debate, on the 13th July, the
latter rose and was called upon by
the Speaker.

1 9th and 11th Aug. 1892, 7 Parl.
Deb. 4 s. 300, 384.
2 An adjournment of the debate
has been agreed upon, to enable a
member to continue his speech upon
another day. 8th March, 1809. “Mr.
Perceval having spoken for three
hours on the charges against the
Duke of York, the house loudly
called for an adjournment. Mr.

Perceval stated that he had more
to offer in concluding, and would
go on or stop as the house pleased.
The adjournment of the debate till
the next day passed by acclamation.
N.B.—The first instance in my time
of adjourning in the middle of a
speech,” Lord Colchester’s Diary, ii.
172; 13 H. D. 1 s. 114.
3 Hypothec (Scotland) Bill, 21st
July, 1869 (Mr. Orr Ewing).
4 50 H. D. 3 s. 507.
5 See the celebrated debate, 6th
May, 1791, on the Quebec Gov-
ernment Bill, in which Mr. Burke in-
sisted upon the relevancy of Paine’s
Rights of Man, and the recent events
of the French Revolution, 2 Lord J.
Russell’s Life of Fox, 253.
6 “If any man speak not to the
matter in question, the Speaker is to
debate must not stray from the question before the house to matters which have been decided during the current session, nor anticipate a matter appointed for the consideration of the house, according to the principle laid down by rulings to that effect, mentioned on p. 264. For instance, upon a motion for the appointment of a committee upon the game laws, a member was restrained from criticizing the provisions of certain bills before the house for the amendment of those laws; though when bills, in the charge of the government, dealing with subjects bound together by a common principle, stand in a series upon the notice paper, debate on the first bill may include therein a discussion of the bills of a cognate character.

On the consideration by the house of the names, taken *seriatim*, of commissioners to be appointed pursuant to the provisions of a bill, discussion, sought to be raised upon each name, of the general policy involved in the appointment of the commissioners was not permitted. On a motion for the withdrawal of a bill, or for the postponement of a stage of a bill (p. 301), the provisions thereof must not be discussed, and debate must be strictly confined to the object of the motion. Debate also on a motion for the adjournment of the house, or of the debate, must, pursuant to standing order No. 22, be kept to the motive of the motion. Nor, when a remark made in debate has been ruled to be out of order, can those remarks be subjected to debate.

A member who resorts to persistent irrelevance may, under standing order No. 24, be directed by the Speaker or the chairman to discontinue his speech, after the attention of the house has been called to the conduct of the member;

moderate, 18th May, 1604, 1 C. J. 975.

1 7th March, 1856, 140 H. D. 3 s. 2037; 146 ib. 1702; see also 176 ib. 1797; 185 ib. 886; 187 ib. 775; 210 ib. 1815; and 185 ib. 333; 187 ib. 115. 1804; 159 ib. 348; 165 ib. 799; 167 ib. 1159; 189 ib. 91. 96; 210 ib. 1815; 211 ib. 1281; 212 ib. 1490; 219 ib. 1054; 238 ib. 1492; 239 ib. 1249; 241 ib. 807; 242 ib. 1443.

2 185 ib. 1718; also 14th Jan. 1881, 257 ib. 812.

3 12th April, 1888, 324 ib. 1066; 13th May, 1889, 336 ib. 1594.

4 17th July, 1889, 336 ib. 698.


6 27th Aug. 1886, 308 ib. 738.

7 The Speaker has directed a
and akin to irrelevancy is the frequent repetition of the same arguments, whether of the arguments of the member speaking, or the arguments of other members; an offence which may be met by the power given to the chair under standing order No. 24.\footnote{For examples, see 240 H. D. 3 s. 1662. A member suspended for persistent repetition, 25th Jan. 1881, 257 ib. 1849; 258 ib. 1620-1627; 282 ib. 1081. For resolutions vesting power in the Speaker to stay impertinent speeches, passed in former times, see 14th and 17th April, 1604; 31st March, 1610, 1 C. J. 172. 423. 948.}

Considerable laxity formerly arose in debate upon questions of adjournment,\footnote{See H. D. 23rd and 26th June, and 24th and 25th Aug. 1848; see ib. 5th Feb. and 22nd Feb. 1849; 102 H. D. 3 s. 1100; 232 ib. 1733.} and though efforts were made to enforce a stricter practice, it was not until 27th November, 1882, that standing orders Nos. 22 and 23 were passed, which restrict debate on all dilatory motions, such as motions for the adjournment of a debate, or of the house during any debate, or to report progress, or to leave the chair, to the matter of such motion; and which forbid members, who move or second any such motion, from moving or seconding a similar motion during the same debate.

The standing orders also empower the Speaker, or the chairman, if he be of opinion that such dilatory motions are an abuse of the rules of the house, to put forthwith the question thereon from the chair;\footnote{3rd July, 1888, 329 ib. 1095.} or he may decline to propose the question thereupon to the house.\footnote{4th March, 1887, 311 ib. 1645; 19th July, 1888, 328 ib. 1887; 19th July, 1889, 338 ib. 887; 19th Aug. 1889, 339 ib. 1733.} An attempt was made at the same time to mitigate the interference with the transaction of business caused by motions for the adjournment of the house, when there is no question under discussion, by standing order No. 17, and, as is explained elsewhere, debate must not be permitted on an order of the day, nor on a motion of which notice has been given, upon a question for the adjournment of the house.

It is not regular to discuss the merits of a bill, or other order of the day, upon a motion for its postponement.

Debate on motions for adjournment, \textit{ib.} see p. 268.

Debates on motions for adjournment.

\textit{s. o. 22, 23, Appendix, p. 827.}
Otherwise, the merits of a bill might be debated not only upon its several stages, but whenever its postponement is proposed. And, further, the discussion of each stage might be anticipated, by resuming debates before the day appointed for its consideration by the house. On 1st June, 1875, a member having moved the postponement of the second reading of a bill, from the next day until a more distant day, another member rose to move that the order be discharged: but upon the Speaker representing the inconvenience and impropriety of such an amendment, which would raise a debate upon the merits of the bill, when its postponement only was in question, the amendment was not proceeded with.

No member may speak except when there is a question before the house, or the member is about to conclude with a motion or amendment. These are the only exceptions which are admitted: questions put before the commencement of public business to ministers or other members of the house (see p. 236); personal explanations (see p. 303); and statements made by the ministers of the Crown regarding public affairs.

Explanations of this kind are made to the house on behalf of the government, stating the advice they have tendered to the sovereign regarding their retention of office, or the dissolution of Parliament; announcing the legislative proposals they intend to submit to Parliament; or the course they intend to adopt in the transaction and arrangement of public business.

The time when these explanations are made is after the questions to ministers and to other members have been answered, and before the commencement of public business; \(^3\) though a ministerial explanation has been made before the Speaker began to call on members to put their questions upon the notice paper.\(^4\) As no ques-

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1. 240 H. D. 3 s. 858.
2. 224 ib. 1235.
3. 10th June, 1884, 290 ib. 692; 13th June, 1892, 5 Parl. Deb. 4. 5. 915.
4. 293 H. D. 3 s. 1820. Ministerial explanations have also been made during debate on motions that afforded an opportunity for the statement. For instance, on motion for committee of supply, 4th March,
Explanations during debate, see p. 304.

See also reference to prior debates by way of explanation, p. 306.

Chapter XII.

Explanations is before the house, debate on such statements is irregular.¹

Explanation by a member of the circumstances which have caused his resignation of an office in the government is usually made immediately before the commencement of public business.² Though debate must not arise upon the explanation, statements pertinent thereto on behalf of the government have been permitted.

In regard to the explanation of personal matters, the house is usually indulgent; and will permit a statement of that character to be made without any question being before the house: but no debate should ensue thereon. General arguments or observations beyond the fair bounds of explanation, or too distinct a reference to previous debates, are out of order;³ though a member has been permitted by the Speaker to make, upon a subsequent sitting, an explanation regarding alleged misrepresentation in debate.⁴ The indulgence of a personal explanation should be granted with caution; for, unless discreetly used, it is apt to lead to irregular debates.⁵ In one case personal explanations were permitted to be made by one member, on behalf of another who was abroad.⁶ Explanations have also been allowed on behalf of gentlemen whose conduct had been reflected upon in debate;⁷ though recently

1867; on motion for an adjournment of the house, 6th March, 1867, 185 H. D. S. s. 1309. 1339.

¹ Debate has been raised on a ministerial statement upon a motion for adjournment, 290 ib. 696.

² Lord Henry Lennox, 290 ib. 1481; Mr. W. E. Forster, 269 ib. 106. Explanations of this nature have been made during debate upon a motion to which such statements were relevant: Mr. Courtney, 4th Dec. 1864, 234 ib. 656; Mr. Chamberlain and Sir George Trevelyan, 304 ib. 1104. 1181.

³ Lord C. Paget, 14th March, 1864, 173 ib. 1913.

⁴ 87 ib. 480.

⁵ Mr. T. Duncombe, 18th March, 1859, 153 ib. 334; Mr. Sheridan and the chancellor of the exchequer, 17th March, 1864, 174 ib. 191; Mr. Lowe, Lord R. Cecil, Mr. Disraeli, and Mr. Walter, 18th April, 1864, 174 ib. 1203; Mr. Baillie Cochrane, the chancellor of the exchequer, and Mr. Roebuck, 28th March, 1865, 178 ib. 372; 269 ib. 106–132. See also motion to express regret that imputations made against a member had not been withdrawn on the occasion of a personal explanation, 18th March, 1864, 174 ib. 306.

⁶ Mr. Bright, 16th March, 1860, for Mr. Cobden, 157 ib. 718.

⁷ Case of Dr. Beke, 23rd Nov. 1867, 190 ib. 422; case of Mr. Reed, 210 ib. 403.
an explanation of this nature was not permitted by the Speaker.¹

Except on occasions when a reply is permitted (see p. 305), or in a committee, it is a rule, strictly observed in both houses, that no member shall speak twice to the same question, unless he speaks to explain some part of his speech which has been misunderstood. Accordingly, when a member speaks to a motion, and resumes his seat without moving an amendment that he intended to propose, he cannot subsequently rise to move the amendment, having already spoken to the question before the house.² So also, if, when an order of the day has been read, a member, having made a prolonged appeal that the consideration of the order should be deferred, resumes his seat, he cannot again address the house thereon.³ Under special circumstances, on an explanation from the Speaker, the pleasure of the house has been signified that a member should be allowed to speak a second time;⁴ and a second speech has been allowed to a minister, who had spoken early in the debate, in answer to a question which had rendered a ministerial explanation necessary, or to answer a question addressed to him after he had spoken.⁵

To explain.

1. The right of an explanation is regulated in the House of Lords by standing order No. 27, which prescribes that no man is to speak twice to a bill, at one time of reading it, or to any other proposition, except the mover in reply, "unless it be to explain himself in some material part of his speech" (no new matter being introduced), and not without the leave of the house first obtained.

So also in the Commons, a member who, during a debate, has spoken to a question may again be heard to offer explanation of some material part of his speech which has been misunderstood: but he must not introduce new

¹ 19th May, 1882, 269 H. D. 3 s. 1095.
² 191 ib. 1083.
³ Indian Councils Act Amendment Bill, 26th May, 1892, 4 Parl. Deb. 4 a. 1930.
⁴ Government Annuities Bill, 7th March, 1864 (the chancellor of the exchequer and Mr. H. B. Sheridan), 173 H. D. 5 s. 1549.
⁵ Lord J. Russell, 3rd Feb. 1862, 119 ib. 88.153; the attorney-general, 8th April, 1864, 174 ib. 935.
matter, nor endeavour to strengthen by new arguments his former position, which he alleges to have been misunderstood, or to reply to other members.\(^1\) But here, again, a greater latitude is permitted in cases of personal explanation, where a member’s character or conduct has been impugned in debate.\(^2\)

The proper time for explanation is at the conclusion of the speech which calls for it: but it is a common practice for the member desiring to explain, to rise immediately the statement is made to which his explanation is directed, when, if the member in possession of the house gives way and resumes his seat, the explanation is at once received: but if the member who is speaking declines to give way, the explanation cannot then be offered.\(^3\)

2. A reply is only allowed to the peer or member who has proposed a substantive question to the house; and this privilege is accorded to the mover of a substantive motion for the adjournment of the house.\(^4\) It is not conceded to a member who moves an order of the day, such as a motion that a bill be read a second time; nor an amendment,\(^5\) the previous question,\(^6\) an adjournment during a debate, a motion on the consideration of Lords’ amendments, nor an instruction to any committee.\(^7\) Under these circumstances, it is not uncommon for a member to move an order of the day, or second a substantive motion by raising his hat,

\(^1\) 165 H. D. 3 s. 1032; 167 ib. 1216. Mr. Lowe and Lord R. Cecil, 13th May, 1864, 175 ib. 462; 223 ib. 367. 1099; 226 ib. 525. 507; 231 ib. 301; 241 ib. 332; 242 ib. 1709.

\(^2\) 15th June, 1846 (Sir R. Peel and Mr. Disraeli), 87 ib. 537.

\(^3\) See explanation of this rule as stated by the Speaker, 24th Nov. 1819, 41 H. D. 157; 27th March, 1850, Mr. Gladstone and Mr. White- side, 157 H. D. 3 s. 1407; Mr. Gladstone and Mr. Newdegate, 27th May, 1861, 163 ib. 83; Mr. Denman and the chancellor of the exchequer, 19th May, 1865, 179 ib. 572; Mr. Maguire and Sir R. Peel, 11th May, 1866, 183 ib. 800; Mr. Lawson and Mr. Gathorne Hardy, 22nd May, 1868, 192 ib. 749; 208 ib. 343. 1190; 213 ib. 728.

\(^4\) See 5th Feb. 1858; 4th April, 1859 (ministerial explanations); 11th April, 1867, 186 ib. 1505; 207 ib. 1350; 210 ib. 1846; 17th Dec. 1873, &c.

\(^5\) 174 ib. 2022; 249 ib. 1527.

\(^6\) 8th Feb. 1858 (Operations in India, Mr. Disraeli).

\(^7\) 186 H. D. 3 s. 1443; Conventual and Monastic Institutions, 9th May, 1870 (Mr. Matthews): Charing Cross and Victoria Embankment Bill, 1873 (Lord Elcho).
without rising to address the chair, and to reserve his speech for a later period in the debate. Formerly, a member who had moved an order of the day, or seconded a motion in this manner, was precluded from afterwards addressing the house upon the same question, or was heard merely by the indulgence of the house: but under present usage, the option of speaking at a subsequent period of the debate has been conceded. But in moving a motion for adjournment, or an amendment, a member cannot avail himself of this privilege, as he must rise in his place to make the motion, and thus cannot avoid addressing the house, however shortly. Accordingly, in such a case, the mover and, in like manner, the seconder of a motion have not the power of reserving their speech until a future occasion during the debate.

And as a member who moves an amendment cannot speak again, so a member who seconds an amendment is equally unable to speak again upon the original question, after the amendment has been withdrawn or otherwise disposed of. In both cases, the members have already spoken while the question was before the house, and before the amendment had been proposed from the chair. For the same reason, a member who has addressed the house in moving the second reading of a bill, cannot move the adjournment of the debate, unless an amendment has been since proposed.

3. In a committee of the whole house the restriction upon speaking more than once is altogether removed, as will be more fully explained in speaking of the proceedings of committees (see p. 365).

The adjournment of a debate does not enable a member to speak again upon a question, when the discussion is renewed on another day, however distant: but directly a new
question has been proposed, as, “that this house do now
adjourn,” “that the debate be adjourned,” “the previous
question,” or an amendment, members are at liberty to
speak again; as the rule applies strictly to the prevention
of more than one speech to each separate question proposed:
but a member who has already spoken to a question, or
has moved or seconded an amendment thereto, or a motion
for the adjournment of the debate, may not rise again to
move an amendment, or the adjournment of the house or of
the debate, or any similar question, though he may speak
to these new questions when proposed by other members.
On the 27th October, 1884, an amendment having been
moved to add words to the address in answer to the Queen’s
speech, that being the third day of the debate, that amend-
ment was amended, without opposition, by leaving out the
earlier portion of it, when a doubt was raised whether the
amendment so amended had not become a new question,
upon which members who had already spoken might again
address the house: but, after full consideration, it was
ruled that it was still the same question. A member, how-
ever, who has already spoken, may rise and speak again
upon a point of order or privilege, if he confines himself to
that subject, and does not refer to the general tenor of a
speech.

For preserving decency and order in debate, various rules have been laid down, which, in the Lords, are enforced by
the house itself, and in the Commons by the Speaker in the
first instance, and, if necessary, by the house. The violation
of these rules any member may notice, either by a cry of
“order,” or by rising in his place, and, in the Lords,
addressing the house, and, in the Commons, the Speaker.
When a member speaks to order, he must simply direct
attention to the point complained of, and submit it to the
decision of the Speaker (see p. 331).

The rules for the conduct of debate divide themselves
into two parts, viz.: I., such as are to be observed by
members addressing the house; and, II., those which regard
the behaviour of members listening to the debate.

I. (1) A member, while speaking to a question, may not
allude to debates of the same session upon any question or
bill not then under discussion; (2) nor speak against or
reflect upon any determination of the house, unless he in-
tends to conclude with a motion for rescinding it; (3) nor
allude to debates in the other house of Parliament; (4) nor
utter treasonable or seditious words, or use the Queen’s
name irreverently, or to influence the debate; (5) nor speak
offensive and insulting words against the character or
proceedings of either house; (6) nor refer to matters pending
a judicial decision; (7) nor reflect upon the conduct of the
sovereign or of other persons in authority; (8) nor make
personal allusions to members of Parliament; (9) nor ob-
struct public business.

(1) It is a wholesome restraint upon members, to prevent
them from reviving a debate already concluded; and
there would be little use in preventing the same question or
bill from being offered twice in the same session, if,
without being offered, its merits might be discussed again
and again. 1 The rule, however, is not always strictly
enforced: peculiar circumstances may seem to justify a
member in alluding to a past debate, and the house and the
Speaker will judge, in each case, how far the rule may
fairly be relaxed. On the 30th August, 1841, for instance,
an objection was taken that a member was referring to a
preceding debate, and that it was contrary to one of the
rules of the house. The Speaker said, “That rule applied in
all cases: but where a member had a personal complaint to
make, it was usual to grant him the indulgence of making

1 See H. D. 28th Feb. 1845, where
Mr. Roche had come from Ireland on
purpose to ask Mr. Roebuck a ques-
tion, but was stopped by Mr. Speaker;
7th Aug. 1876, 231 H. D. 3 a. 749;
238 ib. 1403.

Chapter XII
it." And again on the 7th March, 1850, he said, "The house is always willing to extend its indulgence, when an honourable member wishes to clear up any misrepresentation of his character: but that indulgence ought to be strictly limited to such misrepresentations, and ought not to extend to any observations other than by way of correction." Again, on the 3rd March, 1856, a noble lord was allowed to refer to a former debate by way of personal explanation: but directly he proposed to introduce new matter, he was stopped by the Speaker; and the same rule was explained and enforced on the 26th February, 1858, on the 4th June, 1863, and on other occasions. Nor is a member allowed to refer to a speech made in a committee of the whole house. This rule, however, does not apply to debates upon different stages of a bill; and after the passing of an Act, allusions have been allowed to debates during its progress, while discussing a proclamation issued under that Act. And upon a motion for practically rescinding a resolution of the house, reference has been permitted to the debate upon that resolution. There appears, however, to be a technical difficulty in the strict enforcement of the rule in committee, where a debate in another committee is referred to, as one committee is not supposed to be cognizant of the debates of another.

A member may not read any portion of a speech, made in the same session, from a printed book or newspaper. This rule, indeed, applies strictly to all debates whatsoever, the publication of them being a breach of privilege: but of late years it has been relaxed, by general acquiescence, in favour of speeches delivered in former sessions. It is also irregular

1 59 H. D. 3 s. 486; see also 65 ib. 642, 26th July, 1842.
2 7th March, 1850 (Mr. Campbell and Mr. B. Osborne), 109 ib. 462; see also 30th March, 1846 (Sir J. Graham and Mr. Shaw), 85 ib. 300; 140 ib. 1708; Sir R. Bethell, Mr. Scott, and Mr. Warren, 149 ib. 10-14; 235 ib. 503, 1192; 236 ib. 36, 172; Sir W. Marriott, 20th March, 1893.
3 154 ib. 983.
4 Royal Titles Act, May 11th, 1876, 129 ib. 874.
5 Controller of the Stationery Office, 1877, 233 ib. 1708.
6 In committee of supply, Education Vote, 12th June, 1856, 142 ib. 1354.
7 203 ib. 1613, &c.
8 On the 17th May, 1794, Sir W.
to read extracts from newspapers, letters, or other documents referring to debates in the house in the same session.\(^1\) Indeed, until 1840, the reading of any extracts from a newspaper, whether referring to debates or not, had been restrained as irregular. On the 9th March, 1840, the Speaker having called a member to order, who was reading an extract cut out from a newspaper, as part of his speech, Sir Robert Peel said it would be drawing the rule too tightly if members were restrained from reading relevant extracts from newspapers; and with the acquiescence of the house, the member proceeded to read the passage from the newspaper.\(^2\) On the 14th February, 1856, when a member was called to order for reading an extract from a newspaper, the Speaker stated that, on a former occasion when he had attempted to enforce this rule, he had been overruled by the house. And 9th March, 1857, in committee of supply, the chairman made a similar statement.\(^3\)

(2) The objections to the practice of referring to past debates apply, with greater force, to reflections upon votes of the house, unless made for the purpose of justifying a motion that the vote be rescinded. Those reflections not only revive discussion upon questions already decided, but are wholly irregular, inasmuch as the member is himself included in, and bound by, a vote agreed to by a majority.\(^4\) Reflections also on the action taken by the Speaker and the house upon a closure motion are not permitted.\(^5\)

(3) The rule that allusions to debates in the other house are out of order, prevents fruitless arguments between members of two distinct bodies who are unable to reply to each other, and guards against recrimination and offensive language, in the absence of the party assailed: but it is

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\(^1\) 27th Feb. 1846 (Mr. Ferrand), 1846 H. D. 3 s. 232; also 154 ib. 1200; 162 ib. 1885; 168 ib. 1198; 183 ib. 826; 191 ib. 2030; 206 ib. 1830; 208 ib. 1604; 241 ib. 831.

\(^2\) 52 ib. 1063-1065.

\(^3\) 140 ib. 764; 144 ib. 2106.

\(^4\) 2 Hatsell, 234, n.; see also 155 H. D. 3 s. 1122; 186 ib. 855.

\(^5\) 19th and 20th July, 1888, 328 ib. 1809; 329 ib. 58; 29th Feb. and 29th March, 1893.
ORDER IN DEBATE.

mainly founded upon the understanding that the debates of the other house are not known, and that the house can take no notice of them. The daily publication of debates in Parliament offers a strong temptation to disregard this rule. The same questions are discussed by persons belonging to the same parties in both houses, and speeches are constantly referred to by members, which this rule would exclude from their notice; 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. An ingenious orator may break through any rules in spirit, and yet observe them to the letter.

The same rule has been applied to restrain the discussion of a bill which has been passed and sent to the Lords. On the 4th April, 1876, when it was proposed that a motion for an address to the Crown, on the Royal Titles, should be considered on Friday next, the Speaker pointed out that the Royal Titles Bill, which had passed the Commons, stood for third reading, in the Lords, on that day, and that it would be irregular to discuss the proposed motion until the bill had been passed by the Lords. The motion was accordingly appointed for the following Monday. In like manner, on an amendment to a bill in committee, which referred to the provisions of a bill before the Lords, debate on the

1 Lord Peterborough's complaint regarding words spoken in the Commons, 1641, 4 L. J. 582; 155 H. D. 3 s. 1121; 198 ib. 368.
2 See Lords' Debates, 3rd April, 1845 (Lord Ashburton); Commons' Debates, 4th April, 1845 (Lord J. Russell), on the Ashburton Treaty; Commons' Debates (Mr. Ffrench), 21st and 23rd July, 1845; and Lords' Debates (Lord Brougham), 22nd and 24th July, 1845, on the Irish Great Western Railway Bill; Lords' Debates, 27th June, 1848 (Earl Grey); and Commons' Debates, 2nd April, 1852 (Mr. Cobden); Lords' and Commons' Debates, 26th Feb. and 1st March, 1853 (Sir R. Bethell and Lord Campbell), on the Conspiracy Bill, 130 H. D. 3 s. 4. 69; and 177 ib. 1557; 183 ib. 1098, as examples of the violation of this rule. See also 191 ib. 1786; and Speaker's ruling, 19th March, 1891, concerning the power of quotation from a speech in the House of Lords, 351 ib. 1500. See also p. 853.
3 See discussions, 29th May, 1868, 192 ib. 1077; 208 ib. 1682; and Speaker's ruling, 9th June, 1876, 229 ib. 1658; 31 ib. 749; 237 ib. 1262; 242 ib. 228.
4 228 ib. 1183.
details of that bill was not permitted,\textsuperscript{1} and a member was, on another occasion, restrained by the Speaker from commenting on the provisions of a bill which was then before the house of Lords.\textsuperscript{2}

This rule does not apply to reports of committees of the other house, even though the report has not been communicated to the Commons, according to a decision to that effect by Mr. Speaker.\textsuperscript{3} Nor can the rule be extended to the votes or proceedings of either house, as they are recorded and printed by authority.\textsuperscript{4}

(4) Treasonable or seditious language, or an irreverent use of her Majesty’s name, would be rebuked by any subject out of Parliament; and it is only consistent with decency, that no member of the legislature should be permitted openly to use such language, in his place in Parliament. Members have not only been called to order for such offences, but have been reprimanded, or committed to the custody of the Serjeant, and even sent to the Tower.\textsuperscript{5}

The irregular use of the Queen’s name to influence a decision of the house is unconstitutional in principle, and inconsistent with the independence of Parliament. Where the Crown has a distinct interest in a measure, there is an authorized mode of communicating her Majesty’s recommendation or consent, through one of her ministers (see p. 423): but her Majesty cannot be supposed to have a private opinion, apart from that of her responsible advisers; and any attempt to use her name in debate to influence the judgment of Parliament, would be immediately checked and censured.\textsuperscript{6}

On the 12th November, 1640, it was moved that some course might be taken for preventing the inconvenience of his Majesty being informed of anything that is in agitation

\textsuperscript{1} Criminal Law Amendment (Ireland) Bill, 25th April, 1887, 142 C. J. 191.
\textsuperscript{2} 26th April, 1887, 314 H. D. 3 s. 68.
\textsuperscript{3} H. D. 9th June, 1848.
\textsuperscript{4} Since 1860, the Lords’ Minutes have been placed upon the table of the House of Commons, for reference, 159 H. D. 3 s. 856.
\textsuperscript{5} 1 C. J. 50. 51. 104. 333. 335. 866; 9 ib. 760; 15 ib. 70; 18 ib. 49. 54. 658; 7 Hans. Parl. Hist. 511; D’Ewes, 41. 244; 3rd March, 1881, 259 H. D. 3 s. 168.
\textsuperscript{6} 1 C. J. 697.
in the house before it is determined; and on the 16th December, 1641, the Lords and Commons tendered to Charles I. a remonstrance to that effect.

Again, on the 17th December, 1783, the Commons resolved—

“That it is now necessary to declare, that to report any opinion or pretended opinion of his Majesty, upon any bill or other proceeding depending in either house of Parliament, with a view to influence the votes of the members, is 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 this country.”

On the 26th February, 1808, in the debate on Mr. Canning’s motion for papers relating to Denmark, Mr. Tierney said, “The right hon. gentleman had forfeited the good opinion of the country, the house, and, as I believe, of his sovereign.” This the Speaker held to be such an introduction of the personal opinion of the sovereign into debate, respecting the conduct of a member of the house, as justified Mr. Tierney’s being called to order. On the 19th March, 1812, complaints were made, in the House of Lords, of the use of the Prince Regent’s name in debate.

The rule, however, must not be construed so as to exclude a statement of facts, by a minister, in which the Queen’s name may be concerned. In the debate on the Foreign Loans Bill, 24th February, 1729, Sir R. Walpole stated that he was “provoked to declare what he knew, what he had the king’s leave to declare, and what would effectually silence the debate.” Upon which his statement was called for, and he declared that a subscription of 400,000l. was being raised in England for the service of the Emperor. When he sat down, Mr. Wortley Montagu complained that the minister had introduced the name of the king to “overbear their debates:” but Walpole replied that, as privy councillor, he was sworn to keep the king’s counsel secret, and that he had therefore asked his Majesty’s permission to state what he knew, which, without his leave, he could not have divulged; and

1 2 C. J. 27. 344; 39 ib. 842. Chester’s Diary, 139.
2 10 H. D. 737; 2 Lord Col...
3 22 H. D. 51, et seq.
thus the matter appears to have ended, without any opinion being expressed by the Speaker or by the house.¹

On the 9th May, 1843, Sir Robert Peel said, "On the part of her Majesty, I am authorized to repeat the declaration made by King William," in a speech from the throne, in reference to the legislative union between Great Britain and Ireland. On the 19th, an objection was raised to these expressions: but the Speaker, after noticing the irregularity of adverting to former debates, expressed his own opinion—

"That there was nothing inconsistent with the practice of the house in using the name of the sovereign in the manner in which the right hon. baronet had used it. It was quite true that it would be highly out of order to use the name of the sovereign in that house, so as to endeavour to influence its decision, or that of any of its members, upon any question under its consideration: but he apprehended that no expression which had fallen from the right hon. gentleman could be supposed to bear such a construction."

And Lord John Russell explained that "the declaration of the sovereign was made by the right hon. baronet's advice, because any personal act or declaration of the sovereign ought not to be introduced into that place;" to which Sir R. Peel added, "that he had merely confirmed, on the part of her Majesty, by the advice of the government, the declaration made by the former sovereign."² On the 2nd May, 1876, the premier, Mr. Disraeli, said he had her Majesty's authority to make a statement on her part: but, as the name of the sovereign could not be introduced in debate, it rested with the house whether he should proceed. The Speaker observed that "if the statement related to matters of fact, and was not made to influence the judgment of the house, he was not prepared to say that, with the indulgence of the house, her Majesty's name might not be introduced." Mr. Disraeli then proceeded to make a statement, on the authority of the Queen, in contradiction to Mr. Lowe, that her Majesty had never made proposals to any minister for a change of the royal titles.³

(5) It is obviously unbecoming to permit offensive ex-

¹ 7 Chandler's Debates, 61. 64. ² 228 ib. 2037. ³ 69 H. D. 3 a. 24. 574.
pressions against the character and conduct of Parliament to be used without rebuke; for they are not only a contempt of that high court, but are calculated to degrade the legislature in the estimation of the people. If directed against the other house, and passed over without censure, they would appear to implicate one house in discourtesy to the other; if against the house in which the words are spoken, it would be impossible to overlook the disrespect of one of its own members. If, when called to order, the member fails to retract or explain his words, and make a satisfactory apology, he may be punished by a reprimand or by commitment, or under the standing order No. 21 or 27. It is most important that the use of such words should be immediately reproved, in order to avoid complaints and dissension between the two houses.

In 1614, Dr. Richard Neile, Bishop of Lincoln, uttered some words which gave offence to the Commons, and they complained of them in a message to the Lords, to which they received an answer that the bishop protested, "upon his salvation, that he had not spoke anything with any evil intention to that house;" and they assured the Commons that, if they had conceived that the lord bishop's words meant to cast any aspersion of sedition upon that house, they would have censured the same with all severity.

Their lordships added that hereafter no member of their house ought to be called in question, when there is no other ground thereof but public and common fame only. In 1701, a complaint was made, by the Commons, of expressions used by Lord Haversham, at a free conference, and numerous communications ensued, which were terminated by a prorogation. On the 14th December, 1641, and on the 20th May, 1642, exception being taken to words used by Lord Pierpoint,

Chapter XIII. Words against Parliament, or either house.

1 31st March, 1887, 313 H. D. 3 s. 101; 12th Aug. 1887, 319. ib. 363; 28th June, 1889, 337 ib. 1104; 23rd June, 1892, 5 Parl. Deb. 4 s. 1842. The Speaker has condemned the use by a member of improper language directed against the House of Lords, in giving notice of a motion, 290 H. 2 9 C. J. 147. 769; 10 ib. 512; 11 ib. 580. Mr. Duffy's case, 5th May, 1853, 108 ib. 461.

3 2 L. J. 713; see also 4 ib. 582; 1 C. J. 496. 499, &c.; 3 Hatsell, 73.

4 13 C. J. 629. 634. 637. 639.
and by Lord Herbert of Cherbury, they were commanded to withdraw, and were committed to the custody of the gentleman usher.\(^1\) On the 14th March, 1770, exception was taken to a statement in debate by the Earl of Chatham, "that the late lord chancellor was dismissed for giving his vote in this house;" and the house resolved "that nothing had appeared to this house to justify his assertion." \(^2\)

Disrespectful or abusive mention of a statute would seem to be partly open to the same objections as improper language applied to the Parliament itself; for it imputes discredit to the legislature which passed it, and has a tendency to bring the law into contempt; though the necessity of the repeal of a law justifies, as an argument for that course, its condemnation in debate. A statement that the enactment of a law may justify an appeal to force is not within the cognizance of the chair.\(^3\)

(6) Matters awaiting the adjudication of a court of law should not be brought forward in debate. This rule was observed by Sir R. Peel and Lord J. Russell, both by the wording of the speech from the throne, and by their procedure in the house, regarding Mr. O'Connell's case (see n. 4, p. 264), and has been maintained by rulings from the chair.

(7) Unless the discussion is based upon a substantive motion, drawn in proper terms (see p. 263), reflections must not be cast in debate upon the conduct of the sovereign, the heir to the throne, and members of the royal family, the Viceroy and Governor-General of India, the Lord-Lieutenant of Ireland, the Speaker, the chairman of ways and means, members of either house of Parliament,\(^4\) and judges of the superior courts of the United Kingdom.\(^5\)

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\(^1\) L. J. 475; 5 ib. 77.

\(^2\) 32 ib. 476.

\(^3\) 2nd Sept. 1886, 308 H. D. 3 a. 1108.

\(^4\) See Speaker's ruling, that the explicit statement of the prime minister must be accepted, 8th June, 1883, 280 ib. 116.

\(^5\) Disrespectful language towards the royal family, 21st March, 1887, 312 ib. 1061; 25th July, 1889, 338 ib. 1338; the Speaker, 1st March, 1887, 311 ib. 951; 4th April, 1887, 313 ib. 472; 25th March, 1875, 234 ib. 1558; 6th June, 1877, 238 ib. 1953; the chairman, 302 ib. 1710; the judges, 26th Feb. 1883, 276 ib. 934; 4th April, 1884, 287 ib. 1732; 2nd Sept. 1887, 320 ib. 1031; 14th Feb. 1888, 322 ib. 403; 1st June, 1888.
including persons holding the position of a judge such as a judge in a Court of Bankruptcy and of a county court. Nor may opprobrious reflections be cast in debate on sovereigns and rulers over countries in amity with her Majesty.¹

(8) In order to guard against all appearance of person-
ality in debate, it is a rule, in both houses, that no member shall refer to another by name. In the upper house, every lord is alluded to by the rank he enjoys, as “the noble marquess,” or “the right reverend prelate;” and in the Commons, each member is distinguished by the office he holds, by the place he represents, or by other designations, as “the noble lord the secretary for foreign affairs,” “the honourable” or “right honourable gentleman the member for York,” or “the honourable and learned member who has just sat down.”² The use of temperate and decorous lan-
guage is never more desirable than when a member is canvassing the opinions and conduct of his opponents in debate. The imputation of bad motives, or motives different from those acknowledged; misrepresenting the language of another, or accusing him, in his turn, of misrepresentation; charging him with falsehood or deceit; or contemptuous or insulting language of any kind;—all these are unparlia-
mentary,³ and call for prompt interference.⁴ The same

¹ 14th Feb. 1878, 237 H. D. 3 s. 1639; 6th March, 1878, 238 ib. 799.
² Mr. Berkeley was called to order, 20th March, 1860, for referring to members by name, as having spoken, in former sessions, against the ballot, 157 ib. 939.
³ A charge made against a member of having obstructed the business of the house is not out of order, 2 Sept. 1886, 308 ib. 1170.
⁴ For examples of unparliamentary expressions, see Debates, 3rd March 1864; 173 H. D. 3 s. 1406; and cases of Viscount Palmerston and Mr. Layard, 27th April, 1753, and of Mr. Gathorne Hardy and Mr. La-
yard, 7th July, 1864 (vote of confi-
dence) as to the words, “calumnious charges,” 137 ib. 1895; 176 ib. 1003; also 186 ib. 173. 422. 441. 884; 187 ib. 953; 188 ib. 1895. “Dodge” ruled to be an unparliamentary expression, 193 ib. 1297; so also “factious opposition,” ib. 1741; and “jockeyed,” 198 ib. 512; and accu-
sing a member of having “de-
liberately raised a false issue,” 205 ib. 1743; and having “passed a somewhat impertinent censure,” 206 ib. 1685; “hypocritical lovers of liberty,” 237 ib. 1630; “rude re-
marks,” 320 ib. 763; “falsehood,” 96 ib. 1206; 314 ib. 258. But not “cal-
lumnious,” 201 ib. 1435; see also 211 ib. 832; 212 ib. 222. 1653; 213 ib. 750; 219 ib. 589; 223 ib. 1015. Mr. Plimsoll’s case, “villains,” 22nd July,
right to claim courteous treatment in debate is due alike between both houses of Parliament; and abusive language, and imputations of falsehood, uttered by members of the House of Commons against members of the House of Lords have been met by the immediate intervention of the chair to compel the withdrawal of the offensive words, or, in default, by the punishment of suspension.

The rules of the House of Lords upon this point are very distinctly laid down in standing order No. 27, which directs "that all personal, sharp, or taxing speeches be forborne" in the house; and that if any offence be given of that kind, the house "will sharply censure the offender.

On the 10th December, 1766, notice was taken of some words that had passed between the Duke of Richmond and the Earl of Chatham; upon which they were required by the house to declare, upon their honour, "that they would not pursue any further resentment."

The Lords also, to prevent quarrels in debate between their members, have ordered, by standing order No. 29, that a lord who conceives himself to have received an affront or injury from another member within the precincts of the house, shall appeal to the Lords in Parliament for his reparation; or shall, if he declines the justice of the house, undergo their severe censure.

Sometimes the Lords have extended this principle to the prevention of quarrels which have arisen out of the house. On the 6th November, 1780, the Lords being informed that the Earl of Pomfret had sent a challenge to the Duke of Grafton, upon a matter unconnected with the debates or proceedings of Parliament, declared the earl "guilty of a high contempt of this house," and committed him to the Tower.

The House of Commons will insist upon all offensive Offensive words uttered in committee, see p. 360.
words being withdrawn, and upon an ample apology being made, which shall satisfy both the house and the member to whom offence has been given. If the apology be refused, or if the offended member decline to express his satisfaction, the house takes immediate measures for preventing the quarrel from being pursued further, by committing both the members to the custody of the Serjeant; whence they are not released until they have submitted themselves to the house, and given assurance that they will not engage in hostile proceedings.

In 1770, words of heat having arisen between Mr. Fox and Mr. Wedderburn, the former rose to leave the house, upon which the Speaker ordered the Serjeant to close all the doors, so that neither Mr. Fox nor Mr. Wedderburn should go out till they had promised the house that no further notice should be taken of what had happened. If words of heat arise in a committee of the whole house, they are reported by the chairman, and the house interposes its authority to restrain any hostile proceedings.

The Commons will also interfere to prevent quarrels between members, arising from personal misunderstanding in a select committee, as in the case of Sir Frederick Trench and Mr. Rigby Wason, on the 10th June, 1836. One of those gentlemen, on refusing to assure the house that he would not accept a challenge sent from abroad, was placed in custody; and the other, by whom the challenge was expected to be sent, was also ordered to be taken; nor were either of them released until they had given the house satisfactory assurances of their quarrel being at an end.

The sending a challenge by one member to another, in consequence of words spoken by him in his place in Parliament, is a breach of privilege, and will be dealt with accordingly,
unless a full and ample apology be offered to the house. But it does not appear that the Speaker or the house would interfere to prevent a quarrel from being proceeded with, where it had arisen from a private misunderstanding, and not from words spoken in debate, or in any proceedings of the house or of a committee. In such cases, if any interference should be deemed necessary, information would probably be given to the police. But in 1701, Mr. Mason, a member, having sent a challenge to Mr. Molyneux, a merchant, the house required his assurance that the matter should go no further.

When disorderly words are used by a member in debate, notice should be immediately taken of the words objected to; and if a member desires that the words be taken down, he must repeat the words to which he objects, and state them to the house exactly as he conceives the words to have been spoken. Then the Speaker or chairman, if in his opinion the words are disorderly, having ascertained the sense of the house or the committee, directs the Clerk to take down the words to which objection has been taken. Even the Speaker's own words have been taken down. The Commons have agreed "that when any member had spoke between, no words which had passed before could be taken notice of, so as to be written down in order to a censure." And on the 9th April, 1807, the Speaker decided that certain words could not be taken down, though a member had immediately risen to order, and had objected to the

1 Case of Mr. Roebuck and Mr. Somers, 16th June, 1845, 100 C. J. 589; 81 H. D. 3 s. 601. Notice taken of a challenge sent to a member, on remarks made outside the house, which touched proceedings in the house, 31st May, 1883, 138 C. J. 232. In 1798, the Speaker did not interfere to prevent the duel between Mr. Pitt and Mr. Tierney: but went to Putney, where it was fought, 1 Lord Sidmouth's Life, 204. 205.

2 Private memorandum, 22nd Feb. 1849. But see 13 C. J. 444; also case when offensive language had been used, in the division lobby, concerning a speech delivered at a public meeting, 16th May, 1867, 122 C. J. 221.

3 165 H. D. 3 s. 622. 206. ib. 196.

4 Regarding the Speaker's discretion in giving the direction, see 2 Hattell, 272, n.; also 115 H. D. 3 s. 276; 235 ib. 1806.

5 2 Hattell, 269; 66 C. J. 391; 68 ib. 322; 247 ib. 1352; 270 ib. 365; 272 ib. 1563.

6 Feb. 16th, 1770, 1 Cav. Deb. 483.

7 2 Hattell, 269, n.
words used, because another member and the Speaker had
spoken to the question of order, before the house expressed
a wish to have the words taken down.\(^1\) And again, when
objection was taken to words, after a question put from the
chair, it was ruled to be too late.\(^2\) This rule applies, if the
member is permitted to continue his speech without inter-
ruption; and in the Lords, also, the words are required to
be taken down \textit{instanter}.\(^3\) If the words be taken down in
a committee of the whole house, they are reported forth-
with, to be dealt with by the house.\(^4\) Failing the tender of
explanation or apology, the consideration of the matter is
appointed for the next sitting, and the member incriminated
is ordered to attend. Immediate complaint to the chair is,
however, the most effective mode of dealing with offensive
words.

Another rule, or principle of debate, may be here added.
A minister of the Crown is not at liberty to read or quote
from a despatch or other state paper not before the house,
unless he be prepared to lay it upon the table. This restraint
is similar to that rule of evidence, in courts of law, which
prevents counsel from citing documents which have not been
produced in evidence. The principle is so reasonable that
it has not been contested; and when the objection has been
made in time, it has been generally acquiesced in. It has
also been admitted that a document which has been cited,
ought to be laid upon the table of the house, if it can be
done without injury to the public interests.\(^5\) The same rule,

\(^1\) 9 H. D. 326.
\(^2\) 205 H. D. 3 s. 403.
\(^3\) 48 ib. 321, 17th June, 1839 (Beer
Bill).
\(^4\) Case of Mr. More, 3rd June, 1826,
1 C. J. 866; of Mr. Shippen, 4th Dec.
1717, 18 ib. 653; of Mr. Duffy, 5th
May, 1853, 108 ib. 461, 466; of Mr.
Parnell, 25th July, 1877, 132 ib.
375; 3rd July, 1879; 134 ib. 316;
235 H. D. 8 s. 1810; 272 ib. 1561.
1565; see also p. 853.
\(^5\) See motion of Mr. Adam, March
4th, 1808, to censure Mr. Canning
for having read to the house de-
spatches and parts of despatches,
none of which had then been com-
communicated to the house, and some
of which the house had determined
should not be produced, 10 H. D. 1
s. 898; 2 Lord Colchester’s Diary, 141.
Mr. Canning and Mr. Tierney,
11th Feb. 1818, 37 H. D. 338. De-
bate in committee of supply, 17th
July, 1857 (Sir C. Wood); 148 H. D.
3 s. 1759. See debate, 23rd May,
1832, on the Longford Election, in
which Sir Robert Peel referred to in-
formation received by the govern-
ment without citing documents; and

\textbf{Y}
however, cannot be held to apply to private letters or memoranda. On the 18th May, 1865, the attorney-general, on being asked by Mr. Ferrand if he would lay upon the table a written statement and a letter to which he had referred, on a previous day, in answering a question relative to the Leeds Bankruptcy Court, replied that he had made a statement to the house upon his own responsibility, and that, the documents he had referred to being private, he could not lay them upon the table. Lord R. Cecil contended that the papers, having been cited, should be produced: but the Speaker declared that this rule applied to public documents only. Indeed, it is obvious that, as the house deals only with public documents in its proceedings, it could not thus incidentally require the production of papers which, if moved for separately, would be refused as beyond its jurisdiction. Members not connected with the government have also cited documents in their possession, both public and private, which were not before the house: but though the house is equally unable to form a correct judgment from partial extracts, inconvenient latitude has sometimes been permitted, which it is doubtful whether any rule but that of good taste could have restrained.

The opinions of the law officers of the Crown, being confidential, are not usually laid before Parliament, nor cited in debate; and their production has frequently been refused: but if a minister deems it expedient that such opinions should be made known, for the information of the house, he is entitled to cite them in debate.

Debate must cease on the question under discussion when the question has been "entirely" or "fully" put by the Speaker of either house of Parliament (see p. 296), in the Lords, pursuant to standing order No 30, and in the Commons, under established usage.
(9) The rules of Parliament are designed to afford every legitimate opportunity of discussion, to ensure reasonable delays in the passing of important measures, and to guard the rights of minorities; and freedom of debate has been maintained and observed by the rules and usages of both houses, with rare patience and self-denial. But, of late, these salutary rules have been strained and perverted, in the House of Commons, for purposes of obstruction. Such a course, if persisted in, would frustrate the power and authority of Parliament, and secure the domination of a small minority, condemned by the deliberate judgment of the house and of the country. That it was unparliamentary and opposed to the principles of orderly government was manifest; and on the 25th July, 1877, it was declared by the Speaker, "that any member wilfully and persistently obstructing public business, without just and reasonable cause, is guilty of a contempt of the house, and would be liable to such punishment, whether by censure, by suspension from the service of the house, or by commitment, as the house may adjudge."  

That a revision of the standing orders must be made to secure the due transaction of public business, and to maintain the dignity of the house, became obvious. The matter was considered by a select committee in 1878, and a standing order was passed, 23rd February, 1880, amended 22nd November, 1882, for the suspension of a member from the service of the house, on question put forthwith, who shall be named by the Speaker, or the chairman of a committee of the whole house, whether he be the chairman.

1 Jeremy Bentham contrasts the liberal spirit of the English Parliament with the intolerance of revolutionary France. "In France, the terrible decrees of urgency, the decrees for closing the discussion, may well be remembered with dread; they were formed for the subjugation of the minority—for the purpose of stifling arguments which were dreaded."—Political Tactics, 2, Works, 361.

2 On the 12th March, 1771, the minority divided the house twenty-three times, in resisting the punishment of the printers of the debates; and Burke said of these proceedings, "Posterity will bless the pertinacity of that day," 2 Cavendish Deb. 377. 395.

3 132 C. J. 375.

4 Occasions when this standing order was put in force: 136 ib. 31. 56. 111. 418; 258 H. D. 3 s. 69–88; 137 C. J. 149. 322. 346. 395. 483; 271 H. D. 3 s. 1127. 1262; 273 ib. 1280.
of ways and means or any other chairman,\textsuperscript{1} for committing the offence of disregarding the authority of the chair, or of abusing the rules of the house by persistently and wilfully obstructing the business of the house, or otherwise.\textsuperscript{2} Suspension under the order lasts, on the first occasion, for a week; on the second, for a fortnight; and on any subsequent occasion, for a month; and carries with it exclusion from the precincts of the house\textsuperscript{3} (see p. 332). The offence must arise in the house, and be dealt with at once. No motion can be made that a suspended member be heard at the bar.\textsuperscript{4}

Temporary provision was also made by the urgency resolutions of sessions 1881 and 1882, to facilitate the consideration of several important bills;\textsuperscript{5} and during session 1887 the standing order was passed which provides for the closure of debate.

Limitations were also placed by standing orders No. 22, 23, and 30, passed during session 1882, amended session 1888, upon obstructive motions for adjournment, and vexatious divisions (see p. 301), and provision was made, by standing

\begin{itemize}
\item \textsuperscript{1} 322 H. D. 3 s. 991.
\item \textsuperscript{2} The words, “or otherwise,” apply to any form of disorder which it is the duty of the chair to restrain, 26th Feb., 1885, 294 H. D. 3 s. 1421; Mr. T. M. Healy, 142 C. J. 173. 407.
\item \textsuperscript{3} When suspension is ordered on a motion not made pursuant to the standing order, withdrawal from the precincts of the house must be obtained by express terms in the resolution for suspension, 146 C. J. 481; 313 H. D. 3 s. 1417. For the extent of exclusion enforced in the case of Mr. Bradlaugh, when ordered to withdraw from the house, and of members suspended from its service prior to standing order No. 27, in 1888, see 136 C. J. 227; 261 H. D. 3 s. 182.
\item \textsuperscript{4} 315 ib. 1126–1128.
\item \textsuperscript{5} Pursuant to these resolutions, a minister of the Crown, by a motion which declared that the state of public business was urgent (the question being put thereon forthwith, and decided by a majority of three to one in a house of not less than 300), was enabled to vest in the Speaker “the powers of the house for the regulation of its business.” The Protection of Person and Property (Ireland) Bill, the Peace Preservation (Ireland) Bill, and the Prevention of Crimes (Ireland) Bill, 1881, 1882, were dealt with accordingly under rules laid upon the table of the house by the Speaker. A power conferred by these rules of ensuring the completion, at a prescribed hour, of the consideration of a bill in committee and on report was used in 1881, 136 C. J. 84, 93, 113, 116; then by order of the house, in 1887 and 1888, on the Criminal Law (Ireland), &c., Bill, the Members of Parliament (Charges, &c.) Bill, 142 C. J. 285. 332; 143 ib. 420, and the Government of Ireland Bill, 30th June, 21st Aug., 1883. A motion to apply urgency to votes in supply failed, 136 C. J. 124.
\end{itemize}
order No. 24, to check irrelevance or repetition in debate. S. O. 24, Appendix, p. 828.

These standing orders, during session 1888, received increased stringency; and the transaction of business was also furthered by providing for the classification, on the notice S. O. 12, paper, of bills other than government bills, after Whitsun-tide (see p. 247), and for the appointment of motions for S. O. 16, the introduction of bills, and for the nomination of select committees at the commencement of business (see p. 244).

By standing order also, with few exceptions, the Speaker S. O. 51, leaves the chair forthwith for a committee of the house (see p. 360). And the Speaker or the chairman can direct S. O. 27, a member whose conduct is grossly disorderly, to withdraw from the precincts of the house for the remainder of that day's sitting (see p. 332). It may be feared, however, that the occasions for debate, afforded by the forms of the house, and the opportunities for delay created by the fixed hours for the interruption of business, pursuant to the standing orders (see p. 208), may still be used to frustrate the ever-increasing work of legislation.

II. The rules to be observed by members present in the house during a debate are (1) to keep their places; (2) to enter and leave the house with decorum; (3) not to cross the house irregularly; (4) not to read books, newspapers, or letters; (5) to maintain silence; (6) not to hiss or interrupt.1

(1) By standing order No. 19, the lords are directed to keep their dignity and order in sitting, and not to move out of their places without just cause; and that when they cross the house, they are to make obeisance to the cloth of estate.

By the resolutions of 10th February, 1698, and 16th Feb-Commons.

ruary, 1720, members of the House of Commons are ordered to keep their places, and not walk about the house, or stand at the bar or in the passages.2

If, after a call to "order," members who are standing at the bar or elsewhere do not disperse, the Speaker orders them to take their places; when it becomes the duty of the

1 For the order, "That no member do presume to take tobacco in the gallery of the house or at a committee table," see 11 C. J. 137.
2 12 ib. 496; 19 ib. 425.
Serjeant-at-arms to clear the gangway, and to enforce the order of the Speaker, by desiring those members who still obstruct the passage immediately to take their places (see p. 199). If they refuse or neglect to comply, or oppose the Serjeant in the execution of his duty, he may report their names to Mr. Speaker.

(2) Members of the Commons who enter or leave the house during a debate must be uncovered, and should make an obeisance to the chair while passing to or from their places.¹

(3) In the Lords, it has been seen that care should be taken in the manner of crossing the house, and it is especially irregular to pass between the woollsack and any peer who is addressing their lordships, or between the woollsack and the table. In the Commons, members are not to cross between the chair and a member who is speaking,² nor between the chair and the table, nor between the chair and the mace, when the mace is taken off the table by the Serjeant. When they cross the house, or otherwise leave their places, they should make obeisance to the chair.

(4) They are not to read books, newspapers, or letters in their places.³ This rule, however, must now be understood with some limitations; for although it is still irregular to read newspapers, any books and letters may be referred to by members preparing to speak, but ought not to be read for amusement, nor for business unconnected with the debate.

(5) Silence is required to be observed in both houses. In the Lords, it is ordered, by standing order No. 24—

"That if any lord have occasion to speak with another lord while the house is sitting, they are to retire to the prince's chamber, or else the Lord Speaker is to call them to order, and, if necessary, to stop the business in agitation."

In the Commons, all members should be silent, or should converse only in a whisper. Whenever the conversation is so loud as to make it difficult to hear the debate, the Speaker calls the house to order. On the 5th May, 1641, it was resolved—

¹ D'Ewes, Journal, 282; ² Hatsell, 232.
³ Permissible when a member speaks from the third or any higher bench from the floor.
That if any man shall whisper or stir out of his place to the disturbance of the house at any message or business of importance, Mr. Speaker is ordered to present his name to the house, for the house to proceed against him as they shall think fit.\textsuperscript{1}

(6) They are not to disturb a member who is speaking, by hissing, exclamations, or other interruption; and the resolution of the house, 22nd January, 1693, enjoins “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.”\textsuperscript{2}

This rule is too often disregarded. In the House of Commons, disorderly noises are sometimes made, which, from the fulness of the house, and the general uproar maintained when five or six hundred members are impatiently waiting for a division, it is scarcely possible to repress. On the 19th March, 1872, while strangers were excluded, notice was taken of the crowing of cocks, and other disorderly noises, proceeding from members, principally behind the chair; and the Speaker condemned them as gross violations of the orders of the house, and expressed the pain with which he had heard them.\textsuperscript{3}

Without such noises, there are words of interruption “Hear, hear,” &c. which, if used in moderation, are not unparliamentary; but when frequent and loud, cause serious disorder; such as the cry of “question,” “order, order,” or “hear, hear,” which has been sanctioned by long parliamentary usage, in both houses. When intended to denote approbation of the sentiments expressed, and not uttered till the end of a sentence, the cry of “hear, hear,” offers no interruption to the speech. But the same words may be used for very different purposes, and instead of implying approbation, they may express dissent, derision, or contempt. Whenever exclamations of this kind are obviously intended to interrupt a speech, the Speaker calls to “order,” and, if persisted in, he names the disorderly members according to ancient usage;\textsuperscript{4} or puts in force standing order No. 21 or No. 27.

1 2 C. J. 135. 2 1 ib. 152. 473; see also motions against hissing, &c., 1604, 1 ib. 243. 3 210 H. D. 3 s. 307. 4 1 C. J. 483; 2 ib. 135; see
A gross form of interruption, by loud cries of "shame," has been strongly condemned by the Speaker, who declared his intention to take notice of the committal of the offence.¹

On the 15th December, 1792, Mr. Whitmore, having disturbed the debate by a disorderly interruption, was "named" by the Speaker, and directed by the house to withdraw. On the 8th June, 1852, "complaint being made by a member in his place, that Mr. Feargus O'Connor had been guilty of misbehaviour to him, Mr. Speaker informed Mr. O'Connor that if he persisted in such conduct, it would be necessary for him to call the particular attention of the house towards him, in order that the house might take such steps as would prevent a repetition of it for the future. Upon which Mr. O'Connor rose in his place, and addressed the house, without expressing his regret for what had occurred. Whereupon Mr. Speaker called upon him by name; and Mr. O'Connor then apologized to the house for his misconduct."² On the 3rd February, 1881, Mr. Dillon, Mr. Parnell, Mr. Finigan, Mr. O'Kelly, and Mr. O'Donnell, having persisted in repeated interruptions of Mr. Gladstone, who had been called upon by Mr. Speaker to move a resolution of which he had given notice, and was in possession of the house, were named and suspended.³ On the 2nd September, 1886, whilst a division was in progress, complaint was made of offensive words addressed by one member to another. They were heard sitting and covered; and then the Speaker recommended that the division should be completed. After the declaration of the numbers, the Speaker informed the house that, as the words had been uttered in the house, the matter came under his cognizance; and that he was authorized by both the members to tender to the house due expressions of regret and of apology for the occurrence.⁴ Again, 4th May,

¹ 28th Jan. 1887, 810 ib. 166; 11th May, 1893.
³ 136 ib. 55; 258 H. D. 3 s. 68.
⁴ 141 C. J. 347; 308 H. D. 3 s. 1165.
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1887, complaint having been made of insulting words directed against certain members of the house by a member standing below the bar, the Speaker directed the Clerk to take down the words. The Speaker then, having sought for an explanation from the member who had so offended, required him to withdraw the words, and to apologize to the house.¹

Indecent interruptions of the debate or proceedings, in a committee of the whole house, are regarded in the same light as similar disorders while the house is sitting. On the 27th February, 1810, the committee on the Expedition to the Scheldt reported that a member had misbehaved himself during the sitting of the committee, making use of profane oaths and disturbing their proceedings. Mr. Fuller, the member complained of, was heard to excuse himself; in doing which he gave great offence by repeating and persisting in his disorderly conduct; upon which Mr. Speaker called upon him by name, and he was ordered to withdraw. It was immediately ordered, nem. con., that "for his offensive words and disorderly conduct he be taken into the custody of the Serjeant." The member further aggravated his offence by breaking from the Serjeant, and returning into the house in a very violent and disorderly manner, whence he was removed by the Serjeant and his messengers, upon an order given by the Speaker.²

On the 9th June, 1852, the house being in committee, Mr. F. O'Connor interrupted the proceedings of the committee by disorderly and offensive conduct towards a member, and the chairman was directed to report the same to the house. On the Speaker resuming the chair, a motion was made that Mr. O'Connor do attend in his place forthwith: but it was represented that on the previous day he had been disorderly and had apologized, and that it was fruitless to deal with him again in the same manner. While his conduct was under discussion, he twice entered the house and approached the chair of Mr. Speaker, and then withdrew. It was thus obvious to the house that he must

¹ 142 C. J. 211; see also complaints, 30th July and 2nd Aug. 1888, 143 ib. 410, 413.
² 65 ib. 134.
be dealt with summarily; and it was accordingly ordered, nem. con., that for his disorderly conduct and contempt of the house, he be taken into the custody of the Serjeant-at-arms.  

Again in committee, on the declaration of the numbers taken at a division, an interchange of insulting words between two members formed the subject of complaint: but, after an explanation, the words were mutually withdrawn.  

In cases of disorder, the jurisdiction of the house is also extended to the lobbies. On the 11th April, 1877, on the numbers being declared after a division, complaint was made to the house, by Mr. Sullivan, of an offensive expression addressed to him by Dr. Kenealy, in the side lobby, during the division just taken. Mr. Speaker observed that, had the expression complained of been used in the house, it would have been his duty to deal with the matter on his own authority: but as the complaint referred to words used in the lobby, he left it to the consideration of the house; and Mr. Speaker called upon Dr. Kenealy to explain his conduct. Dr. Kenealy was heard in his place; and, having admitted that he had used the expression complained of, desired to submit his conduct to the decision of the house: after which he withdrew. It was then resolved that he be ordered to withdraw the offensive expression, and to apologize to the house for having used it. Dr. Kenealy being called in, the Speaker acquainted him with the resolution of the house, and he withdrew the offensive expression complained of, and apologized to the house for having used it.  

On a subsequent occasion, 18th July, 1887, insulting words addressed by a member to another member in the outer lobby, were brought under the cognizance of the house.  

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1 H. D. 9th June, 1852. On the 16th June he was discharged, on the report of a committee, that arrangements had been made for his removal to a lunatic asylum, 107 C. J. 278, 292. 301.  

2 13th Aug. 1890, 145 ib. 572.  

3 132 ib. 144; 233 H. D. 3 s. 951.  

4 317 ib. 1167; 142 C. J. 377.  

5 389. On a former occasion, an appeal to the Speaker, as a point of order, regarding an alleged threat
In the enforcement of all these rules for maintaining order, the Speaker of the House of Lords has no more authority than any other peer, except in so far as his own personal weight, and the dignity of his office, may give effect to his opinions, and secure the concurrence of the house. The result of his imperfect powers is that a peer who is disorderly is called to order by another peer, perhaps of an opposite party; and that an irregular argument is liable to ensue, in which each speaker imputes disorder to the last; and recrimination takes the place of orderly debate. There is no impartial authority to whom an appeal can be made, and the debate upon a question of order generally ends with satisfaction to neither party, and without any decision upon the matter to which exception had been taken.

In so large and active an assembly as the House of Commons, it is absolutely necessary that the Speaker should be invested with authority to repress disorder, and to give effect, promptly and decisively, to the rules and orders of the house. The ultimate authority upon all points is the house itself: but the Speaker is the executive officer, by whom its rules are enforced. In ordinary cases, the breach of order is obvious, and is immediately checked by the Speaker; in other cases, if his attention is directed to a point of order at the proper moment, namely, the moment when the alleged violation of order occurred, he at once gives his decision, and calls upon the member who is at fault, to conform to the rule as explained from the chair. But doubtful cases may arise, upon which the rules of the house are indistinct or obsolete, or do not apply directly to the point at issue; when the Speaker, being left without specific directions, refers the matter to the judgment of the house. On the 27th April, 1604, it was “agreed for a rule, that if any doubt arise upon the bill, the Speaker is to explain, but not to sway the house with argument or dispute;” and uttered by a member to another member in a lobby, was met by the Speaker’s stating that upon an occurrence in the lobby he declined to give an opinion, 5th July, 1881, 263 H. D. 3 s. 50.

1 22nd March, 1872, 210 ib. 534; 20th June, 1879, 247 ib. 325.
in all doubtful matters this course is adopted by the Speaker. Whenever the Speaker rises to interpose, in the course of a debate, he is to be heard in silence, and the member who is speaking, or offering to speak, should immediately sit down; and members who do not maintain silence, or who attempt to address the Speaker, are called to order by the majority of the house, with loud cries of "order" and "chair." Of late years, the authority of the chair in maintaining order has received an accession of strength by standing order No. 21, session 1882, "Suspension of members" (see p. 325), and by standing order No. 27, session 1888, which empowers the Speaker or the chairman to order a member whose conduct is grossly disorderly to withdraw immediately from the house during the remainder of that day's sitting; or if the Speaker or the chairman deems that the powers conferred by this standing order are inadequate to deal with the offence, he may, in accordance with standing order No. 21, name such member; or he may call on the house to adjudge upon his conduct.

Members ordered to withdraw in pursuance of this standing order, or who are suspended from the service of the house in pursuance of standing order No. 21, must withdraw forthwith from the precincts of the house, subject, however, in the case of members under suspension, to the proviso regarding their service on private bill committees.

It is a rule in both houses, that when the conduct of a member is under consideration, he is to withdraw during the debate. The practice is to permit him to learn the charge against him, and, after being heard in his place, for him to withdraw from the house. The precise time at which he should withdraw is determined by the nature of the charge. When it is founded upon reports, petitions, or other docu-

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1 1 C. J. 187; 2 Lord Colchester's Diary, 141.
2 1 C. J. 244.
3 i.e. any chairman.
4 1st Dec. 1888, 331 H. D. 3 s. 732; also 11th July, 1893.
5 The area within the walls of the palace of Westminster compose the parliamentary precincts. Answer by the Clerk of the house, Question 1164, Report Select Committee (Privilege), sess. 1888, No. 411.
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ments, or words spoken and taken down, which sufficiently explain the charge, it is usual to have them read, and for the member to withdraw before any question is proposed. But if the charge be contained in the question itself, the member is heard in his place, and withdraws after the question has been proposed; as in the cases of Mr. Secretary Canning, in 1808; and of Lord Brudenell, in 1836. If the member should neglect or refuse to withdraw, at the proper time, the house would order him to withdraw. Thus, in the Lords, Lord Pierpoint, in 1641, and Lord Herbert of Cherbury, in 1642, were commanded to withdraw; and in the Commons, in 1715, it was ordered, upon question and division, "that Sir W. Wyndham do now withdraw." When a member's conduct has not been directly impugned by the form of the question, he has continued in the house and voted.

When Mr. John Bright, 18th June, 1883, had been heard in reply to a motion that words he had uttered amounted to a breach of privilege, the Speaker reminded him that he should withdraw. Mr. Bright, however, expressed a wish to remain in his place. The Speaker ascertained the general sense of the house, and Mr. Bright's withdrawal was not required.

And, acting in like manner, when a member against whose conduct a complaint was made, having been first heard, had withdrawn, on the expression of a desire that the member might return to the house whilst a rejoinder was made to his explanation, the Speaker sanctioned the return of the member to his place, until the consideration of the member's conduct was commenced by the house.

On the 17th May, 1849, petitions were presented complaining of the conduct of three members, as railways directors:

1 See the cases of Lord Coningsby, in 1720, 21 L. J. 450; Sir F. Burdett, in 1810, 65 C. J. 224; Sir T. Troubridge, in 1833, 88 ib. 470; Mr. O'Connell, in 1838, 91 ib. 42; Mr. S. O'Brien, in 1846, 101 ib. 582; Mr. Isaac Butt, in 1858, 113 ib. 68; Mr. Lever, in 1861, 116 ib. 377. 381; see also Mr. Plimsoll's case, 1873, 128 ib. 61.

2 63 ib. 149.

3 91 ib. 319.

4 14 L. J. 476; 5 ib. 77.

5 18 C. J. 49.

6 Mr. Stanifield, 17th March, 1864, 174 H. D. 3 s. 349.

7 290 ib. 812; 138 C. J. 280.

8 21st July, 1887, 317 H. D. 3 s. 1633-1638. See also p. 853.
The members were permitted to explain and defend their conduct, but did not afterwards withdraw. It being contrary to the standing orders (see p. 503) to make a motion or to enter upon a debate on the presentation of a petition, unless it complains of some present personal grievance or relates to a matter of privilege, the conduct of the members could scarcely be regarded as under the consideration of the house at that time, and as soon as the members were heard, the petitions were ordered to lie upon the table, without further debate. One of the members withdrew, but returned almost immediately to his seat.

On the 28th April, 1846, the house had resolved that Mr. W. S. O'Brien, a member, had been guilty of a contempt: but the debate upon the consequent motion for his commitment was adjourned until a future day; upon which Mr. O'Brien immediately entered the house, and proceeded to his place. Mr. Speaker, however, acquainted him that it would be advisable for him to withdraw until after the debate concerning him had been concluded. The reason for this intimation was that the member had been already declared to be in contempt, although his punishment was not yet determined upon. On the 30th, a request was made, through a member, that he should be heard in his place: but this was regarded as clearly irregular, and he was not permitted to be heard. But a member not yet adjudged guilty of contempt may return to his place, when debate on his conduct has been adjourned.

1 85 H. D. 3 s. 1198. 1291.
2 Mr. Parnell, 25th July, 1877, 235 ib. 1815. 1833.
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DIVISIONS.

In both houses, any member who desires to vote is required to be present in the house when the question is put from the chair the first or second time (see p. 273). If not within the folding-doors of the house when the question is put from the chair, he is not entitled to vote; and the following precedents will explain the various circumstances under which this rule has been applied.

On the 16th March, 1821, Mr. Speaker called the attention of the house to his having, at the previous sitting, caused a member to vote in a division who was not within the doors of the house when the question was put; and the house resolved, nem. con., "that the said member had no right to vote, and ought not to have been compelled to vote on that occasion." 1

On the 3rd May, 1819, after the numbers had been reported by the tellers, notice was taken that several members had come into the house after the question was put. Mr. Speaker desired any members who were not in the house when the question was put, to signify the same; and certain members having stated that they were not in the house, their names were struck off from the "ayes" and from the "noes" respectively; and the numbers so altered were reported by Mr. Speaker to the house. 2

On the 14th June, 1836, the house was informed by a member who had voted with the majority on a former day, that he was not in the house when the question was put, and had therefore no right to vote on that occasion; and it was resolved that his vote should be disallowed. 3

On the 5th July, 1855, the chairman of the committee on the Tenants' Improvements (Ireland) Bill, on reporting pro-

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1 78 C. J. 172.  
2 74 ib. 393; also 80 ib. 483.  
3 91 ib. 475.
gess, stated that, on a division in committee, when the numbers were reported at the table by the tellers, his attention had been called to the fact that three members, who had voted in the majority, were in the lobby beyond the folding-doors, at the back of the Speaker’s chair, when the question was put, and asked whether they were entitled to vote. The Speaker ruled “that to entitle a member to vote he must have been in the house and within the folding-doors, and must have heard the question put. After the glass has been turned, and before the question has been put, the officers of the house are bound to clear the lobbies of all members; any member not wishing to leave the house or to vote, is at liberty to retire to the rooms beyond the lobby.” See also Mr. Speaker also stated, in reply to a question from the chairman, “that the vote of any member not present when the question is put, may be challenged before the numbers are declared, or after the division is over.”

In accordance with this rule, members who were in the rooms behind the chair or in one of the side lobbies when the question was put, have been informed by the Speaker or the chairman, that they were not entitled to give their vote.

These precedents show that at whatever time it may be discovered that members were not present when the question was put, whether during the division, before the numbers are reported, or after they are declared, or even at a subsequent sitting, such votes are disallowed. And in the Lords, a similar rule prevails.

It was formerly customary, before a division took place in either house, to enforce the entire exclusion of strangers: but in the Commons, pursuant to resolution 10th March, 1853, and to standing order No. 92, strangers have only been required to withdraw from below the bar; and in the Lords, under resolution 10th March, 1857, and standing

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1 110 C. J. 352; 139 H. D. 3 s. 486.  
2 111 C. J. 47; 141 ib. 242; 142 ib. 186.  
3 65 L. J. 481 (Local Jurisdiction).  
4 The direction given by standing order No. 92, for the withdrawal of strangers from the front gallery, is not enforced.
order No. 32, strangers have not been required to withdraw from the galleries and the space within the rails of the throne. In fact, they withdraw from those parts of the house only in which, if they remained, they would interfere with the division.1

The Speaker, directly the debate is closed, puts the question, and when the voices are taken, gives the order that "strangers must withdraw." One of the clerks at the table then turns a two-minute sand-glass, pursuant to standing order No. 28, and, while the sand is running, the doorkeepers set in motion the "division bells" in every part of the building, to give notice that a division is at hand. When the sand has run out, the Speaker, pursuant to standing S. O. 29, order No. 29, so soon as he shall think proper to direct that the doors be closed, cries, "order, order," and immediately the Serjeant, and the doorkeepers and messengers under his orders, close and lock all the doors leading into the house and the adjoining lobbies, simultaneously. Those Members members who arrive after the doors are shut cannot gain admittance, and those who are within cannot leave the house until after the division is concluded.2

When the doors are closed, the Speaker again puts the question, and the ayes and noes respectively declare themselves. By standing order No. 28, the Speaker is obliged S. O. 28, to put the question twice, because the sand-glass is not turned until the voices have been taken; and in the mean time, members who were not present when the question was put, gain admittance to the house. None of these could vote unless the question were again put; and therefore the question is put a second time after the doors are closed, in order that the whole house, having had notice of a division, may be able to decide upon the question when put by the Speaker: but after the question has been first put, no

1 In the Irish Parliament, strangers were permitted to be present during a division; see 1 Sir J. Barrington, Personal Sketches, 195.

2 On the 16th June, 1857, a peer remained in one of the division lobbies until after the doors had been locked; and the Serjeant was directed to let him out, without making any report; see also 1 Lord Colchester's Diary, 519.
member is permitted to speak; and the debate cannot, therefore, be reopened after the turning of the sand-glass.

When the house proceeds to a division, every member is bound to retire from the house into one of the lobbies. On the 3rd February, 1881, a teller reported that he was unable to clear the house, as several members refused to quit their places. The Speaker, having already called the attention of the house to their conduct during a previous division, now cautioned them that, if they again refused to withdraw, he should consider that they were disregarding the authority of the chair. As they persisted in retaining their seats, the Speaker proceeded to name them, twenty-eight in number, and they were severally suspended from the service of the house.

On this occasion, and also on the 2nd September, 1886 (see p. 328), the Speaker, after his attention had been called to the breach of order, directed that the division should proceed, and dealt with the matter when the division was completed.

A member who is within the folding-doors of the house when the question is put from the chair, for the first or second time, must give his vote. If he has not heard the question put, either the first or the second time, the question is again stated to him from the chair; and, if he has entered a division lobby, he may therefore claim to give his vote irrespective of the division lobby into which he may have passed. If a member has heard the question put, then his vote must accord with the division lobby that he has entered.

1 136 C. J. 56; 258 H. D. 3 s. 78-88.
2 The rooms behind the Speaker's chair are not within the house for the purposes of a division; and members may retire to these rooms after the house has been cleared for a division, and before the question has been put from the chair a second time (see p. 336), 123 H. D. 3 s. 713; 16th July, 1859, 254 ib. 730.
3 A question to ascertain whether a member, being within the folding-doors, has heard the question put, should be invariably addressed to every member who appears at the table, regarding his vote in a division.
4 80 C. J. 307; 114 ib. 112; 137 ib. 172; 149 ib. 93.
5 137 ib. 172.
6 Members found in the house: 103 ib. 406; 114 ib. 102; 121 ib. 140; 129 ib. 234. Members found in a division lobby: 117 ib. 151; 129 ib. 243; 144 ib. 333; 203 H. D. 3 s. 460.
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A member who has not voted upon an amendment is nevertheless entitled to vote upon the main question, when subsequently put. He therefore should be admitted to the house, so soon as the numbers have been declared after the first division; and it is the duty of the Serjeant to ensure that the doors of the house are reopened for that purpose.

The mode of taking divisions is regulated, in the House of Lords, by standing order No. 32. Until 1857, a division was effected in the Lords by the not contents remaining within the bar, and the contents going below the bar: but in that year their lordships adopted nearly the same arrangements as those which had been in successful operation, for many years, in the Commons. The proceedings, as at present conducted, may be briefly described. When the question has been "entirely put," the lobbies on the right and left of the house are cleared of strangers, and the doors locked. The Lord Speaker appoints two Tellers for each party, without respect to their degree. The contents then go into the right lobby, and the not contents into the left lobby, and on returning into the house are counted by the Tellers, and their names recorded by the clerks. The vote of the lord on the woollack, or in the chair, is taken first, in the house; and any lord may, on the ground of infirmity, by permission of the house, be told in his seat. The Tellers having counted the votes, announce them to the lord on the woollack, or in the chair. Alphabetical lists of the names are printed with the Lords' Minutes; and similar lists, but arranged according to the rank of the peers on the roll, are also inserted in the journal. If a peer goes into the wrong lobby, he may, pursuant to standing order No. 32, correct the error. Being accompanied by the Tellers to the table, he there declares the vote that he intended to give, which is recorded by them accordingly.

1 Statements by the Speaker, MS. notes, 28th May, 1845, and 13th March, 1849; see also 4th June, 1866, 183 H. D. 3 s. 1916.

2 Until 1857, the two Tellers were required to be of the same degree.

3 Resolutions, 10th March, 1857; Reports of the Lords' Committee on the minutes and journals, 1857.

4 166 H. D. 3 s. 1698; 94 L. J. 230; 116 ib. 254.
In case of an equality of voices, the not contents have it, and the question is declared to have been resolved in the negative. When this occurs, it is always entered in the journal. "Then, according to the ancient rule of the law," or "the ancient rule in the like cases, 'Semper prae summitur pro negante,' &c." ¹ The effect of this rule is altered when the house is sitting judicially, as the question is then put "for reversing, and not for affirming;" and consequently, if the numbers be equal, the house refuses to reverse the judgment, and an order is made that the judgment of the court below be affirmed.

As a general rule, none but "law lords," i.e. peers who have held high judicial offices, and lords of appeal, vote in judicial cases, or otherwise interfere with the decisions of the house. All peers, however, are entitled to vote, if they think fit, and the right has been exercised in some very remarkable cases. In 1685, in the case of Howard v. the Duke of Norfolk, a decree of the Lord Keeper Guildford was reversed, after an angry debate, by a house attended by eighteen bishops and sixty-seven temporal peers.² In 1689, on Titus Oates' writ of error, the judgment of the court below was affirmed, on a division, by thirty-five peers against twenty-three, in opposition to the unanimous opinion of the nine judges who attended.³ In June, 1806, in the case of Lord Hertford's guardianship of Lord Hugh Seymour's daughter, there was a large attendance of lay peers.⁴ In the writ of error of The Queen v. O'Connell, in

¹ 33 L. J. 519; 14 ib. 167. 168.
² 14 ib. 50; Select Chancery Cases; 3 Lord Camp. Lives of Chancellors, 485. 486.
⁴ Lord Minto says, 16th June, 1806, "The House of Lords made a very discreditable appearance on this occasion, attending in great numbers, at the solicitation or command of the Prince of Wales."—Life and Letters of Sir Gilbert Elliot, first Earl of Minto, iii. 390.
1844, a discussion arose, in which some of the lay lords seemed inclined to exercise their right, but abstained from voting. On the 9th April, 1883, in the appeal of Bradlaugh v. Clarke, Lord Denman, a lay peer, was present, and expressed his opinion in support of the dissentient lord of appeal, Lord Blackburn.

Any lords who desire to avoid voting may withdraw to the woolsacks, where they are not strictly within the house, and are not therefore counted in the division.

Whilst the Commons sat in St. Stephen's Chapel, the separation of the "ayes" and "noes" for the purpose of a division was effected by the retention of one party within the house, to be counted there, and by the withdrawal of the other party into the Lobby, who were counted on their return into the house. This practice continued until 1836, when a change of method being thought advisable, the present arrangement was adopted of two lobbies, one at each side of the house, whereby, on a division, the house is entirely cleared; one party being sent into each of the lobbies. The Speaker directs the ayes to go into the right lobby, and the noes into the left lobby, and then appoints two tellers for each party; of whom one for the ayes and another for the noes are associated, to check each other in the telling. If two tellers cannot be found for one of the parties, the division cannot take place; and the Speaker forthwith announces the decision of the house. For instance, if it appears that there are no tellers, or but one teller for the ayes, the Speaker declares "that the noes have it."

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1 11 Clar. and Fin. 155. 421.
2 On the second reading of Queen Caroline's Degradation Bill, in 1820, Lord Gage enforced an old order, and each peer gave his vote, in his place, seriatim, 53 L. J. 731. 754; 2 Plumer Ward's Mem. 91.
3 A member is bound to act as teller for that party with whom he has declared himself, when appointed by the Speaker; and his refusal would be reported to the house, Private Mem. 7th July, 1859; though a member, by seconding a motion, does not pledge himself to act as teller, 287 H. D. 3 s. 1220. On a question for the suspension of a member, he was proposed as a teller for the noes, but Mr. Speaker said that, unless another teller could be named, he should declare that the ayes had it; and a similar case occurred in committee, 20th April and 30th June, 1882, 268 H. D. 3 s. 1017; 271 ib. 1129.
4 97 C. J. 183. 354; 98 ib. 605;
When there are two tellers for each party, the division proceeds, and the house is cleared. Two clerks are stationed in each division lobby, at desks, on which are placed lists of the members, in alphabetical order, printed upon a sheet of paper; and, as the members pass by, the clerks place a mark against their names; and, at the entrance from the lobby into the house, the tellers count the numbers. Members disabled by infirmity are told in the house.

When both parties have returned into the house, the tellers state the numbers in the division to a clerk at the table, to be entered upon the division paper; they then come up to the table (the tellers for the majority being on the right); and one of the tellers for the majority reports the numbers. The division paper is handed to the Speaker, who declares the numbers, and states the determination of the house. If two tellers differ as to the numbers on the side told by them, or if a mistake regarding the numbers be discovered, unless the tellers agree thereon, a second division must take place,¹ when the numbers will be correctly reported by the Speaker. If a mistake is subsequently discovered, it will be ordered to be corrected in the journal.² On the 28th November, 1867, an error in the numbers reported by the tellers in a committee of the whole house having been discovered before the chairman had left the chair, the chairman ordered the numbers to be corrected accordingly.³

Members occasionally remain in a division lobby un-

¹ On the 30th March, 1810, a second division was taken on the Expedition to the Scheldt, 65 ib. 235; and again on the 26th June, 1869, in committee on the Tenure and Improvement of Land (Ireland) Bill, 115 ib. 332. In this case a question was raised privately, whether a member, who had voted with the ayes in the first division, could afterwards vote with the noes: but it was held that, as the first division had become null and void, the house could only deal with the member’s voice and vote in the last and valid division. In committee on Parliamentary and Municipal Elections Bill, 13th April, 1872, 127 ib. 140. Also Roman Catholic Relief Bill, 5th Dec. 1847, 103 ib. 102; 16th June, 1860 (in committee), 115 ib. 332.

² 19th Feb. 1847, 102 ib. 131; 2nd May, 1869, 115 ib. 216; 13th March, 1863, 118 ib. 111; 13th March, 1882, 137 ib. 98; 141 ib. 57. 103; 142 ib. 506.

³ 123 ib. 16; 128 ib. 223.
counted by the tellers, and their votes are, by mutual agreement, included in the tellers' statement to the clerk at the table. If the tellers are not made aware that a member has remained uncounted in a division lobby, he can obtain the addition of his vote to the numbers in the division, according to the lobby through which he has passed, if, making an appeal to the chair, he can establish his right to vote, and raises the claim before the report of the numbers by the tellers (see p. 344).

If a member, who, having heard the question put, goes into the wrong lobby, through inadvertence, 1 it is the rule in the Commons, in opposition to the practice of the Lords (see p. 339), to hold the member bound by the vote he has actually given, without regard to his voice on the question, or his own declared intention. On the 9th April, 1856, "one of the tellers for the noes stated that Mr. Wykeham Martin was with the noes, in the left lobby, but had refused to vote with them"—the fact being that he had gone into that lobby by mistake. As he had heard the question put, he was informed that, having gone forth into the left lobby, his vote must be recorded with the noes. 2 Again, on the 21st June, 1864, Sir C. O'Loghlen, in committee on the Court of Chancery (Ireland) Bill, went into the wrong lobby, and carried, by his vote, the question that the chairman do leave the chair. He stated his case to the Speaker, when the house was resumed, but was told that, having heard the question put, there was no remedy for his error. 3

As has been mentioned (see p. 274), the objection that a member's vote in a division was contrary to the way in which he had given his voice in the house must be taken before the declaration of the numbers of the division from the lobby.

1 Members who find themselves in the wrong lobby may claim to have the doors unlocked, in order that they may pass across into the other lobby, if the claim be made before the tellers begin to tell, 31st May, 1889, 144 C. J. 225; 336 H. D. 3 s. 1592.

2 111 C. J. 129.

3 176 H. D. 3 s. 31. For similar cases, see 111 C. J. 129; 115 ib. 229; 119 ib. 359; 121 ib. 137; 137 ib. 172; 164 H. D. 3 s. 210; 142 ib. 1814.
the chair; and this rule is enforced regarding a demand to record his vote made by a member who, having heard the question put, may have remained in a division lobby, and who had not been counted by the tellers (see p. 342).

The objection that a member whose vote had been taken in a division was not within the folding-doors of the house when the question was put the first or second time from the chair, can be raised either immediately, or subsequently during the sitting when the division took place, or at another sitting of the house. And in the Lords a similar rule prevails (see p. 336). Notice also can be taken, in like manner, either immediately or subsequently, of an error in the tellers’ report.

An error in the report of the numbers taken at a division is brought before the house by both the tellers of the lobby wherein the error arose; though a statement made by one of the tellers has been accepted. It is a teller also who should call the attention of the house to the fact that a vote may have been given in the division by a member, who was absent from the house when the question was put from the chair, or to the case of a member who had remained in a division lobby uncounted by the tellers; though the house has acted on notice taken by the member himself, or by another member in his behalf.

If the numbers in a division are equal, the Speaker (and in committee the chairman, see p. 361), who otherwise never votes, must give the casting voice. In the performance of this duty, he is at liberty to vote like any other member, according to his conscience, without assigning a reason; but, in order to avoid the least imputation upon his impartiality, it is usual for him, when practicable, to vote in such a manner as not to make the decision of the house final, and to explain his reasons, which are entered on the journal.

The principle which guides a Speaker in giving his vote on the ground of personal interest, see p. 353.

Chapter XIII.

Casting voice of the Speaker.

Precedents.

1 245 H. D. 3 s. 919; 11th March, 1885, 140 C. J. 93.
2 102 ib. 131.
3 93 ib. 537.
4 93 ib. 587; 95 ib. 596; 98 ib. 163; 102 ib. 872; 106 ib. 205; 317 H. D. 3 s. 2015.
On the third reading of the Succession Duty on Real Estates Bill, there having been a majority against "now" reading the bill a third time, and also against reading it that day three months, there was an equality of votes on a third question, that the bill be read a third time to-morrow, when the Speaker gave his casting vote with the ayes, saying "that upon all occasions when the question was for or against giving to any measure a further opportunity of discussion, he should always vote for the further discussion, more especially when it had advanced so far as a third reading; and that when the question turned upon the measure itself—for instance, that a bill do or do not pass—he should then vote for or against it, according to his best judgment of its merits, assigning the reasons on which such judgment would be founded." 1

On the 24th February, 1797, Mr. Speaker Addington gave his casting vote in favour of going into committee on the Quakers Bill, assigning as his reason that he had prescribed to himself an invariable rule of voting for the further discussion of any measure which the house had previously sanctioned, as in this instance it had, by having voted for the second reading: but that upon any question which was to be governed by its merits, as, for instance, "That this bill do pass," he should always give his vote according to his judgment, and state the grounds of it. 2

The course adopted by successive Speakers, in giving their casting vote, can be traced in the following examples, first, of the casting vote given so as to afford the house an opportunity for a further decision; and secondly, of the casting vote which decided the matter before the house, given upon the judgment which the Speaker formed upon the occasion which required his vote.

(1) In the proceedings taken against Lord Melville, 8th April, 1805, which resulted in his impeachment, the

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1 12th May, 1792, 1 Lord Colchester's Diary, 57; 51 C. J. 764. Lord Colchester's Diary, 85; 52 C. J. 335.
2 1 Lord Sidmouth's Life, 187; 1
numbers were equal upon the previous question (moved in
the form, “That the question be now put”)—that question
being the motion on which Lord Melville’s impeachment was
based—Mr. Speaker Abbot gave his casting vote in favour
of the previous question, on the ground that “the original
question was now fit to be submitted to the judgment of
the house.”

(2) On the 10th May, 1860, the numbers being equal upon
an amendment to a bill, on report, the Speaker stated that
as the house was unable to form a judgment upon the pro-
priety of the proposed amendment, he should best perform
his duty by leaving the bill in the form in which the com-
mittee had reported it to the house. A similar course
has generally been taken on stages in the progress of bills—
often without stating any reasons.

(3) On the third reading of the Tests Abolition (Oxford)
Bill, 1st July, 1864, an adverse amendment having been
negatived by a majority of ten, a debate was raised upon
the main question that the bill be now read a third time,
during which many members came into the house; and upon
the division the numbers were equal. Under these cir-
cumstances, the Speaker said he should afford the house
another opportunity of deciding upon the merits of the bill,
by declaring himself with the ayes, and the question that
the bill do pass was negatived by a majority of two.

(1) On a question for the appointment of a committee to
inquire into delays in the Court of Chancery, 5th June, 1811,
the Speaker voted with the ayes, it being upon a question
“whether or not this house shall exercise its own power of
inquiry into the causes of existing grievances.”

(2) On the 26th May, 1826, the Speaker, the numbers being
equal, voted in favour of a resolution regarding the practice
of the house in cases of bribery at elections, because the

1 8th April, 1803, 60 C. J. 201; 1 Lord Colchester’s Diary, 548; 536; 96 ib. 344; 98 ib. 163; 102 ib.
2 115 C. J. 235.
3 14th June, 1821, 76 ib. 439; 1st 66 ib. 393; 2 Lord Colchester’s May, 1828, 83 ib. 292; 23rd June,
1837, 92 ib. 496; 93 ib. 587; 95 ib.
4 872; 106 ib. 205.
5 119 ib. 338.
6 66 ib. 393; 2 Lord Colchester’s Diary, 334.
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resolution was merely declaratory of what are the powers, and what is the duty of the house.  

(3) On a motion for an address to the Crown in behalf of political offenders, 25th May, 1841, Mr. Speaker declared himself with the noes, as “the vote, if carried, would interfere with the prerogative of the Crown.”

(4) On a question for referring a petition, complaining of bribery at Bridport, to a committee of inquiry, 19th May, 1846, the numbers being equal, Mr. Speaker declared himself with the noes, because the house had no better means of forming a judgment upon the question than a committee, who had declined to entertain it, and it was open to an elector of the borough, under the provisions of the Act 5 & 6 Vict. c. 2, to present another petition to the house.

(5) The numbers being equal on the third reading of the Church Rates Abolition Bill, 19th June, 1861, the Speaker gave his casting vote against the bill, stating that it appeared to him that a prevailing opinion existed in favour of a settlement of the question, different, in some degree, from that contained in the bill; and that he thought he should best discharge his duty by leaving to the future judgment of the house to decide what change in the law should be made, rather than to take the responsibility of the change on his single vote.

(6) On the 24th July, 1862, the numbers being equal on a question for disagreeing to a Lords' amendment, the Speaker said he should support the bill, as passed by this house.

(7) The numbers being equal upon a proposed resolution relative to Trinity College (Dublin), 24th July, 1867, Mr. Speaker stated “that this was an abstract resolution, which, if agreed to by the house, would not even form the basis of legislation: but undoubtedly the principle involved in it was one of great importance, and, if affirmed by a majority of the house, it would have much force. It should, however, be affirmed by a majority of the house, and not merely

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1 81 C. J. 387.
2 96 ib. 344.
3 101 ib. 731.
4 116 ib. 282. See also Speaker's vote "noe" on second reading of a bill, 2nd April, 1821, 76 ib. 229.  
5 168 H. D. 3 s. 785.
by the casting vote of its presiding officer. For these
reasons he declared himself with the noes."¹

But while in the chair the Speaker is thus restrained, by
usage, in the exercise of his independent judgment, in a
committee of the whole house he is entitled to speak and
vote like any other member. Of late years, however, he
has generally abstained from the exercise of his right.
This punctilious impartiality was not formerly observed by
Speakers. Among the earliest examples are those of Mr.
Speaker Glanville, on the 4th May, 1640, upon the granting
of twelve subsidies to the king;² and of Mr. Speaker
Lenthall, on the 22nd January, 1641, against the "brotherly
gift" to the Scottish nation.³ Sir Fletcher Norton spoke
strongly on the influence of the Crown, on the 6th April,
1780; and Mr. Speaker Grenville, on the Regency question,
on the 16th January, 1789.⁴ On the 17th December, 1790,
Mr. Speaker argued, at length, the question of the abate-
ment of an impeachment, by a dissolution of Parliament,
and cited a long list of precedents.⁵ On the 4th December,
1797, Mr. Speaker Addington addressed the committee on
the assessed taxes, from the gallery.⁶ The same Speaker
also addressed a committee on the union with Ireland, in
1799;⁷ and again, 6th May, 1800, in the committee upon
the Inclosure Bill.⁸ In committee on the charges against
the Duke of York, 16th February, 1809, Mr. Speaker Abbot
moved the commitment of Captain Sandon, a witness, for
prevarication.⁹ Again, on the 1st June, 1809, he made a
speech in committee on Mr. Curwen's bill for preventing the
sale of seats in Parliament;¹⁰ and on the 4th February, 1811,

¹ 122 C. J. 395. On two occasions
the Speaker has voted for the post-
ponement of a proceeding to a future
day, 9th Aug. 1878, 142 H. D. 3 s.
1712; 25th July, 1887, 142 C. J. 397.
² 1 Lord Clarendon, Hist. 242.
³ D'Ewes, Notes on Long Parlia-
ment; Harleian MSS. (162), p. 160.
⁴ 27 Parl. Hist. 970.
⁵ 28 ib. 1043.
⁶ Lord Colchester's Diary, i. 121.
⁷ 12th Feb. 1799, 1 Lord Sid-
mouth's Life, 219. 225; 1 Lord Col-
chester's Diary, 175; and see 34
Parl. Hist. 448; 2 Plowden's Hist.
of Ireland, 909.
⁸ 1 Lord Colchester's Diary, 203.
⁹ 12 H. D. 1 s. 743; 2 Lord Col-
chester's Diary, 166.
¹⁰ 14 H. D. 1 s. 837; 2 Lord Col-
chester's Diary, 193.
in committee on the Lords' resolution for a commission for giving the royal assent to the Regency Bill.\(^1\) Finally he addressed a committee on the Roman Catholic Relief Bill, in 1813, and carried an amendment excluding Catholics from Parliament, which caused the abandonment of the bill.\(^2\) On the 26th March, 1821, Mr. Speaker Manners Sutton spoke in committee on the Roman Catholic Disability Bill; \(^3\) and again on the 6th May, 1825, in committee on a similar bill; \(^4\) and on the 2nd July, 1834, in committee on the bill for admitting dissenters to the universities, he spoke against the principle of the bill.\(^5\) On the 21st April, 1856, in committee of supply, the management and patronage of the British Museum by the principal trustees having been called in question, Mr. Speaker Shaw Lefèvre spoke in defence of himself and his colleagues, with great applause. And lastly, on the 9th June, 1870, Mr. Speaker Denison spoke and voted in committee on the Customs and Inland Revenue Bill, in support of a clause exempting horses kept for husbandry from licence duty, if used in drawing materials for the repair of roads.

After the division, the division lists are examined by the clerks, and sent off to the printer, who prints the marked names in their order; and the division lists are delivered on the following morning, together with the "Votes and Proceedings" of the house.\(^6\) If an error occurs in marking the name of a member upon the division list, the error is corrected upon application made at the table of the house, or to one of the division clerks, by a memorandum published, at the earliest opportunity, in the "Votes and Proceedings."

In committees of the whole house, divisions were formerly taken by the members of each party crossing over to the opposite side of the house: but the same forms are now published.

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\(^1\) 18 H. D. 1 s. 1107; 2 Lord Colchester's Diary, 315; Plumer Ward's Mem. i. 379.
\(^2\) Lord Colchester's Diary, i. p. xxiii.; ib. ii. 447.
\(^3\) 4 H. D. n. s. 1451.
\(^4\) 13 ib. 434.
\(^5\) 24 H. D. 3 s. 1092.
\(^6\) The issue of the printed lists of the divisions began on Monday, 22nd Feb. 1836.
observed in all divisions, whether in the house or in com-
mittee. A division in committee cannot be taken unless 
there be two tellers for each side, as in the house itself.\(^1\)

It is in the power of two members, when a question is put
from the chair, to compel the house to take a division
thereupon; and experience proved the necessity of placing
this power under some restraint.\(^2\) By standing order
27th November, 1882, power was given to the chair, under
certain restrictions, to take the vote of the house upon
dilatory motions, such as a motion to adjourn a debate, by
calling upon the members who challenged the decision of
the chair, to rise up in their places. This standing order was
repealed during the session of 1888; and a standing order
was passed, whereby the Speaker or the chairman, if in his
opinion a division is frivolously or vexatiously claimed,\(^3\) may
take the vote of the house or committee, by calling upon
the members who support, and who challenge his decision
to rise successively in their places; and he, thereupon, as he
may think fit, either declares the determination of the house
or the committee, or names tellers for a division. In case
there is no division, the number of the minority who have
risen is declared from the chair, and their names, having
been taken down in the house, are printed with the lists of
divisions.\(^4\)

In the Lords, not only those peers who are present may
vote in a division, but on certain questions, absent peers
are entitled, by ancient usage, regulated by several standing
orders, to vote by proxy.\(^5\) In 1867, however, a Lords’ com-
mittee recommended that the practice of using proxies should
be discontinued; and on the 31st March, 1868, by standing
order No. 34, the house agreed to discontinue the practice

\(^1\) 105 C. J. 364.
\(^2\) In the American House of Re-
presentatives it is a rule that "No
division and count of the house shall
be in order, but upon motion seconded
by at least one-fifth of a quorum of
the members." See also the author’s
pamphlet on Public Business in Par-
liament, 1849, 2nd edit. p. 29, and
the report of the committee on
public business, in 1878.
\(^3\) See Speaker’s remarks, 13th
June, 1893.
\(^4\) 145 C. J. 580; 146 ib. 476; 147
ib. 102.
\(^5\) During the king’s illness, in 1811,
\it was doubtful whether proxies were
admissible; see 18 H. D. 976.
of calling for proxies, and resolved that two days' notice
must be given of a motion for the suspension of the standing
order.

No attempt has since been made to suspend this order,
and the practice, though capable of being revived on any
occasion, at the pleasure of the house, 'may be regarded as
in abeyance.

A practice, similar in effect to that of voting by proxy, has Pairs.
for many years been resorted to in both houses. A system
known by the name of "pairs," enables a member to absent
himself, and to agree with another member that he also shall
be absent at the same time.\(^1\) By this mutual agreement, a
vote is neutralized on each side of a question, and the relative
numbers in the division are precisely the same as if both
members were present. The division of the house into dis-
tinct political parties facilitates this arrangement, and mem-
bers pair with each other, not only upon particular questions,
or for one sitting of the house, but for several weeks or even
months at a time. There can be no parliamentary recogni-
tion of this practice, although it has never been expressly con-
demned;\(^2\) and it is therefore conducted privately by individual
members, or arranged by the gentlemen known as "the
whips," who are entrusted by their political parties with the
office of collecting their respective forces on a division.

In addition to the power of expressing assent or dissent by Protest.
a vote, peers have the right, without asking leave of the
house, to record their opinion, and the grounds of it, by a
"protest," which is entered in the journals, together with
the names of all the peers who concur in it; and, pursuant to
standing order No. 35, the entry of a protest in the Clerk's

\(^1\) On an occasion when, the House of Commons, having met on Monday,
sat until half-past one o'clock on Tuesday afternoon, members who
paired on Monday for "the night" voted in divisions which took place
after nine o'clock on Tuesday morn-
ing, because, as they had not paired
for "the sitting," but for "the night,"
it was held that the compact termi-
nated on Tuesday morning. Doubts
having arisen regarding this course
of action, a memorandum has been
drawn up by the "whips" for the
government and for the opposition,
for their guidance, if a similar occa-
sion arose.

\(^2\) A motion condemning this prac-
tice, 6th March, 1743, was negatived,
on division, 21 C. J. 602.
When to be entered. book must be made on the next sitting day, before the hour of two o'clock, and must be signed before the rising of the house the same day.¹

Sometimes leave is given to lords to enter a protest against any vote of the house, some time after the period limited by the standing order.²

When a protest has been drawn up by any peer, other lords may either subscribe it without remark, if they assent to all the reasons assigned in it; or they may signify the particular reasons which have induced them to attach their signatures:³ but, by the usage of the House of Lords, the privilege of entering a protest is restricted to those lords who were present and voted upon the question to which they desire to express their dissent. But leave is sometimes given to lords to sign the protest of another peer, although they were not present when the question was put.⁴ Any protest or reasons, or parts thereof, if considered by the house to be unbecoming or otherwise irregular, may be ordered to be expunged.⁵

Protests or reasons expunged by order of the house, have also been followed by a second protest against the expunging of the first protest or reasons, by which the object of the house has been defeated.⁶ On the 10th April, 1690, certain reasons having been expunged, the Duke of Somerset desired that, as he had protested for those very reasons, he might have leave to withdraw his name from the protest, which was granted to him, and to any other lords who pleased.⁷ On the 24th June, 1824, leave was given to the peers who had entered

¹ As to dissents in judicial cases, see Macqueen, 28. 29.
² 101 L. J. 257. 480; 122 ib. 216.
⁴ 101 L. J. 493, 10th Feb. 1823.
⁵ "The Duke of Somerset had not voted on the question for the address, but had nevertheless protested against it; and upon motion, his protest, he having been present at the debate, though he had not voted, was allowed to stand on the journal," 55 ib. 492; Lord Colchester's Diary, iii. 273; see 87 H. D. 3 s. 1137; protest against Corn Importation Bill, when certain peers who had not been present, signed the protest; and again, 27th March, 1890, 343 ib. 8. 184.
⁶ 16 L. J. 655. 757; 17 ib. 55; 19 ib. 220. 480. 481; 40 ib. 49; 43 ib. 82.
⁷ 14 ib. 459 (8th and 10th April, 1690); 2 Burnet's Own Time, 41; 16 L. J. 655; 19 ib. 220; 21 ib. 695. 710; 22 ib. 73; 43 ib. 82.
a protest against the Earl Marshal’s bill, to withdraw and amend it, as it stated certain facts incorrectly.¹

The distribution among members of a circular addressed to them by another member, asking for their vote in favour of a motion which the member intended to move, or to state whether their vote would be for or against the motion, was condemned by the Speaker, as a proceeding “contrary to the best usages and traditions of the house, and which would detract from its character.”²

In both houses, personal interest affects the right of members to vote, in certain cases. In 1796, a general resolution was proposed in the Lords, “That no peers shall vote who are interested in a question:” but it was not adopted.³ It is presumed, however, that such a resolution was deemed unnecessary; and that it was held that the personal honour of a peer will prevent him from forwarding his own pecuniary interest by his votes in Parliament. By standing order (Private Bills) No. 98, lords are “exempted from serving on the committee on any private bill wherein they shall have any interest.”

In the Commons, it is a rule that no member who has a direct pecuniary interest in a question shall be allowed to vote upon it: but, in order to operate as a disqualification, this interest must be immediate and personal, and not merely of a general or remote character. On the 17th July, 1811, the rule was thus explained by Mr. Speaker Abbot: “This interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of his Majesty’s subjects, or on a matter of state policy.”⁴ This opinion was given upon a motion for disallowing the votes of the bank directors upon the Gold Coin Bill, which was afterwards negatived without a division. And on occasions when the objection of personal interest in a vote has been raised, which came obviously within the exemption from the application of the

rule, defined by Mr. Speaker Abbot, the Speaker or the chairman has overruled the objection, or has decided that a motion to disallow the vote would be out of order.¹

No instance is to be found in the journals in which the vote of a member has been disallowed, upon questions of public policy.² On the 1st June, 1797, however, Mr. Manning submitted to the Speaker whether he might vote, consistently with the rules of the house, upon the proposition of Mr. Pitt, for granting compensation to the subscribers to the Loyalty Loan, he being himself a subscriber. The Speaker explained generally the rule of the house, and Mr. Manning declined to vote. After the division, the votes of two other members were objected to as being subscribers: but one stated that he had parted with his subscription, and the other that he had determined not to derive any advantage to himself; upon which questions for disallowing their votes were severally negatived.⁴

On the 3rd June, 1824, a division took place on a “Bill for repealing so much of an Act 6 Geo. I., as restrains any other corporations than those in the Act named, and any societies or partnerships, from effecting marine insurances, and lending money on bottomry.” An entry in the journal, in the form of a memorandum, states that an objection was made to the numbers declared by the tellers, that certain members who voted with the ayes were personally interested in the passing of the bill, as being concerned in the Alliance Insurance Company: but it was decided that they were not so interested as to preclude their voting for the repeal of a public act.⁵ On the 10th July, 1844, on the question for hearing counsel against a bill for suspending certain actions for penalties under the gaming laws, objections were taken to the votes of members who were

¹ Speaker's rulings: 212 H. D. 3 a. 1136; 237 ib. 875; 334 ib. 732; chairman's rulings: 226 ib. 1742; 345 ib. 1232 (see also p. 356).
² This statement, by the author, has been retained, though, 11th March, 1892, upon a motion that the votes of certain members given in favour of the grant in aid of a preliminary survey for a railway from the coast to Lake Victoria Nyanaa, be disallowed, the numbers were— ayes, 154; noes, 149, 147 C. J. 98.
⁴ 52 C. J. 632.
⁵ 79 ib. 455.
defendants: but one stated that it was not his intention to take advantage of the provisions of the bill, and plead the same in bar of such action; and the other that he had not been served with any process. Motions for disallowing their votes were, therefore, withdrawn.\(^1\) On the 11th July, 1844, the vote of a member upon the second reading of a public bill relating to railways, was objected to upon the ground that he had a direct pecuniary interest as the proprietor of railroad shares: but a motion for disallowing his vote was withdrawn.\(^2\) An objection on the ground of personal interest raised against a vote given in a committee of the whole house, must be determined by the committee, upon a motion made therein that the vote be disallowed; and a motion to report progress, in order to bring such an objection before the house, was not permitted.\(^3\)

The votes of members, who were subscribers to undertakings proposed to be sanctioned by a bill,\(^4\) or who were interested in private bills, have frequently been disallowed. In 1800, the votes of three members were disallowed, as having a direct interest in a bill for incorporating a company for the manufacture of flour, wheat, and bread.\(^5\) On the 20th May, 1825, notice was taken that a member who had voted with the yeas on the report of the Leith Docks Bill, had a direct pecuniary interest in passing the bill: he was heard in his place; and stated that on that account he had not voted in the committee on the bill, and that he had voted, in this instance, through inadvertence. His vote was ordered to be disallowed.\(^6\) Instances, also, may be given of motions to disallow the votes of shareholders in the

\(^1\) 99 C. J. 486.
\(^2\) Ib. 491.
\(^3\) 17th June, 1890, 345 H. D. 3 s. 1232–1235. Owing to the interruption of business at ten minutes to seven o'clock, a motion that certain votes be disallowed, given in the committee of supply, on the 4th March, 1892, was made in the committee on the 11th March, 147 C. J. 98. It was ruled by the Speaker 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, 25th March, 1889, 334 H. D. 3 s. 732.
\(^4\) 80 ib. 110; 91 ib. 271.
\(^6\) 80 C. J. 443; see also ib. 110; 91 ib. 271.
PERSONAL INTEREST.

company which was the promoter of the bill on which the division was taken, that have been negatived. And in like manner, on the second reading of the Birmingham and Gloucester Railway Bill, 15th May, 1845, objection was taken to one of the tellers for the noes, as being a landholder whose property would be injured by the proposed line. A motion for disallowing his vote was withdrawn. On the 15th July, 1872, objection was taken to two of the tellers in a division, who had voted against the Birmingham Sewerage Bill, on the ground of personal pecuniary interest: but the Speaker stated that they had no such pecuniary interests in the bill as would disqualify them from voting against it.

The extent to which the rule of personal interest in a vote given by a member against a private bill, which would create a project intended to compete with an undertaking in which he has a pecuniary interest, is as yet undecided. As the Speaker stated, 12th May, 1885, there is no rule of the house on the subject. He recommended that each member should be guided by his own feelings in the matter, and should vote, or abstain from voting, as he thought fit; though the Speaker added to his statement a reminder, that members should be aware that they ran the risk of having their votes disallowed by the subsequent action of the house.

On the 22nd February, 1825, a member voted against a bill for establishing the London and Westminster Oil Gas Company, and notice was taken that he was a proprietor in the Imperial Gas Light and Coke Company, and thereby had a pecuniary interest in opposing the bill. A motion was made that his vote be disallowed: but, after he had been heard in his place, it was withdrawn.

On the 16th June, 1846, objection was taken to the vote of a member who had voted with the noes, because, as director and shareholder in the Caledonian Railway Company, he had a direct pecuniary interest in the rejection of

1 8th May, 1883, 138 C. J. 199; 11th March, 1884, 139 ib. 103; 9th March, 1886, 141 ib. 83.
2 100 ib. 436.
3 15th July, 1872, 212 H. D. 3 s.
4 298 ib. 342.
5 80 C. J. 110.
the Glasgow, Dumfries, and Carlisle Railway Bill. Whereupon he stated that the sole direct interest that he had in the Caledonian Railway was as holder of twenty shares, to qualify him to be a director in that undertaking; and that he voted against the Glasgow, &c., Railway, conceiving it to be in direct competition with the Caledonian Railway, as decided by the legislature in the last session. A question for disallowing his vote, on the ground of direct pecuniary interest, was negatived.¹

An objection to a vote, on the ground of personal interest, cannot be raised or mooted except upon a substantive motion, that the vote given in a division be disallowed, on the principle affirmed upon p. 264, and cannot be brought forward as a point of order.² The member whose vote is under consideration on the ground of personal interest, having been heard in his place, should withdraw immediately, and before the question founded thereon has been proposed.³

The principle of the rule which disqualifies an interested member from voting, must always have been intended to apply as well to committees as to the house itself; but it is undeniable that a contrary practice had very generally obtained in committees upon private bills, although it was not brought directly under the notice of the house until the 21st June, 1844, when the Middle Level Drainage Bill committee instructed their chairman to report that a member “had received an intimation that he ought not to vote on questions arising thereon, by reason of his interest in the said bill;” and desired the decision of the house upon the following question: “Whether a member, having property within the limits of an improvement bill, which property may be affected by the passing of the bill, has such an interest as disqualifies him from voting thereon.” The reply the house made to the application from the committee was an instruction thereto, “That the rule of this

¹ 101 C. J. 873.
² 91 C. J. 271; 80 ib. 110; 138 ib.
³ 285 H. D. 3 s. 1222; 4th March, 1892, 2 Parl. Deb. 4 s. 90.
house relating to the vote, upon any question in the house, of a member having an interest in the matter upon which the vote is given, applies likewise to any vote of a member so interested, in a committee.”¹ Since that time, committees on opposed private bills are constituted so as to exclude members locally or personally interested; and in committees on unopposed bills, such members are not entitled to vote (see p. 724). And a member of a committee on an opposed private bill, or group of bills, will be discharged from further attendance, if it be discovered, after his appointment, that he has a direct pecuniary interest in the bills, or one of them (see p. 725).²

But though a member interested is disqualified from voting, he is not restrained, by any existing rule of the house, from proposing a motion or amendment. On the 26th July, 1859, Mr. Whalley moved an amendment to a clause added by the Lords to a railway bill, in which he admitted that he was personally interested. In the debate, exception was taken to such an amendment having been proposed by a member having a pecuniary interest: but the Speaker ruled that, though it was a well-known rule of the house, that a member under such circumstances could not be permitted to vote, and though the course adopted was certainly most unusual, yet there was no rule by which the right of a member to make a motion was restrained, and he had been given to understand that Mr. Whalley did not intend to vote.³ Objections that a member alleged to be personally interested, could not give a notice of opposition to a bill, and that a member, who moved an instruction to a committee on a private bill, was a member of a corporation which petitioned against the bill, were overruled by the Speaker.⁴

The law of Parliament regarding the acceptance of bribes or pecuniary rewards for parliamentary services, has been explained elsewhere (see p. 81).

¹ 77 H. D. 3 s. 16. ² 101 C. J. 904; 104 ib. 337; 115 ib. 218; N. E. Railway (Hull Docks) ³ 263 ib. 1477; 287 ib. 875. ⁴ 155 H. D. 3 s. 459.
Chapter XIII.

Disallowance of a vote on the score of personal interest is restricted to cases of pecuniary interest, and has not been extended to those occasions when the dictates of self-respect, and of respect due to the house, might demand that a member should refrain from taking part in a division.¹

¹ See statement by the Speaker, 18th March, 1864, 174 H. D. 3 s. 340. For cases of members who voted against the motion for their suspension, see Mr. Bradlaugh's votes, 22nd Feb. 1882, 137 C. J. 61; 11th Feb. 1884, 139 ib. 41. On the first occasion, the Speaker stated that it was for the house to consider what should be done with regard to Mr. Bradlaugh's vote; on the second occasion, his vote was disallowed, because he was not a member of the house. See also division lists, sess. 1887, No. 91. 481. 483; sess. 1890, No. 16. For the rule regarding the vote of rival candidates for the Speakership (see p. 151).
CHAPTER XIV.

COMMITTEES OF THE WHOLE HOUSE: AND STANDING COMMITTEES.

A committee of the whole house is, in fact, the house itself, presided over by a chairman instead of by the Speaker. It is appointed in the Lords by an order, “That the house be put into a committee,” which is followed by an adjournment of the house during pleasure. In the Commons it is appointed by a resolution, that the house will immediately—or on a future day—resolve itself into a committee of the whole house. Under standing order No. 51, whenever an order of the day is read for the house to resolve itself into committee, not being a committee to consider a message from the Crown (see p. 421), or the committees of supply, and ways and means (see p. 571), or the committee on the East India Revenue Accounts (see p. 564), the Speaker leaves the chair without putting any question, unless notice of an instruction to the committee has been given, when such instruction is first disposed of. The mace is then removed from the table, and placed under it, and the committee commences its sitting.

The chair is taken, in the Lords, by the chairman of committees, who is appointed by a resolution of the house. Pursuant to standing orders Nos. 41 and 42, he takes the chair in all committees of the whole house, and in all committees upon private bills, unless where it shall have been otherwise directed by the house; and if he, or any lord appointed by the house in his place, shall be absent (unless by leave of the committee), the house is resumed. Nor can the committee proceed to business unless a chair-

1 If the member who has given notice of an instruction be not present when the order of the day is read, the Speaker leaves the chair forthwith, Elector’s Qualification Bill, 26th May, 1892.

2 See 10th May, 1886, 118 L. J. 180.
man is appointed by the house. But another chairman is usually appointed before the house goes into committee, or for the whole day.\(^1\)

In the Commons the chair (at the table) is generally taken by the chairman of the committee of ways and means.\(^2\) Difference in a committee concerning the election of a chairman is determined by the house itself.

In the absence of the chairman of ways and means, the chair of a committee of the house is usually taken by a member, on the suggestion of a member of the government, or otherwise, without question on the part of the house; though in such a case preference is given to one of those seven members who, in pursuance of the provision contained in standing order No. 1, the Speaker nominates at the commencement of every session to act as temporary chairman of committees, when requested to do so by the chairman of ways and means. During prolonged sittings of a committee it has also been customary for the chairman to withdraw, and to be replaced by another member, without any question.\(^3\) Closure in committee is enforceable only under the chairman of ways and means.

The proceedings in committee are conducted in the same manner as when the house is sitting. In the Lords, a peer addresses himself to their lordships, as at other times; in the Commons, a member addresses the chairman, who performs in committee all the duties which devolve upon the Speaker in the house. He calls upon members as they rise to speak, puts the questions, maintains order, and gives the casting vote in case of an equality of voices.

On the 28th June, 1848, in committee on the Roman Catholic Relief Bill, the numbers in a division were equal, and the chairman gave his casting voice. It was stated, in

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\(^1\) 80 L. J. 125. 406; 81 ib. 233; 88 ib. 58; 95 ib. 103; 103 ib. 12. Viscount Eversley, 10th Feb. 1871, was appointed chairman of committees, in the absence of Lord Redesdale from illness.

\(^2\) This usage began in 1841. Until that time the chair of committees of the whole house was taken by a member appointed by the call of the committee, or, if the call was disputed, by the vote of the house, 59 H. D. 3 s. 606.

\(^3\) 132 C. J. 395; 137 ib. 322, &c.
debate, that no such case was recollected, and doubts were expressed as to the regularity of the proceeding: but a similar case had already arisen in committee on the Highways Bill, on the 25th June, 1834; it was clearly consistent with the rules of the house, and has since been followed without question.\(^1\) In giving his casting voice, the chairman is governed by the same principles as the Speaker (see p. 344). Thus, on the 29th July, 1869, the numbers being equal in committee of supply, upon the reduction of a vote, the chairman declared himself with the noes, as the committee would have an opportunity of voting upon any other reduction of the proposed vote.\(^2\)

The ordinary function of a committee of the whole house is deliberation, and not inquiry. All matters concerning the imposition of taxes, or the grant of public money, must be considered in committee, as a preliminary to legislation; and any other questions which, in the opinion of the house, may be more fitly discussed in committee, are dealt with in that manner.\(^3\) The provisions of public bills are usually considered in a committee of the whole house (see p. 451).

In former times, important inquiries were entrusted to committees of the whole house; as, for example, in 1744, the cause of the miscarriage of the fleet before Toulon; in 1782, the want of success of the naval forces during the American war; in 1809, the conduct of the Duke of York; in 1810, the failure of the Expedition to the Scheldt; and, in 1808 and 1812, the operation of the orders in council;\(^4\) and witnesses were examined at the bar. Such a tribunal is, however, ill adapted to close and consecutive examinations, while the time occupied by its inquiries is a serious impediment to the general business of the session. In 1790, committees of the whole house on the African slave-trade were assisted in their inquiries by select committees appointed to take the examination of witnesses, and

\(^{1}\) 89 C. J. 489; 3rd Aug. 1859, 114 ib. 333; 21st May, 1860, 115 ib. 256; 7th Aug. 1876, 131 ib. 398.
\(^{2}\) 24 C. J. 773; 38 lb. 644; 64 lb. 15; 65 lb. 14; 63 lb. 199; 67 lb. 333.
\(^{3}\) Education, 1856; Government of India, 1858.
report the minutes of evidence to the house. And of late years no such inquiries have been referred to committees of the whole house, while the investigation of matters of equal importance has been more satisfactorily entrusted to secret and select committees (see p. 378).

A committee can only consider those matters which have been committed to them by the house. If it be desirable that other matters should also be considered, an instruction is given by the house, to empower the committee to entertain them. An instruction is moved as a distinct question, after the order of the day has been read, and must be considered before the Speaker leaves the chair, under standing order No. 51.

The general principle which governs debate and amendments (see p. 278), applies to all occasions that may arise on the question for the Speaker's leaving the chair for a committee of the whole house, when procedure thereon is excepted from the operation of standing order No. 51; the only relaxation of that principle being the exemption from the rule of relevancy accorded to amendments to the question for the Speaker's leaving the chair for the committee of supply or ways and means (see p. 571).

It is not necessary to give notice of the express terms of resolutions intended to be proposed in committee of the whole house; nor does a motion in committee need a seconder.

On the 3rd November, 1675, it was declared to be an ancient order of the house, "that when there comes a question between the greater and lesser sum, or the longer or shorter time, the least sum and the longest time ought first to be put to the question," in order "that the charge may be

1 45 C. J. 11; 46 ib. 149.
2 War in the Carnatic, 1781, 58 ib. 430, 435; Victualling the Navy, 1782, 58 ib. 871; Naval Inquiry, 1805, 60 ib. 214, 418; Army before Sebastopol, 1855, 110 ib. 56; and see debate on its appointment, 136 H. D. 3 s. 979, 1121.
3 See the Speaker's ruling, 156 ib.
4 1720 (French Treaty in committee on Customs Act), on the reference of the treaty to the committee.
5 Navigation Laws, 15th May, 1848; Sardinian Loan, 12th June, 1856; Annual Budgets.
6 9 C. J. 367; 3 Grey's Deb. 381–388.
made as easy upon the people as possible." The application of this rule in ordinary cases is rendered unnecessary by modern usage. Formerly, when resolutions, or clauses of a bill, were tendered to a committee, containing proposals for the laying a charge upon the people, the dates and sums were not stated, but were left in blank. Therefore when the committee considered the matter, if two or more proposals were made suggesting various modes of filling up the blanks, the procedure prescribed by the rule was put in force: but as now arranged, dates and sums are placed before the committee printed in italics (see p. 529), which are dealt with by amendments proposed in the ordinary way: though the principle enforced by the rule is occasionally followed in the committees of supply, and ways and means (see p. 583), and might, if the need arose, be observed by the house.

A message from the Crown, which has been referred to a committee of the whole house, and resolutions or documents which regulate its proceedings, are read by a clerk at the table, so soon as the committee has been entered upon.

When a resolution is proposed in a committee, every amendment may be moved, which might be moved to such a resolution, if proposed in the house itself. Thus, in committee on the government of Canada, on the 14th April, 1837, an amendment was moved to leave out all the words after "that," in a resolution, in order to add other words; and again, on the 3rd May, 1858, a similar amendment was moved in committee on the government of India. Such a proceeding, however, would not be admissible in considering the clause of a bill (see p. 459) or resolutions in the committee of supply (see p. 579). In committee, amendments are proposed to the "proposed resolution," and not to the "question," as in the proceedings of the house.

A motion for the "previous question" is not admitted...
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in a committee of the whole house (see p. 270). The main difference between the proceedings of a committee and those of the house is that in the former a member is entitled to speak more than once, in order that the details of a question or bill may have the most minute examination; or, as it is expressed in the Lords' standing order No. 40, "to have more freedom of speech, and that arguments may be used pro et contra;" though it cannot be denied that an unrestricted right of debate offers special opportunities for delay and obstruction.

Members must speak standing and uncovered, as when the house is sitting;¹ although it appears that, in earlier times, they were permitted to speak either sitting or standing.²

Standing order No. 43 directs that when the house is put into a committee of the whole house, the house shall not be resumed without the unanimous consent of the committee, unless upon a question put by the lord in the chair.

Order in debate in a committee is enforced by the chairman, who is responsible for the conduct of business therein; and from his decision no appeal should be made to the Speaker.³ Except when a temporary chairman is in the chair (see p. 361), the closure powers created by standing orders Nos. 1 and 25 are as operative in a committee as in the house itself (see p. 211), and are enforced in the

¹ 248 H. D. 3 s. 406.
² In a committee on a subsidy, 7th Nov. 1804, Sir Walter Raleigh was interrupted by Sir E. Hobby, who said, "You should speak standing, that so the house might the better hear you." Raleigh replied, "that being a committee, he might either speak sitting or standing." Mr. Secretary Cecil rose next, and said, "Because it is an argument of more reverence, I choose to speak standing." 1 Hans. Parl. Hist. 916.
³ 21st Feb. 1860, 156 H. D. 3 s. 1474; see also 170 ib. 109; 176 ib. 31; 22nd Dec. 1888, 352 ib. 1011; 15th Aug. 1899, 339 ib. 1359. During the session of 1896, when the present method of taking divisions was a novelty, to take thereon the instruction of the house, progress was reported by a committee, 91 C. J. 104; and in the session of 1855, doubts having arisen in a committee regarding the right of certain members to vote, the chairman, after the house was resumed, submitted the matter to the consideration of the Speaker, 159 H. D. 5 s. 486; 110 C. J. 332. On one occasion only, 6th May, 1852, upon a report of progress, a point of order in debate was submitted to the judgment of the Speaker, who gave his decision thereon, 126 H. D. 3 s. 1243. For the Speaker's statement regarding the procedure by a chairman of a standing committee (see p. 375, n. 5).
same manner. The rules observed by the house regarding order in debate are followed in committee, hence as reference to debate in committee is not permitted in the house (see p. 309), reference in committee to the conduct of the Speaker is not allowed;¹ nor can the enforcement of closure at a previous sitting of the committee be discussed.²

By standing order No 24 (see p. 300), the chairman is empowered to check irrelevance or tedious repetition in debate. And the rule that a member who has used objectionable words must explain or retract the same, or offer an apology (see p. 318), is as operative in committee as in the house. A division which, in the opinion of the chairman, is frivolously or vexatiously claimed can be dealt with by him in pursuance of standing order No. 30 (see p. 350).

The chairman possesses the power given to the Speaker by standing order No. 27 (see p. 332), of directing a member whose conduct is grossly disorderly to withdraw immediately:³ but with this exception, the suspension of members on the chairman's report, and the conduct of disorderly members, are considered with the Speaker in the chair. The house is therefore resumed on account of words of heat or disputes between members, or when words have been taken down to be reported to the house.⁴ On an occasion, 28th July, 1887, when insulting words were addressed by a member to another member, during the progress of a division, after the declaration of the numbers, the chairman stated that he must, in consequence, send for the Speaker. The Speaker accordingly resumed the chair; the chairman reported to him the occurrence; and the Speaker, after a statement from the member, named him for having violated the decorum of the house.⁵ A chairman has also reported

¹ 248 H. D. 3 a. 61.
² 328 ib. 1446.
³ See p. 853.
⁵ 142 ib. 407; see also 3rd July, 1882, 271 H. D. 3 a. 1272.
to the Speaker, at the close of his report of the suspension of certain members for obstruction, that a member during the proceedings had addressed to him insulting words; and the matter was set down for consideration on a future day.\(^1\) The sitting of a committee may also be interrupted by a complaint of a breach of privilege whereon progress is reported, and the incident is considered by the house.\(^2\)

An outbreak of disorder in a committee,\(^3\) by which the honour and dignity of the house were affected, has justified the Speaker in resuming the chair immediately, without awaiting the ordinary forms. On the 10th May, 1675, a serious disturbance arose in a committee of the whole house, which threatened bloodshed; the Speaker, thereupon, “very opportunely and prudently rising from his seat near the bar, in a resolute and slow pace, made his three respects through the crowd, and took the chair.” The mace was laid upon the table; the disorder ceased; and the Speaker stated that it was to bring the house into order again, that, “though not according to order,” he had taken the chair. No other entry appears in the journal than that “Mr. Speaker resumed the chair;” but the same report adds that, though “some gentlemen excepted against his coming into the chair, the doing it was generally approved, as the only expedient to suppress the disorder.”\(^4\) This incident has not been repeated, for subsequently when a member who, for disorderly conduct, had been ordered into custody, returned into the house, during the sitting of a committee, in a violent and disorderly manner, upon a report of progress, the Speaker resumed the chair, and ordered the Serjeant to do his duty.\(^5\) So also, when during the sitting of the committee on the Corn Bill, 6th March, 1815, tumultuous proceedings took place outside, and one member complained that the house was surrounded by a military force, and another that he had been beset by a mob, on the report of progress, the Speaker resumed the

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1 137 C. J. 323. 328.  
2 26th Nov. 1888, 143 ib. 483.  
3 1 ib. 887.  
4 3 Grey’s Deb. 129.  
5 Mr. Fuller’s case, 27th Feb. 1810, 65 C. J. 134.
chair, and, the matter having been considered, the committee was resumed.¹

If an occasion of public business arises in which the house is concerned, the Speaker resumes the chair at once, without any report from the committee; as if the usher of the Black Rod should summon the house to attend her Majesty or the lords commissioners in the House of Peers, or if the time be come for holding a conference with the Lords.²

When the incident which has occasioned the interruption to the sitting of a committee has been dealt with, the house forthwith again resolves itself into the committee.

Resolutions to be proposed in a committee of the whole house can be moved according to the order suggested by the discretion of the mover; and after a motion for a resolution has been proposed from the chair, a motion to postpone such motion, to obtain priority for another resolution, would be out of order. When proposed from the chair, unless progress be reported thereon, a resolution is a question which must be withdrawn, negatived, amended, or agreed to by the committee.³

A committee of the whole house has no power either to adjourn its own sittings or to adjourn a debate to a future sitting:⁴ but if a debate be not concluded, or if all the matters referred be not considered, in the Lords, the house is resumed, and the chairman moves, "That the house be again put into committee" on a future day; and in the Commons, the chairman is directed to "report progress, and ask leave to sit again." On such a report, the house has occasionally thereupon again resolved itself into the committee (see p. 464). If the committee has agreed to certain resolutions, but is unable to conclude the discussion of other resolutions, it is customary to direct the chairman to report the former, and to report progress upon the latter.⁵ So

¹ 70 C. J. 143; 2 Lord Colchester's Diary, 531.
² 126 C. J. 433; 67 ib. 431.
³ 149 H. D. 3 s. 2066.
⁴ At the general desire of the committee, the sitting of a committee of the whole house was suspended for a certain time on the 11th Aug. 1848, 101 ib. 90; see also 9 C. J. 68.
⁵ Customs and Corn Importation, 1846, 101 ib. 280. 281; committee of ways and means (Income Tax),
entirely is the principle of adjourning debates in committees of the whole house ignored, that when resolutions have been proposed, and progress reported before they were agreed to, resolutions upon other distinct matters have been proposed, and agreed to, at ensuing sittings of the committee, and the resolutions first proposed taken up again on a more distant day. Thus, on the 17th February, 1851, in committee of ways and means, a resolution for the continuance of the income tax was proposed, and progress reported. On the 18th March, a resolution was agreed to for paying £8,000,000 out of the Consolidated Fund; and on the 4th April, the resolution for the continuance of the income tax was again proposed, and agreed to. And again, on the 28th April, 1853, a resolution was proposed upon the income tax, and progress reported. The committee sat again the same day, when, instead of resuming the discussion upon that resolution, another resolution was proposed upon exchequer bills; and on the 29th April, the resolution upon the income tax was again proposed. For this reason no member can claim to speak first on the renewal of a debate in committee, on the ground that he was in possession of the committee, when the chairman had reported progress.

It is the practice for members who desire to close the sitting of a committee, to move that the "chairman do report progress, and ask leave to sit again," in order to put an end to the proceedings of the committee on that day, this motion, in committee, being analogous to that frequently made at other times, for adjourning the debate. A motion, "That the chairman do now leave the chair," when carried, supersedes the order of the day for a committee, and converts it into a dropped order; as, when the Speaker resumes the chair, no report whatever is made from the committee.

The same result is obtained if, when the chairman reports progress in the matter referred to the committee, he does

1853, 108 C. J. 431; Customs, 1854, 109 ib. 470; Supply, 5th Aug. 1867, 122 ib. 429. 2 7th June, 1858 (Mr. Reebuck), 150 H. D. 3 a. 1618. 3 86 C. J. 403; 89 ib. 381. 465; 90 ib. 497. 561; 117 ib. 177.
not ask for leave to sit again, upon a direction given by the member who had obtained the appointment of the committee.¹

A motion to report progress, having been negatived, cannot be repeated during the pendency of the same question, being subject to the same rule as that observed in the house itself, which will not admit of a motion for the adjournment of the debate to be repeated, without some intermediate proceeding (see p. 268). It has, therefore, been customary to alternate the motion for reporting progress, with the motion, "That the chairman do now leave the chair."² On the 7th June, 1858, in committee on the government of India, a question for reporting progress having been negatived, the committee, some time afterwards, were prepared to assent to such a motion: but, in order to adhere to the rule, the chairman put the question upon a formal part of an amendment which had been proposed, before he proceeded to put the question for reporting progress.³

Resolutions agreed to by a committee are, upon direction from the committee, reported by the chairman to the house; and, until such report has been made, no reference may be made to it, nor to the proceedings of the committee. Formerly, before the chairman could leave the chair for that purpose, a formal question was put that he "do now leave the chair:" but now, pursuant to the direction given by standing order No. 52, when he has been ordered to make a report to the house, the chairman leaves the chair without question put.

By standing order No. 53, reports from committees of the whole house are brought up without any question being put. Resolutions creating a charge upon the people, as is mentioned on p. 529, are considered on a future day: but resolutions upon all other matters are received immediately.⁴ The resolutions reported by a committee are twice read

¹ Training Colleges (Ireland) Loans, 30th July, 1891, 146 C. J. 501.
² 113 ib. 214; 150 H. D. 3 s. 1688; see also 21st June, 1860, 115 C. J. 323.
³ Established Church (Ireland)
⁴ Report, 123 ib. 160.
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before they are agreed to by the house. The first reading is a formal proceeding; the question, "That the said resolutions be now read a second time," is proposed by question from the chair, and then the resolutions are read successively by the Clerk at the table, following the order in which the resolutions were reported to the house. The final question put upon the resolution is the question that the house doth agree with the committee in the said resolution. The interval before that question is proposed, and after the resolution has been read a second time, affords the occasion for the proposal of an amendment to the resolution, as no amendment can be moved after the proposal of the question, that the house agrees with the committee in a resolution. Amendment or debate arising upon the consideration of the report of a resolution from a committee must be strictly relevant thereto. Every resolution may be amended, disagreed to, postponed, or recommitted to the committee. Resolutions which have been recommitted to a committee of the whole house, and reported, have been again recommitted to the committee.

In the Commons, the principal proceedings in committees of the whole house are in reference to bills (see p. 456), and the voting of supply, and ways and means (see p. 569); of which a description will be found in the chapters relating to these matters.

Since 1832, the annual appointment of the ancient grand committees for religion, for grievances, for courts of justice, and for trade, has been discontinued. They had long since fallen into disuse, and served only to mark the ample jurisdiction of the Commons in Parliament. When they were accustomed to sit, they were, in fact, constituted like committees of the whole house, but sat at times when the house itself was not sitting.

171 H. D. 3 s. 1551. 1 ib. 220. 822. 873. 1042, &c.; 112 C. J. 227; 119 ib. 333; 75 ib. 379; 76 ib. 440; 95 ib. 169; 77 ib. 314; 83 ib. 509; 77 ib. 314; 119 ib. 122.
83 ib. 533.

1 1 ib. 220. 822. 873. 1042, &c.; 2 ib. 3. 153. 202. 321, &c.; Lex Parl. 339; Scobell, 35-38; 4 Rushworth, Col. 19; see also 3 Lord Colchester's Diary, 481; 3rd April, 1626, 1 C. J. 843; 14th April, 1641; 2 ib. 120, &c.
The ancient committee of privileges is also analogous to a grand committee, consisting of certain members specially nominated, of all knights of shires, gentlemen of the long robe, and merchants in the house; and "all who come are to have voices." This committee is still appointed at the commencement of each session; but it is not nominated or appointed to sit, unless there be some special matter to be referred to it, as was the case in 1847.1

In the Commons, the proceedings of committees of the whole house have been entered in the journals since the 23rd February, 1829, when the Speaker submitted to the house that arrangements should be made to effect that object, to which the house assented.2 In the "Votes and Proceedings," all amendments in committee on bills, upon which divisions arise, are entered: but other amendments are only referred to in general terms.3 And the Lords have more recently adopted a similar form of entry in their journals. In a committee of the whole house, it is customary for the clerk assistant to officiate as Clerk.

The transaction of public business in the House of Commons was forwarded by the appointment, during the session of 1883, pursuant to resolutions agreed to on the 1st December, 1882, of standing committees for the consideration of bills relating to law, courts of justice, and legal procedure, and to trade, shipping, and manufactures. These committees, on the one hand, are, in procedure and method, assimilated to select committees, and are, on the other hand, in the number and choice of members, more representative than a select committee, and follow in many respects the method of business adopted by committees of the whole house.4 The resolutions of 1st December, 1882,

1 103 C. J. 139 (West Gloucester Election).
2 84 lb. 78.
3 191 H. D. 3 s. 574.
4 The appointment of standing committees was an attempt to meet the demand made, of late years, upon the time of the house by the consideration of bills in a committee of the whole house. For example, in 1879, the committee on the Army Discipline and Regulation Bill held twenty-two sittings; in 1881, the committee on the Irish Land Bill thirty-nine sittings, and the Prevention of Crime (Ireland) Bill thirty-one sittings.
for the appointment of the standing committees, were not, until the 7th March, 1888, placed among the standing orders of the house, when it was ordered that bills relating to agriculture and fishing be deemed bills relating to trade.

Two standing committees are accordingly appointed during each session, pursuant to standing orders Nos. 47, 48, and 49, for the consideration of such bills relating to law and courts of justice and legal procedure, and to trade, shipping, manufactures, agriculture, and fishing, as may be committed to them. These standing committees, consisting of not less than sixty, nor more than eighty, members, are nominated by the committee of selection, who are in their nomination to regard the classes of bills committed to the committees, the composition of the house, and the qualifications of the members selected.

The committee of selection has the power of adding not more than fifteen members to a standing committee in respect of any bill referred to it, to serve on the committee during the consideration of such bill; and of discharging members serving on the standing committees, and of appointing others in substitution for those discharged. The committee of selection also nominates a chairmen's panel, consisting of not less than four, nor more than six, members, of whom three are the quorum; and the chairmen's panel appoint from among themselves the chairman of each standing committee, and may change the chairman, so appointed, from time to time. The quorum of a standing committee is twenty.

The rules and standing orders applicable to select committees are, by standing order No. 47, made applicable to standing committees, unless the house shall otherwise order. Members have the right of access, as in the case of select committees (see p. 386), to the room occupied by a standing committee; and strangers are admitted, except when the committee shall order them to withdraw. The chairman of a standing committee also, following the rule in select committees (see p. 388), can only vote when there is an equality of voices. As is the rule regarding all committees,
a motion for the previous question would be out of order in a standing committee. As these committees are excluded from the operation of standing order No. 66, they cannot sit whilst the house is sitting, without the order of the house, which is obtained before the commencement of public business, upon a motion, made without notice given, by the chairman, or by a member in his behalf.¹

No notice is required of a motion to commit a bill to a standing committee, and this motion can be made though the bill is under consideration by a committee of the whole house (see p. 470). Upon this motion, debate must be restricted to the effect of the reference of the bill to a standing committee, or to its expediency; and general debate upon the merits or clauses of the bill is not permitted.² An amendment to insert at the end of the motion the words, "upon this day six months," has been ruled to be out of order.³

Notice of an instruction to a standing committee can stand upon the notice paper, either after the motion for referring a bill to the committee, or as an independent motion.⁴

The proceedings of a standing committee are assimilated, as far as possible, to those of a committee of the whole house. The doors of the room in which the committee sits are locked during a division, and every member present when the question is put must vote, and if he has not heard the question, the chairman will again state it to him. A standing committee has also the power of determining the question of a personal interest in a vote. Notices of amendments, given in the house, are printed and circulated with the "Votes," and stand referred to the committee, although the member who gives the notice is not a member of the committee. The members address the chair standing;

¹ 145 C. J. 433. By a motion made at the commencement of public business, the standing committee to whom the Clergy Discipline Bill was referred were enabled to sit every day, notwithstanding any adjournment of the house, until the bill had been considered, 147 ib. 269.

² Criminal Code (Indictable Offences) Bill, 16th April, 1883, 278 H. D. 3 s. 333, 335, 341; 287 ib. 1870.

³ 278 ib. 394.

⁴ The standing committee on law, &c., was empowered by instruction to consolidate two bills into one bill, 138 C. J. 141.
amendments are proposed under the rules in force in the house; and the minutes of proceedings are printed and circulated, with the divisions upon every question. Closure cannot be moved in a standing committee.

It is the duty of standing committees, as it is the duty of all committees, to fulfil, as far as possible, the duty laid upon them by the house, and to give to the matters referred to the committee due and sufficient consideration. The following examples of procedure show that, whilst a standing committee can, without an infraction of this rule, report a bill to the house in an incomplete state, a motion intended to obtain that object, moved to prevent the further progress of the bill in the committee, was not permitted.

The standing committee to whom the Criminal Code (Indictable Offences Procedure) Bill was referred, made, 26th June, 1883, a special report, stating that, for the reasons therein specified, having reached clause 10, the committee had resolved not to proceed further with the consideration of the bill. On a subsequent occasion, however, when a member attempted to move a similar motion during the consideration by a standing committee of the Clergy Discipline (Immorality) Bill, the chairman held that the motion was out of order.

Following the principle which governs procedure in committees of the whole house, no appeal can be made to the Speaker regarding the decisions and rulings of a chairman of a standing committee.

1 144 C. J. 160; 145 ib. 243.
2 Question to a chairman of a standing committee, and the Speaker's statement, 23rd March, 1893.
3 138 ib. 301; see also p. 853.
4 23rd May, 1892, see Times, 24th May. During the session of 1890, this matter was considered by the chairman's panel, at a private meeting, and they arrived at the opinion that, in the case of a bill committed to a standing committee, if, before the committee had proceeded to consider the bill, or until some reasonable attempt to deal with the bill had been made, a motion was made to the effect that the committee decline to proceed with the bill, such a motion would be an improper motion, and that the chairman should decline to put the question. This resolution was formed with reference to the Companies (Winding-up) Bill, it having been intimated to the chairman that, at the first meeting of the committee, a motion might be made that the committee decline to proceed with the consideration of the Bill.
5 The Speaker fully upheld this
Under standing order No. 50, a bill reported from a standing committee is proceeded with as if it had been reported from a committee of the whole house, and need not, therefore, be recommitted. These bills, however, are exempted from the operation of standing order No. 40; and accordingly, when the order of the day for the consideration of the bill, as amended, is read, the Speaker puts the question, “That the bill be now considered.”

The House of Lords, during the sessions of 1889, 1890, and 1891, by standing orders Nos. 45–53, provided for the sessional appointment of one or more standing committees to whom every bill shall be recommitted, after passing through a committee of the whole house, unless, on motion made when the bill is reported by the chairman of committees, the house shall otherwise order; and bills reported from a standing committee are considered in the house on such report.

The procedure of standing committees is the same as in a select committee, though they cannot sit without special leave during a sitting of the house; and the quorum of a standing committee is seven. Standing committees also are empowered to appoint a sub-committee for the fuller consideration of any bill committed to them.

The nomination of the standing committees is entrusted to a committee of selection appointed at the commencement of each session, consisting of the chairman of committees and eight other lords to be named by the house; and the names of the lords so nominated are reported to the house. The lord in charge of a bill committed to a standing committee is a member thereof, during the consideration of the bill.

principle, in a statement made from the chair, which arose upon a letter addressed to him by several members of a standing committee, alleging that the chairman had ruled that certain amendments to a bill under their consideration were out of order, because the amendments were hostile to the bill. The Speaker said that he would not allow an appeal to be made to him on a point of order arising in a standing committee; yet he added that he could not, as a general rule, assert that amendments hostile to a bill may not be admitted, 14th Aug. 1889, 339 H. D. 3 s. 1223.
The committee of selection also nominates a chairmen's panel of not more than twelve nor less than eight lords, who appoint from among themselves the chairman of each standing committee, and may change the chairman appointed from time to time. In the absence of the chairman so appointed, the standing committee may appoint another chairman for that meeting, preference being given to a lord (if present) who shall have been appointed to serve as a chairman by the committee of selection. The chairmen's panel also determines to which of the standing committees a bill may be recommitted.

Pursuant to standing order No. 39, no report shall be received from any standing committee with regard to any bill the same day on which such bill is reported from such committee, when any amendments have been made to such bill, either in committee of the whole house or by the standing committee; and no bill shall be read the third time the same day that the bill is reported from the committee.
CHAPTER XV.

SELECT COMMITTEES IN BOTH HOUSES: AND JOINT COMMITTEES.

A SELECT committee is composed of certain members appointed by the house to consider or to take evidence upon any matters, and to report their opinion, for the information and assistance of the house. The reports of previous committees, or other printed reports and papers, and bills and other documents, may be referred to select committees. And to enable a committee to cite in their report a document which has been laid upon the table, it is usual to move that it be referred to them. Petitions relating to the subject of inquiry may also be referred, which are laid before the committee by the clerk, from time to time.¹

Like committees of the whole house, select committees are restrained from considering matters not specially referred to them by the house. When it is thought necessary to extend their inquiries beyond the order of reference, an instruction from the house gives them authority for that purpose;² and notice of an instruction can be placed upon the notice paper, to be moved after the appointment of a select committee, or after the nomination of members thereof, or as an independent motion. If it be deemed advisable to restrict or direct the inquiries of a select committee, a mandatory instruction may be given by the house, prescribing the limits of their powers,³ or the course of their

¹ 186 H. D. 3 s. 1047.
² Committee of Secrecy, 1817, 72 C. J. 318; Taxation of Ireland, 2nd March, 1865, 120 ib. 107; East India Communications, 23rd April, 1866, 121 ib. 243; Trade in Animals, 16th April and 30th July, 1866, ib. 222.
³ 15th April, 1872, 210 H. D. 3 s. 1262; 29th April, 1884, 287 ib. 875.
⁴ 75 C. J. 259; 90 ib. 322; 119 ib. 147.
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proceedings, or directing the committee to make a special report upon certain matters.

In the House of Lords, by standing order No. 57, notice of the names of lords to be nominated for service on select committees, other than those on private bills, must be entered among the printed notices for the day.

The house resolves that a select committee be appointed, after which it is ordered that certain lords then nominated shall be appointed a committee to inquire into the matters referred, and to report to the house. Lords are nominated in the order of their precedence. Their lordships, or any three of them (or a greater number, if necessary), meet in one of the rooms adjoining to the upper house, and adjourn as they please. In special cases the Lords have appointed select committees by ballot. There are also sessional committees appointed by the Lords at the commencement of every session, viz. the committee of privileges, the sub-committee for the journals, the appeal committee, the standing order committee, the Parliament Office committee, and the library committee.

By standing orders Nos. 54-56, a lord of the committee may speak to the rest uncovered, or he may sit still if he pleases; and the committees are attended by such judges or learned counsel as are appointed, who are not to sit there or be covered, unless it be out of favour for infirmity.

A select committee of the House of Lords may sit, notwithstanding any adjournment of the house, without special leave.

The Lords do not give select committees authority to send for witnesses or documentary evidence, nor have the committee any such power: but parties are ordinarily served with a notice from the clerk attending the committee, that their attendance is requested on a certain day, to be examined before the committee. Until recently, such witnesses were required, previously to their examination, to be

1 99 C. J. 284; 102 Ib. 24; 137 Ib. 37. 65; to take evidence on oath, 142 Ib. 97; to omit clauses from a bill, 18th March, 1890, 145 Ib. 194; to hear counsel, 123 Ib. 263.

2 137 Ib. 98.

3 199 L. J. 39.

4 18 Ib. 758; 22 Ib. 116; 40 Ib. 198.
sworn at the bar of the house: but by the 21 & 22 Vict. c. 78, a committee of the House of Lords may administer an oath to the witnesses examined before them. Where a positive order is thought necessary to enforce the attendance of a witness, or the production of documents, it emanates from the house itself. A select committee upon a bill cannot examine witnesses, except by order of the house. It is usual to give a Lords' committee power to appoint their own chairman: but when no such power is given, the chairman of committees (though not named as a member) is the chairman, by virtue of his office.

Pursuant to resolutions of the 25th June and 7th December, 1852, in effect the same as the Commons' standing orders Nos. 71, 72, and 73, a record is made on the minutes of the proceedings of the select committees of the House of Lords, of the names of lords who put questions to witnesses, who are present at each sitting, and who take part in a division.

The chairman of a Lords' committee votes, like the other members, but has no casting vote (see p. 388).

The constitution of the select committees of the House of Commons is regulated by standing orders Nos. 67–74, which make provision respecting the number of members placed upon the committees, for their attendance, for the publication of their names on the notice paper of the house, and upon the minutes of proceedings, and require that due previous notice shall be given of motions for the nomination of members on select committees. Notice also must be given of a motion for discharge of a member therefrom (see p. 383).

In compliance with these orders, a select committee is usually confined to fifteen members: but if from any special circumstances a larger number should be thought necessary, the house will, upon notice previously given (see p. 293), order that the committee do consist of a certain other number.¹

¹ Of twenty-one members (Civil Bills (Ireland) Bill, 1851), 106 C. J. 218; of thirty-one members (Indian Territories, 1852), 107 ib. 168; of
A committee upon a matter of privilege may be appointed and nominated forthwith without notice; such a committee having been held not to be governed by any of the orders applicable to the appointment and nomination of other select committees.\(^{1}\) The nomination of select committees have in special cases been entrusted by the order of the house to sources other than its own decision.\(^{2}\) For instance, the house has appointed certain committees by ballot;\(^{3}\) or has named two members, and appointed the rest of the committee by ballot;\(^{4}\) or, having chosen twenty-one names by ballot, has permitted each of two members nominated by the house to strike off four from that number;\(^{5}\) and the house habitually resorts to the committee of selection, for the nomination, either wholly or partially, of the members of select committees.\(^{6}\) The committee of selection has also been empowered, 20th May, 1892, to divide a select committee into two committees, and to apportion between the committees the bills referred to the original committee.\(^{7}\) The select committee on Mail thirty members (Leasing Powers, &c. (Ireland) Bills), 108 C. J. 284; of twenty-three members (Merchant Ships), 135 ib. 84; of twenty-seven members (Merchant Shipping), ib. 150; Railway Rates, and Agricultural Tenants Compensation bills, 1882, 137 ib. 21. 376.

\(^{1}\) 112 ib. 232; 146 H. D. 3 s. 97; 113 C. J. 68; 148 H. D. 3 s. 1855–1867; 143 C. J. 484.

\(^{2}\) Until the surrender by the Commons of their judicature over contested elections put an end to the general committee on elections, the nomination of committees was occasionally entrusted to that body. Stanford, Derby, and Sligo Elections, 103 ib. 555; 108 ib. 158; 109 ib. 52; Mr. Stonor's case, 1854, 109 ib. 192; Education (Inspectors' Reports), 1864, 119 ib. 281; Leeds bankruptcy court, 1865, 120 ib. 312.

\(^{3}\) Secret committees: 41 L. J. 96.

\(^{4}\) 113 (Bank); 42 ib. 176 (Treasonable Conspiracy in Ireland); 43 ib. 97 (Suspension of Habeas Corpus); 56 C. J. 259 (State of Ireland); 67 ib. 492 (State of Counties); 74 ib. 64 (Bank); on the state of the country (Lords), 5th Feb. 1818, 87 H. D. 155; see also 3 Lord Colchester's Diary, 37.

\(^{5}\) 88 C. J. 144. 467, &c.

\(^{6}\) Ib. 160. 475.

\(^{7}\) The practical difficulty that has arisen upon the nomination by the house of a select committee, has suggested the transfer of that duty to a tribunal such as the committee of selection. On the 6th March, 1876, there were no less than seventeen divisions upon the nomination of the committee upon referres on private bills, 131 ib. 80.

\(^{7}\) Police, &c., bills, 147 ib. 268; see also cases of sub-committees in the earlier journals, 1 ib. 845; 8 ib. 374.
Contracts, 15th March, 1869, was ordered to consist of seven members, five to be nominated by the committee of selection, and two to be added by the house. The select committee on the Contagious Diseases Acts, 17th February, 1880, was appointed, ten members to be chosen by the house, and five by the committee of selection. The house ordered, 16th April, 1883, that the nomination of five members to serve on a joint committee of Lords and Commons (Channel Tunnel), be referred to the committee of selection; and again, 10th March, 1887, that the committee (London Corporation, Malversation, &c.) do consist of five members nominated by the same committee. As the house has delegated this duty to the committee of selection, no notice of motion, either for the discharge of a member nominated by that committee or for the substitution of another member in his place, is permissible, unless such motion is given under authority from the committee of selection.

Members are also nominated to serve on a committee to examine witnesses, without the power of voting, or to serve on a committee, and to take part in its proceedings, but without the power of voting. In the nomination of members to serve on select committees, and on select committees to whom hybrid bills (see p. 443) or private bills may be referred, the house, and the committee of selection, are not bound to consider whether members are personally interested in the matter or bill referred to the committee, and no objection can be raised in this respect to the constitution of the committee (see p. 726).

Sessional committees also are appointed, such as the committee of public accounts under standing order No. 77 (see p. 563); the committee on standing orders, the committee of selection, the general committee on railway and

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1 124 C. J. 85. 26; 135 ib. 26. 47; 138 ib. 143; 142 ib. 108.
2 4th April, 1892, 3 Parl. Deb. 4 s. 552; 28th April, 1893, Speaker’s statement.
3 Carlow Election, 91 C. J. 42; Mr. Stonor’s case, 109 ib. 232; Education (Inspectors’ Reports), 119 ib. 281; Leeds bankruptcy court, 120 ib. 312; London Corporation (Malversation, &c.), 142 ib. 108. In this case these members had the power to propose, as well as to examine witnesses.
4 Moorad’s claim, 1858, 113 ib. 68.
canal bills, the committee on police and sanitary bills, and the kitchen and refreshment-rooms committee.

As is mentioned on p. 235, pursuant to standing order No. 67, the nomination of members on a committee, or the substitution of members for those who have been nominated thereon, and proposals to increase the number of a committee beyond fifteen, or such other number as the house may have agreed upon, cannot be moved, except upon previous notice. Previous notice also is required of a motion to discharge a member from attendance on a committee. ¹

Upon a matter of privilege, or to fulfil the orders or the intention of the house, committees are appointed and nominated forthwith without notice (see p. 235).

The number that shall form the quorum of a committee is ordered by the house. Where no quorum is named, it is necessary for all the members of the committee to attend. In cases of an inquiry partaking of a judicial character, the house has named a quorum of five, but at the same time ordered the committee to report the absence of any member on two consecutive days;² or, when such an investigation has been undertaken by a committee of five members, no quorum has been fixed by the house.³ Three are generally a quorum in committees of the upper house, and in the Commons the usual number is five when the number of the committee is fifteen and upwards;⁴ but three are sometimes allowed,⁵ and occasionally seven,⁶ or nine,⁷ or any other number which the house may please to direct. Late in the session, the original quorum of a committee is sometimes reduced.⁸ Where a quorum is prescribed by a standing order, the order is suspended before the quorum is reduced.⁹

¹ 178 H. D. 3 s. 956; 125 C. J. 268.
² Great Yarmouth and York Elections, 90 ib. 457. 504.
⁴ The committee on Moorad’s claim, sess. 1858, consisted of seven, and the quorum was five.
⁵ 111 C. J. 8. 12; 120 ib. 46.
⁶ Army before Sebastopol, 1855, 110 ib. 87; 125 ib. 49; 126 ib. 61, &c.
⁷ Committee of privileges, 1854, 109 ib. 75; oaths of members, 1857, 112 ib. 374.
⁸ 106 ib. 279; 116 ib. 291; 127 ib. 219; 128 ib. 361.
⁹ Public Accounts committee, 128 ib. 91; 124 ib. 340, &c.
A committee cannot proceed to business without a quorum, and, pursuant to standing order No. 74, the clerk of the committee calls the attention of the chairman to the absence of a quorum, who thereupon suspends the proceedings of the committee until a quorum be present, or adjourns the committee; and a standing committee is adjourned in like manner.

The Income and Property Tax committee was instructed to report the evidence of a witness, although given when its quorum was incomplete. As the object of select committees is usually to take evidence, the House of Commons, when necessary, gives them "power to send for persons, papers, and records." If that power be not given, the documents that may be laid before the committee are handed in by the chairman. Under the power to send for persons, &c., witnesses may be summoned by an order, signed by the chairman, and must bring all documents that will be required for the use of the committee. If the order is neglected or disobeyed, the matter is reported to the house, and an offender is treated in the same manner as if he had been guilty of a similar contempt to the house itself. Witnesses, however, are not summoned from India or the colonies: but application is made to the secretary of state to secure their attendance, or to obtain answers to written questions.

In 1849, the Fisheries (Ireland) committee was appointed, with power to send for papers and records only, but examined witnesses who voluntarily tendered their evidence. By this arrangement, the expense of witnesses summoned in the usual manner was avoided.

A select committee on a bill, having power to send for persons, papers, and records, can only take evidence concerning that bill, unless the scope of its inquiries be enlarged by an instruction.

A select committee have no power to send for any papers
which, if required by the house itself, would be sought by address (see p. 507). In such cases, the chairman may either move an address in the house, or communicate with the secretary of state to whose department the papers relate, who will lay them before Parliament if he thinks proper, by command of her Majesty. The papers, when received, will then be referred to the committee by the house. Nor is a committee at liberty to send for any papers which, according to the rules and practice of the house, it is not usual for the house itself to order. In the committee on the Thames Embankment, in 1871, objections were raised to the production of a case laid before the law officers of the Crown, on the ground that such a document was not usually required to be produced by the house itself (see p. 322): but when it appeared that the opinion formed upon the case had been presented, the production of the case, upon which that opinion was founded, could not be resisted, and it was presented to the committee.  

In 1858, the select committee on the Boundaries of Special inquiries. Boroughs had leave to receive and call for maps, memorials, reports, papers, and records concerning the said boroughs, and to confer with the boundary commissioners, and those employed under them in their inquiries, and with the members of the counties and boroughs affected.  

The select committee of the Lords on the Sweating System was empowered by a resolution of their house to employ a gentleman to visit the localities where the existence of the system was alleged, and to examine into the evidence proposed to be submitted to the committee.  

Orders for the appointment of select committees are occasionally discharged; and other committees, with different orders of reference, appointed.  

During the sitting of a select committee of the Lords, under standing order No. 56 strangers may be excluded.

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1 Minutes of the committee, pp. iv.-vi.  
7 123 C. J. 183.  
3 120 L. J. 455.

93 ib. 265; 99 ib. 300; 103 ib. 487; 109 ib. 231.  
8 Conventual, &c., Institutions, 1870, 125 C. J. 169.
All lords may come, but not vote. Any lord is entitled, by standing order No. 55, to attend the select committees of that house, and is not excluded from coming in and speaking, but he must not vote, a privilege that does not extend to a secret committee.

In the Commons, the presence of strangers during the sitting of select committees is generally permitted. Their exclusion, however, may be ordered at any time, and continued as long as the committee may think fit. When they are deliberating, it is the invariable practice to exclude strangers.

Members of the House of Commons have claimed the right of being present, as well during the deliberations of a committee as while the witnesses are examined; and although, if requested to retire, they would rarely make any objection, on the grounds of established usage and of courtesy to the committee, they ought immediately to retire when the committee are about to deliberate; yet it appears that the committee, in case of their refusal, have no power to order them to withdraw.

On the 24th April, 1626, Mr. Glanvyle, from the select committee on the charges against the Duke of Buckingham, stated that exceptions were taken by some members of the house against the examinations being kept private, without admitting some other members thereof, and desired the direction of the house. It is evident from this statement that the committee had exercised a power of excluding members; and though it is said in the journal that much dispute arose upon the general question, "whether the members of the house, not of a select committee, may come to the select committee," no general rule was laid down: but in that particular case the house ordered—

"That no member of the house shall be present at the debate, disposition, or penning of the business by the select committee: but only to be present at the examination, and that without interposition."¹

Precedents. Charges against the Duke of Buckingham.

An opinion somewhat more definite may be collected from the proceedings of the Indian Judicature committee, in 1782. In that case the committee were about to deliberate upon

¹ 1 C. J. 849.
the refusal of Mr. Barwell to answer certain questions; and on the room being cleared, he insisted upon his privilege, as a member of the house, of being present during the debate. The committee observed that as Mr. Barwell was the party concerned in that debate, they thought he had no right to be present. Mr. Barwell still persisted in his right, and two members attended the Speaker, and returned with his opinion, that Mr. Barwell had no right to insist upon being present during the debate; upon which Mr. Barwell withdrew. Here the ground taken by the committee for his exclusion was that he was concerned in the debate, and not simply that, as a member, he had no right to be present at their deliberations. The house soon afterwards ordered—

"That when any matter shall arise on which the said committee wish to debate, it shall be at their discretion to require every person, not being a member of the committee, to withdraw."

The inference from this order must be that the committee would not otherwise have been authorized to exclude a member of the house.¹

When committees were appointed to examine the physicians of King George III., in 1810 and 1811, the house also ordered, "That no member of this house, but such as are members of the committee, be there present."²

On the 23rd February, 1849, in the case of the Irish Poor committee, the Speaker stated, that although it had been the practice for members, not being members of the committee, to withdraw while the committee were deliberating or dividing; yet if members persisted in remaining, the committee have no power to exclude them, unless by order of the house; and the house acts upon this decision.³

As members cannot be excluded from a committee room by the authority of the committee, if the occasion should arise, the committee must apply to the house for power to effect their exclusion. At the same time, it may be observed, that such applications are not favourably entertained by the house.⁴

¹ 38 C. J. 370; see also Election Proceedings committee, 1852, 97 ib. 438. ² 66 ib. 6; 67 ib. 17. ³ 102 H. D. 3 s. 1183. ⁴ See Election Proceedings committee, 1852, 99 C. J. 438; Army
But when, in the opinion of the house, secrecy ought to be maintained, secret committees are appointed, whose inquiries are conducted throughout with closed doors; and it is the invariable practice for all members, not on the committee, to be excluded from the room throughout the whole of its proceedings.

The first proceeding of a committee is to choose a chairman, who is ordinarily called to the chair by the general voice of the members present: but if a difference of opinion should arise, the choice is obtained by the procedure observed by the house in the election of a Speaker.

Members attending the sittings of a committee may sit or stand without being uncovered. Every question is determined in a select committee in the same manner as in the house to which it belongs. In the Lords' committees, the chairman votes like any other peer; and, if the numbers on a division be equal, the question is negatived, in accordance with the ancient rule of the House of Lords, "Semper presumitur pro negante." In the Commons, the practice in a select committee, not being a private bill committee (see p. 726), is similar to that observed in divisions of the house itself, pursuant to the resolution of the house: "That, according to the established rules of Parliament, the chair-

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1 53 L. J. 115; 38 C. J. 430. 433; 65 ib. 37; 66 ib. 6; 67 ib. 17; 72 ib. 318; 92 ib. 26; 99 ib. 461; 112 ib. 24.

2 "In the course of the debate (on the committee of secrecy on the Bank of England), Mr. Fox and Mr. Grey both stated distinctly and expressly, and without contradiction, that the nature of a committee of secrecy was only that it excluded from their proceedings all strangers: but that the members of the committee were not otherwise bound to individual secrecy out of the committee, than as their own sense of duty or propriety might suggest, according to the nature and object of their inquiry."—Lord Colechester's Diary, 9th March, 1797, p. 91. For a discussion as to the peculiarities of a secret committee, see debates upon the budget and navy estimates, 22nd Feb. 1848, 96 H. D. 3 s. 987. 1056; Bank Acts committee, 12th Feb. 1857, 144 ib. 596.

3 Minutes of Committees; Savings Banks, 1849; Bills of Exchange Bill, 1855; Rochdale Election, 1857; Tenure and Improvement of Land (Ireland) Act, 1865.
Chapter XV.

man of a select committee can only vote when there is an equality of voices. 1

But to suit the composition of committees on private bills, which ordinarily consist of four members, 2 under standing order (Private Bills) No. 125, all questions 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.

The doors of the committee room are deemed to be locked whilst a division is being taken, and a member who has heard the question cannot abstain from giving his vote. A member, having voted by mistake, has been allowed to correct the error; and a member's vote has been disallowed, as he was not in the room when the question was put. 3

A select committee may adjourn its sittings from time to time, and occasionally a power is also given by the house to adjourn from place to place; 4 or from time to time, and from place to place. 5 This power of adjournment from place to place is generally intended to enable a committee to hold its sittings in different parts of London, as the Mint committee of 1837, at the Mint; the Coal Mines committee of 1852, at the Polytechnic Institution; the National Gallery committee of 1853, at the National Gallery; and the Oaths committee of 1850, at the house of Mr. Wynn, a member of the committee, who was sick.

1 25th March, 1836, 91 C. J. 214. In the committee on the Consolidation of the Customs and Inland Revenue, 1863, Mr. Horsfall, the chairman, had prepared a report, which was negatived by a majority of one. Mr. Cardwell then proposed a report embodying the opinions of the majority: but at the next meeting of the committee, Mr. Horsfall declined to resume the chair, and proposed that Mr. Cardwell should take it,—his object being to obtain a majority in favour of his own views. The matter being referred to Mr. Speaker, he expressed an opinion that the course proposed was contrary to the spirit of parliamentary proceedings, and Mr. Horsfall resumed the chair; but a committee so balanced being unable to agree, they merely reported the evidence without any opinion.—Mr. Speaker Denison's Note-book. 2

2 119 C. J. 460.

3 Railway Rates, &c., committee, 1882, Report, pp. 50. 63.

4 89 C. J. 413; 101 ib. 152; 105 ib. 215; 107 ib. 279; 108 ib. 433; 111 ib. 318.

5 72 ib. 318; 108 ib. 350.
But in 1834, the committee on the Inns of Court appointed a quorum to go into Essex, to take the evidence of a witness who was unable to move from home. In 1858, it was proposed to give the power of adjourning from place to place to the committee on contracts (Public Departments), in order to enable it to hold its sitting at Weedon: but the proposal was withdrawn, and a royal commission appointed. In 1863, this power was granted to the committee on the Thames Conservancy, to empower it to visit different parts of the river to which its inquiry extended. In 1864, the same power was given to the committee on Schools of Art.

In certain cases, select committees have been appointed expressly for the purpose of taking the examination of witnesses who were incapacitated by sickness from attending personally to be examined before the house or its committees.

Formerly, without the leave of the house, no committee of the Commons could sit during a sitting of the house, but now, by standing order No. 66, all committees, not being standing committees (see p. 374), are able to sit on days when the house meets for business, during the sitting, and notwithstanding any adjournment of the house, except while the house is at prayers. The Serjeant, therefore, under standing order No. 76, when the house is going to prayers, gives notice thereof to the committees, and all proceedings of committees, after such notice, are null and void, unless such committees be otherwise empowered to sit after prayers. Nor may a committee sit, save by order of the house, on a day when the house is not sitting. Occasionally, committees have been ordered to sit from day to day notwithstanding any adjournment of the house, or to sit and proceed forthwith, and to sit from day to day.

1 118 C. J. 240.
2 119 ib. 255.
3 61 ib. 435; 2 Hatsell, 138, n.
4 The words, "any adjournment," in the standing order, are held by usage to mean the adjournment of the house whilst the committees are sitting.

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Without such an order, therefore, on a Friday night, the leave of the house must be obtained to enable a committee to sit on Saturday.

Orders are usually made that no committees shall have leave to sit on Ascension Day until two o'clock,\(^1\) in order to enable members to attend morning service. And on Ash Wednesday, committees rarely sit, but, if necessary, meet after two o'clock, to which hour the house is adjourned.

A select committee ought to be regularly adjourned from one sitting till another, though in practice the reassembling of the committee is sometimes left to be afterwards arranged by the chairman, by whose direction the members are summoned for a future day: but this practice, not being regular, can only be resorted to for the convenience of the members, and with their general concurrence. In 1871, a complaint was made, that, a day having been fixed for the next meeting of the committee by the chairman, he had, after consulting several members of the committee, appointed an earlier day: but it was ruled that, under the circumstances explained to the house, such a proceeding was not irregular.\(^2\)

In 1856, the Masters and Operatives committee was revived,\(^3\) in consequence of an irregularity in its adjournment; being the first instance, it is believed, of such a proceeding, except in the case of committees on private bills.

Where select committees have been appointed to inquire into matters in which the private interests, character, or conduct of members of the House of Commons or other persons are concerned, the committees are empowered to hear counsel on behalf of such persons, the order of the house for that purpose being obtained on petitions presented to the house, on the report of the committee, or on a motion to that effect. A committee has also been instructed that they do hear the petitioners by counsel or otherwise; and, on the other hand, the order of the house has provided that such hearing of persons interested shall be at the discretion of the committee.\(^4\) And in accordance with the resolution

\(^1\) 144 C. J. 215; 146 ib. 294.  
\(^2\) 111 ib. 298.  
\(^3\) 203 H. D. 3 s. 685.  
\(^4\) 77 C. J. 405; 88 ib. 169. 563. 588;
of the 16th March, 1688, if any information come before a committee that chargeth a member of the house, the committee ought only to direct that the house be acquainted with the matter of such information, without proceeding further thereupon. ¹

The evidence of the witnesses examined before a select committee is taken down in shorthand, and printed daily for the use of the members of the committee. ² In the Lords, the printing is authorized by an order of the house; in some cases with special directions restricting the delivery of the copies of the evidence, or of certain portions thereof. ³ In the Commons, evidence before select committees is printed according to long-established usage. A printed copy of his evidence is sent to each witness for his revision, with an instruction that he can only make verbal corrections, as corrections in substance must be effected by re-examination; nor is a witness permitted to see the original manuscript notes of his evidence. Alterations should be confined to the correction of inaccuracies, or the necessary explanation of any answer, and are required to be in the handwriting of the witness himself, unless he is disabled by accident or infirmity, in which case they may be written by another person at his dictation. The corrected copy should be returned without delay to the committee clerk, who is to examine the corrections, and, if any appear to be irregular, he is to submit them to the chairman. If the evidence be not returned, with corrections, in six days, or some other reasonable time, according to the circumstances, it will be

₁ 110 C. J. 367; 116 ib. 307; 119 ib. 193; 123 ib. 263; 124 ib. 48. 51. 87; 143 ib. 234; 144 ib. 253.
² 10 ib. 51.
³ For the permanent establishment of the shorthand writer to both houses of Parliament, see p. 194. Official reports of evidence by shorthand writers were first ordered by the Lords, on divorce bills, 1699, 1700, 16 L. J. 524. 630. 634. Shorthand writers were subsequently employed by the Lords in 1786, upon the slave-trade inquiries; and by the Commons in 1792, on the Eau Brink Drainage. Pursuant to 42 Geo. III c. 84, 1802, shorthand writers attended election committees, 3 Lord Colchester’s Diary, 332; see also resolution 4th May, 1789, 44 C. J. 320, regarding Mr. Gurney, who was appointed to take minutes at the trial of Warren Hastings.
⁴ 115 L. J. 117; 117 ib. 393. 418; 121 ib. 116.
printed in its original form. Where evidence has been taken upon oath, its correction should be restrained within very narrow limits.

On the 20th July, 1849, an instruction was given to a select committee to re-examine a witness "touching his former evidence," as it appeared that he had corrected his evidence more extensively than the rules of the house permitted, and his corrections had consequently not been reported by the committee; and in 1849, a committee of the Lords reported that the alterations made by some of the witnesses were so unusual, that they had ordered the alterations and corrections to be marked, and printed in the margin.

Leave is occasionally given to the parties appearing before a select committee to print the evidence from the committee clerk's copy, from day to day.

Both as a breach of the Commons' privileges (see p. 72), and pursuant to the resolution of the house forbidding the publication, no member, or any other person, may publish any portion of the evidence taken by, or documents presented to select committees, which have not been reported to the house; and this rule extends equally to the report of a committee before it has been presented to the house.

Select committees are able to consider and to report to the house resolutions recommending an outlay of public money for the purposes therein specified, without the previous signification of the royal recommendation (see p. 527), because such a resolution is classed among those abstract resolutions by the house in favour of public expenditure, which are in the nature of suggestions, and are not in themselves binding upon the action of the house.

1 Instructions by Mr. Speaker, 16th April, 1861; and see 189 H. D. 3 s. 1229.
2 104 C. J. 525.
3 Audit of Railway Accounts (North Wales Railway).
5 21st April, 1837, 92 ib. 282.
6 The consideration of the irregular publication of reports by royal commissions was referred by the Lords, 20th May, 1883, 116 L. J. 200, to the committee on the office of the Clerk of the Parliaments.
7 Reports: sess. 1857-8, on Mr. Barber's case, 113 C. J. 321; and sess. 1877, on Lord Cochran's case, 132 ib. 143. Reports on House of Com-
When the evidence has been concluded, the chairman prepares resolutions, or a draft report, which it is customary to print and circulate among the members, before they are considered. Resolutions are open to discussion and amendment, subject to the same rules as in a committee of the whole house. No resolution or amendment may be proposed, which is not within the order of reference; and the chairman will decline to put it from the chair. When a resolution has been agreed to, the committee are unable to review and amend it. When there are more than one series of resolutions, it is usual to move that those to be proposed by Mr. A. (generally the chairman) be now taken into consideration; which question may be amended by leaving out "Mr. A." and inserting "Sir W. H.;" and the opinion of the committee being ascertained, the consideration of the resolutions preferred by them is proceeded with. A draft report is read a first time pro forma, and a second time paragraph by paragraph, every part being liable to amendment, according to the ordinary rules which govern amendments. A question is also put that each paragraph, or each paragraph as amended, stand part of the report. In case there should be two or more draft reports, proposed by different members, they are severally read a first time, when a question is proposed that the draft report proposed by Mr. C. be now read a second time, paragraph by paragraph; to which an amendment may be moved to leave out "Mr. C." and insert "Lord D.;" and when the committee have decided which of the rival reports shall be accepted for consideration, it is proceeded with, paragraph by paragraph. New paragraphs may also be inserted throughout the report, or added by way of amendment. When the whole report has been agreed to, a question is put that it be the report of the committee to the house.

Select committees formerly had no power to report either their opinion, or the minutes of evidence taken before them, without leave given by an order of the house. But by

\[\text{Committee on Local Taxation, Paper No. 173; sess. II. 1886, No. 37; see also payment of witnesses (p. 1870, resolution of Sir M. Lopes.}\]
standing order No. 75, committees empowered to send for persons, papers, and records, can report their opinion and observations, together with the minutes of evidence, to the house, and also a special report of matters which they may think fit to bring to the notice of the house.

When it is desired to report any matters to the house, not comprised in the order of reference, or otherwise exceptional, leave is obtained from the house to make a special report.

It is the custom not to report the evidence until the inquiry has been completed, and the report is ready to be presented: but whenever an intermediate publication of the evidence, or more than one report, may be thought necessary, the house will grant leave, on the application of the chairman, for the committee to "report its opinion or observations, from time to time," or to "report minutes of evidence" only, from time to time.\(^1\) And until the report and evidence have been laid upon the table, it is irregular to refer to them in debate,\(^2\) or to put questions in reference to the proceedings of the committee.\(^3\) If a committee, as the conclusion of their inquiry, make a final report to the house, the sittings of the committee are assumed to have been closed; and if further proceedings were desired, it would be necessary to revive the committee.\(^4\)

When a committee has not completed its inquiries before the end of the session, it is a frequent practice to reappoint it at the next meeting of Parliament.\(^5\) A committee reappointed cannot report the evidence taken before the committee in the previous session except as a paper in the appendix. To obviate that difficulty, on the 29th April, 1852, the house ordered the evidence of the previous session to be laid before them; and when presented it was referred to the committee, with leave to report it forthwith.\(^6\)

There have been instances in which the chairman of a committee, after the committee had reported, has published

\(^{1}\) 74 L. J. 80, &c.; 92 C. J. 18, 167; 112 ib. 282, &c. London Improvements Bill, Speaker’s ruling, 27th April, 1893.

\(^{2}\) 159 H. D. 8 a. 814; 193 ib. 1124. 134 ib. 17, 52; 135 ib. 71.

\(^{3}\) 189 ib. 604. Property Tax, 107 ib. 77.

\(^{4}\) Tyne River, &c., 105 C. J. 201.
his own draft report, which had not been accepted, accompanied, in some cases, by additional arguments and illustrations; and no objection had been urged against such a publication: but on the 21st July, 1858, it was brought to the notice of the house, that the chairman of a committee had published and circulated, in the form of a parliamentary proceeding, a draft report which he had submitted to the committee, but which had not been entertained by them, accompanied by observations reflecting upon the conduct and motives of members of that committee. No formal vote was sought for on this occasion: but it was generally agreed that the proceeding was irregular, and contrary to the usage of Parliament.

In one case the report of a committee had been made, and ordered to be printed, in the previous session, but was, in fact, prepared by the chairman after the prorogation. A committee was appointed to consider the circumstances under which the document purporting to be the report of the committee had been ordered to be printed; and on their report being received, the house resolved, "That the document was not a report which had been agreed to by the said committee, and that the said document be cancelled." On the 28th April, 1863, notice being taken that the analysis of evidence appended to the report of the select committee on Sewage of Towns in the last session, comprised observations and opinions not within the scope of such analysis, it was ordered to be cancelled. Notice also has been taken of certain errors in a statement comprised in the appendix to a report, and a corrected statement ordered to be laid before the house.

When the evidence has not been reported by a committee, it has sometimes been ordered to be laid before the house. It is usual, however, to present the report, evidence, and appendix together, which are ordered to lie upon the table,

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1 Agricultural Distress, 1836; Income Tax, 1861.
2 151 H. D. 3 a. 1867.
3 102 C. J. 254. 682; H. D. 16th June, 1847.
4 118 C. J. 180.
5 103 ib. 621.
6 88 ib. 671; 105 ib. 637, &c.
7 14th Nov. 1882, debate on this motion adjourned, 137 ib. 504.
and to be printed. In presenting a report, the chairman
appears at the bar, and is directed by the Speaker to bring it up.

On the 18th May, 1865, it was ordered by the Lords,
"That any report presented by a select committee shall not
merely be laid upon the table of the house, but shall be
printed and circulated, and notice shall be given on the
minutes of the day on which it may be intended to take the
report into consideration."

If it be expedient, the Commons
appoint the consideration of the report of a select com-
mittee for a future day, by a motion made on the presenta-
tion of the report, or by a subsequent motion for that
purpose. The report of a committee presented during a
previous session has also been thus taken into consideration.
On the consideration of a report, motions have been made
expressing the agreement or the disagreement of the house
therewith, or motions are made which are founded upon,
or which enforce the resolutions of the committee.

Motions also may be made that the report be recommitted;
or recommitted, with minutes of proceedings, so far as they
relate to a certain paragraph; or recommitted, and the
order of reference amended; or communicated to the
Lords at a conference. In 1850, the house, instead of
ordering the evidence taken before a committee to be printed,
referred it "to the secretary of state for the colonies, for
the consideration of her Majesty's government."

An offer to control the decision of the committee on a
private bill, for a corrupt consideration, was, in session 1879,
of signatures to petitions, 1863), 120
ib. 252.

As the previous question cannot
be entertained in a Commons' com-
mittee (see p. 270), the paragraph on
the minutes of the proceedings of a
select committee, which contained an
entry of a motion for the previous
question, was recommitted to the com-
mittee, 127 ib. 509.

70 ib. 430.

91 ib. 9.

105 ib. 661 (Ceylon committee).
brought before the house, and dealt with as a breach of privilege.¹

There are several early instances of the appointment of joint committees of the two houses:² but until 1864, no such committee had been appointed since 1695.³ A rule, similar to that adopted in regard to conferences, that the number on the part of the Commons should be double that of the Lords, in the constitution of a joint committee is no longer in force; and joint committees consist of equal numbers, representing both houses. This practice began in 1864, when, at the instance of Mr. Milner Gibson, the Commons appointed a committee of five members on the railway schemes of that session affecting the metropolis; and requested the Lords "to appoint an equal number of lords to be joined with the members of this house." The Lords accordingly appointed a committee of five lords to join the committee of the Commons,⁴ and this precedent has since been repeatedly followed by both houses.⁵

The house that originates the joint committee, appoints a certain number of their members to join with a committee of the other house, and sends them a message to that effect for their consideration.

It is the custom that the Lords should propose the time and place of meeting, whether the committee be first desired by the Lords or by the Commons; and the committee of the Commons are directed to meet the Lords as desired, and they agree in the appointment of the chair-

¹ Tower Hill Level Bridge Bill, 1879; cases of Grissell and Ward, 134 C. J. 322, &c.; see also p. 88.
² 3 Hatsell, 38, et seq.; trials of the Lords in the Tower, 11th May, 1769; Lord Stafford's impeachment, 27th Nov. 1690.
³ 22nd April, 1895, 11 C. J. 314.
⁴ 173 H. D. 3 s. 291. 311. 490; 119 C. J. 38. 57.
⁵ Originated by the Lords: Parliamentary Deposits, 1867, 188 H. D 3s. 423; 122 C. J. 311; Despatch of Public Business, 1890, 124 ib. 87; Parliamentary Agents, 1876, 131 ib. 282; Stationery Office, 1881, 136 ib. 281; Government of India, 141 ib. 79; private bills, Memorandum of Association, 144 ib. 341. Originated by the Commons: Railway Companies Amalgamation, and Tramways (Metropolis), 1872, 127 ib. 61. 83; Railways Transfer and Amalgamation bills, 1873, 128 ib. 62; Channel Tunnel, 1883, 138 ib. 116; Debates in Parliament, and Private Bill legislation, 143 ib. 86. 93; Railway Rates and Prov. Order bills, 1891, 1892, 146 ib. 129; 147 ib. 62.
The practice of the House of Lords, which empowers the chairman of a committee to vote like the other members, without a casting vote, and establishes that, if the votes of the committee are equal, the question is decided in the negative (see p. 383), is followed by a joint committee.

An instruction to a joint committee is governed by the rules which regulate instructions to committees of the whole house (see p. 452), and cannot, therefore, be drawn in a mandatory form, or to endow the committee with powers already possessed thereby. A joint committee has the same power of swearing witnesses as committees sitting separately, in the usual manner.

In former times, committees of both houses have been put in communication with each other. In 1861, also, power was given to the select committee on the business of the house to communicate from time to time, with a select committee of the House of Lords upon the same subject.

1 Despatch of Public Business, Joint Committee Proceedings, vols. vii. 178, and xiii. 102.
2 Railway Amalgamation Bills 116 ib. 77; 93 L. J. 13.
3 In 1794, Corresponding Societies, 49 C. J. 619. 620; in 1801, State of Ireland, 66 ib. 287. 291.
4 Joint Committee Proceedings, vols. 49 C. J. 619. 620; in 1801, State of Ireland, 66 ib. 287. 291.
CHAPTER XVI.

WITNESSES AND PARLIAMENT.

How summoned by the Lords. Witnesses summoned to give evidence before the House of Lords, or any committee of the whole house, are ordered to attend at the bar on a certain day, to be sworn; and they are served with the order of the house, signed by the Clerk of the Parliaments. And if a witness be in the custody of a keeper of a prison, the keeper is ordered to bring him up in custody, in the same manner.\(^1\) If the house have reason to believe that a witness is purposely keeping out of the way, to avoid being served with the order, it has been usual to direct that the service of the order at his house shall be deemed good service.\(^2\) If, after such service of the order, the witness should not attend, he is ordered to be taken into custody:\(^3\) but the execution of this order is sometimes stayed for a certain time.\(^4\) If the officers of the house do not succeed in taking the witness into custody by virtue of this order, the last step taken is to address the Crown to issue a proclamation, with a reward for his apprehension.\(^5\)

When the evidence of peers, peeresses, or lords of Parliament has been required, the lord chancellor has been ordered to write letters to them, desiring their attendance to be examined as witnesses:\(^6\) but they ordinarily attend and give evidence without any such form.

When the attendance of a witness is desired, to be examined at the bar, by the House of Commons, or by a committee of the whole house, he is simply ordered to attend at a stated time;\(^7\) and the order, signed by the Clerk of the house, is served upon him personally, if in or near London; and if at a distance, it is forwarded to him by the

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\(^1\) 68 L. J. 513. 558.
\(^2\) 66 ib. 295. 358.
\(^3\) Ib. 400.
\(^4\) Ib. 358.
\(^5\) 78 C. J. 240; 91 Ib. 338.
\(^6\) Ib. 441. 442.
\(^7\) Ib. 144.
Serjeant-at-arms, by post, or, in special cases, by a messenger. If he should be in the custody of the keeper of any prison, or sheriff, the Speaker is ordered to issue his warrant, which is personally served upon the keeper, or sheriff, by a messenger of the house, and by which he is directed to bring the witness in his custody to be examined. If the order for the attendance of a witness be disobeyed, he may be ordered to be sent for in custody of the Serjeant-at-arms, and Mr. Speaker be ordered to issue his warrant accordingly; or he may be declared guilty of a breach of privilege, and ordered to be taken into the custody of the Serjeant. Any person, also, who aids or abets a witness in keeping out of the way, is liable to a similar punishment. When the Serjeant has succeeded in apprehending such persons, they have generally been sent to Newgate for their offence.

If a witness should be in custody, by order of the other house, his attendance is secured by a message, desiring that he may attend in the custody of the Black Rod or the Serjeant-at-arms, as the case may be, to be examined.

The attendance of a witness to be examined before a select committee is ordinarily secured by an order signed by the chairman, by direction of the committee: but if any person should neglect to appear when summoned in this manner, his conduct is reported to the house, and an order is made for his attendance at the bar of the house. If, in the mean time, he should appear before the committee, it is usual to discharge the order for his attendance: but if he still neglects to appear, he is dealt with as in the other cases already described.

When witnesses have absconded, and cannot be taken into custody by the Serjeant-at-arms, addresses have been presented to the Crown for the issue of proclamations, with rewards for their apprehension.
If the evidence of a member be desired by the house, or a committee of the whole house, he is ordered to attend in his place on a certain day.¹ But when the attendance of a member as a witness is required before a select committee, the chairman sends to him a written request for his attendance. And pursuant to the resolution of the 16th March, 1688, “if a member of the house should refuse, upon being sent to, to come to give evidence or information as a witness to a committee, the committee ought to acquaint the house therewith, and not summon such member to attend the committee.”²

There has been no instance of a member persisting in a refusal to give evidence: but members have been ordered by the house to attend select committees.³ In 1731, Sir Archibald Grant, a member, was committed to the custody of the Serjeant-at-arms, “in order to his forthcoming to abide the orders of the house,” and was afterwards ordered to be brought before a committee, from time to time, in the custody of the Serjeant.⁴ On the 28th June, 1842, a committee reported that a member had declined complying with their request for his attendance. A motion was made for ordering him to attend the committee, and give evidence: but the member having at last expressed his willingness to attend, the motion was withdrawn.⁵

If the attendance of a peer should be desired, to give evidence before the house, or any committee of the House of Commons,⁶ the house sends a message “to the Lords, to request that their lordships will give leave to” the peer in question “to attend, in order to his being examined” before the house or a committee, as the case may be, and stating the matters in relation to which his attendance is required. If the peer should be in his place when this message is received, and he consents, leave is immediately given for him to be examined, if he think fit. If not present, a

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¹ 61 C. J. 356; 64 ib. 17; 65 ib. 21. 30, &c.
² 10 ib. 51.
³ 19 ib. 403.
⁴ 21 ib. 851; 852.
⁵ 97 ib. 438. 453. 458; see also Report of Precedents, from select committee, Parl. Paper, No. 392, sess. 1842.
⁶ 82 C. J. 394; 88 ib. 173. 179.
message is returned on a future day, when the peer has, in his place, consented to go. Exactly the same form is observed by the Lords, when they desire the attendance of a member of the House of Commons. A message is also sent requiring the attendance of a member to be examined, when the Lords are sitting on the trial of an impeachment: ¹ but if the Lords be sitting as a court of criminal judicature on the trial of a peer, they order the attendance of a member of the House of Commons without a message. ² Whenever the attendance of a member of the other house is desired by a committee, it is advisable to give him private intimation, and to learn that he is willing to attend, before a formal message is sent to request his attendance. But these formalities, though occasionally adopted, ³ are not usual or necessary in the case of private bills, where the attendance of witnesses is voluntary. ⁴ If a member should be in custody when leave is given him to attend the House of Lords, the Serjeant-at-arms is ordered to permit him to attend, in his custody. ⁵

The same ceremony is maintained between the two houses in requesting the attendance of officers connected with their respective establishments: but when leave is given them to attend (see p. 407), the words "if they think fit," which are used in the case of members, are omitted in the answer. ⁶

Whether a peer, who is not a lord of Parliament, may be ordered to attend in the same form as a commoner, is a matter upon which the two houses have not agreed, as although the Commons have ordered such peers to attend, ⁷ the Lords, in the case of Lord Teignmouth, maintained the privilege of peerage as apart from the privilege of Parliament, by a

¹ 12 L. J. 84; 16 ib. 33. 747.
² 3 Hatsell, 21, n.
³ Liverpool Docks Bill (Lord Harrowby), 103 C. J. 435; Salford Borough Bill, 108 ib. 431; Thames Embankment Approaches Bill, 1873 (Duke of Northumberland). In this case the attendance of the duke was desired by the committee itself, and not by the parties.
⁴ 3 Hatsell, 21.
⁵ 11 C. J. 296; 305; 15 ib. 376; (Mr. W. S. O'Brien), 101 ib. 603.
⁶ 103 ib. 658; 112 ib. 61; 113 ib. 255.
⁷ 3rd May, 1779, Earl of Balcarres, 37 ib. 366; proceedings regarding the attendance of Lord Teignmouth, sess. 1806, 61 ib. 374.
resolution to that effect, which, however, was not communicated to the Commons.¹

In 1805, the Commons having sent a message to the Lords, desiring the attendance of Viscount Melville, to be examined before the committee of Naval Inquiry, the Lords acquainted them, at a conference, that the course adopted by the Lords "has been to permit their members, on their own request, to defend themselves in the House of Commons on points on which the Commons have not previously passed criminating resolutions against them, and to give evidence before the house, or any committee thereof, on those points only on which no matter of accusation is depending against them;" and within these limitations they gave leave to Lord Melville to attend, though the Commons did not think fit to examine him.²

Before any such message is sent to the other house, or any witness is otherwise summoned, it is right that the house should previously have directed an inquiry into the matter upon which evidence is sought.³

These being the various modes of securing the attendance of witnesses to give evidence before either house of Parliament, the mode of examination is next to be considered.

Lords of Parliament, and peers not being lords of Parlia-

¹ 46 L. J. 812; see 2 Hatsell, App. 9; 2 Lord Colchester’s Diary, 69. 73, 1st June, 1825. ‘The chancellor, by Mr. Cowper’s advice, thought it necessary to have leave given by the house for the Archbishop of Dublin’s attendance before the Commons’ committee, although, not being on the rota, he has no seat in the House of Peers, or duty to discharge there.”  —3 Lord Colchester’s Diary, 394.

² 60 C. J. 265. 272; 1 Lord Colchester’s Diary, 558; and see 4 Hatsell, 485. By standing order No. 71, “No lord shall 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 the Tower, during the pleasure of this house.”  

³ On the 31st March, 1813, a motion being made for a message to the Lords for the attendance of Lord Moira to give information concerning the Princess of Wales, the Speaker desired the attention of the house to the proceeding as novel and un-parliamentary; “the rule being, according to all precedents, not to desire the attendance of witnesses of any sort, excepting upon a matter pending in the house, and which the house had previously resolved to examine.” The motion was superseded by reading the order of the day, 68 C. J. 364; 2 Lord Colchester’s Diary, 434.
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ment, and peeresses, are sworn at the table of the house, by the lord chancellor;¹ and other witnesses who are to be examined by the house, or by a committee of the whole house, are sworn at the bar. An Irish peer, being a member of the House of Commons, is sworn at the bar, as a commoner.² The Lords formerly claimed the privilege of being examined upon honour, instead of upon oath.³ But this supposed privilege has long since been abandoned, and peers are everywhere examined upon oath, even in the House of Lords itself. If counsel be engaged in an inquiry at the bar, the witnesses are examined by them, and by any lord who may desire to put questions. When counsel are not engaged, the witnesses are examined by the Lords generally. A lord of Parliament is examined in his place; and peers not being lords of Parliament, and peeresses, have chairs placed for them at the table.⁴

Formerly, every witness about to be examined before a select committee, was required to attend previously at the bar to be sworn; but since 1858, by statute 21 & 22 Vict. c. 78, any committee of the House of Lords may administer an oath to the witnesses before such committee. Witnesses, however, in accordance with the resolution, 11th June, 1857, "that select committees, in future, shall examine witnesses without their having been previously sworn, except in cases in which it may be otherwise ordered by the house,"⁵ have only been sworn upon inquiries of a special character.

In select committees of the Lords, witnesses are placed in a witness-box or at the shorthand writer's table, to be examined: but members of the House of Commons are allowed a seat near the table, where they sit uncovered.

Besides the infliction of punishment for perjury, false evidence before the Lords, prevarication, or other misconduct of a witness, is punishable as a contempt.⁶

¹ 38 L. J. 68. 69; ib. 14th July, 1845; 15th June, 1855.
² Viscount Palmerston, 16th July, 1844.
³ 24 L. J. 136; 14 ib. 18.
⁴ 25 ib. 303; see also ib. 100; 28 ib. 69; 46 ib. 172. 189, where the judges of the Court of Justiciary in Scotland had chairs set for them at the bar, to be examined.
⁵ 89 ib. 60; Report on Oaths of Witnesses, 1857 (15).
⁶ 48 ib. 371, &c.
The Commons, except during the Commonwealth, never asserted the right of administering an oath: though during the seventeenth century they were evidently alive to the importance of such a power, and resorted to various expedients in order to supply the defect in their own authority. 1. They selected some of their own members who were justices of the peace for Middlesex, to administer oaths in their magisterial capacity. 2. They sent witnesses to be examined by one of the judges. 3. They sought to aid their own inquiries by having their witnesses sworn at the bar of the House of Lords; and by examining witnesses on oath before joint committees of both houses; in neither of which expedients were they supported by the Lords. The Commons also assumed a right of delegating to others a power which they did not possess. On the 27th January, 1715, they empowered justices of the peace for Middlesex to examine witnesses in the most solemn manner before a committee of secrecy; and the same practice was resorted to in other cases. Between this time and 1757, several similar instances occurred: but from that year the most important inquiries were conducted without any attempt to revive so anomalous and questionable a practice. At length, in 1871, in pursuance of the recommendations of a select committee of 1869, Act 34 & 35 Vict. c. 83 was passed, empowering the House of Commons and its committees to administer oaths to witnesses, and attaching to false evidence the penalties of perjury. By standing orders Nos. 88 and 89, oaths and affirmations, under the Oaths Act, 1888 (see p. 156), are administered to witnesses, before the house or a committee of the whole house, by a clerk at the table; and before a select committee, by the chairman, or by the clerk attending the committee. It is not usual, however, for select committees to examine

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1 See 6 C. J. 214. 431; 7 ib. 55. 287. 484, &c.; see also 2 ib. 435. See further the author's evidence before the committee on Witnesses (House of Commons), in 1869.

2 Hatsell, 151, et seq.; 9 C. J. 521; 10 ib. 682; 10 ib. 415. 417; 8 ib. 325. 327; 2 ib. 502; 8 ib. 647. 665. 8 18 ib. 353. 590; 19 ib. 301. The committee on the South Sea Company, 1721, 19 ib. 403; 21 ib. 851.

3 2 Hatsell, 151–157.
witnesses upon oath, except upon inquiries of a judicial or other special character.¹

Offences against Parliament committed by those who withhold or give false evidence are treated as a breach of privilege (see p. 84). Though while the house punishes misconduct with severity, it is careful to protect witnesses from the consequences of their evidence given by order of the house (see p. 121); and on extraordinary occasions, where further protection has been deemed necessary to elicit full disclosures, Acts have been passed to indemnify witnesses from all the penal consequences of their testimony.²

The practice of the house regarding evidence sought for outside the walls of Parliament touching proceedings that have occurred therein is regulated by the resolution of session 1818, which directs that no clerk or officer of the house, or shorthand writer employed to take minutes of evidence before this 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 the house, without the special leave of the house.³ Accordingly parties to a suit who desire to produce such evidence, or any other document in the custody of officers of the house, in a court of law, petition the house, praying that the proper officer may attend, and produce it; and the term “proper officer” includes an official shorthand writer (see p. 194). The motion for leave may be moved without previous notice (see p. 235).⁴ During the recess, however, it has been the

¹ The committee on Foreign Loans in 1875 was the first to examine witnesses upon oath under the Act; again by the committees on Privilege (Tower High Level Bridge); Mr. Goffin’s certificate, 1879; Contagious Diseases Act, 1882. By an instruction, the committee on London Corporation (Malversation), 1887, were directed to take evidence on oath, 142 C. J. 97.

² Election Compromises, 1842, 5 & 6 Vict. c. 31; Sudbury Disfranchisement, 1843, 6 & 7 Vict. c. 11; Gaming Transactions, 1844, 7 & 8 Vict. c. 7.

³ 73 C. J. 389. Under sect. 24 of the Election Petitions Act, 1868, the shorthand writer of the House of Commons shall attend to take notes of the evidence before the election judge. An order of the house is not required to enable the shorthand writer who has attended a trial of an election petition to give evidence thereon elsewhere, as the trial is not a proceeding of the house (private ruling, 7th Feb. 1873).

⁴ 106 ib. 212. 277; 107 ib. 291, &c.
practice for the Speaker, in order to prevent delays in the administration of justice, to allow the production of minutes of evidence and other documents, on the application of the parties to a private suit. But should the suit involve any question of privilege, especially the privilege of a witness, or should the production of the document appear, on other grounds, to be a subject for the discretion of the house itself, he will decline to grant the required authority. During a dissolution the Clerk of the house sanctions the production of documents, following the principle adopted by the Speaker. It has been held by the courts, that the evidence of members of proceedings in the House of Commons is not to be received without the permission of the house, unless they desire to give it; and, according to the usage of Parliament, no member is at liberty to give evidence elsewhere in relation to any debates or proceedings in Parliament, except by leave of the house of which he is a member.

When a witness is examined by the House of Commons, or by a committee of the whole house, he attends at the bar, which is then kept down. If the witness be not in custody, the mace remains upon the table; when, according to the strict rule of the house, the Speaker should put all the questions to the witness, and members should only suggest to him the questions which they desire to be put: but, for the sake of avoiding the repetition of each question, members are usually permitted to address their questions directly to the witness, which, however, are still supposed to be put through the Speaker. When a witness is in the custody of the Serjeant-at-arms, or is brought from any prison in custody, it is the usual, but not the constant, practice for the Serjeant to stand with the mace at the bar. When the mace is on the Serjeant's shoulder, the Speaker has the sole management; and no member may speak, or even suggest questions to the chair. In such cases, there-
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fore, the questions to be proposed should either be put in
writing, by individual members, or settled upon motions in
the house, and given to Mr. Speaker before the prisoner is
brought to the bar. If a question be objected to, or if any
difference should arise in regard to the examination of a
witness, he is directed by the Speaker to withdraw, before a
motion is made, or the matter is considered. In committee
of the whole house, any member may put questions directly
to the witness. Where counsel are engaged, the examina-
tion of witnesses is mainly conducted by them, subject to
the interposition of questions by members; and where any
question arises in regard to the examination, the parties,
counsel, and witnesses are directed to withdraw.

Members of the house are always examined in their
places; and peers, lords of Parliament, the judges, and
the lord mayor of London, have chairs placed for them
within the bar, and are introduced by the Serjeant-at-arms.
Peers sit down covered, but rise and answer all questions
uncovered. The judges and the lord mayor are told by the
Speaker that there are chairs to repose themselves upon;
which is understood, however, to signify that they may only
rest with their hands upon the chair backs.

When a peer is examined before a select committee, it
is the practice to offer him a chair at the table, next to the
chairman; where he may sit and answer his questions
covered.

When a witness is summoned at the instance of a party, his expenses are defrayed by such party: but when sum-
moned for any public inquiry, to be examined by the house
or a committee, his expenses are paid by the paymaster-

1 2 Hatsell, 142, and n.
2 "Agreed that members ought not to be brought to the bar unless they are accused of any crime," 10 C. J. 46. On the 12th Jan. 1768, Wilkes being brought to the bar in custody, objected that he could not appear there without having taken the oaths: but his objection was overruled.
3 The same forms are observed when a peer desires to address the house, as in the case of Viscount Melville, 11th June, 1805, 5 H. D. 250; and Duke of Wellington, 1st July, 1814; Abbot's Speeches, 84; 2 Lord Colchester's Diary, 6–8.
4 2 Hatsell, 149, where all these forms are minutely described.
general, under orders signed by the Clerk of the Parlia-
ments, the Clerk of the House of Commons, or by chairmen
of committees in either house. No witness residing in or
near London is allowed any expenses, unless he has
rendered special services to the committee. Every witness
should report himself to the committee clerk on his arrival
in London, or he will not be allowed his expenses for resi-
dence prior to the day of making such report. And full
particulars regarding the payments to witnesses must be
annexed to the report of the select committee before whom
the witnesses gave evidence.

The Lords have appointed a select committee to inquire
into the expenses that should be allowed to witnesses, and
have received their report in detail, before the items were
agreed to.

In 1873, the East India Finance committee resolved that
the expenses of witnesses coming from India (not exceeding
10,000l.) should be paid out of the revenue of the United
Kingdom.

Upon a special report from the select committee on the
Army and Navy Estimates, and with the sanction of the
royal recommendation, a grant was made to provide for
the remuneration of accountants who might be employed
in behalf of the committee to examine and audit the expense
accounts of the army and navy manufacturing
departments.

1 See Report, 1840, No. 555.
2 A witness is allowed his actual travelling expenses, and for every
day or part of a day that he is neces-
sarily kept from home, at the follow-
ing rates, viz. a barrister, physician,
civil engineer, or architect, 3l. 3s.; a
solicitor, surgeon, or land surveyor,
2l. 2s.; a clergyman, or non-pro-
fessional gentleman, 1l. 1s.; a me-
chanic, &c., 10s. Special allowances
have also been made to defray the
expenses of official substitutes,
3 See Report, 1840, No. 555.
4 Parl. Paper, No. 194, sess. 1873.
5 The treasury declined to act on this
resolution; see Mr. Law’s letter,
appendix to Report, p. 9. The
Treasury sanctioned, sess. 1891, on
application from the committee on
British and Foreign Spirits, a pay-
ment of 105l. to two witnesses for
work done for the committee.
6 62 L. J. 910.
7 Parl. Paper, No. 239, sess. 1887,
142 C. J. 162. 271. 497; 143 ib. 95.
96.
CHAPTER XVII.

COMMUNICATIONS BETWEEN THE LORDS AND COMMONS.

The two houses of Parliament have frequent occasion to communicate with each other, not only in regard to bills which require the assent of both houses, but with reference to other matters connected with the proceedings of Parliament. These are the modes of communication:—by message; — by conference; — by joint committees; and—by select committees of both houses communicating with each other (see p. 398). Communication by message and by conference are considered in this chapter.

A message is the most simple and frequent mode of communication; it is daily resorted to, for sending bills from one house to another; for requesting the attendance of witnesses; for the interchange of reports and other documents; and for communicating all matters of an ordinary description, which occur in the course of parliamentary proceedings. An important change in the form of sending messages was introduced in 1855: but as the former practice is still recognized by the orders of both houses, it may be convenient to describe it. Prior to 1847, the Lords sent messages by the masters in chancery, their attendants, or, on special occasions, by their assistants, the judges.  

The Commons sent messages to the Lords by one of their own members (generally the chairman of the committee of ways and means, or a member who had charge of a bill), who was generally accompanied by thirty or forty members.  

Inconvenience was caused by observance of these usages; and in 1855, the present method of communication between the year 1871, Princess Louise’s Annuity Bill, 126 ib. 57.

1 D’Ewes, 447; Order and Course of Passing Bills in Parliament, 4to, 1641.

Messages touching bills relating to the Crown or royal family were formerly sent to the Commons by two judges, 80 C. J. 573; 86 ib. 514. 805. The last occasion when the Lords observed this custom took place in
the two houses was adopted. On the 24th May, the following resolutions, which had been communicated by the Lords, at a conference, were agreed to by the Commons, whereby it was arranged that one of the clerks of either house may be the bearer of messages from the one to the other; and that the reception of the messages should not, of necessity, interrupt the business then proceeding.

Messages accordingly, as a rule, occasion no interruption, though the business of the house that is in course of transaction when a message from the Lords is received, is occasionally interrupted; for instance, when the Speaker communicates the message to the house, whereupon motions are made, and questions are put from the chair which arise upon the communication of the message (see p. 476).

A conference, whereby both houses are brought into direct intercourse with each other, by deputations of their own members, is the most formal and ceremonious method of communicating important matters by one house of Parliament to the other; and while the managers are at the conference, the deliberations of both houses are suspended.

Either house may demand a conference upon matters which, by the usage of Parliament, are allowed to be proper occasions for such a proceeding; as, for example: (1) To communicate resolutions or addresses to which the concurrence of the other house is desired. (2) Concerning the privileges of Parliament. (3) In relation to the course of proceeding in Parliament. (4) To require or communicate statements of facts on which bills have been passed by the other house. (5) To offer reasons for disagreeing to or insisting on amendments made by one house to bills passed by the other.

On all these and other similar matters, it is regular to demand a conference: but as the object of communications of this nature is to maintain a good understanding between

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1 110 C. J. 254.
2 87 ib. 421; 88 ib. 438; 89 ib. 225; 102 ib. 861; 232; 95 ib. 422; 112 ib. 363, &c.
3 89 ib. 220; 90 ib. 656; 91 ib. 95 ib. 422; 112 ib. 363, &c.
4 88 ib. 488; 89 ib. 225; 102 ib. 861.
5 9 ib. 344.
the houses, it is not proper to use them for interfering with and anticipating the proceedings of one another, before the fitting time. Thus, while a bill or other matter is pending in the other house, it is irregular to demand a conference concerning it.¹

In demanding a conference, the purpose for which it is desired should be explained, lest it should be on a subject not fitting for a conference.² The causes of demanding a conference need not, however, be stated with minute distinctness. It is sufficient to specify that they were upon matters of high importance "respecting the due administration of justice;" "to the prosperity of the British possessions in India;" "essential to the stability of the empire, and to the peace, security, and happiness of all classes of his Majesty's subjects."³

Conferences were formerly demanded, in order to offer reasons for disagreeing to amendments to bills, until 1851, when, by resolutions of both houses, agreed to at conferences 12th and 15th May, 1851, messages between the two houses were substituted for conferences, unless a conference was preferred;⁴ and since these resolutions were agreed to, there has been only one instance of a conference where a message would have been admissible.⁵

It is the privilege of the Lords to name both the time and place of meeting, whether the conference be desired by themselves or by the Commons.⁶ The agreement of both houses to a conference is communicated by message.

Each house appoints managers to represent it at the conference, and, by "ancient rule," the number of the Commons named for a conference is double that of the Lords.⁷ It is not, however, usual according to later practice to

¹ See resolution, 1 C. J. 114.
² 2nd Aug. 1641, 2 ib. 581; 22nd March, 1678, 9 ib. 555; see also 51 ib. 5; 32 Parl. Hist. 188; 4 Hatsell, 23.
³ 85 C. J. 473 (Sir J. Barrington); 88 ib. 488 (E. I. C. Charter); 89 ib. 232 (Union with Ireland).
⁴ 106 ib. 210. 217. 223. Messages were, by resolution, 24th April, 1866, substituted for conferences, in communicating addresses for commissions under the Corrupt Practices Act, 15 & 16 Vict. c. 57 (see p. 623).
⁵ Oaths Bill, 1858, 113 ib. 182.
⁶ 1 C. J. 154.
⁷ 1 ib. 154.
specify the number of the managers for either house. The
managers of the house which desires the conference are the
members of the committee who draw up the reasons, to
whom others may be added; and the managers of the
other house are selected from the members who have taken
an active part regarding the bill, if present; or other
members may be named, who happen to be in their places.
But it is not consistent with the principles of a conference
to appoint managers whose opinions do not coincide with
the objects thereof.\footnote{C. J. 350; 122 ib. 438.}

The duty of the managers—for they are not allowed to
speak—is confined to the delivery and receipt of the resolu-
tions to be communicated, or the bills to be returned, with
reasons for disagreeing to amendments. One of their
number reads the resolutions or reasons, and afterwards
delivers the papers on which they are written, which is
received by one of the managers for the other house. When
the conference is over, the managers return to their respec-
tive houses and report their proceedings.

Messages have now practically superseded conferences in
relation to bills: but the former course of proceedings must
still be briefly explained. Let it be supposed that a bill sent
up from the Commons has been amended by the Lords and
returned; that the Commons disagree to their amendments,
draw up reasons, and desire a conference; that the conference
is held, and the bill and reasons are in possession of the
House of Lords. If the Lords should be satisfied with the
reasons offered, they send a message to acquaint the Com-
mons that they do not insist upon their amendments. But
if they insist upon any of their amendments, they desire
another conference, and communicate the reasons of their
perseverance. If the Commons persist in their disagree-
ment to the Lords' amendments, they were formerly pre-
cluded, by the usage of Parliament, from desiring a third
conference; and unless they allowed the bill to drop, laid
it aside, or deferred the consideration of the reasons and
amendments, they desired a free conference. This practice,
however, was departed from on one special occasion. In 1836, after two conferences upon the Municipal Corporations Bill, a free conference was held, according to ancient usage:¹ but the disagreement between the two houses continued, and the consideration of the Lords' amendments and reasons was postponed for three months. In the following session, another bill was brought in, to which amendments were made by the Lords, to which the Commons disagreed. The results of the free conference, however, had been so unsatisfactory, that the usage of Parliament was departed from, and four ² ordinary conferences were successively held, with such success that the bill received the royal assent.

A free conference differs materially from the ordinary Free conference; for, instead of the formal communication of reasons, the managers attempt, by discussion, to effect an agreement between the houses. If a free conference should prove as unsuccessful as the former, the disagreement is almost helpless: though, if the house in possession of the bill should be prepared to make concessions, it is competent to desire another free conference upon the same subject; or, if a question of privilege or other new matter should arise, an ordinary conference may be demanded.³ Until 1836, no free conference had been held since the year 1740; nor has there been any subsequent example.

When the time appointed for a conference has arrived, business is suspended in both houses, the names of the managers are called over, and they leave their places, and repair to the conference chamber. The Commons, who come first to the conference, enter the room uncovered, and remain standing the whole time within the bar, at the table.⁴ The Lords have their hats on till they come just within the bar of the place of conference, when they take them off and walk uncovered to their seats; they then seat themselves, and remain sitting and covered during the conference. The lord (usually the lord privy seal) who receives or delivers

¹ 91 C. J. 783.
² 92 ib. 466. 512. 589. 646.
³ 4 Hatsell, 42-45. 52.
⁴ By order, 16th Jan. 1702, none but managers are to stand within the bar.
the paper of resolutions or reasons stands up uncovered, while the paper is being transferred from one manager to the other: but while reading it he sits covered. When the conference is over, the Lords rise from their seats, take off their hats, and walk uncovered from the place of conference. The Lords who speak at a free conference, do so standing and uncovered.1

A few words may be added concerning other means of communication between the two houses, less open and ostensible than those already described. The representation of the executive government by ministers, in both houses, who have a common responsibility for the measures and policy of the state, secures uniformity in the direction of the councils of these independent bodies. Every public question is presented to them both, from the same point of view; the judgment of the cabinet, and the sentiments of the political party which they represent, are adequately expressed in each house; and a general agreement is thus attained, which no formal communications could effect. The organization of parties also exercises a marked influence upon the relations of the two houses. When ministers are able to command a majority in the Lords as well as in the Commons, concord is assured. The views of the dominant party are carried out spontaneously in both houses, as if they were a single chamber. But when ministers enjoying the confidence of the majority of the Commons are opposed by a majority of the Lords, it is difficult to avert frequent disagreements between the two houses. The policy approved by one party is condemned by the other; and the minority in the Commons naturally look for the support of the majority in the Lords. Hence the decisions of one house are often contested by the other. When this conflict of opinion arises upon a bill, the proceedings which ensue have already been explained. When it arises upon a question of policy or administration, the course pursued is, in great measure, determined by the character of the difference. The two houses may differ upon abstract questions

1 4 Hatsell, 28, n.; see also Lords' s. o. Conferences, 101-103; 1 C. J. 156.
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without any grave consequences. But if the policy of the government is condemned, or their conduct censured, or legislation arrested in one house, it is natural that the other should be ready with resolutions in support of the cause of which it approves. Thus during the contest between Mr. Pitt and the coalition, in 1784, the Lords were forward in giving countenance to the minister, in his struggle with a hostile majority of the Commons.¹ Again, in the great Reform crisis of 1831–32, the Commons supported the ministers and their cause, when they were imperilled by the hostility of the Lords.² And in 1839, when the opposition, in the Commons, had failed to arrest the establishment of a system of national education under an order in council by an address to the Crown, the upper house presented an address condemning the scheme, but without effect.³ In the same year, the House of Lords having appointed a committee to inquire into the state of Ireland since 1835, in respect of crime and outrage, the Commons, regarding this step as an arraignment of the policy of the ministers, supported them by a vote of confidence.⁴ In 1850, when the Lords censured the government for the course taken in reference to the claims of Don Pacifico upon Greece, the Commons came to the rescue, with a vote of approval and confidence.⁵

In 1857, a vote of censure upon the policy of the government, in reference to the war in China, was negatived in the House of Lords: but, by a combination of parties, a vote to the same effect was carried in the House of Commons;⁶ and was followed by a dissolution.

In 1860, the Lords having rejected the bill for the abolition of the paper duties, the Commons responded by resolutions reasserting their privileges in regard to money bills (see p. 550). And again, in 1864, conflicting resolu-

tions were agreed to in the two houses in relation to the Danish War.¹

In 1871, a bill having been passed by the Commons for the abolition of purchase in the army, and providing compensation to the officers, which was refused a second reading by the Lords, a royal warrant was issued cancelling former regulations by which the purchase of commissions had been sanctioned. The Lords were thus constrained to reconsider the bill, in order to secure the pecuniary interests of the officers: but in proceeding with the bill, they placed on record a condemnation of the issue of the warrant. It became a matter for consideration whether the Commons should be invited to respond to this adverse resolution: but as legislation was not arrested, and the vote of the Lords was without effect upon the policy or political position of ministers, the passing of the bill was accepted as a sufficient approval of the course adopted, without any retaliatory resolution. In 1881, the Lords condemned the policy of the government in regard to Afghanistan, and the Commons approved it.

In 1882, the Lords having appointed a committee to inquire into the working of the Irish Land Act of the previous year, the Commons, after a long debate, agreed to a resolution that parliamentary inquiry, at the present time, into the working of that Act tends to defeat its operation, and must be injurious to the interests of good government in Ireland.²

¹ 96 L. J. 538; 119 C. J. 495. ² 187 ib. 94; 266 H. D. 3 s. 1729, &c.
CHAPTER XVIII.

COMMUNICATIONS FROM THE CROWN TO PARLIAMENT: AND FROM PARLIAMENT TO THE CROWN.

The Queen is supposed to be present in the High Court of Parliament, by the same constitutional principle which recognizes her presence in other courts: but she can only take part in its proceedings by means which are acknowledged to be consistent with the parliamentary prerogatives of the Crown, and the entire freedom of the debates and proceedings of Parliament. She may be present in the House of Lords, at any time during the deliberations of that house, where the cloth of estate is: but she may not be concerned in any of its proceedings, except when she comes in state for the exercise of her prerogatives. In earlier times, the sovereign was habitually present in the House of Lords, as being his council, whose advice and assistance he personally desired. King Henry VI., in the ninth year of his reign, declared, with the advice and consent of the Lords, "That it shall be lawful for the Lords to debate together, in this present Parliament, and in every other for time to come, in the king's absence, concerning the condition of the kingdom, and the remedies necessary for it." Whence it appears that, at that time, it was customary for the king to be present at the deliberations of the Lords, even if his presence was not essential to their proceedings. When he ceased to take a personal part in their deliberations, it was still customary for the sovereign to attend the debates as a spectator.

1 See Hale, Jurisd. of Lords, c. 1; Fortescue, c. 8 (by Amos), with note B.; and 2 Inst. 186.
2 3 Bot. Parl. 611.
3 On the 24th Feb. 1640, while the trial of Lord Strafford was pending, the king came to the house, and the articles and answers were read to his Majesty, 2 Parl. Hist. 742.
4 12 L. J. 318. "Charles II. being sat, he told them it was a privilege he claimed from his ancestors to be present at their deliberations; that, therefore, they should not for his coming interrupt their debates, but proceed, and be covered."—Andrew
successors, James II., William III., and Queen Anne, were very frequently present; but this questionable practice, which might be used to overawe that assembly, and influence their debates, has wisely been discontinued since the accession of George I. And, according to the practice of modern times, the Queen is never personally present in Parliament, except on its opening and prorogation; and occasionally for the purpose of giving the royal assent to bills during a session.

The various constitutional forms by which the Crown communicates with Parliament, and by which Parliament communicates with the Crown, will now be noticed in succession, according to their relative importance and solemnity.

The most important modes by which the Crown communicates with Parliament are exemplified on those occasions when her Majesty is present, in person or by commission, in the House of Lords, to open or prorogue Parliament, and when a royal speech is delivered to both houses. In giving the royal assent to bills in person or by commission, the communication of the Crown with the Parliament is of an equally solemn character. On these occasions the whole Parliament is assembled in one chamber, and the Crown is in immediate and direct communication with the three estates of the realm.

The mode of communication next in importance is by a written message under the royal sign manual, to either house.

Marvell's Letters, p. 405. Nor was Charles II. an inattentive observer; for on the 28th Jan. 1670, he reprimands the Lords for their "very great disorders, both at the hearing of causes, and in debates amongst themselves," 12 L. J. 413.

1 William III. was present during the debate on the second reading of the Abjuration Bill, 2nd May, 1690, 14 ib. 483; 3 Lord Macaulay, Hist. 347.

2 She was present for the first time on the 29th Nov. 1704, "at first on the throne, and after, it being cold, on a bench at the fire," Jerviswood Corr. 15, cited by Lord Stanhope, Reign of Queen Anne, 166. She was present on the 15th Nov. and 6th Dec. 1705, ib. 205. 208.

3 See 2 Lord Macaulay, Hist. 33.

4 2 Hatsell, 371, n.; Chitty on Prerogatives, 74. The last occasion appears to have been the attendance of Queen Anne, on the 9th and 12th Jan. 1710, during the debates upon the war with Spain.

5 63 L. J. 885.
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singly, or to both houses separately. The message is brought 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 under the royal sign manual, which her Majesty had commanded him to deliver to their lordships. And the lord chancellor then reads the message at length, all the lords being uncovered; and it is afterwards read, or supposed to be read, again, at the table, by the Clerk. In the House of Commons, the member who is charged with the message appears at the bar, where he informs the Speaker that he has a message from her Majesty to this house signed by herself; which, on being desired by the Speaker, he brings up to the chair. The message is delivered to the Speaker, who reads it at length, while all the members of the house are uncovered.

On the 21st March, 1882, Mr. Speaker explained that a message from the Crown, under the sign manual, was always received by members uncovered: but that this custom did not apply to an answer to an address, nor to the speech from the throne when read to the house from the chair.

The subjects of such messages are usually communications in regard to important public events which require the attention of Parliament; the calling out for service of the militia and the reserve forces (see p. 525); the prerogatives, or property of the Crown; provision for the royal family, and other occasions which compel the executive to seek for pecuniary aid from Parliament (see p. 524). They may be regarded, in short, as additions to the royal speech, at the commencement of the session, submitting other matters to the deliberation of Parliament, besides the causes of summons previously declared.

1 86 C. J. 488.
2 66 L. J. 935; 89 C. J. 575.
3 If brought by one of the household, he appears in uniform—in the Lords, in his place; in the Commons, at the bar.
4 66 L. J. 935.
5 All the members present uncovered on the announcement of the death of the German emperor, Frederick, 15th June, 1888.
6 267 H. D. 3 a. 1443.
7 40 L. J. 186; 44 ib. 74; 82 C. J. 111.
8 85 ib. 466; 89 ib. 189. 579.
This analogy between a royal speech, and a message under the sign manual, is supported by several circumstances common to both. A speech is delivered to both houses, and every message under the sign manual should also be sent, if practicable, to both houses: but when they are accompanied by original papers, they have occasionally been sent to one house only. The more proper and regular course is to deliver them on the same day: but from the casual circumstance of both houses not sitting on the same day, or other accidents, it has frequently happened that messages have been delivered on different days.¹

Another form of communication from the Crown to either house of Parliament, is in the nature of a verbal message, delivered, by command, by a minister of the Crown, to the house of which he is a member. This communication is used whenever 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 imprisoned, and detained from his service in Parliament; according to the examples of such communications cited on p. 114.

The other modes of communicating with Parliament are by the royal "pleasure," "recommendation," or "consent," being signified.

The Queen's pleasure is signified at the commencement of each Parliament, by the lord chancellor, that the Commons should elect a Speaker; and when a vacancy in the office of Speaker occurs in the middle of a Parliament, a communication of the same nature is made by a minister, in the house (see p. 153). Her Majesty's pleasure is also signified for the attendance of the Commons in the House of Peers; in regard to the times at which she appoints to be attended with addresses; and concerning matters personally affecting the interests of the royal family.² At the end of a session, also, the royal pleasure is signified, by the lord chancellor, that Parliament should be prorogued.

¹ 2 Hatsell, 366, n.; 66 L. J. 958; 539.
² 86 ib. 460.
Under this head may likewise be included the approbation of the Speaker elect, signified by the lord chancellor.

The royal recommendation is signified to the Commons by a minister of the Crown, on receiving petitions, on motions for the introduction of bills, or on the offer of other motions, involving any public expenditure or grant of money not included in the annual estimates, whether such grant is to be made in the committee of supply, or any other committee; or which would have the effect of releasing or compounding any sum of money owing to the Crown (see p. 531). The royal consent is given, by a privy councillor, to motions for leave to bring in bills; or to amendments to bills, or to bills in any of their stages, or to instructions to committees on bills, or to Lords' amendments to bills, which concern the royal prerogatives, the hereditary revenues, or personal property or interests of the Crown or Duchy of Cornwall. When the Prince of Wales is of age, his own consent is signified, as Duke of Cornwall, in the same manner. The mode of communicating the recommendation and consent is the same; but the former is given at the very commencement of a proceeding, and must precede all grants of money: while the latter may be given at any time during the progress of a bill, in which the consent of the Crown is required. Where bills have been suffered, through inadvertence, to be read a third time and passed, the proceedings have been declared null and void.

In June, 1874, notice having been given of an amendment in committee on the Valuation of Property Bill, rendering Crown property rateable, doubts arose whether, as the

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1 106 C. J. 232; 107 ib. 142; 117 ib. 79. In 1853, the Queen's consent and recommendation were signified to the Land Revenues Bill, 108 ib. 625.
2 101 ib. 843; 107 ib. 321; 124 ib. 222.
3 Second reading, 108 ib. 375; 110 ib. 290; third reading, ib. 115, &c.
4 Civil List Bill, 1837, 93 ib. 204.
5 101 ib. 892; 103 ib. 729; 126 ib. 355.
6 77 ib. 408; 86 ib. 485.550; 91 ib. 548; 105 ib. 492.
7 118 ib. 310; 119 ib. 368.
8 98 ib. 287; 99 ib. 309; 104 ib. 192; 105 ib. 338; 23 H. D. 1 s. 474. 551.
9 107 C. J. 157.
consent of the Crown had not been signified, the question could be put by the chairman upon such amendment: but, after full consideration and review of precedents, it was determined that the chairman was bound to put the question. Several precedents were found, in the last century, in which amendments affecting the interests of the Crown had been made in committees on bills, and the consent of the Crown was afterwards signified when such amendments were agreed to upon the report. Hence it appeared that it was for the house, and not for the committee, which cannot receive any communication from the Queen, to guard the interests of the Crown. And it is clear, from many precedents, that the house itself is reluctant to interfere for that purpose until the very latest stages of the bill.

The same point of practice arose in the House of Lords, on the 1st July, 1844, on the third reading of the St. Asaph and Bangor Dioceses Bill. A select committee was appointed to search for precedents, who reported that there were no precedents: but that the bill belonged to that class to which it had been the usage to give the consent of the Crown before passing the house; and that it had been the custom to receive such consent at various stages. The consent of the Crown was withheld; and again in 1866, on the third reading of the Blackwater Bridge Bill, notice being taken that the Queen's consent had not been signified, Mr. Speaker declined to put the question. In 1868, the Peerage (Ireland) Bill was withdrawn upon the second reading, when it was intimated that ministers would not advise her Majesty to give her consent to the bill at a later stage.

Another form of communication, similar in principle to the last, is when the Crown "places its interests at the
disposal of Parliament,” which is signified in the same manner, by a minister of the Crown.¹ In 1833, the king had referred, in his speech from the throne, to a measure relating to the church temporalities in Ireland, and before going into committee upon that subject, his Majesty’s recommendation had been signified. Yet objection was taken upon the second reading of the bill, that the king had not formally placed his interests in the Irish bishoprics at the disposal of Parliament;² and a communication, in proper form, was afterwards made to that effect. In 1868, the Government being unwilling to advise the Queen to place her interest in the temporalities of the bishoprics and benefices in Ireland at the disposal of Parliament, the House of Commons voted an address to her Majesty, praying that such interest should be placed at their disposal. In reply, the Queen desired that her interest should not stand in the way of the consideration of any measure relating to the Irish Church,³ and the bill for suspending appointments to bishoprics and benefices in Ireland was proceeded with, and passed by the Commons, in opposition to the ministers of the Crown. A similar course was adopted by the Lords, in 1875, in regard to Irish peerages.⁴

These several forms of communication are recognized as constitutional declarations of the Crown, suggested by the advice of its responsible ministers, by whom they are announced to Parliament, in compliance with established usage. They cannot be misconstrued into any interference with the proceedings of Parliament, as some of them are rendered necessary by resolutions of the House of Commons, and all are founded upon parliamentary usage, which both houses have agreed to observe. This usage is not binding upon Parliament: but if, without the consent of the Crown, previously signified, Parliament should dispose of the interests or affect the prerogative of the Crown, the Crown could still protect itself, in a constitutional manner, by the

¹ Church Temporalities (Ireland) Bill, 1833, 88 C. J. 381; Church of Ireland Bill, 1833, 90 ib. 447; 91 ib. 427; 95 ib. 385, &c. ² H. D. 6th May, 1833. ³ 123 C. J. 160. 170. ⁴ 225 H. D. 3 s. 1210.
Addresses in answer to written messages.

Addresses in answer to written messages.

How acknowledged.

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refusal of the royal assent to the bill. And it is one of the advantages of this usage, that it obviates the necessity of resorting to the exercise of that prerogative.

Having enumerated all the accustomed forms in which the royal will is made known to Parliament, it may now be shown, in the same order, in what manner they are severally acknowledged by each house.

The forms observed on the meeting and prorogation of Parliament, and the proceedings connected with the address in answer to the royal speech, were described in the seventh chapter (see p. 170), and the royal assent to bills will be treated of hereafter (see p. 480). Messages under the royal sign manual are generally acknowledged by addresses in both houses, which are presented from one house by the "lords with white staves," i.e. the lord steward and the lord chamberlain; or sometimes by other lords specially named; and from the other by privy councillors, in the same manner as addresses in answer to royal speeches, when Parliament has been opened by commission (see p. 172).¹

In the Commons, however, it is not always necessary to reply to messages under the sign manual by address; as a prompt provision, made by that house (see p. 555), is itself a sufficient acknowledgment of royal communications for pecuniary aid; whilst messages, other than messages touching pecuniary aid, such as messages relating to important public events,² or matters connected with the prerogatives, interests, or property of the Crown;³ or which call for general legislative measures,⁴ are answered by an address.

When the house is informed, by command of the Crown, of the arrest of a member to be tried by a military court martial, it immediately resolves upon an address of thanks to her Majesty, "for her tender regard to the privileges of

¹ 109 C. J. 169; 132 H. D. 3 s. 1882, ib. 399.
² 82 C. J. 114, &c.; assassination of the Emperor of Russia, 1881, 136 ib. 223; calling out the reserve force, 214.
³ 85 ib. 466; 89 ib. 578; 95 ib. 520.
⁴ 85 ib. 214.
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Chapter XVIII. this house."¹ And when the arrest of a member for a criminal offence is communicated from the Crown, an address of thanks is voted in answer.² But as the arrest of a member to be tried by a naval court martial does not proceed immediately from the Crown, and the communication is only made from the Lords of the Admiralty (see p. 115), no address is necessary in answer to this indirect form of message.

The matters upon which the royal pleasure is usually signified need no address in answer, as immediate compliance is given by the house; and the recommendation and consent of the Crown, as already explained, are only signified as introductory to proceedings in Parliament, or essential to their progress.

These being the several forms of acknowledging communications proceeding from the Crown, it now becomes necessary to describe those which originate with Parliament. It is by addresses that the resolutions of Parliament are ordinarily communicated to the Crown. These are sometimes in answer to royal speeches or messages, but are more frequently in regard to other matters, upon which either house is desirous of making known its opinions to the Crown.

Address, address, address, address, address. Addresses. Addresses. Addresses.

Addresses are sometimes agreed upon by both houses, and jointly presented to the Crown, but are more generally confined to each house singly. When some event of unusual importance³ makes it desirable to present a joint address, the Lords or Commons, as the case may be, agree to a form of address, and, having left a blank for the insertion of the title of the other house, communicate it, formerly at a conference, but now by message,⁴ and desire their concurrence. The blank is filled up by the other house, and a message is returned, acquainting the house with their concurrence, and that the blank has been filled up. Such addresses are presented either by both houses in a body,⁵ or by two peers

¹ 70 C. J. 70. ² 37 ib. 963. ³ 87 ib. 421; 89 ib. 235; outrage upon the Queen, 1840, 95 ib. 422; outrage upon the Queen, 1842, 97 ib. 324.

⁴ Address, attempt against her Majesty’s life, 6th March, 1882, 137 ib. 88.

⁵ 87 ib. 424; 72 L. J. 393; 74 ib. 279.
and four members of the House of Commons;¹ and they have been presented also by committees of both houses;² by a joint committee of Lords and Commons,³ and by the lord chancellor and the Speaker of the House of Commons;⁴ but the Lords always learn her Majesty’s pleasure, and communicate to the Commons, by message, the time at which she has appointed to be attended.

The addresses of the Commons in answer to the royal speech at the commencement of the session (see p. 171), were formerly moved as a resolution unprefaced by the preliminary words, “Most Gracious Sovereign,—We, Your Majesty’s most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, beg leave to offer,” &c., whereby the resolutions are addressed to the Queen; and the resolution was referred to a committee for due preparation. According to present usage addresses are now moved in due form for presentation to her Majesty; and this practice will be adopted on all other occasions when addresses are presented to the Sovereign, in accordance with the precedent of the address on the war with Russia of session 1854.⁵ Sometimes addresses are agreed to upon the report of committees of the whole house, not only in relation to matters involving public expenditure, but concerning other public affairs.⁶ Addresses, or resolutions for addresses, are ordered to be presented by the whole house;⁷ by the lords with white staves, or privy councillors;⁸ and, in some peculiar cases, by members specially nominated.⁹

The subjects upon which addresses are presented are too varied to admit of enumeration. They have comprised every

¹ 85 C. J. 652; 112 ib. 423; 114 ib. 373; 137 ib. 94, &c. A joint address having been agreed to, 2nd Sept. 1880, when the Queen was at Balmoral, her Majesty dispensed with its formal presentation, see Lords’ Minutes, p. 306.
² 1 C. J. 877.
³ 2 ib. 462.
⁴ 23rd Dec. 1708, 16 ib. 54.
⁵ Address on the war with Russia, 31st March, 1854, 109 ib. 109; 132 H. D. 3 s. 307.
⁶ State of the nation, 22nd Dec. 1783, 39 C. J. 848. 855; defence of the kingdom, 20th June, 1803, 58 ib. 528, &c.
⁷ 92 Ib. 492; 113 ib. 31.
⁸ 92 L. J. 19.
⁹ 10 C. J. 295; 67 ib. 391.
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matter of foreign ¹ or domestic policy; ² the administration of justice; ³ the confidence of Parliament in the ministers of the Crown; ⁴ the expression of congratulation or condolence (which are agreed to nem. con.); ⁵ and, in short, representations upon all points connected with the government and welfare of the country. But they ought not to be presented in relation to any bill depending in either house of Parliament. ⁶

When a joint address is to be presented by both houses, the lord chancellor and the House of Lords, and the Speaker and the House of Commons, proceed in state to the palace at the time appointed. The Speaker's state coach and the carriages of the members of the House of Commons, are entitled, by privilege or custom, to approach the palace through the central Mall in St. James's Park.

On reaching the palace, the two houses assemble in a chamber adjoining the throne room, and when her Majesty is prepared to receive them, the doors are thrown open, and the lord chancellor and the Speaker ⁷ advance side by side, followed by the members of the two houses respectively, and

¹ 78 C. J. 278; 82 ib. 118; 88 ib. 471; assassination of President Lincoln, 1865, 120 ib. 229.
² Removal of a judge, 89 ib. 235; appointment of a royal commission with power to examine witnesses on oath, 143 ib. 46.
³ 85 ib. 472.
⁴ 7 ib. 325.
⁵ 105 ib. 508; 108 ib. 371; 113 ib. 31; 123 ib. 142. Death of Grand Duchess of Hesse (Princess Alice), 16th Dec. 1878. Assassination of the Emperor of Russia, 15th March, 1881. When this address was answered, a letter from the Russian ambassador to Earl Granville was communicated, by her Majesty's command, forwarding a telegraphic message from the Emperor of Russia, in acknowledgment of the address, 136 C. J. 141. Death of the Duke of Albany, 139 ib. 149. Death of Frederick William, German emperor, 143 ib. 293. The sympathy of the house was expressed on the death of the Prince Consort, and on the death of Prince Albert Victor, in the address in answer to the royal speech, 117 ib. 7; 147 ib. 10. The death of William, German emperor, was announced to the house, 9th March, 1888, by the first lord of the treasury, 323 H. D. 3 s. 706. Mr. Speaker read to the house, 10th April, 1888, a communication that he, had received through the secretary of state for foreign affairs, from the chancellor of the German empire, that the Imperial German Parliament had unanimously resolved that the veneration for their deceased monarch, and participation in the grief of the German people expressed by the House of Commons, had called forth the deepest sympathy and gratitude throughout Germany, 143 ib. 142. See also p. 853.
⁶ 12 L. J. 72. 81. 88; 8 C. J. 670; 1 Grey's Deb. 5.
⁷ The Speaker is always on the left hand of the chancellor.
are conducted towards the throne by the lord chamberlain. The lord chancellor reads the address, and presents it to her Majesty, on his knee, to which her Majesty returns an answer, and both houses retire from the royal presence.

When addresses are presented separately, by either house, the forms observed are similar to those already described, except that addresses of the Commons are then read by their Speaker. In presenting the address, the mover of the address in the Lords is on the right hand of the chancellor, and the seconder on his left; while the mover and seconder of the address, in the Commons, are on the left hand of the Speaker. When the lord chancellor or Speaker has read the address, he presents it to her Majesty, kneeling upon one knee. The lords attend her Majesty in levee dress: but the members of the House of Commons can assert their privilege of freedom of access to the throne, by accompanying the Speaker in their ordinary attire.

When addresses have been presented by the whole house, the lord chancellor in one house, and the Speaker in the other, report the answer of her Majesty; but when they have been presented in the ordinary way, the answer is reported generally, in the Lords, by the lord chamberlain, in levee dress, with his white staff; and in the Commons, by one of the royal household, who appears at the bar, in uniform, and, on being called by the Speaker, reads her Majesty's answer.

Another mode of communication with the Crown, less direct and formal than an address, has been occasionally adopted; when resolutions of the house, and resolutions and evidence taken before a committee, have been ordered to be laid before the sovereign. In such cases the resolutions have been presented in the same manner as addresses, and answers have sometimes been returned.

1 They are not permitted to enter the royal presence with sticks or umbrellas, see 2 Hatsell, 390, n.; 3 Lord Colchester's Diary, 604-607.
2 On this occasion the proceedings of the house were interrupted to receive her Majesty's answer, 17th Dec. 1878, 108 C. J. 438.
3 37 ib. 330; 33 ib. 884; 40 ib. 1157; 69 ib. 296; 67 ib. 462; 73 ib. 316, &c.; 90 ib. 534; 39 ib. 885; 69 ib. 211.
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It is to the reigning sovereign, or regent, alone that addresses are presented by Parliament: but messages are frequently sent by both houses to members of the royal family, to congratulate them upon their nuptials, or other auspicious events;\(^1\) or to condole with them on family bereavements.\(^2\) Resolutions have also been ordered to be laid before members of the royal family. Certain members are always nominated by the house to attend those illustrious personages with the messages or resolutions; one of whom afterwards acquaints the house (in the Lords, in his place, or at the table; and, in the Commons, at the bar) with the answers which were returned.\(^3\)

Communications are also made to both houses by members of the royal family, which are either delivered by members in their places,\(^4\) or are conveyed to the house by letters addressed to the Speaker.\(^5\)

Such being the direct and formal communications between the Crown and Parliament, it may be added that the presence of ministers, in both houses, maintains the closest relations of the Crown with the legislature. The representation of every department of the state by members of Parliament, and the principles of ministerial responsibility, long since established in our constitution, bring the executive government and the legislature into uninterrupted intercourse, and combined action. Where no formal communication, between the Crown and Parliament, is technically required, the introduction of a measure by her Majesty's ministers, attests the royal approval; and when amendments are made, by either house, which ministers accept instead of abandoning the measure, or resigning office, they are under an obligation to advise the Queen to signify her royal

\(^1\) 72 L. J. 53; 73 C. J. 424; 95 ib. 88; 49 L. J. 384; 74 Ib. 6; also p. 853.

\(^2\) 53 L. J. 367; 75 C. J. 480; 92 ib. 493 (the Queen Dowager); 105 ib. 508. To the Duchess of Edinburgh, on the assassination of the Emperor of Russia, by both houses, 15th March, 1881, 259 H. D. 3 s. 1066. To the Duchess of Albany, 1884, 139 C. J. 140; to the German empress, 143 ib. 293.

\(^3\) 53 L. J. 369; 72 ib. 53; 95 C. J. 95; 105 ib. 539; 52 H. D. 3 s. 343; ib. 18th July, 1850.

\(^4\) 58 C. J. 211; 75 ib. 288.

\(^5\) 64 ib. 86; 68 ib. 253; 69 ib. 324. 433.
assent to the bill, when it has been agreed to by both houses. Again, when the measures or policy of ministers are condemned by Parliament, a change of administration restores agreement between the executive and the legislature. Ministers are responsible alike to the Crown and to Parliament, and so long as they are able to retain the confidence of both, the harmonious action of the several estates of the realm is secured.¹

CHAPTER XIX.

PROCEEDINGS OF PARLIAMENT IN PASSING PUBLIC BILLS.

If bills were not a more convenient form of legislation, both houses might enact laws in the form of resolutions, provided the royal assent were afterwards given. In the earlier periods of the constitution of Parliament, all bills were, in fact, prepared and agreed to in the form of petitions from the Commons, which were entered on the Rolls of Parliament, with the king’s answer subjoined; and at the end of each Parliament the judges drew up these imperfect records into the form of a statute, which was entered on the Statute Rolls. This practice was incompatible with the full concurrence of the legislature; and matters were often found in the Statute Rolls which the Parliament had not petitioned for, or assented to. Indeed, so far was this principle of independent legislation occasionally carried, that, in the 13th and 21st Richard II., commissions were appointed for the express purpose of completing the legislative measures, which had not been determined during the sitting of Parliament. These usurpations of legislative power were met with remonstrances in particular instances, and at length in the 2nd Henry V., the Commons prayed that no additions or diminishations should in future be made, nor alteration of terms which should change the true intent of their petitions, without their assent; for they stated that they had ever been “as well assenters as petitioners.” The king, in reply, granted “that henceforth nothing should be enacted to the petitions of the Commons contrary to their asking, whereby they

1 Rot. Parl. passim.
2 3 ib. 256 (13th Richard II.); ib. 368 (21st Richard II.); stat. 21st Richard II. c. 16.
3 3 Rot. Parl. 102 (5th Richard II. No. 28); 3 ib. 141 (6th Richard II. No. XXX.); 3 ib. 418 (1st Henry IV.); Hale, Hist. of the Common Law, 14; Reeves, Hist. of the English Law; Pref. to Cotton’s Abridgment; Bufflehead’s Statutes, Preface.
should be bound without their assent; saving always to our liege lord his real prerogative to grant and deny what him lust, of their petitions and askings aforesaid."¹ No distinct consequences appear to have immediately followed this remarkable petition; and, so long as laws were enacted in the form of petitions, to any portion of which the king might give or withhold his assent, and attach conditions or qualifications of his own, the assent of the entire Parliament was rather constructive than literal; and the Statute Rolls, however imperfectly drawn up, were imperfect records of the legislative determinations of Parliament.

But petitions from the Commons, which were originally the foundation of all laws, were ultimately superseded; and in the reign of Henry VI. bills began to be introduced, in either house, in the form of complete statutes, which were passed in a manner approaching that of modern times, and received the distinct assent of the king, in the form in which they had been agreed to by both houses of Parliament. It is true that Henry VI. and Edward IV. occasionally added new provisions to statutes, without consulting Parliament;² but the constitutional form of legislating by bill and statute, agreed to in Parliament, undoubtedly had its origin and its sanction in the reign of Henry VI.

Before the present method of passing bills in Parliament is entered upon, it may be premised that the practice of the Lords and Commons is so similar in regard to the several stages of bills, and the proceedings connected with them, that, except where variations are distinctly pointed out, a statement of the proceedings of one house is equally descriptive of the proceedings of the other.

As a general rule, bills may originate in either house: for the exclusive right of the House of Commons to grant supplies, and to impose and appropriate all charges upon the people, renders it necessary to introduce by far the greater proportion of bills into that house.

A bill which concerns the privileges or proceedings of

¹ 4 Rot. Parl. 22, No. X. ² Ruffhead's Statutes, Preface; Cotton's Abridgment, Preface.
either house, should, in courtesy, commence in that house to which it relates. But bills affecting privileges of the other house have, nevertheless, been admitted without objection. Amendments, however, concerning the privileges and jurisdiction of the Lords, have given rise to discussions in both houses.

The Lords claim that bills for the restitution of honours and in blood should commence with them; and such bills are presented to that house by her Majesty's command. The customary practice adopted by the House of Commons in dealing with a restitution bill, is, on the receipt of the bill from the Lords, to read the bill a first and second time, and to commit the bill to a select committee, nominated forthwith, without previous notice of the names of the committee, the Queen's consent having been signified before the first reading. On the report of the bill from the select committee, the bill is appointed for third reading upon a future day. Bills of attainder, and of pains and penalties, generally originate in the House of Lords, being of a judicial character.

A bill for a general pardon, or act of grace, as it is com-
INTRODUCTION OF BILLS.

monly termed, originates with the Crown, and is read once only in each house, all the members being uncovered, after which it receives the royal assent in the ordinary form. Such a bill cannot be amended by either house of Parliament, but must be accepted in the form in which it is received from the Crown, or rejected. An act of indemnity, protecting persons against the consequences of any breach of the law, is proceeded with as an ordinary bill, though, being usually an urgent matter, the bill is passed through all its stages at one sitting.

Bills are divided into the two classes, of public and private bills. The former, relating to matters of public policy, are introduced directly by members of the house; while the latter are founded upon the petitions of parties interested. The greater part of these proceedings apply equally to both classes of bills: but the progress of private bills is governed by so many peculiar regulations and standing orders, in both houses, that an entire separation of the two classes can alone make the progress of either intelligible.

In the House of Lords, any peer is at liberty to present a bill, and to have it laid upon the table, without notice; but in the Commons, a member must, due notice having been given, move for leave to bring in a bill. In making this motion, he may explain the object of the bill, and give reasons for its introduction; but unless the motion be opposed, this is not the proper time for any lengthened debate upon its merits. When an important measure is offered by a minister or other member, this opportunity is frequently taken for a full exposition of its character and objects: but otherwise, debate should be avoided at this stage, unless it be expected that the motion will be negatived, and that no

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1 14 L. J. 502. 503 (1690); 25 C. J. 406 (1747); 4 Burnet's Own Time, 121; 3 Macaulay's Hist. 575.
2 Earl of Winchelsea's Indemnity Bill, 5th June, 1820, 75 C. J. 275. 276; Lord Harborough's Indemnity Bill, 21st Aug. 1820, 75 C.J. 478; Earl of Scarborough's Indemnity Bill, 6th Sept. 1841; Forsyth's Indemnity Bill, 1866; Lord Byron's Indemnity Bill, 1880, 135 ib. 306; 254 H. D. 3 s. 646; 96 C. J. 542; 131 lb. 239; 135 ib. 871 (Lord Plunket), 1880; 254 H. D. 3 s. 646.
3 3 H. D. 24; 13 H. D. 3 s. 1188.
future occasion will arise for discussion.\(^1\) If the motion be agreed to, the bill is ordered to be prepared and brought in by the mover and seconder,\(^2\) and by such other members as may be thought expedient.\(^3\) Members also have been nominated by the house to join with the members ordered to bring in a bill, either in substitution for, or in addition to, those included in the order of leave.\(^4\) Debate on the merits of the bill is not allowed on such an occasion.\(^5\) Instructions may be given to these gentlemen to make such provision in the bill, as has been agreed to by the house on the reports from committees of the whole house which relate to charges upon the people.\(^6\) Amendments have been made or proposed to a question for leave to bring in a bill, either hostile to the motion,\(^7\) or to effect the alteration thereof.\(^8\) On the 20th February, 1852, the motion for leave to bring in a Militia bill, as proposed by Lord John Russell, was amended, on division. The ministers resigned, and a bill was afterwards brought in by the new administration, in conformity with the amended order.\(^9\) A bill has been ordered as an amendment to a question for a resolution of the house;\(^10\) and on the 17th April, 1834, a bill to admit Dissenters to the Universities was ordered, as an amendment

\(^1\) The lengthened debate on this question is of comparatively recent origin. Debate on the Protection of Life and Property (Ireland) Bill continued over five sittings, 24th Jan. to 2nd Feb. 1881, was closed by Speaker Brand (see p. 272, n. 2); Government of Ireland Bill, 1886, four sittings, 1898, four sittings; Criminal Law and Procedure (Ireland) Bill, 1887, five sittings, and four sittings on the motion to give precedence to procedure on the bill.

\(^2\) This order is ordinarily formal; but, 20th Feb. 1852, Lord Palmerston having carried an amendment to the motion for leave to bring in Lord J. Russell’s Militia Bill, discussion arose upon the question, by whom the bill should be brought in, 119 H. D. 3 s. 876.

\(^3\) The Speaker decided, 1 Feb. 1893 (private ruling), that the names of members ordered to bring in a bill should not exceed twelve in number.

\(^4\) 91 C. J. 613. 632; 113 ib. 92. 262; 116 ib. 219. 226; 130 ib. 132. 171.

\(^5\) 171 H. D. 3 s. 478. 521.

\(^6\) 129 C. J. 114; 138 ib. 131; 140 ib. 363; 145 ib. 260.

\(^7\) Church Rates, 1853, 108 ib. 516; County Franchise, 1861, 116 ib. 65; Protection of Person, &c. (Ireland), 1881, 136 ib. 49. An amendment to postpone procedure on the motion to that day six months is out of order, 151 H. D. 3 s. 1242.

\(^8\) 70 C. J. 62; 71 ib. 430.

\(^9\) 107 ib. 68. 131.

\(^10\) 81 ib. 61.
to a question for an address to the Crown for that purpose. In 1869, a bill for the Disfranchisement of Freemen in the City of Dublin was ordered as an amendment to a question for the issue of a new writ.

In various cases, proceedings preparatory to the bringing in of bills, first occupy the attention of the house. Sometimes resolutions have been agreed to by the house, and bills immediately ordered, as in the cases of the Liverpool Elections Bill in 1831: at other times, resolutions of the house in a former session have been read, and bills ordered thereupon. On the 5th March, 1811, resolutions of a former session, relating to the slave trade, were read, and a bill ordered nem. con. In 1833, the introduction of the bill for the abolition of slavery was preceded by several resolutions. The Regency Bills of 1789 and 1811 were founded upon resolutions which had been reported from a committee of the whole house, communicated to the House of Lords, and agreed to, and afterwards presented by both houses to the Prince of Wales and the Queen. On other special occasions, resolutions agreed to by both houses, at a conference, have preceded the introduction of a bill. It has not been uncommon, also, to read parts of speeches from the throne, Queen's messages, Acts of Parliament, entries in the Journal, reports of committees, or other documents in possession of the house, as grounds for legislation, before the motion is made for leave to bring in a bill. On the 30th April, 1868, a question, that the oath taken by Roman Catholic members previous to the alteration of their oath in 1866, be read by the Clerk at the table, was negatived.

The most frequent preliminary to the introduction of bills is the report of resolutions from a committee of the

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1 22 H. D. 3 s. 900; 89 C. J. 191.
2 124 C. J. 256.
3 86 ib. 821.
4 62 ib. 586; 75 ib. 65; 82 ib. 442.
5 66 ib. 148.
6 88 ib. 482.
8 Slave Trade, 1806; 61 C. J. 303.
9 401.
10 82 ib. 442; 91 ib. 630; 95 ib. 470; 107 ib. 186; Established Church (Ireland), 30th March, 1868, 123 ib. 113; Royal Titles Bill, 1876; 181 ib. 47.
11 123 ib. 148; 191 H. D. 3 s. 1582.
whole house, in conformity with the standing orders regarding charges upon the people. The chairman is sometimes directed by the committee to move the house for leave to bring in a bill or bills; and sometimes the resolutions are simply reported, and after being agreed to by the house, a bill is ordered thereupon; or upon some only; or a bill upon some of the resolutions, and other bills upon other resolutions. Sometimes several resolutions have been reported, and agreed to, and another resolution directing the chairman to move for a bill pursuant to the said resolutions, has been reported separately, on which the chairman immediately proceeded to move for a bill. These resolutions have also been again read and a second bill ordered thereon (see p. 593).

In other cases, it has been deemed advisable, for particular reasons, to initiate legislation by preliminary discussion in committee, as in 1856, on the subject of education, and in 1858, on the government of India. Again, in 1867, it was proposed to found the Representation of the People Bill upon resolutions to be previously discussed in committee: but ultimately the bill was brought in without any preliminary proceedings. As the house may refer any matters whatever to the consideration of a committee, this course is not inconsistent with any parliamentary principle: but it is open to these objections,—that it involves a double discussion of the same questions in committee, and that it reverses the accustomed order of proceeding, by giving precedence to the consideration of the details of a measure, instead of to the principle. When a bill stands for a second reading, it is out of order to propose resolutions in a com-

1 The standing orders which required that bills relating to religion and trade should originate in a committee of the whole house were repealed, 29th Feb. 1888, 143 C. J. 75. The resolution of session 1771, which required that legislation for the infliction of capital punishment should originate in committee, 33 ib. 417, is obsolete; see chairman's ruling, 21st March, 1861, 162 H. D. 3 s. 201.
2 81 C. J. 44; 123 ib. 160. 176; 144 ib. 115, 383; 145 ib. 198. 263.
3 80 ib. 471; 103 ib. 981; Blackwater Bridge, 1873, 128 ib. 249.
4 113 ib. 285.
5 111 ib. 87.
6 149 H. D. 3 s. 853, 1654; 113 C. J. 135. 235.
7 185 ib. 214. 1203.
mittee, having the same legislative objects, until the order for the second reading of the bill is discharged.¹

In preparing bills, care must be taken that they do not contain provisions which are not authorized by the order of leave, that the prefatory paragraph prefixed to a bill which defines the object thereof, known as the title of a bill, corresponds with the order of leave,² and that the bill itself is prepared pursuant to the order of leave,³ and in proper form; for, if it should appear that these rules have not been observed, the house will order it to be withdrawn.⁴

Such objections, however, should be taken before the second reading; for it is not the practice to order bills to be withdrawn, after they are committed,⁵ on account of any irregularity which can be cured while the bill is in committee,⁶ or on recommitment. Amounts of salaries, tolls, rates, or other charges, and dates, formerly left in blank, are printed in italics.

A bill may be presented during the same sitting as that in which it is ordered, or at a subsequent sitting, whilst the house is not engaged in the transaction of business. It is presented by one of the members who were ordered to prepare and bring it in.⁷ The member who has obtained leave for a bill, should take the draft to the Public Bill Office for inspection, and transmission to the printer, where he will receive the form for the presentation of the bill to the house. To do so, in pursuance of the order, 10th December, 1692,⁸ he goes from his place to the bar of the house. The Speaker thereupon calls upon him by name: he answers,

¹ 149 H. D. 3 s. 1595.
² 102 C. J. 832; 103 ib. 522.
³ Poor Removal (Ireland) Bill, 25th April, 1883; 138 ib. 161. Speaker's ruling, Registration of Electors Bill, 23rd March, 1893.
⁴ 80 ib. 329; 82 ib. 325; 48 ib. 261; 92 ib. 254. A clause relating to the qualification of members having been embodied in a bill for regulating expenses at elections, the bill was consequently withdrawn by order, 90 ib. 411.
⁵ Objection being taken after report, and recommitment of the Income Tax and Inhabited House Duties Bill, 1871, that the bill comprised provisions beyond the order of leave, and that the second reading had been agreed to under a misapprehension of its contents, the bill was withdrawn, 9th and 11th May, 1871; 206 H. D. 3 s. 631.
⁶ 71 ib. 403.
⁷ 33 C. J. 255.
⁸ 10 ib. 740.
"a bill, sir;" and the Speaker desires him to "bring it up;" upon which he carries the bill to the table, and delivers it to the Clerk of the house, who reads the short title aloud; when the bill is said to have been "received by the house." After a bill has been received in either house, a question is put, "That the bill be now read the first time," which is rarely opposed, either in the Lords or Commons; and in the Commons can only be opposed by a division, as, under standing order No. 31, "when a bill is presented, or is brought from the Lords, the questions, 'that the bill be now read a first time;' and 'that the bill be printed,' shall be decided without amendment or debate."

Bills sent from the House of Lords to the Commons are read the first time, and a day is fixed for the second reading, upon motion made without notice either before the commencement or after the close of public business (see p. 235). This motion is one of those formal motions for the transaction of business which, by usage, are not opposed, and are made, without objection, during the time of unopposed business. Opposition to the first reading of a Lords' bill is regulated by standing order No. 31.

It is to be observed that when the question for the first reading of a bill is negatived, the house merely determines that the bill shall not now be read; and the question may therefore be repeated on a future day.

It was formerly the practice for the Clerk, on the first reading, to read to the house, first, the title, and then the bill itself; after which the Speaker read the title, and opened to the house the effect and substance of the bill, either from memory or by reading his breviate, which was filed to the bill; and sometimes he even read the bill itself.

According to present usage, when the Clerk at the table has read the title of a bill placed upon the notice paper of the house among the orders of the day, the order of the

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1 See 1 C. J. 223.  
2 Lords' standing order No. 37; 88 C. J. 614; 136 ib. 100. [Bill read a first time on division.]  
3 The County Elections Bill, 1852, was twice negatived, 107 ib. 174. 201; Notices, 7th May, 1852 (p. 396).  
4 1 C. J. 380. 456.  
5 Order and Course of Passing Bills in Parliament, 4to. 1641; 1 C. J. 298.
FIRST READING OF BILLS.

house that a bill be read has been complied with; and attempts to obtain that a bill should be read to the house clause by clause, have been overruled by the Speaker.\(^1\) The practice of affixing a breviate or brief to every bill, prevailed during the greater part of the seventeenth century;\(^2\) and at present a member bringing in a bill may prepare a memorandum explanatory of the contents and objects of the bill, but containing nothing of an argumentative character, which, when revised in the Public Bill Office, will be printed and circulated with the bill.\(^3\)

When the bill has been read a first time, the question next put in the Commons is, "That the bill be read a second time." The second reading, however, is not usually taken at that time, and a future day is named, on which the bill is ordered to be read a second time.\(^4\) The bill is then ordered to be printed, in order that its contents may be published and distributed to every member before the second reading.\(^5\) Unreasonable delay ought not to be allowed in the printing of a bill after its introduction;\(^6\) though the fact that the bill remains unprinted does not justify a motion that the order for the second reading be read and discharged.\(^7\) If a bill has not been printed when it is called on for second reading, the postponement of the bill is the usual course; though, as no rule forbids the second reading of an unprinted bill, a member is in order in moving its second reading; and it is for the house to determine whether, under the circumstances, the bill should be read a second time.\(^8\)

In the Lords, the questions for the printing and second reading of a bill on a future day are

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1. 178 H. D. 3 s. 181; 192 ib. 322.
2. 6 C. J. 570.
3. Mr. Speaker’s order, March, 1882, 260 H. D. 3 s. 423; 289 ib. 1513.
4. An amendment, proposing to add “upon this day six months” to this question, is out of order, 279 ib. 519.
5. Copies of indemnity bills, and of Consolidated Fund and appropriation bills, are not circulated, but are obtainable by members, 118 ib. 134; resolution 24th March, 1863, 118 C. J. 134; see also p. 560.
6. Speaker’s ruling, 22nd May, 1873, 216 H. D. 3 s. 276; 235 ib. 1429; 240 ib. 859.
7. 279 H. D. 879.
8. 239 H. D. 3 s. 609; 256 ib. 776; 277ib. 510; 289 ib. 1834; 9th March, 1892, 2 Parl. Deb. 4 s. 376. 385.
rarely put: but are entered in the minutes, upon an intimation from the peer who has charge of the bill.

After a bill has been presented, and read a first time, it is not regular to make any other than clerical alterations in it.\(^1\) On the 28th March, 1873, notice being taken that the University Tests (Dublin) Bill had been materially altered since the first reading, the Speaker ruled that, after the first reading, a bill was no longer the property of the member himself, but passed into the possession of the house. The order for the second reading was accordingly discharged, and the bill withdrawn.\(^2\)

There is no rule or custom which restrains the introduction of two or more bills relating to the same subject, and containing similar provisions.\(^3\)

If it appears, after the first reading, that a public bill affects private rights, notice of this circumstance is sent from the Public Bill Office to the member in charge of the bill; and the examiners of petitions for private bills are ordered to examine the bill with respect to compliance with the standing orders relative to private bills: but the reference to the examiners does not affect the order for the second reading of the bill, which remains upon the notice paper, though the second reading cannot be moved until the examiners have reported on the bill.\(^4\)

If the examiners report that the standing orders have been complied with, or the select committee on standing orders report that the bill may be proceeded with, the bill is read a second time, and committed to a select committee, nominated partly by the house and partly by the committee of selection;\(^5\) and the committee may be empowered to hear suitors, their agents, and counsel, for and against the bill; and the bill, when reported from the select committee, is recommitted to a committee of the whole house, and is subsequently treated as a public bill.

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\(^1\) 108 H. D. 3 s. 969.  
\(^2\) 215 ib. 303. 305.  
\(^3\) 268 ib. 1656; 278 ib. 93. Borough Franchise (Ireland) Bill, 1883; Criminal Law Bills, 1883, &c.  
\(^4\) 306 ib. 425.  
\(^5\) Regarding motions to discharge these members from attendance, see pp. 382. 383.
If the examiner of petitions for private bills reports that the standing orders applicable to the bill have not been complied with, and the select committee on standing orders report that such non-compliance ought not to be dispensed with, the order of the day for the second reading of the bill is read and discharged, and the bill is withdrawn.

Public bills which affect private rights, thus combining the characteristics of a public and a private bill, are termed in practice "hybrid bills," and are subject, as also are petitioners against the bill, to the payment of fees in respect of a private bill.

It may become necessary, before the second reading of a bill, to make considerable changes in its provisions, which can only be accomplished, at this stage, by discharging the order for the second reading, and withdrawing the bill. If a change of title be necessary, the practice is to order the bill to be withdrawn, and to move subsequently for leave to bring in another bill: but where the bill is withdrawn, for the purpose of making numerous amendments, without any change of title, a simpler form of proceeding is adopted. Upon the withdrawal of the first bill, a motion is made forthwith that leave be given "to present another bill instead thereof." 1 Debate on the merits of a bill is not permitted on a motion for its withdrawal, and must be germane to the motion. 2 A bill has been withdrawn, and another bill ordered, after reading the resolution upon which the first bill was founded. 3

By a standing order of the House of Lords, No. 37, the name of the lord who moves the second reading of any public bill is entered on the journals; and the name of the lord presenting a public bill, and of the lord who gives notice to the clerk assistant that he intends to move the

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1 69 C. J. 369; Fisheries (Ireland) Bill, 1853, 248 H. D. 3 s. 1119; 108 C. J. 612; 143 ib. 94; 144 ib. 407; Forged Transfers Bill, 146 ib. 266.
2 226 H. D. 3 s. 860; 337 ib. 1167; 339 ib. 1493.
3 131 C. J. 128. By old parliamentary rule, a bill brought from the other house should not be withdrawn. This rule is still observed in the Lords; not so of late years in the Commons.
second reading of a public bill brought up from the Commons are printed in the minutes of proceedings.¹

The day having been appointed for the second reading, the bill stands upon the notice paper, amongst the other orders of the day, and is called on in its proper turn, when that day arrives. The second reading is the most important stage through which the bill is required to pass; for its whole principle is then at issue, and is affirmed or denied by a vote of the house;² though it is not regular on this occasion to discuss, in detail, its several clauses,³ and this principle has been enforced on other stages of a bill.⁴ The member who has charge of the bill moves, "That the bill be now read a second time;" and takes this opportunity of enforcing its merits. Debate on the stages of a bill should be confined thereto, and should not be extended to a criticism of the provisions of other bills then before the house relating to the same subject: but the Speaker remarked, when called upon to enforce this rule, that on many such occasions some licence was conceded to honourable members who addressed the house;⁵ and the rule is occasionally relaxed (see p. 300). The opponents of the bill may vote against the question that the bill "be now read a second time:"⁶ but this course is rarely adopted, because it still

¹ A question arose whether the motion for the second reading of the Medical Relief Disqualification Removal Bill should stand in the name of the Earl of Minto or of the Earl Granville; and on motion, it was agreed that the Earl of Minto should have precedence, 27th July, 1885, 300 H. D. 8 s. 27; 117 L. J. 414.

² Instances of protracted debate on the second reading of bills: 1851, Ecclesiastical Titles Assumption Bill, seven sittings; 1881, Land Law (Ireland) Bill, eight sittings; 1884, Representation of the People Bill, six sittings; 1886, Government of Ireland Bill, twelve sittings; 1887, Criminal Law (Amendment) Ireland Bill, seven sittings; 1888, Local Government (England and Wales) Bill, six sittings; 1890, Purchase of Land and Congested Districts (Ireland) Bill, five sittings; 1893, Government of Ireland Bill, twelve sittings.

³ 233 H. D. 3 s. 33; 237 ib. 1593; see also debate on an Expiring Laws Continuance Bill, 321 ib. 38.

⁴ 223 ib. 35; 224 ib. 1297; 225 ib. 684, 1688; 282 ib. 1106; 296 ib. 396.

⁵ 37 C. J. 354; 99 ib. 488; Church Rates Redemption Bill, 6th May, 1863; Judgments Law Amendment Bill, 13th May, 1863; 118 ib. 296. 221, 222. In former times, when the question for now reading a bill a second time has been negatived, it has been followed by an order for
remains to be decided on what other day it shall be read a second time, or whether it shall be read at all; and the bill, therefore, is still before the house, and may afterwards be proceeded with.  The ordinary practice is to move an amendment to the question, by leaving out the word "now," and adding "three months," "six months," or any other term beyond the probable duration of the session. The postponement of a bill, in this manner, is regarded as the most courteous method of dismissing the bill from further consideration, as the house has already ordered that the bill shall be read a second time; and the amendment, instead of reversing that order, merely appoints a more distant day for the second reading. The acceptance by the house of such an amendment being tantamount to the rejection of the bill, if the session extends beyond the period of postponement, a bill which has been ordered to be read a second time upon that day "three months," is not replaced upon the notice paper of the house. The same form of amendment is adopted when it is desired to postpone the second reading for any shorter time.

It is also competent to a member who desires to place on record any special reasons for not agreeing to the second reading of a bill, to move, as an amendment to the question, 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

1 Parliamentary Electors Bill, 102 ib. 822. 837. 872. 901; 322 H. D. 3 s. 1496; Church Rates Commutation Bill, 118 C. J. 206. 222; Dublin, Wicklow, &c., Railway Bill (on consideration), 142 ib. 394. 402.
2 Poor Removal (Ireland), No. 2 and Beer Adulteration bills, 1882, 137 ib. 206. 354.
3 Corn Importation Bill, 1842, 97 ib. 113; Property Tax Bill, 1842, 27 ib. 321; Factories Bill, 1844, 99 ib. 265; Bank Charter Bill, 1844, ib. 396; Sugar Duties Bill, 1844, ib. 421; Poor Law Amendment Bill, 1844, ib. 468; Lunatics Bill, 1845, 100 ib. 721; Representation of the People Bill, 1859, 114 ib. 125. In this case, the Speaker stated that in the time of his predecessor, between forty and fifty such resolutions had been moved as amendments to stages of bills, 158 H. D. 3 s. 1006; Army Discipline Bill, 1873, 134 C. J. 141; Arrears of Rent (Ireland) Bill, 1882, 137 ib. 220. 337; 142 ib. 162, &c.
4 Inhabited House Duty Bill, 1851,
opposed to its progress;\(^1\) or seeking further information in relation to the bill by committees,\(^2\) commissioners,\(^3\) the production of papers or other evidence,\(^4\) or, in the Lords, the opinions of the judges.\(^5\) The principle of relevancy in an amendment (see p. 278) governs every such proposed resolution, which must, therefore, "strictly relate to the bill which the house, by its order, has resolved upon considering,"\(^6\) and must not include in its scope other bills then standing for consideration by the house. Nor may such an amendment deal with the provisions of the bill upon which it is moved, nor anticipate amendments thereto which may be moved in committee.\(^7\) When such a resolution amounts to no more than a direct negation of the principle of the bill, it is an objectionable form of amendment:\(^8\) but there are special cases for which it may be well adapted. On the 21st February, 1854, an amendment was made to the question for reading the Manchester Education Bill a second time, that "education to be supported by public rates, is a subject which ought not, at the present time, to be dealt with by any private bill," which gave legitimate expression to the opinion of the house.\(^9\) Amendments, however, to the question for the second reading of

\(^{1}\) Australian Colonies Government Bill, 1850, 105 ib. 334; Government of India Bill, 23rd June, 1853, 108 ib. 609; Representation of the People Bill, 1866, 121 ib. 213; Elementary Education Bill, 1876, 131 ib. 262; Valuation of Property Bill, 1877, 132 ib. 86; Customs and Inland Revenue Bill, 1878, 133 ib. 182, &c.

\(^{2}\) 82 L. J. 284; 83 ib. 201; 85 ib. 279; 88 ib. 337; 95 C. J. 476; 98 ib. 354. 398; 99 ib. 31; 104 ib. 384; 105 ib. 139; 110 ib. 238.

\(^{3}\) 93 ib. 469 (Amendment for an Address); 100 ib. 719.

\(^{4}\) 88 L. J. 543; 102 C. J. 865; 106 ib. 382; 107 ib. 186; 137 ib. 77.

\(^{5}\) Bank Charter Bill, 1833, 65 L. J. 618.

\(^{6}\) Report on Public and Private Business, 1837 (No. 517), p. 5; 143 H. D. 3 s. 643; 269 ib. 961.

\(^{7}\) 192 ib. 1571. A resolution proposed, 11th June, 1873, upon the second reading of the Roads and Bridges (Scotland) Bill, that the house declines to entertain any legislation involving the compulsory imposition of local burthens, &c., was held to affect other bills as well as that under consideration, and was therefore restricted to that bill only, 128 C. J. 270.

\(^{8}\) Jewish Disabilities Bill, 1848, 103 ib. 414.

\(^{9}\) 109 ib. 90.
a private bill, which seek to substitute for that question a resolution declaring the opinion of the house on a matter of public or general policy, are out of order.¹

It must be borne in mind, however, that the resolution, if agreed to, does not arrest the progress of the bill, the second reading of which may be moved on another occasion. The effect of such an amendment is merely to supersede the question for now reading the bill a second time; and the bill is left in the same position as if the question for now reading the bill a second time had been simply negatived ² or superseded by the previous question. The house refuses, on that particular day, to read the bill a second time, and gives its reasons for such refusal: but the bill is not otherwise disposed of.³ Such being the technical effect of a resolution, so carried, it need scarcely be said that its moral and political results vary according to the character and importance of the resolution itself, the support it has received, and the means there may be of meeting it, in the further progress of the bill. Thus the amendment to the second reading of the Conspiracy to Murder Bill, in 1858, being also a vote of censure, was not only fatal to that measure, but caused the immediate fall of Lord Palmerston's ministry. Again, the amendment to the second reading of the Reform Bill of 1859, was decisive as to that measure, and led to a dissolution. So, on the 22nd July, 1872, a resolution being carried, on the Thames Embankment (Land) Bill, that, having regard to the advanced period of the session and the pressure of more important business, it was not expedient to proceed further with the consideration of the bill, the bill was necessarily abandoned.⁴ But where the resolution relates to a matter which is incidental to the legislation intended by the bill, such a reso-

² 244 H. D. 3 s. 1384.
³ In 1861, the second reading of the Marriage Law Amendment Bill having been superseded by a resolution, the Speaker, on an appeal from its mover, suggested that the best course would be to withdraw the bill and introduce another in harmony with the expressed opinion of the house, 162 lb. 892.
⁴ See also the case of the resolution moved on consideration of the East Indian Railways Bill, 1st July, 1879, 134 C. J. 308.
lution does not arrest its progress, provided the principle affirmed can be considered at a further stage. Thus, on the 6th May, 1872, on going into committee upon the Education (Scotland) Bill, a resolution was carried, affirming that instruction in the holy scriptures was an essential part of education, and ought to be provided for in the bill. To give effect to this resolution, an amendment was moved in committee: the amendment was negatived; and thus the resolution of the house was practically reversed,—a proceeding, however, in strict conformity with parliamentary usage. In the Lords, resolutions relating to a bill have been moved separately, before the order of the day, and not by way of amendment,—a course which would be incompatible with the rules of the House of Commons.

Sometimes the previous question is moved on the second reading of a bill (see p. 269); though the use of that form is open to the same objection as a simple negative of the second reading, as the bill is not disposed of, but may be appointed to be read on another day.

It may here be stated, that if, when the order of the day is read at the table, no motion be made for the second reading or other stage of a bill, or for its postponement, it becomes a dropped order, and does not appear again upon the notice paper, unless another day be appointed for its consideration. If a bill has been read a second time by mistake or inadvertence, the proceedings have been declared null and void, and another day has been appointed for the second reading.¹

A motion that a bill be rejected, formerly not uncommon, is not consonant with established practice.² In more ancient times, bills were treated with even greater ignominy. On the 23rd January, in the 5th Elizabeth, a bill was rejected and ordered to be torn; so, also, on the 17th March, 1620, Sir Edward Coke moved "to have the

¹ Supreme Court of Judicature 1859, 114 C. J. 139; 153 H. D. 3 s. Bill (Lord Redesdale), 2nd May, 816.
1873, 215 H. D. 3 s. 1396.
² Masters and Operatives Bill, 37 C. J. 444; 80 ib. 425.
bill torn in the house;” and it is entered that the bill was accordingly “rejected and torn, without one negative.”

And even so late as the 3rd June, 1772, the Lords having amended a money clause in the Corn Bill, Governor Pownall moved that the bill be rejected, which motion being seconded, the Speaker said “that he would do his part of the business, and toss the bill over the table.” The bill was rejected, and the Speaker, according to his promise, threw it over the table, “several members on both sides of the question kicking it as they went out.”

The second reading is the stage at which counsel have been heard, when the house has been of opinion that a public bill was of so peculiar a character as to justify the hearing of parties whose interests, as distinct from the general interests of the country, were directly affected by it. It is a general principle of legislation, that a public bill, being of national interest, should be debated in Parliament upon the grounds of public expediency; and that the arguments on either side should be restricted to members of the house, while peculiar interests are represented by the petitions of the parties concerned. Questions of public policy can only be discussed by members; but where protection is sought for the rights and interests of public bodies, or others, it has not been unusual to permit the parties to represent their claims, either in person or by counsel. Counsel have also been heard at various other stages of bills, as well as on the second reading. In the case of bills of pains and penalties, disabilities, or disfran-

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1 1 C. J. 63. 252. 262. 311. 560.
2 17 Parl. Hist. 512–515.
3 Cotton Factories Bill, 1818, 51 L. J. 662; 88 C. J. 501; 90 ib. 587, &c.; Municipal Corporations Bill (Lords), 1833; Warwick Borough Bill (Lords), 1834; Stafford Disfranchisement Bill (Lords), 1836; Canada Government Bill (Commons), 1838, Mr. Roebuck; Jamaica Bill (Commons), 22nd and 23rd April, and 7th June, 1839; and (Lords), 28th June; Ecclesiastical Duties and Revenues Bill (Lords), 1840; Sudbury Disfranchisement Bill (Lords), 1842 and 1844; Newfoundland Fisheries Bill, 1891, 352 H. D. 3 s. 1131; 128 L. J. 158; 146 C. J. 308. 313.

For explanations of the principle upon which Parliament has permitted counsel to be heard against public bills and precedents cited, see Lords’ Debate on Australian Colonies Bill, 10th June, 1850, 111 H. D. 3 s. 943.
chisement, it has been usual to order a copy of the bill, and the order for the second reading, to be served upon the parties affected, and to hear them by counsel. The attorney-general has also been ordered to appoint counsel to manage the evidence, at the bar of the house, in support of the bill, or to take care that evidence be produced in support of the bill.

When a bill has been read a second time, a question is put, "That this bill be committed," which, in the House of Commons, cannot be opposed, being a mere formal sequel to the second reading (see p. 210); and a day is named for the committee. Notices of amendments to a bill in committee are not receivable at the table, until the bill has been read a second time. On the order of the day being read for the committee, it is moved in the Lords, "That the house be now put into committee on the bill;" to which an amendment may be moved, that the house be put into committee on a future day, beyond the probable duration of the session. When the order of the day is read in the Commons, for the house to resolve itself into a committee on the bill, the Speaker, pursuant to standing order No. 51, unless a member rises to move an instruction which stands upon the notice paper, leaves the chair forthwith. When the order of the day for committee on a bill is read, the member in charge thereof can move that the order be discharged, and the bill referred to a select committee. If that motion is moved by another member, the member in charge of the bill, if he objects to that course, can express his desire that the Speaker should leave the chair, which the Speaker would do forthwith, pursuant to standing order No. 51.

The Lords occasionally, as in the case of Consolidated Fund bills, when the bill has been read a second time, negative the committee stage, and proceed at once to the third reading. Numerous instances of this practice are to be found upon the journals of the House of Commons, until

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1 Wilson's Disabilities Bill, 1737; Rumbold's Pains and Penalties Bill, 1782; Queen's Degradation Bill, 1820 (Lords).
2 Rumbold's Bill, 7th May, 1782.
3 O'Sullivan's Disabilities Bill, 5th May, 1869, 124 C. J. 180.
the year 1786, in the case of urgent bills, acts of grace, and
even in taxation bills, when there were no blanks to be
filled up, and no amendment was tendered to the bill.
The bill recognizing King William and Queen Mary, and for
avoiding all questions touching the Acts made in the
Parliament assembled at Westminster on the 13th February,
1688, was, perhaps, the most important bill treated in this
manner.1

Before the house resolves itself, for the first time, into a
committee of the whole house upon a bill, an instruction
may be given to the committee, empowering them to make
provision for matters which would exceed a fair interpretation
of the rule concerning relevant amendments.

To explain the principles that govern the proposal of
instructions to committees of the whole house, it must be
borne in mind that, under the parliamentary usage in force
in former times, an amendment might be wholly irrelevant
to the motion or bill to which it was proposed (see p. 278),
and that consequently to a bill in its progress through the
house, clauses might be added relating to any matters how-
ever various and unconnected, whether with each other or
with the bill as originally drawn. A reaction from such
laxity of procedure led to the establishment of rules and
practice which imposed on the House of Commons an in-
convenient rigidity in dealing with a bill. No amendment
could be moved which was not strictly within the scope of
the prefatory paragraph, known as the title, which is pre-
fixed to every bill, and describes its object and scope. To
obviate the difficulty thus created, the house, in 1854, by
standing order No. 34, gave a general instruction to all
committees of the whole house to whom bills were committed,
which empowered them to make such amendments therein
as they should think fit, provided that the amendments were relevant to the subject-matter of the bill; and, if such amendments were not within the title of the bill, the title was to be amended, and reported specially to the house.

This general and standing instruction to committees on bills meets all ordinary occasions. Amendments to bills may, however, be offered which exceed the operation of standing order No. 34, and which, without a special instruction from the house, could not be considered by the committee.

In entertaining an instruction, the house is subject to this primary condition, namely, that the amendments to be sanctioned by an instruction must come within a fair interpretation of the rule laid down by standing order No. 34, namely, that those amendments should be relevant to the subject-matter of the bill. Thus as the subject-matter of a bill, as disclosed by the contents thereof, when read a second time, has, since 1854, formed the order of reference which governs the proceedings of the committee thereon, it follows that the objects sought by an instruction should be pertinent to the terms of that order; and that the amendments, which an instruction proposes to sanction, must be such as would further the general purpose and intention of the house in the appointment of the committee. The object of an instruction is, therefore, to endow a committee with power whereby the committee can perfect and complete the legislation defined by the contents of the bill, or extend the provisions of a bill to cognate objects; and an attempt to engraft novel principles into a bill, which would be irrelevant, foreign, or contradictory to the decision of the house taken on the introduction and second reading of the bill, is not within the due province of an instruction. Accordingly, an instruction can be moved that authorizes the introduction of amendments into a bill which extends its provisions to objects not contained therein, if those objects are relevant to the subject-matter thereof, or which would augment the legislative machinery whereby the bill is to be put into force, as shown by the examples contained in the Appendix, class 1, p. 839; whilst, on the
other hand, no instruction is permissible which is irrelevant, foreign, or contradictory to the contents of the bill, or that seeks the subversion thereof, by substituting another scheme for the mode of operation therein prescribed (see Appendix, class 3, p. 841).

An amendment to an instruction must be strictly relevant thereto, and must be drawn in such a shape that, if accepted, the question as amended would retain the form and effect of an instruction.¹

An instruction is necessary to enable a committee to divide a bill into two or more bills, to consolidate two bills into one bill,² or to give priority to the consideration of a portion of a bill, with power to report the same separately to the house;³ and instructions have been given to committees of the whole house, on the presentation of a petition, empowering the committee to hear counsel and examine witnesses.⁴ An instruction also may be required to render the provisions of a bill bearing a limited title applicable to the whole of the United Kingdom, or otherwise to extend the operation of a bill beyond the limits defined in the title⁵ (see Appendix, class 4, p. 842).

A motion for an instruction which seeks to confer upon a committee of the whole house power to make amendments in a bill that is already possessed by the committee, is out of

¹ 21st Feb. 1893, Liverpool Corporation Bill; Mr. T. P. O'Connor’s amendment; Speaker’s ruling (private).
² Representation of the People and Redistribution of Seats Bill, 28th May, 1866, 183 H. D. 3 s. 1319. For other precedents, see 73 L. J. 188; 85 ib. 294; 107 C. J. 140. 228; 108 ib. 645; 116 ib. 376 (three bills); 124 ib. 194. 246; 125 ib. 246; 126 ib. 114; 127 ib. 230; 144 ib. 319. 339; 205 H. D. 3 s. 977.
³ Purchase of Land, &c. (Ireland), Bill, 1890, 146 C. J. 30.
⁴ Corn Regulation Bill, 1791, 46 ib. 466; Sinecure Offices Bill, 1812, 67 ib. 309; Apprentices Bill, 1814, 69 ib. 333; Peurryn Bribery Bill, 1819, 74 ib. 441; Silk Trade Bill, 1824, 79 ib. 180; Coventry Magistracy Bill, 1827, 82 ib. 536; East Retford Disfranchisement Bill, 1828, 83 ib. 122; Liverpool Franchise Bill, 1832; Municipal Corporations Bill, 1835, 67 L. J. 329; Gaming Actions Discontinuance Bill, 1844, 76 ib. 550. 553; St. Albans Disfranchisement Bill, 1851, 84 ib. 101. Motion for hearing the electors of Lancaster before the committee on the Representation of the People Bill, 1867, 186 H. D. 3 s. 982.
⁵ The Chairman, in default of such an instruction, has declined to put the question on a new clause, 142 C. J. 333; or the clause has been withdrawn, 143 ib. 500.
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No instruction to the committee of supply, see p. 571.

order (see Appendix, class 2, p. 840); nor, in the Commons, can an instruction be moved to a committee of the whole house in a form other than the permissive form, namely —"that they have power"—to consider the matter dealt with by the instruction; and this rule applies to instructions to standing or joint committees (see p. 399). No such restriction applies to instructions to select committees (see p. 378) or private bill committees (see p. 709), nor to committees of the whole house, in the Lords. To these committees a mandatory or imperative instruction, defining the course of action which they must follow, can be given by the house.

An instruction to make provisions in a bill which would entail a charge upon the people cannot be put from the chair, unless the recommendation of the Crown be given to the instruction (see p. 531). Nor can matters already decided during the current session, or which are appointed for the future consideration of the house, be brought forward by an instruction, in accordance with the general practice of the house regarding motions and debates (see p. 263).

The powers conferred by an instruction moved when a bill is committed for the first time, continue operative, if occasion should arise for the subsequent recommittal of the bill.

Notice is required, not only of an instruction, but of amendments to an instruction, which, if agreed to, would enlarge the scope of the instruction, or convert the same into a novel proposition. Nor, even in the case of an instruction to a committee on a private bill, can an amendment be proposed, without notice, to alter the form of a mandatory instruction, creating charges.

Mr. H. Gardner's Instruction, Local Government Bill, 7th June, 1888, 326 ib. 1440.

4th June, 1860, 158 ib. 1851-1854.

National Education (Ireland) Bill, 1892. Instruction and committee, 15th June; recommitted 16th June; instruction read in committee.

176 H. D. 3 s. 1940; 269 ib. 218; 317 ib. 356; Speaker's ruling, 16th Feb. 1893.

27th Feb. 1891, 350 ib. 1825.

1 195 H. D. 3 s. 847; 207 ib. 402.
If such an instruction has been proposed from the chair, on notice taken, the Speaker declines to put the question thereon, 24th July, 1884, 139 C. J. 396.

2 1 Lord Colchester's Diary, 431; 2 Lord Sidmouth's Life, 144; 189 H. D. 3 s. 1070.

3 65 L. J. 551; 68 ib. 151; 71 ib. 582.

4 Conventual Establishments, 10th May, 1870, 201 H. D. 3 s. 524;
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instruction which stands upon the notice paper into a permissive instruction.¹

Debate on a motion for an instruction must be strictly relevant thereto, and must not be directed towards the general objects of the bill to which the instruction relates;² and the mover has not the right of reply.³

An instruction to a committee of the whole house can only be moved when the order of the day for the first sitting of the committee has been read (see p. 360). Instructions to committees of the whole house upon bills are also moved, when founded on the report of a committee of the whole house.⁴ In the case of bills referred to standing or select committees, an instruction can be moved when the order is made that the bill be committed, or subsequently.

When the Speaker has left the chair, the mace is removed from the table, and the committee begin the consideration of the bill.⁵ As its principle has been affirmed at the second reading, the details of the bill are examined in committee, clause by clause and line by line; for which purpose the permission to speak more than once offers great facilities.

In the Lords, the first proceeding of the committee is to postpone the title, which is there treated as a part of the bill; but in the Commons the title, if it requires amendment, is dealt with on the third reading. The preamble is next postponed in a Lords’ committee; and on the 29th June, 1869, in committee on the Irish Church Bill, a long debate was raised upon the postponement of the preamble, which was, however, agreed to without a division;⁶ whilst in the Commons, by standing order No. 35, the preamble stands postponed until after the consideration of the clauses, without question put.

This practice is adopted because the house has already

¹ 5th Dec. 1890, 349 H. D. 3 s. 667.
² 12th Aug. 1889, 389 ib. 1073.
³ 10th April, 1867, 186 ib. 1443.
⁴ 105 C. J. 683.
⁵ Standing order No. 33, which empowers the reference of several bills to one committee, has become unused, owing to the operation of standing order No. 51 (see p. 451).
⁶ 197 H. D. 3 s. 689.
affirmed the principle of the bill on the second reading, and it is therefore the province of the committee to settle the clauses first; and then to consider the preamble in reference to the clauses only. By this rule the preamble is made subordinate to the clauses, instead of governing them.

The chairman proceeds to read the number of each clause, which is thus brought under the consideration of the committee; and to call on the members who have given notice of amendments. A member is not at liberty to speak generally upon a clause, upon its being called by the chairman, there being no question before the committee until an amendment has been moved, or a question put that the clause stand part of the bill.\(^1\) If no amendment be offered to any part of a clause, the chairman at once puts the question, "That this clause stand part of the bill," and proceeds to the next: but when an amendment is proposed, he states the line in which the alteration is to be made, and puts the question in the ordinary form. Members who are desirous of offering amendments in committee should watch carefully the progress of the bill; for if the committee have amended a later line or words in the same clause, amendments cannot be made in an earlier part of the bill. Whenever several amendments are about to be moved to the same clause, the chairman proposes each of them in such a form as not to exclude any later amendments; and with this view he often proposes only the first words of an earlier amendment:\(^2\) but if an amendment has been proposed from the chair, which, if carried, excludes amendments that other members seek to submit to the committee, the question on that amendment must be put, if the mover insists upon obtaining the decision of the committee thereon\(^3\) (see also p. 276).

Amendments may be made in every part of the bill, whether in the preamble, the clauses, or the schedules; clauses may be omitted, and new clauses and schedules

\(^1\) Representation of the People Bill, 18th June, 1866 (chancellor of the exchequer), 184 H. D. 3 s. 536.
\(^2\) 181 ib. 539; 184 ib. 445.
\(^3\) Labourers' Allotments Bill, 27th Aug. 1887, 320 ib. 200.
added; though no amendments can be moved to the granting or enacting words of money, and of other bills. Those words are part of the framework of the bill, and are never submitted to the committee. An amendment must be coherent, and consistent with the context of the bill; and when a proposed amendment had been so amended as to form an incoherent question, the chairman stated that if no further amendment were proposed, he should proceed with the question which next arose upon the clause. Amendments also cannot be moved which are based on schedules or other provisions, the terms of which have not been placed before the committee. Amendments are out of order that are—irrelevant to the bill; governed by amendments already negativated; inconsistent with, or contradictory to, the bill as agreed to by the committee; or that are tendered to the committee in a spirit of mockery; and the chairman would decline to put such questions from the chair. The chairman also, regarding an amendment offered to a bill that was limited in scope to the repeal of a clause in a statute, ruled that the amendment was out of order, because its object was the continuance and the extension of the clause to be repealed. The chairman stated that, though the committee had full power to amend, even to the extent of nullifying the provisions of a bill, they could not insert a clause which reversed the principle which the bill, as read a second time, sought to affirm.

In like manner, it is not within the scope of a committee on an expiring laws continuance bill to amend the provisions of the Acts proposed to be continued, or to abridge the duration of such provisions; nor can an amendment be moved whereby an Act still in force would be included among the provisions of a statute law revision bill, which dealt

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1 332 H. D. 3 s. 1010; 339 ib. 218. 1333. 1451. 1455; 12th June, 1882, 270 ib. 862; 296 ib. 800; 305 ib. 88; 111 C. J. 213.
2 Tithe Rent Charge Recovery Bill, 29th Jan. 1891, private ruling. 3 15th March, 1880, 251 H. D. 3 s. 1134.
4 167 H. D. 3 s. 112; 179 ib. 522; 187 ib. 1942; 188 ib. 811; 211 ib. 137. 2026; Feb. 1881, 238 ib. 1239. 5 30th July, 1874, 221 ib. 1018.
solely with statutes no longer in force.\textsuperscript{1} It has been held, however, that a committee on a bill to effect the consolidation of the law on the subject to which the bill relates may, without an instruction, amend the provisions of the statutes which by the bill are to be consolidated and fused together.\textsuperscript{2}

No amendment can properly be proposed to a clause which is irrelevant to the subject-matter of such clause: such an amendment should be moved as a new clause.\textsuperscript{3} Neither may an amendment be proposed to leave out from the word “That” to the end of the clause, in order to substitute other words,—such an amendment being in the nature of a new clause.\textsuperscript{4} In such a case the regular course is to negative the question, that the clause stand part of the bill, and to bring up a new clause, at the proper time. But when an amendment has already been made at the beginning of a clause, and it is afterwards proposed to leave out the remainder of the clause, such an amendment has been held to be regular.\textsuperscript{5} When a clause has been amended, the question put from the chair is, “That this clause, as amended, stand part of the bill;” and no other amendment can be proposed to a clause, after this question has been proposed from the chair.\textsuperscript{6} It has been ruled that when the question, “That this clause stand part of the bill,” has been put from the chair, it cannot be withdrawn, as it necessarily follows upon the consideration of the clause, and is not a motion made by any member which he could ask leave to withdraw.\textsuperscript{7}

No amendment should be admitted which is in the nature of a previous question. Clauses may be postponed, unless they have been already partly considered and amended, in

\begin{itemize}
\item \textsuperscript{1} 346 H. D. 3 s. 1618.
\item \textsuperscript{2} Procedure in a standing committee on the County Courts Consolidation Bill, 1888, and in a select committee on the Military Lands Consolidation Bill, 1892.
\item \textsuperscript{3} Divorce and Matrimonial Causes Bill, 6th Aug. 1857, 147 H. D. 3 s. 1190. 1198; Prisons Bill, 1st and 22nd March, 1878, 232 ib. 1242; 233 ib. 359; Army Discipline Bill, 19th June, 1879, 247 ib. 278.
\item \textsuperscript{4} 116 ib. 666; 196 ib. 74; 200 ib. 1057, &c.
\item \textsuperscript{5} Irish Land Bill, 1st April, 1870, 200 ib. 1057.
\item \textsuperscript{6} 147 ib. 1191.
\item \textsuperscript{7} Hypothec Abolition (Scotland) Bill, 1st April, 1879, private ruling.
\end{itemize}
which case it is not regular to postpone them;\(^1\) though if a
proposed amendment be withdrawn, the clause may be post-
poned.\(^2\) Upon a question for the postponement of a clause,
the debate is limited to the simple question of postpone-
ment, and may not be extended to the merits of the bill.\(^3\)
Postponed clauses are considered after the other clauses of
the bill have been disposed of, and before any new clauses
are brought up. But they have also been considered, under
special circumstances, after new clauses,\(^4\) or certain other
clauses,\(^5\) or some of the schedules of the bill.\(^6\) When
instructions have been given by the house for the purpose,
the committee may receive clauses or make provision in the
bills committed to them, which they could not otherwise
have considered, or they may consolidate or divide the bills
referred to them.\(^7\)

By standing order No. 37, no question is put for the
filling up of words printed in italics; and if no alteration
has been made in such words, the bill is reported without
amendment.

When a real blank has been left, if it be desired to fill it
up with words different from those first proposed, a distinct
motion is made upon each proposal, instead of moving an
amendment upon that first suggested. The chairman puts
the question upon each motion separately, and in the order
in which they were made.\(^8\) It was formerly an occasional,
but not the constant, practice to put first the motion for a
smaller sum or longer time;\(^9\) but according to later prac-
tice, this rule has not been observed in committees upon
bills. Thus, on the 18th July, 1856, in committee on the

\(^1\) 207 H. D. 3 s. 722, Elections
(Parliamentary) Bill, 25th July,
1871.
\(^2\) Supreme Court of Judicature
Bill, 8th July, 1873, 128 C. J. 340.
\(^3\) 207 H. D. 3 s. 1378; 318 ib. 145.
\(^4\) 122 C. J. 141. 149; 132 ib. 238;
142 ib. 206–210; 186 H. D. 3 s. 768.
\(^5\) 136 ib. 267.
\(^6\) Supreme Court of Judicature
Bill, 1875, 130 ib. 425.
\(^7\) The effect to which the rejection
of an instruction affects the power of
a committee in considering amend-
ments which trench upon the purport
of the rejected instruction, will be
found in the decision by the chair-
man, Tithe Rent-Charge Recovery
Bill, 1889, 339 ib. 1185. 1228.
\(^8\) 93 C. J. 204. 526; 94 ib. 465.
\(^9\) 88 ib. 617.
Vice-President of the Committee of Council on Education Bill, it was proposed to fill up the blank, for the salary of the office, with 2000L: it was afterwards proposed to fill it up with 1200L; and the question was put and decided upon the sum first proposed. Where the proposed sum has already been printed in italics, and another sum is proposed, the latter is put in the form of an amendment, without reference to the relative amount of the two proposals; and this practice is now uniformly observed.

When, pursuant to an instruction (see p. 454), two bills are to be consolidated, the preambles of the two bills are severally postponed, and the clauses of each are successively proceeded with. When a bill is to be divided into one or more bills, it is usual to postpone those clauses 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.

In the Lords, new clauses are brought up and inserted in their proper places, while the committee are going through the bill: but in the Commons, all the clauses of the bill are considered before any new clauses are brought up and added to the bill; though new clauses have been considered before postponed clauses.

The new clauses proposed by the minister, or other member in charge of the bill, are proposed before other new clauses.

If a new clause be offered, the chairman desires the member to bring it up, and it is read a first time, under standing order No. 38, without question put. A question is then put for reading the clause a second time, and, if agreed to, the clause may be amended before the question is put for adding it to the bill. The committee may divide one clause into two, or decide that the first part of a clause, or the first part of a clause with a schedule, shall be considered as an entire clause. A new clause, however, will not be entertained out of order.

1 111 C. J. 363. 2 110 ib. 223; 111 ib. 353. 3 88 L. J. 234; Representation of the People Bill, 30th July, 1867, Lords' Minutes, pp. 1277, 1279. 4 208 H. D. 3 s. 802. 5 86 C. J. 728; 87 ib. 80; 89 ib. 409; 132 ib. 235.
if inconsistent with clauses agreed to by the committee,\(^1\) if substantially the same as a clause previously negatived,\(^2\) if properly an amendment, or needing an instruction.

Schedules to a bill are considered, as a rule,\(^3\) after new clauses are disposed of, and they are treated in the same manner as clauses. When the schedules have been considered, new schedules are offered. If a schedule be disagreed to, another cannot be offered to supply its place, until the remaining schedules have been disposed of. A new schedule is brought up, read a first time and second time, amended, if need be, and added to the bill.\(^4\)

When all the clauses and schedules have been agreed to, and any new clauses or schedules added, the preamble, which had been postponed, is considered, and, if necessary, is amended so as to conform to amendments made in the bill;\(^5\) and the chairman puts the question, “That this be the preamble of the bill,” which he reads (short) to the committee. Lastly, in the Lords, the title of the bill is considered and agreed to; and in the Commons, when any amendment is to be made to the title, this is the last proceeding of the committee.\(^6\) Sometimes the short title of the bill is also amended in committee.\(^7\)

Doubts have arisen whether the committee, to whom a bill has been referred, can by amendment so change the provisions of the bill, that when it is reported to the house, the bill is in substance a bill other than that which was referred to the committee. A committee can negative every clause of which the bill committed to them is composed, and can substitute for those clauses new clauses, if relevant to the bill as read a second time, and which are otherwise in order. This course has been followed.\(^8\) On the other hand,

\(^{1}\) Municipal Elections Bill, 1859, 114 C. J. 163.

\(^{2}\) 179 H. D. 3 s. 538. See p. 853.

\(^{3}\) Schedules have been considered before new clauses. Poor Law Amendment Bill, 18th July, 1844; Turnpike Trusts (South Wales) Bill, 24th July, 1844, 99 C. J. 517. 536.


\(^{5}\) 99 C. J. 48. 154; 100 ib. 135; 104 ib. 505.

\(^{6}\) 110 ib. 223; 111 ib. 276; 112 ib. 373.

\(^{7}\) 135 ib. 360. 398.

\(^{8}\) Coroners in Boroughs Bill, 17th May, 1892, 147 ib. 259.
when, in 1856, the Partnership Amendment Bill having been committed pro forma, was extensively amended, no amendment being inserted which it was not clearly competent for the committee to entertain, when objection was taken that it had become a new bill, the minister in charge of it, while denying the alleged extent of the amendments, consented to withdraw the bill.\(^1\) And, again, on the same principle, the Speaker stated, appeal having been made to him regarding extensive alterations made by the committee on the Tithe Rent-Charge Recovery Bill, that, whilst he desired to safeguard the rights and jurisdiction of the chairman of ways and means in giving an opinion on a matter of committee procedure, though he could not, as Speaker, stop the bill on the point of order that the bill was a new bill, he unhesitatingly affirmed that the practice of the house had been, in a case of this kind, to withdraw a bill which had been so dealt with, and to introduce another bill in the amended form, on which the decision of the house could be obtained upon a second reading. The bill was thereupon withdrawn.\(^2\)

When the lord, or member, having charge of a bill desires to introduce numerous amendments, in order to improve the measure, and render it more generally acceptable to the house, he may move that the bill be committed pro forma—a course which is rarely objected to. In such cases the proposed amendments are not separately considered; nor is any question put upon the several clauses of the bill. The proceeding is entirely formal; the chairman reports the bill, with the amendments, to the house; and it is reprinted in its amended form, and recommitted for a future day. Lords’ bills are so treated in the House of Commons, like other bills. It is not, however, regular to

\(1\) 140 H. D. 3 s. 2200.

\(2\) 16th Aug. 1889, 339 lb. 1487. The Speaker has also ruled that the amendments made by a select committee to a private bill should not be so extensive as to create a bill other than the bill read a second time by the house; Toll Bridges, &c., Bill, 21st July, 1876, 230 ib. 1879. “No committee can destroy a bill, but they can lay it down.” More's Notes of Debates in the Long Parliament, 14th April, 1641; Harl. MSS.; Mr. Speaker's ruling, 176 H. D. 3 s. 99. See also p. 470.
commence the consideration of a bill in the usual way, and
to deal with the remaining clauses pro formâ: but it has
been arranged that all subsequent amendments, though put
from the chair, shall be accepted without discussion.1 The
limit beyond which these amendments should not exceed
has been explained on p. 462. When a bill, having been
committed pro formâ, is recommitted, it is considered as if
the bill had been committed for the first time.

The house is not supposed to be informed of any of the
proceedings of the committee until the bill has been re-
ported; and discussion of the clauses, with the Speaker in
the chair, is consequently irregular.

If the committee cannot go through the whole bill at one
sitting in the Lords, the chairman puts a question that the
house be resumed, which being agreed to, he leaves the
chair, and moves that the house be put into committee on a
future day; and in the Commons, the committee direct the
chairman to report progress, and ask leave to sit again.2 On
the chairman’s report, the house has occasionally thereupon
resolved itself again into the committee.3

The proceedings of a committee on a bill may be brought
abruptly to a close, by an order, “That the chairman do now
leave the chair;”4 or by a proof that a quorum is not present
(see p. 223); in which case the chairman, being without
instructions from the committee, makes no report to the
house. A bill disposed of in this manner disappears from
the order book; though it can be revived by an order of the
house (see p. 250). When a committee on a bill is revived,
its proceedings are resumed at the point at which they were
interrupted,—having been valid, and duly recorded in the
minutes, until the chairman was directed to leave the
chair.5

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1 Literary and Scientific Societies
Bill, 4th June, 1856, 142 H. D. 3 s.
939.

2 See report, “no progress,” when
several bills have been referred to a
committee, 124 C. J. 268, &c.

3 111 ib. 316; see also p. 575.

4 90 ib. 497. 562; 105 ib. 345; 111
ib. 201; 112 ib. 310; 126 ib. 339, &c.

5 Savings Banks and Friendly
Societies Bill, 31st July, 1860, MS.
Committee Minute-Book; 115 C. J.
402. 427.
When the bill has been fully considered, the chairman puts a question, "That I do report this bill without amendment," or "with the amendments, to the house;" which being agreed to, the chairman leaves the chair, understanding order No. 52, without question put, and Mr. Speaker resumes the chair; upon which the chairman approaches the steps of the Speaker's chair, and reports from the committee that "they had gone through the bill, and had made amendments," or "several amendments thereunto." If no amendments have been made, he reports, "that they had gone through the bill, and directed him to report the same, without amendment."

In the Lords, the bill is at once reported if there be no amendments: but, unless the standing orders be suspended (see p. 487), the bill cannot be further proceeded with. Standing order No. 39 also directs that when amendments are made to a bill, no report can be received from a committee of the whole house, "the same day such committee goes through the bill;" and this standing order is extended to the procedure of the Lords' standing committees (see p. 377). In the absence of the chairman of committees, leave has been given to another peer to report the amendments.¹

On the 2nd April, 1868, it was resolved, that in entering in the journals the reports of bills amended in committees of the whole house, the only name entered therewith shall be that of the lord who moves the reception of the report, and takes charge of the bill in that stage.²

In the Commons, pursuant to standing order No. 39, the chairman, at the close of the proceedings of the committee, reports the bill forthwith to the house, and any amendments thereto are received without debate, and a time is appointed for taking the same into consideration.

On the report of a bill, if no amendments have been made, the bill is immediately ordered to be read a third time (see p. 472), or a future day is appointed for the third reading. If amendments have been made by the committee, the bill as amended is usually ordered to be taken into consideration.

¹ 91 L. J. 38. ² 100 ib. 103.
on a future day; though, if the occasion should arise, the bill as amended may, upon the report thereof, be immediately considered by the house. If the title has been amended, such amendment is specially reported.¹

Bills materially amended in committee are, if it be requisite, reprinted before consideration as amended, by order made when the bill is reported to the house; though occasionally, while a bill has been in progress, the amended clauses, so far as they have been agreed to, have been printed, by direction of the Speaker, and circulated with the votes.²

By standing order No. 40, when the order of the day for the consideration of a bill, as amended in the committee of the whole house, has been read, the house proceeds to consider the same without question put, unless the member in charge thereof desires to postpone its consideration, or a motion be made to recommit the bill.

Accordingly, if these motions are not made, or if no member moves a new clause, whereof notice stands upon the notice paper, or an amendment to the bill, on this stage no question arises; and the Speaker calls upon the member in charge of the bill, who names a day for the third reading,³ or moves that the bill be read the third time.⁴

When the bill, as amended by the committee, is considered, the entire bill is open to consideration, and new clauses may be added, and amendments made. According to former usage, the amendments might be wholly irrelevant to the subject-matter of the bill.⁵ This vicious practice was, in 1888, rendered impossible by standing order No. 41, which prescribes that no amendment may be proposed to a bill on consideration, which could not have been proposed in committee without an instruction from the house.

By standing order No. 38, no clause may be offered on the report stage of a bill, unless notice thereof has been given;
and it has been held that such notice must comprise the words of the clause intended to be proposed; and where a clause has been offered, differing materially from the notice, it has not been entertained. Nor can this defect of notice be supplied by an amendment being proposed to the clause by another member; as the clause cannot be amended until it has been received and read a second time. A member has not been permitted to move a clause, of which another member had given notice. New clauses are first offered, priority being given to clauses moved by the member in charge of the bill; after which amendments may be made to the several clauses of the bill as reported by the committee. A clause that is moved on the consideration of the bill as amended is read a first time without question put; and before this stage, the member who proposes the clause may speak in support thereof. The question is then proposed from the chair, “That the clause be read a second time;” which is the proper time for opposing the clause; and the member proposing the same can address the house. If this question be affirmed, amendments may then be proposed to the clause. Amendments are offered, as in committee, in the order in which, if agreed to, they will stand in the amended clause: but if a proposed amendment be withdrawn, a prior amendment may be moved. Sometimes the motion for reading the clause a second time, and also the clause after its second reading (an amendment proposed thereto having been withdrawn), are, by leave of the house, withdrawn. The last question put by the Speaker is, “That this clause, or this clause as amended, be added to the bill;” and on this question a further debate may arise.

When the new clauses upon the notice paper have been disposed of, the Speaker calls on the members who have

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1 Oxford University Bill, 26th June, 1854, 109 C. J. 336; 134 H. D. 3 s. 694; Government of India Bill, 6th July, 1858 (Mr. Seymour); 151 ib. 1038.
2 134 ib. 694.
4 Elementary Education Bill (14th clause), 4th Aug. 1876, 231 ib. 525.
5 112 C. J. 332. 398; 125 ib. 300, &c.
6 171 H. D. 3 s. 188.
given notice of amendments to the bill, and on the members who rise in like manner, not having placed their amendments upon the notice paper. Where an amendment is proposed by leaving out a clause of the bill, a question is put, that such clause “stand part of the bill.” No amendments will be allowed which are inconsistent with the provisions of the bill which have been considered by the house; and clauses having been introduced, not relevant to the subject-matter of the bill, the bill has been recommitted in respect of those clauses.

On consideration of a bill on report, no clause or amendment may be proposed which creates a charge upon the public revenue, or upon rates or local burthens upon the people, but the bill may be recommitted in respect of any such proposed clause or amendment.

In respect of a charge upon rates or local burthens, a bill may be recommitted and considered in committee forthwith: but in the case of a clause or amendment which creates a charge upon the public revenue, it is necessary that such charge shall have been recommended by the Crown, and sanctioned by a resolution of a committee of the whole house, which has been agreed to by the house upon report.

It may be necessary to recommit a bill to a committee of the whole house, and occasionally to a select committee, before it is read a third time; and debate on this motion must be restricted to the purpose and extent of the proposed recommittal of the bill.

A bill may be recommitted: 1. Without limitation, in which case the entire bill is again considered in committee, and reported with “other” or “further” amendments. 2. The bill may be recommitted with respect to particular clauses or amendments only, or to the clauses in which amendments are proposed to be made, and the preamble.

1 113 C. J. 285. 539.
2 238 H. D. 3 s. 1597. 1628; 338 ib. 1155; 282 lb. 1198; 354 lb. 184-189.
3 119 C. J. 172. Notice taken on report that a clause has been inserted in committee by mistake; clause struck out, 109 ib. 403.
4 212 H. D. 3 s. 1277.
5 83 C. J. 538; 94 ib. 510; 143 ib. 212. 407. 427. 525.
6 Bank Notes Issue Bill, 1865, &c.; 120 ib. 304; 125 ib. 208. 346.
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3. On clauses or schedules being offered, or intended to be proposed, the bill may be recommitted with respect to these clauses or schedules. In these two latter cases no other parts of the bill are open to consideration. A bill, however, has been recommitted in respect of certain clauses, and of any new clauses relating to the subject-matter of those clauses.

4. The bill may be recommitted, and an instruction given to the committee, that they have power to make some particular or additional provision. If the member who has charge of the bill, and other members also, desire the recommittal of the bill, the former has priority in making the motion for that purpose.

A bill may be recommitted as often as the house thinks fit. Bills have been recommitted once or twice, and even six, and seven times. The proceedings on the report of a recommitted bill are similar to those already explained: and on report the bill, as amended, is taken into consideration forthwith, and is read the third time (see p. 472), or further proceedings thereon are appointed for a future day. Sometimes, after the house has ordered a bill to be read a third time on a future day, this order is discharged, and the bill recommitted; or amendments have been moved to the question for reading a bill a third time, in order to obtain the recommittal of the bill.

Notwithstanding the facilities for discussion afforded by a committee of the whole house, the details of a bill may often be considered more conveniently by a standing or by a select committee. Indeed, according to the ancient practice, all ordinary bills were committed to such committees, and none but the most important were reserved for the consideration of a committee of the whole house: but now, even though a bill has been considered by a select com-

1 106 C. J. 570; 116 ib. 121; 126 ib. 289; 127 ib. 427; 132 ib. 411.
2 179 H. D. 3 s. 826.
3 128 C. J. 360.
4 89 ib. 127; 93 ib. 605; 94 ib. 318; 107 ib. 311.
5 179 H. D. 8 s. 800.
6 83 C. J. 354; 89 ib. 286; 93 ib. 605; 94 ib. 318.
7 65 ib. 384, 396, 420; 69 ib. 420, 444, 460.
8 110 ib. 117; 111 ib. 298; 113 ib. 318, 339, 384, &c.
9 112 ib. 391; 118 ib. 167, 275.
mittee, it is recommitted to a committee of the whole house. Sometimes a bill is referred to a select committee to which other bills have been committed;\(^1\) or to committees appointed to inquire into or consider other matters;\(^2\) or two or more bills are referred to the same committee.\(^3\) When it has not been determined, until after the second reading, to commit a bill to a select committee, the order of the day for the committee of the whole house, is read and discharged, notice not being required, and the bill is committed to a select or standing committee;\(^4\) a motion which can be made, although the bill is under consideration by a committee of the whole house.\(^5\) Debate on the reference of a bill to a select committee follows the rule stated on p. 374.\(^6\) In the Lords, a bill may be committed to "a private committee of the lords present this day."\(^7\) When it is deemed advisable to take evidence, the necessary powers are given to the committee for that purpose.\(^8\)

The irregularity of the conversion, by amendments, of a bill into a new bill, by the committee to whom the bill was referred, has been considered (p. 463); though a select committee, after consultation with the Speaker, have negatived all the clauses, and the preamble of a bill; and made thereon a special report to the house.\(^9\) If the select committee should fail to report the bill, the committee may be revived, and the bill recommitted to it.\(^10\)

\(^1\) 84 L. J. 172; 92 ib. 70; 116 C. J. 146; 120 ib. 65; 129 ib. 151; 138 ib. 61, 222, &c.
\(^2\) 103 ib. 929; 105 ib. 396; 106 ib. 243; 111 ib. 59; 114 ib. 67; 115 ib. 87.
\(^3\) 119 ib. 165; 120 ib. 55.
\(^4\) 72 L. J. 355; 110 C. J. 143; 111 ib. 207; 112 ib. 387; 119 ib. 256.
\(^5\) 10 ib. 399. 400; 136 ib. 154. 236; 261 H. D. 3 s. 502; Evidence in Criminal Cases Bill, 147 C. J. 154. 225; Superannuation Acts, &c., Bill, 147 ib. 221. 264.
\(^6\) If a member, other than the member in charge of the bill, proposes that a bill which stands com-
mittted to a committee of the whole house be committed to a select committee, such motion cannot be made, if, on the order of the day being called, the member in charge of the bill claims that the house should go into committee, because, in pursuance of standing order No. 51, the Speaker is bound to leave the chair forthwith without putting any question (see p. 451).
\(^7\) 66 L. J. 150. 583.
\(^8\) 104 C. J. 253; 106 ib. 164.
\(^10\) 115 C. J. 373.
Though the power of the house of making relevant amendments in a bill, under standing order No. 34 (see p. 452), is, in terms, confined to committees of the whole house, it is acted upon by select committees, as the rules of select committees follow, as far as possible, those of the house, and of committees of the whole house.\(^1\) A select committee has, consequently, the power of considering a money clause, if duly sanctioned by a resolution (see p. 529).\(^2\)

When the bill is reported from a select committee, it is recommitted to a committee of the whole house,\(^3\) unless it be first recommitted to the same select committee.\(^4\) If, in addition to reporting the bill, with or without amendments, the committee desire to inform the house of any matters relating to the bill, they make a special report.\(^5\)

The appointment, by the committee of selection, of committees to consider public bills for confirming provisional orders or certificates of boards or commissions, and also the class of bills termed "hybrid bills," is mentioned on pp. 443, 709, 719.

In 1849, the ancient system of ingrossing bills upon parchment, after the report, was discontinued, and both houses agreed to substitute bills, printed on vellum by the Queen’s printer, for the parchment rolls.\(^6\) By the adoption of this system, the old form of question, “That this bill be ingrossed,” upon the report stage, was dispensed with.

On the third reading of a bill, such amendments as have been already described in reference to a second reading (see p. 446) may be proposed to the question for now amended by select committee. Bills reported from select committees.

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2 Electric Telegraphs Bill, 1868, 123 ib. 350; County Officers and Courts (Ireland) Bill, 1877, 134 ib. 301; MS. Minutes of Proceedings.
3 106 ib. 393; 107 ib. 199.
4 97 ib. 446; 98 ib. 487; 106 ib. 239.
5 110 ib. 298; 120 ib. 386.
reading the bill a third time. According to present usage in the House of Commons, it is not unusual to take the third reading of a bill immediately after the consideration thereof in the house upon report,¹ or upon the report of the bill from a committee of the whole house, if the bill is reported without amendment.² Bills also have been committed to a committee of the whole house immediately after the second reading, and on the report, without amendment, the bills were read the third time. Nor to the proposal from the chair of the questions consequent upon such procedure, the general concurrence of the house being accorded, is it necessary to obtain, as a preliminary, the leave of the house thereto. These facilities are, however, never accorded in the case of a bill founded on a committee resolution based on the recommendation of the Crown.

The question for the third reading may be negatived: but, as previously stated (see p. 445), such a vote is not fatal to the bill.³ In the Lords, new clauses may be added, and amendments made to the bill, at this stage; and the same practice formerly prevailed in the Commons: but, by standing order No. 42, verbal amendments only can be made to a bill on the third reading. When material amendments are desirable, the order for the third reading of the bill may be discharged, and the bill recommitted to introduce the amendments in committee. In such cases it has been customary to consider the bill as amended, and to read it a third time, immediately.⁴

A bill has been read a third time, and further proceedings upon the question, “That this bill do pass,” have been adjourned to a future day.⁵ Such a course is impossible

¹ 135 C. J. 360; 147 lb. 83. 98. 294. 369, &c.
² 97 ib. 480. 482; 107 lb. 335; 113 ib. 252; 138 ib. 435; 147 ib. 103. 106. 125. 148, &c.
³ Combination of Workmen Bill, 18th April, 1853, 108 lb. 410.
⁴ New Zealand Government Act Amendment Bill, 7th Aug. 1857, 112 ib. 384; Stamp Duties Bill, 31st March, 1890, 115 lb. 174; 144 ib. 309. 381.
⁵ After the third reading of the Queen's Degradation Bill in the House of Lords, 10th Nov. 1820, the further consideration of the bill was put off for six months, 53 L. J. 762.
in the House of Commons, as, according to established practice, that question, being practically obsolete, is invariably omitted, though the form is preserved upon the journal; and thus, according to established usage, a bill, when read the third time, has passed, and consequently the question thereon is not put from the chair. An entry is occasionally made in the journal, at the discretion of the house, that a bill was read the third time and passed, nemine contradicente.

In the Lords, the original title of a bill is amended at any stage at which amendments are admissible, when alterations in the body of the bill have rendered any change in the title necessary: but in the Commons, the original title is not amended, during the progress of the bill, to render it conformable with amendments which may have been made to the bill since its first introduction, unless the house agree to divide one bill into two, or combine two into one, or the committee have amended the title. Such amendments are accordingly offered to the title on the third reading stage of a bill. When amendments to a bill are material, the short title by which the bill is distinguished in the votes is also altered. It may be as well to recall to mind, in this place, that standing order No. 45 of the Commons directs that the precise duration of every temporary law shall be expressed in a distinct clause at the end of the bill.

By Act 48 Geo. III. c. 106, if a bill be in Parliament for

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1 Under the former procedure, the question, "That this bill do pass," has been negatived, and debate and divisions have taken place thereon, 76 C. J. 413; 80 ib. 617; 89 ib. 497; Tests Abolition (Oxford) Bill, 1864, 119 ib. 388; Reform Bill, 1831, 86 ib. 860; Ecclesiastical Titles Bill, 1851, 106 ib. 335; Succession Duty Bill, 1853, 108 ib. 692; Education (Scotland) Bill, 12th July, 1855, 110 ib. 372; 117 ib. 388.

2 238 H. D. 3 a. 1832; 289 ib. 1583.

3 Mr. Speaker’s Retirement Bill, 1857, was passed nem. con., whereon the Speaker addressed his acknowledgments to the house, 112 ib. 110. See debate and motion regarding this entry on the occasion of the Representation of the People Bill, 26th and 27th June, 1884, 139 C. J. 321. 324; 289 H. D. 3 a. 1561.

4 104 C. J. 581; 105 ib. 338; 117 ib. 378.

5 109 ib. 316; 111 ib. 309; 112 ib. 384; 116 ib. 373. 392; 135 ib. 48. 323.
the continuance of any temporary Act, and such Act expires before the royal assent is given to the bill, the Act to be continued does not lapse in the interval.

Throughout all these stages and proceedings, the bill itself continues in the custody of the Clerk or other officers of the house, and no alteration whatever is permitted to be made in it, without the express authority of the house or a committee, in the form of an amendment regularly put from the chair, and recorded by the clerks at the table or by the chairman in committee.¹

The next step is to communicate the bill to the other house. It has been already stated (p. 411) that the Lords ordinarily send their bills to the Commons by the Clerk of the Parliaments, or a clerk at the table. When the bill has originated in the Lords, "a message is ordered to be sent to the House of Commons to carry down the said bill, and desire their concurrence." If the bill has been sent up from the Commons, and has been agreed to without amendment, the Lords send a message "to acquaint them that the Lords have agreed to the said bill without any amendment," but do not return the bill: but if they have made amendments, they return the bill with a message, "that the Lords have agreed to the same with some amendments, to which their lordships desire their concurrence."

The Commons send up their bills to the Lords by their Clerk, or by one of the clerks at the table, who delivers it at the bar, to one of the clerks at the table of that house. The form of message adopted by the Commons in sending bills to the upper house is similar, mutatis mutandis, to that used by the House of Lords. The Lords, by standing order No. 38, direct "that when a bill brought from the House of Commons shall have remained on the table of this house for twelve sitting days, without any lord giving notice of the second reading thereof, such bill shall not any longer appear among the bills in progress, and shall not be further

¹ See debate, 3rd June, 1782, as to alterations alleged to have been made without authority by Mr. Burke, paymaster of the forces, in the impression of a bill for regulating the pay office, 23 Parl. Hist. 989; 3 Wraxall's Mem. 431.
Chapter XIX. Bills sent to the Other House.

proceeded with in the same session, except after eight sitting days' notice given by a lord of the second reading thereof; provided that such notice shall not be given after the first day of August." And in 1873, the Public Worship Facilities Bill, brought from the Commons, having come under the operation of this order, was accordingly removed from the minutes. But on the 20th May, the standing order was suspended in respect of that bill, which was allowed to proceed. Again, in 1879, the Common Law Procedure Bill, having fallen under the operation of this order, was revived on the 26th April, with a slight alteration in the title. In 1886, however, the Lords refused to suspend standing order No. 38 in the case of the Copyhold Enfranchisement Bill.¹

Every bill received from the Lords, except appropriation bills (see p. 562), when passed, with or without amendments, is returned to them by the Commons, the House of Lords being the place of custody for bills, prior to the royal assent.

If a bill or clause be carried to the other house by mistake, or if any other error be discovered, a message is sent to have the bill returned, or the clause expunged, or the error otherwise rectified by the proper officer.² In 1844, an amendment made by the Lords, in the Merchant Seamen's Bill, was omitted from the paper of amendments returned with the bill to the Commons. After all the amendments received by the Commons had been agreed to, they were informed by the Lords that an amendment had been omitted, by mistake, desiring their concurrence: but, at the instance of the Speaker, the Commons declined to take the amendment into consideration, and the Lords did not insist upon it.³

By standing order, No. 43, Lords' amendments to public bills are appointed to be considered on a future day, unless,

¹ 118 L. J. 261.
² 1 C. J. 132; 75 ib. 447; 78 ib. 317; 80 ib. 512; 91 ib. 639. 646; 92 ib. 572. 609; Lunatic Asylums Bill, 100 ib. 804; Poor Employment (Ireland) Bill, 101 ib. 1277; Cruelty to Animals Bill, 103 ib. 736;
³ 99 ib. 637. 638. 644; 76 H. D. 3 a. 1894.


Consideration of Lords' amendments.
S. O. 43, Appendix, p. 830.

according to ordinary usage, the house shall order that the amendments be considered forthwith; 1 though if objection be taken, the consideration of the amendments may be deferred. Occasionally, also, if the proceeding be required by the state of public business, the reading of the orders of the day has been interrupted by the communication of a Lords' message to the house (see p. 257), and the amendments to the bill thereby transmitted to the Commons have been considered forthwith. 2 Amendments more than verbal are, if it be desirable, ordered to be printed and circulated with the notice paper; and an order has been made that the bill, as amended by the Lords, be printed. 3 When the order of the day is read for considering Lords' amendments to a bill, a question is put, "That the Lords' amendments be now taken into consideration;" to which an amendment may be moved, to leave out "now," and add "this day three months," or to leave out "now taken into consideration," and add "laid aside:" 4 but generally the house proceeds to the consideration of the amendments, which, after being read a second time, are severally agreed to, or otherwise disposed of. The order for the consideration of Lords' amendments has also been read and postponed. And during the consideration of such amendments certain amendments have been read and postponed, and subsequent amendments taken into consideration. 5 Where the Lords have added a clause, leaving a blank for a penalty, the house has gone into committee on the clause, and filled up the blank. 6 When the question for agreeing to an amendment is before the house, an amendment to insert "not" is inadmissible, as that question may be voted against, and negatived, when put from the chair. 7 In debate on a Lords' amendment no reply or second speech is permitted on the motion that the

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1 110 C. J. 458, 464, &c.; 135 H. D. 3 s. 1411; 225 ib. 650.
2 8th June, 1891, 146 C. J. 340.
3 111 ib. 312. 324; 131 ib. 363.
4 118 ib. 349; 97 ib. 278; 99 ib. 572; 108 ib. 393.
5 90 ib. 624; Irish Land Law Bill, 12th Aug. 1877, 319 H. D. 3 s. 262-304; 122 C. J. 456; see also Tithe, &c., Bill, 19th March, 1891, 351 H. D. 3 s. 1470.
6 123 ib. 345; 125 ib. 398; 126 ib. 420.
7 12th Aug. 1876, 231 ib. 1176.
Chapter XIX.

house do agree or disagree thereto: ¹ debate also must be confined to the amendment, and may not extend to the general merits of the bill.²

If one house agree to a bill passed by the other, without any amendment, no further discussion or question can arise upon it; but the bill is ready to be put into the commission, for receiving the royal assent. If a bill be returned from one house to another with amendments, these amendments must either be agreed to by the house which had first passed the bill, or the other house must waive their amendments: otherwise the bill will be lost. Sometimes one house agrees to the amendments, with amendments, to which the other house agrees.³ Occasionally, this interchange of amendments is carried even further, and one house agrees to amendments with amendments, to which the other house agrees with amendments; to which, also, the first house in its turn agrees.⁴ In some cases the Lords have left out clauses or words, to which amendments the Commons have disagreed: but on restoring such clauses or words have, at the same time, proposed to amend them.⁵ A Lords' amendment has been divided, and a separate question put upon each part of it.⁶ Sometimes one house does not insist upon its amendments, but makes other amendments.⁷ When an amendment made by the Lords has been agreed to, by mistake, with an amendment, the proceedings have been ordered to be null and void, and the amendment disagreed to.⁸ An amendment made by one house to an amendment made by the other, should be relevant to the same subject-matter. And if an amendment be proposed to a Lords'

¹ 197 H. D. 3 s. 1949. ² 241 ib. 848. 1059. ³ 90 C. J. 624. 626. 629. The title of a bill has been amended, to make it conform to the Lords' amendments, 109 ib. 486. ⁴ 111 ib. 373; 112 ib. 416; 118 ib. 381. 412; 125 ib. 384; 127 ib. 158. 413; 128 ib. 128. 357; 138 ib. 478. 486. For examples of an interchange of amendments between the two houses, see the proceedings on the Land Law (Ireland) Bill, 1881, and the Arrears of Rent (Ireland) Bill, 1882. ⁵ Municipal Corporations (Ireland) Bill, 4th Aug. 1838, 93 ib. 824-826; 118 ib. 326. 365; 125 ib. 346; 127 ib. 305. 343; 128 ib. 346. 356. ⁶ Irish Church Bill, 1869, 124 ib. 332. ⁷ 125 ib. 493. ⁸ Ware, &c., Railway Bill, 1858, 113 ib. 264.
amendment, not consequent on, or relevant to, such amend-
ment, the question will not be put from the chair.¹ A
departure from this rule was permitted, under peculiar cir-
cumstances, in the case of the Bolton Police Bill, 1839: but
the Lords agreed to it with a special entry in the journal,
that it was not to be drawn into a precedent; and a protest
was signed by five very influential peers against agreeing
to the amendment.² It is also a rule, that neither house
may, at this time, leave out or otherwise amend anything
which they have already passed themselves; unless such
amendment be immediately consequent upon the accept-
ance or the rejection of an amendment of the other house.
In 1678, it was stated by the Commons at a conference,
"that it is contrary to the constant method and proceedings
in Parliament, to strike out anything in a bill which hath
been fully agreed and passed by both houses;"³ and in
allowing consequential amendments, either in the body of
the bill, or in the amendments, the spirit of this rule is still
maintained.⁴ So binding, indeed, has it been held, that in
1850, a serious oversight, as to the commencement of the
Act, having been discovered in the Pirates' Head Money Bill,
before the Lords' amendments had been agreed to, no
attempt was made to correct it by way of amendment,⁵ but
a separate Act was passed for the purpose.

Procedure on amendments by the Lords to a bill which
affect the privileges of the Commons, in regard to matters
of aid or supply, is considered elsewhere.

¹ 115 C. J. 494.
² 71 L. J. 643.
³ 1 C. J. 388; 9 ib. 547.
⁴ Municipal Corporations (Ireland) Bills, 1836, 1838, and 1840, 91 ib.
592; 93 ib. 829; 95 ib. 604; 97 ib. 577, 597; Parliamentary Voters (Ire-
land) Bill, and County Courts Extension Bill, 1850, 105 ib. 592, 596.
681; Patent Law Amendment Bill, 1854, 107 ib. 358; Oxford University
Bill, 1854, 135 H. D. 3 s. 828; Duwidge College Bill, 1857, 112 C. J.
420; Poor Law Boards (Payment of
Debts) Bill, 1859. In this case the
Commons disagreed to a clause in-
serted by the Lords, on the ground of
privilege, but inadvertently agreed
to a subsequent amendment, which
was consequent on that clause. The
Lords did not insist upon their clause,
and corrected the latter part of the bill by a consequential amendment,
114 ib. 375. Other examples will
be found, 115 ib. 394, 491, 695, 501;
117 ib. 344, 364; 121 ib. 472; 131 ib.
208, 422.
⁵ 105 ib. 471.
When it is determined to disagree to amendments made by the other house: 1. An order may be made that the bill, or the Lords' amendments, be laid aside; or the order for the consideration of the Lords' amendments may be discharged, and the bill withdrawn; 2. The consideration of the amendments may be put off for three or six months, or to any time beyond the probable duration of the session; 3. A message may be sent to communicate reasons, which are drawn up by a committee appointed forthwith for that purpose, for disagreeing to the amendments; or, 4. A conference may be desired with the other house (see p. 412).

According to established usage, when a bill has been returned by either house to the other, with amendments which are disagreed to, a message is sent, or a conference is desired, by the house which disagrees to the amendment, to acquaint the other with the reasons for such disagreement, in order to reconcile their differences, and, if possible, by mutual concessions to arrive at an ultimate agreement. If such agreement cannot be secured, the bill is lost for the session (see p. 546).

When one house agrees to amendments made by the other, or does not insist upon its own amendments, or upon its disagreement to amendments, no reasons are offered; the object of reasons being to persuade the other house, and not to justify a resolution of its own. Thus, on the 21st July, 1858, the Lords having made an amendment to the Oaths Bill, upon which they insisted, after reasons had been offered against it, at a conference: but having in the meantime passed a separate bill virtually to effect the same object—the admission of Jews to Parliament,—the Commons, in order to record the true circumstances of the case, without departing from the usage of Parliament, agreed to a resolution, "That this house does not consider

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1 110 C. J. 417.
2 111 ib. 380. 388. 94 ib. 546; 141 ib. 271.
3 106 ib. 438; 108 ib. 809. Representation of the People Bill, 1867, 122 ib. 440; Land Law (Ireland) Bill, 1881, 136 ib. 453, etc.
4 A message has been sent to the Lords that the Commons insist on their disagreement to the Lords' amendments: but the course is un-usual, 133 ib. 377.
it necessary to examine the reasons offered by the Lords for insisting upon the exclusion of Jews from Parliament, as, by a bill of the present session, their lordships have provided means for the admission of persons professing the Jewish religion, to seats in the legislature." After which a message was sent to acquaint the Lords that the house did not insist upon their disagreement, without any reasons.  

The official record of the assent of one house to bills passed, or amendments made by the other, is by indorsement of the bill in old Norman French. Thus, when a bill is passed by the Commons, the Clerk of the house writes upon the top of it, "Soit baille aux seigneurs." When the Lords make amendments, it is returned with an indorsement, signed by the Clerk of the Parliaments, "A ceste bille avesque des amendemens les seigneurs sont assentus." When it is sent back with these amendments agreed to, the Clerk of the House of Commons writes, "A ces amendemens les communes sont assentus;" and bills are communicated by the Lords to the Commons with similar indorsements, mutatis mutandis. When amendments are disagreed to, such disagreement is not indorsed upon the bill, but forms the subject of a message.

If amendments made by the Lords are agreed to by the Commons, the latter return the bill with the message signifying their agreement. If amendments made by the Commons are agreed to by the Lords, their lordships send a message, but retain the bill for the royal assent (see p. 475).

When bills have been finally agreed to by both houses, they only await the royal assent to give them, as Lord Hale says, "the complement and perfection of a law;" and from that sanction they cannot legally be withheld. So binding is this principle, that doubts have arisen whether a Commons' bill may be read a third time and passed by the

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1 113 C. J. 332.  
2 In his absence, the clerk assistant is authorized to indorse bills.  
3 This message has been received by the Commons after the royal assent has been given to the bill, 2 Hatsell, 591.  
4 Jurisd. of Lords, c. 2.  
Lords, without amendment, after a commission has been submitted to the Queen, and before it is brought down to Parliament. For this reason, procedure on third readings and on Lords' amendments has been postponed: but this has not been an invariable practice. On the 3rd June, 1856, the Commons having adjourned, for want of forty members, before a commission was received, another commission was appointed for the 5th, and in the mean time intimation was given that no bills should be returned to the Lords agreed to without amendment, or with Lords' amendments agreed to, until after the commission, lest it should become necessary to alter the commission, so as to embrace them. For the purpose of obtaining the royal assent, bills remain in the custody of the Clerk of the Parliaments, except money bills, which are returned to the Commons before the royal assent is given; and when the necessity arises, the lord chancellor has notice that a commission is wanted. The Clerk of the Parliaments then prepares two sets of the titles of all the bills, each title being stated on a separate piece of paper: one set being for the Clerk of the Crown to insert in the commission, and the other for her Majesty's inspection, before she signs the commission. Money bills are placed first in these sets, which are followed by public bills, local and personal, and private bills. When the Queen comes in person to give her royal assent, the clerk assistant of the House of Lords waits upon her Majesty in the robing-room, before she enters the house, reads a list of the bills, and receives her commands upon them.

During the progress of a session, the royal assent is given.

1 See Whale Fisheries Bill, 10th July, 1789, 38 L. J. 497.
2 The forms of commissions for declaring the royal assent, when Parliament has been opened by the Queen, and by commission, are prescribed by the rules made by her Majesty by order in council, pursuant to the Crown Office Act, 1877. Parl. Papers, 1878 (87). These commissions now have the wafer great seal attached, instead of the old wax seal.
3 Mr. Birch's Evidence, p. 10, No. 418, of 1843.
4 The idea that a session was concluded by the royal assent being signified to a bill, ceased to exist more than two centuries ago.
rally given by a commission issued under the great seal for that purpose. The first instance in which the royal assent appears to have been given by commission was in the 33rd Henry VIII., although proceedings very similar had occurred in the 23rd and 25th years of the reign of that king. The lord chancellor produced two Acts agreed to by the Lords and Commons; one for the attainder of the queen and her accomplices; and the other for proceeding against lunatics in cases of treason; each Act being signed by the king, and the royal assent being signified by a commission under the great seal, signed by the king, and annexed to both the Acts. To prevent any doubts as to the legality of this mode of assenting to an Act, the two following clauses were put into the Act for the attainder of the queen, enacting

"That the king's royal assent, by his letters patent under his great seal and assigned with his hand, and declared and notified in his absence to the Lords spiritual and temporal, and to the Commons assembled together in the high house, is and ever was of as good force as though the king's person had been there personally present, and had assented openly and publicly to the same:—And that this royal assent, and all other royal assents hereafter to be so given by the kings of this realm, shall be effectual to all intents and purposes."  

In strict compliance with the words of this statute, the commission is always, "by the Queen herself, signed with her own hand," and attested by the Clerk of the Crown in chancery. But on the 7th March, 1702, William III. signed, with a stamp, the commission assenting to the Abjuration Act. And towards the latter end of the reign of George IV., it became painful to him to sign any instrument with his own hand, and he was enabled, by statute, to appoint one or more person or persons, with full power and authority to each of them to affix, in his Majesty's presence, and by his Majesty's command, given by word of mouth, his Majesty's royal signature, by means of a stamp to be prepared for that purpose; and the commission for giving the royal

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2 1 L. J. 176.  
4 5 Macaulay, Hist. 308.  
5 11 Geo. IV. c. 23.
assent to bills on the 17th June, 1830, bears the stamp of the
king, attested according to the provisions of that Act.¹

On the 5th February, 1811, the Regency Bill received the
royal assent by commission, under peculiar circumstances.
The king was incapable of exercising any personal author-
ity: but the great seal was nevertheless affixed to a com-
misson for giving the royal assent to that bill. When the
Commons had been summoned to the bar of the House of
Lords by the lords commissioners, the lord chancellor said,
"My lords and gentlemen, by the commands, and by virtue
of the powers and authority to us given by the said commis-
sion, we do declare and notify his Majesty's royal assent to
the Act in the said commission mentioned, and the clerks are
required to pass the same in the usual form and words;" 
after which the royal assent was signified by the Clerk in
the usual words, "Le roy le veult." ²

The form in which the royal assent is signified by com-
misson is as follows. Three or more of the lords commis-
ioners, seated on a form between the throne and the wool-
sack in the House of Lords, command the usher of the Black
Rod to signify to the Commons that their attendance is
desired in the house of peers to hear the commission read,
upon which the Commons, with the Speaker, immediately
come to the bar. The commission is then read at length,
and the titles of the bills being afterwards read by the Clerk
of the Crown, the royal assent to each is signified by the
Clerk of the Parliaments, in Norman French; and is so
entered in the Lords' Journal. A supply bill (see p. 562)
being carried up by the Clerk of the House of Commons, is
handed to the Clerk of the Parliaments by the Speaker,
and receives the royal assent before all other bills. The
assent is pronounced in the words, "La reyne remercie ses
bons sujets, acceu leur benevolence, et ainsi le veult." For a
public bill the form of expression is, "La reyne le veult;" 
for a private bill, "Soit fait comme il est desire;" upon a

¹ 62 L. J. 732. (Commons); 1st and 9th March,
² 48 lb. 70; Parl. Debates, 1124; 1804 (Lords); 1 Twiss, Life of
see also Debates, 27th Feb. 1804 Eldon, 2nd edit. 416. 418.
petition demanding a right, whether public or private, "Soi droit fait comme il est désiré." In an act of grace or pardon which has the royal assent before it is agreed to by the two houses, the ancient form of assent was, "Les prélats, seigneurs, et communes, en ce present parlement assemblées, au nom de tous vos autres sujets, remercient tres humblement vostre majesté, et prient à Dieu vous donner en santé bonne vie et longue;" but according to more modern practice, the royal assent has been signified in the usual form, as to a public bill. The form of words used to express a denial of the royal assent would be, "La reyne s'avisera." The necessity of refusing the royal assent is removed by the strict observance of the constitutional principle, that the Crown has no will but that of its ministers, who only continue to serve in that capacity so long as they retain the confidence of Parliament. This power was last exercised in 1707, when Queen Anne refused her assent to a bill for settling the militia in Scotland.

During the Commonwealth, the lord protector gave his assent to bills in English: but on the Restoration, the old form of words was reverted to; and only one attempt has since been made to abolish it. In 1706, the Lords passed a bill "for abolishing the use of the French tongue in all proceedings in Parliament and courts of justice." This bill dropped in the House of Commons; and although an Act passed in 1731 for conducting all proceedings in courts of justice in English, no alteration was made in the old forms used in Parliament. Until the latter part of the reign of Edward III., all parliamentary proceedings were conducted in French, and the use of English was exceedingly rare until the reign of Henry VI. All the statutes were then enrolled in French or Latin, but the royal assent was occasionally given in English. Since the reign of Henry VII., all other proceedings have been in the English language, but the old form of royal assent has been retained.

1 D'Ewes, Journ. 35. 4 18 ib. 506.
3 1 ib. 162; 13 ib. 394 (with reasons); 18 ib. 506.
The royal assent is rarely given in person, except at the close of a session, when the Queen attends to prorogue the Parliament, and then she signifies her assent to such bills as may have passed since the last commission was issued: but bills for making provision for the honour and dignity of the Crown, such as bills for settling the civil lists, have generally been assented to by the sovereign in person, immediately after they have passed both houses.¹ When her Majesty gives her royal assent to bills in person, the Clerk of the Crown reads the titles, and the Clerk of the Parliaments makes an obeisance to the throne, and then signifies her Majesty's assent, in the manner already described. A gentle inclination, indicative of assent, is given by her Majesty, who has, however, already given her commands to the Clerk of the Parliaments, as already stated.

During the year 1876, her Majesty being about to visit the continent during the session, it became a question whether her Majesty could give her royal assent to bills, by commission, during her absence from the realm. No case could be found in which the royal assent had been so given: but in the 2nd William and Mary, "for the exercise of the Government by his Majesty during his Majesty's absence" (in Ireland), there was a proviso that "nothing should be taken to exclude or debar his Majesty, during his absence from the realm, from the exercise of any act of royal power, but that every such act should be as good and effectual as if his Majesty was within this realm;" and it had been stated by the lord chancellor (Lyndhurst), 7th August, 1845, that any act which her Majesty "could do as sovereign

¹ See Civil List Bills, 1820, 75 C. J. 258; 1831, 86 ib. 517; 1833, 95 ib. 227. On the 2nd Aug. 1831, the Speaker, after a short speech in relation to the bill for supporting the royal dignity of her Majesty Queen Adelaide, delivered it to the Clerk, when it received the royal assent in the usual form: but the Queen, attended by one of the ladies of her bedchamber, and her maids of honour, was present, and sat in a chair placed on a platform raised for that purpose between the archbishops' bench and the bishops' door, and after the royal assent was pronounced, her Majesty stood up and made three courtesies, one to the king, one to the Lords, and one to the Commons. 63 L. J. 883, and Index to that volume, p. 1157. The precedent here followed was that of George III. and Queen Charlotte; Earl Grey's Corr. with Will. IV., i. 314.
would have as much validity and effect, if done on the continent of Europe, as if done in her own dominions." The lord chancellor (Cairns) also, in 1876, gave it as his opinion (privately) that her Majesty would be able to give the royal assent to bills while absent from the realm; and this course has been followed whenever the necessity arose.

When Acts are passed, the original ingrossment rolls (or, since 1849, the authenticated vellum prints) are preserved in the House of Lords; and all public and local and personal Acts, and nearly all private Acts, are printed by the Queen's printer; and printed copies are referred to as evidence in courts of law. The original rolls or prints may also be seen when necessary, and copies taken, on the payment of certain fees.

All Acts of Parliament, of which the commencement was not specifically enacted, were formerly held, in law, to take effect from the first day of the session: but the Clerk or clerk assistant of the Parliaments is now required by Act 33 Geo. III. c. 13, to indorse, in English, on every Act of Parliament, immediately after the title, the day, month, and year when the same shall have passed and received the royal assent, which indorsement is to be a part of the Act, and to be the date of its commencement, when no other commencement is provided in the Act itself.

The forms commonly observed by both houses, in the passing of bills, having been explained, it must be understood that they are not absolutely binding. Though founded upon long parliamentary usage, either house may vary its own peculiar forms, without question elsewhere, and without affecting the validity of any act which has received, in proper form, the ultimate sanction of the three branches of the legislature. If an informality be discovered during the progress of a bill, the house in which it originated will either order the bill to be withdrawn, or will annul the informal proceeding itself, and all subsequent proceedings:

1 See debate on printer's error in the Elementary Education Act, 1891, 18th Feb. 1892, 1 Parl. Deb. 4 s. 300.

2 H. D. 3 a. 1515. 687.

3 106 C. J. 82. 209; 108 ib. 412.
but if irregularities escape detection until the bill has passed, no subsequent notice can be taken of them, as it is the business of each house to enforce compliance with its own orders and practice.

In the ordinary progress of a bill, the proceedings either follow from day to day, or some days are allowed to intervene between each stage subsequent to the first reading; yet when a pressing emergency arises, bills are passed through all their stages in the same day, and even by both houses, and the royal assent has also been signified on the same day. This unusual expedition is, in the Lords, at variance with standing order No. 39, which strictly forbids the passing of a bill through more than one stage in a day, and which is formally dispensed with on such occasions. On the 9th April, 1883, no notice having been given on the previous day to suspend the standing orders in regard to the Explosive Substances Bill, the house resolved, “That it was essentially necessary for the public safety that the bill should be proceeded in with all possible despatch, and that notwithstanding the standing orders, the lord chancellor ought forthwith to put the question upon every stage of the said bill, on which this house shall think it necessary for the public safety to proceed thereon;” and immediately passed the bill through all its stages. In the Commons, there are no orders which forbid the passing of public bills with unusual expedition; and it is nothing more than an occasional departure from the usage of Parliament, justified by the circumstances

1 58 C. J. 645, 646; 98 ib. 491; 103 ib. 770; 107 ib. 77, 363, 378; 108 ib. 21; 110 ib. 294; 121 ib. 239.
2 Bill for recruiting the land forces, 3rd April, 1744, 24 ib. 636-639; Seamen’s Additional Pay Bill, 9th May, 1797, 52 ib. 555, 557, 558. Habes Corpus Suspension (Ireland) Bill, 17th Feb. 1866, 121 ib. 88. In this latter case, the bill was passed by both houses on a Saturday, and the Queen being at Osborne, the commission, with the bill annexed, was forwarded to her Majesty in the morning, and the agreement of both houses having been communicated later in the day by telegraph, her Majesty signed the commission and despatched it to Westminster. In 1871, the Queen being at Balmoral, and again, in 1876, while the Queen was in Germany, the telegraph was used in like manner. On the 9th April, 1883 (138 ib. 127, 128), the Explosive Substances Bill was passed through all its stages, in both houses, and received the royal assent on the following day at twelve o’clock.
3 80 L. J. 661; 98 ib. 41.
4 115 ib. 76.
of the particular case, sanctioned by the general concurrence of the house (see p. 472), as, though one stage may follow another with unaccustomed rapidity, they are as open to discussion as at other times.¹

But, though a departure from the usage of Parliament, during the progress of a bill, will not vitiate a statute, informalities in the final agreement of both houses have been treated as if they would affect its validity. No decision of a court of law upon this question has ever been obtained: but doubts have arisen there; and in two modern cases Parliament has thought it advisable to correct, by law, irregularities of this description. It has already been explained that, when one house has made amendments to a bill passed by the other, it must return the bill with the amendments, for the agreement of that house which first passed it. Without such a proceeding, the assent of both houses could not be complete; for, however trivial the amendments may be, the judgment of one house only would be given upon them, and the entire bill, as amended and ready to become law, would not have received the formal concurrence of both houses. If, therefore, a bill should receive the royal assent, without the amendments made by one house having been communicated to the other and agreed to, serious doubts naturally arise concerning the effect of this omission; since the assent of the Queen, Lords, and Commons is essential to the validity of an Act.

1. Will the royal assent cure all prior irregularities, in the same way as the passing of a bill in the Lords would preclude inquiry as to informalities in any previous stage?
2. Is the indorsement on the bill, recording the assent of Queen, Lords, and Commons, conclusive evidence of that fact? or, 3. May the journals of either house be permitted to contradict it?

The first case in which a difficulty arose was in the 33rd Henry VI. In the session commencing 29th April, 1450, the Commons passed a bill requiring John Pylkington to appear, on a charge of rape, "by the Feast of Pentecost

¹ 184 H. D. 3 s. 2107.
It does not appear distinctly whether the bill was even brought into the Commons before that day in the year 1450: but it certainly was not agreed to by the Lords until afterwards. By the law of Parliament then subsisting, the date of an Act was reckoned from the beginning of a session; and the Lords, to avoid this construction, altered the date to “the Feast of Pentecost, which will be in the year of our Lord 1451:" but did not return the bill, so amended, to the Commons. Pylkington appeared before the Exchequer Chamber, to impeach the validity of this Act, “because the Lords had granted a longer day than was granted by the Commons, in which case the Commons ought to have had the bill back.” Chief Justice Fortescue held the Act to be valid, as it had been certified by the king’s writ to have been confirmed by Parliament; though he added these words to his decision, “peradventure the matter ought to wait until the next Parliament, then we can be certified by them of the certainty of the matter.” But Chief Baron Illingworth and Mr. Justice Markham were of opinion that if the amendment made the bill vary in effect from that which was sent up from the Commons, the Act would be invalid.

In 1829, a bill “to amend the law relating to the employment of children in factories,” passed the Commons, and was agreed to by the Lords, with an amendment: but instead of being returned to the Commons, it was, by mistake, included in a commission, and received the royal assent. The amendment was afterwards agreed to by the Commons: but, in order to remove all doubts, an Act was passed to declare that the Act “shall be valid and effectual to all intents and purposes, as if the amendment made by the Lords had been agreed to by the Commons before the said Act received the royal assent.”

In 1843, the Schoolmasters’ Widows’ Fund (Scotland) Bill was returned to the Commons with amendments: but, before these were agreed to, the bill was removed from the table,

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1 Year Books, 33rd Henry VI.; 2 10 Geo. IV. c. 63.

without authority from the house, and carried up to the Lords with other bills. The proper indorsement, viz. "A
ces amendemens les communes sont assentus," was not upon this bill; yet the omission was not observed, and the bill received the royal assent on the 9th May. After an examination of precedents, this Act was made valid by a new enactment. 1

It is a curious fact, in connection with an informality of this character, on the face of a bill, that a commission expressly recites that the bills "have been agreed to by the Lords spiritual and temporal, and the Commons, and indorsed by them as hath been accustomed." The informality in this case would therefore appear to have been greater than in that of 1829; because, in the former, the endorsements were complete, and, as they are without date, it would not appear, except from the journals, that the amendment had been agreed to after the royal assent had been given: but in the latter, the agreement of the Commons would be wanting on the face of the record.

In case of any accidental omission in the indorsement, the bill should be returned to the house whence it was received; as, on the 8th March, 1580, 23rd Elizabeth, when a schedule was returned to the Commons and the indorsement amended there; because "soit bailé aux seigneurs" had been omitted, and the Lords had therefore no warrant to proceed. 2

Having noticed the effect of informalities in the consent of both houses to a bill, the last point that requires any observation is the consequence of a defect or informality in the commission or royal assent. On the 27th January, 1546, when King Henry VIII. was on his death-bed, the lord chancellor brought down a commission under the sign manual, and sealed with the great seal, addressed to himself and other lords, for giving the royal assent to the bill for the attainder of the Duke of Norfolk, which had been passed, with indecent haste, through both houses. Early the next

1 6 & 7 Vict. c. lxxxvi. (local and personal).
2 D'Ewes, 303; 1 C. J. 132; Order and Course of Passing Bills in Parliament, 4to. 1641.
morning the king died, and the duke was saved from the scaffold, but was imprisoned in the Tower during the whole reign of Edward VI. On the accession of Queen Mary, he took his seat in the House of Lords, was appointed to be one of the triers of petitions; and also, by patent, on the 17th August, to be lord high steward for the trial of the Duke of Northumberland.

In the next session, the Act of Attainder was declared void by statute, because, after reciting certain informalities in the commission, no record existed showing that the commissioners did give the king's royal consent to the bill, which therefore

"remayneth in verie dede as no Acte of Parlyament, but as a bill onedie exhibited in the saide Parlyament, and onedie assented unto by the saide lordes and coïëns, and not by the saide late king."

The same Act declared—

"That the lawe of this realme is and alwaies hath byn, that the royall assent or consent of the king or kings of this realme, to any Acte of Parlyament ought to be given in his own royall presence, being personallie in the higher howse of Parlyament, or by his letters patents under his great scale, assigned with his hande, and declared and notified in his absence to the lords spiritual and temporal, and the Comons, assembled together in the higher howse, according to a statute made in the 33rd yere of the reigne of the saide late King Henry VIII."

In 1809, the titles of two bills relating to the town of Worthing were transposed, and the royal assent signified to both, so incorrectly indorsed, without further notice. But, in 1821, the titles of two local Acts had been, by a similar error, transposed in the indorsement when the bills received the royal assent. Each Act, consequently, had been passed with the title belonging to the other; and the mistake was corrected by Act of Parliament.

In 1844, there were two Eastern Counties Railway Bills in Parliament. One had passed through all its stages, and the other was still pending in the House of Lords, when on the 10th May the royal assent was given, by mistake, to the

1 Mary, No. 27; Introduction to Statutes of Geo. Com. p. 75.

2 1 & 2 Geo. IV. c. xcv. (local and personal).
latter, instead of to the former. On the discovery of the error, an Act was passed by which it was enacted that when the former Act shall have received the royal assent, it shall be as valid and effectual from the 10th May, as if it had been properly inserted in the commission, and had received the royal assent on that day; and that the other bill shall be in the same state as if its title had not been inserted in the commission, and shall not be deemed to have received the royal assent.\footnote{7 Vict. c. xix. (local and personal).}
CHAPTER XX.

MODE OF PETITIONING PARLIAMENT.

The right of petitioning the Crown and Parliament, for redress of grievances, is acknowledged as a fundamental principle of the constitution;¹ and has been uninterruptedly exercised from very early times. Before the constitution of Parliament had assumed its present form, and while its judicial and legislative functions were ill-defined, petitions were presented to the Crown, and to the great councils of the realm, for the redress of those grievances which were beyond the jurisdiction of the common law. There are petitions in the Tower of the date of Edward I., before which time it is conjectured that the parties aggrieved came personally before the council, or preferred their complaints in the country before inquests composed of officers of the Crown.

Assuming that the separation of the Lords and Commons had been effected in the reign of Henry III. (see p. 20), these petitions appear to have been addressed to the Lords alone: but, taking the later period, of the 17th Edward III., for the separation of the two houses, they must have been addressed to the whole body then constituting the High Court of Parliament. Be this as it may, it is certain that, from the reign of Edward I., until the last year of the reign of Richard II.,² no petitions have been found which were addressed exclusively to the Commons.

During this period, the petitions were, with few exceptions, for the redress of private wrongs; and the mode of receiving and trying them was judicial rather than legislative. Receivers of petitions were appointed, ordinarily the

¹ "Nulli negabimus, aut diem usum rectum vel justitiam."—Magna Carta of King John, c. 29; see Bill of Rights, art. 5; 1 & 2 Will. & Mary, sess. 2, c. 2.
² 3 Rot. Parl. 448.
masters in chancery, who, sitting in some public place accessible to the people, received their complaints, and transmitted them to the auditors or triers. The triers were committees of prelates, peers, and judges. By them the petitions were examined; and, if the common law offered no redress, their case was submitted to the High Court of Parliament.\(^1\) The functions of receivers and triers of petitions have long since given way to the immediate authority of Parliament at large: but their appointment, at the opening of every Parliament, has been continued by the House of Lords without interruption. They are still constituted as in ancient times, and their appointment and jurisdiction are expressed in Norman French.\(^3\)

In the reign of Henry IV., petitions began to be addressed, in considerable numbers, to the House of Commons. The courts of equity had, in the mean time, relieved Parliament of much of its remedial jurisdiction; and the petitions were now more in the nature of petitions for private bills than for equitable remedies for private wrongs. Of this character were many of the earliest petitions; and the orders of Parliament upon them can only be regarded as special statutes, of private or local application. As the limits of judicature and legislation became defined, the petitions applied more distinctly for legislative remedies, and were preferred to Parliament through the Commons:\(^3\) but in passing private bills, Parliament has retained the mixed judicial and legislative character of ancient times.

Proceeding to later times, petitions continued to be received in the Lords, by triers and receivers of petitions, or by committees whose office was of a similar character; and in the Commons, they were referred to the committee of grievances, and to other committees specially appointed for the examina-

\(^1\) See Ellyngue, chap. 8; Coke, 4th Inst. 11.
\(^2\) There are receivers and triers for Great Britain and Ireland; and others for Gascony and the lands and countries beyond the sea, and the Isles. No spiritual lords are now appointed triers, 73 L. J. 579; 80 ib. 13; 89 ib. 11.
\(^3\) See 1 Parl. Writs, 160; 2 ib. 156; 3 Rot. Parl. 448; Coke, 4th Inst. 11. 21. 24; Ellyngue, chap. 8; Hale, Jurisd. of the Lords, chap. 6-13; Report on Petitions, 1833 (jlb); especially the learned evidence of Sir F. Palgrave.
tion and report of petitions: but since the Commonwealth, it appears to have been the practice of both houses to consider petitions in the first instance, and only to refer the examination of them, in particular cases, to committees. In early times, all petitions prayed for the redress of some specific grievance: but after the Revolution of 1688, the present practice of petitioning, in respect of general measures of public policy, was gradually introduced.

Regarding the presentation of petitions to Parliament, statute 13 Car. II. c. 5, "enacts that no person shall repair to both or either of the houses of Parliament upon pretence of presenting any petition, accompanied with an excessive number of persons, nor, at any one time, with above the number of ten persons;" and, under statute 57 Geo. III. c. 19, s. 23, "a meeting of more than fifty persons within the distance of one mile from the gate of Westminster Hall, for the purpose of considering any petition to both or either house of Parliament, on any day on which the two houses, or either house, shall meet and sit, is an unlawful assembly."

The existing practice in regard to petitions shall be considered under three divisions: viz. 1. The form of petitions; 2. The character and substance of petitions; 3. Their presentation to Parliament.

1. Petitions to the House of Lords should be superscribed, "To the right honourable the lords spiritual and temporal in Parliament assembled;" and to the House of Commons, "To the honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled." A general designation of the parties to the petition should follow; and if there be one petitioner only, his name after this manner: "The humble petition of [here insert the

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1 C. J. 582; 2 ib. 49. 61; 3 ib. 649; 4 ib. 228; 7 ib. 287.
2 11 L. J. 9. 57. 184; 14 ib. 23; 12 C. J. 83.
3 See 13 Chas. II. c. 5; 10 C. J. 88; 13 ib. 287; ib. 518 (Kentish petition, 1701); 18 ib. 425. 429-431 (Septennial Bill); 2 Hallam Const. Hist. 445; 2 May, Const. Hist. 60 (7th ed.).
4 A petition intended for the last Parliament will not be received; see Mirror of Parl. 1831, vol. 3, p. 2199.
name or other designation] sheweth." The general allegations of the petition are concluded by what is called the "prayer," in which the particular object of the petitioner is expressed. To the whole petition are generally added these words of form, "And your petitioners, as in duty bound, will ever pray, &c.;" to which are appended the signatures or marks of the parties.

Without a prayer, a document will not be taken as a petition;¹ and a paper, assuming the style of a declaration,² an address of thanks,³ or a remonstrance only, without a proper form of prayer, will not be received.

In other cases, remonstrances respectfully worded, and concluding with a proper form of prayer, have been received;⁴ but a document, distinctly headed as a remonstrance, though concluding with a prayer, has been refused.⁵ A so-called memorial, properly worded, and concluding with a prayer, has been received.⁶

The petition should be written upon parchment or paper, for a printed or lithographed petition will not be received by the Commons;⁷ and at least one signature should be upon the same sheet or skin upon which the petition is written.⁸ It must be in the English language, or accompanied with a translation, which the member who presents it states to be correct;⁹ it must be free from interlineations or erasures; it must be signed; it must have original signatures or marks, and not copies from the original, nor signatures of agents on behalf of others, except in case of incapacity by sickness;¹⁰

¹ 7 C. J. 427; 98 ib. 457.
² 60 H. D. 3 s. 640.
³ 64 ib. 423.
⁴ 97 C. J. 470; 98 ib. 461; 10th Aug. 1842, 65 H. D. 3 s. 1225. 1227; 21st June, 1860, 159 ib. 761; Coas Defence Association, 6th July, 1860, ib. 1524; see also 67 C. J. 898; 74 ib. 391.
⁵ 70 H. D. 3 s. 745.
⁶ 240 ib. 1082.
⁷ 48 C. J. 788; 68 ib. 624. 648; 72 ib. 128. 156; 53 H. D. 3 s. 158. This rule has not been adopted by the Lords.
⁸ 62 C. J. 155; 72 ib. 128. 144; 77 ib. 127; 66 H. D. 3 s. 1033; 100 C. J. 335; 109 ib. 293. If petitions are presented without any signatures to the sheet on which they are written, they are not noticed in the votes.
⁹ 76 ib. 173. 189; 100 ib. 560.
¹⁰ 82 ib. 118. 262; 86 ib. 748; 85 ib. 541; 91 ib. 325. 576; 9 ib. 369. 493; 10 ib. 285; 34 ib. 800; Rep. Pub. Petitions Committee, 26th June, 1848.
and it must not have letters, affidavits, appendices, or other documents annexed. The signatures must be written upon the petition itself, and not pasted upon, or otherwise transferred to it. Petitions of corporations aggregate should be under their common seal. To these rules another may be added, that if the chairman of a public meeting signs a petition on behalf of those assembled, it is only received as the petition of the individual, and is so entered among the proceedings of the house, because the signature of one party for others cannot be recognized.

Any forgery or fraud in the preparation of petitions, or in the signatures attached, or the being privy to, or cognizant of, such forgery or fraud, is liable to be punished as a breach of privilege, and is considered and dealt with by the house as a matter of privilege. And there have been frequent instances in which such irregularities have been discovered and punished by both houses. In some cases the house has satisfied itself by the rejection of the petition, or by discharging the order for its lying on the table. A motion to that effect has been permitted without previous notice; though a claim to draw attention, as a matter of privilege, to expressions in a petition presented at a previous sitting, has not been conceded.

2. The language of a petition should be respectful and character and substance of petitions.

1 S1 C. J. 52; 82 ib. 41; 111 ib. 102.
2 Special Reports Petitions committee, 104 ib. 283; 105 ib. 79.
3 The presentation of petitions is recorded in the Commons' Journal by a reference to the Reports of the committee on Public Petitions.
4 10 C. J. 285.
5 See resolution, 2nd June, 1774, 34 ib. 800.
6 238 H. D. 3 s. 1741.
9 Petitions from Dublin against the Sale of Intoxicating Liquors on Sunday (Ireland) Bill, 1878, 133 ib. 130. 139. 181; Special Report, 20th April, 1883, 138 ib. 153.
10 238 H. D. 3 s. 1400; 187 ib. 14.
temperate, and free from disrespectful language to the Queen, or offensive imputations upon the character or conduct of Parliament, or the courts of justice, or other tribunal, or constituted authority; and if objection be taken to a petition upon such a ground, the petition should be read at the table. On the 2nd March, 1822, a petition from Newcastle, imputing notorious corruption to the House of Commons, was, on a division, not received; and a motion having been made that a petition alleging that members of Parliament had taken a bribe, do lie upon the table, the motion was withdrawn. On the 2nd August, 1832, a petition threatening to resist the law, was not allowed to lie upon the table. In 1838, a petition containing disrespectful language towards the other house of Parliament was withdrawn. In 1840, a petition from J. J. Stockdale was rejected, as containing an intentional and deliberate insult to the house. On the 28th March, 1848, a petition having been brought up and read, objection was taken to a paragraph praying for the abolition of the House of Lords, on the ground that it prayed for a fundamental alteration of the institutions of the country: but the objection, after debate, was not pressed, and the petition, being otherwise temperately expressed, was ordered to lie upon the table. On the 3rd May, 1867, a petition in favour of certain Fenian prisoners, expressed in strong but guarded language, was allowed to lie upon the table; and a motion afterwards made for discharging that order was not supported by the house. On the 8th June, 1874, notice being taken that a petition contained offensive imputations upon the conduct of the Public

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1 122 H. D. 3 a. 863.
2 84 C. J. 589; 84 ib. 275.
3 76 ib. 105.
4 164 H. D. 3 a. 978; 202 ib. 1307.
5 8 H. D. n. s. 1231; 26th June, 1823, 9 ib. 1253; see also debate on a petition praying inquiry into the mismanagement of the Eastern Counties Railway, by Mr. Hudson and two other M.P.'s, 105 H. D. 3 a. 581; also the petition alleging fraudulent practices against a member, 116 C. J. 364. 377. 381; see also debate on petitions complaining of members (p. 333).
6 87 ib. 547.
7 93 ib. 236.
8 95 ib. 193.
9 103 ib. 384; 97 H. D. 3 a. 1055.
10 186 ib. 1929; 187 ib. 1886.
Petitions committee, it was ordered to be withdrawn.\(^1\) On the 3rd July, 1874, notice being taken that a petition contained imputations upon the conduct of certain judges, and statements affecting the social and legal position of individuals, it was ordered to be withdrawn, and the printed copies to be cancelled.\(^2\) On the 12th April, 1875, the petitions committee reported that a petition from Prittlewell contained offensive imputations upon the lord chief justice and two of the judges of the Court of Queen's Bench, and reflected, in an unbecoming manner, upon the Speaker and the proceedings of the house; and on the 15th April, the order for the petition to lie upon the table was, after discussion, read and discharged.\(^3\) A petition may not allude to debates in either house of Parliament,\(^4\) nor to intended motions, if merely announced in debate: \(^5\) but when notices have been formally given, and printed on the notice paper, petitions referring to them are received. And by standing order No. 82, the usage under which the house refused to entertain petitions against a resolution or bill imposing a tax or duty for the service of the year, was discontinued. In the Lords, a petition relating to a bill before the Commons, but which has not yet reached the house, or which has been already thrown out, will not be received.

On the 18th June, 1849, a petition was offered from W. S. O'Brien and others, attainted of treason, praying to be heard by counsel against the Transportation for Treason (Ireland) Bill. It was objected that no petition could be received from persons civilly dead: but the house, after debate, agreed, under the peculiar and exceptional circumstances of the case, to receive the petition. The petitioners' sentence of death had been commuted to transportation; they had denied the legal power of the lord-lieutenant to transport them, and the bill against which they had petitioned was introduced in order to remove doubts upon the

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\(^1\) 129 C. J. 209.  \(^5\) 85 ib. 107; 63 H. D. 3 s. 192; 114 ib. 820.
\(^2\) Ib. 276.  \(^6\) 105 ib. 160; 19th Feb. 1851 (Window Tax), 109 ib. 160.
\(^3\) 130 ib. 134, 145.  \(^7\) 67 ib. 150; 82 ib. 604; 91 ib. 616; 97 ib. 259; 103 ib. 406. 633;
question which they had raised. It was, in fact, a bill to declare the legality of a sentence which they maintained to be contrary to law. Before the introduction of a bill, a petition from W. S. O'Brien, upon the subject of his sentence, had been already received by the house.\footnote{106 H. D. 3 s. 389.}

Petitions from British subjects resident abroad have always been received; and also of foreigners resident in this country. Petitions have also been occasionally received from foreigners not within British jurisdiction: but on the 7th April, 1876, a petition from inhabitants of Boulogne-sur-Mer, several of whom appeared to be British subjects, being offered, a committee appointed to consider the matter, did not advise its reception.\footnote{140 C. J. 11; see also resolutions, 20th March, 1833, and 9th May, 1844, 98 ib. 190; 74 H. D. 3 s. 714; 99 C. J. 284.}

3. Petitions are to be presented by a member of the house to which they are addressed, who must, pursuant to the order of the house, affix his name at the beginning thereof.\footnote{131 ib. 141; 228 H. D. 3 s. 1320.} On the 6th April, 1876, notice being taken that a member's name had been affixed to a petition without his authority, the petition was ordered to be withdrawn; and it has been ruled that the member's name should be signed by his own hand, and that it is irregular to authorize another person to affix it.\footnote{229 ib. 586.}

But petitions from the corporation of London are presented to the House of Commons by the sheriffs, at the bar (being introduced by the Serjeant with the mace), or by one sheriff only, if the other be a member of the house, or unavoidably absent.\footnote{90 C. J. 506; 108 ib. 122. 331.} In 1840, both the sheriffs being in the custody of the Serjeant-at-arms, petitions from the corporation of London were presented at the bar by the lord mayor, an alderman, and several of the common council; by the lord mayor, aldermen, and commons; and by two aldermen, and several members of the common council.\footnote{95 ib. 43. 82. 198.}

\footnote{1 On the 17th April, 1690, a question for admitting the sheriffs was negatived, on division, 5 Parl. Hist. 386.}

\footnote{2 MS. Officers and Usages of the House of Commons, p. 46.}

\footnote{3 75 ib. 213; 94 ib. 432.}

\footnote{4 On the 17th April, 1690, a question for admitting the sheriffs was negatived, on division, 5 Parl. Hist. 386.}

\footnote{5 75 ib. 213; 94 ib. 432.}

\footnote{6 On the 17th April, 1690, a question for admitting the sheriffs was negatived, on division, 5 Parl. Hist. 386.}
privilege conceded in the year 1813, petitions from the corporation of Dublin may be presented in the same manner, by their lord mayor. If the lord mayor should be a member, he must present the petition, in his place as a member, and not at the bar. Lord Cochrane proposed to extend this privilege to the Lord Provost of Edinburgh, but his amendment was lost, Mr. Tierney remarking "that the Scotch were generally thought a prudent people, and the corporation of Edinburgh would know better than to send their provost four hundred miles to present a petition." A peer or member may petition the house to which he belongs: but if a member desires to have a petition from himself presented to the house, he should entrust it to some other member, as he will not be permitted to present it himself. A member who has not taken the oath or affirmation cannot present a petition. Petitions are not received on the first day of a session, when the Queen's Speech is delivered (see p. 170).

To facilitate the presentation of petitions, they may be transmitted through the post-office, to members of either house, free of postage, provided they be sent without covers, or in covers open at the sides, and do not exceed 32 ounces in weight.

1 By resolution, 23rd Feb. 1813, 68 ib. 209; 24 H. D. 598; 124 C. J. 85; 134 ib. 269; 187 ib. 288; 143 ib. 109; 144 ib. 183.
2 On the 1st July, 1850, a petition from the corporation of Dublin was presented by the lord mayor in his place as a member (wearing his robes). The officers of the corporation, in their robes, were allowed seats below the bar: but having brought the mace into the house, they were desired by the Serjeant to remove it, MS. note. So again Friday, 14th March, 1851, 6th Feb. 1880, and on several other occasions. MS. Officers and Usages of the House of Commons, p. 46.
3 68 C. J. 209; 24 H. D. 698. 705.
4 So ruled by Mr. Speaker, 30th Aug. 1841 (Sir Valentine Blake), 59 H. D. 3 s. 476; 30th April, 1846 (Sir J. Graham), and 9th July, 1850 (Mr. F. O'Connor).
5 Objection was taken, in March, 1881, to the presentation of a petition by Mr. Bradlaugh, the High Court of Justice having adjudged that the making an affirmation had not qualified him to sit and vote: but notice of appeal having been given, it was allowed, 259 H. D. 3 s. 892. On the 22nd June, 1882, he was informed by Mr. Speaker that he could not present a petition until he had taken the oath, 137 C. J. 293.
6 In Feb. 1880, the Lord Mayor of Dublin had arranged to present a petition on the day of meeting, but on receiving an intimation of the practice, he postponed the ceremony until the next day.
In both houses it is the duty of members to read petitions which are sent to them, before they are presented, lest any violation of the rules of the house should be apparent on the face of them; in which case it is their duty not to offer them to the house. If the Speaker observes, or any member takes notice of, any irregularity, the member having charge of the petition does not bring it up, but returns it to the petitioners. If any irregularity escapes detection at this time, but is discovered when the petition is further examined, no entry of its presentation appears in the votes. In other cases more formal notice is taken of the violation of the rules of the house, and the petitions are not received; or are ordered to be withdrawn, or are rejected. A member who has reason to believe that the signatures to a petition are genuine, is justified in presenting it, although doubts may have been raised as to their authenticity: but in such cases the attention of the house should be directed to the circumstance.

Up to this point the practice of the Lords and Commons is similar: but the forms observed in presenting petitions differ so much, that it will be necessary to describe them separately. On the 1st May, 1868, it was ordered, "That the name of the lord presenting a petition shall be entered thereon." It was ordered by the Lords, 30th May, 1685, "That any lord who presents a petition, shall open it before it be read." At the same time, the lord may comment upon the petition, and upon the general matters to which it refers; and debate thereon may ensue: but a lord who intends to speak upon a petition, usually gives notice of its presentation. When the petition has been laid upon the table, an entry of that fact is placed on the Lords' Minutes and Journals, with the prayer of the petition: but petitions are rarely printed at length in the journals, unless they relate to proceedings of a judicial character.

1 96 C. J. 159; 104 ib. 154; 105 ib. 160; 109 ib. 160; 111 ib. 102. 2 53 ib. 236; 100 ib. 333; 103 ib. 693; 116 ib. 364 (as containing libellous charges against a member of the house and other parties). 3 55 ib. 193; 122 ib. 345. 4 117 H. D. 3 a. 399. 5 100 L. J. 138; 14 ib. 22; 74 ib. 236.
Chapter XX.

It is to the representatives of the people that petitions are chiefly addressed, and to them they are sent in such numbers, that restrictions, of necessity, are imposed upon the discussion of their merits. Formerly, the practice of presenting petitions had been generally similar to that of the House of Lords: but the number had so much increased, and the business of the house was so much interrupted by the debates which arose on receiving petitions, that, under standing orders Nos. 78–81, adopted in 1842 and 1853, a member, on the presentation of a petition, may read the prayer and make only a general statement regarding the source and nature of the petition; and every petition which conforms to the rules or practice of the house, is brought to the table by the direction of the Speaker, who does not allow debate thereon, but the petition may be read by the Clerk, at the table, if required.

In the case of a petition complaining of a present personal grievance, calling, as an urgent necessity, for an immediate remedy, the matter contained in such petition may be brought into discussion on the presentation thereof (see p. 504). All other such petitions, when laid on the table, are referred to the committee on Public Petitions, without any question being put, though if the petition relates to a subject with respect to which the member presenting it has given notice of a motion, and the petition has not been ordered to be printed by the committee, he may, after notice given, move that the petition be printed and circulated with the notice paper of the house.

Thus while a member may state the purport and material

1 In the five years ending 1832, 23,283 public petitions were presented to the House of Commons; in the five years ending 1842, 70,072; in the five years ending 1852, 62,248; in the five years ending 1862, 63,008; in the five years ending 1867, 53,305; in the five years ending 1872, 101,573; in the five years ending 1877, 91,846; in the five years ending 1882, 72,850; in the five years ending 1887, 73,815; and in the five years ending 1892, 50,141. Since 1833, 844,062 petitions have been presented. 31,963 petitions were presented session 1899 (23rd Sep.), a number only exceeded by the 33,898 of session 1843.

2 In 1833 and 1834, sittings from twelve to three were devoted to petitions and private bills.

3 Not by a member, 105 C. J. 99.
allegations of a petition, he is not at liberty to read the whole or greater part of the petition itself: but if he desires that the petition should be read, the proper course is to require it to be formally read by the Clerk, at the table. ¹

On the 14th June, 1844, it was ruled, by Mr. Speaker, that a petition of parties complaining of their letters having been detained and opened by the post-office, and praying for inquiry, was not of that urgency that entitled it to immediate discussion, especially as notice of its presentation had been given on the previous day, which proved that the matter was such as admitted of delay: ² but on the 24th June, 1844, a similar petition, of which no previous notice had been given, was permitted to open a debate. In the latter case, however, the complaint was that “letters are secretly detained and opened;” and thus a “present personal grievance” was alleged, while in the former case a past grievance only had been complained of. ³ On the 5th July, 1855, a petition complaining of the recent misconduct of the police in Hyde Park, and of injuries personally sustained by the petitioners, was held not to justify a debate, as the grievance complained of did not demand an immediate remedy. ⁴ On the same ground, the Speaker ruled that a petition presented 1st May, 1890, praying for the appointment of a commission to inquire into the municipal contracts of the borough of Salford, did not come within the operation of standing order No. 80. ⁵ Neither, under cover of a motion for the adjournment of the house, will a member be permitted to bring under discussion the contents of a petition which he would be restrained by the standing order from debating: ⁶ but a personal explanation has been permitted without any question being before the house, upon matters affecting a member, which have been alluded to in a petition. ⁷

It will be observed that, although the standing orders

¹ 79 H. D. 3 s. 496; 106 ib. 300.
² 75 Ib. 894; 99 C. J. 398.
³ 75 H. D. 3 s. 1264.
⁴ 139 ib. 483.
⁵ 343 ib. 1800.
⁶ 7th July, 1856 (attorney-general and the Bedford Charities).
⁷ 48 H. D. 3 s. 226; 109 ib. 235; and 7th July, 1856.
restrict debate to urgent cases, that restriction does not extend to a petition complaining of a matter affecting the privileges of the house, such a case being governed by the general rule, that a question of privilege is always entitled to immediate consideration. But if the matter does not demand the immediate interposition of the house, the course would be to appoint by order that the petition be taken into consideration on a future day, and be printed for the information of the house.  

A motion for printing and circulating a petition with the notice paper of the house, pursuant to standing order No. 81, if unopposed, can be made before the commencement of public business (see p. 243). The proposal is not a matter of right, but is open to debate and objection like any other motion.

All public petitions, except petitions regarding a personal grievance or a matter of privilege, are referred to the "committee on Public Petitions," under whose directions they are classified, analyzed, and, when necessary, printed at length. The reports of this committee, printed twice a week, point out, under classified heads, not only the name of each petition, but the number of signatures to which addresses are affixed, the general object of every petition, and the total number of petitions and the signatures in reference to each subject; and whenever the peculiar arguments and facts, or general importance, of a petition require it, it is printed at full length in an appendix to the notice paper of the house, and is accessible by purchase to the public. In some cases, petitions have been ordered to be printed with the notice paper, with the signatures attached thereto, and order has been made regarding petitions presented in a former session, pursuant to Special Report, Public Petitions committee, 11th April, 1878, 133 ib. 205, and to sessional orders.

1 104 C. J. 302; 105 ib. 110; 112 ib. 231; 113 ib. 68; 114 ib. 357; 146 H. D. 3 s. 97; 168 ib. 1855; Royal Atlantic Steam Company, 19th July, 1861, 164 ib. 1178; 116 C. J. 377. 381.
2 86 H. D. 3 s. 328; Lisburn Election, 18th April, 1864, 119 C. J. 173.
3 Southampton writ, 97 ib. 329; 63 H. D. 3 s. 1057; 79 ib. 686. This order has been made regarding petitions presented in a former session, 102 C. J. 22. 203; 112 ib. 155; 113 ib. 331.
4 88 ib. 95.
5 Pursuant to Special Report, Public Petitions committee, 11th April, 1878, 133 ib. 205, and to sessional orders.
6 97 ib. 302; 98 ib. 396. 460. 549; 101 ib. 142.
in others for the use of members only.\footnote{1} A petition has been ordered to be printed for the use of members only, with the names of the persons who had signed it.\footnote{2} Sometimes petitions which have been already printed, have been ordered to be reprinted.\footnote{3}

\footnote{1} 100 C. J. 538, 648; 101 ib. 1021; 105 ib. 45; 106 ib. 209; 116 ib. 377.  \footnote{2} 97 ib. 57.  \footnote{3} 98 ib. 216; 103 ib. 90.
CHAPTER XXI.

ACCOUNTS, PAPERS, AND RECORDS PRESENTED TO PARLIAMENT.

Parliament is invested with the power of ordering all documents to be laid before it, which are necessary for its information. Each house enjoys this authority separately, but not in all cases independently of the Crown. Accounts and papers relating to trade, finance, and general or local matters, are ordered directly, and are returned in obedience to the order of the house whence it was issued: but returns of matters connected with the exercise of royal prerogative, are obtained by means of addresses to the Crown.

The distinction between these two classes of returns should be borne in mind; as, on the one hand, it is irregular to order directly that which should be sought for by address; and, on the other, it is a compromise of the authority of Parliament to resort to the Crown for information, which it can obtain by its own order. The application of the principle is not always clear: but, as a general rule, it may be stated that all public departments connected with the collection or management of the revenue, or which are under the control of the treasury, or are constituted or regulated by statute, may be reached by a direct order from either house of Parliament: but that public officers and departments, subject to her Majesty's secretaries of state, or the privy council, are to receive their orders from the Crown.

Thus, returns from the Commissioners of Customs and of Inland Revenue, the Post-office, the Board of Trade, and the Treasury, are obtained by order. These include every account that can be rendered of the revenue and expenditure of the country; of commerce and navigation; of salaries and pensions; of general statistics; and of facts connected with the administration of all the revenue departments. Addresses are presented for treaties with foreign powers, for despatches
to and from the governors of colonies, and for returns connected with the army, the civil government, and the administration of justice. Where returns relate to the expenditure of public money upon any Crown property, they are obtained by order, and not by address.1

When an address for papers has been presented to the Crown, the parties who are to make them appear to be within the immediate reach of an order of the house; as orders of the House of Commons for addresses have been read, and certain persons who had not made the returns required, have been ordered to make them to the house forthwith.2 In other cases, however, further addresses have been moved, praying her Majesty to give directions that papers be laid before the house forthwith.3

When it is discovered that an address has been ordered for papers which should properly have been presented to the house by order, the error is corrected by discharging the order for the address, and ordering that the papers be laid before the house.4 In the same manner, when a return has been ordered, for which an address ought to have been moved, the order is discharged, and an address is presented instead.5 Where the order for a return is found not to comprise all the particulars desired, it is usual to discharge the order, and make another in a corrected form. Sometimes, however, without discharging the order, public papers or other particulars have been ordered to be added to the return,6 or the resolution for an address has been read, and another address ordered for the additional information.7 An order has been made that certain particulars specified in an order for a return shall be separately stated, or so much

1 Windsor Castle and Buckingham Palace, 19th April, 1826; Greenwich Park, 3rd June, 1850; Marble Arch, 18th March, 1852; Richmond Park, 12th June, 1854; Metropolitan Parks, 28th July, 1854; St. James’s Park, 21st April, 1856, and 20th May, 1857. In the latter case the right of the house to order such a return having been questioned, was conclusively established.
2 90 C. J. 413, 650; 95 ib. 448.
3 95 ib. 220; 102 ib. 692; 120 ib. 70.
4 92 ib. 580, &c.
5 Ib. 365; 104 ib. 623, &c.
6 110 ib. 56, 230; 116 ib. 99; 117 ib. 337; 121 ib. 143; 123 ib. 69; 127 ib. 277.
7 109 ib. 288.
of the order as related to certain portions of the return has
been discharged or otherwise amended.\(^1\) Orders of a former
session relating to papers are also amended, or otherwise
dealt with, as circumstances may require. The addition of
particulars to a return, not specified in the order of the
house, has been ruled by Mr. Speaker to be an irregularity.\(^2\)

If one house desires any return relating to the business
or proceedings of the other, neither courtesy nor custom
allows such a return to be ordered: but an arrangement is
generally made, by which the return is moved for in the
other house; and, after it has been presented, a message is
sent to request that it may be communicated.\(^3\) Or a message
is sent requesting that a return of certain matters may be
communicated; and such return is prepared and communi-
cated accordingly.\(^4\) But it is not usual to send a message
for a return which has been obtained from other departments,
by order or address. For such a return it is more regular to
move in the usual manner.\(^5\)

Returns may be moved for, either by order or address, rela-
ting to any public matter, in which the house or the
Crown has jurisdiction.\(^6\) They may be obtained from all
public offices, and from corporations, bodies, or officers con-
stituted for public purposes, by Acts of Parliament or other-
wise: but not from private associations, such as Lloyd’s, for
example,\(^7\) nor from individuals not exercising public func-
tions. The papers and correspondence sought from govern-
ment departments should be of a public and official character,
and not private or confidential. On the 3rd July, 1884,
notice having been taken that the order for an address for

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\(^1\) 123 C. J. 178; 122 ib. 322; 127 ib. 277; 126 ib. 99.
\(^2\) 338 H. D. 3 a. 1717.
\(^3\) 111 ib. 250. 270. 294. In 1856, a notice had been given of a return
of fees on private bills in both houses, but on an intimation from the
Speaker, the return was confined to the House of Commons, 111 C. J.
120.
\(^4\) 123 ib. 212; 127 ib. 141.
\(^5\) Ib. 396. 408.
\(^6\) To secure regularity in the form of these returns, it was recommended
by the printing committee, 1841, that every member be advised, before he
gives notice of a motion for a return, to consult the librarian, Parl. Paper,
1841 (181); see also Report, 17th March, 1857 (122).
\(^7\) 11 H. D. 271.
a copy of Dr. Crichton Browne’s treatise on Education, related to a private matter over which the house had no jurisdiction, and involved a question of copyright, the order was discharged.1 The opinions of the law officers of the Crown, given for the guidance of ministers, in any question of diplomacy or state policy, being included in the class of confidential documents, have generally been withheld from Parliament. In 1858, however, this rule was, under peculiar and exceptional circumstances, departed from, and the opinions of the law officers of the Crown upon the case of the Cagliari, were laid before Parliament.2

But however ample the power of each house to enforce the production of papers, a sufficient cause must be shown for the exercise of that power; and if considerations of public policy can be urged against a motion for papers, it is either withdrawn, or otherwise dealt with according to the judgment of the house.

If parties neglect to make returns in reasonable time, they are ordered to make them forthwith:3 or so much of returns as has not been made.4 If they continue to withhold them, they are ordered to attend at the bar of the house;5 and, unless they satisfactorily explain the causes of their neglect, and comply with the order of the house, they will be censured or punished according to the circumstances of the case.6 A person has been reprimanded by the Lords for having made a return to an order, which he was not required or authorized to make, and for framing it in a form calculated to mislead the house (see also p. 509).7

When Parliament is prorogued before a return is presented, the order for the return should be renewed in the ensuing session, as if no order had previously been given; because a prorogation puts an end to almost every proceeding pending in Parliament; yet returns are often presented by virtue of addresses in a preceding session, without

1 139 C. J. 336. 2 149 H. D. 3 a. 178. 3 90 C. J. 413; 114 ib. 371; 119 ib. 291; 121 ib. 143. 4 131 ib. 354. 5 75 ib. 404; 89 ib. 386; 96 ib. 363. 6 90 ib. 575; 81 L. J. 134. 7 82 ib. 89.
any renewal of the address, and occasionally in compliance with an order of a former session. Orders have also been made which assume that an order has force from one session to another. For example, returns have been ordered “to be prepared in order to be laid before the house in the next session;” and orders of a former session have been read, and the papers ordered to be laid before the house forthwith. And the order for an address made by a former Parliament has been read, and the house being informed that certain persons had not made the return, they were ordered forthwith to make a return to the house.

Besides the modes of obtaining papers by order and by address, both houses of Parliament are constantly put in possession of documents by command of her Majesty, and in compliance with Acts of Parliament.

Judgment rolls, exhibits, and certified copies of documents relating to appeals, are delivered in at the bar of the House of Lords, upon oath. Other papers and returns were formerly delivered at the bar, upon oath, in the same manner: but now they are either presented by a minister of the Crown, or are forwarded by the department to the Clerk of the Parliaments, for presentation. In the Commons, when a minister of the Crown has any papers of special importance to present, he goes to the bar, and, on being called by the Speaker, he brings them up; and they are ordered to lie upon the table: but the more usual practice is to deliver them to the clerks at the table. When such papers are brought up, they are generally ordered to lie upon the table, as a matter of course: but upon the question that they do lie upon the table, the mover can found a statement to the house, and a debate can arise; though not without objec-

1 98 C. J. 423; 103 ib. 579, 775; 104 ib. 239, 284, &c.; 106 ib. 5; 108 ib. 209.
2 39 ib. 301; 103 ib. 131; 104 ib. 35, 88, 133, &c.; 106 ib. 24; 108 ib. 293; 129 ib. 7; 135 ib. 126, &c.
3 78 ib. 472; 80 ib. 631.
4 78 ib. 72; 114 ib. 371.
5 90 ib. 413.
6 By usage, such papers are only to be presented by privy councillors.
7 8th July, 1857, Sir G. Lewis on an estimate of the cost of the Persian War, 146 H. D. 3 s. 1132; Mr. Lowe, 13th Feb. 1862, and Mr. Bruce, 5th May, 1865, on papers relating to education, 165 ib. 191; 178 ib. 1535; Mr. Bruce, 10th Feb. 1873, on
tion being taken to a course which brought on debate under inconvenient conditions.¹

In the Lords, if the paper relate to judicial proceedings, the person is called to the bar, sworn, and examined respecting it; but if it be an ordinary paper, he is called in, delivers the paper at the bar, and is directed to withdraw. In the Commons, it was formerly the custom to present papers in this manner: but by resolution 7th April, 1851, accounts and other papers which are laid before the house by Act of Parliament, or the order of the house, are presented, by the deposit of the papers in the office of the Clerk of the house. A minister may move for a return from his own department, without notice, and immediately present it, in compliance with the order which has just been made.²

 Occasionally, blank papers, familiarly known as "dummies," are presented, instead of the real documents, a practice which the exigencies of public business renders necessary: but if used as a colourable compliance with an order of the house, it is open to grave objections. It was therefore ordered, 20th March, 1871, that papers are to "be laid upon the table in such a form as to ensure a speedy delivery thereof to members;"³ and this order was communicated to the several public departments.

When accounts and papers are presented, they are ordered to lie upon the table, when an order has been made, that the paper be taken into consideration on a future day; and on the consideration thereof a motion has been founded.⁴ If necessary, the papers are ordered to be printed, or are referred to committees, or abstracts are ordered to be made and printed. Sometimes papers of a former session are ordered to be printed or reprinted. In the Commons, a

¹ See debate on the attorney-general's motion for copy record (Mr. Davitt), 27th Feb. 1882, 266 H. D. 3 s. 1804; 137 C. J. 75. ² See debate on the attorney-general's motion for copy record (Mr. Davitt), 27th Feb. 1882, 266 H. D. 3 s. 1804; 137 C. J. 75. ³ 126 lb. 96. ⁴ 125 lb. 8. 27.
select committee is appointed at the commencement of each session, "to superintend the form, and to regulate the distribution of parliamentary papers." ¹

Papers printed by order of the Lords are, on application, distributed gratuitously to members of the House of Commons, and to other persons with orders from peers. They are also accessible to the public by sale. The Commons have more fully applied the principle of sale, as the best mode of distribution to the public. ² Each member, under the regulations now in force, can, on application, receive a copy of every paper printed by the house: but he is not entitled to more than one copy, without obtaining an order from the Speaker. ³ Certain reports and papers, viz. reports of royal commissions and of select committees, and all papers relating to the estimates, are distributed to every member as a matter of course, without application.

The Vote Office is charged with the delivery of printed papers to members of the house, who should leave their addresses at the office, in order that papers may be forwarded to them, either during the session or in the recess.

To facilitate the distribution of parliamentary papers, they are sent through the post-office, to all places in the United Kingdom, at a rate of postage not exceeding one halfpenny for every two ounces in weight, whether prepaid or not, provided they be sent without a cover, or with a cover open at the sides, and without any writing or marks upon them. The members of both houses are also entitled, during a session, to send, free of postage, all Acts of Parliament, bills, minutes, and votes, by writing their names upon covers provided for that purpose, in the proper offices.

By these various regulations, the papers laid before Parliament are effectually published and distributed, and each paper is distinguished by a sessional number at the foot of the page, and by the date at which the order for printing is

¹ 144 C. J. 20.
² Reports of Printed Papers committee, 1835 (61. 392); 90 C. J. 544.
³ This rule is not strictly enforced, as regards bills and estimates before the house, which may generally be obtained by members, on application at the Vote Office.
made; and they are classified and arranged in volumes at the end of each session.

Papers which are not printed are open to the inspection of members in the library of the house. In some cases, papers of a local or private character have been ordered to be printed at the expense of the parties, if they think fit.1 In other cases, they have been ordered to be returned to a public department.2 Sometimes part of a return only has been ordered to be printed.3 The orders of a former session, that a return do lie upon the table, and be printed, have been discharged; and papers have been withdrawn that have been laid upon the table.4

Administrative orders and regulations relating to prisons, education, charities, endowed schools, and other matters are presented to both houses, in pursuance of Acts of Parliament, which come into operation, unless disapproved of by either house, within a certain number of days.5 These days are calculated, not according to the days on which the House of Commons actually sits, but of days during the session of Parliament.6 Unless it be otherwise expressly enacted by statute,7 this period must be comprised in the same session,8 a prorogation or dissolution being conclusive of such proceedings or business pending at the time (see p. 43).

The method by which Parliament signifies disapproval or proposed alteration of these orders and regulations must, unless otherwise directed by statute, be signified in the form of an address to her Majesty.

1 101 C. J. 990; 113 ib. 42. 369; 115 ib. 505; 116 ib. 125.
2 106 ib. 880; 125 ib. 80.
3 124 ib. 209; 125 ib. 70.
4 7th Feb. 1873, 134 ib. 18; 135 ib. 235.
5 By statute 34 & 35 Vict. c. 63, s. 2, a copy of draft charters and of proceedings thereon under the consideration of a committee of her Majesty's privy council, for the foundation of any college or university, shall be laid before both houses of Parliament for a period of not less than thirty days before any such report shall be submitted to her Majesty.
6 Letter from the Clerk of the house to the secretary of the Home Office, 23rd March, 1866 (No. 36720–45).
7 See University Act, 40 & 41 Vict. c. 48, s. 50.
8 See Speaker's ruling (Educational Endowments, Scotland), 28th Feb. 1887, 311 H. D. 3 s. 832.
CHAPTER XXII.

PARLIAMENT, AND CHARGES UPON THE PEOPLE.

Part II. The House of Lords (p. 540).
Part III. The House of Commons (p. 553).
Part IV. Procedure in the Committees of Supply, and Ways and Means, &c. (p. 569).

The Sovereign, being the executive power, is charged with the management of all the revenues of the state, and with all payments for the public service. The Crown, therefore, acting with the advice of its responsible ministers, makes known to the Commons the pecuniary necessities of the government; the Commons, in return, grant such aids or supplies as are required to satisfy these demands; and they provide by taxes, and by the appropriation of other sources of the public income, the ways and means to meet the supplies which they have granted. Thus the Crown demands money, the Commons grant it, and the Lords assent to the grant: but the Commons do not vote money unless it be required by the Crown; nor do they impose or augment taxes, unless such taxation be necessary for the public service, as declared by the Crown through its constitutional advisers (see p. 532).

The demand by the Crown for grants of aid and supply for the service of each financial year is made in the speech from the throne at the opening of Parliament. The sovereign addresses the Commons, demands the annual supply for the public service, and acquaints them that estimates will be laid before them of the amount that will be required. The form in which the Commons vote those supplies is consequently a resolution that each sum "be granted to her Majesty;" nor is a grant of supply, even when endowed with the force of law, available for use until the sovereign
THE PRESENTATION OF ESTIMATES.

The royal order (supply grants) puts it at the disposal of the treasury by a royal order under the sign manual.\(^1\)

Other demands for a supply from the sovereign may also be made during the progress of the session by messages desiring pecuniary aid, by a demand for a vote of credit (p. 524), or by the presentation of an estimate.

**Presentation of the annual estimates.**—In accordance with the royal direction, estimates are laid before the House of Commons, stating the specific grants of money which will, during the current year, be required for the army, navy, and civil services; and by resolution, 19th February, 1821, the house directs that whenever Parliament assembles before Christmas, the estimates for the naval and military services should be presented before the 15th day of January then next following, if Parliament be then sitting; and that such estimates should be presented within ten days after the opening of the committee of supply, when Parliament does not assemble till after Christmas.\(^2\) The directions given by this resolution are observed, as far as possible, by the army, navy, and civil service departments.

Until 1854, estimates were not presented in respect of the revenue departments. Prior to that year, the charges of collecting the revenue were deducted by each department from the gross sums collected. This practice, which withdrew the full produce of the taxes, and the cost of collection, from the immediate control of Parliament, was condemned by a resolution of the house, 30th May, 1848; and, pursuant to an Act passed in the year 1854, the whole of the net revenue derived from taxation is paid into the exchequer, and the cost of the revenue departments is included among the annual estimates.\(^3\)

The rule that estimates of public expenditure cannot be presented to Parliament, save by royal command, was formerly set aside in the case of the charge for the disembodied militia. The Commons there took the initiative: the estimate was prepared by a committee, and was re-

\(^1\) Public Income, &c., Parl. Paper [366], sess. 1869, part ii. p. 651.
\(^2\) 76 C. J. 87.
\(^3\) 103 ib. 380; 109 ib. 467.
ferred to the committee of supply, when the Queen's recommendation was signified. But inconveniences arose from this method of procedure; and, pursuant to resolution, 9th February, 1863, the militia estimates, like the other estimates for the public service, are presented by command.¹

As the sovereign is responsible for the presentation of the estimates of the public expenditure, the Crown, acting through its ministers, controls, subject to the requirements of the Exchequer and Audit Act, the form in which the estimates are presented. Under established usage, however, important changes in the customary form of the estimates should not be made without the previous approval of the Public Accounts committee, acting on behalf of the House of Commons; and, in deference to this principle, official alterations in the estimates are restricted to such rearrangements as involve no question of principle.²

**Form of the estimates.**—The ordinary sessional estimates are presented in three parts or divisions, comprising the three branches of the public service—the army, navy, and civil services; and each estimate contains first a statement of the total grant thereby demanded, and then a statement of the detailed expenditure thereof, divided into subheads and items. These estimates should embody the total amount of the expenditure which is required for each financial year; and accordingly, by way of example, when an increase over the demands made by the annual estimates for the army and the navy was requisite, revised or additional estimates were presented, specifying the amounts ultimately found necessary for those services.³

Besides the ordinary sessional estimates for the service of the current year, to meet the requirements of the executive government, estimates for grants on account, for supplementary grants, and for excess grants, are pre-

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¹ 169 H. D. 3 s. 198.
² 341 ib. 1517; Public Accounts committee, 3rd Report, 1891.
³ On the same principle, following the precedents of 1814, 69 C. J. 18.
Grants on account.—Owing to our financial system, and the conditions of parliamentary business, the presentation of estimates for grants in advance upon the estimated departmental expenditure of the year, before a complete sanction has been given to that expenditure, is an annual necessity. These grants are known as “votes on account.”

In the hope that the vote of the committee of supply would be taken upon the bulk of the annual estimates during the earlier portion of each session, the financial year closes the 31st March, and begins on the 1st April. The futility of a hope centred on the 1st April is the experience of every session. When that day comes round, session after session, but very slender provision has been made for the requirements of the new financial year. On the other hand, as every grant of supply is limited to the service of the financial year for which the grant is made, the grant lapses, if it has not been utilized before the 31st March; and, under the provisions of the Exchequer and Audit Act, all unexpended sums in the hands of the departments are returned into the exchequer. Thus, obviously, during the first quarter of each year, a vote on account must be demanded; for, if no grant in advance has been made upon the 31st March, the maintenance of the public service will be wholly unprovided for.

During sessions uninterrupted by a dissolution, the army and navy departments are usually exempted from the necessity of obtaining grants on account. Owing to the

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2 To suit the exigencies of parliamentary business, grants on account were taken, before the number of men were voted, during the session of 1848, for the army and navy, 103 C. J. 253. 264; in 1858, for both services, 113 ib. 78; 149 H. D. 3 s. 110; in 1867, for the navy, 122 C. J. 112. 153; see also 267 H. D. 3 s. 852. 853.
nature of the duties entrusted to them, a peculiar privilege is accorded to those departments. The constitutional principle which insists that each grant of supply shall be devoted exclusively to the object for which the grant is made, in the case of the army and navy departments, is subjected to a temporary suspension. Under sanction from the treasury, authorized by a provision in the Appropriation Act of each current financial year, and subject to a confirmation of the transaction by the next year's Appropriation Act, the military and naval services have the power of using, at their discretion, until the close of each financial year, such unexpended balances or surpluses as they can save out of the grants made to their departments. Accordingly, to meet the necessity of carrying on the army and navy services, those departments are permitted to make a temporary advance, on account, out of any one grant, towards any other grant which appears upon the estimates for that service. Thus it is customary to obtain, before the 31st March in each year, the grant for the pay and wages of the men in the army and the navy for the ensuing financial year, and to use the money so granted, on account, for the general maintenance of those services, until the grants to the army and navy are completed. This facility is not extended to the civil service departments; and grants on account are therefore required to maintain those departments during the first quarter of the ensuing financial year. Besides the grants on account thus required during the month of March, the necessity of one or more grants on account during the months of May, June, or July, is occasioned by that recurring pressure of parliamentary business which postpones the consideration of supply to the end of the session.

According to established usage, demands for grants on account are restricted to such services as have received the sanction of Parliament, though an exception is occasionally made to this rule in favour of trifling, or non-contentious new services. A limit has also been placed by practice upon the total amount that may be demanded by estimates
for a “vote on account.” To retard or to obviate a renewal of these demands, estimates have been presented for the first sessional grant on account, comprising an expenditure in advance for the ensuing three months. This course was followed in 1879 and 1881-2: but such opposition arose, that the proposal for a three months’ supply was not pressed, and provision for two months was accepted. Accordingly, since 1881-2, the practice has been to limit the first grant on account to the ensuing two months, and the supply granted by the later votes on account to two months, or less. The power of Parliament is, in this matter, unrestricted; and, in the session of 1888, to provide for an impending adjournment from August to November, the third grant on account was made for the period of four months.

Grants on account may also be rendered necessary by a dissolution of Parliament. If the dissolution occurs in the early portion of a session, before supply is completed, it may be necessary to take votes on account sufficient to carry on all the services, army and navy, as well as civil, until the new Parliament is able to consider the grant of supply. When Parliament was dissolved in 1886, as the navy department was possessed of a sufficiency of supply, by the exercise of the power of making a temporary application of the grants they had received towards the service in general, nominal sums only were taken on account for the navy services: but, in future, on such an occasion, substantial grants on account will be demanded for both army and navy services. The amounts demanded for grants on account caused by a dissolution were, to take the case of 1841, a supply consisting of one-half of the civil and miscellaneous expenditure. In 1857 and 1886, supply was taken for four, and five months. In 1880, supply was taken for three months, in behalf of the bulk of the navy and the civil services, and a four months’ grant for

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1 244 H. D. 3 s. 1593; 250 ib. 1146.
2 143 C. J. 428.
3 114 ib. 138.
4 141 ib. 275.
5 96 ib. 388.
6 112 ib. 93. 98.
7 141 ib. 220. 275.
The facility thus given for carrying on the executive government without reference to Parliament, has not been unnoticed. In 1841, Lord John Russell, on 7th June, proposed to take supply up to 1st October. Sir Robert Peel objected, that this would enable the government to defer the meeting of Parliament until October; and this objection was met by an assurance that the new Parliament should be summoned as soon as possible; and, under similar circumstances, when, in 1886, supply was asked for extending from June to 31st October, Mr. Gladstone stated that he thought it quite certain that Parliament ought to meet at an early period of time.

The grants on account caused by a dissolution should be legalized by an Appropriation Act, passed before Parliament is dissolved, appropriating in detail all the supply voted in the expiring session in the manner used at the close of an ordinary session; and the amount of supply left unvoted is dealt with by the succeeding Parliament.

The prorogation or dissolution of Parliament without an Appropriation Act is a constitutional irregularity, as thereby all the grants of the Commons are nullified, and the sums must be voted again in the next session, before a legal appropriation can be effected, a course which was followed on the two occasions when Parliament was dissolved, no Appropriation Act having been passed.

On the occasion of the dissolution of 1820, the Commons did not pass a bill to effect the due appropriation of certain temporary supplies; a course which drew from the Lords a remonstrance, which that house recorded on its journal (see p. 540).

When, owing to the course of events, grants voted on account exceeding a specified amount are required, the persons who acted on supply grants, unsanctioned by an Appropriation Act, would be guilty of a high crime and misdemeanor, 39 C. J. 858.

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1 135 C. J. 92, 93.
2 58 H. D. 3 s. 1274.
3 306 ib. 1317; see also debate, 1st April, 1892, 3 Parl. Deb. 4 s. 507.
4 See Appropriation Acts, sess. I. and II. 1886.
5 On the advice of Mr. Pitt in 1784, and of Lord Grey in 1831. The Commons, in 1794, resolved that
account, as in the case of the army and navy departments, exceeded the requirements of the current financial year, statements were presented, by command, showing the amounts of the original scale of expenditure, together with reduced estimates for the sums ultimately found to be sufficient, which were referred to the committee of supply. In one case, a grant made on account was in excess of the total amount required. The due amount was accordingly voted de novo in committee; and the previous resolution was rescinded, before the new resolution was agreed to by the house.

Supplementary grants.—A supplementary estimate may be presented either for a further grant to a service already sanctioned by Parliament, in addition to the sum already demanded for the current financial year, or for a grant caused by a fresh occasion for expenditure that has arisen since the presentation of the sessional estimates, such as expenditure newly imposed upon the executive government by statute, or to meet the cost created by an unexpected emergency, such as an immediate addition to an existing service, or the purchase of land, or of a work of art. Supplementary estimates for the army and navy services were presented during the session of 1884–5, to meet increased expenditure caused by operations in Egypt and South Africa, and to provide for an increase of the ranks of the army. This method of placing before Parliament the demand for a supply created by that occasion, was adopted in preference to a vote of credit (see p. 524), because a fairly definite estimate could be formed of the amount that would be required, and of the general heads under which that expenditure would fall.

The need for a supplementary grant to an existing service is not infrequently caused by the system in force to ensure the control of Parliament over public expenditure. To provide for the early presentation of the annual estimates, the departments are obliged to compute in the month of

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1 69 C. J. 18. 449; 111 ib. 172.  
2 Transport Service, 111 ib. 268.  
3 140 ib. 26. 27. 92.  
4 285 H. D. 3 s. 672. 873.
November their anticipated expenditure for the ensuing financial year, dating from the coming 1st April. Fallibility must attend calculations which range over sixteen months in advance; and as too large a demand for money is a grave departmental error, the official tendency is to make the demand too small. If the lesser error occurs, to avoid the still greater evil of excess expenditure, recourse of necessity must be had to a supplementary grant.

Excess grants.—An estimate for an excess grant arises when a department has, by means of advances from the civil contingencies fund, or out of funds derived from “extra receipts,” carried expenditure upon a service beyond the amount granted to that service, during the financial year for which the grant was made. The title of this class of estimate attests the nature of the grants; and to place on record a permanent disapproval of these departmental excesses, the Commons resolved, 30th March, 1849, that “when a certain amount of expenditure for a particular service has been determined upon by Parliament, it is the bounden duty of the department which has that service under its charge and control, to take care that the expenditure does not exceed the amount placed at its disposal for that purpose.”

A demand for an excess grant by the army and navy departments is of exceptional occurrence, as under the privilege, which has been explained (see p. 518), the military and naval services have the power of applying the surpluses they can save out of the grants made to their departments, to meet excess expenditure made upon other grants, in cases where such expenditure is of public advantage. Excess grants are accordingly usually required by the civil service departments alone, as that financial privilege is reserved for the army and navy departments.

Demands for excess grants, having been first brought before the committee of public accounts (see p. 563), are presented to the committee of supply in the form of a single resolution, which includes all the occasions for excess

\[1\] 104 C. J. 190.
expenditure that have occurred in the branch of the public service to which the resolution applies; and the grants should be voted, and the money made available before the end of the current financial year, in order that the irregularity may be set right at the earliest possible moment.

Grant of a vote of credit.—Unexpected demands upon the resources of the United Kingdom for the defence of the empire, or for a warlike expedition, which, on account of the magnitude or indefiniteness of the service, cannot be stated with the detail given in an ordinary estimate, are laid before Parliament by an application, based on an estimate of the total sum required, for a vote of credit. Sums obtained upon a vote of credit are, like other grants of supply, available solely during the financial year when the vote was made. Ex

Exceptional grants.—An exceptional grant may be required to meet the cost of an imperial undertaking which forms no part of the current service of the year, such as the 20,000,000l. granted to facilitate the abolition of slavery in the British Colonies; loans to foreign countries, and to Ireland; or the grant for the purchase of the Suez Canal shares. Demands also for pecuniary aid are made by a message from the sovereign, bearing the sign manual; the object of these messages being usually to obtain a grant for the maintenance of the dignity and well-being of the Crown, or for the reward of men who have rendered distinguished service to the empire.

These demands for exceptional grants are brought before

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1 1856, 111 C. J. 269; 1884, 140 ib. 173, &c. The practice of demanding a vote of credit by a message from the Crown, has, since 1854, 109 ib. 432, been discontinued.

2 285 H. D. 3 s. 875.

3 West India Relief, 1832, 87 C. J. 452; Slavery, 29,000,000l. grant, 1833, 88 ib. 482; Sardinia and Turkish Loans, 1853 and 1855, 110 ib. 142. 406; 111 ib. 273; Fortifications and Works, 1860, 1862, 1863, and 1867, 115 ib. 403. 441, &c.

4 43 L. J. 566; 86 C. J. 719; Duke of Cambridge, 1850, 105 ib. 539; Princess Royal, 1857, 112 ib. 153; Prince of Wales, 1863; resolutions agreed to nem. con. 118 ib. 69; Prince Albert Edward, 1889, 144 ib. 290.

5 Sir H. Havelock, 1857, 113 ib. 9; Sir Rowland Hill, 1864, 119 ib. 293; widow of Earl of Elgin, 1864, 119 ib. 293; Lords Aleseter and Wolseley, 1888, 138 ib. 146. 217.
Parliament either by a resolution proposed in a committee of the whole house, appointed to sit on a future day, for that purpose, or by the presentation of an estimate, according to the nature of the demand. A grant based upon an exceptional demand, or a royal message, may be voted either by the committee of the whole house that is appointed to consider the matter, or wholly or partially by the committee of supply. For instance, the grant for the emancipation of the negro was voted in a committee; the grant for the purchase of the Suez Canal shares was voted in committee of supply; and in the case of the demands occasioned by the marriage of the Princess Royal, 1857, the marriage portion, paid out of the revenues of the year, was voted upon estimate by the committee of supply, whilst the annuity granted to the princess was charged upon the Consolidated Fund by a resolution originating in a committee of the whole house, a practice which has been followed on similar occasions.

The grants voted in the committee of supply are dealt with by the Appropriation Act, and the grants voted in a special committee, by a bill brought in for that purpose (see p. 559).

**Grants and charges not based on the annual estimates.**

Incidental charges necessary to carry on the public service, which are not of the nature of the annual supplies, are voted every session, upon the recommendation signed by a minister of the Crown (see p. 528). Usually these charges are for salaries and other expenses caused by the imposition of novel duties upon the executive government by the legislation of the session.

Messages from the sovereign also are sent to inform Parliament, when an emergency occurs the calling out for service, the militia, and the army and militia reserve forces. The army reserve messages are commu-

1 112 C. J. 153; 121 ib. 99; 144 ib.
ib. 355.
2 88 ib. 383.
3 Suez Canal shares, 131 ib. 55.
4 112 ib. 170. 175.
5 3 Hatsell, 172; 67 C. J. 377. 380;
69 ib. 254 (Duke of Wellington);
Princess Charlotte, 71 ib. 220.
8 1615, 70 ib. 399; 1854, 109
ib. 242; 1878, 133 ib. 156; 1883
Issues in anticipation of the Appropriation Bill.

Consolidated Fund bills.—Until a grant of supply has been appropriated by statute to the service and object for which the grant is destined, the treasury, unless otherwise authorized, is not capable of making an issue of the sum so granted from the Consolidated Fund. The introduction of the Appropriation Bill cannot, however, take place until all the grants have been voted for the service of the current year,—a process usually ranging over the period of six months. A more prompt issue must therefore be made of the money granted from time to time for the current service of the Crown. Accordingly, from time to time bills are passed during each session, in pursuance of the provisions of the Exchequer and Audit Departments Act, 1866, and of the Public Accounts and Charges Act, 1891, s. 2, known as the Consolidated Fund bills, which empower the treasury to issue out of the Consolidated Fund, for the service of the departments for whose use the grants are voted, such sums as they may require, in anticipation of the statutory sanction conferred by the Appropriation Act. The first Consolidated Fund Bill of the session is passed during the month of March. It includes the supply grants for the service of the financial year that ends on the then approaching 31st March, together with the excess grants for the preceding financial year; and this bill must receive the royal assent in time to allow of the necessary issues being made before the 31st March; and it is also a necessity that some amount of supply for the service of the ensuing financial year should be made available upon the 1st April.

Grants on account, see p. 519.

140 C. J. 51. 124; 30 & 31 Vict. c. 67, s. 14; 45 & 46 Vict. c. 49, s. 18. 110, 111, ss. 10. 8; 33 & 34 Vict. c.
The remaining Consolidated Fund bills are passed, during the progress of the session, at such times as may be requisite for the maintenance of the public service.

**Regulations adopted by the Commons to enforce the royal control over public expenditure and revenue.—** The Commons have faithfully maintained the duty and responsibility of the sovereign, and their own, regarding the custody of public money, by standing orders framed specially for that purpose.¹ Three of these standing orders, Nos. 57–59, were the first, and, for more than a century, were the only, standing orders ordained by the Commons for their self-government; and the regulations prescribed by those standing orders have been from time to time extended and applied.² Under the practice thus established, every motion which in any way creates a charge upon the public revenue,³ or upon the revenues of India, must receive the recommendation of the Crown, before it can be entertained by the house; and then, the recommendation having been given, procedure on the motion must be adjourned to a future day, and be referred to the consideration of a committee of the whole house.

Unless the recommendation of the sovereign enjoined by these standing orders be signified, in the manner hereinafter mentioned (see p. 528), the Speaker cannot put the question on a motion which comes within the scope of these standing orders. Accordingly, if any motion, or bill, or

¹ 3 Hatsell, 241. The Imperial Diet of Japan, during the session of April, 1892, distinguished themselves by embodying in their procedure the principle of imperial control over the initiation of public expenditure. — (Information supplied by the courtesy of Mr. Kentaro Kaneko.)

² The first grant of public money proposed upon a formal recommendation of the Crown, took place on 5th March, 1706, when Mr. Secretary Harley informed the house that her Majesty had been made acquainted with a petition praying for a grant of 500,000l., presented by sufferers from the damage the French troops inflicted on the islands of St. Nevis and St. Christopher, during Feb. and March 1705, 15 C. J. 323.

³ In the case of Lords Alcester and Wolseley, the grant of a pension was submitted to the House of Commons by a royal message (see p. 524). Whilst the house was acting upon the message, a change from a pension to an equivalent sum of money was thought desirable; and the grant of the sum of money was founded upon a resolution of a committee appointed upon the recommendation of the Crown, 138 ib. 217.
proceeding is offered to be moved, whether in the house or in a committee, which requires, but fails to receive, the recommendation of the Crown, it is the duty of the chair to announce that no question can be proposed upon the motion, or to direct the withdrawal of the bill.\(^1\) In like manner, after the question has been proposed on an amendment, and it has appeared that the amendment would vary the incidence of taxation, the Speaker has declined to put the question.

**Procedure on legislation creating a public charge.**—In pursuance of the standing orders which regulate the financial procedure of the house, committees of the whole house are appointed to sanction by their resolutions grants of public money, or the imposition of a charge upon the people. The committee is appointed, either before the commencement or after the close of public business, by a motion that “this house will,” on a future day, “resolve itself into a committee” to consider the matter specified in the motion. If satisfied that the motion will receive the royal recommendation, the Speaker proposes the motion as a question from the chair, and thereupon a minister of the Crown or a privy councillor, acting under instructions from the treasury, signifies to the Speaker, and to the house, that the motion is recommended by the Crown; and the recommendation, and the name of the member who signified it, are recorded upon the journal of the house.

**Bills creating a charge.**—When the main object of a bill is the creation of a public charge, resort must be had to this procedure before the bill is introduced, and upon the report of the resolution of the committee of the whole house thereon the bill is ordered to be brought in.\(^2\) If the charge created by a bill is a subsidiary feature therein, resulting from the provisions it contains, the royal recommendation and preliminary committee are not needed in

\(^1\) 2 Hatsell, 168, n.; 59 C. J. 355; 63 ib. 266; 142 H. D. 3 s. 1302; 164 ib. 173. 997; 241 ib. 1591.

\(^2\) 19th April, 1800, Income Tax Duties Acts Amendment Bill, 55 C. J. 396; 98 ib. 167; 101 ib. 615; 104 ib. 412; 113 ib. 31; Education and Local Taxation Relief (Scotland) Bill, 25th Feb. 1892, 1 Parl. Deb. 4 s. 315; 147 C. J. 67. 79.
the first instance, and the bill is brought in on motion. But before the clauses and provisions for the creation of incidental charges can be considered by a committee on the bill, those clauses and provisions must be sanctioned by the resolution of a committee appointed upon the recommendation of the Crown, and agreed to by the house;¹ and in the presentation copies of the bill, the clauses and provisions which create these charges are printed in italics, to mark that they do not form part of the bill, and that no question can be proposed thereon, unless vitality has been imparted to those provisions by a committee resolution;² and amendments to bills which are not thus sanctioned, are not proposed from the chair, or, if agreed to inadvertently, are cancelled.³ The Speaker also has declined, in like manner, to put the question on an amendment which would have varied the incidence of taxation.⁴

In deference to the usage expressed in standing order No. 62, that consideration of a charge upon the people “shall not be presently entered upon, but shall be adjourned” to a future day, the resolutions of the committees of supply, and ways and means, and of all resolutions which are sanctioned by the recommendation of the Crown, are not considered on the day on which they are reported from the committee, but on a future day appointed by the house;⁵ and bills brought in upon such resolutions are, also, not passed through more than one stage at the same sitting of the house.⁶

¹ When the scope of a clause exceeded the power given by the resolution on which the bill was founded, the chairman declined to put the question thereon, 138 C. J. 234.
² Public Offices (Site and Approaches) Bill, 1865, 177 H. D. 3 s. 1908; 232 ib. 196. 538, &c. On an intimation from the Speaker, a bill reported to the house by a select committee containing a money clause not printed in italics was recommitted to the committee to set the matter right, 98 C. J. 487.
³ 112 ib. 393; 137 ib. 345; 138 ib. 234; 55 ib. 396; 111 ib. 371; 137 H. D. 3 s. 1897; 164 ib. 173; 191 ib. 1877; 123 C. J. 157; 191 H. D. 3 s. 1878.
⁴ ⁴ A resolution from a committee See also of the whole house, authorizing the collection of fees in the Court of Bankruptcy by means of stamps, was reported forthwith, as the fees were not increased, but the mode of collection only altered, 25th July, 1849, 104 C. J. 567; see also the Speaker’s remarks, 315 H. D. 3 s. 789.
⁵ 239 ib. 1419; see proceedings (Customs, &c., Bill), 5th May, 1893.
Examples may be given of matters which need recommendation from the Crown; namely, advances on the security of public works, when funds in addition to the funds already available to such purposes must be provided to meet such advances;\(^1\) advances to landlords or tenants beyond the scope and objects of the Public Works Loans Acts\(^2\) (see p. 536); bills relating to savings banks which create a charge upon the Consolidated Fund or other public liability;\(^3\) the imposition of stamp duties by private or provisional order bills;\(^4\) the release or compounding of sums due to the Crown;\(^5\) the repeal of an exemption from an existing duty, as the burthen of the duty is thereby augmented;\(^6\) the charge of certain payments upon the Civil Contingencies Fund;\(^7\) a proposal to repeal an existing drawback on the export of sugar, as it effected an increase of charge upon the importers who desired to export sugar;\(^8\) a provision granting costs against the Crown or the revenue officers, and thereby imposing a public charge;\(^9\) and petitions praying for compensation out of the public revenues.\(^10\) Prior to 1875, it had been held that a proposal for the remission of statutory advances made by the treasury did not come within the standing orders. But this exemption no longer exists, because these advances are made recoverable by statute, as specialty debts due to the Crown.\(^11\)

Procedure on guarantees. — Contingent or prospective charges upon the public revenue, and upon the revenue of India, come within the purview of these standing orders; therefore before clauses in a bill can be considered, which

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\(^1\) Exchequer bills for temporary relief, 1817, 72 C. J. 220; 57 Geo. III. c. 34.
\(^2\) Distress (Ireland) Compensation for Disturbance Bill, sess. 1880.
\(^3\) 108 C. J. 558; 118 ib. 55; 130 ib. 1791.
\(^4\) 132 ib. 180; 133 ib. 106; 135 ib. 95. 187; 146 ib. 353.
\(^5\) 75 ib. 152. 167; 98 ib. 52. To a clause about to be proposed for that purpose in committee on a bill, 20th June, 1861, 116 ib. 285.
\(^6\) Stamp Duties Bill, 1854, 109 ib. 334.
\(^7\) St. Alban's Inquiry Commission Bill, 1851.
\(^8\) 120 C. J. 313.
\(^9\) 166 H. D. 3 s. 1593.
\(^10\) 81 C. J. 66; 88 ib. 212; 98 ib. 586; 112 ib. 219; 119 ib. 177.
\(^11\) Public Loans (Ireland) Remission Bill, 1881.
apply the Consolidated Fund—money to be voted by Parliament ¹—or the revenues of India ² as a guarantee for sums to be raised, paid, or borrowed for any purpose, such clauses must receive the preliminary authority of a committee resolution, founded upon the recommendation of the Crown; and the guarantee clauses in the bill must be printed in italics. ³

**Instructions needing recommendation from the Crown.**—

No instruction to a committee on a bill can be proposed which would enable the committee to add provisions to the bill creating a charge upon the people, unless such instruction receives the recommendation of the Crown. ⁴

**Petitions for the creation of a charge.**—In pursuance of standing orders Nos. 57 and 58, a petition praying directly or indirectly for an advance of public money; ⁵ for compounding or relinquishing any debts due to, or other claims of the Crown; ⁶ or for remission of duties or other charges payable by any person; ⁷ or for a charge upon the revenues of India, ⁸ will only be received if recommended by the Crown; ⁹ and, in case of debts due to the Crown, on proof of the steps taken for the recovery of such debts. Petitions distinctly praying for compensation, or indemnity for losses, out of the public revenues, are refused, unless recom-

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¹ Main Drainage (Metropolis) Bill, 1858; Canada Railway Bill, 1867.
² 1859, 114 C. J. 55. 315; 1860, 115 ib. 455; Military Orphan Fund, 1866, 121 ib. 156, &c.
³ 154 H. D. 969; 151 H. D. 3 s. 1519.
⁴ Notice of an instruction to extend the provisions of the Education (Scotland) (Sutherland and Caithness) Bill (1875) to Scotland generally, notice paper, 15th June, 1875, p. 1490; and of an instruction, Local Taxation (Customs) Bill, 1889, to sanction the admission of clauses empowering the treasury to make a loan, were on this account ruled to be irregular. The words, "for an advance by way of loan from the treasury," were, consequently, withdrawn from the notice, p. 1575 of the notices, May, 1890. See also the Speaker's refusal to put the question on an instruction, Dublin Barracks Bill, 12th May, 1892, 147 C. J. 243. On one occasion, the royal recommendation was refused to an instruction: but the refusal showed that the motion for the instruction should not have been proposed from the chair, 93 ib. 294.
⁵ Captain Manby, 1823, 78 ib. 261. 285; 90 ib. 42. 487. 507; 111 ib. 247; 119 ib. 177.
⁶ 75 ib. 167; 81 ib. 66; 83 ib. 212.
⁷ 81 ib. 353; 92 ib. 372 (Duke of Marlborough).
⁸ 111 ib. 366.
⁹ 73 ib. 157; 74 ib. 422; 87 ib. 571; 90 ib. 487; 104 ib. 233, &c.
mended by the Crown: but petitions are received praying that compensation may be made for losses contingent upon the passing of bills pending in Parliament.¹

No increase of sums demanded on behalf of the Crown.—As is subsequently explained (see p. 580), the constitutional principle which vests in the Crown the sole responsibility of incurring national expenditure, forbids an increase by the Commons of a sum demanded on behalf of the Crown for the service of the state. This principle, however, is apparently disregarded when the recommendation of the Crown is given to a resolution empowering the expenditure of public money which, framed in general terms, places no limitation on the amount of expenditure to be authorized by the resolution. As the resolution sanctions, without any specific limitation, the application of money to be provided by Parliament to certain purposes, when the clauses in a bill founded upon such a resolution are before the committee, the freedom of action sanctioned by that resolution can be exercised. The committee is not bound by the terms of the provisions which the ministers of the Crown have inserted in the bill; and any member may propose an increase of the grants specified in these clauses, or to extend the application of the provisions of the bill, whatever may be the cost resulting therefrom, so long as the power conferred by the royal recommendation is not exceeded. Acting on this principle, when, in 1812, a committee was considering a message from the Prince Regent recommending, in general terms, provision to be made for the family of Mr. Spencer Perceval, amendments were permitted for increasing the provision proposed by the ministers;² and this practice has been supported by rulings from the chair, though, on the last occasion, not without remarks which deserve careful consideration.³

Responsibility of the Crown and Parliament regarding taxation.—The principle that the sanction of the Crown must be given to every grant of money drawn from the public

¹ 90 C. J. 136; 92 ib. 469.
² 23 H. D. 199; 2 Walpole, Life
³ 263 H. D. 3 s. 53; 354 ib. 1898.
revenue, applies equally to the taxation levied to provide that revenue. No motion can therefore be made to impose a tax, save by the minister of the Crown, unless such tax be in substitution, by way of equivalent, for taxation at that moment submitted to the consideration of Parliament; nor can the amount of a tax proposed on behalf of the Crown be augmented, nor any alteration made in the area of imposition. In like manner, no increase can be considered by the house, except on the initiative of a minister, acting on behalf of the Crown, either of an existing, or of a new or temporary tax for the service of the year; nor can a member other than a minister move for the introduction of a bill framed to effect a reduction of duties, which would incidentally effect the increase of an existing duty, or the imposition of a new tax, although the aggregate amount of imposition would be diminished by the provisions of the bill.

When a schedule of duties has been reported from a committee, and agreed to by the house, the committee on the bill cannot increase such duties, nor add any articles not previously voted: but if the duties so voted are less than those payable under the existing law, it is competent for the committee on the bill to increase them, provided such increase be not in excess of the existing duties.

The house, accordingly, can make amendments which diminish the amount of a reduction of taxation, or postpone the day when the reduction takes place, although the amendments may so far increase the charges upon the people. So long as an existing tax is not increased, any modification of the proposed reduction may be introduced in the committee on the bill, being regarded as a question, not for increasing the charge upon the people, but for determining to what extent such charge shall be reduced.

1 On the 14th March, 1844, Mr. Howard Elphinstone proposed a committee of the whole house to consider the Stamp Acts, with the view of imposing the same amount of probate duty on real estate as was paid on personal property. Objection being taken, the Speaker observed on the irregularity of the proceedings, and the motion was withdrawn.
Thus, on the 19th March, 1845, resolutions were reported from a committee on the Customs Acts by which the import duties on glass were reduced from and after a prescribed date. In the committee on the bill introduced upon those resolutions, it was proposed to postpone the period at which such reduction of duty would take place; and the amendment was ruled, privately, by the Speaker to be regular, although the amendment postponed the relief from taxation beyond the time voted by the preliminary committee, and agreed to by the house.1

Drawbacks. As a final illustration of the way in which the reduction of public charges is dealt with, it may be mentioned that, as a "drawback" is a fiscal arrangement made to facilitate the exportation of goods liable to excise duties, and is so far an alleviation of taxation, a provision creating a "drawback" can be considered without recommendation from the Crown, or a preliminary committee resolution. Thus when, in 1857, resolutions affecting the sugar duties had been voted in the committee of ways and means, although those resolutions did not touch duties levied in the Isle of Man, the grant of a drawback upon sugar imported into the Isle of Man was inserted in the Customs Bill which was founded upon those resolutions. In like manner, when upon the consideration of the Lords' amendments to a bill which was designed to relieve the Consolidated Fund of charges to the amount of 20,000L., an amendment to the bill consequent upon a Lords' amendment, which limited the extent of that relief to 18,000L., was held to be admissible, as not imposing an addition to the existing charge on the Consolidated Fund.2

Doubts have been entertained whether, on the report stage of resolutions from a committee by which duties are reduced, it is regular to propose any amendment by which such reductions would be negatived, or the amount of reduction diminished. It has been contended that such an amendment would, in effect, increase a charge upon the

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1 100 C. J. 206. See also proceedings on Sugar Bill, 1848, 103 ib. 853. 2 193 H. D. 3 s. 1887. 1920; see also n. 1, p. 549.
people, which cannot be done with the Speaker in the chair, even upon royal recommendation, and the resolution of a committee. But it is clear that, if the amendment were made, it would merely leave unchanged the duty existing by law, or would reduce it; and that the charge upon the people would not be increased. It would, indeed, be an anomalous form to report such resolutions to the house at all, unless the house could disagree to or amend them, and there are numerous cases in which amendments of this character have been proposed, without objection, on the report.¹

Exemptions from the standing orders touching charges on the people.—Unless a new and distinct charge be imposed upon the public revenue, the standing orders which regulate financial procedure are not applicable. This principle applies to cases where it is proposed to authorize advances on the security of public works, out of moneys already set apart for such purposes.² For the same reason, it was held, 30th June, 1857, that a bill which repealed a section of the Superannuation Act that created a superannuation fund by means of annual deductions from official salaries, did not come within the scope of these standing orders, because, although the bill effected a diminution of public income, it did not increase salaries, nor the public charge in respect of salaries. The same exemption also applies to legislation which varies the appropriation of the proceeds of an existing charge upon public revenue, whereby no new burthen is imposed; such, for instance, as the University Education (Ireland) Bill, 1882, which diverted to the use of the Royal University of Ireland, grants out of the Consolidated Fund which were payable by statute to the Queen’s Colleges in Ireland; and this principle was applied to the Local Government Bill of 1888, which diverted from the exchequer to the county fund a portion of the probable duty, because, although thereby certain sums would

¹ Customs Act Report, 15th, 16th, and 17th March, 1843, 101 C. J. 323, 335. 349.
² Railways (L) Bill, 1847 (advance of 16,000,000£), (Lord G. Bentinck); Drainage (L) Act, 5 & 6 Vict. c. 89; Public Works (Manufacturing Districts) Bill, 1863; Drainage (L) Act, 9 Vict. c. 4, ss. 10. 31. 51; Public Works (L) Act, 9 Vict. c. 1.
be intercepted, and the public revenue would be so far diminished, no fresh payment arose out of the Consolidated Fund, or out of moneys provided by Parliament, nor was any additional charge imposed upon the people. A ruling to this effect was, during the session of 1891, also made from the chair regarding the Russian Dutch Loan Bill.\(^1\) Nor do standing orders Nos. 57 and 62 apply to bills dealing with local loans.

Legislation regarding moneys administered by the public works loan commissioners affords another mode of illustrating the foregoing principle. By the National Debt and Local Loans Act, 1887 (50 & 51 Vict. c. 16, s. 6), the national debt commissioners are empowered to issue to the various commissioners mentioned in the Act, the sums required for local loans to an amount not exceeding that authorized by Parliament; consequently, the particular mode of application of those sums does not increase the total amount available for loans. The Act of 1887 created a Local Loans Fund, under the control of the national debt commissioners, which receives the repayments of the principal of local loans, and the income derived from interest thereon. The Act made the Consolidated Fund a security in case of deficiency; and the resolution which sanctioned the liability so imposed upon the Consolidated Fund was, with the recommendation of the Crown, voted in committee.\(^2\) The provisions of the standing orders regarding the imposition of a charge were thus fully complied with by the procedure upon the National Debt Local Loans Bill of 1887; and, as compliance with the standing orders in respect of what may be termed the principal Act is held applicable to all subsequent bills which fulfil its purposes, since the passing of the National Debt and Local Loans Act, 1887, annual Public Works Loans Bills are ordered in on motion, without a preliminary recommendation from the Crown. On the same principle, and in like manner, the Land Purchase (Ireland) Bill, 1888, was introduced on motion, because the financial

\(^1\) 354 H. D. 3 s. 171.  
\(^2\) 142 C. J. 303.
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Chapter XXII.  
Part I.  

operations of the bill were based on the Local Loans 
Fund under the Act of 1887.\(^1\) Other cases of procedure may be mentioned in which 
the recommendation of the Crown has not been held 
necessary, such as the transfer of certain charges from the 
Consolidated Fund to the supplies annually voted by 
Parliament, as no increased charge upon the people was 
effected;\(^2\) an exemption from penalties due to the Crown 
created by the Under Secretaries Indemnity Bill of 1864;\(^3\) 
bills relating to savings banks, when solely of a legal and 
administrative character;\(^4\) and bills applying the land 
revenues of the Crown to improvements of Crown property, 
although by statute such land revenues are carried to the 
Consolidated Fund.\(^5\)

The rule that recommendation from the Crown must be 
given to a guarantee based on the public, or Indian revenues 
(see p. 530), is only applicable to a provision which creates 
a direct, though prospective, charge upon the public revenue. 
The application of this principle has received the following 
illustrations from transactions with the Government of 
India.

The Government of India Act, 1858, s. 55, prescribes 
that the revenues of India shall not be applied to expedi-
tions beyond the frontiers, without the consent of both 
houses of Parliament; and if the resolution whereby this 
consent is given follows the directions of the Act, and is 
unaccompanied by a guarantee upon the exchequer, the 
resolution is exempt from the operation of the standing 
orders, and can be considered by the House of Lords 
without a previous communication from the Commons.\(^6\) 
The resolution, however, which, in 1867, was submitted to 
Parliament to empower the employment of Indian native

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\(^1\) 330 H. D. 3 s. 1550.  
\(^2\) 147 ib. 1220.  
\(^3\) 175 ib. 83.  
\(^4\) 117 C. J. 90.  
\(^5\) Newborough Church Bill, 1 Will. IV. c. 59; Hainault Forest 
Bill, 1851; Pimlico Improvement

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\(^6\) Afghan War, 134 C. J. 23; 111 L. J. 13; Egyptian and Burmese 
Expeditions, 137 C. J. 416; 141 ib.
forces in the Abyssinian War, was accompanied by a provision that the contingent charges, which might arise out of the expedition, should be defrayed by the exchequer. The resolution approving that application of the Indian revenues, as it was accompanied by that proviso, was consequently moved upon recommendation from the Crown, and was referred to a committee; and as the initiative in the imposition of charges rests with the Commons, the resolution was subsequently communicated to the Lords, and their concurrence obtained.¹ The same question arose during the session 1885, when the consent of Parliament was sought to the employment of the Indian native forces upon an expedition into the Soudan and Nubia: but on this occasion it was held that the resolution was not brought by that proviso within the scope of the standing orders, because it created only an indirect liability, which could not arise unless the contingency creating such liability took place, and a grant was voted by Parliament towards the expenses of the expedition. The resolution was therefore considered with the Speaker in the chair, and was submitted directly to the Lords without previous communication from the Commons.²

Grants needing no royal recommendation.—A grant of public money can be obtained, not only without a previous signification of the royal recommendation, but against the wish of the ministers of the Crown, by a motion, made in accordance with the provisions of standing orders Nos. 60 and 62, for the appointment of a committee of the whole house, upon a future day, to consider a resolution for an address to the Crown, asking for the issue of a sum of money for the purposes therein assigned, concluding with an assurance, “that this house will make good the same;” ³

¹ 123 C. J. 15. 18. 26; 100 L. J. 14. ² 140 C. J. 89. ³ 89 ib. 456; 95 ib. 474 (Church Extension); 96 ib. 57; 98 ib. 415 (Danish Claims); 174 H. D. 3 s. 192; 29th April, 1864 (Mr. Bewicke's case). On 21st May, 1811, the Commons addressed the Prince Regent to pay Mr. Palmer's arrears of percentage, amounting to 54,000. The Lords took notice of this vote for payment of a debt, which they had denied to be due. The Prince Regent returned an answer declining to issue the money, being the first instance of the kind.
procedure to which resort is made on occasions when a public monument to a deceased statesman is desired. If a motion for an address for public money is submitted to the house in any other manner, the Speaker declines to propose the question to the house,—a rule which has been held to apply to an address to the Crown to offer a reward for the apprehension of a witness who had absconded, and to an address for the issue of gun-metal to be cast into a statue of a distinguished soldier.

To a certain extent, evasions are, by usage, permitted of the restriction imposed by the standing orders upon proposals for the expenditure of public money. Bills devising a large scheme for public expenditure, accompanied by provisions for the application of the same, have been brought in upon motion, the money clauses being printed in italics. In such cases, the principle of the bill is discussed, and, if approved on behalf of the Crown, the necessary pecuniary provision is subsequently made; otherwise further progress of the bill is prevented by the refusal of the royal recommendation. In like manner, motions advocating public expenditure, or the imposition of a charge, if the motion be framed in sufficiently abstract and general terms, can be entertained, and agreed to by the house.

Resolutions of this nature are permissible because, having

A motion by Mr. Whitbread to censure ministers for this answer was negatived, 66 C. J. 357. 383; 20 H. D. 1 s. 343; Lord Colchester's Diary, ii. 152. 352.

1 Sir R. Peel, 1850, 105 C. J. 512; Viscount Palmerston, 1866, 121 ib. 100; Earl of Beaconsfield, 1881, 136 ib. 230. Addresses for monuments to Lord Chatham in 1778, and Mr. Pitt in 1806, were voted without a committee, being before the date of the standing order.

2 98 ib. 321 (Danish Claims), 16th July 1861, 164 H. D. 3 s. 997.

3 St. Alban's case, 1851, 106 C. J. 189.

4 125 ib. 355. 362.

5 Lord Geo. Bentinck's Railways (Ireland) Bill, 4th Feb. 1847; Electric Telegraphs Bill, 1st April, 1868; Railways (Ireland) Bill, 5th March, 1872, 209 H. D. 3 s. 1952.

6 National Monuments, &c., 1844, 99 C. J. 206; Emigration, 1848, 103 ib. 600; River Thames (amendment on going into committee of supply), 9th July, 1858, 151 H. D. 3 s. 1168; 113 C. J. 294; National Defences, 1859, 114 ib. 318; Recreation Grounds, 1860, 115 ib. 246; Sailors' Homes, 1863, 118 ib. 181; County Court Judges (salaries), 1869, 124 ib. 289; Harbours of Refuge, 117 ib. 182; 126 ib. 98; 131 ib. 374; Irish Sea Coast Fisheries, 1874, 129 ib. 120; Volunteer Equipments, 145 ib. 187.
no operative effect, no grant is made or burthen imposed by their adoption. And although, on one occasion, the house declined to receive a report from a select committee which proposed compensation for losses incurred by certain patentees, because it had not been recommended by the Crown, the precedent has not governed the usage of the house regarding resolutions agreed to by select committees advocating an outlay of public money.

Procedure for the diminution of public charges.—It follows, as a matter of course, that a motion to alleviate the burthens upon the people is not within the scope of the standing orders relating to the imposition of charges upon the people. Hence a bill for diminishing or repealing a tax or other public burthen, unless the imposition of a new tax is proposed by way of substitution, needs no royal recommendation or preliminary committee stage, and is brought in upon motion. Amendments, also, strictly confined to relief from pecuniary burthens, can be considered both in committee and with the Speaker in the chair (see p. 567).

The responsibility discharged by the Lords in the grant of supplies for the service of the Crown, and in the imposition of taxation, is concurrence, not initiation. Thus whilst the demand for supply made in the speech from the throne, on the opening of a session, is directed to the Commons, the speech is addressed to both houses of Parliament; and to the financial legislation which that demand creates, the Lords must be a consenting party. Of their position in this respect the Lords have not been unmindful. When the Commons failed to provide for the appropriation of certain temporary supplies which they voted prior to the dissolution, 1820, caused by the death of George III. (see p. 521), the Lords, by a resolution, took notice that those supplies

1 92 C. J. 478.
2 Repeal of stamp duty on admission to corporations, and repeal of 4½ per cent. duties, 1838; repeal of duty on bricks, 1839; Penny Postage Bill, 1840; Stamp Duty on Policies of Insurance, 2nd July, 1844; Paper Duties Bill, 1869.
had not been duly brought before them by an appropriation bill.¹

The Lords have taken exception, if a message from the Crown for pecuniary aid is sent exclusively to the Commons; and for upwards of a century it has been the custom to present such messages to both houses, if possible upon the same day,² addressing the demand for the grant to the Commons, and desiring the concurrence of the Lords by the message presented to their house, a procedure which maintains the constitutional relations of the two houses of Parliament in matters of supply.³ The reply made by the Lords to the message is an address to the Crown, declaring their willingness to concur in the measures which may be adopted by the other house.⁴

The Lords also express their opinion upon the public expenditure, the method of taxation, and of financial administration, both in debate and by resolution, and they investigate those matters by their select committees.⁵ Nor do the Commons, as formerly, attempt to exclude the Lords from inquiries of this nature by not transmitting to them reports and papers relating to taxation, or by declining to permit the attendance of a member to give evidence on this subject before a select committee of the Lords.⁶

Origin of the Lords’ position.—The Commons, having during nearly three centuries claimed the right to include the members of the House of Lords in the taxation levied upon the subjects of the Crown, advanced this claim still further by resolving, 1671, “That in all aids given to the king by the Commons, the rate or tax ought not to be altered by the Lords;” and, by a second resolution, 3rd

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¹ 41 Parl. Deb. 1631–1635.
² 25th June, 1713, and 28th Feb. 1739, 2 Hatsell, 366. n. The message in regard to the provision for her Majesty Queen Adelaide, on the 14th April, 1831, was presented to the Commons alone, 86 C. J. 488.
³ 73 L. J. 28; 96 C. J. 29 (Lord Keane); 88 L. J. 129; 111 C. J. 186 (Sir F. Williams); Lord Alcester and Lord Wolsley, 1883, &c.
⁴ 63 L. J. 892.
⁵ 1 Todd, Parl. Govt. ed. 2, 696.
⁶ Poor Law (Ireland), 1846, 101 C. J. 238. 335; Parochial Assessment, 1850, 105 ib. 368. The report, 24th May, 1867, on metropolitan local taxation, was communicated to the Lords.
July, 1678, "That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords." 1

The Commons’ privileges and legislation by the Lords.— By the practice and usage based upon that resolution, the Lords are excluded, not only from the power of initiating 2 or amending bills dealing with public expenditure or revenue, but also from initiating public bills which would create a charge upon the people by the imposition of local and other rates, or which deal with the administration or employment of those charges. Bills which thus infringe the privileges of the Commons, when received from the Lords, are either laid aside or postponed for six months. 3

It follows, accordingly, that the Lords may not amend the provisions in bills which they receive from the Commons dealing with the above-mentioned subjects, 4 so as to alter, whether by increase or reduction, the amount of a rate or charge—its duration, mode of assessment, levy, collection, appropriation, or management; 5 or the persons who pay, receive, manage, or control it; 6 or the limits within which it is leviable. Other forms of amendment by the Lords

1 9 C. J. 283; ib. 509.
2 See p. 853.
3 See special entry, 24th July, 1661, on laying aside the Westminster Paving Bill, 8 ib. 311; 56 ib. 88; 86 ib. 905; 92 ib. 659; Declands Abolition Bill, 1846, 101 ib. 724; Railway Audit Bill, 1850, 105 ib. 455; Parochial Schoolmasters (Scotland) Bill, 1857, 112 ib. 404; 115 ib. 305. 361; 144 ib. 304. 316; 159 H. D. 3 s. 530. The Commons formerly accepted bills from the Lords, creating charges, not directly imposed by the bill, but defrayable out of moneys to be provided by Parliament. This method of procedure was terminated in deference to a statement made by the Speaker, 23rd Aug. 1860, 115 C. J. 500; 160 H. D. 3 s. 1629. 1734.
4 Forfeited Estates (Ireland) Bill, 1700, 13 ib. 318; 3 Hatsell, App. No. 12; 105 C. J. 491.
5 See Speaker’s ruling on Municipal Corporations (Ireland) Bill, 1839, 50 H. D. 3 s. 3.
6 Baths, &c., Bill, 1846, 101 C. J. 1234.
have also been held to infringe on the privileges of the Commons, such as the addition of a clause providing that payments into and out of the Consolidated Fund should be made under the same regulations as were applicable by law to other similar payments;\textsuperscript{1} of provisions for the payment of salaries to officers of the Court of Chancery out of the suitors' fund;\textsuperscript{2} and alterations in a clause prescribing the order in which charges on the revenues of a colony should be paid.\textsuperscript{3}

The privilege claimed by the Commons has also been held to include legislation affecting the Local Loans Fund, a fund derived from local taxation, with the guarantee of the Consolidated Fund (see p. 536), created under the National Debt and Local Loans Act, 1887. For instance, the Land Purchase (Ireland) Bill, 1888, placed a limitation on the total amount to be advanced out of the Local Loans Fund to any one purchaser; and when the bill was considered by the Lords, an amendment was proposed to restrict this limitation to "any application made after the passing of this Act:" but the amendment was ruled out of order by the lord chancellors of England and of Ireland, as being outside the competence of their house.\textsuperscript{4}

On the same principle, two private bills were laid aside, because the bills sent by the Lords to the Commons contained clauses imposing a stamp duty on memorials;\textsuperscript{5} and second bills were brought in, in accordance with the practice mentioned on p. 444. Another private bill, brought from the Lords, containing privileged clauses, was, however, permitted to proceed, on an explanation from the Speaker that the promoters of the bill were not responsible for the irregularity, and that the clauses would be withdrawn.\textsuperscript{6}

\textsuperscript{1} Naval Prize Balance Bill, 1850, 105 C. J. 488.
\textsuperscript{2} Administration of Justice Bill, 1841; Master in Chancery Bill, 1847,—a clause to this effect was struck out on third reading, in the Lords.
\textsuperscript{3} Canada Government Bill, 1840; amendment withdrawn on third reading, in the Lords.
\textsuperscript{4} 331 H. D. 3 s. 1224. 1226.
\textsuperscript{5} The Provident Life Assurance Bill and the Imperial Life Assurance Bill, 1889, 144 C. J. 304. 316; see also Royal Dublin Society Bill, 1877, 132 ib. 299.
\textsuperscript{6} 128 ib. 194; 215 H. D. 3 s. 1675.
Acceptance by the Commons of privileged amendments.—If otherwise unobjectionable, the Commons usually accept amendments by the Lords, which, though not strictly regular, do not materially infringe the privileges of the Commons; and they justify their conduct by an entry inserted in the journal, under direction from the Speaker, explaining the motives of the agreement, stating, for instance, that the amendments are verbal,—further the intention of the house,—carry out the intention of the Commons,—make the provisions of the bill uniform and consistent,—are rendered necessary by several Acts recently passed,—or that the amendment does not alter or otherwise affect any valuation or assessment of taxation.1

Even when amendments by the Lords are an infringement of privilege, it is not the invariable practice of the Commons to assert their claim regarding amendments made to bills that they have sent to the Lords, which dealt with the relief of the poor, or with municipal, county, and local rates and assessments; more especially when those amendments affected charges upon the people incidentally only, and were made for the purpose of giving effect to the legislative intentions of the Commons.2 The difficulty also of separating those amendments from other legislative provisions or amendments, to which there was no objection, has frequently prompted their acceptance by the Commons.3

Nor have the Commons, in dealing with amendments by the Lords to bills for the administration of local and other

1 79 C. J. 524; 80 ib. 573. 631; 81 ib. 388; 86 ib. 684; 90 ib. 375; 91 ib. 823; 92 ib. 659; 107 ib. 236; 112 ib. 389. 418; 116 ib. 205; 120 ib. 449; 122 ib. 426. 456; 128 ib. 345. 362; 131 ib. 412; 135 ib. 198. 369; 136 ib. 453; 137 ib. 389; 145 ib. 370. 575.

2 Prisoners' Removal Bill, 1849, the Lords made the bill perpetual, instead of being in force for three years. In the Industrial Schools Bill, 1861, the Lords struck out a limitation of the Act, and thereby extended the charge: the Commons agreed to the amendment.

3 Municipal Corporations Bill, 1837, 92 C. J. 465; Irish Poor Relief Bill, 1838, 44 H. D. 3 s. 575; 93 C. J. 744; Municipal Corporations (Ireland) Bill, 1838, 44 H. D. 3 s. 871; Poor Relief (Ireland) Bill, 1847, 92 H. D. 3 s. 1299; 102 C. J. 593; Landed Property (Ireland) Bill, 1847, 120 ib. 50; Poor Relief (Ireland) Bill, 27th July, 1849, 107 H. D. 3 s. 1039; Poor Law Loans Bill, 1871 (special entry); Poor Law Amendment bills, 1876, 1878, &c.
rates and charges, which touched matters of privilege, refrained from acting on the principle that, if the Lords' amendments, both in object and intention, dealt with legislative and not fiscal objects, a rigid adherence on the part of the Commons to their privileges might exclude the Lords from the practical consideration of such bills. On an occasion of this nature, in the session of 1838, when the Commons had before them Lords' amendments, many of which dealt with privileged matters, Speaker Abercromby explained the course which in his judgment should be followed. Speaking as the authorized guardian of the privileges of the house, he remarked, after reference to a precedent which had occurred in the year 1834, that the bill affected "not only the proprietors of the land, but the great mass of the people of Ireland;" and that, "as the principle of rating was necessarily incidental to such a measure, he considered that, if the privileges of this house were strictly pressed in such a case, they would almost tend to prevent the House of Peers from taking such a measure into its consideration in a way that might be, on all grounds, advisable.

Influenced by these considerations, as appears by the debates which took place on three occasions, in the years 1838, 1847, and 1849, with the expressed sanction, not only of Mr. Abercromby, but of Mr. Shaw Lefevre, the Commons waived the exercise of their privilege, and considered amendments made by the Lords, which, not only by the omission of provisions, but by distinct enactment, changed the area, and therefore the burden, of local taxation, and imposed rates higher than the rates fixed by the House of Commons. And, though the Commons disagreed to certain amendments, which proposed to apply loans drawn from the Consolidated Fund to objects other than those prescribed by the Commons, and to extend the time appointed for the application of the loans, their disagreement was not based on a claim of privilege. In like manner, although it

1 24th July, 1838, 44 H. D. 3 s. 1847, 102 C. J. 594. 606; 92 H. D. 575; 92 ib. 1339; 107 ib. 1039.
2 Landed Property (Ireland) Bill, 3 s. 1299. 1339.

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is not competent for the Lords, by a private bill, to alter rates leviable under a public Act, the Speaker suggested that a Lords' amendment to that effect, and therefore an amendment which affected the privileges of the Commons, should be accepted, with a special entry upon the journal to justify and explain the course adopted by the house.¹

Rejection of privileged amendments.—When the Lords' amendments necessitate an assertion of the Commons' privileges, the disagreement is made on the ground of privilege; and in the message to the Lords from the Commons, communicating the reasons for their disagreement, the assertion of this claim usually takes the form of a statement that the amendments would interfere with the public revenue, or affect the levy and application of rates, or alter the area of taxation, or otherwise infringe the privileges of the house, and that the Commons consider that it is unnecessary on their part to offer any further reason, hoping the above reason may be deemed sufficient.²

This hint of privilege is generally accepted by the Lords, and the amendment is not insisted upon. Though, on a recent occasion, when the rejection by the Commons of an amendment, because, as stated in their reasons, the amendment would create "a further charge upon the revenue," was accepted by the Lords, that house asserted, by a resolution, that they made no admission in respect of any deduction which might be drawn from the reasons offered by the Commons, and did not consent that these reasons should thereafter be drawn into a precedent.³

If the Lords return a message to the Commons insisting upon a privileged amendment, the course adopted by the Commons is to order that the Lords' amendments be laid.

¹ Dublin Corporation Bill, 1890, 348 H. D. 3 s. 964.
² Naval Prize Balance Bill, 1850, 105 C. J. 491; Tramways (Ireland) Bill, 1860; Juries Bill, 1862; Peace Preservation (Ireland) Bill, 1870, 125 ib. 123; Intoxicating Liquors Licences Suspension Bill, 1871, 126 ib. 432; 208 H. D. 3 s. 1736; Erne Loch and River Bill, 1881, 136 C. J. 474.
³ 356 H. D. 3 s. 122; Elementary Education Bill, 1891.
Chapter XXII.

Part II.

Relaxation of Commons' privileges.—The claim to exclusive legislation over charges imposed upon the people was formerly extended by the Commons to the imposition of fees and pecuniary penalties, and to provisions which touched the mode of suing for fees and penalties, and to their application when recovered; and they denied to the Lords the power of dealing with these matters. The rigid enforcement of this claim proved inconvenient; and in 1849, the Commons adopted a standing order, based on a S. O. 44, resolution passed in 1831, which gave the Lords power to deal, by bill or amendment, with pecuniary penalties, forfeitures, or fees, when the object of their legislation was to secure the execution of an Act; provided that the fees were not payable into the exchequer, or in aid of the public revenue; and when the bill shall be a private bill for a local or personal act. And the Commons also agreed to another standing order, whereby they surrendered their privileges so far as they affected private and provisional order bills sent down from the House of Lords, which refer to tolls and charges for services performed, not being in the nature of a tax, or which refer to rates assessed and levied by local authorities for local purposes.

The practical result of these standing orders is a waiver by the Commons of their privilege with respect to pecuniary penalties in public and in private bills. Fees imposed in a public bill can only be dealt with by the Lords provided they are not paid into the exchequer; whilst it is competent for the Lords by a private bill to impose fees and tolls for rendered services, and to authorize the levy of rates to be assessed and levied by local authorities for local purposes.

Legislation by the Lords regarding charges.—The following expedients have been adopted, when it is desirable that a bill containing provisions which deal with charges upon

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1 8th March, 1692, 10 C. J. 845; 3 Hatsell, 126. 135.
2 86 C. J. 477.
3 Court of Chancery (Duchy of Lancaster) Bill, 1850; Burial Service Bill, 1846 (burial fees).
the people should be introduced into the House of Lords. In such a case, the bill is presented and printed, containing the necessary provisions for giving full effect to the intention of the bill, and is considered and discussed in the Lords in that form. On the third reading the provisions infringing upon the privileges of the Commons are struck out; and the bill, drawn so as to be intelligible after their omission, is sent to the Commons in that form. The bill is printed by the Commons containing the omitted provisions, formerly printed in red ink, but now marked by underlines and brackets, and with a note stating that these provisions are to be proposed in committee. Thus, as these provisions form no part of the bill received from the House of Lords, no privilege is violated; whilst the bill before the Commons contains every provision necessary for giving it full effect; and in committee the privileged provisions, if approved of, are inserted. 1

Occasionally, the same purpose is met by the form in which the bill, or the amendments are drafted. For instance, when the Lords, by an amendment, extended the Contagious Diseases Prevention Bill, 1846, to Scotland and Ireland, as the bill contained rating clauses, they inserted a clause providing that the rating power conferred by the bill should not be thereby extended. To this clause the Commons disagreed; the Lords did not insist thereon, and thus the whole bill was extended to Scotland and Ireland. 2 A bill to continue the Crime and Outrage (Ireland) Act, 1854, was introduced in the Lords, but as the Act contained sections which authorized charges upon the county cess and the Consolidated Fund, a clause was inserted which excepted those sections from the operation of the bill; this exception was disagreed to by the Commons,

1 Good examples of this practice are afforded by the Burial Grounds Bill, in 1853; the Police (Scotland) Bill, in 1857; the Probates, &c., Act Amendment Bill, in 1858; the Cayman Islands Government Bill, 1863; British North America Bill, 1867; and Supreme Court of Judicature Bill, 1873. A poor law administration bill, a class of bill formerly not accepted by the Commons from the Lords, was, by the adoption of this method, received and considered by the Commons. Poor Relief Bill, 1868, 123 C. J. 202.

2 101 ib. 1290.
and thus the entire Act was continued. Again, as the creation of conservancy districts, with boards and rating powers, was one of the objects of the Rivers Conservancy Bill, 1879, the provisions dealing with rates were struck out on the third reading in the Lords; and the Commons inserted those provisions in the bill, when it came before them.

When the Irish Land Law Bill, 1887, was introduced in the Lords, as, under the Act of 1885 and the National Debt and Local Loans Act, 1887, advances to tenants are made out of moneys in the hands of the National Debt commissioners—funds with which the Lords cannot deal—they inserted a subsection in the bill, providing that those advances should be made out of the Irish Church Fund surplus,—a fund which, by Act, had been placed at the disposal of Parliament, with a footnote stating that the subsection was inserted by the Lords to avoid a question of privilege, and suggesting the omission of the subsection. This was done by the Commons; and the advances consequently came out of funds provided by the Public Works Loan commissioners, as desired by the Lords.

Money bills outside the Commons' privileges.—The claim to an exclusive right over financial legislation exerted by the Commons has not been extended to bills dealing with funds set apart for the purposes of general, but not public, utility. For instance, bills comprising charges upon the property and revenues of the Church or the Queen Anne's Bounty; dealing with the property and land revenues of the Crown, the proceeds of which are not consigned

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1 The Commons, in the session of 1868, refused to strike out a formal provision introduced by the Lords into the West Indies Bill for the purpose of its omission by the Commons, to make way for the substitution of a clause whereby a charge of 2000l. a year might be retained upon the Consolidated Fund; and the provision consequently appears as sec. 2 of the Act 31 & 32 Vict. c. 120, 123 C. J. 371 (see also p. 534).

2 Church Endowment Bill, 1843; Ecclesiastical Commissioners (England) Bill, 1843; Bishopric of Manchester Bill, 1847. It was ruled, privately, that a bill could not be received from the Lords affecting the revenue arising, under the Church Temporalities (Ireland) Act, 1843, from a tax, rate, or assessment imposed upon all benefices.
by statute to the Consolidated Fund; and bills applying to various purposes the fund created by the Irish Church Act, have been received from the Lords by the Commons, or amended by the Lords, without objection on the score of privilege.

Rejection by the Lords of bills and provisions creating charges upon the people.—As the functions of the House of Lords in the grant or imposition of supply and taxation are reduced to a simple assent or negative, it becomes necessary to examine how far the power of dissent may be exercised without invading the privileges of the Commons. The legal right of the Lords, as a co-ordinate branch of the legislature, to withhold their assent from any bill whatever, to which their concurrence is desired, is unquestionable; and, in former times, their power of rejecting a money bill had been expressly acknowledged by the Commons: but, until the year 1860, though the Lords had rejected numerous bills concerning questions of public policy, in which taxation was incidentally involved, they had respected bills exclusively relating to matters of supply, and ways and means. In 1860, the Commons determined to balance the year’s ways and means by an increase of the property tax and stamp duties, and the repeal of the duties on paper. The increased taxation had already received the assent of Parliament, when the Lords rejected the Paper Duties Repeal Bill, and thus overruled the financial arrangements voted by the Commons. That house was naturally sensitive to this encroachment upon privileges: but the Lords had exercised a legal right, and their vote was irrevocable during that session. The Commons, therefore, to maintain their privileges, recorded upon their journal, 6th July, resolutions affirming that the right of granting aids and supplies to the Crown is in the Commons alone; that the power of the Lords to reject bills

1 Waste Lands (Australia) Bill, 1846.
2 Intermediate Education (Ireland) Bill (Lords), 1878, 133 C. J. 338; Arrears of Rent (Ireland) Bill, 1882, 157 ib. 451.
relating to taxation "was justly regarded by this house with peculiar jealousy, as affecting the right of the Commons to grant the supplies, and to provide the ways and means for the service of the year;" and "that to guard, for the future, against an undue exercise of that power by the Lords, and to secure to the Commons their rightful control over taxation and supply, this house has in its own hands the power so to impose and remit taxes, and to frame bills of supply, that the right of the Commons as to the matter, manner, measure, and time may be maintained inviolate." 1

In accordance with these resolutions, during the next session, the financial scheme of the year was presented to the Lords for acceptance or rejection, as a whole. The Commons again resolved that the paper duties should be repealed: but, instead of seeking the concurrence of the Lords to a separate bill for that purpose, they included in one bill the repeal of those duties with the property tax, the tea and sugar duties, and other ways and means, for the service of the year; and this bill the Lords were constrained to accept. 2 The budget of each year has since that occasion been comprised in a general or composite Act, —a proceeding supported by precedent. In 1787, Mr. Pitt's entire budget was comprised in a single bill; and during many subsequent years great varieties of taxes were imposed and continued in the same Acts. 3

Rejection by the Lords of provisions creating a charge.—The right of the Lords to reject a money bill has been held to include a right to omit provisions creating charges upon the people, when such provisions form a separate subject in a bill which the Lords are otherwise entitled to amend. The claim of privilege cannot, therefore, be raised by the Commons regarding amendments to such bills, whereby a whole clause, or series of clauses, has been omitted by the Lords, which, though relating to a charge,

1 115 C. J. 360; 159 H. D. 3 s. & 25 Vict. c. 20.
2 1383.
3 162 ib. 594; 163 ib. 69, &c.; 24
and not admitting of amendment, yet concerned a subject separable from the general objects of the bill.¹

On the 30th July, 1867, it was very clearly put, by Earl Grey and Viscount Eversley, that the right of the Lords to omit a clause which they were unable to amend, relating to a separate subject, was equivalent to their right to reject a bill which they could not amend without an infrac-
tion of the privileges of the Commons.²

Tacks to bills of supply.—In former times, the Commons abused their right to grant supplies without interference from the Lords, by tacking to supply bills provisions which, in a bill that the Lords had no right to amend, must either have been accepted by them unconsidered, or have caused the rejection of a measure necessary for the public service. This is an invasion of the privileges of the Lords, no less than their interference in matters of supply infringes the privileges of the Commons; and has been met by the Lords by standing order No. 59, and by their resolution of the 9th December, 1702—

"That the annexing 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 said bills of aid or supply, is unparliamentary, and tends to the destruction of the constitution of the government."³

On no recent occasion have clauses been irregularly

¹ Coroners Bill, 1844; District Lunatic Asylums (Ireland) Bill, 1846; Courts of Common Law Bill, 1853 (stamp duty in schedule); Turnpike Trusts Arrangements Bill, 1856 (clauses relating to insolvent trusts); Poor Relief (Ireland) Bill, 1860; Prisons (Scotland) Bill, 1861 (schedule). In this case the bill constituted prison boards, having taxing powers, and in the schedule appointed the numbers of each board, and the districts by which they were to be returned. The Lords desired to alter the constitution of the Edinburgh and Forfar boards, but being unable to make such amendments, they wholly omitted Edinburgh and Forfar from the schedule, and the Commons made amendments which met the views of the Lords. Metropolis Local Management Act Amendment Bill, 1862 (clause altering qualification of vestrymen); Corrupt Practices at Elections Bill, 1863 (clause 11, charging costs of commissions upon local rates); Drainage (Ire-

² Parliamentary Representation Bill (clause 7), 189 H. D. 3 s. 411. 417.

³ 17 L. J. 185.
Chapter XXII

Part II

Part III—In England, as in many other countries of Europe, the origin of taxation may be referred to the feudal aids and services, due from the tenants of the Crown to their feudal superior. The greater portion of the soil of England was held by military service, and the councils of William, being composed of the tenants-in-chief of the Crown (see p. 15), granted and confirmed, as a Parliament, the aids and services to which the king, as their feudal superior, was entitled.

After the property in land had undergone many changes and subdivisions, and the commonalty had grown in numbers and wealth, the taxation became less feudal in its character; and the Commons assumed their place as an estate of the realm in Parliament, and represented wealthy communities. These changes are marked by the well-known statute, De tallagio non concedendo, in the 25th Edward I., by which it was declared, "That no tallage or aid shall be taken or levied without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land." The popular voice being thus admitted in matters of taxation, the laity were henceforth taxed by the votes of their representatives in Parliament. The lords spiritual and the lords temporal voted separate subsidies for themselves; and from the reign of Edward I., the clergy, as a body, granted subsidies, either as a national council of the clergy, in connection with the Parliament, or, at a later period, in Convocation, until the surrender or dispose of their right in the reign of Charles II.²

1 46 L. J. 342; 62 C. J. 61; 8 H. D. 1 s. 427.
2 Regarding the origin of Convocations, and of their time of meeting, see the Parliamentary Original and Rights of the Lower House of Convocation, by Bishop Atterbury, p. 7, 4to, 1702. They are still summoned to meet at the same time as the Parliament, but from 1717 until within the last half of the present century, were not permitted to transact any business. See Debates, 1802–53, on the Proceedings of Convocation; 123 H. D. 3 s. 247. 277; 124 ib. 978.
At length, when the Commons had increased in political influence, and the subsidies voted by them had become the principal source of national revenue, they gradually assumed their present position in regard to taxation and supply, and included the Lords as well as themselves in their grants. So far back as 1407, it was stated by King Henry IV., in the ordinance called “The Indemnity of the Lords and Commons,” that grants were “granted by the Commons, and assented to by the Lords.” That this was not a new concession to the Commons is evident from the words that follow, viz. “That the reports of all grants agreed to by the Lords and Commons should be made in manner and form as hath hitherto been accustomed; that is to say, by the mouth of the Speaker of the House of Commons for the time being.”¹

Concurrently with parliamentary taxation, other imposts were formerly levied by royal prerogative with the consent of Parliament; but none of these survived the Revolution of 1688.² Since that time the public revenue of the Crown has been dependent upon Parliament, and is derived either from annual grants for specific public services, or from payments already secured and appropriated by Acts of Parliament, and which are commonly known as charges upon the Consolidated Fund (see p. 558).

Action of the Commons on the royal demand for a supply.

—The action taken by the House of Commons upon the demand of aid and supply for the public service made by the speech from the throne, is the appointment, pursuant to standing order No. 54, of those committees of the whole house, which are known as the committee of supply and the committee of ways and means. Motions setting up these committees are made immediately after the house agrees to the address in answer to the speech, and are put forthwith from the chair, no interference being permitted.³

In these committees the financial duties of the House of Commons are mainly discharged. The committee of supply

¹ 3 Rot. Parl. 611.
² Bill of Rights, art. 4.
³ 23rd Feb. 1688, 322 H. D. 3 s. 1348.
controls the public expenditure by considering the grants of money that will be required for the army, navy, and civil services of the current year, upon the estimates of that expenditure prepared by the ministers of the Crown. The committee of ways and means provides the public income raised by the imposition of annual taxation, and votes the resolutions that authorize the issue out of the Consolidated Fund of the sums required to meet the grants voted by the committee of supply (see p. 588).

Committees of the whole house are also appointed for the consideration of grants made in pursuance of messages from the Crown, or other exceptional demands for expenditure. The matter of permanent taxation is also considered by similar committees; and upon their resolutions bills are brought in to effect the objects sought by the appointment of these committees.

The imposition of taxation.—The consideration of the financial statement for the year made by the chancellor of the exchequer,\(^1\) is an important feature in the financial legislation of each session. This statement, familiarly known as "the budget," is made when the minister has completed his estimate of the probable income and expenditure for the ensuing financial year, and usually after some progress has been obtained in voting the grants for the army and navy and other public services.\(^2\) In that statement the chancellor of the exchequer develops his views of the resources of the country, communicates his calculations of probable income and expenditure, and declares whether the burdens upon the people are to be increased or diminished; and, as the consideration of the taxes for the service of the year is the province of the committee of ways and means (see p. 556), to that committee his statement is generally addressed.\(^3\)

\(^1\) Or sometimes the first lord of the treasury, if a member of the House of Commons.

\(^2\) In the years 1845, 1848, 1852, and 1857, the budget statement was made in anticipation of the customary votes in committee of supply, 77 H. D. 3 s. 455; 36 ib. 900. 987.

\(^3\) Financial statements have not invariably been made in the committee of ways and means. In 1823, the budget was brought forward in
The resolutions which form the usual basis of the chancellor's statement are the resolutions for the continuance, during the ensuing financial year, of the customs duty upon tea, and of the income tax duty, as these duties are the only duties not, at present, made permanent by statute;¹ and upon these resolutions, when agreed to by the house, the bill is introduced which gives legislative effect to the financial objects of the government.²

¹ Taxes for the revenue of the year.—In the procedure adopted by the Commons for the imposition of taxation, the following distinction is generally, if not uniformly, drawn. Taxes applicable to the immediate exigencies of the public income, which are renewed from year to year, and

² An anticipatory authority is imparted by usage to the resolutions of the house which impose or alter taxation. Under orders from the treasury, although statutory legal effect may not for some time be given to these resolutions, the reduced or the increased duties are collected from the date prescribed by the resolutions, as soon as they are agreed to by the house. These proceedings are, at the time, without legal au-
temporary and other taxes imposed to obtain an immediate source of revenue, are considered by the committee of ways and means.¹ Fiscal regulations, and alterations of permanent duties, not having directly for their object the increase of revenue, are dealt with by committees of the whole house.² An illustration of this procedure can be drawn from past legislation on the sugar duties. Being an annual duty, the duty on sugar was, until 1846, voted in the committee of ways and means. During that year the duties on sugar, after revision in that committee, were made permanent; and accordingly, when, in 1848, a further revision was proposed of the sugar duties, that revision was proposed in a separate committee of the whole house, and not in the committee of ways and means.³

Additions to permanent duties, made for the express purpose of supplying deficiencies in the annual revenue, are considered in the committee of ways and means; and when an objection was raised that certain resolutions, as extending beyond the current financial year, ought not to have originated in that committee, the Speaker overruled the objection, stating that taxation, as an immediate source of revenue, though it may embrace a further period, is properly submitted to the committee of ways and means.⁴

Statutory provision must be made by Parliament, during each financial year, to ensure that all the money therein raised for the service of the Crown be applied to a distinct use, either wholly or partly, within the current financial year; as the proceeds of taxation should not be reserved for accumulation, pending the decision of Parliament, or otherwise left without specific appropriation.⁵

¹ 95 C. J. 351. 415. Property Tax and Inhabited House Duty, 1852–53, 108 lb. 187; Tobacco Duty, 1878, 133 lb. 169. But in 1784, the house duty had been increased in a committee on the Smuggling Acts, 40 ib. 58. 245; 24 Parl. Hist. 1008; and in 1853, an increase of the Scotch and Irish spirit duties was proposed in a committee on Customs, &c., Acts, to avoid delay, and hence a loss of revenue, 108 lb. 428.

² 92 ib. 499. 500; 97 ib. 264.

³ 103 ib. 626.

⁴ 16th May, 1861. An objection that resolutions of the committee of ways and means extended in effect beyond the current financial year, was overruled by the Speaker, 162 H. D. S. a. 2101.

⁵ This was the opinion of the Speaker, 24th June, 1890, stated in
The Consolidated Fund.—To provide a fund, "into which shall flow every stream of the public revenue, and from whence shall issue the supply for every public service," 1 the proceeds of taxation, and other sums of money received by the treasury on behalf of the Crown, are carried to the Consolidated Fund established by Act 27 George III. c. 13; and from that fund the sums of money required to defray the public expenditure are drawn. 2 

Drafts upon the Consolidated Fund for supplies.—The drafts made upon the Consolidated Fund to meet the grants voted by the committee of supply for the service of the current year, are based upon resolutions, agreed to by the committee of ways and means, "That, towards making good the supply granted to her Majesty for the service of the year ended on the 31st day of March, 18—, the sum of £ be granted out of the Consolidated Fund of the United Kingdom;" and upon these resolutions are founded, first, the sessional Consolidated Fund Acts, and finally the Appropriation Act, which endows those resolutions with complete legal effect; and upon receipt of the order from the sovereign, which gives final validity to a supply grant, the treasury makes the issues to meet those grants out of the Consolidated Fund. 3 

defersence to the wish of the house, not as a ruling on a question of order, but as the result of his consideration of a matter of constitutional propriety; and the opinion was acted upon by the government, 345 H. D. 3 s. 1799–1805. 1 Public Income, &c., Parl. Paper, 1869 (366), Part II. p. 327.

2 Upon a system, commenced in the year 1881, under the sanction of the comptroller-general, the treasury, and of the public accounts committee, the cash receipts acquired by public departments, without being paid into the exchequer, may be applied as an appropriation in aid of money provided by Parliament for the service to whom such receipts have been paid, in pursuance of a treasury minute that is laid before Parliament. Public Accounts committee, 3rd Report, sess. 1881 (350); and 2nd Report, sess. 1883 (o. 47); 17th March, 1892, 2 Parl. Deb. 4 s. 1115; Public Accounts and Charges Act, 1891, s. 2.

3 The vote of resolutions by the committees of ways and means, and of supply, to authorize and to meet the issue of exchequer bills to defray the temporary requirements of the executive government, used to form one of the functions of these committees. Resort to this procedure is now obviated by the insertion of clauses in the sessional Consolidated Fund Acts, which authorize the Bank of England, on application from the treasury, to advance the sums re-
The drafts upon the Consolidated Fund authorized by the resolutions of the committee of ways and means must not exceed the amount of supply which has previously been granted for the service of the year; and it is the duty of the Public Bill Office, acting on behalf of the Speaker,¹ to ensure compliance with this rule. In deference to this requirement, the report of the final ways and means resolutions, on which Consolidated Fund and Appropriation bills are founded (see p. 560), is invariably placed upon the notice paper after the report of the supply grants which that resolution is designed to meet; so that, if necessary, the amount sanctioned by the ways and means resolution can, by reduction, be brought into conformity with the grants made by the committee of supply. The royal order, which is the final authority for the issue of a supply grant, also prescribes that the amount thereunder issued shall not exceed the amount of the grants out of the ways and means appropriated by Parliament to the service of the year.

The grants made by a committee of the whole house appointed to consider an exceptional occasion for expenditure (see p. 593), and grants obtained upon an address to the Crown (see p. 538), are also drawn from the Consolidated Fund pursuant to statutory authority.

Application of the Consolidated Fund.—The drafts which are made upon the Consolidated Fund, under the authority of the sessional Consolidated Fund and Appropriation Acts, are available for the supply of any service belonging to the financial year to which those Acts apply: but the drafts authorized for the supply of one financial year are not applicable to the supply of another financial year. Nor are the drafts made to meet the supply voted in one parliamentary session applicable to the supply voted in extent a statement, otherwise unfounded, that the duty thus discharged by the Public Bill Office devolves upon the Speaker himself.

¹ The Speaker superintends the procedure of the house,—a responsibility which justifies to a certain extent a statement, otherwise unfounded, that the duty thus discharged by the Public Bill Office devolves upon the Speaker himself. Public Moneys Report (Parl. Paper No. 279, sess. 2, 1857), p. 27; 1 Todd, Parl. Govt. ed. 2, 816.
another session. Thus grants out of the Consolidated Fund, devoted by the legislation of session 1885 to the service of the financial year 1885–86, could not be applied to the supplementary grants voted during session 1886 for the year 1885–86. These grants were not available until fresh issues out of the Consolidated Fund were provided in the session of 1886 for the financial year 1885–86.

Besides the drafts made upon the Consolidated Fund to meet the requirements created by the legislation of each session, permanent charges for the service of the state are secured by statute upon that fund which the treasury is bound to defray, as directed by law. In this expenditure are included the interest of the national funded debt, the civil list of her Majesty, the annuities of the royal family, and the salaries and pensions of the judges and of other public officers.

**Appropriation of the grants for the annual services.**—The sums of money granted, in advance, by the committee of supply for the service of the year, are issued, as has been explained, during the first six months of every session, under the authority of the Consolidated Fund Acts (see p. 526), because the Appropriation Bill, which gives complete legal sanction to those issues, cannot be introduced until the financial arrangements of the year are concluded.¹

Accordingly, when all the supply grants necessary for the service of the year have been voted, the resolution finally proposed in the committee of ways and means is for a grant out of the Consolidated Fund, which provides the balance of ways and means required to cover the supply grants voted for the current financial year. Upon the report of that resolution, the Appropriation Bill is brought in, which authorizes the issue of the remaining sums necessary for the service of the year out of the Consolidated Fund.² The bill also enacts that each grant voted during the session

¹ 57 H. D. 3 s. 458.
² 110 C. J. 443; 145 ib. 579.

Owing to their formal character, the Consolidated Fund and the Appropriation Bills are not printed for general circulation, but copies can be obtained on application; see also p. 442.
shall be expended upon the service to which it is thereby appropriated, according to the terms prescribed by the resolutions voted in the committee of supply; and the bill also ratifies the application of the surpluses upon the army and navy grants, which is described upon p. 519.

When, during the course of a session, an increase in the ranks of the army above the number specified in the annual estimates has been obtained under a vote of credit or otherwise¹ (see pp. 522, 524), it was formerly necessary to include among the provisions of the year's Appropriation Act a statement of the number of that additional force: but this statement is no longer required, as permanent provision is made to meet such additions to the army by sect. 2 of the Army Annual Acts.²

The latitude permissible in debate and amendment upon going into the committee of supply (see p. 572) does not extend to the stages of the Appropriation Bill. Debate and amendment on these occasions must be relevant to the bill, and must be confined to the conduct or action of those who receive or administer the grants specified in the bill.³ As an illustration of this rule, it may be mentioned that discussion has been permitted on the state of Europe, so far as it depended on the conduct of the executive government, as, for example, the use made of the naval forces, or the action of the diplomatic servants of the Crown; whilst, on the other hand, observations and amendments relating to the constitution of Great Britain, to the House of Lords, to a course of action taken by that house touching the tenure of land in Ireland, or remarks on

¹ 140 C. J. 161. 180. 320.
² Compare Appropriation Acts, 1870 and 1882, with the Act of 1885.
³ 143 H. D. 3 s. 558. 641; 12th April, 1859 (Admiralty Board), 153 ib. 1626; 23rd July, 1863 (Foreign Relations); 28th June, 1863 (Irish Constabulary); 14th Aug. 1867 (Turkey and Greece); 5th Aug. 1870 (Fortifications, and State of the Navy); 8th Aug. 1872 (Kew Gardens); 11th Aug. 1876 (Outrages in Bulgaria); 15th Aug. 1882, on going into committee (War in Egypt), 137 C. J. 482; 16th Aug. on third reading (Egyptian Budget), ib. 484. The annual education statement has been made by the minister for that department on the second reading of the Appropriation Bill, 17th June, 1886, 306 H. D. 3 s. 1723; 16th June, 1892, 5 Parl. Deb. 4 s. 1355.

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the balance of power in Europe, were held to be irrelevant.\(^1\)

The principle of relevancy is also strictly applied to debate and amendments in the committee on the Appropriation Bill. No grant of supply is effected by the bill; its provisions are solely administrative; the sole object of the bill is to ensure the application of the grants made by Parliament to the objects defined by the resolutions of the committee of supply. Accordingly, debate or amendment must be restricted to the matter of appropriation; and the conduct of the officials or of the departments who receive the supply grants cannot be challenged in the committee on the bill; nor can amendments be moved to its clauses, or to the schedule, to effect the reduction of the amount, or an alteration in the destination of a grant.\(^2\) Nor are the enacting words of the bill open to procedure amendment.\(^3\)

A Consolidated Fund or an Appropriation Bill that has passed both houses\(^4\) is returned into the custody of the Commons; and when that house is summoned to the House of Lords, to attend the sovereign or the lords commissioners, the bill is handed by the Speaker, at the bar of the House of Lords, to the Clerk of the Parliaments, to receive the royal assent. The passing of the Appropriation Bill takes place, ordinarily, but not necessarily, on the day appointed for the prorogation of Parliament; as on several occasions, when special circumstances have demanded an adjournment, instead of a prorogation, the royal assent has nevertheless been given to the Appropriation Act; and on the meeting of Parliament, after the adjournment, the outstanding business has been proceeded with. And as the money bills have been

\(^{1}\) 176 H. D. 3 s. 1859; 180 ib. 836; 231 ib. 1119. 1160; 256 ib. 472.1232; 265 ib. 736. 768.

\(^{2}\) 256 ib. 240; 292 ib. 558; 332 ib. 977. 980–983; 340 ib. 609.

\(^{3}\) 332 H. D. 993. 1010; 339 ib. 219.

\(^{4}\) Appropriation bills, in common with bills brought in upon royal recommendation, are, by usage (see p. 329), not passed through more than one stage at each sitting of the House of Commons.
passed, and the committee of supply closed, the special
sitting has then been held, without any disturbance of the
financial arrangements of the year.\(^1\) When the sovereign is
present in person (see p. 202), the Speaker prefaced the de-

delivery of the money bills with a short speech concerning
the principal measures which have received the assent of
Parliament during the session, in which he does not omit to
mention the supplies granted by the Commons.

**Enforcement of the appropriation system.**—A sessional
committee of the whole house is appointed to consider,
and ratify by resolution, the application by the navy and
army departments of surpluses to meet deficiencies, as has
been already explained (see p. 518); and on that resolu-
tion is based the clause inserted in every Appropriation
Act, which confers the sanction of Parliament to that
method of dealing with those grants.

The house is further assisted in maintaining the due
enforcement of the Appropriation Act, by reports from the
comptroller and auditor-general, under the Exchequer
and Audit Act, 1866, regarding the application and the
appropriation of the grants, and upon such other matters
as are, in his judgment, connected therewith.

The house also appoints, at the commencement of every
session, a standing “committee of public accounts,” con-
sisting of eleven members, “for the examination of the
accounts, showing the appropriation of the sums granted
by Parliament to meet the public expenditure.” The
function of this committee is to ascertain that the parlia-
mentary grants for each financial year, including supple-
mentary grants, have been applied to the object which

\(^1\) On the 12th Oct. 1799, the Ap-
propriation Act received the royal
assent, when both houses adjourned
till the 21st Jan. 1800. On the 24th
July, 1829, the Appropriation Act re-
ceived the royal assent; and on the
26th, the Commons adjourned, and con-
tinued adjournments, and the trans-
action of business, until 23rd Nov.
On the 17th Aug. 1882, the Approp-
riation Act received the royal assent;
Parliament prescribed, and to recheck the official audit created by the Exchequer and Audit Departments Act. The committee also scrutinizes the causes which have led to any excesses over parliamentary grants, and the application of savings on the grants made to the naval and military departments. The researches made by the committee, and the publication of their reports, ensure, on behalf of the House of Commons, an effectual examination of the public accounts.¹

**East India Revenue Accounts.**—The house reviews the financial condition of India in a committee of the whole house, appointed on the motion of a minister of the Crown, to consider a statement of the financial position of India during the past year, based on the accounts of the revenue and expenditure of India, which have, during the session, been presented to Parliament, in pursuance of statute 21 & 22 Vict. c. 106, s. 53.² The question must be put for the Speaker’s leaving the chair for this committee, as it is exempted from the operation of standing order No. 51, in order to create an opportunity for more general debate than can arise in committee, where amendment and debate must be confined to the economical and financial condition of India, as disclosed by the finance accounts relating to those territories.³ When, to the customary form of motion tendered to the committee certifying the amount of revenue and expenditure in India during the past financial year, a member proposed, as an alternative proposal, an amendment affirming that, for the causes therein stated, the house could not consider the motion, the chairman called the attention of the committee to the character of the amendment, to guard against a supposition

¹ The reference of the estimates to the consideration of a select committee has been occasionally advocated in the house. During the sessions of 1887 and 1888, select committees were appointed to examine into the army, navy, and revenue estimates; and the select committee on procedure on the estimates, 1888, reported regarding the extent to which the estimates might, in their opinion, be subjected to this method of examination, 1 Todd, Parl. Govt. 2nd ed. 744; 142 C. J. 233; 143 ib. 95. 99; Parl. Paper No. 281, sess. 1888.

² The resolution reported from the committee was (sess. 1889) not considered by the house, the prorogation having intervened, 135 C. J. 434. 438.

³ 333 H. D. 3 s. 176. 208.
that an abstract expression of opinion, as an alternative to the proposition before the committee, could be entertained. The amendment was consequently not moved by the member who placed it upon the notice paper.¹

Greenwich Hospital.—As under the Act 48 & 49 Vict. c. 42, the expenditure on this hospital is defrayed out of the revenues thereof, a statement showing, under the proper heads, the income and expenditure of the hospital, is every year submitted, by a resolution, to the consideration and approval of the house.²

Charges not subject to royal recommendation.—The practice requiring the recommendation of the Crown, and the committee stage, for proposals involving public expenditure has been explained (see p. 527). The procedure must now be considered, which arises under standing order No. 62, regarding the imposition of charges upon the people which does not require the recommendation of the Crown, because the charge does not form a portion of the Crown revenue, nor expenditure drawn from the exchequer.

Bills dealing with charges of this nature are not introduced on resolutions reported from a committee of the whole house appointed under standing order No. 62.³ In consequence, bills authorizing the levy or application of rates for local purposes, administered by authorities acting on behalf of the ratepayers, are brought in on motion,⁴ and

¹ 348 H. D. 3 s. 1044.
² 146 C. J. 518.
³ The committees that formed the preliminary step to the introduction of the bills referred to in notes 1 and 2, p. 537 of this book (9th ed.), were not what are technically called “money committees,” but, as has been ascertained by an examination made by the principal clerk of the Public Bill Office, were committees appointed to consider matters of trade and other matters, in deference to standing orders or usages no longer operative (see p. 439, n. 1).
⁴ Metropolis Police Bill, 84 C. J. 233; Coal Trade (Port of London) bills, 86 ib. 558; Poor Law Amendment Bill, 1834; Municipal Corporations Bill, 1833; Poor Relief (Ireland) Bill, 98 ib. 90; Collection of Rates Bill, 1839; Highway Rates Bill, 94 ib. 363; Prisons (Scotland) Bill, 94 ib. 22; Metropolis Local Management bills, 1855 and 1858: Union Relief Aid (Distress in Manufacturing Districts) Bill, 1862; Rating Bill, Valuation Bill, and Consolidated Rate Bill, 1873. But the Rate in Aid Bill (Irish Famine), 1849, originated in committee, as it levied a general rate, the funds being under the management of government officers.
the clauses relating to those objects are not printed in italics (see p. 529);¹ such, for instance, as the Main Drainage (Metropolis) Bill, 1858, and the Thames Embankment Bill, 1862, as the expense of the proposed works was to be paid out of local rates upon the metropolis;² and an objection, that a clause in the Corrupt Practices Prevention Bill, 1858, imposing a charge upon county and borough rates should have been authorized by a previous committee resolution, was overruled.³

The same principle is applied to bills relating to church rates, and to the incidence and the recovery of tithe; and the Tithe Commutation Bill, 1836, the Tithe bills of 1890 and 1891, and the Church Rates Commutation Bill, 1864, were ordered in on motion;⁴ nor has standing order No. 62 been held to apply to bills imposing charges upon any particular class of persons for their own use and benefit.⁵

Though bills creating charges which are not within standing order No. 62 are not introduced in committee, still, in deference to the principle enforced by that standing order, no provisions for the creation of any form of charge upon the people can be inserted in a bill whilst the Speaker is in the chair; though the necessity of adjourning the committee stage thereon to a future day does not arise. Accordingly, when clauses or amendments dealing with

¹ 179 H. D. 3 s. 480.
² Objection taken that these bills ought to be introduced in committee overruled, 165 ib. 1516; 165 ib. 1826.
³ 91 C. J. 17; 174 H. D. 3 s. 1701. During the session of 1883, notice was taken that the Church in Ireland Bill (which proposed to levy “an annual tax” upon all benefits in lieu of firstfruits) should have originated in a committee. A select committee appointed to examine precedents reported that no case precisely similar bad been discovered, but “that the general spirit of the standing orders and resolutions of the house required that every proposition to impose a burthen or charge on any class of the people should receive its first discussion in a committee of the whole house,” and the bill was consequently withdrawn, 88 C. J. 185; Parl. Paper No. 86, 1883. But the opinion expressed by that committee has not influenced the practice of the house.
⁴ The Merchant Seamen’s Fund bills, 1848 and 1850, imposing a duty on ships in the merchant service, and authorizing a deduction from the wages of the seamen, &c., to form funds for their relief, were, being trade bills, brought in upon a committee resolution, on the principle stated in n. 3, p. 565, 103 C. J. 512; 105 ib. 54.
rates, tolls, and other charges imposed for local purposes, are submitted to the house on the report stage of a bill, it is the practice to move that the house should forthwith go into committee thereon, or for the committal of the bill in respect of the clauses or amendment in question; and the Speaker would decline, if necessary, to propose such provisions from the chair (see p. 529).

Funds devoted to objects of public utility.—Funds set apart for purposes of public utility, but not for the public service of the United Kingdom, such as the former fee funds of the Court of Chancery, and the church funds accruing under the Irish Church Act, are not within the scope of the standing orders.

Reduction of charges.—Proposals to reduce a burthen upon the people may be made in the house or in committee, no special form of procedure being prescribed for such a motion, or for the introduction of bills which are strictly confined to the reduction of a tax or charge upon the people. It follows that amendments for the reduction of charges, such as of taxes, rates, salaries, tolls, and penalties, can be moved when a bill is considered upon report; and this has been permitted even when, by indirect effect, an amendment created a certain amount of charge. For instance, it was held allowable, upon this stage, to strike out an exemption from a tax, which had been agreed to by the committee on the bill; and also to omit a clause imposing a charge upon the ratepayers, although the omission of the clause left other parties, already liable by law, still chargeable with certain expenses.

Bounties, drawbacks, or allowances, involving payments out of the revenue, have usually been proposed in committee: but if an allowance be merely a deduction from the amount

1 97 C. J. 424; 119 ib. 316; 120 ib. 356.
2 Courts of Justice Building Bill, 165 H. D. 3 s. 1561.
3 134 C. J. 332. 350; 137 ib. 451; Evicted Tenants, &c., Bill, Speaker's ruling, 29th March, 1893.
4 See proceedings in committee on Customs, &c., Acts, 1st July, 1853, by which the advertisement duty, proposed to be lowered from 1s. 6d. to 6d., was finally reduced to 6, 10s. ib. 640, and Debates.
5 Drainage Bill, 1840.
6 Expenses of Hustings, 23rd July, 1868, 193 H. D. 3 s. 1688.
of a proposed duty, it may be entertained by the house, or by the committee on the bill, without any preliminary vote in committee.\(^1\) In 1865, it being proposed to reduce the existing drawback on the export of sugar, it was agreed, on consideration, that the proposal should originate in committee, as it was equivalent to an increase of charge upon all importers of sugar who desired to export it.\(^2\)

Control over packet and telegraphic contracts.—It may be mentioned, in conclusion, that, as a check upon corrupt or improvident contracts, it is provided by standing orders, that in every contract for packet and telegraphic services beyond sea, a condition should be inserted, that the contract shall not be binding until it has been approved by a resolution of the house. Every such contract is to be forthwith laid upon the table, if Parliament be sitting, or otherwise within fourteen days after it assembles, with a copy of a treasury minute setting forth the grounds upon which the contract was authorized.\(^3\) No such contract is to be confirmed, nor power given to the government to enter into agreements, by which obligations at the public charge are undertaken, by any private Act. All such contracts are, accordingly, approved by resolutions of the house.\(^4\)

The Army Annual Bill.—The consent of Parliament, necessary to legalize "the raising and keeping" of a standing army within the United Kingdom, in time of peace, is so intimately connected with the grant of supplies for the service of the Crown,\(^5\) that the bill which gives that consent, and provides for the regulation and discipline of the army, forms one of those measures which of necessity must be introduced in the House of Commons. When the house has agreed to the resolutions voted by the committee of supply, which determine the number of men who shall be

\(^1\) Paper Duty Repeal Bill, 1860, cl. 2, 157, H. D. 3 s. 2094.
\(^2\) 120 C. J. 313.
\(^3\) On the 16th June, 1873, in the case of the Cape of Good Hope and Zanzibar mail contract, notice being taken that a treasury letter had been presented instead of a treasury minute, the order for resuming the adjourned debate on the contract was discharged; and amended papers were presented.
\(^4\) 125 C. J. 414, &c.
\(^5\) 24 Parl. Hist. 720.
maintained during the year for the army and for the sea services, the bill for the regulation of the army is ordered in. A complete code of military law was formerly re-enacted by each sessional Mutiny Bill. In the year 1879, this legislative necessity was obviated, and a permanent Act was passed for the discipline and regulation of the army; though, to secure the rights of Parliament to give or to withhold its consent to a standing army, the permanent Act is inoperative, unless it be put in force by an annual Act, to which, under established constitutional usage, only a twelve months' duration is given. By this limitation, the Commons, in addition to their control over the number of the naval and military forces, and the yearly sums to be appropriated to their support, reserve to themselves the power of determining whether a standing army shall be kept on foot. The Mutiny Bill of former sessions is accordingly replaced by the Army Annual Bill, a bill which must become law before the 30th April in each year, the day on which the Army Act of the previous session expires. On the second reading of an Army Annual Bill, general debate on the enforcement of the existing army regulations is out of order.

Part IV.—In reply to the sessional announcement from the throne, that provision must be made by the Commons for the service of the Crown, and that the estimates for the requisite expenditure will be laid before them, they appoint, acting on standing order No. 54, the committees of supply, and ways and means (see p. 554).

At the beginning of a new Parliament, when the house resolves itself for the first time into the committee of supply, the leader of the house, or a minister of the Crown in his behalf, calls upon a member to take the chair of the com-

1 The Army Discipline, &c., Act, 1879, re-enacted 1881, 44 & 45 Vict. c. 58.  
2 The discipline of the Royal Navy and the marine force, when afloat, is secured by permanent statutes. The discipline of the marines, when ashore, is maintained by the Army Discipline Acts of 1879 and 1881, as kept in force by the Army Annual Bill.  
3 334 H. D. 3 s. 807.
The Committee of Supply.

Chapter XXII.

Part IV.

Duties of chairman.

Retirement of chairman.

Days of sitting.

1 19th Jacobi, a dispute being in the committee, which of two members named should go to the chair, the Speaker was called to his chair, and put the question, that Sir Edward Coke (who was one of the persons named) should take the chair, and then the Speaker left his chair. Memorials of the Method, &c., of Proceedings in Parliament, by H. S. E. C. P., 1658, p. 37; 1 C. J. 650; 9 ib. 386; 13 ib. 794; 21 ib. 255; 40 ib. 1126, &c.; 3 Grey's Debates, 301. Two members having been successively called upon to take the chair of the committee of ways and means, 2nd Feb. 1810, the Speaker immediately returned to the chair to submit the question to the house, 15 H. D. 302; 65 C. J. 30. Mr. Playfair having resigned the office, Sir A. Otway was called to the chair, 2nd March, 1883, when a member rose to address the committee. Mr. Speaker thereupon resumed the chair; and upon question it was ordered that Sir A. Otway do take the chair of the committee, 138 ib. 63; 276 H. D. 3 s. 1321.

2 His salary, first paid out of the civil list, then voted on address, is included among the annual estimates, 55 C. J. 790; 8 H. D. 1 s. 228; see also report on office of Speaker, 1853.

3 Colonel Wilson Patten, 5th April, 1858, 125 H. D. 3 s. 591; Mr. Dodson, 8th April, 1872, 210 ib. 892; Mr. Lyon Playfair, 1st March, 1883.
mittees are placed among the orders of the day for every Monday, Wednesday, and Friday;\(^1\) and the sitting of the committee was formerly restricted to those days. This restriction is no longer in force. Standing order No. 55 provides that these committees may be set down for any sitting of the house; though, following the directions given by the standing order, these committees are always appointed for every Monday, Wednesday, and Friday; nor can this arrangement be disturbed, save upon motion made by a member of the government to provide for the transaction of business.\(^3\)

Under standing order No. 11, the order of the day for supply on the committee either of supply or of ways and means, is placed the first order on Friday, and the question must be proposed, that the Speaker do leave the chair (see p. 246).

An instruction to the committee of supply cannot be moved, as, following the Speaker's ruling, "nothing can be brought on in that committee of which notice has not been given in detail, by the estimates laid before the house."\(^3\)

Amendments on going into committee of supply.—The ancient constitutional doctrine, that redress of grievances should be considered before the grant of supply, is maintained by the usage which sets aside the rule of relevancy when the question is proposed that the Speaker do leave the chair for these committees; and standing order No. 51 prescribes that this question must be proposed, whenever it is intended that the house should resolve itself into the committees of supply, or ways and means; though, as is shown (p. 573), the operation of this standing order is considerably restricted by the provisions of standing order No. 56. Accordingly, under this usage, any matter, if otherwise in order, can be brought forward by debate raised with or without notice, on the main question for the Speaker's leaving the chair, or upon an amendment to that question which is proposed by a member who has placed upon the notice paper a notice \(^4\) of the amendment.

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\(^1\) 11 C.J. 98, 301.  
\(^2\) 17th June, 1873, 240 H. D. 3 s.  
\(^3\) Mirror of Parl. 1828, p. 1972.  
\(^4\) Notice requisite, 8th May, 1868, 1669; 16th July, 1880, 254 ib. 731.  
\(^5\) 191 H. D. 3 s. 2053; 1st May, 1887.
The ordinary rules of debate are applicable on this occasion. For instance, the opportunity created by the
question of the Speaker’s leaving the chair cannot be used
to bring forward a matter already decided by the house, of
which notice has been given, or which stands upon the
notice paper. Matters which should be considered upon a
substantive motion (see p. 263), are equally inadmissible.
Nor can any subject, or matter of detail, which should be
discussed in the committee, be debated on these occasions.
Accordingly, neither debate nor amendment can be per-
mitted relating to grants already agreed to, or to resolutions
which will be proposed in the committees of supply; or
ways and means, or to items upon the estimates. So also,
under the rule that a member cannot speak twice to the
same question (see p. 304), a member who spoke when the
main question, “That Mr. Speaker do leave the chair,” was
before the house, cannot speak again thereon; though, when
an amendment has been proposed from the chair, he can
re-enter into the debate, because a new question has been
submitted to the house; and, in the same way, members who
have spoken to one amendment may speak again, after
another amendment has been proposed.

Sittings of the committee of supply on Monday and Thurs-
day, under standing order No. 56.—The power of raising
general debate upon the question for going into the com-
mittee of supply is regulated by standing order No. 56,

order, as the vote to which it referred
had already been agreed to by the
house, and could not be reopened
in that form, 164 ib. 1509; see
also 24th Feb. 1862, 165 ib. 639;
Dockyard Commission, 22nd Feb.
1884, 173 ib. 903; Greenwich Hos-
pital, 5th Aug. 1867, 189 ib. 857;
Number of Land Forces, 4th March,
1872, 209 ib. 1327.

2nd June, 1856 (Mr. Blackburn),
not reported. On the 25th July,
1861, Mr. Hope rose to move as an
amendment to the question for the
Speaker’s leaving the chair, an ad-
dress, praying that a sum already
voted for the Royal Military College
at Sandhurst should not be expended
until the house had had time to con-
sider the plan of certain proposed
buildings: but the Speaker ruled
that such an amendment was out of

1 142 ib. 1026; 189 ib. 91; 308 ib.
1755.

2 314 H. D. 3 a. 1718; Rules, Orders,
&c., No. 314.

3 On the 21st April, 1864, Mr.
Sheridan’s amendment on fire in-
surances was framed so as to avoid
this irregularity, 174 ib. 1447.

4 175 ib. 770.
which provides that when that committee is taken on a
Monday or Thursday, the Speaker leaves the chair without
question put, unless on the first time of going into com-
mmittee of supply upon the army, navy, and civil services
respectively, or for a vote of credit, an amendment is moved,
or discussion raised, relating to the estimates of which notice
has been given.

He therefore quits the chair without question put, when
notice is given that estimates for supplementary, or excess
grants, or grants on account, will be taken;¹ and the only
occasion when, pursuant to standing order No. 56, the
Speaker proposes the question for his leaving the chair
for the committee of supply, is limited to the sittings
when the annual estimates for the ensuing financial year,
or for a vote of credit, are first set down for consideration;²
and in the debate on amendments that may follow thereon,
relevancy to the class of estimates of which notice has been
given is strictly enforced. For instance, such matters as
the desirability of an appeal in criminal cases, or the conduct
of the Lord-Lieutenant of Ireland, were held to be subjects
which could not be debated on the civil service estimates,
because, in the first case, the amendment did not refer to
any present action on the part of the government, and
because, in the second, the lord-lieutenant’s salary was not
granted by the committee of supply;³ and, for an analogous
cause, the subject of the Greenwich Hospital funds was
excluded from debate upon the navy estimates.⁴

Monday and Thursday, owing to the facility given to the
transaction of the business of supply under standing order
No. 56, are the days usually chosen for the sittings of that
committee; and, during the progress of the session, the pro-

¹ 2nd and 12th March, 1883, 276
H. D. 3 s. 1261; 277 lb. 220; 5th
March, 1884, 285 ib. 549; 15th Nov.
1884, 293 lb. 1598; 12th March, 1885,
295 ib. 808.
² The Speaker leaves the chair
forthwith on occasions when a sitting
of the committee held under standing
order No. 56 has been interrupted,
and a motion that the House will im-
mmediately resolve itself into supply
has been agreed to, 2nd Aug. 1884,
291 lb. 1531.
³ 30th March, 1885, 296 ib. 1010;
9th Sept. 1886, 308 ib. 1756. 1774–
1779, 1785–1789.
⁴ 17th March, 1890, 342 ib. 1027.
visions of this standing order are habitually extended, by an order of the house, to every sitting of the committee of supply except on a Friday, which is generally reserved, throughout the chief portion of the session, as an opportunity for raising general debate.

Procedure on the question for the Speaker's leaving the chair.—Under established usage, members who desire to bring forward amendments of which they have given notice, do not wait for the Speaker’s call, but rise to do so when the opportunity occurs. Accordingly, when several notices have been given of amendments on going into the committee of supply, though the Speaker endeavours to follow the order taken by the notices of amendments upon the notice paper, that order cannot be observed, unless the members themselves rise in due course, and claim their opportunity. As notice is required of these amendments, they can only be moved by the member who gave the notice (see p. 285). In this, and in other respects, order in debate on going into committee of supply conforms to ordinary practice; thus when an amendment to the question for the Speaker’s leaving the chair has been negatived, as it has been decided that the words proposed to be left out shall stand part of the question, no further amendment can be moved thereto; though, as has been mentioned (p. 572), general debate on the main question can be maintained by those members who have not moved nor seconded an amendment thereto, or spoken on the main question before an amendment was moved.

The adjournment of debate on an amendment to the question for the Speaker’s leaving the chair creates, occasionally, an exceptional result, owing to the direction contained in standing order No. 11, that on Fridays the question that the Speaker do leave the chair must invariably be proposed. If an adjourned debate on that question is standing upon the notice paper when the ensuing Friday comes round, the order of the day for resuming the adjourned debate is removed, and procedure on the amendment lapses,

in order that the Speaker, in obedience to the standing order, may propose afresh the question for his leaving the chair.\footnote{1} The order for an adjourned debate is removed in like manner whenever the committee of supply is taken forthwith in pursuance of standing order No. 56.\footnote{2}

Revival of the order for the committee of supply.—The committee of supply must be kept on foot throughout the session, until closed in due course (see p. 587). Accordingly, when the house, by the acceptance of an amendment to the question for the Speaker's leaving the chair, has thereby superseded the order of the day for the committee of supply, that order is revived by a motion, made forthwith, either that the house will immediately,\footnote{3} or upon a future day,\footnote{4} resolve itself into the committee of supply.\footnote{5} This course has also been followed on those occasions when, the motion for the Speaker's leaving the chair having been negatived, the house could not agree in the amendment that should follow thereon. For instance, four successive amendments having been tendered in vain for the acceptance of the house, an

1 10th and 17th April, 1891, 146 C. J. 197. 216; 352 H. D. 3 s. 383.
2 27th and 30th May, 1892, 147 C. J. 297. 300. See also supply procedure ("Votes" and notice paper), 9th, 10th, and 11th March, 1893. The order for the adjourned debate was removed on Friday, 10th March, and when the question was reposed (11th March) for the Speaker's leaving the chair for the committee of supply (Army Estimates), it was held (private ruling) that, as on the 9th March the house decided against an amendment to that question, no amendment could be proposed there- to on the 11th March, but general debate was maintained on the question.
3 Flogging in the Army, 15th March, 1867, 122 ib. 106; Duchy of Lancaster, 5th May, 1871, 206 H. D. 3 s. 323; Slave-Trade (Egypt and Turkey), 16th March, 1877, 132 C. J. 104; Turkey and Greece, 5th May, 1881, 136 ib. 219; also 136 ib. 238; 138 ib. 63. On the 27th July, 1874, this proceeding was adopted in the case of the committee of ways and means, after an amendment to the question for the Speaker to leave the chair had been agreed to (Monastic and Conventual Institutions), 129 ib. 337.
5 The motion that the house will, \textit{Formal motions on Monday next, resolve itself into the committee of supply was made, 27th May, 1892, immediately after an adjourned debate on an amendment to the question for the Speaker's leaving the chair for supply had been adjourned by the midnight interruption of business, 147 ib. 257.
addition to the initial word "That" was accepted, whereby the sitting of the committee of supply was postponed to a future day; and, on another occasion, by words so added, the house immediately resolved itself into committee of supply. Except on occasions when, under standing order No. 56, the Speaker leaves the chair forthwith, the resolution for the immediate resumption of the committee of supply compels the reproposal of the question for the Speaker's leaving the chair; and a division has been taken against that question, and amendments moved thereto.

As the appointment, by standing order, of the committee of supply as first order of the day on Friday was designed to facilitate debate, it has been contended that, on a Friday sitting, it is the duty of the government, when an amendment has been carried, to move that the house will again resolve itself into the committee, to create a further opportunity for discussion or amendment. This course is not unfrequently followed: but it is not obligatory, either by standing order or by usage, and the expediency of making the motion is left to the judgment of the government.

In order to meet the requirements of the public service, the house exercises much freedom of action in dealing with the committee of supply. Occasionally, the resumption of the committee is obtained, immediately after business has been transacted therein, upon the report to the house of the resolutions of the committee. Thus on one occasion, the house went into committee, three resolutions were passed, and on the report of the resolutions, a motion was made forthwith that the sitting of the committee should be resumed; and a like motion was made at a nine o'clock

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1 120 C. J. 379; 180 H. D. 3 s. 369-427.
2 126 C. J. 416.
3 24th May, 1860, 115 ib. 267.
4 Assistant-Surgeons, Navy, 8th April, 1860, 105 ib. 198; Billeting Soldiers, 7th April, 1856, 111 ib. 124; Forms of Prayer, 13th July, 1885, 113 lb. 306; 115 ib. 454; Flogging in the Army, &c., 15th March, 1867, 122 ib. 106; Recruits, 16th May, 1867, ib. 219; 133 ib. 266; 174 H. D. 3 a. 1960; 205 ib. 1515; 206 ib. 322.
5 Mr. Speaker's observations, 5th May, 1871, 206 ib. 322; 6th April, 1883, 277 ib. 1716; 19th March, 1886, 303 ib. 1423-1426; 26th Feb. 1892, 1 Parl. Deb. 4 s. 1447.
6 27th June, 1879, 134 C. J. 301.
sitting, when, pursuant to standing order No. 7, the chairman made his report to the house (see p. 211, n. 2). And when the order of the day for the committee of supply becomes a dropped order by a sudden adjournment of the house, under the practice explained elsewhere (see p. 250), if necessity arises, the house at the next sitting immediately resolves itself into the committee of supply.

Notice of transaction of business in committee of supply.—When the transaction of business is desired, notice of the estimates intended to be submitted to the committee at that sitting is affixed to the order of the day. The notice of an estimate has been waived by the house, on the 11th June, 1886, under urgent circumstances; and, similarly, Class III. of the civil service estimates was considered, public notice in the house having been given of an intention to take that class, although notice to that effect was accidentally omitted from the notice paper circulated among the members of the house.  

Form of supply resolutions.—Each grant is placed before the committee of supply by a motion, which repeats the definition contained in the estimate of the total amount of each grant, and of the particular service for which the sum is demanded. The form the motion takes is, "That a sum, not exceeding £, be granted to her Majesty, to defray the charge which will come in course of payment during the year ending on the 31st day of March, for" the object therein specified.

Procedure on supply grants.—A motion for a grant may be submitted to the committee in the order selected by the mover without regard to the order and arrangement of the estimates. The grants for future expenditure arising in an ensuing financial year can be voted before a supplementary grant to make good past expenditure which had arisen in the then current financial year. Nor is a partially con-

1 15th July, 1887, 142 C. J. 373; 247 H. D. 3 s. 888. 1046. 2 21st June, 1889, 337 ib. 425. 3 215 ib. 1014. 4 18th March, 1887, Navy Grants: 18th, 19th March, 1890, 145 ib. 187. 192.

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sidered motion, of necessity, brought forward as the first motion at the next sitting; and when such motion is again submitted to the committee, the chairman proposes the question thereon disengaged from any amendment which may have been already proposed thereto, as the renewal of the amendment is left to the option of the committee.  

A grant may also be submitted to the decision of the committee, at the discretion of the mover, by a proposal of the items of which a grant is composed, in separate resolutions. For instance, an estimate for the purchase of land at South Kensington comprised three items. The first item was moved as a separate grant, which was agreed to; and the two other items, taken together, were proposed as another grant, which was negatived,—a course which was pursued with the express sanction of the chair. This course was also taken, during the session of 1890, regarding the grants for the household of the Lord-Lieutenant of Ireland, and for the offices of his chief secretary, which were, in the first instance, proposed in a single resolution. In like manner, a grant, composed of differing forms of demand, and founded on various estimates for the same service, can be proposed in one motion; for instance, a supplementary grant, in addition to the original grant specified in the estimates, can be taken in one resolution, the words, “including a supplementary sum of 1.,” being inserted therein. Nor is the committee precluded from considering at the same sitting both a grant on account, and the grant itself for which the grant on account was made. The motion by which a grant on account is proposed, follows the customary form. The motion states the total sum required; and the various amounts needed for each department, which compose that sum, are stated in a schedule appended to the resolution. The question proposed thereon from the chair follows the terms of the resolution,

1 28th June, 1883, 280 H. D. 3 s. 1713.  
2 7th Sept. 1886, 319 lb. 1629; 23rd Aug. 1887, 319 lb. 1629.  
3 171 lb. 937.  
4 145 C. J. 466.  
5 Suppression of the Slave-Trade, 144 lb. 456.  
6 26th March, 1863, 9th April, 1877, 118 lb. 140; 132 lb. 138.
and places the total sum, the aggregate grant, before the committee for its decision; and upon that question amendments can be moved for the reduction of the whole grant, or for the reduction or omission of the items whereof the grant is composed.

Grants proposed by a minister.—The proposal of a motion for a grant of supply must be made by a minister of the Crown; though an exception is made in the case of the grant for the British Museum, which may be moved by a member who, as a trustee of the museum, is responsible for the administration of the grant; a petition for aid from the trustees having been presented to the House, under the recommendation of the Crown, and referred to the committee of supply.

Except in the manner of moving amendments (see p. 581), the procedure of the committee of supply follows the ordinary usage of the house: no amendment can be moved which is not relevant to the grant under consideration; nor can a motion for postponing a proposed resolution be entertained. Each resolution for a grant forms a distinct motion, which can only be dealt with by being agreed to, reduced, negatived, superseded, or, by leave, withdrawn; and the withdrawal can be made, although the decision of the committee has been taken upon amendments proposed to the resolution. If a resolution be under consideration at the close of a sitting, the committee report the resolutions to which they have agreed, and also report progress in respect of the last resolution which was then under consideration; though such resolution as has been mentioned (see p. 577), is not of necessity moved at the next sitting of the committee.

Here the power of the committee ceases. The committee may vote or refuse a grant, or may reduce the amount thereof, either by a reduction of the whole grant, or by the omission or reduction of the items of expenditure of which

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1 132 C. J. 139.
2 178 H. D. 3 s. 740.
3 145 C. J. 64, 72, 187.
4 175 H. D. 3 s. 77.
5 146 C. J. 145.
the grant is composed: but the committee have no other function.

The constitutional principle which vests in the Crown the sole responsibility over national expenditure, and which forbids the Commons to increase the sums demanded by the Crown for the service of the state (see p. 532), is strictly enforced in the committees of supply, and ways and means. For instance, it was held, 9th March, 1863, that a member could not move an addition to the number of men stated upon the army estimates, although apparently the grant for pay upon the estimates provided for a number of soldiers larger than the number therein specified; and analogous motions have been ruled out of order, although the proposed increase in the number of men was nominal, designed only for the correction of an alleged error in the estimates.\(^1\) No amendment can, therefore, be proposed, whether by a minister of the Crown, or by any other member, to increase the amount of a grant beyond the sum specified in the estimate. If such increase be necessary, the original estimate must be withdrawn, and a revised estimate presented, specifying the number of men required, or the sum to be demanded, or additional estimates must be presented.\(^2\) Nor can the committee attach a condition or an expression of opinion to a grant, nor alter its destination.\(^3\)

This rule came under consideration when a grant for the

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\(^{1}\) 169 H. D. 3 s. 1267; see also Pay of General Officers, 10th March, 1834, 21 ib. 1377; General Officers of Marines, 29th Feb. 1864, 173 ib. 1882.

\(^{2}\) In 1858, the new ministry having proposed reductions in the army and navy estimates prepared by their predecessors, a question arose whether, in committee of supply, the votes proposed by them might not be increased to the amount of the original estimates. To obviate these doubts, revised army estimates were prepared, and the order for referring the original army estimates to the committee was discharged (113 C. J. 112. 120); but as regards the navy estimates, no such precaution was taken.

\(^{3}\) See Speaker’s ruling, 4th Aug. 1843, 71 H. D. 3 s. 294. Though undoubtedly out of order, amendments of this nature have been moved, but the proceeding has been either withdrawn, or subsequently negatived, such as an amendment to a building grant for the University of London, by a proviso, “That no part of such sum shall be applied to the erection of any building according to either of the designs now exhibited,”—a proviso omitted on report, 122 C. J. 265. 270; see also 130 ib. 324.
packet service was proposed, accompanied by a proviso prescribing that no part of the grant was applicable to certain payments for the conveyance of mails subsequent to the 20th June, 1863. An objection was taken to the proviso as an infraction of this rule: but as the proviso was strictly relevant to the grant for the packet service, and merely defined the purposes for which the grant was designed, the objection was not sustained by the chairman, and the regularity of the proviso was subsequently confirmed by the action of the house. 1 On a subsequent occasion, this precedent was followed; and an amendment to the words defining the destination of a grant was permitted, as the intention of the amendment was to define the purpose for which the vote was designed, and to render the resolution consistent both with the object to which the grant was destined, and with the description thereof in the estimate. 2

Mode of proposing amendments in the committee of supply. —The method which regulates the proposal of amendments in the committee of supply is not in accord with the habitual practice of the house. In the contest which must, during a debate, inevitably arise between a motion, and an amendment proposing an alteration of the terms of the motion, undue priority is given to the second proposal, namely, to the amendment, if it be submitted for decision as a substantive proposal taking the place of, and as a substitute for the original motion. Yet a due position in debate must be secured for the amendment. The house, according to its ordinary mode of procedure, meets this difficulty by a method which secures equality of treatment between the motion and the amendment. Both proposals are simultaneously submitted to consideration. The house is not asked whether they approve of the amendment, or of the motion, but whether the motion shall be altered, so as to make way for the reception of the amendment.

This method of putting the question on an amendment is disregarded in the committee of supply. When an amendment of a grant.

1 118 C. J. 231. 239; 170 H. D. 3rd May, 1886, 141 C. J. 180; 3 s. 1882. 2024. 2 305 H. D. 3 s. 166.
amendment is proposed for the reduction of a grant, the motion originally proposed is wholly set aside, and can be withheld indefinitely from the decision of the committee; for the amendment, as proposed from the chair, takes the same form as the original motion, but offers, in lieu of the sum thereby demanded, a reduced sum for acceptance by the committee. The amendment thus takes the place of the original motion; and consequently, the rejection of the amendment does not, as would happen under the habitual usage of the house, bring the original motion under the decision of the committee, but leaves room for the proposal, without limit, of amendments in the same form, and of ever-varying amount.

Amendments based on the items of a grant.—The form of amendment hitherto considered is to obtain a reduction of the total grant proposed from the chair. Following the like method of procedure, a motion for a grant can be dealt with, in detail, by proposals to omit or to reduce the items of expenditure which compose the grant, in the manner prescribed by the following rules, which were, on the 9th February, 1858, and the 28th April, 1868, adopted by the house:

"That when a motion is made, in committee of supply, to omit or reduce any item of a vote, a question shall be proposed from the chair for omitting or reducing such item accordingly; and members shall speak to such question only, until it has been disposed of."

"That when several motions are offered, they shall be taken in the order in which the items to which they relate appear in the printed estimates."

"That after a question has been proposed from the chair for omitting or reducing any item, no motion shall be made, or debate allowed upon any preceding item."

"That 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."

"That 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."
Under these rules, the question upon the whole grant is first proposed from the chair; and if a motion be made to omit or reduce any item comprised in that grant, a question is put, that such item be omitted therefrom, or be reduced by a specified sum;¹ and when a reduction has been made in the amount of an item, a further motion may be made to omit the reduced item.² Nor can the original motion for the whole grant be proposed until this method of amendment has run its course.

The rules framed for the guidance of the committee of supply have been enforced by the following decisions from the chair. In dealing with the items of an estimate, it has been ruled that items must be dealt with separately,³ and that an amendment including more than one item cannot be proposed by way of reduction of an item, but must be moved as a reduction of the whole grant.⁴ The rule which prohibits any return in debate to an item prior to the item upon which debate has arisen, or a question has been proposed, remains in force, after the withdrawal of the motion on which that question was founded;⁵ nor can a proposal be made for the reduction of the whole grant, for the purpose of renewing discussion upon an item on which a question has been proposed, or debate arisen, or upon any item previous thereto.⁶

The reduction of a grant or item must be of a substantial, and not of a trifling amount;⁷ nor may a series of motions be made upon the same grant, raising, substantially, the same issue.⁸ When two or more amendments upon the same grant are, at the same time, tendered to the committee, the chairman puts first the amendment which

¹ 132 C. J. 138; 134 ib. 97. 396; 137 ib. 83; 139 ib. 404; 144 ib. 426. 431. 435.
² 119 ib. 211.
³ 177 H. D. 3 s. 1990.
⁴ Chairman’s ruling. On a proposal to move the omission of three items, he submitted for the decision of the committee the question upon the first item, 6th Nov. 1888, 330 ib. 497–499.
⁵ 13th Nov. 1888, chairman’s private ruling.
⁶ 21st April, 1884, 287 H. D. 3 s. 235; 22nd Aug. 1887, 319 ib. 1484. 1485.
⁷ On the 9th June, 1879, the chairman declined to put the question on a reduction of £1, 246 ib. 1439; 13th June, 1878, 240 ib. 1456.
⁸ 7th Aug. 1877, 236 ib. 592.
proposes the largest reduction, and then, if that be not accepted, the lesser amendments;\(^1\) still, as reductions are moved upon a grant independently the one of the other, a succession of reductions may be moved alternating between larger or smaller amounts, as may seem expedient to the movers, subject to the authority of the chairman, who may intervene to determine the most convenient order in taking the amendments offered.\(^2\) Where a motion has been proposed for the reduction of the whole grant, no motion can be made for a reduction by the omission of an item therefrom, unless the motion for reduction be withdrawn.\(^3\)

In accordance with general usage, the main principle which governs debate in the committee of supply is relevancy to the matter which the question proposed from the chair submits to the committee. To this rule a necessary exception is made. The expenditure on the army and navy services, though spread over various sources of outlay, is expenditure devoted to one object. By established usage, therefore, the minister in charge of the army or navy estimates makes a general statement concerning the services for the year upon the first votes that are proposed to the committee, namely, the votes which determine the number of the land forces and seamen that shall be maintained, or for their pay; and a general discussion upon the army and navy services is taken thereon.

This power of general debate does not, however, sanction discussion in detail upon special subjects, which must be reserved until the grant for that special service is before the committee, such as the reorganization of the controlling authorities over navy expenditure, or the tactics adopted during naval manoeuvres.\(^4\) After the pay, or wages vote

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\(^1\) 12th June, 1857, 145 H. D. 3 s. 1733; 21st July, 1879, 248 ib. 911.
\(^2\) 14th Aug. 1848, 103 C. J. 405. 924; 111 ib. 101. 106. 124; 124 ib. 283.
\(^3\) 9th April, 1877, 233 H. D. 3 s. 734.
\(^4\) 303 ib. 1215; 14th March, 1888, 333 ib. 1731.
has been agreed to, debate must be confined to the particular vote before the committee;¹ but if, in consideration of the pressing needs of the services, the number of men, and the grants for pay of the navy or army services are voted without full discussion, general debate has been permitted, in respect of the navy, upon the grant for victualls and clothing; and, in respect of the army, on the grants for provisions or clothing;² though this permission has, at the discretion of the chairman, been refused, as when the claim was urged regarding debate on the navy services.³

No method has been established for obtaining in the committee a general discussion upon the administration of the expenditure sanctioned by the civil service estimates; and debate must be kept to the specific object of the grant which is placed before the committee.⁴ For instance, the grant for the salary of the Chief Secretary for Ireland does not justify a review of his conduct regarding prosecutions, —a subject which is relevant to the grant for public prosecutions.⁵ Criticism made on the grant for prisons upon the enforcement by the officials of the prison rules, was permitted, but not of the conditions imposed by those rules from a legislative point of view; nor can the circumstances attending the trial which resulted in sending a prisoner to gaol, be discussed on the prisons vote.⁶

Debate on supplementary and excess grants is restricted to the particulars contained in the estimates on which those grants are sought, and to the application of the items which compose those grants; and the debate cannot touch the policy or the expenditure sanctioned, on other heads, by the estimate on which the original grant was obtained, except so far as such policy or expenditure is brought

¹ 223 H. D. 3 s. 655.
² 267 ib. 851; 2nd March, 1891, 330 ib. 2039.
³ 9th April, 1875, 223 ib. 655.
⁴ An attempt was made, without success, 12th June, 1857, 145 ib. 1712. In 1877, a statement regarding the civil services was made by Mr. W. H. Smith, on the motion for going into supply, 233 ib. 651: but a similar attempt regarding the education vote during that session, by the vice-president of the committee of council, failed to obtain approval, 235 ib. 1048.
⁶ 27th July, 1891, 356 ib. 447.
before the committee by the items contained in the supplementary or excess estimates.\(^1\) In debate on a grant on account, matters which can be discussed upon the grant on which the advance is sought, may be discussed, in anticipation, upon the motion for the grant on account; though the proper occasion to examine the grants in detail is when the final grant to complete is proposed to the committee. If, as occasionally takes place, the whole amount required for a particular service (as, by way of example, for a special diplomatic mission which had been brought to a conclusion),

\(^1\) 392 H. D. 3 s. 794; 311 ib. 1418. 1424; report select committee on estimates (procedure), sess. 1888, No. 281, p. v.; questions 2. 164. 446. 705; debate on grant for diplomatic buildings (Egypt), reported Times, 3rd March, 1893. On the 3rd March, the Speaker made the following statement, in answer to a question put to him by the chancellor of the exchequer, regarding debate on supplementary estimates: “I have always, since being in the chair, manifested great reluctance to answer any question which might seem to be in the nature of an appeal from the chairman of committees to myself: but the way in which the right hon. gentleman has put his question clearly indicates to me that he does not wish to refer to me as a court of appeal. . . .” Undoubtedly, of late years a certain limitation has been enforced upon the discussion of supplementary estimates. As a general rule, on the supplementary estimates it is in order to discuss only the particular items which constitute the supplementary estimates, and the subheads of the original estimates can only be referred to so far as they are involved in the fair discussion of the points contained in the items asked for in the supplementary estimates. Of course, it is quite obvious that it would be improper, as a general rule, to raise on a supplementary estimate the whole question of policy involved in the original estimate; and, as I have stated, the discussion is properly confined to the items of the supplementary estimate. I think, however, that I ought to state that items of supplementary estimates may raise in themselves questions of policy, but the interpretation whether they do raise questions of policy, or not, must clearly be left to the chairman of committees. If I may be allowed to illustrate what I mean, I would say the question of the draining of Constantinople would clearly not raise the whole question of foreign embassies. But, on the other hand, a vote which would largely increase the vote for a railway to Uganda might raise the whole question of the policy involved in the original vote for Uganda. I do not know that I need say anything else, but that I entirely sever myself from anything that occurred last night. The question has been asked me; and it is quite true that restriction has been placed upon the discussion of items in supplementary estimates; and the question whether principles are involved, either new principles, or principles which were originally involved in the original estimates, must be one entirely at the discretion of the gentleman who occupies, and worthily occupies, the chair.” See also debate (Evicted Tenants Commission), 27th March, 1893, etc.
has been obtained on a grant on account, the committee is not thereby debarred from debate on the subject of that mission, when the final grant for missions abroad is being considered, although, as has happened, no money being included for that mission in the grant then before the committee, no reduction thereon can be proposed.¹

Regarding the general conduct of debate in the committee of supply, it may be observed that remarks on the conduct of a servant of the state, made on the grant containing his salary, must be restricted to his official conduct.² Nor can a member discuss a grant on which the committee have resolved, nor a grant not yet brought forward. So also when a proposal has been made to omit or reduce an item, debate is restricted to that item, and reference is not permitted to any other item in the grant.³ Reply in committee to statements made in the house upon the estimates is not permitted. On the 16th April, 1860, a general discussion on the navy services arose before the Speaker left the chair, and the secretary to the Admiralty reserved his explanations until the house was in committee; but when he was proceeding to refer to matters not comprised in the vote under consideration, he was stopped, being out of order.⁴

When all the supplies for the service of the year have been granted, the sittings of the committee of supply are discontinued. Care must be taken not to close the committee until all the necessary grants have been obtained; for, if the committee of supply be designately closed, it cannot be reopened save by the demand for further supplies from the Crown made by a second speech from the throne, or by a royal message.⁵ When the committee of supply is closed, the financial arrangements of the year are completed by

¹ Chairman's private ruling, Sir H. D. Wolff's mission, sess. 1887.
³ 175 H. D. 3 s. 1673; 177 ib. 1990.
⁴ 157 ib. 1851.
⁵ 6th March, 1706, 15 C. J. 326.

329: 20th July, 1715, 18 ib. 232. 234: 16th June, 1721, 19 ib. 592. 602: 18th April, 1748, 25 ib. 611. 626. 635; 3 Hatsell, 168. The committee of ways and means was closed, sess. 1807; and was revived, being set up again for a future day, 62 C. J. 803. 806.
votes in the committee of ways and means (see p. 559); and upon the final resolution of that committee the appropriation bill is ordered in (see p. 560).

Procedure in the committee of ways and means.—The duty imposed on the committee of ways and means is to raise or consider such portion of the public revenue as is needed to meet the expenditure required for the service of the Crown during the current financial year; and to vote money from the proceeds of taxation to cover grants in supply. The consideration of the public revenue is placed before the committee by the financial statement of the chancellor of the exchequer (see p. 555). Following the practice used in the committee of supply, which sanctions an explanation of all the army and navy estimates upon the first motions relating to those services (see p. 584), the chancellor of the exchequer founds the "budget" statement, which extends over the finances of the current year, upon the first resolution that he proposes to the committee of ways and means, whatever may be the purport of the resolution; and the debate that ensues follows the lines traversed by the chancellor's statement. On the resolutions subsequently proposed in the committee of ways and means, debate must be relevant to the resolution immediately under consideration.

The established usages of the house, in the form and method of dealing with amendments, and not the practice in use in the committee of supply (see p. 581), is followed in the committee of ways and means; and every motion for amendment must relate to the matter submitted to its consideration, and is governed by the rule of relevancy.¹

Though it is the function of the committee of ways and means to impose rather than to repeal taxes (see p. 556), examples of the repeal of taxation effected in this committee

¹ Amendments formerly offered to substitute for a resolution proposed by the government, an abstract resolution condemning in argumentative terms either their financial proposals or the imposition of a tax (see 108 C. J. 431; 126 H. D. 3 s. 453; Notices, vol. i. p. 681, 27th April, 1871), are not according to existing practice. Ruling, 27th April, 1893.
are to be found upon the journals.\(^1\) Proposals for the variation or modification of taxation can therefore be made in the committee; but these proposals must be grafted upon the financial scheme submitted by the government, and must not affect the balance of ways and means voted for the service of the year. Amendments, therefore, can be proposed to substitute another tax, of equivalent amount, for that proposed by the government, as, for instance, a proposal to substitute probate and legacy duty on real property as an alternative for an inhabited house duty; the necessity of new taxation, to that extent, being already declared on behalf of the Crown.\(^2\)

No augmentation of a tax or duty asked by the Crown, as has been already explained (p. 532), can be proposed to the committee, nor tax imposed, save upon the motion of a minister of the Crown; and accordingly, an amendment designed to extend the imposition of licences upon brewers, as proposed by the government, to other manufacturers, was ruled to be irregular; nor would an amendment to extend the imposition of a tax to persons enjoying an exemption therefrom be now permitted.\(^3\)

The practice formerly in use regarding the proposal of the questions for the longer or shorter time, had reference to the ancient mode of granting subsidies, which were rendered a lighter burden by being extended over a longer period (see p. 460); and this rule, in principle, is still regarded in the committee of ways and means;\(^4\) and when

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1 10th May, 1766, duties on cotton wool, &c., repealed, 30 C. J. 812; 15th May, 1777, duties on materials for making glass, 36 ib. 508; 4th Dec. 1798, additional house and window duty repealed, and income tax imposed, 54 ib. 56; 14th July, 1807, Irish beer duties repealed, 62 ib. 710; paper duties repealed, 7th May, 1861, 116 ib. 195.

2 10th Dec. 1852, 108 ib. 187; 123 H. D. 3 s. 1571; see also substitution of a duty on soap for a duty on newspapers, 91 C. J. 524.

3 Notice paper, 10th April, 1862, p. 407; 77 H. D. 3 s. 637. 751.

4 88 C. J. 325. The principle of this rule was not adhered to, 6th May, 1853, in putting the question for levying the property tax in the United Kingdom, 108 ib. 467. The proceedings in committee of ways and means, 6th March, 1857, on the tea and sugar duties, afford a good illustration of the application of this rule, 112 ib. 86. Also on the income tax, 21st July, 1839, and 23rd March, 1860.
the time at which a tax shall commence is being considered, as the most distant time is an alleviation of the burthen, the question upon the most remote date is first put from the chair.

Procedure upon reports of supply, and ways and means.

—in deference to the usage mentioned on p. 529, the resolutions of the committees of supply, and ways and means, are not considered on the day on which they are reported from the committee, but on a future day appointed by the house. A relaxation of this rule is permitted in cases of extraordinary urgency, but not to facilitate the ordinary transaction of public business. During the mutiny of the fleet, 8th May, 1797, the report from the committee of supply of a grant for an increase of pay to the seamen and marines was, by order of the house, at once received and agreed to; and on the 24th, an increase of pay was voted to the land forces in the same manner.¹ On the other hand, when, 10th May, 1860, the house ordered a resolution on wine licences, agreed to by the committee of ways and means, to be reported forthwith, to forward the progress of a bill, notice thereof having been taken, the proceeding was annulled, and an order made that the resolution be reported on a future day.²

Resolutions reported from the committees of supply, and ways and means, are considered according to the practice observed regarding other reports from committees of the whole house (see p. 370); and accordingly, the interval before the question, “That the house doth agree with the committee in the said resolution,” is proposed, after the resolution has been read a second time, affords the occasion for the proposal of a reduction of the sum specified in the resolution, as no amendment can be moved after the proposal of the question, that the house agrees with the committee in a resolution. Examples are to be found upon the journal of general debate upon the question for the second reading of resolutions of these committees, and of

¹ 52 C. J. 552. 695; 33 Parl. Hist. ² 158 H. D. 3 a. 1161. 1167; 115 477. C. J. 231. 240.
the proposal of amendments to that question, and also to
the concluding question that the house agrees with a
resolution. According to existing practice, procedure upon
a report of the grants made by the committee of supply
consists of debate strictly relevant to each resolution, as it
is separately submitted to the house, raised either on the
grant itself, or on an amendment proposing a reduction
thereof, no other form of amendment being in order, or
when the final question that the house agrees with a reso-

1 26th April, 1847, Education, 102
C. J. 415; 25th July, 1854, Vote of
Credit, Lord Dudley Stuart’s amend-
ment for an address praying that
Parliament might not be prorogued
until the house had received more
full information as to our foreign
relations, 135 H. 3 s. 718; 100
C. J. 437; 10th March, 1857, Ex-
penditure of the State, 112 ib. 94;
American Prize Courts, 1863, 118 ib.
322; 127 ib. 120; 129 ib. 263. Two
instances exist, 29th Dec. 1796, and
1st July, 1823, 52 C. J. 220; 73 ib.
443, of amendments whereby it was
sought to attach a condition to a
grant upon the report of the resolu-
tions: but the rule forbidding such
an amendment, in force in committee,
is equally applicable upon the report
stage of a grant.

2 175 H. D. 3 s. 360; 25th March,
1889, 334 ib. 771.

2 178 H. D. 3 s. 360; 25th March,
1889, 334 ib. 771.

If moved before the final question put upon each reso-

3 103 C. J. 790; 114 ib. 92; 125 ib.
157. 388; 135 ib. 367. 372. 375; 143
ib. 473; 144 ib. 213. 445. Amendment
proposed to proposed amendment, 76
ib. 487.

4 17th March, 1892, 2 Parl. Deb.
4 s. 1172.

5 20th Feb. 1879, 243 H. D. 3 s.
1549; 8th Aug. 1879, 249 ib. 531.

6 25th April, 1864, 174 ib. 1551; 8th Aug. 1879, 249 ib. 531. These
observations should, in the opinion
of Mr. Speaker, be restricted to sub-
jects strictly connected with the
resolutions which are to be read a
second time, 1st Aug. 1893.

7 119 C. J. 324; 142 ib. 322. 386.
8 77 ib. 314; 113 ib. 211; 117
ib. 81. 87. 93; 135 ib. 372; 141 ib.
88. 92. 104. 108; for recommittal of
a ways and means resolution, see 124
ib. 203.
as in committee alone an addition to the public burthens can be made. If a recommitted grant has been increased on reconsideration by the committee, the resolution specifies that, in addition to the sum already granted, a further sum has been granted for the purpose therein stated.

If a reduction of a resolution is moved, the question that the Speaker puts from the chair is that the original sum "stand part of the question." If that question passes in the negative, the question follows that the reduced amount "be there inserted," and upon that question a further amendment may be proposed. Thus, by way of example, when a resolution was read for a grant of 34,026l. (Houses of Parliament), an amendment was proposed to leave out 34,026l., and insert instead 28,526l. The original sum, 34,026l., was negatived; the insertion of 28,526l. was moved, when a proposal was made to substitute for 28,526l. the sum of 31,026l. The house negatived the consequent question, namely, that "28,526l. stand part of the proposed amendment," and then agreed to the insertion of the sum of 31,026l.

No further proceeding is founded on the reports of the supply grants: but when the resolutions of the committee of ways and means are agreed to, bills may be ordered thereon to carry the resolutions into effect. When such a bill has been ordered, but not presented, the members appointed to prepare the bill may be instructed to make provision therein, pursuant to such further resolutions of the committee as have been agreed to since the bill was ordered; or an instruction is given to the committee on the bill to make such provision therein, if the bill has been read a second time.

When a bill brought in on ways and means resolutions, or

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1 See amendment proposed by Mr. Greville, 27th Jan. 1767, 31 C. J. 76; 3 Hatsell, 179.
2 113 C. J. 320; 141 ib. 108.
3 3 Hatsell, 184, n.; 126 C. J. 107; 144 ib. 214. 445; 145 ib. 364. 512.
4 124 ib. 312.
5 124 ib. 132; 143 ib. 145; 145 ib. 290.
6 100 ib. 743. 784; 143 ib. 172. 173; 144 ib. 171.
on the resolutions of any other committee of the whole house, be withdrawn, and it is expedient to bring in another bill of a similar nature, the usage is to read again the resolutions on which the bill was founded, and to order another bill, either on all, or on some of those resolutions.¹

If an inland revenue bill is founded on a committee resolution expressed in general terms, such as that it is expedient to amend the law relating to inland revenue, no instruction is needed to enable the committee thereon to receive clauses for the remission of inland revenue duties, irrespective of the scope and object of the bill.

Committees on exceptional expenditure.—Under standing order No. 51, the question for the Speaker’s leaving the chair must be proposed when the house resolves itself into a committee on a message from the Crown. Procedure in a committee of the whole house appointed to consider expenditure not included in the estimates for the year’s supply, follows, in principle, the procedure of the committee of supply (see p. 581).

The approval or the reduction of the expenditure under consideration, or a modification of the terms and conditions of the charge thereby created, are the matters specially entrusted to such a committee, and to these objects amendments are directed. In the case, however, of a committee appointed to consider the creation of a fund for the naval defence of the United Kingdom, to be available during the then ensuing seven years, an amendment was admitted to the resolution proposed by the government, which proposed to substitute for that resolution an argumentative justification for the refusal of that demand.²

The constitutional principle that no increase can be made of an amount demanded on behalf of the service of the Crown (see p. 580), is obviously binding on these

¹ 111 C. J. 126; 112 ib. 185; 140 ib. 264. 306.
² 25th March, 1889, 144 ib. 88. On a subsequent occasion, in the East India (Revenue Accounts) committee, when an analogous amendment was proffered, upon an objection taken by the chairman to its argumentative form, the amendment was not moved (see p. 564).
committees; and thus when a committee was considering the resolution, founded on a royal message, for the grant of 1000£ a year to Sir Henry Havelock, an amendment to obtain the continuance of the pension to his son was not permitted.¹

The reports of committees which authorize grants not voted in the committee of supply, are dealt with according to the practice in force regarding the reports from a committee of the whole house, subject, as regards amendments, to the rules which govern the consideration of financial resolutions (see pp. 370. 590), and, if necessary, bills are ordered in upon those reports.

¹ 8th Dec. 1857, 148 H. D. 3 s. 392.
CHAPTER XXIII.

ISSUE OF WRITS, AND TRIAL OF CONTROVERTED ELECTIONS.

The law of elections, as declared by various statutes,¹ by the purport decisions of committees of the House of Commons, and of this chapter, election judges, has become a distinct branch of the law of England: but as the issue of writs, and other matters concerning the seats of members, form an important part of the functions of the House of Commons, an outline of these proceedings, apart from the general law in reference to elections, cannot be omitted.

Whenever vacancies occur in the House of Commons, from issue of any legal cause, after the original issue of writs for a new Parliament by the Crown, all subsequent writs are issued out of chancery, by warrant from the Speaker, issued when the house is sitting, upon the order of the House of Commons. A motion for a new writ is, as has been explained (p. 259), a matter of privilege, and is made without notice: but in the case of a seat declared void on the ground of corrupt or illegal practices, the house, by resolution, renewed from time to time, has directed that two days' notice shall be given of the motion for the writ to fill up such a vacancy (see p. 598).² The causes of vacancy are the death of members, their elevation to the peerage (see p. 597), the acceptance of office under the Crown (see p. 603), bankruptcy and lunacy (see p. 600), and the determination of election judges that elections or returns are void (see p. 620).

When the house is sitting, and the death of a member, vacancies his elevation to the peerage,³ or other cause of vacancy, is during a session.

¹ In 1850, there were upwards of 240 statutes relating to elections, exclusive of Acts for the trial of controverted elections, some few of which have since been repealed. See the author's pamphlet on the Consolidation of the Election Laws, 1850.
² 180 C. J. 23; 137 ib. 20; 7th April, 1886, 141 ib. 149; see also debate on the issue of new writs, Times, 1st Feb. 1893.
³ See 26 H. D. 3 s. 839, 11th March, 1835; 2 Hatsell, 65, n., 393-397.
known, pursuant to a motion, moved by any member, Mr. Speaker is ordered by the house to issue his warrant for a new writ for the place represented by the member whose seat is thus vacated. But where a vacancy has occurred prior to, or immediately after, the first meeting of a new Parliament, the writ will not be issued until after the time limited for presenting election petitions.\(^1\) Nor will a writ be issued, if the seat which has been vacated be claimed on behalf of another candidate. In December, 1852, several members accepted office under the Crown, against whose return election petitions were pending. After much consideration, it was agreed that where a void election only was alleged, a new writ should be issued;\(^2\) and again, in 1859, and in 1880, the same rule was adopted.\(^3\) But where the seat is claimed, it has been ruled that the writ should be withheld until after the trial of that claim,\(^4\) or until the petition has been withdrawn.\(^5\) In 1859, Viscount Bury accepted office under the Crown, while a petition against his return for Norwich, on the ground of bribery, was pending; and, as his seat was not claimed, a new writ was issued. Being again returned, another petition was presented against his second election, and claiming the seat for another candidate. The petition against the first election came on for trial, and the committee reported that the sitting members, Lord

\(^1\) By the Election Petitions Act, 1888, c. 6, the petition is to be presented within twenty-one days after the return has been made to the Clerk of the Crown in chancery. By sec. 49, in reckoning time for the purposes of this Act, Sunday, Christmas-day, and any day set apart for a public fast or thanksgiving, shall be excluded; and it has been held that Sundays are excluded from the computation of twenty-one days. Pease v. Norwood, 4 L. R., C. P. 235; Southampton case, 11th Jan. 1889. On the change of ministry, before the meeting of Parliament in Dec. 1888, writs were issued for several of the new ministers on the 15th; but for those who had been returned for counties at a somewhat later date, writs were not issued until the 29th. And again, in 1874, after another change of ministry, writs were not issued for Buckinghamshire, and some other counties, for several days after the issue of writs for the boroughs, and for some counties where the returns had been made early.

\(^2\) Southampton and Carlow writs, 29th Dec. 1832.

\(^3\) Sandwich and Norwich writs, 22nd June, 1859, 154 H. D. 3 s. 450, 454; Chester writ, 3rd May, 1880, 135 C. J. 125.

\(^4\) Athlone Election, 1859.

\(^5\) Louth Election (Mr. Chichester Fortescue), 1886.
Bury and Mr. Schneider, had been guilty, by their agents, of bribery at that election. By virtue of that report, Lord Bury, under the Corrupt Practices Prevention Act, became incapable of sitting or voting in Parliament, or, in other words, ceased to be a member of the house: but as a petition against his second return, and claiming the seat, was then pending, a new writ was not issued.\(^1\) This position of affairs illustrated the propriety of issuing the writ, in the first case, on the acceptance of office by Lord Bury, as the rights of all parties were nevertheless secured. On the meeting of a new Parliament, in November, 1852, the seat of a deceased member was claimed: but the petition was withdrawn the day after the expiration of the time limited for receiving election petitions, and the writ was immediately issued.\(^2\) The claim of one seat for a constituency which returns two members does not interfere with the issue of a writ, on a vacancy occurring in the other seat.\(^3\)

If a member becomes a peer by descent, a writ is usually issued soon after the death of his ancestor is known; though, occasionally, some delay occurs in obtaining the writ of summons, which ought strictly to precede the issue of the writ,—that proceeding being founded upon the alleged fact that the member has been called up to the House of Peers.\(^4\) On the 15th February, 1809, the house being informed that no writ of summons had been issued to General Bertie, calling him to the House of Peers, as Earl of Lindsey, though a writ had been issued for the borough of Stamford, ordered a supersedeas of the writ.\(^5\) On the 10th January, 1811, a new writ was issued in the room of Lord Dursley, "now Earl of Berkeley," without stating, as usual, that he was called up to the House of Peers. His claim to the Berkeley peerage, however, not being admitted by the Lords, he afterwards sat as Colonel Berkeley, until created Lord

\(^1\) 2nd Aug., 1859, 155 H. D. 3 s. 865.
\(^2\) Durham Election (Mr. Grainger), 108 C. J. 161.
\(^3\) Lichfield writ (Sir G. Anson), 1841, 96 ib. 326. 566; First Durham Election petition, 1852-53.
\(^4\) 74 H. D. 3 s. 108 (Lord Abinger);
\(^5\) 64 ib. 49.
Elections, the Issue of Writs.

Seagrave in 1831. The same rule, however, does not extend to a peer of Scotland, to whom no writ of summons is issued. On the 21st February, 1840, a new writ was issued for Perthshire, in the room of Viscount Stormont, "now Earl of Mansfield, and Viscount Stormont in the kingdom of Scotland," though it was allowed on all hands that no writ of summons had then been issued to his lordship, in respect of his English peerage. And again, in 1861, a new writ was issued for Aberdeenshire, in the room of Lord Haddo, "now Earl of Aberdeen in the peerage of Scotland," before he had received his writ of summons in respect of his English peerage. If a member be created a peer, his seat is not vacated until the letters patent conferring the dignity have passed the great seal. When it is advisable to issue the writ without delay, in the case of a member created a peer, and it is doubtful whether the seat be legally vacated, the member accepts the Chiltern Hundreds before his patent is made out (see p. 605).

A new writ is moved as a matter of privilege, without notice; though, by a resolution, 5th April, 1848, "in all cases where the seat of any member has been declared void on the grounds of bribery or treating, no motion for the issue of a new writ shall be made without previous notice being given in the votes;" and when such notice was dropped, it was required to be renewed like other dropped notices. In 1853 and 1854, it was ordered that no such motion should be made without seven days' previous notice in the votes; but according to later usage, only two clear days' previous notice has been required; and such notices are appointed for consideration at the commencement of public business (see p. 243).

1 66 C. J. 31; 18 H. D. 1 s. 807; Lord Colchester's Diary, ii. 306. 340.
2 93 C. J. 105; 52 H. D. 3 s. 435. A peer applies to the lord chancellor for his writ of summons; produces his father's marriage certificate; proofs that he is the eldest son, &c.
4 Sir H. Vivian, Debates, 6th and 8th June, 1893. In the case of Lord Eddisbury, the Gazette notice that her Majesty had directed the grant of Letters Patent, appeared 9th May; the new writ on his call to the Lords was moved 15th May, 1848, 103 ib. 513.
5 103 ib. 423. Sligo writ, 28th June, 1848, 99 H. D. 3 s. 1289.
6 108 C. J. 315; 109 ib. 388.
7 112 ib. 283; 141 ib. 149.
8 135 ib. 213; 137 ib. 20; Notice Paper, 1st Feb. 1893.
If doubts should arise concerning the fact of the vacancy, the order for a new writ should be deferred until the house may be in possession of more certain information; and if, after the issue of a writ, it should be discovered that the house had acted upon false intelligence, the Speaker will be ordered to issue a warrant for a supersedeas to the writ. Thus on the 29th April, 1765, a new writ was ordered for Devizes, in the room of Mr. Willey, deceased. On the 30th it was doubted whether he was dead, and the messenger of the great seal was ordered to forbear delivering the writ until further directions. Mr. Willey proved to be alive, and on the 6th May a supersedeas to the writ was ordered to be made out.  

And in several more recent cases, when the house has been misinformed, or a writ has been issued through inadvertence, the error has been corrected by ordering the Speaker to issue his warrant to the Clerk of the Crown to make out a supersedeas to the writ.  

A new writ having been issued on the 6th July, 1880, for Berwick-upon-Tweed, in the room of Mr. Strutt, who had succeeded to the Belper peerage, a supersedeas to that writ was ordered on the 8th, as delays had arisen in completing the formalities incident to his being called to the upper house.

When vacancies occur by death, by elevation to the peerage, or by the acceptance of office, the law provides for the issue of writs during a recess, by prorogation or adjournment, without the immediate authority of the house, in order that a representative may be chosen without loss of time, by the place which is deprived of its member. By the 24 Geo. III. sess. 2, c. 26, amended by 26 Vict. c. 20, on the receipt of a certificate, under the hands of two members, that any member has died, or that a writ of summons under the great seal has been issued to summon him to Parliament as a peer,  

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1 See 2 Hatsell, 80, n.; 16 Parl. Hist. 95; 30 C. J. 381. 404; see also cases of the city of Gloucester, 19th Dec. 1702, and of Mr. Vansittart, supposed to have been lost at sea, 17 Parl. Hist. 322; 33 C. J. 546.  
2 64 ib. 48; 81 ib. 223; 86 ib. 134. 182; 106 ib. 12 (Dungarvan writ).  
3 253 H. D. 3 a. 1918.  
4 See the form of the certificate in the Appendix. No writ of summons being directed to a Scotch or Irish peer, this Act does not extend to such cases; Marquess of Tweeddale, Jan. 1873.
either during the recess or previously thereto, the Speaker is required to give notice forthwith in the *London Gazette* (which is to be acknowledged by the publisher); and after six days from the insertion of such notice, to issue his warrant to the Clerk of the Crown to make out a new writ.

But the Speaker may not issue his warrant during the recess (1) unless the return of the late member has been brought into the office of the Clerk of the Crown fifteen days before the end of the last sitting of the house; nor (2) unless the application is made so long before the next meeting of the house, for despatch of business, as that the writ may be issued before the day of meeting; nor (3) may he issue a warrant in respect of any seat that has been vacated by a member against whose election or return a petition was depending at the last prorogation or adjournment (see p. 596).

And, subject to the same provisions, by the 21 & 22 Vict. c. 110, the Speaker is required, on the receipt of a certificate from two members, and a notification from the member himself, to issue his warrant for a new writ, during the recess, in the room of any member who, since the adjournment or prorogation, has accepted any office whereby he has, either by the express provision of any Act of Parliament, or by any previous determination of the House of Commons, vacated his seat. If, however, it should appear doubtful whether such office has the effect of vacating the seat, the Speaker may reserve the question for the decision of the house.

By the Bankruptcy Act, 1883, s. 33, similar powers are given to the Speaker, in the event of a seat having become vacant by the bankruptcy of a member, upon the issue of the certificate of the court, stating that the disqualification inflicted by the Act had not been removed (see p. 31).

By the Lunacy (Vacating of Seats) Act, 1886, if a member is placed in a lunatic asylum, the duty of sending a certificate of the fact to the Speaker, is laid upon every

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1 In the calculation of the six days, the day on which the notice appeared in the *Gazette*, and any intervening Sunday, are reckoned; i.e. upon notice in a Tuesday's *Gazette*, the writ is issued on the following Monday.

2 That is to say, the six days' provision (see note 1) must have been complied with.
person on whose order or certificate the member was received, committed, or detained; or any two members may certify to the Speaker that they are credibly informed that the member has been placed in an asylum.

The Speaker, upon the receipt of such certificate, forthwith transmits it to the commissioners in lunacy, who, without delay, will examine the member to whom the certificate relates, and report to the Speaker whether he is of unsound mind. The Speaker, at the expiration of six months from the date of such report, requires the commissioners to re-examine the member in question, and on their report that he is still of unsound mind, the seat of the member becomes vacant, and the Speaker lays that report upon the table, and issues his warrant to the Clerk of the Crown to make out a new writ for the election of a member to supply the vacant seat. Apparently, under this provision, the issue of a writ could not arise during a recess.

At the beginning of each Parliament, the Speaker is required to appoint a certain number of members, not exceeding seven, and not less than three, to execute his duties in reference to the issue of writs, in case of his own death, the vacation of his seat, or his absence from the realm. This appointment stands good for the entire Parliament, unless the number should be reduced to less than three; in which case the Speaker is required to make a new appointment, in the same manner as before. This appointment is ordered to be entered in the journals, and published in the London Gazette; and the instrument is to be preserved by the Clerk of the house, and a duplicate by the Clerk of the Crown.

For any place in Great Britain, the Speaker's warrant is directed to the Clerk of the Crown in Chancery; and for any place in Ireland, to the Clerk of the Crown and Hanaper, in Ireland. On the receipt of the Speaker's warrant, the writ is issued by the Clerk of the Crown, and transmitted through the post-office, in pursuance of the provisions of the 53 Geo. III. c. 89. Neglect or delay in the delivery of the writ, or

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1 103 C. J. 195.
2 By 37 & 38 Vict. c. 81, the duties
ERRORS IN ELECTION RETURNS.

any other violation of the Act, is a misdemeanour; and in
the event of any complaint being made, the house will also
inquire into the circumstances. In 1840, two writs were
issued for Perthshire, instead of one, and the Clerk of the
Crown was examined in relation to the occurrence.

If any error should appear in the return to a writ, such as
a mistake in the name of the member returned, or in the
date of the return, or in the division of the county for which
the return is made, evidence is given of the nature of the
error, either by a member of the house, or some other person
who was present at the election, or is otherwise able to afford
information; and the Clerk of the Crown is ordered to attend
and amend the return. On the 18th August, 1854, the Mayor
of Barnstaple annexed to the writ, which he returned to the
Clerk of the Crown, a certificate instead of an indenture; and
on being made aware of his error, he forwarded, on the 25th
August, an indenture dated on that day. As this date differed
from that of the return, the Clerk of the Crown felt unable
to annex the indenture to the writ, but made a special cer-
tificate to the house of the facts. This was considered, 13th
December, when, by the order of the house, the members
for Barnstaple were called to the table, and took the oath.

If no return be made to a writ in due course, the Clerk of
the Crown is ordered to attend and explain the omission;
when, if it should appear that the returning officer, or any
other person, has been concerned in the delay, he will be
summoned to attend the house; and such other proceedings
will be adopted as the house may think fit.

of the pursuivant of the great seal in
relation to writs were transferred to
the messenger of the great seal.
1 Glasgow writ, 1837, 92 C. J. 410.
2 95 ib. 122. 127.
3 Newport (Hants), 1831, Mr. Hope
Vere, 86 ib. 578; Kirkcaldy return,
1875, Sir George Campbell, 130 ib.
165; Perth county return, 1878,
Colonel Moray, 133 ib. 53; Poole,
139 ib. 175; Mid Antrim, 141 ib. 8;
Longford, 142 ib. 54; Birmingham,
144 ib. 149; Kirkcaldy, 147 ib. 104.
4 Carlow county, 1841, "November"
being inserted instead of "De-
cember," 96 ib. 3.
5 Northampton county, 26th Feb.
1846, 101 ib. 207; Worcester county
(eastern division), 25th Feb. 1859,
152 H. D. 3 s. 855.
55 (2).
7 Waterford writ, 1806, 61 C. J.
By the 25th sec. of the Act 6 Anne, c. 41, if any member "shall accept of any office of profit from the Crown, during such time as he shall continue a member, his election shall be and is hereby declared to be void, and a new writ shall issue for a new election, as if such person, so accepting, was naturally dead; provided, nevertheless, that such person shall be capable of being again elected." 1 By virtue of this provision, whenever a member accepts an office of profit from the Crown, a new writ is ordered; and it is the usual practice to move the new writ when the member has kissed hands, instead of waiting for the completion of the formal appointment. On the 18th April, 1864, a writ being moved for Merthyr Tydvil, in the room of Mr. Bruce, who had accepted the office of vice-president of the committee of council for education, it was objected that not having been sworn a privy councillor, he was not qualified to hold the office: but it was conclusively shown by the attorney-general that his seat had been vacated by the acceptance of office, and that the writ ought to be issued, as in the case of Mr. Lowe, who had accepted the same office, and of Mr. Hutt, who had accepted the office of vice-president of the board of trade, before they had been sworn of the privy council. 2

In 1861, Viscount Palmerston, while first lord of the treasury, accepted the honorary offices of Constable of Dover Castle and Lord Warden of the Cinque Ports, from which the salary formerly payable by the Crown had been withdrawn. Lord North and Mr. Pitt had vacated their seats on accepting these offices, together with the salary attached to them: but doubts were now entertained whether they could any longer be regarded as offices of profit. It appeared, 169. 175; 6 H. D. 586. 562. 751; Great Grimby, 1831, 86 C. J. 758. 762, &c.; 6 H. D. 3 s. 35. 159. 294. 460.

1 It is pointed out, in Rogers on Elections, part ii. 16th ed. pp. 9. 63, that, although sec. 25 applies in terms to offices generally, old as well as new, its effect must of necessity be limited to old offices, as otherwise it would act as a partial repeal of sec. 24, by enabling holders of new offices within that section to be re-elected, who are by that section rendered incapable of being elected, and of sitting in the house; and the effect of the words in the definition of the offices, "from the Crown," and "under the Crown," is also explained.

2 174 H. D. 3 s. 1196. 1287.
however, that the warrant granted "all manner of wrecks," and of "fees, rewards, commodities, emoluments, profits, per-
quisesites, and other advantages whatsoever, to the said offices
belonging," including the occupation of Walmer Castle; and,
after full consideration, it was determined that a new
writ should be issued.1

Upon the union of Great Britain and Ireland, in 1801, by
41 Geo. III. c. 52, s. 1, disqualifications before applicable
to the British Parliament were extended to members sitting
in the United Parliament for places in Great Britain; by
sec. 2, disqualifications applicable to the Irish Parliament
were similarly extended to members sitting in the United
Parliament for places in Ireland; and by sec. 9, it is declared
that offices accepted immediately or directly from the Crown
of the United Kingdom, or by the appointment and nomina-
tion, or by any other appointment subject to the approba-
tion of the Lord-Lieutenant of Ireland, shall vacate seats in
Parliament.2

Another class of offices the acceptance of which vacates a
seat is that of colonial governors or deputy-governors, who,
by the Act of Anne, c. 41, s. 24, are incapable of being
elected, or of sitting and voting; and cannot, therefore, be
re-elected.3 In 1878, a new writ was moved for the county
of Clare, in the room of Sir Bryan O'Loghlen, who, since
his election, had accepted the office of Attorney-general of
Victoria; but as his seat had already been vacated in the
colonial legislature on the acceptance of office, and it being
doubtful whether his appointment was from the Crown or
the governor, the matter was considered by a select com-
mittee, and upon their report the house resolved, "That
Sir Bryan O'Loghlen had vacated his seat." 4

1 116 ib. 126; 1801, Mr. W. H.
Smith, 146 ib. 269.

2 Rogers on Elections, part ii.

3 Sir A. Leith Hay; Governor of
Bermuda, 1838; Sir J. R. Carnac,
Lieutenant-governor of Bombay, and
Mr. Poulett Thomson, Governor-
general of Canada, 1839; Sir H.
Hardinge, Governor-general of India,
1844; Sir H. Barkly, Governor of
British Guiana, 1849; Sir John
Young, Lord High Commissioner of
the Ionian Islands, 1855; Mr. Grant
Duff, Governor of Madras, 1881, &c.

4 133 C. J. 376, 415; 134 ib. 161;
245 H. D. 3 s. 1104.
Mr. Southey, in 1826, elected for Downton, during his
absence on the Continent, addressed a letter to the Speaker,
in which he stated that he had not the qualification of estate
then required by law (see p. 27). 1 The house waited
until after the expiration of the time limited for presenting
election petitions, and then issued a new writ for the
borough. 2 In like manner, Mr. Cowan, member for Edin-
burgh, addressed a letter to the Speaker, 25th November,
1847, 3 stating that at the time of his election he had been
disqualified, as being a party to a contract then subsisting
with her Majesty's stationery office. At the expiration of
fourteen days, when his seat could no longer be claimed
by any other candidate, his letter was read, and a new
writ ordered. 4 The same course was adopted, in 1874,
by Mr. Ramsay, member for the Falkirk Burghs, on
discovering that he held a small share in a contract with
the post-office. 5 On the 24th June, 1880, a new writ
was issued for Buteshire in the room of Thomas Russell,
Esq., who, having entered into a contract for the public
service, at the time of his election, was incapable of being
elected. 6

It is a settled principle of parliamentary law, that a Chiltern
member, after he is duly chosen, cannot relinquish his seat; 7
and, in order to evade this restriction, a member who wishes
to retire, accepts office under the Crown, which legally
vacates his seat, and obliges the house to order a new
writ. The offices usually selected for this purpose are the
offices of steward or bailiff of her Majesty's three Chiltern
Hundreds of Stoke, Desborough, and Bonenham; or the
steward of the manors of East Hendred, Northstead, or
Hempholme; 8 which, though the offices have sometimes been

1 82 C. J. 28.
2 Ib. 108.
3 103 ib. 17.
4 8th Dec. 1847, 103 ib. 102.
5 19th March, 1874, 129 ib. 12.
6 253 H. D. 3 s. 727.
7 1 C. J. 724; 2 ib. 201. In 1775,
Mr. George Grenville moved for a
bill to enable members to vacate their
seats, 18 Parl. Hist. 411.
8 According to Hatsell, this prac-
tice began about the year 1750. The
first instance was that of Mr. John
Pitt, on the 17th Jan. 1750, and the
next that of Mr. Henry Vane, M.P.
for Downton in 1753. The office of
escheator of Munster was abolished
in 1838.
refused,¹ are ordinarily given by the treasury to any member who applies for them, unless there appears to be sufficient ground for withholding them. The office is retained until the appointment is revoked to make way for the appointment of another holder thereof. These offices can be granted during a recess;² but the statutory power conferred on the Speaker, for the issue of a writ to fill up a vacancy caused by acceptance of office (see p. 600), does not extend to vacancies caused by the acceptance of these stewardships. The acceptance of any of these offices, however, at once vacates the seat of a member, and qualifies him to be elected elsewhere, although no new writ can be issued for the place which has become vacant by his acceptance of office.

These offices, indeed, are merely nominal: but as the warrants of appointment grant them “together with all wages, fees, allowances,” &c., they assume the form of places of profit. All words, however, which formerly attached honour to the appointment, are omitted, in order to remove any scandal in granting these offices to persons unworthy of the favour of the Crown, who may desire to vacate their seats in Parliament.³

Sir Fitzroy Kelly, solicitor-general, having been returned for Harwich on the 15th April, 1852, immediately afterwards announced himself as a candidate for East Suffolk, the election for which county was appointed to be held on the 1st May. He had been returned for Harwich without opposition, yet on the 29th April a petition was lodged to be re-elected.

¹ See letter of Mr. Goulburn to Viscount Chelsea, Parl. Paper, 1842 (544); and see 3 Lord Dalling, Life of Lord Palmerston, 103. In 1775, Lord North refused to give one of these offices to Mr. Bayly, who desired to stand for Abingdon, in opposition to a ministerial candidate, saying, “I have made it my constant rule to resist every application of that kind, when any gentleman entitled to my friendship would have been prejudiced by my compliance,” 18 Parl. Hist. 418, n. “The office of steward of the Chiltern Hundreds is an appointment under the hand and seal of the chancellor of the exchequer,” Lord Colchester’s Diary, 175.

² In answer to a question, Mr. Goschen stated that during the years 1882-1888, on nine occasions the office of the Chiltern Hundreds was granted during a parliamentary recess, 15th Feb. 1892, 1 Parl. Deb. 4 a. 46.

³ The words, “reposing especial trust and confidence in the care and fidelity of,” &c., were first omitted in the year 1861.
against his return, in the hope of preventing the treasury from granting him the Chiltern Hundreds. But as his seat was not claimed, he at once received the required appointment; and was returned for East Suffolk, and took his seat again, before a new writ had been issued for Harwich. Again, in February, 1865, The O'Donoghue, being member for Tipperary, offered himself as a candidate for Tralee: but before the day of election, he qualified himself to be elected by accepting the Chiltern Hundreds. In 1878, Mr. Wingfield Malcolm, member for Boston, accepted the Chiltern Hundreds, in order to qualify himself as a candidate for the county of Argyll.

In the session of 1847-48, a member having had doubts suggested whether he had not been disqualified at the time of his election, as a contractor (see p. 30), thought it prudent not to take his seat, in case of being sued for the penalties under the Act. He was, however, unwilling to admit his disqualification; and he accordingly applied for the Chiltern Hundreds. Doubts were raised as to the propriety of allowing him to vacate his seat by this method: but it was agreed that, as the time had expired for questioning, by an election petition, the validity of his return, and as the house had no cognizance of his probable disqualification, there could be no objection to his accepting office, which solved all doubts, and at once obliged the house to issue a new writ.

In 1880, Mr. Dodson, elected at the general election in March for the city of Chester, afterwards accepted the office of president of the local government board, and was re-elected without opposition. Meanwhile a petition had been lodged against his first election; and in July the election judges determined that his election was void, on the ground of bribery by his agents. It was generally held that, by

1 The entry in the votes is as follows: "Sir Fitzroy Kelly having, since his return for the borough of Harwich, accepted the office of steward of her Majesty's manor of Hempholme, in the county of York, and being returned for the eastern division of the county of Suffolk, took the oaths and his seat," Votes, 1852, p. 285.

2 120 C. J. 4. 50.

3 133 ib. 402.
virtue of the 17 & 18 Vict. c. 102, and the Parliamentary Elections Act, 1868, s. 46, he was thenceforth incapable of sitting for Chester in that Parliament. But as his second election had not been questioned, doubts were raised whether he had legally ceased to be a member, and was qualified to sit for another constituency. To remove all doubts upon this question, he accordingly accepted the Chiltern Hundreds, and was elected for Scarborough.

Unsworn members can avail themselves of these offices; and when Mr. Bradlaugh voted, on the 11th February, 1884, being an unsworn member (see p. 163), the office of the Chiltern Hundreds was granted to him, whereon the new writ was issued to supply the vacancy which by his conduct had taken place.

If one of her Majesty's principal secretaries of state should be transferred from one department to another, his seat is not vacated, as there is no such division of departments in the office of secretary of state as to render them distinct offices under the Crown. And by the Reform Acts of 1867 and 1868, members holding certain offices are not required to vacate their seats on the acceptance of any other office there enumerated; and as this list comprises, or was intended to comprise, all the parliamentary offices under the Crown which vacate the seats of members, it may now be stated generally that any member who has already vacated his seat on the acceptance of one of these offices, is not required to vacate it, on the immediate acceptance of another. But if he has held an office which did not vacate his seat, a new writ is issued on his acceptance of another office, by which his seat is vacated by law. The resumption of an office

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1 Baron L. de Rothschild, 27th June, 1849, 104 C. J. 430; 23rd July, 1857, 112 ib. 348.

2 12th Feb. 1884, 189 ib. 46.

3 30 & 31 Vict. c. 102, s. 32, and sch. H. The like clauses and schedules are also comprised in the Scotch and Irish Reform Acts of 1868.

4 On the 28th Feb. 1868, a new writ was issued for Northamptonshire, in the room of Mr. Hunt, secretary to the treasury, on his acceptance of the office of chancellor of the exchequer. Again, Mr. Ayrton, secretary to the treasury, vacated his seat in 1869, on accepting the office of first commissioner of works. Mr. Stansfeld having been a commissioner of the treasury in 1868, was afterwards appointed secretary.
which has been resigned, but to which no successor has been appointed, does not vacate a seat. As the secretaries of the treasury, the several under-secretaries of state, and the secretary to the admiralty, are by 15 Geo. II. c. 22, qualified to sit in Parliament, their seats are not vacated; and in like manner, the 30 & 31 Vict. c. 72 enacted that the vice-presidentship of the board of trade, substituted for the office of parliamentary secretary to the board of trade, shall not render the person holding it incapable of being elected, or of sitting or voting as a member, or vacate his seat if returned. By 29 & 30 Vict. c. 55, it was declared that the office of postmaster-general should not be deemed a new office, disqualifying the holder from being elected, or sitting and voting as a member of the House of Commons: but that any member accepting the office, though eligible for re-election, should vacate his seat.

By the 22 Geo. III. c. 82, not more than two principal Under-secretaries of state could sit in the House of Commons; and not more than one under-secretary to each department would appear to have been admissible to the House of Commons under the 15 Geo. II. c. 22, s. 3; and as doubts were entertained whether more than two under-secretaries could sit there, in practice there were, until 1855, only two under-secretaries who held seats in that house at the same time.1 But on the establishment of the secretary of state for war in 1855, an Act was passed to enable a third principal secretary, and a third under-secretary, to sit in the House of Commons; and again, in 1858, by the 21 & 22 Vict. c. 106, on the appointment of a fifth secretary of state for India, it was to the treasury, and in March, 1871, having accepted the office of commissioner for the relief of the poor, it became a question whether his seat was again vacated. A writ had been issued on his acceptance of one office in the schedule, and now he had accepted another: but the words of the Act are, "where a person has been returned as a member to serve in Parliament since the acceptance by him, from the Crown, of any office described in sch. H to this Act annexed, the subsequent acceptance by him, from the Crown, of any other office or offices described in such schedule, in lieu of, and in immediate succession the one to the other, shall not vacate his seat;" and as he had occupied an intermediate office, not in the schedule, a writ was issued for Halifax on the 8th March, 1871.

1 2 Hatsell, 63, n.
provided that four principal and four under-secretaries may sit as members of the House of Commons at the same time. In 1864, notice was taken that five under-secretaries had been sitting in the house, in violation of the latter Act, and a motion was made that the seat of the fifth under-secretary had been vacated. The house, however, referred the question to a committee, who reported that the seat of the under-secretary last appointed was not vacated. At the same time, as the law had been inadvertently infringed, it was thought necessary to pass a bill of indemnity. An Act, 27 & 28 Vict. c. 34, was also passed, providing that in future, if, when there are four under-secretaries in the house, another member accepts the office of under-secretary, his seat shall be vacated, and he shall not be re-eligible while four other under-secretaries continue to sit in the house. If five secretaries or under-secretaries are returned at a general election, none shall be capable of sitting and voting until the number is reduced to the statutory limit. And the same rule is further applied to other offices, of which the number may be limited by statute.

The Act of Anne has, in some cases, been held not to apply to the acceptance of other offices of state, by gentlemen already holding office from the Crown. Thus the acceptance of the paid offices of lord justice in England and in Ireland, when held in conjunction with other offices of state, was ruled not to vacate seats in Parliament, as appears from the cases of Mr. Craggs, Mr. Walpole, and Lord Midleton.

After the Revolution of 1688, the office of lord high treasurer being executed by commissioners, it was customary for the first commissioner (or lord) of the treasury to hold also the office of chancellor of the exchequer. Among other examples may be mentioned that of Sir R. Walpole in 1716, and again from 1721 to 1741; of Mr. Pitt from 1783 to 1801, and again in 1804 until his death; of Mr. Canning in 1827, and Sir Robert Peel in 1834. But as the two offices were generally accepted at the same time, no question arose

1 174 H. D. 3 s. 1218, 1231, &c. 2 Hatsell, 47.
as to the vacation of the seat. In 1770, however, Lord
North, being then chancellor of the exchequer, accepted also
the office of first lord of the treasury. On that occasion,
no new writ was moved, nor was any doubt expressed as to
the legal effect of the acceptance of this second office.
Again, in October, 1809, Mr. Spencer Perceval, while chan-
cellof the exchequer, succeeded the Duke of Portland as
first lord of the treasury, but retained his former office.
Doubts were expressed by Lord Redesdale, whether he had
not vacated his seat: but Lord Chancellor Eldon and Mr.
Speaker Abbot agreed that he had not; and no new writ
was issued. In August, 1873, Mr. Gladstone, already first
lord of the treasury, further assumed the office of chancellor
of the exchequer. Controversy ensued as to the legal con-
sequences of this proceeding: but as Parliament was dis-
solved during the recess, the complicated questions involved
in this case, including former precedents under the Act of
Anne, and the due construction of remedial provisions
of the Reform Act of 1867, did not become the subject of
adjudication.

By the 6 Anne, c. 41, s. 27, the receipt of a new or other New army
commission by a member who is in the army or navy, is
excepted from the operation of the Act, and does not vacate
his seat; and the same exception has been extended, by
construction, to officers in the marines; and to the office
of master-general or lieutenant-general in the ordnance,

1809, "I think Mr. P.'s seat is not
void by any acceptance of any office
of profit since his election. The Act
has not said that if the king gives an
increase of profit to a person already
holding an office of profit, his seat
shall be void, but only that if any
person accepts an office of profit his
seat shall be void."

"I think with you," wrote the
Speaker, "that under the statute of
Anne, there must be the concurrence
of office and profit conjointly in the
new grant, which is to vacate the
seat; to reaccept the same office
under a new commission has never,
in practice, been held to vacate a
seat; and the acceptance of a new
annexation of profit to an office
already in possession, has been con-
sidered equally free from the same
consequences." 2 Walpole, Life of
Spencer Perceval, 51-54.

1 "The receipt of any new com-
mission in the army or navy, unless
within this exception, disqualifies
under sec. 24," Rogers on Elections,
part ii. p. 16 (16th ed.).

2 Hatsell, 45, n.
accepted by an officer in the army; 1 and to military
governments accepted by officers in the army. 2 On the 9th
June, 1733, General Wade, having accepted the office of
governor of the three military forts in Scotland, it was
resolved that the acceptance of such an office by a member,
being an officer in the army, did not vacate his seat. 3
The acceptance of a commission in the militia does not vacate
the seat of a member. 4 It has always been held that the
office of ambassador, or other foreign minister, does not dis-
qualify, nor its acceptance vacate the seat of a member; but
the acceptance of the office of consul or consul-general has
been deemed to vacate a seat, though the member was con-
considered to be re-eligible. 5 By 22 & 23 Vict. c. 5, it was
declared that persons holding diplomatic pensions were not
disqualified from being elected or sitting and voting in the
House of Commons. And by 32 & 33 Vict. c. 15, pensions,
&c., for civil services, under the Superannuation Acts, do
not disqualify the holder from being elected, or sitting or
voting, as a member of the House of Commons. A recorder
is eligible to serve in Parliament except for the borough of
which he is recorder. 6

In January, 1821, Mr. Bathurst held temporarily the
presidency of the board of control, without its emolu-
ments, in connection with another cabinet office then held
by him; and under those circumstances did not vacate his
seat; 7 and the holder of a new office, created in 1887, of
parliamentary under-secretary to the Lord-Lieutenant of
Ireland, did not come within the scope of 41 Geo. III. c. 52
(see p. 608), because no salary or profit attached to the office. 8

1 22nd June, 1742, 24 C. J. 284.
2 General Carpenter, Governor of
Minorca, 1716; General Conway,
Governor of Jersey, 1772, 17 Parl.
Hist. 538; 2 Hatsell, 48. 52, n.; 39
C. J. 970; 54 ib. 392.
3 22 ib. 201.
4 38 & 39 Vict. c. 69.
5 2 Hatsell, 22. 54; 106 C. J. 12
(Dungarvan writ).
6 5 & 4 Vict. c. 108, s. 60; 45 & 46
Vict. c. 50, s. 163, New writs issued
on acceptance of office, 125 C. J.
412; Mr. B. Rowlands, 28th June,
1882.
7 3 Lord Sidmouth's Life, 339.
8 15th and 28th April, 1887, 313
H. D. 3 s. 888. 1003; see also n. 1
p. 611. In 1881, a new writ was
issued in the case of Mr. Herbert
Gladstone, who accepted a lordship
of the treasury, without salary.
At one time it was doubted whether a candidate claiming a seat in Parliament by petition, was eligible for another place before the determination of his claim: but it was resolved, on the 16th April, 1728, "that a person petitioning, and thereby claiming a seat for one place, is capable of being elected and returned, pending such petition." ¹ In case the petitioner should, after his election, establish his claim to the disputed seat, the proper course would appear to be to allow him to make his election for which place he would serve, in the same manner as if he had been returned for both places at a general election.²

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.³

Before the year 1770, controverted elections were tried and determined by the whole House of Commons, as mere party questions, upon which the strength of contending factions might be tested.⁴

In order to prevent so notorious a perversion of justice, the house consented to submit the exercise of its privilege to a tribunal constituted by law, which, though composed of its own members, should be appointed so as to secure impartiality, and the administration of justice according to the laws of the land, and under the sanction of oaths. The principle of the Grenville Act, and of others which were passed at different times since 1770, was the selection by lot of committees for the trial of election petitions. Partiality and incompetence were, however, generally com-

¹ 21 C. J. 135; 2 Hatsell, 73. It seems also that a person returned for one place may petition for another, see n. c, p. 224, Rogers on Elections, part ii. (16th ed.).
² This point was considered in 1849, when such a case seemed likely to occur: but there have been no precedents.
³ Case of Mr. Wynn (stewardship of Denbigh), 94 C. J. 58; of Mr. Whittle Harvey, registered hackney carriages, ib. 29; of Mr. Hawes (see p. 169); of Baron Rothschild, as a government contractor (see p. 31); and of Sir B. O’Loghlen (see p. 604).
⁴ E.g. Sir Robert Walpole’s resignation (1741) in consequence of an adverse vote upon the Chippenham Election petition; see also 1 Cavendish, Deb. 476. 505; 1 May, Const. Hist. (7th ed.), 392.
plained of in the constitution of committees appointed in this manner; and in 1839, an Act was passed establishing a new system, upon different principles, increasing the responsibility of individual members, and leaving but little to the operation of chance.

This principle was maintained, with partial alterations of the means by which it was carried out, until 1868, when the jurisdiction of the house, in the trial of controverted elections, was transferred by statute to the courts of law (see p. 616).

At the commencement of each session, the house agrees to resolutions dealing with the case of members who are returned for two or more places in any part of the United Kingdom. This order regulates the manner of choosing for which place a member will sit when he has been returned for more than one, and his withdrawal from the house, if debate arose upon the matter of his election. When the time limited for presenting petitions to the court against his return has expired, and no petition has been presented, he is required to make his election within a week, in order that his constituents may no longer be deprived of a representative. 1 This election may either be made by the member in his place 2 or by a letter addressed to the Speaker. 3 When a petition has been presented against his return for one place only, he cannot elect to serve for either. 4 He 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, and cannot give up a seat without having incurred some legal disqualification, such as the acceptance of office, or bank-

1 103 C. J. 90. 100.
2 Mr. O'Connell, 24th May, 1842, 97 ib. 302; Mr. Gathorne Hardy, 21st Feb. 1866, 121 ib. 104; also 141 ib. 28; 142 ib. 4.
3 Mr. C. Villiers, 8th Dec. 1847; Mr. Callan, 19th Marob, 1874; Mr. Parnell, 11th May, 1880, 103 ib. 90; 129 ib. 12; 135 ib. 128; also 141 ib. 9. 26. 318; 142 ib. 5.
4 Case of Mr. O'Connell, 1841, 96 ib. 564; 39 H. D. 3 s. 503; Mr. Sexton's case, 1886, 308 ib. 168.
ruptly. Upon this principle, on the 24th May, 1842, Mr. O'Connell, who had been chosen for the counties of Cork and Meath, elected to sit for the former, directly after the report of the election committee, by which he was declared to have been duly elected for that county.¹

When there is a double return, there are two certificates endorsed on the writ,² and both the names are entered in the return books. Both members may therefore claim to be sworn, and to take their seats:³ but after the election of the Speaker, neither of them can vote until the right to the seat has been determined; because both are, of course, precluded from voting where one only ought to vote; and neither of them has a better claim than the other. The practice of making such returns, though apparently prohibited in England by the 7 & 8 Will. III. c. 7, was sanctioned by the law and usage of Parliament.⁴ In Scotland the making of double returns was directed by the Scotch Reform Act, 1832 (s. 33). In Ireland, on the other hand, a double return was expressly prohibited.⁵ By sec. 2 of the Ballot Act, 1872, 35 & 36 Vict. c. 33, the law of the United Kingdom regarding double returns is assimilated,⁶ which provides that where there is an equality of votes between any candidates, and the addition of a vote would entitle a candidate to be declared elected, the returning officer, if a registered elector, may give such additional vote, but shall not, in any other case, be entitled to vote at an election for which he is returning officer.⁷

¹ 97 C. J. 302.
² The ancient form of an indenture was abolished by the Parliamentary and Municipal Elections Act, 1872, 1st sch. s. 44.
³ Report, Oaths of Members, 1848, Q. 23-25. In 1852, three members were returned for Knaresborough. They were all sworn at the table, 8th Nov., and directed by Mr. Speaker to withdraw below the bar. In 1859, there were double returns for Knaresborough and Aylesbury, when the members were sworn in the same way. So also in May, 1878, when there was a double return for South Northumberland.
⁴ See Helston Election Petition Report, 1866, 121 C. J. 436. 486.
⁵ 35 Geo. III. c. 29, s. 13, and 4 Geo. IV. c. 55, s. 68, repealed by the Ballot Act, 1872.
⁶ Rogers on Elections, part i. p. 188 (15th ed.).
⁷ In the South Northumberland election, 1878, the sheriff declined to give his casting vote, and made a double return.
The house, also, agrees to resolutions in condemnation of irregular practices to influence the freedom of election regarding the votes of peers,¹ and the interference of peers and lord-lieutenants² and bribery at parliamentary elections.

On the 10th December, 1779, the Commons resolved that it was "highly criminal in any minister or ministers, or other servants under the Crown of Great Britain, directly or indirectly to use the powers of office in the election of representatives to serve in Parliament, &c."³

By the Election Petitions and Corrupt Practices at Elections Act, 1868, the Parliamentary Elections and Corrupt Practices Act, 1879, and the statute 44 & 45 Vict. c. 68, the trial of controverted elections is confided to two

¹ See debates in the Lords, 27th June, 1853, 128 H. D. 3 a. 791; 5th July, 1858, 151 ib. 926. 927. Opinion of attorney-general, 24th Nov. 1882, 275 ib. 121. In 1872, the legal question of the right of peers to vote, or to be entered upon the register of voters, was conclusively decided by the Court of Common Pleas. The Earl of Beauchamp and the Marquess of Salisbury, having had their names struck off the register by the revising barrister, appealed to the Court of Common Pleas. The court unanimously decided that, in law, as derived from authorities and from the determination of election committees, as well as by resolutions of the House of Commons, peers had no right to vote; and the appeal was accordingly dismissed with costs, 15th Nov. 1872, 8 L. R. C. P., pp. 245–255.

² In February, 1868, two bishops (one not being a lord of Parliament) were on the committee of one of the candidates for the University of Cambridge: but on notice being taken of the circumstance, they withdrew. (Question of Mr. Whitbread, and Sir W. Stirling Maxwell’s answer, 18th Feb.) Doubts were raised whether the resolution embraced a bishop not being a lord of Parliament: but it is clear that, having been agreed to in its present form in 1801 and 1802, it was intended to apply to the Irish peers and bishops not having seats in Parliament, under the Act of Union; and now extends to English bishops not yet summoned to the Lords, by later statutes, 56 C. J. 25; 57 ib. 376. See cases of Bishop of Carlisle, 16 ib. 548; of Duke of Leeds, 68 ib. 344; 26 H. D. 796. 889, &c. Debate, 14th Dec. 1847 (West Gloucester election), and precedents cited by the attorney-general in regard to proceedings of the house against peers who have interfered in elections, 95 H. D. 3 a. 1077; and Debate, 19th Feb. 1846, 83 ib. 1167; Stamford borough case, 1848, 98 ib. 982. 976; Earl of Cadogan, 23rd Feb. 1880, 250 ib. 1198.


⁴ 37 C. J. 507.
judges, selected, as regards England, from the Queen's Bench Division of the High Court of Justice; as regards Ireland, from the Court of Common Pleas at Dublin; and as regards Scotland, from the Court of Session. Petitions complaining of undue elections and returns are presented to these courts instead of to the House of Commons, as formerly, within twenty-one days after the returns to which they relate, and are tried by two judges of those courts, within the county or borough concerned. The house has no cognizance of these proceedings until their termination; when the judges certify their determination, in writing, to the Speaker, which is final to all intents and purposes.\(^1\) The judges are also to report whether any corrupt practices have been committed with the knowledge and consent of any candidate; the names of any persons proved guilty of corrupt practices; and whether corrupt practices have extensively prevailed at the election.\(^2\) They may also make a special report as to other matters which, in their judgment, ought to be submitted to the house. Provision is also made for the trial of a special case, when required, by the court itself, which is to certify its determination to the Speaker. By sec. 5 of the Corrupt and Illegal Practices Prevention Act, 1883, the election court is directed also to report to the Speaker whether candidates at elections have been guilty by their agents of corrupt practices.

The judges are also to report the withdrawal of an election petition to the Speaker, with their opinion whether the withdrawal was the result of any corrupt arrangement. All such certificates and reports are communicated to the house by the Speaker, and are treated like the reports of election petitions.

\(^1\) On the 1st June, 1874, Mr. O'Donnell (lately member for Galway) appeared at the bar and claimed to make a statement before the certificate of the judge, by which he was unseated, was read: but the Speaker informed him that it appeared from the judge's certificate that he was disqualified from sitting, and that he therefore was not entitled to be heard, 129 C. J. 184.

committees under the former system. They are entered in
the journals; and orders are made for carrying the deter-
minations of the judges into execution. A report that
corrupt practices have extensively prevailed is equivalent
to the like report from an election committee, for all the
purposes of the 15 & 16 Vict. c. 57, for further inquiry into
such corrupt practices. Where there is a double return (see
p. 615), and notice is given by one of the parties that he
does not intend to defend his return, a report is made to the
Speaker, and the return is amended accordingly. This Act
also makes further provision for the punishment of corrupt
practices at elections.

In addition to these inquiries by election judges, if upon
a petition to the House of Commons, presented within
twenty-one days after the return, alleging the prevalence of
corrupt practices at an election, an address of both houses
for inquiry is presented, a commission is appointed under
the 15 & 16 Vict. c. 57.

A few words will suffice to explain the proceedings of the
house, so far as its judicature is still exercised in matters of
election. It being enacted by sec. 50 of the Election Petitions,
&c., Act, that "no election or return to Parliament shall be
questioned except in accordance with the provisions of this
Act," doubts were expressed whether this provision would
not supersede the jurisdiction of the house, in determining
questions affecting the seats of its own members, not arising
out of controverted elections. It is plain, however, that
this section applied to the questioning of returns by election
petitions only. Under the procedure in force before the
Election Petitions Act, 1868, when returns were questioned,
by petition, the matter was determined by the statutory
tribunal; otherwise the house uniformly exercised its con-
istitutional jurisdiction. And such continues to be the position
of the house, after the judicature of its election committees
had been transferred to the judges.

In the autumn of 1868, an election petition had been pre-
sented to the Court of Session in Scotland, complaining of
the election of Sir Sydney Waterlow for the county of Dum-
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In the ensuing session, however, the petition having been withdrawn, a select committee was appointed to "consider whether Sir Sydney Waterlow is disqualified from sitting and voting as a member of this house, under the statute 22 Geo. III. c. 45;" and on receiving the report of this committee, which declared him disqualified, a new writ was issued for the county of Dumfries. Thus the very same question which might have been determined, upon petition, by an election judge, was adjudged by the house itself.

The house is, in fact, bound to take notice of any legal disabilities affecting its members, and to issue writs in the room of members adjudged to be incapable of sitting. In 1870, O'Donovan Rossa, a convict then in prison, and sentenced to penal servitude for life, for felony under the Treason-Felony Act, had been returned as member for the county of Tipperary. The house took action, and ordered the issue of a new writ.

The case of John Mitchel, in 1875, further illustrates the position of the house, in relation to elections, and the legal disqualifications of its members. John Mitchel had been returned for the county of Tipperary without a contest. No question could, therefore, arise as to the election or return, the sole matter for determination being the qualification of the member. It was notorious that he was an escaped convict, and had not completed the term of transportation to which he had been sentenced. The facts of the case were proved; and his legal disqualification was clearly established to the satisfaction of the house. A new writ was accordingly issued; and John Mitchel was again returned. But, on this occasion, there had been a contest; and the house therefore left the merits of the election and return to be determined under the Election Petitions Act. Mr. Moore, the other candidate, having given due notice of the disqualification, proved his claim to the seat, and the return was amended

1 124 C. J. 12. 43. 82. 88.  
2 94 ib. 48; 103 ib. 102.  
3 H. D. 10th Feb. 1870; and see Geo. IV. c. 54, s. 33.  
4 Under 9 Geo. IV. c. 32, s. 3; 9 Geo. IV. c. 82, s. 3, supra, p. 33, n. 3.
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accordingly. And again, on the 28th February, 1882, the house resolved that Michael Davitt, having been adjudged guilty of felony, and sentenced to penal servitude for fifteen years, and being then imprisoned under such sentence, was incapable of being elected or returned as a member. In such cases as this, the jurisdiction and duty of the house cannot be questioned, as the incapacity of a felon is expressly declared by statute. A petition relating to an election, but not questioning the return of the sitting member, may properly be received.

Where it has been determined that the sitting member was not duly elected, and that some other candidate was duly elected, and ought to have been returned, the Clerk of the Crown is ordered to attend, and amend the return, by substituting the name of the duly elected candidate for the name of the other candidate. In the case of a double return, the Clerk of the Crown is ordered to attend and amend the return, by raising out the name of one of the parties, and what relates to him in the return. When the election is void, a new writ is ordered, unless the house shall think fit to suspend its issue. In the case of the Wigton election, 1874, the judge reported that the Right Hon. John Young was duly elected: but it appearing that since his election he had been appointed a judge of the Court of Session, in Scotland, a new writ was issued.

1 130 C. J. 49, 52, 239; 222 H. D. 3 s. 493.
2 137 C. J. 77.
3 33 & 34 Vict. c. 22, s. 2. See H. D. 28th Feb. 1882, and especially the speech of the attorney-general.
4 194 H. D. 3 s. 1185.
5 No notice can be taken of a determination until reported to the house. On the 27th May, 1866, Mr. Mills, member for Northallerton, had been declared not duly elected: but no report had been made to the house, and the division on the second reading of the Reform Bill was expected the same evening. As every vote was important, the question was canvassed whether Mr. Mills could vote. It was admitted that his vote could not be disallowed: but on taking counsel with his friends, he very properly desisted from voting.—Mr. Speaker Denison's Note-book.
6 Tipperary Election, 27th March, 1875, 130 C. J. 236; Evesham Election, 1881, 136 ib. 5.
7 97 ib. 203; 124 ib. 173; Montgomery Election, 1848, 103 ib. 218; Dumfartonsire Election, 1866, 121 ib. 156; South Northumberland Election, 1873, 133 ib. 333.
8 Votes, 1st and 2nd June, 1874.
Where there have been special reports concerning bribery, the conduct of returning officers, undue influence, and spiritual intimidation; the alteration of the poll; the absence, misconduct, or perjury of witnesses; defects or uncertainty in the law; the propriety of suspending the writ; or any other exceptional circumstances—the house has taken such measures as were required by law or usage, or as appeared suitable to the occasion. It has been usual, in such cases, to order a copy of the judgment delivered by the judge, and the minutes of evidence, to be laid before the house.

The penalties inflicted for corrupt practices at elections may have the following effect upon the composition of the House of Commons. "A person may, at an election, be disqualified for being elected by reason of corrupt practices committed at an election previous thereto. So also a person not disqualified before an election may, during the election, become disqualified by reason of corrupt practices being committed at such election: but the latter disqualification can only arise ex post facto upon an investigation into such election. This disqualification always existed at common law," and the statutory provisions to which reference will be made are "intended only to give fuller effect to the common law of Parliament." Under sec. 4 of the Corrupt and Illegal Practices Prevention Act, 1883, a candidate for parliamentary election who is reported by an election court as personally guilty of corrupt practices, is incapacitated, during seven years from the date of the report, from being elected for any constituency, and for ever from sitting for the constituency where the corrupt practice took place. Under sec. 5, a candidate who is reported as guilty by his

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1 Peterborough, 1853, 108 C. J. 826.
2 Drogheda petition, 1857, 112 ib. 388; Limerick city petition, 1859, 114 ib. 338.
3 Helston Election, 1866, 121 ib. 436.
4 Mayo petition, 1857, 112 ib. 307; Galway County Election, 1872, 127 ib. 258.
5 114 ib. 330, 350; 115 ib. 167.
6 115 ib. 94. 167, &c.
7 93 ib. 275; 97 ib. 198; 98 ib. 138; 103 ib. 511. 965.
8 Beverley case, 1859, 114 ib. 359.
9 112 ib. 292. 295. 369. 385; 114 ib. 398; 121 ib. 288.
10 Rogers on Elections, part. ii. p. 31 (16th ed.).
agent is incapacitated, during seven years from the date of the report, from being elected for the constituency where the corrupt practice took place. Under secs. 6 and 38, any person who is convicted on indictment, or who is reported by an election court, or by election commissioners to have been guilty of a corrupt practice, is incapacitated for being elected to any constituency, during seven years from the date of the conviction, if convicted, or, if reported, from the date of the election. These incapacities are imposed in addition to the election being avoided.¹

By the Corrupt Practices Act, 1863, election committees were required to report whether corrupt practices had extensively prevailed, and consequent provision was made for the institution of prosecutions by the attorney-general. This duty is now laid upon the public prosecutor by sec. 45 of the Corrupt and Illegal Practices Act, 1883, who, when informed that corrupt or illegal practices have prevailed in any election, shall, subject to the regulations under the Prosecution of Offences Act, 1879, make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require; and thus the intervention of the house, in such cases, is rendered unnecessary by the direct operation of the law.

When general and notorious bribery and corruption have been proved to prevail in parliamentary boroughs, the house has suspended the issue of writs,² with a view to further

¹ Rogers on Elections, part ii. pp. 31. 83 (16th ed.). For the proofs of agency in election inquiries and its results, see ib. pp. 200. 375 (16th ed.).
² Liverpool, 1831, 86 C. J. 458. 493; Warwick, 1833, 88 ib. 611; 89 ib. 9. 579; Carriickfergus, 1833, 88 ib. 531. 599; Hertford, 1833, ib. 578. 649. In the three last cases, the writs were suspended until the dissolution in Dec. 1834. Meanwhile bills of disfranchisement, or for preventing bribery in those boroughs, were pending. Stafford, 1835; writ suspended until 1837, until there was no prospect of passing a disfranchisement bill; see debate, 13th Feb. 1837, on issue of writ, 90 ib. 262; 91 ib. 792. Sudbury; writ suspended from 14th April, 1842, till 1st Aug. 1843, 97 ib. 188. 467, &c.; Disfranchisement Act, 7 & 8 Vict. c. 53. Ipswich, 1842; writ suspended from 25th April until 1st Aug. 1842, 97 ib. 221. 554. Yarmouth, 1848; writ suspended from 14th Feb. until 30th June, 103 ib. 213; freemen disfranchised by 11 & 12 Vict. c. 24. Harwich, 1848, 103 ib. 260. 702. In 1851, an Act was passed for inquiring into bribery at St. Albans, 14 & 15
inquiry, and proceedings for the ultimate disfranchisement of the corrupt constituencies by Act of Parliament. 1

An effectual mode of investigating corrupt practices at elections was also established by 15 & 16 Vict. c. 57, which provided for the appointment of a royal commission of inquiry, upon a joint address of both houses of Parliament, or in consequence of a report from the election judges. 2 Addresses were agreed to in the cases of Canterbury, Cambridge, Maldon, Barnstaple, Kingston-upon-Hull, and Yarmouth, in 1853; Galway, in 1857; Gloucester and Wakefield, in 1859; Lancaster, Great Yarmouth, Reigate, and Totnes, in 1866; Beverley, Bridgwater, Cashel, Sligo, Dublin, and Norwich, in 1869; Norwich and Boston, in 1874; Boston, Canterbury, Chester, Gloucester, Knabeborough, Macclesfield, Oxford, and Sandwich, in 1880; and in 1869, commissioners were appointed, by statute, to inquire into corrupt practices reported, by an election judge, to have been committed by the freemen of Dublin.

In pursuance of the reports of election commissioners, by the Reform Act of 1867, the four corrupt boroughs of Lancaster, Great Yarmouth, Reigate, and Totnes were disfranchised. In 1870, the boroughs of Bridgwater, Beverley, Sligo, and Cashel, and certain voters of the cities of Norwich and Dublin, were disfranchised by special Acts; 3 and in 1871, certain other voters of Norwich were disfrac-
chised. In 1876, after the reports of two commissions, an Act was passed forbidding an election for Norwich until the end of the Parliament, and disfranchising several persons for a period of seven years, in Norwich and Boston.¹

¹ 39 & 40 Vict. c. 72; see also the Acts 44 & 45 Vict. c. 42; 45 & 46 Vict. c. 68, prohibiting elections for Boston, Canterbury, Chester, Gloucester, Macclesfield, Oxford, and Sandwich.
CHAPTER XXIV.

IMPEACHMENT BY THE COMMONS. TRIAL OF PEERS. BILLS OF ATTAINDER.

Impeachment by the Commons, for high crimes and misdemeanours beyond the reach of the law, or which no other authority in the state will prosecute, is a safeguard of public liberty, which happily, in modern times, is rarely called into activity;¹ as the times in which its exercise was needed—when the people were jealous of the Crown; when the Parliament had less control over prerogative; when courts of justice were impure; and when the Crown and its officers screened political offenders from justice,—have passed away.

Impeachments are reserved for extraordinary crimes and grounds of extraordinary offenders: but by the law of Parliament, all persons, whether peers or commoners, may be impeached for any crimes whatever.

It was always allowed that a peer might be impeached for any crime, whether it were cognizable by the ordinary tribunals or not: but doubts have been entertained, upon the authority of the cases of Simon de Beresford, in the 4th Edward III.,² and of Fitzharris, in 1681, whether a commoner could be impeached for any capital offence.

¹ The earliest recorded instance of impeachment by the Commons was in the reign of Edward III., 1376. During the next four reigns, cases of impeachment were frequent; but none occurred in the reigns of Edward IV., Henry VII. and VIII., Edward VI., Queens Mary and Elizabeth, Hallam, 1 Const. Hist. 357. In the reign of James I., the practice of impeachment was revived. Between 1620, when Sir Giles Mompesson and Lord Bacon were impeached, and the Revolution, 1688, about forty cases of impeachment occurred; in the reigns of William III., Queen Anne, and George I., fifteen; and in the reign of George II., that of Lord Lovat, 1746. The last cases were Warren Hastings, 1788, Lord Melville, 1805.

The authority of the cases of Simon de Beresford and of Fitzharris has been superseded.\textsuperscript{1} When on the 26th June, 1689, Sir Adam Blair and four other commoners were impeached of high treason, the Lords, after receiving and considering a report of precedents, including that of Simon de Beresford, and negativing a motion for requiring the opinion of the judges, resolved that the impeachment should proceed.\textsuperscript{2} And thus the right of the Commons to impeach a commoner of high treason has been affirmed by the last adjudication of the House of Lords.

It rests, therefore, with the House of Commons to determine when an impeachment should be instituted. A member, in his place, first charges the accused of high treason, or of certain high crimes and misdemeanours, and, after supporting his charge with proofs, moves that he be impeached. If the house deem the ground of accusation sufficient, and agree to the motion, the member is ordered to go to the Lords, "and at their bar, in the name of the House of Commons, and of all the commons of the United Kingdom, to impeach the accused; and to acquaint them that this house will, in due time, exhibit particular articles against him, and make good the same." The member, accompanied by several others, proceeds to the bar of the House of Lords, and impeaches the accused accordingly.

A committee is appointed to draw up the articles, and on their report, the articles are discussed, and, when agreed to, are ingrossed and delivered to the Lords, with a proviso that the Commons shall be at liberty to exhibit further articles from time to time.\textsuperscript{3} The accused sends answers to each article, which, together with all writings delivered


3. 46 ib. 330; 60 O. J. 482. 483. In the case of Warren Hastings, articles of impeachment were prepared before the formal impeachment; but the usual course has been to prepare them afterwards.
in by him, are communicated to the Commons by the Lords; and to these, replications are returned, if necessary.¹

If the accused be a peer, he is attached or retained in custody, by order of the House of Lords; if a commoner, he is taken into custody by the Serjeant-at-arms attending the Commons, by whom he is delivered to the gentleman usher of the Black Rod, in whose custody he remains, unless he be admitted to bail by the House of Lords, or be otherwise disposed of by their order.³

The Lords appoint a day for the trial, and in the mean time the Commons appoint managers to prepare evidence and conduct the proceedings, and desire the Lords to summon all witnesses, who are required to prove their charges.²

The accused may have summonses issued for the attendance of witnesses on his behalf, and is entitled to make his full defence by counsel.⁴

The trial has usually been held in Westminster Hall, the trial, which has been fitted up for that purpose. In the case of peers impeached of high treason, the House of Lords is presided over by the lord high steward, who is appointed by the Crown, on the address of their lordships: but, at other times, by the lord chancellor or Lord Speaker of the House of Lords. The Commons attend the trial, as a committee of the whole house,⁵ when the managers make their charges, and adduce evidence in support of them; but they are bound to confine themselves to charges contained in the articles of impeachment. Mr. Warren Hastings complained, by petition to the House of Commons, that matters of accusation had been added to those originally laid to his charge, and the house resolved that certain words ought not to have been spoken by Mr. Burke.⁶

When the case has been completed by the managers, they are answered by the counsel for the accused, by whom witnesses are also examined, if necessary; and, in conclusion, the managers, as in other trials, have been allowed a right of reply.

¹ 20 L. J. 297; 18 C. J. 391; 61 ib. 164.
² 20 L. J. 112; 27 ib. 19; 16 C. J. 242; 42 ib. 793. 796; 37 L. J. 714.
³ 61 C. J. 169. 224.
⁴ 20 Geo. II. c. 30; 45 L. J. 439.
⁵ 45 ib. 519.
⁶ 44 C. J. 298. 320.
Lords determine if the accused be guilty.

When the case is thus concluded, the Lords proceed to determine whether the accused be guilty of the crimes with which he has been charged. The lord high steward puts to each peer, beginning with the junior baron, the question upon the first article, whether the accused be guilty of the crimes charged therein. Each peer, in succession, rises in his place when the question is put, and laying his right hand upon his breast, answers "guilty," or "not guilty," as the case may be, "upon my honour." Each article is proceeded with separately, in the same manner, the lord high steward giving his own opinion the last.\(^1\) The numbers are then cast up, and, being ascertained, are declared by the lord high steward to the lords, and the accused is acquainted with the result.\(^2\)

If the accused be declared not guilty, the impeachment is dismissed; if guilty, it is for the Commons, in the first place, to demand judgment of the Lords against him; and they would protest against any judgment being pronounced until they had demanded it.\(^3\)

When judgment is to be given, the Lords send a message to acquaint the Commons that their lordships are ready to proceed further upon the impeachment; the managers attend; and the accused, being called to the bar, is then permitted to offer matters in arrest of judgment. Judgment is afterwards demanded by the Speaker, in the name of the Commons, and pronounced by the lord high steward, the lord chancellor, or Speaker of the House of Lords.\(^4\)

The necessity of demanding judgment gives to the Commons the power of pardoning the accused, after he has been found guilty by the Lords; and in this manner an attempt was made, in 1725, to save the Earl of Macclesfield from the consequences of an impeachment, after he had been found guilty by the unanimous judgment of the House of Lords.\(^5\)

So important is an impeachment by the Commons, that

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\(^1\) Printed trial of Lord Melville, p. 402.
\(^2\) Ib. p. 413.
\(^3\) Commons' resolutions, Earl of Winton's and Lord Lovat's impeach-

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\(^4\) 22 L. J. 556. 560; 27 ib. 78.
\(^5\) Ib. 564. 565; 20 C. J. 541 (27th May, 1725); 6 Howell, St. Tr. 762.
not only does it continue from session to session, in spite of
prorogations, by which other parliamentary proceedings are
determined, but it survives even a dissolution, by which
the very existence of a Parliament is concluded. ¹

In the case of the Earl of Danby, in 1679, the Commons
protested against a royal pardon being pleaded in bar of an
impeachment; ² and it was declared by the Act of Settle-
ment, "That no pardon under the great seal of England
shall be pleasurable to an impeachment by the Commons in
Parliament."

But, although the royal prerogative of pardon is not
given after-
suffered to interfere with the exercise of parliamentary
judicature, yet the prerogative itself is unimpaired in
regard to all convictions whatever; and, after the judgment
of the Lords has been pronounced, the Crown may reprieve
or pardon the offender. This right was exercised in the
case of three of the Scottish lords who had been concerned
in the rebellion of 1715, and who were reprieved by the
Crown, and at length received the royal pardon.

Concerning the trial of peers, very few words will be
necessary. At common law, the only crimes for which a
peer is to be tried by his peers, are treason, felony, misprision
of treason, and misprision of felony; and the statutes which
give such trial have reference to the same offences, either at
common law or created by statute. For misdemeanours, and
in cases of praemunire, it has been held that peers are to be
tried in the same way as commoners, by a jury. ³

During the sitting of Parliament, they are tried by the
House of Peers; or, more properly, before the court of our
lady the Queen in Parliament, ⁴ presided over by the lord
high steward appointed by commission under the great
seal: ⁵ but at other times, they may be tried before the court

¹ 39 L. J. 191; Report, ib. 123; 46 C. J. 136; 2 May, Const. Hist.
(7th ed.), 93; see, however, the Acts
passed in the case of Warren Hasting
and Lord Melville, 26 & 45 Geo. III. cc. 90, 125.
² See 4 Hatsell, 197, n. 208. 400.
³ 405; 3 Lord Macaulay, Hist. 407.
⁴ Rex v. Lord Vaux, 1 Bulstr. 197.
⁵ Foster, Crown Law, 141.
⁶ After the trial, his grace breaks
the white staff, and declares the
commission dissolved. See published
trial of the Earl of Cardigan.
of the lord high steward,\(^1\) to which, under 7 Will. III. c. 3, all the peers must be summoned.

By the 4 & 5 Vict. c. 22, it was enacted, "That every lord of Parliament, or peer of this realm, having place and voice in Parliament, against whom any indictment may be found, shall plead to such indictment, and shall, upon conviction, be liable to the same punishment as any other of her Majesty's subjects."

Indictments are found, in the usual manner, against peers charged with treason or felony: but are certified into the House of Lords by writs of certiorari, when the proceedings are immediately taken up by that house. It is usual, in such cases, to appoint a committee to inspect the journals upon former trials of peers, and to consider the proper methods of proceeding; and if the accused peer be not already in custody, an order is forthwith made for the gentleman usher of the Black Rod to attach him, and bring him to the bar of the house.\(^2\)

Peers on trial before the Lords for misdemeanours are allowed a seat within the bar: but if tried for treason or felony, they are placed outside the bar.\(^3\)

By standing order No. 72, it was resolved by the Lords, "That it is the ancient right of the peers of England to be tried only in full Parliament for any capital offences:" but "That this order should not be understood or construed to extend to any appeal of murder or other felony, to be brought against any peer or peers."

When a peer is tried in full Parliament, the lord high steward votes with the other peers: but when the trial is before the court of the lord high steward, he is only the judge to give direction in point of law; and the verdict is given by the lords-triers.\(^4\)

In the trial of peers, the position of the bishops is at once anomalous and ill defined. Not being themselves ennobled

\(^1\) See 4 Blackstone, Comm. 260; trial of Lord Delamere, 11 Howell, St. Tr. 539; 2 Lord Macaulay, Hist. 38.

\(^2\) 99 H. D. 3 s. 1050 (23rd June, 1848); 80 L. J. 415.

\(^3\) 3 Lord Campbell, Lives of Chancellors, 538, n.

\(^4\) Ib. 557, n.
in blood, they are "not of trial by nobility," but would be tried for a capital offence by a jury, like other commoners.\(^1\) Though not entitled to a trial by the peers, they claim, and to a certain extent exercise, the right of sitting, as judges, upon the trial of peers in full Parliament. When a peer is to be tried in full Parliament, the bishops, as lords of Parliament, are entitled to take part in the proceedings of the House of Lords, of which they are members, and they are always summoned to attend with the other peers.\(^2\) Here, however, they are restrained from the full exercise of their judicial functions, by their ecclesiastical obligations. By the canons of the Church,\(^3\) they are prohibited from voting in cases of blood; and by the Constitutions of Clarendon, it was declared, "That bishops, like other peers (or barons), ought to take part in trials in the king's court, or council, with the peers, until it comes to a question of the loss of life or limb."

It was declared by the Lords, on the impeachment of the Spiritual lords with- Earl of Danby, "That the lords spiritual have a right to stay and sit in court in capital cases, till the court proceed to the vote of guilty or not guilty." And in accordance with this rule, the bishops are present during the trial of peers in Parliament, but ask leave to be absent from the judgment; which being agreed to, they withdraw, in compliance with the canons of the Church, but enter a protestation, "saving to themselves and their successors, all such rights in judicature as they have by law, and by right ought to have."\(^4\)

In passing bills of attainder, the bishops are not subjected to the same restraints as upon an impeachment. The pro-
ceedings, though judicial, are legislative in form; and as they consist of numerous stages, no particular vote involves summoned to attend the court of the lord high steward.

1 Lords' S. O. No. 73; 1st Inst. 31; 3rd Inst. 30; Gibson, Codex, 133; Gilbert, Exch. 40; 1 Burn, Eccl. Law, 221, et seq.; Trials of Bishop Fisher and Arch bishop Cranmer, 1 Howell, St. Tr. 399. 771.

2 73 L. J. 16; Foster's Crown Law, 247. Spiritual lords are not summoned to attend the court of the king's court.

3 Gibson, Codex, 124. 125; and see 2 Burnet, Own Times, 216; and 3 Stillingfleet, Works, 820.

4 11 Henry II. A.D. 1164; 1 Wilkins' Concilia, 455; 13 L. J. 571; 27 ib. 76; 73 ib. 43.
a conclusive judgment upon the accused. In the attainder of Sir John Fenwick, in 1696, the bishops voted in all the proceedings, and even upon the final question for the passing of the bill.1

By the 23rd article of the Act of Union with Scotland, it is declared that the sixteen representative peers shall have the right of sitting upon the trials of peers; “and in case of the trial of any peer in time of adjournment or prorogation of Parliament, they shall be summoned in the same manner, and have the same powers and privileges at such trial, as any other peers of Great Britain;” and in case there shall be any trials of peers when there is no Parliament in being, the sixteen peers who sat in the last Parliament shall be summoned in the same manner. All peers of Scotland enjoy the privilege of being tried as peers of Great Britain.

By the 4th article of the Act of Union with Ireland, it was enacted that “the (representative) lords spiritual and temporal respectively, on the part of Ireland, shall have the same rights in respect of their sitting and voting upon the trial of peers, as the lords spiritual and temporal respectively on the part of Great Britain;” and that all the peers of Ireland shall be sued and tried as peers, but shall not have the right of sitting on the trial of peers.

The proceedings of Parliament, in passing bills of attainder and of pains and penalties, do not vary from those adopted in regard to other bills;2 though the parties who are subjected to these proceedings are admitted to defend themselves by counsel and witnesses, before both houses.

Whenever a fitting occasion arises for its exercise, a bill of attainder is, undoubtedly, the highest form of parliamentary judicature. In impeachments, the Commons are but accusers and advocates; while the Lords alone are

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1 16 L. J. 44. 48; 13 Howell, St. Tr. 750, et seq.
2 Bills of attainder generally commence in the House of Lords. In 1722, the bill of pains and penalties against Dr. Atterbury, Bishop of Rochester, was brought into the Commons, 20 C. J. 165.
Chapter XXIV. judges of the crime. On the other hand, in passing bills of attainder, the Commons commit themselves by no accusation, nor are their powers directed against the offender: but they are judges of equal jurisdiction, and with the same responsibility, as the Lords; and the accused can only be condemned by the united judgment of the Crown, the Lords, and the Commons.
BOOK III.

THE MANNER OF PASSING PRIVATE BILLS.

CHAPTER XXV.

DISTINCTIVE CHARACTER OF PRIVATE BILLS.

Every bill for the particular interest or benefit of any person or persons is treated, in Parliament, as a private bill. Whether it be for the interest of an individual, a public company or corporation, a parish, a city, a county, or other locality, it is equally distinguished from a measure of public policy, in which the whole community are interested; and this distinction is marked by the solicitation of private bills by the parties themselves whose interests are concerned. By the standing orders of both houses, all private bills are required to be brought in upon petition; and the payment of fees, by the promoters, is an indispensable condition to their progress.

But while the distinction between public and private bills may be thus generally defined, considerable difficulties often arise in determining to what class particular bills properly belong. Though a bill relating to a city is generally held to be a private bill, bills concerning the metropolis have been dealt with as public bills,—the large area, the number of parishes, the vast population, and the variety of interests concerned, constituting them measures of public policy rather than of local interest. Thus the Metropolis Police Bills in 1828 and 1839, the Metropolis Local Management Bill in 1855, the Main Drainage of the Metropolis Bill in

1 See infra, Chap. XXXI., and 2 Hatsell, 281-288. A bill for the benefit of three counties has been held to be a private bill, 1 C. J. 388.
2 But see exceptions, infra, Chap. XXVIII.
1858, and other similar bills,\(^1\) were brought in, and passed through all their stages, as public bills. In 1851, 1852, and 1878, the Metropolis Water Supply Bills, which, while they concerned the metropolis, yet more particularly dealt with the special interests of existing water companies, were brought in as public bills, but were otherwise dealt with as "hybrid," or quasi private bills.\(^2\) Numerous other bills concerning the metropolis have been brought in as public bills, but private property and interests being affected by them, they were similarly dealt with.\(^3\) Such bills, however, appear among the public orders of the day, and are treated in the house as public bills; and petitions against them are presented to the house, and not deposited in the Private Bill Office. In 1857, the Thames Conservancy Bill, and in 1882, the Metropolis Management and Floods Prevention Bill, were introduced as private bills, on petition: but the latter was afterwards consolidated with a public bill.\(^4\) In 1881, the Thames Navigation Bill was brought in as a private bill: but many objections having been raised to this course of proceeding, the bill was afterwards withdrawn, and a public bill was introduced.\(^5\) In 1874, and every succeeding year during its existence, bills for giving further powers to the Metropolitan Board of Works, and, since 1890, to its successor the London County Council (chiefly in respect of new streets and other local improvements), were introduced and passed as private bills.\(^6\) Such bills were in the nature of private bills, and were properly so treated: but if

\(^{1}\) Metropolitan Police Courts, 1839, 1840; Metropolitan Sewers Bills, 1848 and 1854; Annoyance Juries (Westminster) Bill, 1861; Metropolis Management and Buildings Act Amendment Bills, 1875 to 1890.

\(^{2}\) 106 C. J. 191; 103 ib. 13; see infra, p. 696.

\(^{3}\) Thames Embankment Bills, 1862, 1863; Metropolis Gas Bills, 1867, 1876; Metropolis Water Supply and Fire Prevention Bill, 1874; Metropolitan Toll Bridges Bill, 1877; Thames (Prevention of Floods) Bills, 1877; Metropolitan Waterworks Purchase Bill, 1880; Hyde Park Corner (New Streets) Bill, 1883; Metropolis Water Supply Bill, 1891; Watermen's and Lightermen's Company Bill, 1892.

\(^{4}\) 137 C. J. 24. 132.

\(^{5}\) 136 ib. 212. 214.

\(^{6}\) 129 ib. 26; 130 ib. 19, &c.; London Subway, &c., Bill, 1890; London County Council (General Powers) Bills, 1890 to 1892; London Sky Signs Bill, and London Overhead Wires Bill, 1891.
they contained powers to raise money, they were required by standing order No. 194 to be introduced as public bills, and referred to a select committee, nominated by the committee of selection. In 1891, this standing order was amended by adding to it a limitation that it should not apply to bills complying with certain conditions, and standing orders 194 A to 194 E were passed; these standing orders, becoming applicable in the session of 1892, together regulate the procedure with regard to bills promoted by the London County Council. Their general effect is that all the ordinary bills of the London County Council are introduced as private bills, though in any special case where it might be necessary to apply for powers inconsistent with the limitations of these standing orders, the procedure should be by public bill, and that the government no longer brings in the annual money bill for the purposes of the London County Council.1 On the 9th February, 1893, the Speaker ruled that the London Owners Improvement Rate or Charge Bill should be introduced as a public bill, on the ground that the interests involved were too vast and the terms of the standing order too specific to admit of its introduction as a private bill; but on the 14th April following he ruled that the London Improvements Bill might be introduced as a private bill, inasmuch as, in view of the exceptions in standing order No. 194, the bill as a whole need not be introduced as a public bill, and the clause in it for raising further money under a new principle, i.e. "betterment," to which objection was taken, might be dealt with on a later stage of the bill.2

Bills concerning the City of London only have generally been private bills, having been solicited by the corporation itself, which desired special legislation affecting its own property, interests, and jurisdiction.3 Thus even the bill for establishing a police force within the city was brought in upon petition, and passed as a private bill.4 And in 1863, when it was sought to repeal that Act by a public bill for

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1. 147 C. J. 217; 263 H. D. 3 s. 1880. 1848; City Elections Bill, 1849;
2. 8 Parl. Deb. 4 s. 856; 11 ib. 310. Coal Duties Bill, 1851.
3. City Small Debts Bills, 1847 and
4. 94 C. J. 175; 129 ib. 33.
the amalgamation of the city and metropolitan police, without the required notices, the standing orders committee refused to allow the bill to be proceeded with. Private bills also have been solicited for the reform of the corporation itself; \(^1\) while the government have proposed public measures, in the interests of the public, for the same object.\(^2\) Again, the corporation and others sought, by means of private bills, to improve Smithfield Market, or otherwise provide a suitable market for cattle; \(^3\) while the Metropolitan Cattle Market was ultimately established by a public bill, brought in by the government, but otherwise treated as a private or "hybrid" bill.\(^4\) This Act, however, was amended in 1875, by a private Act; \(^5\) and the Metropolitan Cattle Market Bill was treated, in the same year, as a private bill.\(^6\) Other bills, again, concerning the City of London, but at the same time affecting public interests, and involving considerations of public policy, have been introduced and passed as public bills.\(^7\) In 1864, the Weighing of Grain (Port of London) Bill was held to be properly a public bill, as affecting an extensive area, and a population of 3,000,000, and its object being to substitute weighing for measurement of grain, in conformity with a public Act of the same session, by which the duty on foreign grain was levied by weight instead of by measure.\(^8\) But in 1872, and again in 1877, private bills were passed for regulating the metage of grain in the port of London.\(^9\) In 1870, on the second reading of the Brokers (City of London) Bill, objection was taken that it ought to have been brought in as a private bill: but the deputy Speaker stated that the bill had been referred to the examiner, who had decided otherwise; \(^10\) and in 1883, another bill, founded upon this

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\(^1\) 104 C. J. 15; 107 ib. 57; 119 H. D. 3 s. 1035.
\(^2\) 141 ib. 314; 154 ib. 946; 156 ib. 282.
\(^3\) 103 C. J. 176; 106 ib. 26.
\(^4\) 106 ib. 66, &c.
\(^5\) 130 ib. 54.
\(^6\) Ib. 11.
\(^7\) Coalwhippers (Port of London), 1843, 1846, and 1851; Vend and Delivery of Coals in London and Westminster, 1845. (There was also a private bill in the same year.) Ballast-heavers (Port of London), 1852; Coal and Wine Duties Continuance, 1861, 1863, and 1868; and Coal and Wine Duties Abolition Bill, 1889, 336 H. D. 3 s. 701.
\(^8\) 176 ib. 171.
\(^9\) 132 C. J. 8.
\(^10\) 202 H. D. 3 s. 740.
precedent, was introduced as a public bill. In 1871, the
Court of Hustings (City of London) Bill, which established
a court having jurisdiction over the metropolis, was brought
in as a private bill: but on notice being taken of the extent
and public importance of the measure, it was withdrawn.¹
In 1879, the London Bridge Approaches Bill, and the Lon-
don (City) Tithes Bill; in 1881, the London (City) Lands
Bill; and in 1882, the Metropolitan Markets (Fish), &c.,
Bills, were brought in upon petition. In 1881, and again in
1882 and 1883, the Parochial Charities (London) Bill was
brought in as a public bill; and in 1882, a bill for the same
purpose was also introduced, upon petition, as a private bill.²

Bills concerning Edinburgh and Dublin have also been
public or private, according to their objects, and the circum-
stances connected with their introduction.³ The abolition of
the annuity tax in Edinburgh has thus been the subject of
both public⁴ and private bills.⁵ In 1879, and again in 1882,
the Edinburgh Municipal and Police Bill was introduced as
a private bill upon petition.⁶ The collection of rates in
Dublin has also been the subject of public and private
bills;⁷ while legislation for the port of Dublin has gen-
erally been proposed in public bills.⁸ In 1876, the Dublin
(South) City Markets Bill was introduced and passed as a
private bill.⁹ But in 1882, the Dublin (City) Highways
Bill was brought in as a public bill, and afterwards treated
as a “hybrid” bill.¹⁰

In 1861, the Red Sea and India Telegraph Bill, which
amended a private Act, was introduced and proceeded with
as a public bill, as it concerned the conditions of a govern-
ment guarantee.¹¹

¹ H. D. 23rd March, 1871.
² 136 C. J. 12; 137 ib. 19.
³ Edinburgh Courts of Justice Bill, 1838; Edinburgh and Leith Agree-
ment Bill, 1838, &c.; Edinburgh Municipality Bill, 1856 (private);
General Register House Bill, 1847 (public); Edinburgh Improvement
Bill, 1876 (private), 131 ib. 236.
⁴ 108 ib. 612; 112 ib. 298.
⁵ 107 ib. 48.
⁶ 134 ib. 32; 137 ib. 27.
⁷ 88 ib. 62; 104 ib. 342; 105 ib.
⁸ 137 ib. 329.
⁹ 6 & 7 Will. IV. c. 117; 1 & 2
¹ 131 C. J. 69, &c.
¹ 137 ib. 75.
¹¹ 112 ib. 36; Mr. Speaker Deni-
son's Note-book.
In 1856, the Passing Tolls on Shipping Bill was held to be properly a public bill. It concerned the harbours of Dover, Ramsgate, Whitby, and Bridlington; abolished passing tolls, transferred those harbours to the Board of Trade, imposed rates, and repealed local Acts: but being a measure of general policy, its character was not changed by the fact that these harbours only came under its operation. And again, the Harbours Bill, in 1861, affected the same four harbours, and the local Acts under which they were administered, but otherwise dealt with so many matters of general legislation, as to be unquestionably a measure of public policy.\(^1\) In 1875, the Dover Pier and Harbour Bill, promoted by the government for public objects, was introduced as a public bill, but was proceeded with as a “hybrid” bill.\(^2\)

In 1873, a public bill was introduced, for the protection and preservation of certain ancient monuments, in various parts of the country, the monuments in question being enumerated in the schedule to the bill. Objections were raised that, as the bill affected the property of persons upon whose lands those monuments were situated, it should have been brought in as a private bill: but its nature and objects were obviously of a public character, and it concerned too many counties and localities to be treated as a private bill; nor were any of its objects such as are contemplated by the standing orders, or referred to in them.\(^3\)

Bills relating to the administration of justice, and other public jurisdictions, have often been treated as public bills: 4

\(^1\) 24 & 25 Vict. c. 47.
\(^2\) 130 C. J. 74.
\(^3\) See 218 H. D. 3 a. 574; 223 lb. 879.
\(^4\) King’s County Assizes Bill, 1832; Dublin Sessions Acts, 6 & 7 Vict. c. 81; Buckingham Summer Assizes Bill, 1849; Newgate Gaol (Dublin) Bill, 1849; Sheriff and Commissary Courts (Berwickshire) Bill, 1853; Cinque Ports Acts, 18 & 19 Vict. c. 48; 20 & 21 Vict. c. 1; Falmouth Quarter Sessions and Gaol Bill, 1865, 28 & 29 Vict. c. 8; Sussex County Business and Quarter Sessions Act, 1865, 28 & 29 Vict. c. 37; Chester Courts Bill, 1867, 30 & 31 Vict. c. 36; Glasgow Boundary Bill, 1871; Bath Prison Bill, 1871. The Belfast Municipal Boundaries Bill, 1833, was brought in as a public bill, but was otherwise treated as a private bill. County of Hertford and Liberty of St. Alban’s Bill, 1874.
but ordinarily they have been solicited, by the promoters, as private bills. In 1868, exception was taken to the Salford Hundred and Manchester Courts of Record Bill, on the ground that it ought to have been introduced as a public bill: but it was shown by the chairman of ways and means that the rules and precedents of the house justified its introduction as a private bill.¹

In 1889, three measures were passed, as public bills, for improving the police in Manchester, Birmingham, and Bolton,² the provisions being compulsory upon those towns, in the interest of public order, and the chief commissioners of police being appointed by the Crown.³ In 1854, the Manchester Education Bill was introduced as a private bill: but on the second reading, an amendment was carried, declaring the subject to be one which ought not, at the present time, to be dealt with by any private bill.⁴ In 1865, a private bill was brought in to alter the licensing system at Liverpool. It was objected that as this bill proposed to deal with the public revenues, it ought not to have been introduced as a private bill: but as the bill was strictly local, and the clauses relating to licence duties were printed in italics, and reserved for the consideration of a committee of the whole house, it was held that the bill was not open to any technical objection requiring its withdrawal.⁵ But on the second reading, an amendment was carried that the granting of licences for the sale of intoxicating liquors is a subject which ought not, at present, to be dealt with by any private bill.⁶ Bills relating to the sale of intoxicating liquors on Sunday, in particular counties, have been introduced and treated as public bills.⁷

In 1871, a bill for regulating the management of certain trust properties of the Presbyterian Church of Ireland was introduced into the House of Lords as a private bill: but objection being taken to legislation upon such a subject by

¹ H. D. 10th March, 1868. ² 2 & 3 Vict. c. 87, 88, 93. ³ H. D. 9th August, 1839. ⁴ See also Victoria University Bill, 1888, 143 C. J. 129. ⁵ 177 H. D. 3 s. 651. ⁶ 120 C. J. 92. ⁷ Cornwall, 1882 and 1883; Durham, Yorkshire, Isle of Wight, Northumberland, 1883.
means of a private bill, the bill was withdrawn, and a public bill for effecting the same object was passed by both houses.\(^1\) And, in the same session, the like proceedings occurred in the case of a bill to regulate the proceedings and powers of the Primitive Wesleyan Methodist Society of Ireland.

In 1848, the Farmers' Estate Society (Ireland) Bill having been brought in upon petition, the committee on the bill reported that the matter was so important that it ought to be dealt with as a public bill.\(^2\)

In 1888, the Keble College Bill was thrown out on third reading, on the ground that it was inexpedient to amend the general law of mortmain by a private bill; and in the same year, a bill to exempt the Victoria University from the Mortmain Act, and to give to it the power of conferring degrees, was brought in as a public bill.

The distinction between two bills, of apparently the same character, is sometimes sufficient to constitute one a public, and the other a private, bill. Thus, in 1855, the Carlisle Canonries Bill, which suspended the appointment to the next vacant canonry, and directed the ecclesiastical commissioners to pay the income to the augmentation of certain livings at Carlisle, was treated as a public bill; as it related to the ecclesiastical commissioners,—a public body holding certain church funds in trust for public purposes prescribed by law, and merely diverted the application of some of these funds from one purpose to another.\(^3\) On the other hand, the South Shields Parochial Districts Bill was held to be a private bill, as it sought to appropriate to local purposes, viz. the increase of certain small livings at South Shields, a sum of 15,000\(^{L}\), to which the dean and chapter of Durham had become entitled, by the sale of lands for the execution of certain public works.\(^4\) In 1871, the Rock of Cashel Bill was brought in as a public bill, vesting that rock, and the buildings and ruins thereon, in trustees.

\(^{1}\) 204 H. D. 3 s. 1868.
\(^{2}\) 103 C. J. 782.
\(^{3}\) See also Newcastle Chapter Bill, 1884, 139 ib. 942.
\(^{4}\) See also Burnley Rectory Bill, 1890; Hanover Chapel Bill, and Handsworth (Staffordshire) Rectory Bill, 1891.
Being referred to the examiners, it was held to be a private bill. But in the following year, another bill, for the same objects, but empowering the church temporalities commissioners, and the secretary to the commissioners of public works in Ireland, with the consent of the lord-lieutenant, to transfer and assign the rock and buildings to trustees, was held to be a public bill, as it merely sought powers for public bodies, already having a statutory interest in the property. In 1873, exception was taken to the Union of Benefices Bill having been introduced as a public bill, on the ground that it amended the Union of Benefices Act, 23 & 24 Vict. c. 140, as to the city of London: but it was held Provisional to be properly a public bill.1 Particular classes of local bills, such as bills for the confirmation of provisional orders, which are otherwise treated under the practice applicable to private bills, are directed, by statute, to be deemed public bills (see p. 650). Bills brought in by the government for carrying out national works or other local purposes, or affecting Crown property, are introduced as public bills, and subsequently treated as hybrid bills.2

But a bill, commenced as a private bill, cannot be taken up and proceeded with as a public bill. 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; whereupon Mr. Pope Hennessy gave notice that he should proceed with it as a public bill: but it was held that such a proceeding would be irregular, and was not persisted in.3

In 1877, notices were given of a private bill for settling a scheme of arrangement for the Turkish loans of 1854, 1855, and 1871: but its subject was obviously not one to be dealt with by a private bill, and it was not proceeded with.

It has been questioned whether a public Act may properly be repealed or amended by a private bill; and undoubtedly

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1 214 H. D. 3 s. 282.
2 Public Offices Site, 1882; Forest of Dean Highways, New Forest Highways, Isle of Wight Highways Bills, 1883; Hyde Park Corner (New Streets) Bills, 1883, 1884, 1886; Dublin Barracks Improvement Bill, 1892.
3 Mr. Speaker Denison's Note- book.
such provisions demand peculiar vigilance, lest public laws be lightly set aside for the benefit of particular persons or places. But no rule has been established which precludes the promoters of private bills from seeking the repeal or amendment of public Acts; and there are precedents in which this course has been sanctioned by Parliament. For example, in 1832, after the Bristol riots, a bill was passed to provide compensation for the damage suffered by many of the inhabitants, under which the public Act 7 & 8 Geo. IV. c. 31, was amended in reference to that city.\(^1\) Again, in 1864, the City of London Tithes Act repealed a public Act of Henry VIII.; and on the 18th July, 1864, objection being taken, on the third reading of the Metropolitan District Railways Bill, that the Thames Embankment Act (a public or hybrid Act) was amended by the bill, the Speaker ruled that no such objection, in point of order, could be sustained.\(^2\) On the 28th February, 1887, the Dover Harbour (Corporation) Bill was read a second time, notwithstanding the objection that it repealed the Dover Harbour (Public) Act of 1861.\(^3\)

With regard to Acts passed prior to 1798, when the division of local and personal Acts was first introduced into the statute-book, it is difficult to determine whether Acts were, in fact, public or private, the only Acts included in the latter category being estate, divorce, naturalization, and other Acts of a personal character, while Acts for the making of roads, bridges, harbours, and other local improvements, which are now comprehended in the local and personal Acts, are found printed indiscriminately with other public Acts. These are eliminated from the revised edition of the statutes recently completed by the statute law committee. And, since 1868, public Acts of a local character have been printed with the local Acts of each year.

In treating of petitions, the origin of private bills has been already glanced at (see p. 494): but it may be referred to

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\(^1\) 2 & 3 Will. IV. c. lxxxviii. (local and personal).
\(^2\) 176 H. D. 3 s. 1619. But see debate in Lords, 28th June, 1864, on second reading of Brokers' Bonds (City of London) Bill, 176 ib. 408.
\(^3\) 311 H. D. (Lords) 3 s. 656. 668.
again, in illustration of the distinctive character of such bills, and of the proceedings of Parliament in passing them. The separation of legislative and judicial functions is a refinement in the principles of political government and jurisprudence, which can only be the result of an advanced civilization. In the early constitution of Parliament these functions were confounded; and special laws for the benefit of private parties, and judicial decrees for the redress of private wrongs, being founded alike upon petitions, were not distinguished in principle or in form. When petitions sought obviously for remedies which the common law afforded, the parties were referred to the ordinary tribunals: but in other cases, Parliament exercised a remedial jurisdiction. Other remedies of a more judicial character, and founded upon more settled principles, were at length supplied by the courts of equity; and from the reign of Henry IV., the petitions addressed to Parliament prayed, more distinctly, for peculiar powers beside the general law of the land, and for the special benefit of the petitioners. Whenever these were granted, the orders of Parliament, in whatever form they may have been expressed, were in the nature of private Acts; and after the mode of legislating by bill and statute had grown up in the reign of Henry VI. (see p. 434), these special enactments were embodied in the form of distinct statutes.¹

Passing now to existing practice, the proceedings of Parliament, in passing private bills, are still marked by much peculiarity. A bill for the particular benefit of certain persons may be injurious to others; and to discriminate between the conflicting interests of different parties involves the exercise of judicial inquiry and determination. This circumstance causes important distinctions in the mode of passing public and private bills, and in the principles by which Parliament is guided. In passing public bills, Parliament acts strictly in its legislative capacity: it originates the measures which appear for the public good, it conducts inquiries, when necessary, for its own information, and enacts laws according

¹ See Statutes of the Realm, by Record Commission, 9 Henry VI.
to its own wisdom and judgment. The forms in which its deliberations are conducted are established for public convenience; and all its proceedings are independent of individual parties, who may petition, indeed, and are sometimes heard by counsel, but who have no direct participation in the conduct of the business, or immediate influence upon the judgment of Parliament.

In passing private bills, Parliament still exercises its legislative functions, but its proceedings partake also of a judicial character. The persons whose private interests are to be promoted appear as suitors for the bill; while those who apprehend injury are admitted as adverse parties in the suit. Many of the formalities of a court of justice are maintained; various conditions are required to be observed, and their observance to be strictly proved; and if the parties do not sustain the bill in its progress, by following every regulation and form prescribed, it is not forwarded by the house in which it is pending. If they abandon it, and no other parties undertake its support, the bill is lost, however sensible the house may be of its value. The analogy which all these circumstances bear to the proceedings of a court of justice, is further supported by the payment of fees, which is required of every party promoting or opposing a private bill, or petitioning for or opposing any particular provision. It may be added that the solicitation of a bill in Parliament has been regarded, by courts of equity, so completely in the same light as an ordinary suit, that the promoters have been restrained, by injunction, from proceeding with a bill, the object of which was held to be to set aside a covenant; or

1 The Manchester and Salford Improvement Bill, in 1828, was abandoned in committee, by its original promoters; when its opponents, having succeeded in introducing certain amendments, undertook to solicit its further progress. But in the Cork Butter Market Bill, the committee would not allow this course to be taken, Minutes, 1859, iii. 84. And, in 1873, the committee on the Kingstown Township Bill, after the commissioners, under their corporate seal, had withdrawn from its promotion, refused to allow them to proceed with it, as individual petitioners. In the Horncastle Gas Bill, 1876, the promoters and opponents agreed in soliciting the bill in an amended form, Minutes of Committee.

2 North Staffordshire Railway Co., 1859; Stockton, &c., Railway Co. v. Leeds and Thirsk and Clarence

Its functions partly judicial in passing private bills.
which was promoted by a public body, in evasion of the Towns Improvement Act, 1847. Parties have also been restrained, in the same manner, from appearing as petitioners against a private bill pending in the House of Lords. Such injunctions have been justified on the ground that they act upon the person of the suitor, and not upon the jurisdiction of Parliament; which would clearly be otherwise in the case of a public bill. And acting upon the same principles, Parliament has obliged a railway company, under penalty of a suspension of its dividends, to apply in the next session for a bill to authorize the construction of a line of railway which the company had pledged itself to make, and in good faith to promote it.

This union of the judicial and legislative functions is not confined to the forms of procedure, but is an important principle in the inquiries and decision of Parliament, upon the merits of private bills. As a court, it inquires into, and adjudicates upon, the interests of private parties; as a legislature, it is watchful over the interests of the public. The promoters of a bill may prove, beyond a doubt, that their own interest will be advanced by its success, and no one may complain of injury or urge any specific objection; yet, if Parliament apprehends that it will be hurtful to the community, it is rejected as if it were a public measure, or qualified by restrictive enactments, not solicited by the parties. In order to increase the vigilance of Parliament, in protecting the public interests, the chairman of the Lords’
committees in one house, and the chairman of ways and means in the other, are entrusted with the peculiar care of unopposed bills, and with a general revision of all other private bills; while the agency of the government departments is also applied in aid of the legislature (see p. 722).

In pointing out this peculiarity in private bills, it must, however, be understood that, while they are examined and contested before committees and officers of the house, like private suits, and are subject to notices, forms, and intervals, unusual in other bills; yet in every separate stage, when they come before either house, they are treated precisely as if they were public bills. They are read as many times, and similar questions are put, except when any proceeding is specially directed by the standing orders; and the same rules of debate and procedure are maintained throughout.

In order to explain clearly all the forms and proceedings to be observed in passing private bills, it is proposed to state them, as nearly as possible, in the order in which they successively arise. It will be convenient, for this purpose, to begin with the House of Commons, because, by the privileges of that house, every bill which involves any pecuniary charge or burthen on the people, by way of tax, rate, toll, or duty, ought to be first brought into that house (see p. 542). It has followed from this rule that by far the greater number of private bills have hitherto, from their character, necessarily been passed first by the Commons. But the Commons, by standing order No. 226 have now resolved, “That this house will not insist on its privileges, with regard to any clauses in private bills, or in bills to confirm any provisional orders or provisional certificates, sent down from the House of Lords, which refer to tolls and charges for services performed, and are not in the nature of a tax, or which refer to rates assessed and levied by local authorities for local purposes” (see p. 547). And this resolution has been held to extend to turnpike, harbour, drainage, and other similar bills.1 But it has been ruled not to extend to

1 Reading and Hatfield Road Bill, Melton Mowbray Navigation Bill, 1858; Wexford Harbour Bill, 1861; 1877; Dearne Valley Water Bill, 1880.
clauses in an improvement bill, imposing a tax upon all insurance companies having policies upon houses within the borough. On the 8th May, 1873, the Speaker called attention to clauses of this character in the Bradford Improvement Bill: but "as the promoters were not responsible for the introduction of the bill into the other house, and had signified their intention to withdraw these clauses, he submitted to the house that this course would be sufficient, under the circumstances, to repair the irregularity." And upon this condition the bill was allowed to proceed. This relaxation of the privileges of the Commons enables the promoters of many bills which must previously have been brought first into the Commons, to solicit them in the House of Lords, in the first instance, if they think fit; and provision having been made, in 1858, for introducing, by arrangement, such bills into the Lords, as may be conveniently undertaken by that house (see p. 722), Parliament has been able to ensure a more equal distribution of the private business of the session between the two houses. It will be more convenient, however, to pursue this description of bills in their progress through the Commons, and afterwards to follow them in their passage through the Lords. Those private bills which have usually originated in the Lords, as naturalization, name, estate, and divorce bills, will, for the same reasons, be more conveniently followed from the Lords to the Commons.

But before these classes of private bills are more particularly described, it will be necessary to advert to an important principle of modern legislation, by which special applications to Parliament for private Acts have, in numerous cases, been superseded by general laws. A private Act is an exception from the general law; and powers are sought by its promoters, which cannot be otherwise exercised, and which no other authority is able to confer. It is obvious, however, that the public laws of a country should be as comprehensive as may be consistent with the rights of private property; and it has accordingly been the policy of the legislature to enable parties to avail themselves of the provisions of public Acts, adapted
to different classes of objects, instead of requiring them to apply to Parliament for special powers in each particular case. This policy has been carried out, not only by the amendment of the general law for the benefit of particular interests as above described, but also by extending in this direction the powers of administration of the government departments, and especially by the establishment of the system whereby these departments are authorized to grant provisional orders, which in effect are private bills, and, when confirmed by Parliament, become the law of the land.

The following are some of the principal statutes relating to matters which formerly have been the subjects of private Acts of Parliament, viz. the Tithe Commutation Acts, the Acts for the enfranchisement of copyholds, the Joint-Stock Companies Acts, the Acts for the regulation and management of railway companies, the Settled Estates and Settled Land Acts, the Acts relating to entail in Scotland, the Towns Improvement (Ireland) Act, the Incumbered Estates Act in Ireland, the Endowed Schools Acts, the Naturalization Act, the Divorce and Matrimonial Causes Acts, the Education Acts, the Municipal Corporation Acts, the Local Government Acts for England and Wales and Scotland. The greater number of these statutes have been passed in the present reign, and they sufficiently show the progress which has been made in this department of legislation.

The statutes which authorize the grant of provisional orders and certificates by government departments, and more directly affect the practice of Parliament, are the most important to this work, and will be the subject of the ensuing chapter. By many of these statutes, the government departments are also invested with large powers of administration, in addition to their powers by provisional order, thus further showing the amendment of the general law in matters which otherwise would have been the subject of special legislation.
CHAPTER XXVI.

PROVISIONAL ORDERS, CERTIFICATES, &C.; AND THE ACTS UNDER WHICH THEY ARE GRANTED.

The system of legislation by Provisional Order, which has of late years been greatly extended, gives facilities to parties personally or locally interested to deal with a variety of different subjects which otherwise would have been proceeded with by private bill. Upon the application of parties interested, several of the government departments are enabled, under various Acts of Parliament, to grant Provisional Orders which, in effect, are private bills. These orders are scheduled to a public bill, brought in by the government department, which declares the expediency of their confirmation, and in this form they are submitted to Parliament for consideration. The confirming bill, being a public bill, is brought in on motion; and, prior to its introduction, Parliament takes no cognizance of a Provisional Order, as the standing orders made for the conduct of private business preliminary to the proceedings in Parliament, are, with the exceptions hereinafter mentioned (see p. 705), not applicable to a Provisional Order. Those interests, however, which are protected by the standing orders, in the case of a private bill, do not suffer; for in this respect the government department takes the place of Parliament, and imposes on the promoters of a Provisional Order the observance of rules and regulations similar in nature and effect to the standing orders, relating to notice by advertisement of the objects of the Order, notice to owners and occupiers, deposit of documents, consents, and other matters, which are laid down by the provisions of the enabling Acts, or made by the department.

An important feature in the procedure, and peculiar to the Provisional Order, is the provision in these enabling Acts for a previous inquiry into the merits of the case submitted to the government department for approval. This
Chapter XXVI. inquiry is obligatory on some of the departments, if it be deemed advisable to proceed with the case; while with others the inquiry is only held if it be thought expedient. The inquiry is usually public, and held in the locality affected by the proposed order, after due notice, by an officer of the department, or other properly qualified person, who makes a report on the case to the department.

These preliminary proceedings in provisional legislation, being distinctly departmental and apart from the practice of Parliament, will not be noticed in detail. Parties proposing to proceed by Provisional Order learn the necessary procedure by reference to the special provisions of the enabling Act, and to the instructions issued by the government department empowered to deal with the particular subject in which they are interested. It is proposed, in this chapter, to mention the statutes under which each government department is enabled to issue Provisional Orders, and to state briefly the purposes for which they are available, and who the parties are on whose application they are granted. The promoters of a Provisional Order, but not the opponents of it, are exempt from the fees chargeable on private bills. Certain expenses are incurred, including, in some cases, fees, in carrying the Orders through the government departments.

The departments above referred to are the Home Office, Board of Trade, Local Government Board, Board of Agriculture, Education Department, the Committee of the Privy Council, Post Office, War Office, and the Charity Commission, the Department of the Secretary for Scotland, the Lord-Lieutenant of Ireland in Council, the Local Government Board, Office of Public Works, and the National Education Department in Ireland. County Councils in England and Wales, and the Local Authority in any burgh or county in Scotland, are also empowered to issue Provisional Orders.

The improvement of the dwellings of the working classes, and of the sanitary condition of populous places, has been the subject of numerous Acts of Parliament, which have been repealed and their provisions amended and consoli-
Home Office and Local Government Board, Dwellings of the Working Classes &c.
dated by the Act of 53 & 54 Vict. c. 70, applying to the United Kingdom. Under the provisions of this Act, Provisional Orders may be granted for authorizing a scheme for (a) the improvement of unhealthy areas in a crowded district by the rearrangement and reconstruction of streets (Part I.); for (b) the improvement of lesser areas of the same description by the same means (Part II.); for (c) the modification of an authorized scheme for either of these purposes, if the modification involves a larger expenditure, or the taking of land compulsorily, or affects injuriously other property without consent; and for (d) the acquisition of land for additional accommodation for the housing of the working classes (Part III.).

The Local Authority is enabled to make a scheme for either of the two former purposes (a and b), based upon petition to the Secretary of State for the Home Department or to the Local Government Board, as the case may be. On their approval, the scheme, either absolutely, or with modifications so that there be no addition to the land to be compulsorily taken, is embodied in a Provisional Order for putting in force the compulsory powers for the purchase of land of the Lands Clauses Consolidation Acts, and otherwise for the execution of the scheme. If the scheme relates to Part I., and to the county or city of London, the Order is granted by the Home Office. If the scheme relates to Part I. or II., and to England and Wales, or to Part II. in the Metropolis, it is granted by the Local Government Board. An order, however, under Part II., if not petitioned against by an owner within a certain period fixed by the Act, comes into operation without confirmation by Parliament. So also for the purpose (d) (Part III.), these compulsory powers may, by the application of secs. 175 to 178 of the Public Health Act, 1875, be put in force by the Home Office for the Metropolis, and by the Local Government Board for England and Wales, if the part of the Act for providing lodging-houses for the working classes has been adopted by the Local Authority. The London County Council and the Commissioners of
Sewers for the City are respectively the Local Authority for this purpose, and also for the larger scheme of improvement (a) (Part I.) for the Metropolis; whilst the vestry or district board of works is the Local Authority for the smaller purpose (b) (Part II.), for which the London County Council is, under certain circumstances, also empowered to act. For elsewhere throughout England and Wales the urban sanitary authority is, for the purposes of the whole Act, the Local Authority, and, for Parts II. and III., the rural sanitary authority.

The Home Office is also enabled, under the following Acts, to grant Provisional Orders for the purposes hereinafter enumerated:

I. Under the Explosives Act, 1875,¹ for the repeal or alteration of any local Act, charter, or custom by which powers are conferred on any Local Authority respecting the manufacture of, or other matters in relation to, explosive substances, on the application of any Local Authority, borough council, or urban sanitary authority, or of any persons dealing in any way with explosives within the jurisdiction of these authorities, due notice being given to the latter by the department. A like Order may also be made for revoking or altering the Provisional Order above described. The Act applies to the United Kingdom, but is administered in Scotland by the Secretary for Scotland.

II. Under the Metropolitan Police Act, 1886;² on the application of the receiver for the metropolitan police, for the compulsory purchase of land under the Lands Clauses Consolidation Acts in order to provide sites for police buildings.

III. Under the Police Act, 1890,³ Provisional Orders may be granted for authorizing (a) the application of any excess over liabilities of a pension fund for such purposes as it may seem expedient; (b) the discontinuance of further investments of capital by reason of a pension fund being sufficient to meet its liabilities, on the application of the

¹ 38 Vict. c. 17, s. 103.
² 49 Vict. c. 22, s. 4.
³ 53 & 54 Vict. c. 45, s. 22.
"police authority" as defined by the Act; and (c) to provide for the adjustment of financial relations between a police force and a special force, i.e. a fire brigade or other like force, in the same police area, as regards the payment of pensions, &c., provided for both forces by a local Act, and also to apply, with or without modification, the provisions of the Police Act to the special force. The application for this latter order is to be made by the authority controlling the special force. The Act extends to England and Wales.

The Board of Trade is invested under the following Acts with large and extensive powers in the granting of Provisional Orders and Certificates, namely:

I. Under the General Pier and Harbours Acts, 1861 and 1862, Provisional Orders may be granted, on the application of persons desirous of constructing such works, for the formation, management, and maintenance of piers and harbours throughout the United Kingdom (except parts of the Rivers Thames, Mersey, Clyde, Wear, Humber, and Tyne), the estimated expenditure on which shall not exceed 100,000l.; for the election or appointment of commissioners as undertakers; the incorporation of a company; the making of bye-laws by the undertakers; the taking of land on lease; the levying of rates; and the borrowing of money on the security of the rates.

II. Under the Merchant Shipping Amendment Act, 1862, and the Merchant Shipping (Pilotage) Act, 1889; on the application of persons interested in the pilotage of a district, or in the operation of the laws regulating it; for the transfer of the whole or part of a pilotage jurisdiction from one port to another, and the consequent arrangements for the constitution of new pilotage authorities; and for the extension of the limits of existing ones, on the condition that in the new district there be no compulsory pilotage, and no restriction placed on the power of duly qualified persons to obtain licences; for the grant of licences; and

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1 24 & 25 Vict. c. 145; 25 & 26 Vict. c. 19.
2 25 & 26 Vict. c. 63, s. 39.
3 52 & 53 Vict. c. 68.
the direct representation of pilots and shipowners on the pilotage authority of any district. These Acts apply to the United Kingdom.

III. Under the Sea Fisheries Acts, 1868¹ and 1884² for the establishment or improvement, and for the maintenance and regulation of an oyster, mussel, and cockle fishery on the seashore, in England and Wales, including; if desirable, the constitution of a body corporate for the purpose of the Order; on the application to the Board of any person desirous of obtaining such an Order; and for amending any such Order which has been previously granted and conferred by Parliament.

IV. Under the Sea Fisheries (Clam and Bait) Act, 1881³ Provisional Orders may be granted when the Board are satisfied that the unrestricted use of beam trawls for sea fishing is injurious to any clam or other bait beds,—for its restriction or prohibition. The application for the Order may be made by any person representing the fishermen of the locality, or, if they appear to the Board to be interested in the fisheries, by the justices of the peace in general or quarter sessions, in Scotland by the commissioners of supply, by urban or rural sanitary authorities, or by owners or the authorities of any harbour; and the Order may be repealed or amended by the provisions of an Order made under the Sea Fisheries Act, 1868. Orders made under these Acts either limited to the grant of a right of fishery for a period not exceeding twenty-one years, over an area not exceeding five acres, or amending a previous Order, without extending the area, may, if unopposed, be confirmed by an Order in Council, and the sanction of Parliament be dispensed with; and these Orders may also, by Order in Council, be wholly or partially cancelled on the representation of the Board of Trade.

V. Under the Gas and Water Facilities Act, 1870⁴ and the Gas and Water Facilities Amendment Act, 1873⁵

¹ 31 & 32 Vict. c. 45, s. 29, et seq. ⁴ 33 & 34 Vict. c. 70.
² 47 & 48 Vict. c. 27. ⁵ 36 & 37 Vict. c. 89, s. 12.
³ 44 Vict. c. 11.
(a) for the construction and maintenance of gas or waterworks, the condition precedent being that in either case there be not an existing supply of gas or water by a company or person authorized by Parliament within the proposed district; (b) for raising additional capital for these purposes; (c) for authorizing agreements between companies or persons for the joint supply of gas or water, and for the amalgamation of such undertakings. The Act applies to the United Kingdom excepting the Metropolis. The Act of 1873, *inter alia*, enables the Board to amend or wholly or partially to revoke by Provisional Order any Order made under the first-mentioned Act.

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**Board of Trade.**

**Tramways.** VI. Under the Tramways Act, 1870; ¹ for authorizing the construction of tramways in any district in England and Wales on the application of (a) the Local Authority of such district, subject, however, to the special approval of the application by a majority of its members in manner prescribed by the Act; ² and (b) any person, corporation, or company, with the consent of the Local or Road Authority: but this consent may be dispensed with if the Board be satisfied, after inquiry, that two-thirds of the proposed tramway is to be laid in districts where these authorities consent to its construction.

**Salmon Fisheries.** VII. Under the Salmon Fishery Act, 1873; ³ upon the application of a board of conservators of any salmon river in England and Wales, for putting in force the compulsory powers of the Lands Clauses Consolidation Acts; for the purchase of and subsequent removal of any weir or other artificial obstruction hindering the passage of fish, not being a weir constructed under Act of Parliament for the purposes of navigation or of a supply of water to a town. This power, together with all the other powers of the Home Office under the Salmon and Freshwater Fisheries Acts, was transferred to the Board of Trade in 1886. ⁴

**Electric Lighting.** VIII. Under the Electric Lighting Act, 1882; ⁵ for

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¹ 33 & 34 Vict. c. 78, s. 4.
² 1st sched. A. part iii.
³ 36 & 37 Vict. c. 71, s. 49.
⁴ 49 & 50 Vict. c. 39.
⁵ 45 & 46 Vict. c. 56 (U. K.).
Chapter XXVI. authorizing any Local Authority, company, or persons to supply electricity for any public or private purposes within any area, for such period limited or unlimited as the Board may think proper. By the amending Act of 1888, the consent of the Local Authority of any district in which such supply is proposed, is required, unless the Board be of opinion that this consent ought to be dispensed with, and make a special report to Parliament of the grounds on which they have so decided. The latter Act contains a reservation that the grant to supply electricity to any area should not hinder or restrict the granting of a licence or Provisional Order to the Local Authority or others within the same area.

IX. Under the Railway and Canal Traffic Act, 1888, Provisional Orders may be granted for fixing railway rates for merchandise. Every railway company is directed by the Act to submit to the Board of Trade a revised classification of merchandise traffic, and a revised schedule of maximum rates, including terminal charges, and these are embodied in a Provisional Order (of which the railway company shall be deemed the promoters), if the Board, after hearing all the parties whom they consider entitled to be heard on the subject, come to an agreement with the railway company; and the Board make a report thereon to Parliament. The Board, in case of failure on the part of the railway company to submit this classification and schedule within the prescribed time, or of their inability to agree with the company, are empowered to determine the classification and schedule of maximum rates which ought to be adopted by the railway company, making a report to Parliament in support of their decision; and the Act provides that, after the presentation of this report, on the application of the railway company to the Board to submit the question to Parliament, "the Board shall, . . . and in any case may, embody" in a Provisional Order the classification and schedule which in their opinion ought to be adopted by the railway company. It may be assumed that in this case the

1 51 & 52 Vict. c. 12. See also 53 in Scotland.
& 54 Vict. c. 13 as to local authority 2 Ib. c. 25, s. 24.
railway company would be the opponents of the Order when, following the ordinary course, it is referred to a committee for consideration. At any time after the confirmation of the Order, at the instance of any railway company or of any person giving twenty-one days' notice to the railway company, the Board has the power of making amendments in it, and these amendments take effect after publication in the *Gazette*.

In addition to the Provisional Orders already mentioned, the Board of Trade is empowered to grant Provisional Certificates for matters relating to railways, in pursuance of several statutes presently to be mentioned. A Provisional Certificate is similar to a Provisional Order, its purpose being to facilitate and simplify legislation in matters otherwise the subject of a private bill, but, if it be unopposed, the proceedings are simpler than those applying to Provisional Orders. The promoters address the Board by memorial, and they propose a draft Certificate, which the Board, if it thinks fit, settles and lays before both houses of Parliament, and if neither house, within six weeks afterwards, resolve that the certificate ought not to be made, the Board may make and issue the Certificate, which is published in the *Gazette*, and thereafter has the same force and operation as if expressly enacted by Parliament. If, however, there be opposition from a railway or canal company affected by the Certificate, notice of such must be lodged at the Office of the Board of Trade, within the period prescribed by an Act of 1870,¹ and the Certificate, scheduled to a public bill, is submitted to Parliament for confirmation, and thereafter treated in the same manner as an opposed Provisional Order. These Certificates may be granted by the Board under the following Acts:

X. The Railway Companies Powers Act, 1864,² for enabling railway companies (a) to enter into working agreements *inter se*; (b) to extend the time for the sale of their superfluous lands; (c) to raise additional capital; and, by the Regulation of Railways Act, 1868,³ for making

¹ 33 & 34 Vict. c. 19. ² 27 & 28 Vict. c. 120. ³ 30 & 31 Vict. c. 119, s. 38.
provision as to general meetings, the right of voting by shareholders, the appointment, number, and rotation of directors, their powers, proceedings, and liabilities, and the appointment and duties of auditors.

XI. And under the Railways Construction Facilities Act, 1864;¹ (a) for the construction of railways (the purchase of the land being first contracted for, and all landowners and other parties beneficially interested consenting); (b) for the deviation of existing railways, or railways in course of construction; (c) for the execution of new works connected with existing railways; and (d) for the incorporation of a company for the purposes of the Act.

By an Act of 1871,² the Local Government Board was established, to which were transferred the powers and duties of the Poor Law Board, and of the Home Office and Privy Council, concerning the public health and local government. Under the Public Health Act, 1848, the Local Government Act, 1858, the Public Health Act, 1872, and the Sanitary Amendment Act, 1874, and other Acts amending the same (called the Sanitary Acts), large powers of provisional legislation were authorized. These Acts have been wholly or partially repealed, and their provisions consolidated in the Public Health Act, 1875.³ Beginning with this Act, which is the authority for their most important duties, the Local Government Board is empowered to grant Provisional Orders for places in England and Wales, except the Metropolis,⁴ under the following Acts, namely:—

I. Under the Public Health Act, 1875, Provisional Orders may be granted: (1) For wholly or partially repealing, altering, or amending (a) Local Acts relating to the same subject-matter as the Public Health Act, 1875;⁵ (b) Acts for confirming Provisional Orders made in pursuance of any of the Sanitary Acts, or of the Public Health Act, the Public Health Act, 1875, apply to Woolwich, which may be considered as no longer within the Metropolitan area for the purposes of the Act.

¹ 27 & 28 Vict. c. 121.
² 34 & 35 Vict. c. 70.
³ 38 & 39 Vict. c. 55.
⁴ By the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76, s. 102), most of the following provisions of
⁵ 38 & 39 Vict. c. 55, s. 303.
and any Order in Council made in pursuance of the Sanitary Acts.\textsuperscript{1}

(2) For enabling sanitary authorities to put in force the powers of the Lands Clauses Consolidation Acts for the compulsory purchase of lands, for the purposes of the Public Health Act.\textsuperscript{2}

(3) For the alteration of areas, local government, urban and rural districts, and improvement districts in the manner set forth in the Act;\textsuperscript{3} and for dissolving a special drainage district in which a loan has been contracted for works, and merging it in the parish or parishes in which it is situated.\textsuperscript{4}

(4) For declaring a rural district or any portion of such district to be a local government district, and for dividing the same into wards or altering or abolishing such wards.\textsuperscript{5}

(5) For uniting districts, whether urban, rural, or contributory, for the purposes of procuring a common supply of water, of making a main sewer, or carrying into effect a system of sewerage, or for any other of the purposes of the

\textsuperscript{1} 38 & 39 Vict. c. 55, s. 297, sub-s. 5.
\textsuperscript{2} Ib. s. 176. The purposes of the Act for which land is required are disposal of sewage, public necessaries, receptacles for rubbish, water supply, hospitals, mortuaries, burial-grounds (under the Public Health (Interim) Act, 1879, to be construed as one with the Act), new streets or the improvement of the same, public parks and recreation-grounds, markets, slaughter-houses, and offices. With regard to water supply, the powers of a local authority are subject to an important limitation, for they are prohibited by the Act from constructing waterworks within the limits of any water company authorized by Parliament who are "able and willing" to provide a proper and sufficient supply (see 62). Local authorities under the Public Health (Scotland) Act, 1887, the Burgh Police (Scotland) Act, 1892, and under the Public Health (Ireland) Act, 1878, are under similar limitation. It has been held that water rights cannot be compulsorily purchased under Provisional Order granted under the Public Health Act, 1875. In the West Houghton case, heard in a Lords' Committee in 1877, a preliminary objection was sustained that the Provisional Order granted by the Local Government Board for the acquisition of certain water rights was \textit{ultra vires}, on the ground that the power under the Act to purchase "land" did not include "water."

\textsuperscript{3} The powers of the Board for the alteration of areas under s. 270, sub-s. 1 and 2, and also for the constitution of a local government district (4) under s. 271, though not repealed, are now exercised by county councils, subject in some respects to the control of the Board under s. 57 of the Local Government Act, 1888, and the Provisional Order is dispensed with.

\textsuperscript{4} Ib. s. 270, sub-s. 3.

\textsuperscript{5} Ib. s. 271. See note 3.
Public Health Act, and for appointing the governing body of the united district.  

(6) For constituting a sanitary authority in any port or a joint representative board exercising such authority over two or more ports, by the Public Health (Ships) Act, 1885. This Order is provisional if objected to within a prescribed period by a riparian authority affected thereby; if not objected to, it becomes absolute under the provisions of the Act.  

(7) For dissolving a main sewerage district or a joint sewerage district made respectively under the Public Health Act, 1848, or the Sewage Utilization Act, 1867, or for constituting them united districts.  

(8) For altering the mode of defraying the expenses of an urban authority for sanitary purposes in certain cases.  

(9) For removing exemptions from assessment to general district rates, where such exemptions arise under any local Acts.  

(10) For settling doubts and differences and adjusting accounts arising out of any transfer of powers under the Public Health Act, 1875, or under any Provisional Order made under it, on the application of any authority concerned or any person affected by such transfer, if for these purposes any rate has to be made or other thing to be done which, apart from the provisions of the Act, could not be done by law; and any settlement or adjustment so made may be included in a Provisional Order which gives rise to the same.  

(11) For authorizing the supply of gas by urban authorities in districts where there is no company or person with statutory authority to supply gas, under the provisions of the Gas and Water Facilities Act, 1870, and the Act of 1873 amending the same, and for revoking, amending, and extending or varying such Orders.  

The majority of these Orders are made on the application of the Local Authority. Those, however, which appear

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1 38 & 39 Vict. c. 55, ss. 273, 280.  
2 Ib. s. 287.  
3 Ib. s. 323.  
4 Ib. s. 304.  
5 Ib. s. 161.
under the heading of 1b, 3, 4, 6, 7, and 9, may be initiated by the Board.

II. Provisional Orders may also be granted by the Local Government Board, under the Poor Law Amendment Act, 1867 1 (amended in detail by Acts of 1868 2 and 1879 3) (a) for repealing wholly or partially or altering a local Act, to the control of which the relief of the poor and the levy of the poor rate are subject in any union or parish in England and Wales, on the application of the Board of Guardians, or of any person having powers under the local Act; (b) for readjusting or dividing parishes extensive in area, or parts of which are separated from one another or are intermixed with other parishes, on the application of “one-tenth part in value of owners of property and of ratepayers in the parishes interested in the subject.” This latter power has been extended and defined by the Divided Parishes Act and Poor Law Amendment Act, 1876, 4 and by the amending Acts of 1879 5 and 1882; 6 and now an Order initiated by the Board, which only becomes provisional requiring confirmation by Parliament if objected to, may be made for dealing with several divided parishes at the same time, for constituting separate parishes out of any such divided parishes, for uniting any parts of a divided parish or of several divided parishes with each other, for amalgamating the parts so united with an adjoining parish, and for amalgamating any part of a divided parish, or parts of several divided parishes, with an adjoining parish or adjoining parishes, for similarly dealing with an isolated part of a parish, and for treating an extra-parochial place as a divided parish. The Order may include consequential alterations with regard to the maintenance of highways, and the constitution of school districts, unless the Education Department otherwise directs, but ecclesiastical divisions of parishes or the boundaries of boroughs for municipal or parliamentary purposes are not to be affected by it. These Acts apply to England and Wales.

1 30 & 31 Vict. c. 106, ss. 2, 3. 2 31 & 32 Vict. c. 122, s. 3. 3 42 & 43 Vict. c. 54, s. 9. 4 39 & 40 Vict. c. 61. 5 45 & 46 Vict. c. 58.
The Local Government Board is also empowered to grant Provisional Orders under the following Acts, namely:

III. Under the Act of 14 & 15 Vict. c. 38 (for the relief of turnpike trusts, where the revenues of a turnpike road are insufficient to meet its liabilities), on the application of the trustees and with the consent of two-thirds in value of the creditors, for the reduction of the rate of interest on the mortgage debt, or for the extinguishment of arrears of interest. This power was transferred from the department of the Secretary of State to the Board in 1872, and applies to England and Wales.

IV. Under the Contagious Diseases (Animals) Act, 1878; for authorizing a Local Authority (as defined by the Act) in England and Wales to acquire land by compulsory purchase, under the provisions of the Public Health Act, 1875, s. 176, for wharves or other purposes, or for use for the burial of carcases.

V. Under the Alkali and Works Regulation Act, 1881 (after an inquiry by one of its inspectors, and where it appears that the purpose can be effected at a reasonable expense); for requiring the owners of salt works or cement works to adopt the best practicable means for the prevention or partial prevention of the discharge into the atmosphere of certain gases specifically mentioned in the Act, and for extending to such works such of the provisions of the Act as they think fit. The Act applies to the United Kingdom, but for Scotland it is administered by the Secretary for Scotland.

VI. Under the Redistribution of Seats Act, 1885, for determining in England and Wales any doubt as to the parliamentary division of a county or borough in which a parish or other place was intended by the schedules to the Act to be included, on the application of any voter.

VII. And under the Local Government Act, 1888 (England and Wales), Provisional Orders may be granted:

1 35 & 36 Vict. c. 79, s. 36.
2 The turnpike trusts now existing are so few, that this power has of late been seldom exercised.
3 41 & 42 Vict. c. 74, s. 40.
4 44 & 45 Vict. c. 37, s. 10.
5 48 & 49 Vict. c. 23, s. 23.
6 51 & 52 Vict. c. 41.
(1) For transferring to a county council the powers of any quarter sessions or justices under a local Act, which are similar in character to those transferred to a county council by the Local Government Act.¹

(2) For transferring to county councils (a) the powers of government departments conferred by statute, and appearing to relate to county matters, or to be of an administrative character; also (b) such powers within the county of commissioners of sewers, conservators, or other public body corporate or unincorporate (not being a borough corporation, or urban, or rural sanitary authority, school board, or board of guardians), provided that the draft of the order be approved by the government department or public body respectively, the powers of which are thereby affected. The powers so dealt with, if arising in two or more counties, may be transferred to these counties jointly, and be exercised by joint committees of the council.²

(3) For constituting a joint committee representing all the administrative counties through which a river or any tributary stream passes, for carrying out the provisions of the Rivers Pollution Prevention Act, 1876, upon the application of the Council of any of the counties concerned.³

(4) For dealing with every case where the council of a borough is not the urban sanitary authority for the whole of its area, being wholly or partly included in the latter, and for determining the area of the county district, thus providing for the council of the borough becoming the district council, and for that purpose to alter the boundaries of the borough or county; and, if the population exceed 50,000, for constituting the borough into a county borough, and for making provision for carrying the Act into effect in such county borough.⁴

(5) For (a) altering the boundary of a county or borough; (b) providing for the union of a county borough with a county; (c) the union of any counties or boroughs or the division of any county; or (d) constituting a borough with

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¹ 51 & 52 Vict. c. 41, s. 4.
² Ib. s. 10.
³ Ib. s. 14.
⁴ Ib. s. 52.
a population of 50,000 into a county borough; and for making, as consequential upon such alterations, changes as to the number and boundaries of wards, and numbers of councillors and aldermen. The county council having considered the report of the Boundary Commissioners affecting it, makes representations to the Board with a view to carrying out any of these purposes which they may think expedient. It is obligatory on the Board to cause a local inquiry to be made before granting a Provisional Order under this section.

(6) For providing for the administrative, judicial, or financial arrangements consequential on the alteration of boundaries in a county made by the Board, provided that the scheme or order is petitioned against by any county council, sessions, or Local Authority affected thereby within the time prescribed by the Act; and, under the same conditions, for amending such a scheme or order which has been previously authorized; and also, if a scheme or order be required by the Act to be laid before or confirmed by Parliament, such scheme or order may amend any local Act.

(7) For enabling a county council to put in force the compulsory powers of the Lands Clauses Consolidation Acts for the purchase of land for the purposes of the Act.

(8) For authorizing the exercise of borrowing powers by a county council, where its total debt, or a proposed loan, exceeds one-tenth of the annual rateable value of the county.

The power of the Board of granting Provisional Orders Highways, under the Highway and Locomotive Amendment Act, 1878, &c., Act. for declaring that certain roads should become ordinary highways, has been repealed by the Act of 54 & 55 Vict. c. 63, under which further powers are conferred on county councils with respect to main roads, and the procedure by Provisional Order dispensed with.

1 51 & 52 Vict. c. 41, ss. 53. 54. 55. 2 Ib. s. 59, sub-ss. 4. 5. 6. 3 Ib. s. 65. The purposes of the Act are bridges, county asylums, county buildings, police stations, and assize courts. 4 Ib. s. 69.
VIII. Provisional Orders may be granted under the Brine-Pumping (Compensation for Subsidence) Act, 1891; \(^1\) (a) for forming a Compensation District, and for establishing a Board entrusted with powers of rating brine-pumpers in order to provide for the claims for compensation under the Act, and for a reserve fund and other expenses of the Board, on the application of any owner or owners of land in England or Wales of the rateable value in the aggregate of 2000\(\ell\), or of any Local Authority, suffering through the subsidence of the ground caused by the pumping of brine. The limit and basis of this rate are threepence per 1000 gallons of brine pumped within twelve months; also (b) for altering the boundaries of a compensation district on a like application, or on the application of a brine-pumper.

The earliest attempt to provide, by a general law, for the objects usually sought by the promoters of private bills, was that of the General Inclosure Act in 1801.\(^2\) By that Act several provisions which had been usually inserted in each Act of inclosure were consolidated, and the necessary proofs before Parliament were facilitated when such Acts were applied for: but the necessity of applying for separate Acts of inclosure was not superseded. In 1836, a general law was passed to facilitate the inclosure of open and arable land;\(^3\) and in 1845, the Inclosure Commissioners were constituted, to whom, under this and numerous other Acts usually cited together as the Inclosure Acts, 1845–78, were entrusted many of the powers previously entrusted to Parliament; of these the most important is the Commons Inclosure Act, 1876, for the inclosure and regulation of commons. By an Act of 1889,\(^4\) the Board of Agriculture was constituted, and invested with the powers and duties of the Inclosure Commissioners (lately entitled by Act of Parliament Land Commissioners); and the Board is consequently the authority by whom the Provisional Orders and schemes are granted under the following Acts:—

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\(^1\) 54 & 55 Vict. c. 40. \(^2\) 41 Geo. III. c. 109. \(^3\) 52 & 53 Vict. c. 30. \(^4\) 6 & 7 Will. IV. c. 115.
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I. Under the Commons Inclosure Act, 1876;¹ (1) for the regulation of a common; (2) for the enclosure of a common or parts of a common; the term "regulation," as stated by the Act, includes "adjustment of rights" and "improvement of a common," and these terms again are particularly explained by the Act. The application for the Order is to be made by persons interested in any common representing at least one-third in value of the interests proposed to be affected. If on consideration of the application it be deemed expedient to proceed with the case, a report is made to Parliament by the department certifying the expediency of the Provisional Order, and before a bill for its confirmation is introduced; this report is referred to a committee specially appointed by the house every session for consideration, who require the Board of Agriculture to give notice in the locality affected, of the meeting of the committee, in order that persons objecting to the Order may appear and be heard. The reference of the Order to this committee does not dispense with its subsequent consideration by a committee to which, whether opposed or unopposed, it may be referred by the committee of selection. The Act contains elaborate provisions for the protection of public and private interests, including rules for the guidance both of the persons making the application and of the department in making the Provisional Order, notably in the latter case for holding a public inquiry on the spot by an assistant commissioner.

II. Under the Metropolitan Commons Acts,² 1866 and 1869; for making a scheme for the local management and improvement of a metropolitan common, on the presentation of a memorial by the lord of the manor, by any commoners, or by twelve ratepayers of the parish in which the common is situated. After certain preliminaries required by the Act of 1866, the scheme may be approved and certified by the Board, who make an annual report to Parliament, in which is set forth in full every scheme certified during the past year, and all the proceedings held in

¹ 39 & 40 Vict. c. 56.
² 29 & 30 Vict. c. 122; 32 & 33 Vict. c. 107.
connection with it; and the confirming bill, if a petition be presented against the scheme, is treated as an opposed private bill. By the Act no application for the enclosure of a metropolitan common can be entertained by the department.

III. Under the Land Drainage Act, 1861;¹ (1) for putting in force the powers of the Lands Clauses Consolidation Acts for the compulsory purchase of lands required for the maintenance and improvement of existing works, and the construction of new works for the drainage of land for agricultural purposes in England, on the application of commissioners of sewers, to whom, on the recommendation of the Board, drainage areas have been assigned; and (2)² for constituting separate elective drainage districts, on the application of the owners of one-tenth part of an area of land requiring a system of combined drainage.

IV. Under the Thames Valley Drainage Act, 1871;³ for enabling the commissioners thereby appointed, either at the instance of a district board or at their own desire, to put in force, for the purpose of carrying out any of the works authorized by the Act, the compulsory powers of the Lands Clauses Consolidation Acts for the purchase of land.

By the Elementary Education Act, 1870,⁴ the Education Department, on the application of a school board in England and Wales, may, after a public inquiry, grant a Provisional Order empowering the latter to put in force the compulsory powers of the Lands Clauses Consolidation Acts for the purchase of a school site; and by a subsequent Act of 1876,⁵ the Education Board are invested with the same power, in order to provide an office when the school board has satisfied them that, having regard to the large population of their district, such provision is necessary. This latter power, however, has not been exercised: but by a special Act of 1872,⁶ the powers of the Act of 1870 are conferred on the

¹ 24 & 25 Vict. c. 133, s. 21, et seq. ² Ib. Part II. ³ 34 & 35 Vict. c. 158 (Local and Personal Acts). ⁴ 33 & 34 Vict. c. 75, s. 20. ⁵ 39 & 40 Vict. c. 79, s. 42. ⁶ 35 & 36 Vict. c. 27.
Chapter XXVI. department, in order to provide offices for the school board of London.¹

Under the Municipal Corporations Act, 1882,² where a petition for a charter of incorporation is referred to a Committee of Council, and it is proposed to extend the Municipal Corporation Acts to the borough to be created, the Committee of Council may settle a scheme for the adjustment of the powers, property, or liabilities of the existing Local Authority in such place, which, if unopposed, may be confirmed by an Order in Council. If opposed by any Local Authority affected thereby, or by a certain proportion of the owners and ratepayers, the scheme is submitted to Parliament for confirmation by a public bill, and treated as an opposed Provisional Order. A scheme before being settled is referred for consideration to the Home Office, the Local Government Board, and to the Board of Trade, if a harbour authority is thereby affected.

The Postmaster-General and the Secretary of State for War have also special statutory powers of dealing with private property in order to meet the requirements of the public service. With the Postmaster-General the procedure is directly by a public bill containing all the enacting provisions, and without the interposition of the Provisional Order (scheduled to a confirming public bill); but if while the bill is pending in either House of Parliament a petition is presented against it, the bill is thereupon treated in the same manner as an opposed private bill. By the Post Office (Land) Act, 1881,³ the Postmaster-General is empowered to give three months’ notice to all persons interested in the land proposed to be taken, and the Treasury, after a local public inquiry into the objections of such persons, may bring in a public bill for exercising the powers of the Lands Clauses Consolidation Acts for the compulsory purchase of land. Similarly, by the Military Lands Act, 1892,⁴ which repeals the Ranges Act, 1891, the Secretary of State

¹ A Provisional Order for this purpose was granted and confirmed in 1890.
² 45 & 46 Vict. c. 50, Part XI.
³ 44 & 45 Vict. c. 20.
⁴ 55 & 56 Vict. c. 43.
is enabled to grant Provisional Orders for the compulsory acquisition of land for military purposes, by himself, by a volunteer corps, and by a county or borough council in behalf of such volunteer corps or a yeomanry corps. Both these Acts apply to the United Kingdom.

Again, by the Telegraph Act, 1892, the powers of the Postmaster-General are extended by Provisional Order, and if he considers that a district is debarred from the public convenience of telegraphic communication owing to the refusal or failure of any person to consent to the construction or maintenance of a work by the Postmaster-General, he may apply to the Railway and Canal Commission, who, on the conditions mentioned in the Act, may make an order dispensing with such consent; and if the person whose consent has been so dispensed with petition the Commission that the order be laid before Parliament, it becomes a Provisional Order, and is treated accordingly, while if no such petition be presented, the order is final.

By the Charitable Trusts Act, 1853, where a new scheme for the management of a charity cannot be carried into complete effect by the Court of Chancery or other court under the jurisdiction created by the Act, or otherwise than by the authority of Parliament, the Board of the Charity Commissioners, on the application of the trustees or others concerned in the management, or interested in the benefits, of a charity, or upon the report of an inspector, or upon information otherwise obtained by the Board, are enabled provisionally to approve and certify a new scheme which, set forth in all its details in an annual report to Parliament, may be confirmed by an Act of Parliament, such Act to be deemed a public general Act; and the confirming bill is treated throughout as a public bill, and is not referred to the committee of selection.

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1 55 & 56 Vict. c. 59.
2 16 & 17 Vict. c. 137, s. 54, et seq.
3 Jewish United Synagogue, 125 C.J., Index; Whixley Tancred's Charities, 126 ib., Index; Birstal Wesleyan Chapel, 143 ib., Index; Sunderland's Charity, 146 ib., Index.

John Kendrick's Loan Charity (Reading Grammar School), 1867, being a private bill, was referred to the committee of selection.
By an Act of 1885, the Secretary for Scotland was appointed, and with the administration of Scottish affairs which, by this and a later Act of 1887, passed into his hands, he has been invested with the powers of granting Provisional Orders under the following statutes, some of which were previously administered by the Home Office, the Board of Trade, and the Local Government Board, while others have been passed for Scotland since his appointment:

I. The Public Health (Scotland) Act, 1867; for putting in force the powers of the Lands Clauses (Scotland) Acts for the compulsory purchase of land for the purposes of the Act, on the application of the Local Authority as described by the Act.

II. The Public Parks (Scotland) Act, 1878; for enabling the Local Authority of any burgh under the Public Health (Scotland) Act, 1867, to acquire and lay out land for public parks and pleasure-grounds, and to put in force the same compulsory powers of purchase for this purpose.

III. The Education (Scotland) Act, 1878; for putting in force the powers of the Lands Clauses (Scotland) Acts for the purchase of land otherwise than by agreement, for the purposes of the Education Acts, on the application of a School Board.

IV. The Local Government (Scotland) Act, 1889; (a) County Councils (Scotland); for the transfer to county councils of the powers of government departments and other authorities; (b) for altering, on the representation of a county council, the boundaries or contents of any county, burgh, or parish, for uniting

1 48 & 49 Vict. c. 61.
2 50 & 51 Vict. c. 52.
3 30 & 31 Vict. c. 101, s. 90.
4 The purposes of the Act are the provision of hospitals, public water-closets, &c., mortuaries, sewers, water supply including water rights, and recreation-grounds; but these powers have of late years been exercised for water supply only. See p. 660, n. 2, as to limitation on water supply.
5 41 & 42 Vict. c. 8.
6 Ib. c. 78, s. 31.
7 52 & 53 Vict. c. 50, ss. 15, 51.
8 The Secretary for Scotland.
parishes or parts of parishes, or for dividing a parish, and for the adjustment of all local matters consequential on such alterations; and (c) for constituting a joint committee representing counties and burghs for enforcing the provisions of the Rivers Pollution Act, 1876.

V. Police (Scotland) Act, 1890;¹ (a) for authorizing the application of any excess over liabilities of a pension fund; and (b) for the discontinuance of further investments of capital by reason of a pension fund being sufficient to meet its liabilities, on the application of the police authority.

VI. Under the Burgh Police (Scotland) Act, 1892,² for regulating the police and sanitary administration of towns and populous places, and for facilitating the union of police and municipal administration of burghs in Scotland, by which the General Police and Improvement Act, 1862, and other Acts on the same subject have been repealed, the Secretary for Scotland is enabled to grant Provisional Orders, (a) on the application of the magistrates and council of any burgh, for the alteration of their number, where they are the commissioners under the Act; (b) on the application of the commissioners of any burgh, and when it shall appear to them that they require additional powers—for better carrying out the purposes of the Act, and especially powers relating to the supply of gas or water;³ or to the roads and streets, or to drainage or sewers or the utilization of sewage, in addition to the powers conferred by the Public Health Acts, or for the repeal of any exemption from rating, or to other matters cognate to the Act; (c) for making provision that contiguous or adjacent burghs may amalgamate for the purposes of the Act, or for municipal purposes, or for carrying on jointly such administration, or for executing jointly conduits, sewers, or drainage works; on the joint application of the magistrates and council, or of the Commissioners of such burghs.

The provisions of the following Acts for granting Provisional Orders have already been noticed as being adminis-

¹ 53 & 54 Vict. c. 67, s. 24. ² See p. 660, n. 2, as to the limita-
³ 55 & 56 Vict. c. 55, s. 44, et seq. tion on water supply.
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The appointments of their offices are made by the Secretary for Scotland, viz.: The Explosives Act, 1875; the Sea Fisheries Acts, 1868 and 1881; the Alkali, &c., Act, 1881; the Redistribution of Seats Act, 1885; and the Housing of the Working Classes Act, 1890. These Acts contain some special provisions in matters of detail, applicable to Scotland.

The Roads and Bridges (Scotland) Act, 1878, authorizes the issue of a Provisional Order for enforcing the adoption of the Act by counties: but such adoption having been made compulsory within a certain period prescribed by the Local Government (Scotland) Act, 1889, the Provisional Order is no longer applicable. There remain, however, in the Act, provisions under which "determinations," under the hand and seal of the Secretary for Scotland, may be made (a) for the adjustment of the burthen of maintenance, erection, and debt of bridges accommodating the traffic, not only of the county or burgh in which they are situated, but also of adjoining counties or burghs; and (b) for a similar adjustment where a trust existing at the commencement of the Act comprises a road, highway, or bridge situated partly in Scotland and partly in England. These "determinations" have to be laid before both houses of Parliament, and have statutory effect if either house does not, within forty days, resolve otherwise. The Act contains special provisions for granting Provisional Orders as to the maintenance of highways in the counties of Lanark and Renfrew, which expired in 1883.

Under the Tramways (Ireland) Acts, 1860 and 1861, and subsequent Acts amending the same, the Lord-Lieutenant of Ireland, through the agency of the Board of Works and the grand jury, is authorized to grant orders for the construction of tramways (worked either by animal or mechanical power), for uniting places between which there is no railway constructed, or in course of construction under

1 41 & 42 Vict. c. 51. 2 52 & 53 Vict. c. 50, ss. 16, 110. 3 23 & 24 Vict. c. 52, and 24 & 25 Vict. c. 102. 4 34 & 35 Vict. c. 114; 39 & 40 Vict. c. 65; 44 & 45 Vict. c. 17; and 46 & 47 Vict. c. 43, as to light railways.
statutory powers; for constituting a company for the purpose; and for fixing the amount of capital, the borrowing powers, and other matters consequential on the incorporation of a company. The Board of Works, at the request of the promoters of the undertaking, and after a public local inquiry held by some person appointed by the Commissioners of Public Works, reports on the engineering, and the grand jury of any county within which the tramway is proposed to be made, after hearing all parties in opposition, and having before them the reports of the Board of Works and of the county surveyor, decides on the merits of the undertaking or any modification of it. If the scheme be approved of, and there be no appeal against such approval to the Lord-Lieutenant in Council, he makes the Order in Council, and it takes effect immediately; and it is only in cases where the undertaking has been opposed before the Judicial Committee of Privy Council in Ireland that the order is provisional requiring confirmation by Parliament: but the confirming bill is treated in all respects as a public bill, and is not referred to the committee of selection.\footnote{1}

By the 52 & 53 Vict. c. 66, the same procedure is made applicable to light railways in Ireland, with the limitation that the Act should only apply where the promoters \((a)\) are an Irish railway company having a railway open to traffic; or \((b)\) have made an agreement approved by the Treasury for the maintenance and working of the light railway by such a company; or \((c)\) where they, in making their application to the grand jury under the Tramways Acts, had proposed a baronial guarantee. Under this Act the Treasury is empowered to make limited advances for the construction of the light railway.

The Local Government Board for Ireland is the authority by which the Public Health Act (Ireland), 1878,\footnote{2} and the Redistribution of Seats Act, 1885, and the Housing of the Working Classes Act, 1890, so far as Ireland is concerned, are administered; the powers of the Board under the two

\footnote{1} Tramway Orders in Council Index; 145 ib. Index; 146 ib. Index. (Ireland) Confirmation Acts, 141 C. J. \footnote{2} 41 & 42 Vict. c. 52.
latter Acts of granting Provisional Orders are the same as those of the Local Government Board of England, and have been already noticed,\(^1\) while those under the Public Health Act, similar in many respects to the Public Health Act, 1875, for England, are for the following purposes:—

(1) For the alteration of sanitary districts by separating from a rural sanitary authority district a town or district in which there shall be town or township commissioners under an Act of Parliament, and constituting it an urban sanitary authority, or by including it in any adjoining urban sanitary district; and also by adding any town or township so constituted to the rural sanitary authority district in which it is situated. No such Provisional Order can be made except on the petition of one or other of the districts affected.

(2) For the compulsory purchase of land under the powers of the Lands Clauses Consolidation Acts for the purposes\(^2\) of the Public Health Act, 1878.

(3) For the transfer of certain powers for the making and maintenance of roads, bridges, footpaths, and public works within an urban sanitary district, from the grand jury of the county in which the district is situate to the urban sanitary authority, with special provisions as to the consent of the grand jury mentioned in the Act.

(4) For the transfer of a burial-ground from one burial board to another.

And under the same conditions as are enacted for England by the Public Health Act, 1875, already mentioned\(^3\) for (5) the repeal of local Acts, Provisional Orders, and Orders in Council; (6) the formation of united districts; (7) the settlement of doubts and differences arising out of any transfer of any powers or property under the Public Health Act, or Provisional Order made thereunder; and (8) for authorizing the supply of gas by an urban sanitary authority.

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\(^1\) Vide supra, pp. 664, 651.

\(^2\) The purposes of the Act are—purchase of sewers, the disposal of sewage, improvement and making of streets, public necessaries, receptacles for rubbish, supply of water, including water rights, markets, slaughter-houses, hospitals, mortuaries. See p. 660, n. 2, as to limitation on water supply.

\(^3\) Vide supra, p. 659.
The Provisional Orders under this Act are made on the application of the sanitary authority.

By the Labourers (Ireland) Act of 1883, Provisional Orders were granted by the Local Government Board for Ireland for the improvement of the sanitary condition of the dwellings of agricultural labourers: but by subsequent Acts of 1885 and 1886 it is provided that these Orders may be confirmed by the Lord-Lieutenant in Council, and they no longer are submitted to Parliament.

By 55 & 56 Vict. c. 42 (s. 17), the Commissioners of National Education in Ireland may grant Provisional Orders for the compulsory acquisition of land by trustees, to be approved of by them, for the sites of national schools or residences for teachers, and the provisions of the Public Health (Ireland) Act, 1878, are made applicable for the purpose.

The Commissioners of Public Works in Ireland are enabled to grant Provisional Orders under the Drainage and Improvement Acts, 1863 and 1880; namely, under the Act of 1863, for constituting into a separate elective drainage district, land liable to be flooded or capable of improvement by drainage. Any person interested in such land may make application to the commissioners for the purpose: but the proprietors of two-thirds in value of it must be in favour of the scheme. By the Act of 1880, Provisional Orders may be granted for enabling a drainage board to execute works within the district of any other drainage district, without the consent of the latter.

The powers of provisional legislation conferred on the various government departments have now all been noticed. There remains another example of the disposition of Parliament, not only to make the general law more applicable to the purposes of private bill legislation, but also to extend its operation over the rights of private property, where such rights can be shown to interfere with the public need. Hitherto the Government Departments alone have been entrusted with these powers, but by recent legislation,
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Chapter XXVI. following the principle of devolution, a local administrative authority, viz. the county council, is empowered to make Provisional Orders for the compulsory acquisition of land for facilitating the provision of allotments for the labouring classes, where it could not be obtained by voluntary arrangement with landowners under the permissive enactments for this purpose. This power is given by the Allotments Acts, 1887 and 1890. The first of these Acts enables the sanitary authority, upon the representation of six parliamentary electors or ratepayers in an urban district, or in a parish in a rural district, as the case may be, to petition the county authority, and the county authority (now the county council) may, thereupon, make the Provisional Order, with certain exceptions as to residential and railway property. The Act of 1890 provides that duly qualified persons in any district, not being within the limits of a borough, may appeal to the county council to make the Order, in case of a failure of the sanitary authority to take proceedings. The county council annually appoints a standing committee for the purposes of the Acts, and upon their recommendation, after a public local inquiry held by some one or more of their own body, or by some other person appointed by them, the council may make the Provisional Order. The sanitary authority or the county council, in case of appeal, is the promoter of the Provisional Order, and on the Local Government Board devolves the duty of introducing a public bill to confirm it. The Acts apply to England and Wales.

By the Allotments (Scotland) Act, 1892, the Local Authority of any burgh or county (in burghs the town council or commissioners, in counties the county council) is enabled to grant Provisional Orders under similar conditions, for the compulsory acquisition of land for allotments. By the Act the Secretary for Scotland is directed to consider objections to the Provisional Order, to order a local inquiry on it if he thinks fit, and is enabled to refuse to introduce the bill for its confirmation.

In concluding this chapter, it is necessary to mention that

1 50 & 51 Vict. c. 48, s. 3; 53 & 54 Vict. c. 65. 2 55 & 56 Vict. c. 54, s. 3.
there are several statutes relating to charities, endowments, education, and some ecclesiastical matters under which the government departments, within whose province it is to deal with these subjects, have been enabled to make orders and schemes which, though provisional, are not treated like Provisional Orders, or in any way dealt with under the rules of private bill procedure, but come into operation without the express confirmation of Parliament. Thus some of them, being first laid before both houses of Parliament, become law, if within a certain prescribed period they are not disapproved of by either house; others, after being submitted to Parliament, must be confirmed by Order in Council; and others again, if no petition be presented against them, by parties interested, at their inception by the department, may be confirmed by Order in Council without being laid before Parliament. The following are instances of some of these statutes, viz.: the Endowed Schools Acts, 1869 to 1889; Prisons Act, 1877; Factory and Workshops Act, 1878; the City of London Parochial Charities, 1883 (the powers of which are now expired); the Education Act (Scotland), 1872; the Endowed Institutions (Scotland) Act, 1878; the Educational Endowments (Scotland) Act, 1882; the Educational Endowments (Ireland) Act, 1885; the Oxford and Cambridge Universities Act, 1877; the Universities (Scotland) Act, 1889; and the Union of Benefices Act, 1860.
CHAPTER XXVII.

CONDITIONS TO BE OBSERVED BY PARTIES BEFORE PRIVATE
BILLS ARE INTRODUCED INTO PARLIAMENT. PROOF
OF COMPLIANCE WITH THE STANDING ORDERS BEFORE
THE EXAMINERS.

For the purposes of the standing orders of both houses, all
private bills to which the standing orders are applicable
are divided into the two following classes, according to the
subjects to which they respectively relate:—

1st Class:—
Burial-ground, making, maintaining, or altering.
Charters and corporations, enlarging or altering powers of.
Church or chapel, building, enlarging, repairing, or maintaining.
City or town, paving, lighting, watching, cleansing, or improving.
Company, incorporating, regulating, or giving powers to.
County rate.
County or shire hall, court-house.
Crown, church, or corporation property, or property held in trust
for public or charitable purposes.
Ferry, where no work is to be executed.
Fishery, making, maintaining, or improving.
Gaol, or house of correction.
Gas work.
Land, inclosing, draining, or improving.
Letters patent.
Local court, constituting.
Market, or market-place, erecting, improving, repairing, maintaining,
or regulating.
Police.
Poor, maintaining or employing.
Poor rate.
Powers to sue and be sued, conferring.
Stipendiary magistrate, or any public officer, payment of; and
Continuing or amending an Act passed for any of the purposes
included in this or the second class, where no further work
than such as was authorized by a former Act, is proposed to be
made.

2nd Class:—
Making, maintaining, varying, extending, or enlarging any
Aqueduct.
Bridge.
Archway.
Canal.
Requirements of the standing orders.

The requirements of the standing orders which are to be complied with by the promoters of such private bills before application is made to Parliament, were conveniently arranged by the Commons, in 1847, in the following order; and a similar arrangement has since been adopted by the House of Lords:

1. Notices by advertisement. 2. Notices and applications to owners, lessees, and occupiers of lands and houses. 3. Documents required to be deposited, and the times and places of deposit. 4. Form in which plans, books of reference, sections, and cross-sections shall be prepared. 5. Estimates and deposit of money, and declarations in certain cases.

Similarity of the orders of Lords and Commons.

The requirements of the two houses, under each of these divisions, are now, mutatis mutandis, nearly identical. Their convenient arrangement and general similarity render unnecessary their insertion in this work; and no version of them can, at any time, be safely relied upon by the promoters of bills, except the last authorized edition.

In addition to the standing orders above alluded to, there are others (Nos. 60–68), the compliance with which is to be proved after the introduction of private bills into Parliament; of these, Nos. 60 and 60A relate only to the deposit

1 The standing orders of both houses are numbered alike, from No. 1 to No. 68.
of certain Lords' bills with government departments, Nos. 62–68 will in due course be further mentioned.

In preparing their bills for deposit, the promoters must be careful that no provisions be inserted which are not sufficiently alluded to in the notices, or which otherwise infringe the standing orders. If the bill be for any of the purposes provided for by the Consolidation Acts, so much of those Acts as may be applicable is to be incorporated; and the bill is otherwise to be drawn in general conformity with the model bills, by which the best forms are prescribed.

By the Parliamentary Inquiries Act, 1851, amended by the Harbours Transfer Act, 1862, the promoters of private bills, in which power is sought to construct works on tidal lands, or affecting navigation, may also be required by the board of trade to deposit such statements and other documents as may be necessary to explain the objects of their intended application, in addition to the documents required by the standing orders of either House of Parliament, to be deposited at the admiralty and board of trade. This requirement is wholly independent of the standing orders of either house: but the proceedings under the Act may come, at a later period, under the notice of Parliament (see p. 723).

Compliance with the standing orders was formerly required to be separately proved—in the Commons, before the examiners of petitions for private bills; and in the Lords, before the standing order committee. The parties were

1 Companies Clauses, Lands Clauses, and Railways Clauses Consolidation Acts, 1845, 1860, 1863, and 1869; Land Clauses Consolidation Act, 1869; Companies Clauses Acts, 1867 and 1877; Companies Clauses and Lands Clauses (Scotland) Acts, 1845; the Railways Acts (Ireland), 1851, 1860, and 1864; Markets and Fairs Clauses, Gasworks Clauses, Commissioners Clauses, Waterworks Clauses, Harbours and Docks Clauses, Towns Improvement Clauses, Cemetery Clauses, Telegraph Clauses, and Police Clauses Consolidation Acts, 1847, 1863, and 1871; see Bigg, Clauses Consolidation Acts. These Acts, as stated in the preambles, were passed, "as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertaking, as for ensuring greater uniformity in the provisions themselves."

2 14 & 15 Vict. c. 49. By this Act, the preliminary inquiries under the commissioners of woods and forests were discontinued.
thus subjected to the heavy expense of proving them twice over, with an interval of some months between the proofs. But in 1854, the Lords adopted a most convenient arrange-
ment, which dispensed with a double proof of all those orders which were common to both houses, except in certain cases. Their lordships resolved, "That there shall be one or more officers of this house, to be called 'the examiners for stand-
ing orders,' who shall examine into certain facts required to be proved before the standing order committee;" and appointed as examiners, for the ensuing session, the gentle-
men who held the office of examiners of petitions in the House of Commons. By this arrangement, the examiners were enabled to take the evidence on behalf of both houses simultaneously; and in 1858, the Lords entrusted to the examiners the same powers which they had previously exercised for the Commons. The examiners, therefore, acting on behalf of both houses, now adjudicate upon all facts relating to the compliance or non-compliance with the standing orders; and the standing orders committee in each house determines, upon the facts as reported or certified by them, whether the standing orders ought or ought not to be dispensed with. Of all the improvements connected with private bill legislation, none have been so signal as those in which the examiners were constituted, and both houses concurred for the assimilation and joint proof of their stand-
ing orders.

The two examiners, appointed by the House of Lords and by Mr. Speaker, conduct, for both houses, the investigations which were formerly carried on, in the Commons, by the sub-committees on petitions for private bills, and, in the Lords, by the standing order committee. It will, however, be convenient to assume, for the present, that bills are to be first solicited in the Commons, though the proofs of com-
pliance with the standing orders of both houses are taken simultaneously.

When all the petitions for private bills, with printed copies of the bills annexed, have been deposited, on or before the 21st December, in the Private Bill Office of the House
of Commons, and printed copies of the bills in the Parliament Office of the House of Lords, on or before the 17th December, the "General List of Petitions" is made out in the order of their deposit, and each petition is numbered. The regulations by which that list is made out give every facility to the promoters of bills to select for themselves whatever position may be most convenient. If they secure an early number on the list, their petitions will be heard by the examiners shortly after the commencement of their sittings. If, on the other hand, they desire their case to be heard at a later period, they may place their petition lower down in the list. As the examination for both houses is conducted at the same time, the order in which the cases are heard for the Lords is determined by the general list of petitions, which is prescribed by the Commons only.

In the case of bills brought in by the London County Council under standing order No. 194, the required deposits and notices of advertisement are fixed at the later dates mentioned in standing order No. 194B.

When the time has expired for depositing documents, and complying with other preliminary conditions, the parties interested are enabled to judge whether the standing orders of the two houses have been complied with; and if it should appear to them that the promoters have neglected to comply with any of them, they may prepare memorials complaining of such non-compliance. These memorials are to be deposited in the Private Bill Office of the House of Commons, according to the position of the petition for the bill to which they relate, in the general list.

"If the same relate to petitions for bills numbered in the general lists of petitions; From

1 to 100
101 to 200
201 and upwards

They shall be deposited on or before

Jan. 9. 16.
", 16.
", 23.

And in the case of any petition for bills which may be deposited by leave of the house after the 21st December, such memorials shall

1 See Mr. Speaker's printed regulations for the deposit of petitions in the Private Bill Office, and for determining the order in which they will be heard.
be deposited three clear days before the day first appointed for the examination of the petition.”

S. O. 281
(as amended in 1893).

All memorials are to be deposited in the Private Bill Office of the House of Commons before six o’clock on any day on which the house shall sit, and between eleven and one when the house shall not sit; and two copies are also to be deposited for the use of the examiners, before twelve o’clock on the following day. The time within which memorials are to be deposited, in the Lords, is not prescribed by the standing orders of that house: but the examiners require such deposit to conform with the orders of the Commons; the hearing of memorials on behalf of both houses, at the same time, being indispensable.

These memorials are prepared in the same form, and are subject to the same general rules, as petitions to the house (see p. 495), as well as to other special rules, which will be noticed hereafter. When the time for depositing memorials has expired, the opposed and unopposed petitions are distinguished in the general list; and the petitions are set down for hearing before the examiners, in the order in which they stand in the general list, precedence being given, whenever it may be necessary, to unopposed petitions.

By standing order No. 75—

"In case any proprietor, shareholder, or member of or in any company, association, or co-partnership, shall by himself or any person authorized to act for him in that behalf, have dissented at any meeting called in pursuance of standing orders 62 to 66, such proprietor, shareholder, or member shall be permitted to be heard by the examiner of petitions, on the compliance with such standing orders, by himself, his agent and witnesses, on a memorial addressed to the examiner, such memorial having been duly deposited in the Private Bill Office."

The public sittings of the examiners commence on the 18th January, being about a fortnight before the usual time for the meeting of Parliament.

One of the examiners is required to give at least seven clear days’ notice, in the Private Bill Office of the Commons, of the day appointed for the examination of each petition; and, practically, a much longer notice has been given, as,
for the convenience of all parties concerned, the examiners give notices for the first hundred petitions on the 10th January, and for the second hundred on the 17th January, being, in each case, the day after the memorials relating to such petitions have been deposited.

In order to facilitate the examination of unopposed petitions, the daily lists of cases set down for hearing before each of the examiners are divided into “unopposed” and “opposed” petitions; and the former are placed first on each day. By this arrangement all the cases are appointed to be heard according to their order in the “General List of Petitions”: but precedence is given, on each day, to the unopposed petitions. These are disposed of, and the numerous agents and witnesses relieved from attendance during the subsequent hearing of opposed cases, which often occupy a considerable time.

In case the promoters shall not appear at the time when their petition comes on to be heard, the examiner is required, by the standing orders, to strike the petition off the general list of petitions. The petition cannot afterwards be reinserted on the list, except by order of the house; and if the promoters should desire to proceed with the bill, it will be necessary to deposit a petition, praying that the petition may be reinserted, and explaining the circumstances under which it had been struck off. This petition will stand referred to the standing orders committee, who will determine, upon the statement of the parties, whether the promoters have forfeited their right to proceed or not, and will report to the house accordingly. If the petition for the bill should be reinserted in the general list, the usual notice will be given by the examiner, and the case will be heard at the appointed time.

When the case is called on, the agent soliciting the bill appears before the examiner with a “statement of proofs,” showing all the requirements of the standing orders, applicable to the bill, which have been complied with, and the name of every witness, opposite each proof, who is to prove the matters stated therein. If the bill be opposed on stand-
ing orders, the agents for the memorialists are required to enter their appearances upon each memorial, at this time, in order to entitle them to be subsequently heard. In the mean time the "formal proofs," as they are termed, proceed generally in the same manner, both in opposed and un-opposed cases. Each witness is examined by the agent, and produces all affidavits and other necessary proofs, in the order in which they are set down in the statement; and in addition to the proofs comprised in the statement, the examiner requires such other explanations as he may think fit, to satisfy him that all the orders of the house have been complied with.

Under the standing orders of both houses, "the examiner may admit affidavits in proof of the compliance with the standing orders of the house, unless in any case he shall require further evidence; and such affidavit shall be sworn, if in England, before a justice of the peace; if in Scotland, before any sheriff depute or his substitute; and if in Ireland, before any judge or assistant barrister, or before a justice of the peace."

In an unopposed case, if the standing orders have been complied with, the examiner at once indorses the petition, addressed to the Commons, accordingly; and forwards to the Lords a certificate to the same effect. If not, he certifies, by indorsement on the petition, that the standing orders have not been complied with, and also reports to the House of Commons, and certifies to the House of Lords, the facts upon which his decision is founded, and any special circumstances connected with the case. In an opposed case, when the formal proofs have been completed, the examiner proceeds to hear the memorialists. The agents for the latter ordinarily take no part in the proceedings upon the formal proofs: but if they desire that any of the promoters' proofs.

1 The appearance is a paper, which is previously obtained from the Private Bill Office, certifying that the agent has entered himself at that office as agent for the memorial. This appearance is given to the committee clerk (see also infra, p. 692).

2 One fair copy of such statement is required for the examiner, and another for the committee clerk.
witnesses, who have proved the deposit of documents, the service of notices, or other matters, should be detained for further examination, in reference to allegations of error, contained in the memorials, the examiner directs them to be in attendance until their evidence shall be required.

By the standing orders of both houses, any parties are entitled to appear and to be heard, by themselves, their agents and witnesses, upon a memorial addressed to the examiner, complaining of non-compliance with the standing orders, provided the matter complained of be specifically stated in such memorial, and the party (if any) who may be specially affected by the non-compliance with the standing orders have signed such memorial, and shall not have withdrawn his signature thereto, and such memorial have been duly deposited.

The attendance of witnesses is ordinarily secured by the parties themselves: but if the examiner should report to the house that the attendance of any necessary witness, or the production of any document, cannot be procured without the intervention of the house, the house will make an order accordingly.¹

Unless the matters complained of be specifically stated in the memorial, the memorialists are not entitled to be heard, and the utmost care is consequently required in drawing memorials. When a memorial complains of more than one breach of the standing orders, it is divided into distinct allegations. Each allegation should specifically allege a non-compliance with the standing orders, and should state the circumstances of such alleged non-compliance, in clear and accurate language.

When the agent for a memorial arises to address the examiner, the agent for the bill may raise preliminary objections to his being heard upon the memorial, on any of the grounds referred to in the standing orders, or on account of violations of the rules and usage of Parliament, or other special circumstances. Such objections are distinct from any subsequent objections to particular allegations. It has

¹ Wandle Waterworks, 1853; 108 C. J. 257; 121 ib. 114. 127.
been objected, for example, that a memorial has not been duly signed, so as to entitle the parties to be heard. No proof of the signatures, however, is required in any case, unless there should be some *prima facie* reason for doubting their genuineness. The same rule is applied to the fixing of a corporate seal. On the 16th February, 1846, an instruction was given to the select committee on petitions for private bills, not to hear parties on any petition "which shall not be prepared in strict conformity with the rules and orders of this house." And as memorials addressed to the examiner have supplied the place of petitions to the house, complaining of non-compliance with the standing orders, the examiners have applied to them all the parliamentary rules applicable to petitions; and have otherwise followed the practice of the sub-committees on petitions for private bills.

If no preliminary objection be taken to the general right of the memorialists to appear and be heard, or if it be overruled, the agent proceeds to read the first allegation in his memorial. Preliminary objections may be raised to any allegation; as that it alleges no breach of the standing orders; that it is uncertain, or not sufficiently specific; or that the party specially affected has not signed the memorial, or has withdrawn his signature. In reference to the latter grounds of objection, it may be explained that by numerous decisions of sub-committees and of the examiners, the signatures of parties specially affected are required in reference to such allegations only as affect parties personally, and in which the public generally have no interest. Thus if it be alleged that the name of any owner, lessee, or occupier of property has been omitted from the book of reference, or that he has received no notice, the examiner will not proceed with the allegation, unless the party affected has himself signed the memorial. But in the application of this rule, considerable niceties often arise from the peculiar circumstances of each case.

There are numerous grounds of objection which relate to
matters concerning the public, and do not therefore require the signatures of parties specially affected. Thus objections to the sufficiency of newspaper notices; to the accuracy of the plans, sections, and books of reference, where the errors alleged are patent upon such documents, or are separable from questions relating to property in lands and houses, have always been treated as public objections. The same principle has been applied to objections to the estimate, deposit of money, or declaration; and to allegations that any documents have not been deposited in compliance with the standing orders. It is for public information and protection that all requirements of this character are to be complied with by the promoters of the bill; and any person is therefore entitled to complain of non-compliance on behalf of the public, without proving any special or peculiar interests of his own.

Allegations are to be confined to breaches of the standing orders, and may not raise questions impugning the merits of the bill, which are afterwards to be investigated by Parliament, and by committees of either house. It may be shown, for example, that an estimate is informal, and not such an estimate as is required by the standing orders: but the insufficiency of the estimate is a question of merits, over which the examiner has no jurisdiction. Again, in examining the accuracy of the section of a proposed railway, the examiner will inquire whether the surface of the ground be correctly shown, or the gradients correctly calculated: but he cannot entertain objections which relate to the construction of the work, its engineering advantages, its expense, or other similar matters, which will be afterwards considered by the committee on the bill.

The examiner decides upon each allegation, and, whenever it is necessary, explains the grounds of his decision. When all the memorials have been disposed of, he endorses the petition, and, if the standing orders have not been complied with, he makes a report to one house, and a certificate to the other, as already stated. In case he should feel doubts as to the due construction of any standing order, in
its application to a particular case, he may make a special report of the facts to both houses, without deciding whether the standing order has been complied with or not.

When the petition has been endorsed by the examiner, it is returned to the Private Bill Office, where the agent can obtain it, in order to arrange for its presentation to the House of Commons, by a member. In case the bill should originate in the House of Lords, the petition is retained in the Private Bill Office; and the examiner makes a report to the House of Commons, as to the compliance or non-compliance with the standing orders.

All the proceedings preliminary to the application to Parliament being thus completed, the further progress of a private bill in the House of Commons is reserved for the next chapter.

Where a dissolution of Parliament is anticipated before the private business of the session has been disposed of, it has been customary to make orders, enabling the promoters of private bills to suspend further proceedings, and to afford facilities for proceeding with the same bills, without repeating proofs of compliance with standing orders, or other unnecessary formalities, in the next session. The orders made in 1859, 1880, 1886, and 1892, for this purpose, were peculiarly simple and effectual, and will probably be followed on similar occasions, to the exclusion of earlier precedents.\(^1\) In 1871, the Tramways (Metropolis) Bills were suspended in a similar manner, in order to be proceeded with in the next session.\(^2\)

1 11th April, 1859, 114 C. J. 165; 20th June, 1892, 147 ib. 379. 416.
11th March, 1880, 135 ib. 95. 111; 126 ib. 335; 35 & 36 Vict. c. 43.
17th June, 1886, 141 ib. 280. 334;
CHAPTER XXVIII.

COURSE OF PROCEEDINGS UPON PRIVATE BILLS IN THE
HOUSE OF COMMONS; WITH THE RULES, ORDERS,
AND PRACTICE APPLICABLE TO EACH STAGE OF SUCH
BILLS IN SUCCESSION, AND TO PARTICULAR CLASSES
OF BILLS.

The further progress of a private bill through the House of
Commons will now be followed, step by step, precisely in
the order in which particular rules are to be observed by
the parties, or enforced by the house or its officers: but this
statement of the various forms of procedure may be in-
troduced by a few observations explanatory of the general
conduct of private business in the House of Commons.

I. Every private bill or petition is solicited by an agent,
upon whom various duties and responsibilities are imposed
by the orders of the house. The rules laid down by the
Speaker, by authority of the house, in 1837, and subse-
quently revised, are to the following effect:—

1. "No person shall be allowed to act as a parliamentary agent
until he shall have subscribed a declaration before one of the clerks in
the Private Bill Office, engaging to observe and obey the rules, regu-
lations, orders, and practice of the House of Commons, and also to pay
and discharge from time to time, when the same shall be demanded,
all fees and charges due and payable upon any petition or bill upon
which such agent may appear; and after having subscribed such de-
claration, and entered into a recognizance or bond (if hereafter re-
quired), in the penal sum of 500L, with two sureties of 250L each, to
observe the said declaration, such person, if in other respects qualified
to act as hereinafter provided, shall be registered in a book to be kept
in the Private Bill Office, and shall then be entitled to act as parlia-
mentary agent: provided that upon the said declaration, recognizance
or bond and registry, no fee shall be payable."

2. "The declaration before mentioned, and the recognizance and Form.
bond, if hereafter required, shall be in such form as the Speaker may
from time to time direct."

3. "One member of a firm of parliamentary agents may subscribe
the required declaration or enter into the required recognizance or
bond on behalf of his firm: but the names of all the partners of such
firm shall be registered with such declaration; and notice shall be given, from time to time, to the clerks of the Private Bill Office, of any addition thereto or change therein."

4. "No person shall be allowed to be registered as a parliamentary agent, unless he is actually employed in promoting or opposing some private bill or petition pending in Parliament."

5. "When any person (not being an attorney, or solicitor, or writer to the signet) applies to qualify himself, for the first time, to act as a parliamentary agent, such application shall be made in writing, and he shall produce to one of the clerks of the Private Bill Office a certificate of his respectability from a member of Parliament, or a justice of the peace, or a barrister-at-law, or an attorney, or solicitor."

6. "No person’s name, other than that of an attorney, or solicitor, or writer to the signet, shall be printed on any private bill, as parliamentary agent for such bill, unless and until his name has been duly inscribed upon the register of parliamentary agents."

7. "No notice shall be received in the Private Bill Office for any proceeding upon a petition or bill, until an appearance to act as the parliamentary agent upon the same shall have been entered in the Private Bill Office; in which appearance shall also be specified the name of the solicitor (if any) for such petition or bill."

8. "Before any party shall be allowed to appear or be heard upon any petition against a bill, an appearance to act as the parliamentary agent upon the same shall be entered in the Private Bill Office; in which appearance shall also be specified the name of the solicitor, and of the counsel who appear in support of any such petition (if any counsel or solicitor are then engaged), and a certificate of such appearance shall be delivered to the parliamentary agent, to be produced to the committee clerk."

9. "In case the parliamentary agent for any petition or bill shall be displaced by the solicitor thereof, or such parliamentary agent shall decline to act, the responsibility of such agent shall cease, upon a notice being given in the Private Bill Office, and a fresh appearance shall be entered upon such petition or bill."

10. "Every agent conducting proceedings in Parliament before the House of Commons shall be personally responsible to the house, and to the Speaker, for the observance of the rules, orders, and practice of Parliament, as well as of any rules which may from time to time be prescribed by the Speaker, and also for the payment of the fees and charges due and payable under the standing orders."

11. "Any parliamentary agent who shall wilfully act in violation of the rules and practice of Parliament, or of any rules to be prescribed by the Speaker, or who shall wilfully misappropriate himself in prosecuting any proceedings before Parliament, shall be liable to an absolute or temporary prohibition to practise as a parliamentary agent, at the pleasure of the Speaker; provided that upon the application of such parliamentary agent, the Speaker shall state in writing the grounds for such prohibition."
12. "No person who has been prohibited from practising as a parliamentary agent, or struck off the rolls of attorneys or solicitors, or disbarred by any of the inns of court, shall be allowed to be registered as a parliamentary agent, without the express authority of the Speaker."

13. "No written or printed statement relating to any private bill shall be circulated within the precincts of the House of Commons without the name of a parliamentary agent attached to it, who will be responsible for its accuracy."

14. "The sanction of the chairman of ways and means, in writing, is required to every notice of a motion prepared by a parliamentary agent, for dispensing with any sessional or standing order of the house."

The name, description, and place of residence of the parliamentary agent in town, and of the agent in the country (if any), soliciting a bill, are entered in the "private bill register," in the Private Bill Office, which is open to public inspection.

Besides these regulations, there are certain disqualifications for parliamentary agency. Members may not be agents; and in compliance with the recommendation of a select committee on the House of Commons offices in 1835, no officer or clerk belonging to the establishment is allowed to transact private business before the house, for his emolument or advantage, either directly or indirectly.\(^1\)

II. It has been stated elsewhere, that the public business for each day is set down in the order book, either as notices of motions or orders of the day: but the notices in relation to private business are not given by a member, nor entered in the order book, except in the case of any special proceedings, but are required to be delivered at the Private Bill Office, at specified times, by the agents soliciting the bills. These notices will each be described in their proper places: but one rule applies to all of them alike—they must be delivered before six o'clock in the evening of any day on which the house shall sit; and between eleven and one on any day on which the house shall not sit; and after any day on which the house has adjourned beyond the following day, no notice may be given for the first day on which it shall

NOTICES AND TIME FOR PRIVATE BUSINESS.

If not duly given, proceedings void.

Notices published.

Time for private business.

S. O. 225.

S. O. 225A.

What to be deemed private business.

Order of proceedings on private business. S. O. 225.

If not duly given, proceedings void.

If any stage of a bill be proceeded with when the notice has not been duly given, or the proper interval allowed, or if notice be taken of any other informality, such proceeding will be null and void, and the stage must be repeated.¹

All notices are open to inspection in the Private Bill Office: but for the sake of greater publicity and convenience, they are also printed with the votes; and members and parties interested are thus as well acquainted with the private business set down for each sitting, as with the public notices and orders of the day.

III. The time set apart for the consideration of all matters relating to private bills is at three o'clock in the afternoon, immediately after the meeting of the house; or at twelve on Wednesday, and at the commencement of other morning sittings; when the orders of the day and notices of motions are proceeded with in the order in which they appear in the printed "private business list;" and provisional order bills are placed after the private business.

But to entitle a motion to be heard at the time of private business, it must relate to a private bill before the house, or strictly to private business in some other form. Resolutions for the amendment of the standing orders, and matters indirectly connected with the private business of the house, are also taken into consideration at the time of private business.²

As soon as the house is ready to proceed to private business, the Speaker desires the Clerk at the table to read from the private business list the titles of the several bills set down for the day, which are read in the following order: 1. Consideration of Lords' amendments; 2. Third readings; 3. Consideration of bills ordered to lie upon the table; 4. Second readings; and 5. First readings. If, upon the reading of any title, no motion be made relative to the bill, or if the motion be opposed, further proceedings are adjourned until the next sitting of the house (see p. 226).

¹ 100 C. J. 423; 101 ib. 167; 106 ib. 61; 139 ib. 57. ib. 75; 107 ib. 157; 122 ib. 66; 133 ² 109 ib. 396, &c.
Every form and proceeding, in the offices of the house, connected with the progress of a bill, is managed by a parliamentary agent (or by a solicitor who has entered his name as agent for the bill), or by officers of the house: but, in the house itself, no order can be obtained, except by a motion made by a member, and a question proposed and put in the usual manner, from the chair; and the rules of the house regarding motions (see p. 263) are applicable to all motions made at the time of private business, except when opposed (see p. 708).

IV. Every vote of the house upon a private bill is entered in the votes and journals; and there are also kept in the Private Bill Office, registers, in which are recorded all the proceedings, from the petition to the passing of the bill, which are open to public inspection daily. The entries in these registers specify briefly each day's proceedings before the examiners, or in the house, or in any committee to which the bill may be referred. As every proceeding is entered under the name of the particular bill to which it refers, it can be immediately referred to, and the exact state of the bill discovered at a glance.

After these explanations, the proceedings in the house may be described, without interruption, precisely in the order in which they usually occur.

When the petition for the bill has been indorsed by one of the examiners, it must be presented to the house, by a member, with a printed copy of the bill annexed, not later than three clear days after such indorsement; or if, when so indorsed, the house should not be sitting, then not later than three clear days after the first sitting; and in case the house should not sit on the latest day allowed for the presentation of the petition, it is to be presented on the first day on which the house shall again sit. If the petition for the bill relate to any claim upon the Crown, the Queen's recommendation must be signified; and the petition will be referred to a committee of the whole house.1

If the standing orders have been complied with, the bill

1 Earl of Perth and Melfort's Compensation Bill, 1856, 111 C. J. 247, &c.
is at once ordered to be brought in. If not complied with,
the petition is referred to the standing orders committee;
and the report of the examiner, having been laid upon the
table by the Speaker, is also referred.

On the 7th March, 1845, the South Eastern Railway
Company petitioned for leave to withdraw their original
petition for a bill, and to present petitions for seven separate
bills with reference to the objects comprised in their original
petition. Their petition was referred to the standing orders
committee, who reported, on the 11th March, that if the
house shall give leave to withdraw their original petition,
the sessional order ought to be dispensed with, and that the
parties be permitted to present petitions for seven separate
bills. On the 14th March, the original petition was with-
drawn, and leave given to present petitions for seven separate
bills.¹ In the same manner, leave was given, on the 14th
March, 1845, that two London and Croydon Railway Bill
petitions be withdrawn, and that petitions might be pre-
sented for five different bills;² again on the 16th February,
1892, leave was given that the London and North Western
Railway (New Railways) Bill might be divided into two
bills.³

By standing order No. 193, no private bill shall be brought
in otherwise than upon petition, signed by the parties, or
some of them, who are suitors for the bill; and bills which
have been proceeding as public bills have sometimes been
withdrawn on notice being taken that they were private
bills, and ought to have been brought in upon petition.⁴

But bills of a local character, to which the standing orders
of the house are applicable, are occasionally brought in, by
order, as public bills, without the form of a petition, and
are familiarly known as hybrid bills.⁵ Their further pro-

¹ 100 C. J. 136.
² Ib. 198.
³ 147 ib. 46.
⁴ 80 ib. 488. 490. 491.
⁵ Knightbridge and Kensington
Openings Bill, 1842; Holyhead Har
bour Bill, 1847; Caledonian Canal
Bill; Windsor Castle Approaches

Bill, 1848; Dublin Improvement
hybrid bills,
(No. 2) Bill, 1849; Portland Har
bour and Breakwater Bill, 1850;
Smithfield Market Removal Bill,
1851; Metropolis Water Supply Bills,
1851 and 1852; Belfast Municipal
Boundaries Bill, 1853; Public Offices
Extension Bill, 1857; Thames Em-
Chapter XXVIII.
gress after first reading, however, is subject to the proof of compliance with the standing orders before the examiner. They are also liable to the payment of fees: but in the greater number of cases, the objects are so far of a public nature that the fees are remitted.

Where provisional orders have taken the place of private bills, the bills for confirming such orders are introduced as public bills, and are subject to the proof of certain deposits, before the examiner, after being read the first time.

If, after the introduction of a private bill, any additional provision should be desired to be made in the bill, in respect of matters to which the standing orders are applicable, a petition for that purpose should be presented to the house, with a printed copy of the proposed clauses annexed. The petition will be referred to the examiners of petitions for private bills, who are to give at least two clear days' notice of the day on which it will be examined. Memorials complaining of non-compliance with the standing orders, in respect of the petition, may be deposited in the Private Bill Office, together with two copies thereof, before twelve o'clock on the day preceding that appointed for the examination of the petition; and the examiner may entertain any memorial, although the party (if any) who may be specially affected by the non-compliance shall not have signed it. After hearing the parties, in the same manner as in the case of the original petition for the bill, the examiner reports to the house whether the standing orders have been complied with or not, or whether any be applicable to the petition for additional provision.

Under standing orders No. 61 of both houses of Parliament, there is an alternative method of dealing with some cases of additional provision in a bill. Under these standing orders, whenever during the progress through either house of any bill of the second class, any alteration has been made

bankment Bills, 1862 and 1863; Metropolis Gas Bills, 1867 and 1868; Admiralty and War Offices Rebuilding Bill, 1873; Parochial Charities (London) Bill; Public Offices Site Bill, 1882; Hyde Park Corner (New Street) Bills, 1883, 1884, 1886; London Open Spaces Preservation Bill, 1884; Coal and Wine Duties (Abolition) London Bill, 1889.
in any work authorized by such bill, proof may be given, in
the house following that in which such bill originated, before
the examiners, of the various matters which are the subject
of the standing orders generally to be complied with in
respect of bills of the second class, and which are fully set
forth in the standing orders above mentioned.\(^1\)

It has occasionally happened that petitions for additional
provision have sought for public legislation affecting the
stamp duties or other branches of the revenue; which,
according to the rules of the house, are required to originate
in a committee of the whole house (see p. 527). In such cases
the petition is presented, and the Queen’s recommendation
having been signified, the house resolves to go into com-
mittee on a future day, to consider the matter of such
petition. The matter 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.\(^2\) Such committees are now taken at
the time of private business. 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.

In the Birkenhead Docks Bill, 1850, an arrangement
having been made with the commissioners of woods and
forests, for a payment out of the land revenues of the Crown,
a resolution was agreed to, in the proper form, and the bill
recommitted to a committee of the whole house, with an
instruction to make provision.\(^3\) In the case of the Forest of
Dean Central Railway Bill, 1856, after the bill had been
reported from the committee, a resolution was agreed to for
an advance to the company out of the land revenues of the
Crown; the bill was recommitted to a committee of the

\(^1\) South Eastern Railway Bill, 1889.

\(^2\) National Loan Fund Life Assurance Society Bill, 1855, 110 C. J. 217; Globe Insurance Company Bill, 1858, 113 ib. 169; Law Life Assurance Society Bill, 25th June, 1863; Land Securities Company Bill, 10th

\(^3\) 105 C. J. 369. 423.
The committee on standing orders consists of eleven members, nominated at the commencement of every session, of whom five are a quorum. To this committee are referred all the reports of the examiners, in which they report that the standing orders have not been complied with, whether the bills originate in the Lords or in the Commons; and it is their office to determine and report to the house whether such standing orders ought or ought not to be dispensed with; and whether, in their opinion, the parties should be permitted to proceed with their bill, or any portion of it; and under what conditions (if any); as, for example, after publishing advertisements, depositing plans, or amending estimates, when such conditions seem to be proper.

If any special report be made by the examiner, as to the construction of a standing order, it will also be referred to the standing orders committee. The committee, in such a case, are to determine, according to their construction of the standing order, and on the facts stated in the examiner's report, whether the standing orders have been complied with or not. If they determine that the standing orders have been complied with, they so report to the house; and if not complied with, they proceed to consider whether the standing orders ought to be dispensed with. To this committee also stand referred all petitions which have been deposited in the Private Bill Office, praying that any of the sessional or standing orders of the house may be dispensed with; or that petitions for private bills which have been struck off the general list by the examiners, may be reinserted, and all petitions opposing the same; and they report their opinion upon such petitions to the house. Their duties, in reference to clauses and amendments and other matters, will be adverted to in describing the proceedings to which they relate.

According to the usual practice of this committee, written statements are prepared, on one side by the agent for the

\[ 1 \, 111 \, C. \, J. \, 266. \]
bill, and on the other by the agents for memorialists who
have been heard by the examiner. When these statements
have been read by the committee, they determine whether
the standing orders ought or ought not to be dispensed with,
and whether "the parties should be permitted to proceed
with their bill, and under what (if any) conditions." The
parties are called in and acquainted with the determination
of the committee, which is afterwards reported to the house.
It is not usual to hear the parties, except for the explanation
of any circumstances which are not sufficiently shown by
the written statements. But in some inquiries of a special
character which have been referred to the committee, they
have heard agents and examined witnesses before they
have agreed to their report.

The committee, in their report to the house, do not explain
the grounds of their determination: but the principles and
general rules by which they are guided may be briefly
stated. The report of the examiner being conclusive as to
the facts, it is the province of the committee to consider
equitably, with reference to public interests and private
rights, whether the bill should be permitted to proceed. If
the promoters appear to have attempted any fraud upon the
house, or to be chargeable with gross or wilful negligence,
they will have forfeited all claim to a favourable considera-
tion. But assuming them to have taken reasonable care in
endeavouring to comply with the orders of the house, and
that their errors have been the result of accident or inad-
vertence, not amounting to laches, their case will be con-
sidered according to its particular circumstances. The
committee will then estimate the importance of the orders
which have been violated, the character and number of
separate instances of non-compliance, the extent to which
public and private interests may be affected by such non-
compliance, the importance and pressing nature of the bill
itself, the absence of opposition, or other special circum-

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1 Edinburgh and Perth Railway Bill, 1847, 102 C. J. 226. 293; and
Edinburgh and Northern Railway Bill, 1849, 104 ib. 37. 48.
Evidence printed at the expense of
stances. And, according to the general view which the committee may take of the whole of the circumstances, they will report that the standing orders ought, or ought not, to be dispensed with.

If the standing orders committee report that indulgence should be granted to the promoters of a bill, they are allowed to proceed with the bill or with the additional provision, either at once, or after complying with the necessary conditions, according to the report of the committee. To give effect to this permission, the proper form to be observed is for a member to move that the report be read, and that leave be given to bring in the bill. In the case of a petition for additional provision, no further proceeding in the house is necessary: but the parties have leave to introduce the provision if the committee shall think fit. In 1853, the standing orders committee had reported that the parties should have leave to make provision in the Lands Improvement Bill, pursuant to their petition. In the mean time the amendments proposed to be made in other parts of the bill had become so numerous, that the chairman of ways and means required the promoters to withdraw it, and bring in another. On bill (No. 2) being ordered, the resolution of the house on the report of the standing orders committee was read, and the gentlemen ordered to bring in the bill were instructed to make provision pursuant to the petition. A second reference to the standing orders committee was thus avoided. The compliance with orders for giving notices, depositing amended plans, &c., is, in ordinary cases, required to be proved before the committee on the bill, but, in special cases, before the examiners.

If the committee report that the standing orders ought not to be dispensed with, their decision is generally acquiesced in by the promoters, and is fatal to the bill. But in order to leave the question still open for consideration, the house agree to those resolutions only which are favourable to the progress of bills, and pass no opinion upon the unfavour-

1 108 C. J. 406. 104 ib. 76; Great Northern Railway
2 Dublin Improvement Bill, 1849, Bill, 1849, ib. 81, &c.
able reports, which are merely ordered to lie upon the table.

In 1883, the examiner having reported that in the case of the Manchester Ship Canal Bill the standing orders had not been complied with in respect of the proposed dredging of the channel of the river Mersey, the standing orders committee resolved that the promoters should be allowed to proceed with their bill on striking out all the powers relating to that portion of the works;¹ and in the Lords, the standing orders committee arrived at the same conclusion.²

Occasionally, the decision of the standing orders committee has been excepted to, and the house has ordered that the case be referred back for reconsideration.³

In one case⁴ the committee had decided that the standing orders ought not to be dispensed with: but by a clerical error it was reported that the standing orders ought to be dispensed with, and a bill was ordered to be brought in. The report was referred back to the committee, and the subsequent proceedings declared null and void. The committee again decided that the standing orders ought not to be dispensed with, and so reported to the house: but the promoters subsequently presented a petition for leave to present a petition for a bill, and their second bill ultimately received the royal assent. In another case, notice being taken that a report of the committee was incorrect, it was referred back to the committee.⁵

In the case of the Albert Station and Mid-London Railway Bill, in 1863, the resolution of the committee was recommitted; and a petition referred to the committee, with an instruction to inquire and report whether the special circumstances stated were such as to render it just and

¹ 138 C. J. 20. 61. ² Lords' Minutes, 13th April, 1883. ³ Great Northern Railway, &c., Bill, 1862, 117 C. J. 307; Dee Conservancy, 1885, 140 ib. 295; Felixstowe, Midlands, &c., Railway Bill, 1886, 141 ib. 196; Peckham, &c., Tramways Bill, 1887, 142 ib. 234; Richardson & Co. (Warrants) Bill, 1890, 145 ib. 255. ⁴ West Riding Union Railway, 1846, 101 ib. 176. 233. 252. ⁵ Liverpool Tramways Bill, 1867, 122 ib. 66.
expedient that the standing orders should be dispensed with; but the committee, after investigation, repeated their resolution that the orders ought not to be dispensed with. In 1870, certain resolutions of the committee, with the bills and the reports of the examiners, were referred back to the committee, and petitions were referred to them, with an instruction to report whether special circumstances render it expedient that the standing orders should be dispensed with. The report was favourable, and the bills were permitted to proceed. In 1883, in the case of the Dundalk Water Bill, the committee having reported that the standing orders ought not to be dispensed with, the report was recommitted: but the committee adhered to their previous decision.

If the promoters of the bill, without desiring to disturb the decision of the standing orders committee, still entertain hopes that the house may be induced to relax the standing orders, or be willing to abandon portions of their bill; or if there be special circumstances, such as the consent of all parties, or the urgent necessity of the bill being passed in the present session, they should deposit a petition, praying for leave to deposit a petition for a bill, and stating fully the grounds of their application. The petition will stand referred to the standing orders committee, who, after hearing the statements of the parties, will report to the house whether, in their opinion, the parties should have leave to deposit a petition for a bill. If leave be given, the petition is deposited in the Private Bill Office; when the case is examined, and the petition certified by the examiner, in the same manner as if it had been originally deposited before the 21st December. But in such cases, the standing orders previously reported by the examiner not to have been
complied with, are taken to have been dispensed with; and unless any further breaches are discovered, he now reports that the standing orders have been complied with.

If parties desire to solicit a bill during the current session, who have not deposited a petition for the bill before the 21st December, they may deposit a petition, praying for leave to deposit a petition for a bill, and explaining the circumstances under which they had been prevented from complying with the orders of the house, as to the deposit of their petition at the proper time. Their petition will stand referred to the standing orders committee, and if they succeed in making out a case for indulgence, leave will be given by the house, on the report of the committee, to deposit a petition for a bill, which will be proceeded with in the usual manner.¹

There have been instances of such urgent necessity for legislation, that a private bill has been brought in on motion; in such cases, the standing orders have been suspended by order of the house, and leave given to bring in the bill.²

When leave has been obtained to bring in a private bill, it is required to be presented, by being deposited in the Private Bill Office, not later than one clear day after the presentation of the petition; or, where the petition has been referred to the standing orders committee, then not later than one clear day after the house has given the parties leave to proceed. It must be printed on paper of a folio size (as determined by the Speaker), with a cover of parchment attached to it, upon which the title is written; and the short title of the bill, as first entered in the votes, is to correspond with that at the head of the advertisement. The names of the members ordered to prepare and bring in

¹ Ratcliff Gas Company, 1854, 109 G. J. 340; Scinde Railway Bill, 1857, 112 ib. 295; Bahia and San Francisco Railway, 1860, 115 ib. 244; Charing Cross Railway, 1862, 117 ib. 283; Albert Park (Dublin), 1868, 121 ib. 218; 122 ib. 171; Kirkcaldy, &c., Railway Bill, 1891, 146 ib. 58.
² East London Railway (Payment of Debts) Bill, 1878, 133 ib. 320; Metropolitan Board of Works (District Railway) Bill, 1888, 138 ib. 242; Manchester Ship Canal Bill, 1887, 142 ib. 276; Hull, Barnsley, &c., Railway Bill, 1889 (to raise further money by debentures), 144 ib. 295.
the bill are printed on the back; and the agent must take care to have the express authority of the members for such use of their names; for in case of any irregularity in this respect, the bill will be ordered to be withdrawn.\(^1\)

On the 20th February, 1846, the solicitor and agent for a Schedules bill petitioned for leave to add schedules which had been accidentally omitted from the printed copies of the bill, and the house allowed the parties to make the alteration.\(^2\)

The proposed amount of all rates, tolls, fines, forfeitures, Rates and tolls in italics, or penalties, or other matters which must be settled in committee, are ordered to be inserted in italics, in the printed bill (see p. 529).

The several bills, after they have been presented in the First reading. Private Bill Office, are laid upon the table of the house for the first reading, together with a list of such bills, and are read the first time in the order in which they stand in the list for each day: but before the first reading of every private bill (except name bills), printed copies of the bill must be delivered at the Vote Office for the use of members; and

"all bills for confirming provisional orders or certificates are set Provisional down for consideration, each day, in a separate list, after the private order bills, business, and arranged in the same order as that prescribed by the S. O. 225A. standing orders for private bills. No bill, originating in this house, S. O. 193A. for confirming a provisional order or certificate, is to be read the first time after the first day of June."

Bills for confirming provisional orders or certificates, being brought in as public bills, are, after the first reading, referred to the examiners, before whom compliance with standing orders Nos. 38 and 39 are to be proved, under which the promoters of a provisional order must deposit, in the Private Bill Office and the office of the central authority (as described in standing order No. 183), a statement relating to the taking of houses inhabited by the labouring classes; and also in the Private Bill Office, duplicates of plans, &c., which have been deposited with a government department; and these bills, and also hybrid bills after the first reading,

\(^1\) Great Dover Road Bill, 11th March, 1861, 116 ib. 99; 161 H. D. S s. 1715.

\(^2\) Southport Improvement Bill, 20th and 23rd Feb. 1846, 101 C. J. 183. 185.
are not further proceeded with until after the examiners' report.

After first reading, bills conferring certain additional powers on the promoters, being companies constituted by Act of Parliament or otherwise, are referred to the examiner before whom compliance with standing orders Nos. 62 to 66 have to be proved. These standing orders require that the bills be approved of by the proprietors of such companies at meetings held specially for the purpose. After the first reading also of railway bills, which impose a charge on county cess, or a local rate in Ireland, compliance with standing order No. 67 has to be similarly proved with regard to the consent of the grand jury or local authority. At the same stage also of a bill brought from the Lords for establishing a company, the consent of the directors, &c., named in the bill has, in compliance with standing order No. 68, to be so proved; and all bills brought from the House of Lords are, after first reading, referred to the examiner, who has to report as to the compliance with such standing orders only as have not been previously inquired into.

Between the first and second readings of a private bill, or a bill for confirming a provisional order or certificate, there may not be less than three clear days, nor more than seven, unless the bill has been referred to the examiners; in which case it may not be read a second time later than seven clear days after the report of the examiner, or of the standing orders committee. The agent for the bill is required to give three clear days' notice in writing, at the Private Bill Office, of the day proposed for the second reading, and no such notice may be given until the day after that on which the bill has been ordered to be read a second time; and, should it be afterwards discovered that such notice had not been duly given, the proceedings upon the second reading will be declared null and void.1 Meanwhile the bill is in the custody of the Private Bill Office, where it is examined as to its conformity with the rules and standing orders of the house. If the bill be improperly drawn, or at variance

1 North Union Railway Bill, 1846, 101 C. J. 371.
with the standing orders, or the order of leave, the order No. 2 Bill. for the second reading is discharged, the bill is withdrawn, S. O. 72, and leave is given to present another.¹ The bill so presented is distinguished from the first bill by being numbered (2), and, having been read a first time, is referred to the examiners of petitions for private bills. Two clear days' notice is given of the examination, and memorials may be deposited before twelve o'clock on the day preceding that appointed. The examiner inquires whether the standing orders, which have been already proved in respect of the first bill, have equally been complied with in respect of the bill No. 2, and reports accordingly to the house; when the bill proceeds in the ordinary course.

The House of Commons will not allow peers to be concerned in the levy of any charge upon the people: but the relaxation of its privileges, in regard to tolls and charges for services performed, not being in the nature of a tax, has led to a considerable change in recent practice.

"The clerks in the Private Bill Office are particularly directed to take care that in the examination of all private bills levying any rates, tolls, or duties on the subject, peers of Parliament, peers of Scotland, or peers of Ireland, are not to be inserted therein, either as trustees, commissioners, or directors of any company, except where such rates, tolls, or duties are made or imposed for services performed, and are not in the nature of a tax."²

In 1845, Mr. Speaker called the attention of the house to a bill which contained a clause giving compulsory power to take lands, of which no notice had been given, and without the proper plans, sections, and estimates having been deposited according to the standing orders. The order for the second reading was discharged, and the bill referred to the committee on petitions for private bills.³ The committee reported that the standing orders had not been complied with; and were instructed to inquire by whom, and under what circumstances, the violation of the standing orders had been committed.⁴ Their report was referred to the standing

¹ 92 C. J. 254. 425; 99 ib. 157. 1859.
² Midland Railway Branches Bill, 1845, 100 C. J. 219.
³ By Speaker's order, 15th Feb. 247.
orders committee, who determined that the standing orders ought not to be dispensed with; and the bill was not proceeded with.\(^1\)

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.\(^2\) This is the first occasion on which the bill is brought before the house otherwise than \textit{pro formā}, 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. If the second reading be deferred for three or six months, or if the bill be rejected, no new bill for the same object can be offered until the next session (see p. 291). In order to avert surprises, if the second or third reading of a bill, or the consideration of a bill as amended, or any proposed clause or amendment be opposed, its consideration is postponed until the day on which the house shall next sit, or its postponement may be moved to a more distant day (see p. 226).

The chairman of the committee of ways and means shall make a report to the house previously to the second reading of any private bill by which it is intended to authorize, confirm, or alter any contract with a government department whereby a public charge has been or may be created; and

\(^1\) C. J. 262. 385. 419.  
\(^2\) But see Minutes of Committee on Mersey Conservancy Bill, 1857; and 147 H. D. 3 s. 183.
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his report, with a copy of the contract and of any resolution to be proposed thereon, is to be circulated with the votes two clear days before the consideration of the resolution in a committee of the whole house, which is not to take place till after the time of private business; nor is the report of the resolution to be considered till three clear days after the resolution has been agreed to. With regard to packet and telegraphic contracts, see p. 568, and standing order No. 64 (Pub. Bus.).

When a private bill has been read a second time, and committed, it stands referred, if not a railway, tramway, tramroad, subway, canal, or divorce bill, to the committee of selection; if a railway, tramway, tramroad, subway, or canal bill, to the general committee on railway and canal bills; and if a divorce bill, to the select committee on divorce bills. On the 22nd June, 1863, after the London (City) Traffic Regulation Bill had been so committed, a motion was made to suspend the standing order, and to commit the bill to a committee of fifteen, ten to be nominated by the house, and five by the committee of selection: but it was not agreed to by the house. When a bill has been read a second time, by mistake, the order that the bill be now read a second time has been discharged, on a later day, and another day appointed for the second reading,1 or the bill has been referred back to the examiner.2

Every bill for confirming provisional orders or certificates shall, after second reading, stand referred to the committee of selection or to the general committee on railway and canal bills, as the case may require, and be subject to the standing orders regulating the proceedings on private bills so far as they are applicable.

After a bill has been read a second time, an instruction may be given to the committee for its direction, if the house think fit.

Instructions to committees on private bills are either mandatory or permissive. Mandatory instructions leave

1 127 C. J. 135; 130 ib. 72; Southampton Corporation Bill, 139 ib. 57. 2 Pacific Steam, &c., Company Bill, 133 ib. 61.
the committee no option in the exercise of their functions with regard to the particular matter, the subject of the instruction. For example, on the 15th April, 1872, an instruction was moved to the committee on the Metage of Grain (Port of London) Bill, to provide for the abolition of compulsory metage, and of any tax or charge upon grain imported into London. Exception was taken to an instruction which imposed an absolute condition upon the decision of the committee. The Speaker, however, stated that such an instruction was unusual, but was quite within the competence of the house; and the motion for the instruction was agreed to. On the 14th June, 1887, instructions were given to the committee on the Manchester Ship Canal Bill, that they should report the bill not later than Monday, the 27th June; and in 1888, to the committee on the Brixton Park Bill, that they do provide that the purchase of the park be not made till the opinion of the ratepayers of Lambeth had been taken on the desirability of the purchase. In 1890, instructions were given to the committees on the London County Council Bill, and the Wolverhampton Corporation Bill, to omit certain clauses.

In 1890 and 1891, an instruction was given to the committee on police and sanitary regulations not to sanction in any bill referred to them any clauses relating to matters which were the subject of provisions in the Infectious Diseases Notification Act and other Acts; on the 17th March, 1892, however, the terms of this instruction were relaxed on the condition that the committee reported that the insertion of such clauses should be allowed, with the reasons on which their opinion was founded. On the other hand, the Speaker has ruled that a mandatory instruction to strike out of a provisional order bill one of the orders scheduled to the bill was quite unprecedented, adding that, practically each order being a separate private bill, an instruction to negative a whole bill would be quite out of

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1 210 H. D. 3 s. 1260. 2 142 J. 99. 3 143 ib. 105; a similar instruction on the Vauxhall Park Bill was 4 145 ib. 104; 146 ib. 94. 5 145 ib. 146; ib. 73; 147 ib.; see also 148 ib. 95.
order, and that the remedy of the opponents of the order was to appear as petitioners against it before the committee to which the bill was referred.¹

Other instructions, also mandatory, direct committees to inquire into and report upon matters which, in the opinion of the house, are relevant to the bill, though not strictly within the ordinary course of proceeding. For instance, in 1866, instructions were given to the committee on the London (City) Corporation Gas Bill, to inquire into the Metropolis Gas Act, 1860,² and to the committee on the London (City) Traffic Regulation Bill, to inquire into the best means of regulating the traffic of the metropolis;³ and in 1867, the committee on the East London (Thames Supply) Bill were instructed to inquire into the Metropolis Water Act, 1852.⁴

In 1878, an instruction was given to a committee on Tramway Bills, to consider and report under what conditions (if at all) the use of steam or other mechanical power might be authorized.⁵ In 1884, an instruction was moved to the committee on the Dublin, Wicklow, and Wexford Railway Bill, to inquire and report whether the proposed railway would injuriously affect an open space in Dublin, and objection being taken that the committee already possessed the power to be conferred by the instruction, the Speaker said that the instruction, being mandatory, was perfectly in order.⁶ In the same year, an instruction was given to the committee on the Ennerdale Railway Bill, to inquire and report whether the proposed railway would interfere with the enjoyment of the public, and of visitors to the lake district, by injuriously affecting the scenery; and in 1887, a similar instruction was given to the committee on the Ambleside Railway Bill.⁷

Permissive instructions may confer on committees powers of inquiry and legislation on matters relevant to the subject-

¹ Times, 19th May, 1893, 12 Parl. Deb. 43. 1230; see also Water Provisional Order (No. 2) Bill, ib. 1st June, 1893. ² 121 C. J. 136. ³ 122 ib. 65. ⁴ 133 ib. 102. ⁵ 139 ib. 190; 287 H. D. 287. ⁶ 139 C. J. 70; 142 ib. 82.
matter of the bill, but which otherwise might not be brought to their attention, and direct the committee to report thereon. In 1878, an instruction was given to the committee on the Manchester Corporation Water Bill, empowering them to consider the requirements of the populations between Manchester and the lake district, whence was to come the proposed supply. In 1879, an instruction was given to the committee on the Liverpool Lighting Bill, empowering them to inquire and report whether schemes for lighting by electricity by local authorities or public companies should be authorized by Parliament. In 1883, there was an instruction to the committee on the Metropolitan District Railway Bill, that they have power to insert a clause making it compulsory on the railway company to pull down certain ventilators sanctioned by an Act of a previous session. In 1892, the committee on the Birmingham Water Bill received an instruction empowering the committee to inquire and report whether it were necessary to extinguish the rights of commoners and others over the large district proposed to be taken for the collection of the water to be supplied under the bill. Objection was taken that the instruction was unnecessary, but was overruled by the Speaker. In 1889, an instruction was given to the committee on the Liverpool Corporation Bill, empowering them to provide, if they thought fit, that, notwithstanding the standing order No. 171, the corporation might work tramways; and again in 1890, by a similar instruction to the committee on the Metropolitan Railway Bill, the operation of the standing order No. 163 with regard to the powers of purchase or amalgamation of companies was suspended.

The difficulty which may arise by the imposition on a committee of too wide a range of inquiry received an illustration in the case of the Manchester, Sheffield, and Lincolnshire Railway Bill, 1891. The committee were empowered

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1 133 C. J. 68. 2 134 ib. 87. 3 138 ib. 158; order discharged, ib. 284; Metropolitan Board of Works (District Railway) Bill, brought in for the same purpose, ib. 242. 4 147 ib. 93; 2 Parl. Deb. 4 s. 626. 5 144 C. J. 158. 6 145 ib. 282.
to take evidence, and report whether the site of the terminus proposed by the bill was the best which could be devised in the interests of the people of London. The committee, by their special report, stated that "in the absence of the definite plans which would be furnished by a rival scheme, they found it impossible to arrive at anything more than a prima facie opinion on the alternative sites suggested, or to come to any conclusion concerning them," and that "their experience may justify some hesitation in the adoption of instructions unaccompanied by adequate means for their perfect fulfilment." 1

Decisions of late years tend to establish the principle that, having regard to the object and purposes of a private bill, instructions must not deal with questions of public policy, which more properly are the subject of a public bill, and that they must be relevant and cognate to the provisions of the bill.

On the 11th March, 1892, in the case of the Eastbourne Improvement Act, 1885, Amendment Bill, a notice stood on the paper to the effect that an instruction be given to the committee to insert clauses in the bill exempting Eastbourne from the operation of sect. 26, cap. 7, 10 Geo. IV., and to make provision to secure that equal, full, and free toleration be accorded to all religious persuasions to hold meetings and processions within the borough of Eastbourne, whereupon the Speaker stated that there was nothing in the Eastbourne Act, 1885, nor in the precedent of the Belfast Act, which would warrant exempting a particular locality from the operation of the general statute referred to; in the case of the Eastbourne Act exceptional powers were granted to the corporation, but by this instruction exemption from a general statute applicable all over the United Kingdom was proposed to be conferred on a particular locality. That would contravene the general principle, and be clearly out of order. 2 Again, on the 8th March in the same year, notice of an instruction to the

1 146 C. J. 154; Supplement to Votes, 1891, p. 1607.
2 2 H. D. 4 s. 627; see also 3 ib. 324.
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committee on the South Eastern Railway Bill was given, to inquire into and report on the accommodation, supplied to third-class passengers on the railway. The Speaker privately informed the member in whose name it stood that the instruction was not in order, on the ground that the remedy (if legislation were needed) should be sought in a general statute applicable to all railways alike; that this would be a matter of general policy to be considered at the time, not of private but of public business; and that it would be contrary to the practice of the house to single out the bill of a particular company and impose on it alone conditions applicable to railways generally. So also later in the same month, the Speaker, on the same grounds, privately ruled an instruction to be out of order by which the committee on the London and North Western Railway Bill were directed to insert a clause in the bill, limiting the hours of labour to eight per day.

On the 29th April, 1892, there was a notice of motion to the effect that an instruction be given to the committee on the London County Council (General Powers) Bill, to consider the desirability of inserting a clause enabling the clerk of the County Council of London to correct the totals of the valuation lists in a manner set forth in the instruction. The chairman of ways and means stated that, though the bill to which the instruction referred was an omnibus bill, there was no one of its clauses which dealt with any matter cognate to the subject of the instruction, which therefore could not be entertained, not being in order.

On the 2nd March, 1886, a mandatory instruction was moved on the Belfast Main Drainage Bill for assimilating the municipal and parliamentary franchise and boundary of Belfast, and for making consequential arrangements as to the election and number of aldermen and councillors and the division of wards. The chairman of ways and means opposed the motion, and said that the assimilation of the parliamentary and municipal franchises was a public question not to be discussed at the time of private business;

1 3 Parl. Deb. 4 s. 1643.
that it was provided by the standing orders that every alteration of the boundary of a borough should be the subject of notice, in order that the whole neighbourhood should be warned of what was proposed; that the proposal was made without any such notice; and that without any observance of the rules and forms laid down by the house, it was proposed that the committee must extend the boundary of the borough of Belfast.¹

Instructions to committees may be given to divide a bill into two or more bills,² or a provisional order into two orders, in which case each bill or order is gone through separately and amended; or to consolidate two bills into one.³

In addition to the various forms of instruction already mentioned, instructions for carrying out the procedure in private bills are sometimes necessary, which confer on committees power to insert additional provision in a bill, or to make provision in a bill for the alteration of stamp duties, or for the release of money deposited in the Court of Chancery for the completion of a railway, in pursuance of special resolutions of the house (see p. 698).

Until 1883, the committee of selection consisted of the chairman of the standing orders committee, who is, ex officio, chairmain, and of five other members nominated by the house at the commencement of every session, of whom three are a quorum. But as the nomination of standing committees on trade and law and courts of justice was confided to this committee in 1883, the number was enlarged by the addition of two other members.⁴ This committee classifies its proceedings and duties, Committee of Selection, S. O. 98.

The general committee on railway and canal bills generally consists of about eight members (of whom three,

¹ 141 C. J. 73; 302 Parl. Deb. 3 s. 1692. See Blackrock, &c., Bill, p. 853.
² 127 C. J. 165; Water Provisional Order (No. 2) Bill, 1803, ib. 1st June, 1893.
³ Metropolis Management Acts (Hybrid and Private), 142 ib. 217; S. O. 99 to 101. 103.
⁴ 27th Feb. 1883, 138 ib. 52.
are a quorum), to be nominated at the commencement of the session by the committee of selection. The committee of selection may, from time to time, discharge members from attendance on the general committee, and is to appoint the chairman. As regards railway, tramway, tram-road, subway, and canal bills, this committee has functions similar to those of the committee of selection. It forms such bills into groups, and appoints the chairman of every committee from its own body,—being, in fact, a chairman’s panel; and may change the chairman from time to time. The main object of its constitution is to ensure a communication between the several chairmen, and uniformity in the decisions of the committees.

The several duties of these two committees are distinctly prescribed in the standing orders, and a general outline of their proceedings is all that need be given in order to explain the progress of a private bill. Printed copies of all private bills are laid by the promoters before the committee of selection, and before the general committee of railway and canal bills at the first meeting, as the case may require, of such committees respectively; and each committee forms into groups such bills as may be conveniently submitted to the same committee, fixes the time of the first sitting of the committee, and names the bill or bills which shall be taken into consideration on the first day of the meeting of the committee.

The committee on every opposed railway, tramway, tram-road, subway, 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, the chairman being appointed by the general committee, and the other three members by the committee of selection. 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. Every unopposed private bill, not being a railway, &c., or canal

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1 By order, 19th March, 1868.  
2 Reduced from five, in 1864.
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bill, or divorce or road bill, is referred, by the committee of selection, to the chairman of the committee of ways and means (who when present is ex officio chairman of every such committee),¹ and one of the members who had been ordered to prepare and bring in the bill, and one other member not locally or otherwise interested, or a referee.² All road bills, whether opposed or unopposed, are referred to a committee consisting of a chairman and three other members not locally or otherwise interested. The general committee on railway and canal bills may, whenever they think fit, refer an unopposed railway, tramway, tramroad, subway, or canal bill to the chairman of ways and means, and two other members not locally or otherwise interested, or one member and a referee to be nominated by the committee of selection. No bill is considered as an opposed bill unless, not later than ten clear days after the first reading, a petition has been presented against it, in which the petitioners pray to be heard by themselves, their counsel, or agents, or unless the chairman of ways and means reports to the house that any bill ought to be so treated.

The committee of selection give each member at least seven days' notice, by publication in the votes, or otherwise, of the week in which he is to be in attendance to serve, if required, as a member not locally or otherwise interested; and they also give him sufficient notice of his appointment as the member of a committee, and transmit to him a blank form of declaration, which he is to return forthwith, properly filled up and signed. If he neglect to return the declaration in due time, or do not send a sufficient excuse, the committee

¹ In the absence of the chairman of the committee of ways and means, or in case he is locally or personally interested in the bill, the next member in rotation, who is not so locally or personally interested, may act as chairman. In the case, however, of an unopposed railway, &c., or canal bill, if the chairman of the committee of ways and means be so interested, or for any other reason be unable to attend, he is, by an order of the house, discharged from attendance, and another member, frequently the chairman of the standing orders committee, substituted in his place, 134 C. J. 111; 139 ib. 371; 140 ib. 159; 145 ib. 509.

² For committees on Lords' unopposed bills, see p. 814; and standing order No. 109; see also pp. 755. 756, on unopposed bills.
of selection will report his name to the house, and he will be ordered to attend the committee on the bill; or to attend the house in his place, where, on offering sufficient apology for his neglect, he will be ordered to attend the committee.

If the committee of selection be dissatisfied with his excuse, they will require him to serve upon a committee; when his attendance will become obligatory, and if necessary will be enforced by the house. On the 5th May, 1845, a member was reported absent from a group committee. He stated to the house that a correspondence had taken place between the committee of selection and himself, in which he had informed them that he was already serving on two public committees, and that his serving on the railway group committee was incompatible with those duties. But the house ordered him to attend the railway committee.

In 1846, the committee of selection, not being satisfied with the excuses of Mr. Smith O'Brien, nominated him a member of a committee on a group of railway bills. He was reported absent from that committee, and was ordered by the house to attend it on the following day. He adhered, however, to his determination not to attend the committee, and was committed to the custody of the Serjeant-at-arms for his contempt.

The committee of selection have the power of discharging any member or members of a committee, and substituting other members. On the 4th May, 1869, two members were added by the house to the committee on a group of private bills, but without the power of voting.

An interval of six days is required to elapse between the second reading of every private bill and the first sitting of the committee, except in the case of name bills, naturalization bills, and estate bills (not relating to the Crown, church or corporation property, &c.), when there are to be three

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1 103 C. J. 590. 627; 115 ib. 138; Sir E. Filmer, 1862, 117 ib. 91; 120 ib. 369 (no order made).
2 Mr. Pope Hennessy, 1860, 115 ib. 94. 99. 106.
3 100 ib. 399; 80 H. D. 3 s. 166.
5 124 C. J. 177; 142 ib. 108.
clear days between the second reading and the committee. Subject to this general order, the committee of selection fix the time for holding the first sitting of the committee on every private bill; and the general committee fix the first sitting of the committee on every railway, tramway, tramroad, subway, and canal bill. In the execution of their various duties, the committee of selection have power to send for persons, papers, and records.

In all these matters the committee of selection ordinarily proceed in compliance with the standing orders: but where any departure from the standing orders, or the usual practice of the committee, is deemed advisable, or where, for any other reason, a particular mode of dealing with any bills is desired by the house, special instructions have been given to the committee of selection. For example, the house have instructed the committee of selection to refer two or more bills to the same committee, 1 or to form all the bills of a certain class into one group; 2 to refer a bill to another committee; 3 to remove a bill from a group, and refer it to a separate committee; 4 to withdraw a bill from one group and place it in another; or to refer private bills to a group of railway bills. 5 Instructions have been given to refer a bill to the chairman of the committee on standing orders, and two other members; 6 or to divide one committee into two committees; 7 or to appoint the first meeting of committees on an earlier day, 8 or forthwith; 9 or not to fix the sitting of committees upon certain classes of bills until a later period; 10 or otherwise dealing with the first meeting of committees. 11 Private bills and hybrid bills

1 100 C. J. 95. 224; 101 ib. 460; 106 ib. 280; 124 ib. 48. 63.
2 104 ib. 248.
3 100 ib. 607.
4 105 ib. 351.
5 Thames Embankment Bill, and Thames Embankment (Chelsea) Bill, 1868. The proceedings above mentioned are more generally carried out by the committee of selection without instruction from the house.

9 Rock Life Assurance Company Bill, 1869.
7 147 C. J. 268.
8 120 ib. 405; 121 ib. 490; 122 ib. 427.
9 103 ib. 700; 105 ib. 513; 107 ib. 300.
10 105 ib. 72. 84; 106 ib. 67.
11 109 ib. 406; 111 ib. 256; 113 ib. 276.
connected with government works, Crown property, or other public interests, are generally referred to a select committee nominated partly by the house, and partly by the committee of selection;¹ and occasionally public bills have been committed to a select committee to be nominated by the committee of selection.² Sometimes private bills affecting the metropolis, or other important localities, or dealing with a subject which, in the opinion of the house, is of special interest, have been referred to committees exceptionally constituted. Thus, in 1868, all bills relating to gas companies in the metropolis were referred to a select committee of five members; and the committee of selection were afterwards ordered to nominate five members to serve upon the committee.³ A hybrid bill, the Metropolis Gas Bill, was recommitted to that committee.⁴ In 1871, several private bills promoted by the Metropolitan Board of Works were committed to a select committee of ten members, five to be nominated by the house, and five by the committee of selection.⁵ And other bills have been referred to committees of eleven members, six or seven to be nominated by the house, and five or four by the committee of selection; or five by the house, and four or two by the committee of selection; or three by the house, and two by the committee of selection.⁶ But, in 1872, a motion to commit the Metropolitan Street Improvements Bill to a committee constituted in a similar manner was negatived.⁷ And again, in 1873, a like motion was negatived in the case of the Charing Cross and Victoria Embankment Approach Bill.⁸

¹ Fisher Lane (Greenwich) Improvement Bill, 100 C. J. 121; Spitalfields New Street Bill, 101 ib. 857; Brighton Pavilion Bill, 1849, 104 ib. 478; Holyhead Harbour Bill, 1850, 105 ib. 634; Whichwood Forest and Whittlebury Forest Bills, 1853, 108 ib. 415. 495; Caledonian and Crinan Canals Bill, 1857, 112 ib. 294; 114 ib. 265; 115 ib. 378; 116 ib. 95; 120 ib. 99; 121 ib. 106; 122 ib. 65; 134 ib. 202; 135 ib. 175, &c. Vide note 2, p. 731.
² Passing Tolls Bill, 13th Feb. 1857; Metropolis Local Management Bill, 14th June, 1860, 115 ib. 304.
³ 123 ib. 66. 74.
⁴ 1b. 126.
⁵ 126 ib. 59. 65. 126.
⁶ 130 ib. 216; 132 ib. 83; Manchester Corporation Waterworks, 133 ib. 62; Arklow Harbour Bill and Public Offices Site Bill, 1882, 137 ib. 121. 241.
⁷ 127 ib. 75.
⁸ 128 ib. 73.
a private bill was committed to the select committee on a public bill; and several private bills for electric lighting were referred to the select committee on the Public Electric Lighting Bill; and, by orders of the house of the 13th March, 1882, and the 26th February, 1886, all private bills promoted by local authorities and relating to police or sanitary regulations, were referred to a committee, first of seven and then of nine, appointed by the committee of selection (see p. 767), and the committee which is specially appointed every session, was by an order of the 20th May, 1892, increased by two members and divided into two committees, with the same powers as the undivided committee.

In 1873, pursuant to the recommendation of a joint committee of the previous session, the railway and canal bills containing powers of transfer and amalgamation, were committed to a committee of three members, to be joined by a committee of three lords. In this case the standing orders relating to the constitution of committees upon private bills were suspended; and the ordinary rules of *locus standi* were superseded by a general order, referring to the committee all petitions against the bills, which prayed to be heard, up to the date of the order. The standing order No. 125, which gives a second or casting vote, was also suspended, in order that the rule of the Lords, "*semper præsumitur pro negante*," might be adopted.

Before the sitting of the committee on the bill, some important proceedings are necessary to be taken by the promoters. It is the duty of the chairman of ways and means, with the assistance of the counsel to Mr. Speaker, to examine all private bills, whether opposed or unopposed, and to call the attention of the house, and also, if he think fit, of the chairman of the committee on every opposed private bill, to all points which may appear to him to require it; and at any period after a bill has been referred to a committee, he is at liberty to report any special circumstances, or to inform the

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1 137 C. J. 56. 165. & Rickards, 132.
2 Ib. 98; 142 ib. 69; 3 Clifford 128 C. J. 179.
house that any unopposed bill should be treated as an opposed bill. To facilitate this examination, the agent is required to lay copies of the original bill before the chairman and counsel, not later than the day after the examiner has indorsed the petition for the bill;¹ and again, two clear days before the day appointed for the consideration of the bill by a committee, the agent is required to lay before them copies of the bill, as proposed to be submitted to the committee, and signed by the agent. By the practice of the House of Lords, copies of the bill, as originally introduced, and also as proposed to be submitted to the committee on the bill, in the Commons, are laid before the chairman of committees and his counsel; and a simultaneous examination of the bill is consequently proceeding in both houses.

And by a standing order of 1858, the chairman of ways and means is required, 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 should be first considered, and to report such determination to the house.

Amendments are suggested or required by the authorities in both houses, which are either agreed to at once by the promoters, or after discussion are insisted upon, varied, modified, or dispensed with. In the mean time the promoters endeavour, by proposing amendments of their own, to conciliate parties who are interested, and to avert opposition. They are frequently in communication with public boards or government departments, by whom amendments are also proposed; and who, again, are in communication with the chairman of ways and means and the chairman of the Lords’ committees. The board of trade assist in the revision of railway bills, and suggest such amendments as they think necessary for the protection of the public, or for the saving of private rights. The secretary of state for the home department formerly exercised a similar supervision over turnpike-road bills: but his functions were transferred, in

¹ Practically, this is done as soon as the bills are deposited in the Private Bill Office.
1871, to the local government board. Where tidal lands or harbours, docks or navigations are concerned, the board of trade, to whom the former admiralty jurisdiction was transferred by the 25 & 26 Vict. c. 69, supervise the provisions of that class of bills. Where there are naval dockyards in any harbours, ports, or estuaries, the admiralty may reserve its jurisdiction, and require protective clauses to be inserted; or may withhold the consent of the Crown to the execution of the proposed work. Where Crown property is affected, the commissioners of woods and forests, who may give or withhold the consent of the Crown, have the bill submitted to them, and insist upon the insertion of protective clauses, or the omission of objectionable provisions. The board of trade offer suggestions in reference to bills affecting trade, patents, electric telegraphs, harbours, shipping, and other matters connected with the general business of that department. Bills promoted by local authorities for the improvement and sewerage of towns, and for the supply of gas and water, receive consideration by the local government board, by whom amendments are also suggested.\(^1\) And in case a bill should affect the public revenue, similar communications will be necessary with the treasury, and other revenue departments. And where the bill comes within the provisions of the Preliminary Inquiries Act,\(^2\) amendments are introduced in compliance with reports from the board of trade.

When the amendments consequent upon these various limits to proceedings have been introduced, the printed bill, with all the proposed amendments and clauses inserted, in manuscript, is in a condition to be submitted to the committee: but care must be taken, in preparing these amendments, that they are within the order of leave, that they involve no infraction of the standing orders, and are not excessive in extent.\(^3\) Where it was proposed to leave out the greater part of the clauses in the original bill, and to insert other

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\(^1\) The powers of the secretary of state in such cases were transferred, by the Local Government Act, 1871, to the local government board. 
\(^2\) 14 & 15 Vict. c. 49; amended by 25 & 26 Vict. c. 69; and see supra, p. 681. 
\(^3\) 108 C. J. 406.
clauses, the chairman of ways and means submitted to the house that the bill should be withdrawn.\(^1\)

The clerk to the committee of selection, or to the general committee, gives at least four clear days' notice to the clerks in the Private Bill Office, of the meeting of the committee on an opposed bill, and one clear day's notice in the case of an unopposed or recommitted bill; and if it should be postponed, he gives immediate notice of such postponement.

In the case of bills not referred to the committee of selection or general committee, the clerk to the committee to which the bill is referred or recommitted is to give the like notices.

The agent is required to deposit in the Private Bill Office a filled-up bill signed by himself, as proposed to be submitted to the committee, two clear days before the meeting of the committee; and a copy of the proposed amendments is to be furnished by the promoters to such parties petitioning against the bill as shall apply for it, one clear day before the meeting of the committee. In 1845, certain committees upon bills reported that no filled-up bill had been deposited by the agent as required, and that the committee had therefore declined to proceed with the bill, and had instructed the chairman to report the circumstance to the house.\(^2\) In these cases the practice has been to revive the committees, and to give them leave to sit and proceed on a certain day, provided the filled-up bill shall have been duly deposited.\(^3\)

Each member of a committee on an opposed private bill, or group of such bills, before he is entitled to attend and vote, is required to sign a declaration "that his constituents have no local interest, and that he has no personal interest" in the bill; "and that he will never vote on any question which may arise without having duly heard and attended to the evidence relating thereto." And no such committee can proceed to business until this declaration has been signed

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\(^1\) Bristol Parochial Rates Bill, 1845, 100 C. J. 335; Porthleven Harbour Bill, 1869.

\(^2\) 100 ib. 261. 302.

\(^3\) Ib. 302. 304.
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by each of the members. If a member who has signed this declaration should subsequently discover that he has a direct pecuniary interest in a bill, or in a company who are petitioners against a bill, he will state the fact to the committee, and will be discharged by the house, or by the committee of selection, from further attendance.

When all the members have signed the declaration, the committee may not proceed if more than one of the members be absent, except by special leave of the house: but no member of the committee may absent himself, except in case of sickness, or by order of the house. If at any time more than one of the members be absent, the chairman suspends the proceedings, and if, at the expiration of an hour, more than one member be absent, the committee is adjourned to the next day on which the house shall sit, when it meets at the hour at which it would have sat if there had been no such adjournment. Members not present within one hour of the time of meeting, or absenting themselves, are reported to the house at its next sitting, when they are either directed to attend at the next sitting of the committee, or, if their absence has been occasioned by sickness, domestic affliction, or other sufficient cause, they are discharged from further attendance. If after a committee has been formed, a quorum of members cannot attend, the chairman reports the circumstance to the house, when the members still remaining will be enabled to proceed, or such orders will be made as the house may deem necessary. If the chairman be absent, the member next in rotation on the list of members, who is then present, is to act as chairman; but in the case of a railway and canal committee, only until the general committee shall appoint another chairman, if they think fit.

1 See Suppl. to Votes, 1854, p. 605; Votes, 1862, p. 453.
2 Suppl. to Votes, 1849, p. 168; ib. 1850, p. 72; ib. 1851, p. 312; 100 C. J. 386; 101 ib. 904; 104 ib. 357.
3 105 ib. 225; 108 ib. 518. 524; Suppl. to Votes, 1853, p. 777; 1st June, 1858, 113 C. J. 209; 3rd May, 1860, 115 ib. 218.
4 Amended standing orders, 19th March, 1868.
5 If quorum not present.
6 See Votes, 1857, p. 212; ib. 1892, p. 685; 5 Parl. Deb. 4 s. 1920; minutes and evidence of committee.
7 See Votes, 1857, p. 212; ib. 1892, p. 685; 5 Parl. Deb. 4 s. 1920;
Questions to be decided by majority of voices.
S. O. 125.

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.

The members of a committee nominated partly by the house and partly by the committee of selection, do not sign the declaration required by standing order No. 118, nor are they subject to the standing orders as to attendance or as to the vote of the chairman. The practice of referring bills of a certain class, already mentioned, to committees so constituted, has of late years greatly increased. There are advantages attaching to such committees: but, on the other hand, the judicial character of the tribunal is impaired by the absence of those regulations by which the continuity and impartiality of the tribunal are preserved. 1 The chairman of such a committee (being a select committee), in accordance with a resolution of the house of 25th March, 1836, and the established rules of Parliament, can only vote when there is an equality of voices. 2

In 1865, considerable changes were introduced into the procedure, by the constitution of referees on private bills, consisting of the chairman of ways and means, and not less than three other persons to be appointed by Mr. Speaker. The referees were to form one or more courts, three at least being required to constitute each court, a member in every case being chairman, but receiving no salary. The practice and procedure of these courts was prescribed by the chairman of ways and means, by rules to be laid before the house: but only one counsel was to be heard on either side unless specially authorized by the referees. According to

North Eastern Railway Bills, Group 7, 1892.

1 In the committee on Southampton Docks Bill, 1892, one member was a director of the dock company, and another held shares in the South Western Railway Company (the purchasing company); but it was decided by the authorities of the house that the constitution of the committee was perfectly regular. In the London County Council (General Powers) Bill, and London Improvements Bill, 1893, a member of the London County Council was a member of the committee on both bills. See Debate, Times, 27th June, 1893.

2 Rules and orders as to public business, No. 396.
the standing orders of 1864, the referees inquired into the engineering details of all works proposed to be constructed, the efficiency of such works and the sufficiency of the estimate; and into other particulars in the case of waterworks and gas bills. Every report made by them to the house stood referred to the committee on the bill, by whom no further evidence was to be taken upon the matters reported upon by the referees. If the referees reported the estimate to be insufficient, or the engineering to be inefficient, the bill was not to be proceeded with, unless the house should otherwise order. The committee on a bill might also, subject to the approval of the chairman of ways and means, refer any question to the referees for their decision. Another important duty entrusted to the referees was the decision of the right of petitioners to be heard before committees, to which more particular reference will presently be made.

In 1865, it was ordered that if the promoters and opponents of any bill agreed that all the questions at issue between them should be referred to the referees, they were empowered to inquire into the whole subject-matter of the bill, and to report their opinion to the house; and if they reported that the bill ought to be proceeded with, it was to be referred to the committee on unopposed bills. In 1867, the committee of selection were empowered to refer to the court of referees, instead of to a committee, every gas and water bill of that session, except those relating to the metropolis, against which a petition endorsed for hearing before the referees had been presented, and the referees were to inquire into the whole subject-matter of the bill, and to report it, with or without amendments, to the house.1

And, in the same year, an Act was passed to enable the courts of referees to administer oaths and award costs, in certain cases, in the same manner as committees on private bills,2 which has become inoperative since 1868, when those courts of referees to which it applied ceased to exist. And lastly, in 1868, in order to avoid the evils incident to

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1 Instruction to committee of selection, 1st March, 1867, 122 C. J. 80.
2 30 & 31 Vict. c. 136.
the hearing of parties before two separate tribunals, first as to the engineering merits of a scheme, and secondly as to its policy and public utility,—the referees were associated with the committees on private bills. And under the present standing orders, the committee of selection refer every opposed private bill, or any group of such bills, to a chairman and three members and a referee, or a chairman and three members, not locally or otherwise interested. From that time, the only separate court of referees was that for determining the locus standi of petitioners.

At first it was decided by the authorities of the house that the referees appointed to committees should vote upon all questions, like members of the house: but, in 1876, a select committee, to whom the consideration of this practice was referred, reported an opinion adverse to its continuance, upon constitutional grounds; and accordingly, on the 27th March, 1876, the house ordered—

“That it be an instruction to committees on private bills that referees appointed to such committees may take part in all the proceedings thereof, but without the power of voting.”

All petitions in favour of or against or otherwise relating to private bills, or bills to confirm provisional orders or certificates (except petitions for additional provision), are now presented to the house, not in the usual way of presenting other petitions, but by depositing them in the Private Bill Office, where they may be deposited by a member, party, or agent. Any petitioner may withdraw his petition, or his opposition, on a requisition to that effect being deposited in the Private Bill Office, signed by himself or by the agent who deposited the petition. Every petition against a private bill which has been deposited not later than ten clear days after the first reading, and, in the case of a provisional order bill, not later than seven clear days after the examiner shall have given notice of the day on which the bill will be examined, or which shall have been otherwise deposited, in accordance with the standing orders, and in which the petitioners pray to be heard by themselves, their counsel, or agents, stands

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1 131 C. J. 120; and see report and evidence of the committee.
referred to the committee on the bill, without any distinct reference from the house. And, subject to the rules and orders of the house, such petitioners are to be heard upon their petition accordingly, if they think fit, and counsel heard in favour of the bill against such petition. Where petitioners have died after the deposit of their petitions, their sons, or their agents or executors, have petitioned to be heard, and, on the report of the standing orders committee, have been permitted to appear and be heard upon the petitions of the deceased petitioners,\(^1\) or to deposit a new petition after the time limited.\(^2\)

The agent for each petition must be prepared with a certificate from the Private Bill Office of his having entered an appearance upon the petition. This document is delivered to the committee clerk; and, unless it be produced, the petition will be entered in the minutes as not appeared upon.\(^3\) On the 23rd May, 1848, a petition was presented, praying that a petitioner against a private bill be allowed to be heard upon his petition, notwithstanding he neglected to present a certificate from the Private Bill Office of his having entered an appearance upon his petition previous to the commencement of business by the committee. The petition was referred to the committee on the bill, without any further instruction.\(^4\) A solicitor who does not appear upon his own petition cannot be heard before the referees, unless he has signed the roll of parliamentary agents.\(^5\) Nor can a petitioner be heard otherwise than by himself, his counsel or parliamentary agent.\(^6\)

\(^1\) Lincolnshire Estuary Bill, 1851, 106 C. J. 226, 233.

\(^2\) Duke of Portland (Ardrossan and Glasgow Railway Bill), 109 ib. 206; Suppl. to Votes, 1854, p. 605; Metropolitan Inner Circle Railway Bill, 1878, 133 ib. 112.

\(^3\) Minutes of committee on Pontypool Gas and Water Bill, 1890.

\(^4\) 103 C. J. 552; and see Suppl. to Votes, 1848, p. 395; Bolton-le-Sands Reclamation Bill, 129 ib. 204. A petitioner, having failed to enter an appearance, presented a petition that he should be heard on his former petition when the bill was recommitted, and his petition was referred by the house to the committee on the bill.

\(^5\) Birkenhead, Chester, &c., Railway Bill, 1873, 1 Clifford and Rickards (C. & R.), Locus Standi Reports, 3; Combe Hill Navigation Bill, 1876, ib. 216.

\(^6\) Ib. 8.
PETITIONS AGAINST PRIVATE BILLS.

Petitioners will not be heard before the committee unless their petition be prepared and signed in strict conformity with the rules and orders of the house, and have been deposited within the time limited, except where the petitioners complain of any matter which may have arisen in committee, or of any proposed additional provision, or of the amendments as proposed in the filled-up bill. Part of a petition having been omitted by mistake, and afterwards added, it was ruled that such part was not referred to the committee.

If a petition be presented after the time limited, the only mode by which the petitioners can obtain a hearing is by depositing a petition, praying that the standing orders be dispensed with in their case, and that they may be heard by the committee. The petition will stand referred to the standing orders committee; and if the petitioners be able to show any special circumstances which entitle them to indulgence, and, particularly, that they have not been guilty of laches, the standing orders will be dispensed with.

On the 17th May, 1849, a petition from the attorney-general against a private bill was brought up, and read; and it being stated that it was essential to the public interests that it should be referred to the committee on the bill, the standing order requiring all such petitions to be deposited in the Private Bill Office, was read, and suspended; and an instruction give to the committee to entertain the petition. In 1864, special instructions were given to the committee on a group of metropolitan railway bills, to hear the promoters of certain schemes not proceeded with in that session, against particular railway bills.

In 1869, all the metropolitan street tramways bills were referred to the same committee, and it was ordered that all petitioners against any of the said bills be heard, without

1 It has been held that when Sunday is the last day for depositing a petition, the deposit may be made on the Monday. See 2 Clifford and Stephens (C. & S.), Locus Standi Reports, 4.
2 83 H. D. 3 s. 487.
3 108 C. J. 284. 670; Votes, 1854, p. 211. 329, &c.
4 104 ib. 302.
5 119 ib. 167. 190.
reference to any question of locus standi.¹ In many cases, committees nominated partly by the house and partly by the committee of selection, have been ordered to hear all petitions against a bill presented within a certain number of days of the sitting of the committee, if they think fit, or without this discretionary power;² and “hybrid bills” have usually been so treated. In such cases, it has been held that the jurisdiction of the referees is superseded by the order of the house.³ In other cases, such powers have been given, subject to the rules, orders, and proceedings of the house.⁴

No petition will be considered which does not distinctly specify the grounds on which the petitioners object to any of the provisions of the bill. The petitioners can only be heard on the grounds so stated; and if not specified with sufficient accuracy, 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, but this power has been seldom exercised.

Petitions in favour of private bills are presented to the house by their deposit at the Private Bill Office and are not referred to the committee, as the petitioners are not parties to the bill. On one side are the promoters, and on the other petitioners against it: but petitioners in favour of the bill can claim no hearing before the committee, except as witnesses. It has been intimated that counsel may allude to the presentation of such petitions in argument, but may

¹ 124 C. J. 63.
² 126 ib. 59. 65. 93; 127 ib. 312; Metropolis Gas Companies Bill, 1875, 130 ib. 230; Manchester Corporation Water Bill, 1878, 133 ib. 62; Solent Navigation Bill, 1881, 136 ib. 466; Arklow Harbour Bill and Public Offices Site Bill, 1882, 137 ib. 121. 241; Electric Lighting Provisional Orders Bill, 138 ib. 323; Metropolitan Railway Bill (Park Railway), 139 ib. 89; Corporation of London (Tower Bridge) Bill, 140 ib. 81; Lambeth, Southwark and Vauxhall, and East London Water Bills, 141 ib. 60. 127; Aire and Calder Navigation Bill, 143 ib. 330; Mersey Docks and Harbour Board Bill, 144 ib. 101; Metropolis Management and Building Acts Bill, 1890, 145 ib. 300; London Water Commission Bill, 1891, 146 ib. 101; Birmingham Corporation Water Bill, 1892, 147 ib. 97.
³ Commercial Gas Bill, 1875, 1 C. & R. 150.
⁴ 128 C. J. 87. 176. All bills referred to the police and sanitary committee. Manchester Ship Canal, 1891, 146 ib. 331; London County Council (General Powers) Bill, 1893.
not examine witnesses in respect of their contents or signatures.¹

Such being the general rules relating to petitions, it is now necessary to enter upon an important change in the mode of adjudicating upon formal objections to petitions, and the rights of petitioners to be heard. Prior to 1865, all such questions were heard and determined by the committee on the bill. Considerable inconvenience and expense were caused by this practice, as counsel were retained, and witnesses kept in attendance, on behalf of petitioners who were adjudged, at the eleventh hour, to have no claim to be heard. With a view to obviate these objections, and at the same time to introduce greater uniformity and certainty into the decisions upon these important questions, it was ordered, in 1864, that the referees should decide upon all petitions, as to the right of the petitioners to be heard, without prejudice, however, to the power of the committee on the bill to decide upon any question as to such rights arising incidentally in the course of their proceedings. To give effect to this order, a court of referees was specially constituted, under the presidency of the chairman of ways and means, for the adjudication of all questions of locus standi. This court, following generally the principles and precedents to be found in the decisions of committees, have reduced to a system, as far as possible, the rules affecting the rights of petitioners against private bills, and provisional orders or certificates.² So many exceptional circumstances naturally arise in each case, that nothing further will be here attempted than a review of the leading principles by which their decisions have been guided. For more detailed information, the reader must consult the clear and accurate reports of the cases to which frequent references are here given.³

¹ Minutes of Group 2, 17th April, 1861.
² It has been held that, though petitioners may, in the proceedings with the government departments, have been in favour of a provisional order for which application had been made, they were not thereby debarred from the common right of petitioning against it, 1 C. & R. 118.
³ Smethurst on Locus Standi Practice of the Court of Referees; vols. 1
By one of the rules made by the chairman of ways and means, under the standing order, the promoters of a bill who intend to object to the right of petitioners to be heard against it, are to give notice of such intention by a written statement of the grounds of their objection, to the clerk to the referees, and to the agents for the petitioners, not later than the eighth day after the deposit of the petition: but the referees may allow such notices to be given, under special circumstances, after the time limited.\(^1\) Such notices may also be withdrawn by notice in writing to the clerk to the referees. The time allowed for serving such notices of objection is exclusive of the day on which the petition was deposited.\(^2\) It has been ruled that the service of such notices by post is not sufficient: but under certain circumstances it has been allowed.\(^3\)

When due service has been proved, if no one appears in support of the petition, the *locus standi* of the petitioners will be disallowed.\(^4\)

Such being the arrangements for hearing questions of *locus standi*, on the day appointed for hearing any case before the court of referees, the petition against the preamble or clauses of the bill, the statement of objections to the right of petitioners to be heard, and the bill itself being before the court, the counsel for the petitioners supports their claim; and the counsel for the promoters is heard in reply,—the speeches being thus limited to one on each side.

For the purposes of argument on questions of *locus standi*, the allegations of a petition are ordinarily admitted: but where the right of petitioners to be heard depends upon special facts which are disputed, they may be called upon to prove them.\(^5\)

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\(^1\) [R. & M. 174; *per contra*, 1 R. & S. 11. 159.](https://www.jstor.org/stable/20331889)


\(^3\) [Smethurst on *Locus Standi*, 7, and App. 98; 3 C. & R. 376; ib. 360.](https://www.jstor.org/stable/20331889)

\(^4\) [Ib. 8, App. 91.](https://www.jstor.org/stable/20331889)

Some petitioners pray to be heard against the preamble and clauses of the bill; some against certain clauses only; and others pray for the insertion of protective clauses, or for compensation for damage which will arise under the bill.

The owners of land proposed to be compulsorily taken by a bill, have always been allowed a right to be heard against the preamble and clauses of the bill, and also the lessees and occupiers of lands and houses, on whom notices are required to be served by the standing orders of both houses. And a railway company whose property is proposed to be taken has the same rights of locus standi as a private landowner.¹ The owner of minerals proposed to be compulsorily taken is in the same position as a landowner whose land is to be taken, and is for all purposes of locus standi a landowner.² The lord of a manor has established his claim to be heard against a bill affecting his manorial rights.³ The owners of river waters, springs, or wells, injuriously affected by bills, are entitled to be heard.⁴ So also mill-owners, the working of whose mills will be affected by works proposed to be constructed above or below them.⁵ Owners and occupiers of land in reasonable proximity to a canal proposed to be stopped up, have been allowed a locus standi.⁶ 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. It has been held, for example, that petitioners praying for a revision of the tolls chargeable by railway companies are

¹ London and North Western Railway Bill, 1865, 1 C. & S. App. 62. 63 (the post case); Caledonian Railway Bill, 1872, 2 C. & S. 256; Caledonian Railway Bill, 1873, 1 C. & R. 7; ib. 19; 3 ib. 136. 201; R. & M. 98; 1 R. & S. 117.
² 1 C. & R. 321; 3 ib. 46.
⁵ Birkenhead, Chester, &c., Railway Bill, 1873, 1 C. & S. 1; 2 ib. 50. 53; 1 C. & R. 3; West Ham Local Board Bill, 1881, 3 ib. 111; Barnstaple Water Bill, 1 R. & M. 195; see also standing order No. 14.
⁶ 1 C. & R. 216; 3 ib. 55.
not entitled to be heard, unless the question of tolls be involved in the bill.\(^1\)

But shipowners, traders, and others injuriously affected by the tolls, rates, or other provisions of a bill, have, with some exceptions, been allowed a hearing, provided they petition as a class, and not as individuals.\(^2\) The referees, however, guarded themselves from deciding that, in no case, could an individual trader be heard;\(^3\) and have since given an extension to the *locus standi* of traders.\(^4\) In the case of the Great Western and Bristol and Exeter Railway Companies Bill, 1877, which, while authorizing an extensive combination of railway companies in western and south-western parts of England, did not make any alteration of tolls or rates, certain traders of Exeter, about fifty in number, were allowed a hearing, on the ground that their interests would be injuriously affected by the traffic arrangements proposed by the bill: but the corporation of Exeter, alleging similar objections, were refused a *locus standi*, as not representing the trading interests of that city so properly as the traders themselves, who had petitioned. The traders of Salisbury were also allowed to be heard against this same bill: but the corporations of Salisbury, Southampton, Glastonbury, and Shepton-Mallet failed to establish their right.\(^5\) But while traders have been admitted, an incorporated chamber of commerce has been refused a hearing against a navigation bill, as they did not allege that, as a corporation, they were injuriously affected, and had no interest distinct from that of other traders who were

\(^{1}\) Lancashire and Yorkshire Railway Bill, 1852, Suppl. to Votes, p. 150; Great Western, Shrewsbury and Birmingham, &c., Bill, ib. pp. 306. 306. 314; South Yorkshire Railway, &c., Group 11 A, 1862; Great Western and West Midland Railways Amalgamation, Group 13, 1863; South Eastern Railway Bill, 1881, 3 C. & R. 97; ib. 303.

\(^{2}\) Smethurst, 37–47; 1 C. & R. 112; 2 ib. 18; ib. 34; 3 ib. 302; 1 C. & S. 59.

\(^{3}\) Ib. 129; 1 C. & S. 49–51.

\(^{4}\) North Eastern Railway Bill, 1874, 1 C. & R. 107; Piers and Harbour P. O. ib. 189; Caledonian Railway Bill, ib. 210; Lerwick Harbour Bill, 2 ib. 25; R. & M. 184. 236; 1 R. & S. 50.

\(^{5}\) Great Western, &c., Bill; 1 C. & S. 55. See also case of Midland and Glasgow, and South Western Railways (Amalgamation) Bills, 1867, ibid., App. 73.
petitioners.¹ The Mining Association of Great Britain, however, have been heard against a railway bill, on the ground that they were composed exclusively of one class of traders, and so far differed from a chamber of commerce, whose members are traders of all classes, and are not necessarily traders at all.² By standing order No. 133A, however, passed in 1883, the referees have a discretionary power to allow the *locus standi* of chambers of commerce on the question of railway rates, to be authorized by a bill, or already authorized by an existing Act.³

It has been held that the owner of land on a line proposed to be abandoned, and of which the compulsory powers have expired, has no *locus standi*.⁴ But an owner showing that he has sustained special damage has been allowed a limited *locus standi*.⁵ Lessees of minerals beneath a line proposed to be abandoned have been refused a *locus standi*.⁶ The owners of land authorized by a former Act to be taken, and contracted for with the company, have been refused a hearing, on the ground that they were merely creditors:⁷ but, on the other hand, the referees have held that the owner of certain premises, who, having received notice, had engaged other premises, and had applied to the Court of Queen's Bench for a *mandamus* to compel the company to complete its contract, had a right to be heard against the clause of a bill which extended the time for completing a railway. So also a landowner with whom a company had contracted to restore land not required for the railway, within a certain time, has been allowed a hearing against a clause extending

¹ Tyne Improvement Bill, 1876, 1 C. & R. 268; 3 ib. 412, *per contra* (Salt Chamber of Commerce).
² Great Western Railway Bill, 1877, 2 ib. 18. 203; *per contra*, 1 R. & S. 100.
³ Manchester, Sheffield, &c., Railway Bill, R. & M. 270; Great Western, &c., Railway Bill, ib. 255.
⁴ Eastern Counties Railway, Suppl. to Votes, 1852, p. 84; London, Brighton, and South Coast Railway Bill, 1898, 1 C. & S. 27; Midland Railway Bill, 1877, 2 C. & R. 40; 3 ib. 78; ib. 399. 403.
⁶ 1 C. & S. 28.
⁷ Llanelli R. & Dock Bill, 1896, Smeth. App. 110; Dublin Trunk Connecting Railway Bill, 1867, 1 C. & S. App. 37; Great Western Railway (Additional Powers) Bill, 1866, 1 ib. 31; 3 C. & R. 315; R. & M. 133.
the time for completing the line, so as to enable him to seek the insertion of a special saving clause for his contract; 1 and landowners who had special agreements with a company or had received no notice to treat for the purchase of their land under compulsory powers, have obtained their *locus standi* against extension of time. 3 And where a company applied for an extension of time for purchasing land and completing works, and it was shown that nothing had been done for the execution of the line, and that the company were under financial embarrassments, landowners on the line have been allowed a hearing. 5 Landowners whose land was proposed to be taken by a bill, but which was already under compulsory powers of purchase by another company, though not actually taken, have been held to have a *locus standi*, as they are not yet divested of their rights as owners. 4 But it has been decided that a landowner, the price of whose land has been fixed by a railway company, and the purchase-money lodged in court, had no *locus standi*, the legal interest in the land having passed from him to the company. 5

Where land has been shown on the deposited plans as intended to be taken, but the amended bill did not propose to interfere with it, or where other clauses affecting the interests of petitioners have been withdrawn, committees have held that the petitioners were not entitled to be heard. 6 In the case of a bill for extension of time for purchase of land and completion of works, it has been held that the owners of certain lands which had been excluded from the operation of the bill, as amended, had no *locus standi* against the bill: 7 but in another case, it has been held that a land-

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owner, whose lands were proposed to be taken in the bill, as read a second time, was entitled to be heard, though his lands were omitted from the bill as submitted to the committee.\footnote{Lancaster and Carlisle Railway Bill, 1858, Minutes, vol. i. p. 114.} And the referees, not having the amended bills before them, have supported the right of landowners to be heard, where their lands are proposed to be taken by the bill as deposited.\footnote{Smethurst, 19; 1 C. & S. App. 47. 57. 109; 2 ib. 116.} Petitioners whose property was not taken, but who apprehended injury by reason of the contiguity of a railway, have been refused a hearing;\footnote{Suppl. to Votes, 1847, i. 323.} and this rule has been strictly adhered to, in numerous cases, by the referees.\footnote{Smethurst, 26-28. 101. 102. 117; Crystal Palace and South London Junction Railway Bill, 1869, 1 C. & S. 40; 1 C. & R. 80; 2 ib. 38. 124. 249; 3 ib. 86. R. & M. 208.} In some exceptional cases, however, of special danger, disturbance, or injury, petitioners so affected have been allowed a hearing.\footnote{1 C. & S. 40-44; 2 C. & R. 2. 14.} Thus owners and occupiers of houses have been heard who complained that their property would be injured and shaken by the proposed line, though untouched by it, and have obtained protective clauses.\footnote{Petitioners, who alleged that their business would be irretrievably injured by proposed works, have been heard, their case being sufficiently exceptional to justify a departure from the general principle of previous decisions,—viz. that landowners can only be heard when their land is actually taken or interfered with.\footnote{1 C. & R. 203; 3 ib. 30. 125; \textit{per contra}, 1 R. & S. 127. 130. 133.} The trustees of a hospital who alleged that, although no land was to be taken by a railway, great injury would arise to the inmates from the noise and vibration of passing trains, have failed to establish a right to be
heard. The trustees of a church, who alleged that the services would be interfered with by the proximity of a railway, were not allowed a hearing. But in numerous cases, petitioners complaining of interference with their access to their premises, or to the sea, or other waterside, have been allowed a locus standi, although their property was not directly affected. The displacement of population has not been a sufficient ground of opposition on the part of school boards and local authorities.

Petitioners whose property was not affected by the bill, but by the main line sanctioned by a former Act, have failed to establish a right to be heard. Where no fresh powers affecting the property of a petitioner are sought, his locus standi has been disallowed. A telephone company, however, who alleged injury to their work by the propagation of electricity, was allowed a locus standi against a bill for the extension of time for the completion of the tramway, in order to ask for a protective clause, on the ground of the change which had taken place in the scientific knowledge and practical application of electricity. The owners of mineral property have been refused a locus standi as landowners, but have been heard against the provisions of bills relating to tolls. It has been held that petitioners using a canal for the purposes of traffic were not entitled to be heard against a bill for the purchase of that canal by a railway company. A landowner will not be heard if no power is taken in the bill.
for the purchase of his land otherwise than by agreement.\textsuperscript{1} The owner of an equitable interest in land has been heard, where the legal estate was vested in trustees.\textsuperscript{2} It has been held that petitioners affected by an underpinning clause of an underground railway, although their property was outside the limits of deviation, were entitled to be heard.\textsuperscript{3} The referees will determine, according to the circumstances of each case, whether petitioners have such an interest as to entitle them to be heard; or to what extent, and with what restrictions, they may claim a hearing; and such circumstances will necessarily vary according to the special relations of the petitioners, and the nature and objects of the bill itself.

A petitioner who has not opposed a bill in the other house is not precluded from being heard upon his petition in the House of Commons: \textsuperscript{4} but the \textit{locus standi} of petitioners has been disallowed, where their opposition in the other house has been withdrawn, and they have consented to protective clauses.\textsuperscript{5} So, if the parties agree to abide by the decision of the committee in one house, they will not be heard in the other: but it is otherwise, if they have not so agreed.\textsuperscript{6} Petitioners, having tendered a clause in the House of Lords, which was rejected by the committee, and then accepted two other clauses, with alterations suggested by them, were held not to be precluded from a hearing before the committee of the Commons, as the clauses they had accepted were of minor importance, and had only been acquiesced in conditionally upon the acceptance of their own clause, which had been rejected.\textsuperscript{7} Certain petitioners, who, having failed in opposing the preamble of a bill in the House of Lords, afterwards accepted protective clauses, have not been allowed

\begin{itemize}
  \item Aldrington, Hove, and Brighton Gas Bill, 1866, Smethurst, App. 107.
  \item Redstock and Bath Railway Bill, 1865, ib. 17; 1 C. & R. 270.
  \item Metropolitan and Metropolitan District Railway Companies Bill, 1879, 2 ib. 198; 3 ib. 196; 1 R. & S. 40.
  \item Thames Subway Bill, 1866, Smethurst, App. 162.
  \item ib. 95; 2 C. & R. 27; 1 R. & S. 39; 1 ib. 200, \textit{per contra}.
  \item Whitehaven, Cleator, \&c., Railway Bill, 1875; 1 C. & R. 200.
  \item Waterford and Wexford Railway Bill, ib. 273.
\end{itemize}
to renew their opposition in the Commons. 1 Previously to 1889, a petitioner against a bill originating in the House of Lords, who had discussed clauses in that house, was precluded from opposing the preamble of the same bill in the House of Commons: but this limitation has been removed by standing order No. 143A.

In the case of the Devon and Dorset Railway Bill, 1853, certain petitions were specially referred to the committee, with an instruction to hear the parties, who otherwise had no locus standi against the bill: 2 but the committee did not admit the petitioners to a general locus standi against the preamble of the bill, but restricted them within the scope of the allegations of their petition. 3 It has been ruled that a petitioner whose petition alleges that his land is taken, and who prays to be heard against the preamble and clauses of the bill, may be heard against the bill generally, though his petition contains no allegation of injury or that the railway is unnecessary, or reference to the preamble except in the prayer of the petition. 4 A landowner, whose land was to be taken, has been held to have a general locus standi against an improvement bill, for widening streets, erecting slaughter-houses, &c. 5 And it has further been held that a landowner has a general locus standi against an omnibus railway bill, however limited his interest. 6

It has been held that the abstraction of underground water by a waterworks bill does not give parties, whose water supply may be affected, a right to be heard. 7 But where

1 Local Government Provisional Order (Lower Thames Valley) Bill, 1877, 2 C. & R. 27.
2 108 C. J. 572.
3 Suppl. to Votes, 1853, p. 1000.
4 Resolution of General Committee of Railway and Canal Bills, 1861; Burntisland Direct Mineral Railway Bill, 1876, 1 C. & R. 207; 3 ib. 301; Paisley Tramways Bill, ib. 457.
5 Liverpool Improvement Bill, 1867, 1 C. & S. 19, App. 49; Belfast Improvement Bill, 1878, 2 C. & R. 69; 1 ib. 158.
6 London and North Western Rail-

7 Southport Water Bill, 1867, 1 C. & S. 20, App. 13; Birkenhead Improvement Bill, 1867, ib. 22; Winder and Eton Water Bill, 1868, ib. 16; 2 ib. 199; 3 C. & R. 239; R. & M. 95; Chasemore v. Richards, 4 L. R. Q.B.D. 104.
scientific evidence has been adduced to prove that the underground water flowed in a defined channel, the petitioners have been heard.\(^1\) A *locus standi* has been allowed where a conduit was proposed to be taken through part of the property of the petitioner.\(^2\) The right of owners of surface waters to be heard as landowners has long been established.\(^3\)

Numerous questions have arisen in regard to the *locus standi* of railway companies, in opposing bills for the amalgamation of other companies; and such *locus standi* has been admitted or refused,\(^4\) according to the degree in which the interests of the opposing companies have been affected.\(^5\)

In the case of the Edinburgh and Glasgow, and Stirling and Dunfermline Railways Amalgamation Bill, the Stirling and Dunfermline Railway Company were not admitted to be heard, on the ground that an agreement had been entered into between the companies for the settlement of all disputes, and that the bill had been amended in conformity with that agreement, and signed by the chairman of the two companies.\(^6\) But a *locus standi* has been allowed to parties holding an agreement with the promoters, in order to secure themselves against interference with such agreement.\(^7\) And where it

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4. The London and North Western, Midland, Great Northern, and Manchester, Sheffield, and Lincolnshire Junction Railway Companies were heard against the Lancashire and Yorkshire and East Lancashire Amalgamation Bill, 1858, Minutes of Committees, i. 244. 245; the Great Western Railway Company were heard against the Chester and Holyhead Railway Amalgamation Bill, 1858, ib. i. 282; Caledonian and Scottish North Eastern Companies Bill, 1866, Smethurst, App. 163; 2 C. & R. 172. 248; 3 ib. 148. 145. 306; R. & M. 177.
5. Manchester, Sheffield, and Lincolnshire Railway Company against the Chester and Holyhead Railway Amalgamation Bill, 1858, Minutes of Committees, i. 282; Edinburgh and Glasgow Railway Companies Bill, 1865; and Brecon and Merthyr Tydfil Railway Amalgamation Bill, 1865; Smethurst, App. 136. 138; Midland and Glasgow and South Western Railway Companies Bill, 1867, 1 C. & S. 55, App. 72; 2 C. & R. 38–103. 299; 3 ib. 57. 58. 88. 107. 404; R. & M. 255.
7. Minutes of Committees, 1858, p. 385.
Chapter XXVIII. appeared that the promoters were debarred by an agreement from executing the works proposed to be authorized by the bill, the committee decided that the bill could not be further proceeded with.\(^1\) The \textit{locus standi} of petitioners against bills for the amalgamation of canal companies, of dock companies, of canal with dock companies, of canal or dock companies with railway companies, of tramway companies, of gas companies, and of water companies, has also been dealt with by the referees.\(^2\) The general ground upon which petitioners are admitted to oppose amalgamation bills is that the amalgamation itself will injuriously affect them, and not that they can show any grievance resulting from past legislation.\(^3\)

It had formerly been held, as a parliamentary rule, that competition did not confer a \textit{locus standi}: but in course of time this rule was considerably relaxed, and numerous exceptions were, in practice, admitted; and now competition is generally allowed to be a sufficient ground for a \textit{locus standi}. The proprietors of an existing railway had no right to be heard upon their petition against another line, on the ground that the profits of their undertaking would be diminished: but if it were proposed to take the least portion of land belonging to the company, their \textit{locus standi} immediately become unquestionable.\(^4\) The result of this rule was that most of the great parliamentary contests between railway companies were conducted in the names of landowners. Each company obtained the signatures of landowners to petitions against the rival scheme; instructed counsel to appear upon them; and defrayed all the costs of the nominal petitioners. An existing water or gas company was held to have no \textit{locus standi} against a new company.

\(^1\) Devon Central Railways Bill, Minutes of Group 3, 1861, p. 90; North British Railway (General Powers) Bill, 1881, Group 12, Minutes of Proceedings, p. 2.

\(^2\) 1 C. & R. 78 (canal); 3 ib. 15; 1 ib. 319 (docks); 1 ib. 28; 1 ib. 112 (docks and railway); 2 C. & S. 218; 1 C. & R. 141 (gas); 3 ib. 38 (tramways); 1 ib. 59; 2 ib. 307 (water).

\(^3\) Gloucester and Berkeley Canal Bill, 1874, 1 ib. 77; see also London and South Western, Midland and Somerset and Dorset Railway Bill, ib. 240–247; 3 ib. 58. 97. 404.

\(^4\) But see Monmouthshire Railway and Canal Bill, Suppl. to Votes, 1852, pp. 283. 284.
proposing to supply the same district, unless their property were taken or interfered with: but in later cases this rule was not enforced,\(^1\) and at present the invasion of their limits of supply by another company is held to entitle them to a *locus standi.*\(^2\) In 1853, the house agreed to a standing order, by which it was competent to the committee of any private bill, and since 1865, to the referees, to admit petitioners to be heard against the bill, on the ground of competition, if they shall think fit; and in compliance with this order, committees and referees have since admitted, or refused, a hearing to petitioners, according to their opinion of the extent and directness of the competition, in respect of which their claim to be heard was founded.\(^3\) In cases where it was only proposed to improve an existing competition, a *locus standi* has not been allowed.\(^4\)

It has been held that the promoters of a *bonâ fide* application to a government department for a provisional order shall be entitled to a *locus standi* against a bill for a competing scheme, conditionally only on the application not being actually rejected before the hearing of the bill in committee.\(^5\)

The *locus standi* on the ground of competition, of a railway company against a dock company, or *vice versa,*\(^6\) and of a railway company against a tramway company, has been refused,\(^7\) though, in the latter case, steam being the motive power of the tramway, the *locus standi* of the one against the other company has been allowed.\(^8\) So also the proprietors of cabs have not, and proprietors of omnibuses plying between the same points as the proposed tramway have, been heard against a tramway bill;\(^9\) the proprietor of a hotel against a railway company's bill, which authorized

\(^1\) Great Central Gas Consumers' Company Bill, 1850. Minutes.
\(^2\) 2 C. & R. 229; ib. 251; 1 R. & S. 31 (gas company against electric lighting); 3 C. & R. 109. 114. 388; R. & M. 203.
\(^3\) Vide C. & S. &c. Reports. The cases of competition are so numerous, and depend so much on varying circumstances, that they are not here quoted.
\(^4\) 2 C. & R. 133. 279; 3 ib. 225. 357. 378; R. & M. 118. 197.
\(^5\) Barry Dock, &c., Extension Bill.
\(^6\) 1 C. & R. 234. 235; 3 ib. 100. 114.
\(^7\) 3 ib. 372. 373. 378.
\(^8\) 2 C. & S. 142; 1 C. & R. 13.
\(^9\) 3 ib. 285. 455. 471.
\(^9\) 2 ib. 321; 1 C. & S. App. 120; 2 ib. 87 (omnibuses),
the company to build a hotel;\(^1\) and railway carriage and locomotive makers against a bill under which a railway company took power to make its rolling stock;\(^2\) and gas and water fitters against a bill whereby the owners of gas or water undertakings sought to supply the fittings,\(^3\) have all been refused a *locus standi*.

A railway company having running powers over a line has been allowed to be heard against the concession of the same powers to another company:\(^4\) but this precedent has not been followed by the referees, who have not allowed such companies to be heard against the granting of running powers and other facilities to other companies on this ground only;\(^5\) but where it has been alleged that this concession was for the purposes of amalgamation or for competition, the *locus standi* of the railway already possessing the running powers has been granted. In the case of the North Staffordshire Railway Bill, 1867, however, the Lancashire and Yorkshire Railway Company, which had running powers over the line of the former company, established their right to be heard on the ground that the bill conveyed greater powers to the London and North Western Railway Company, almost amounting to amalgamation, to the injury of the petitioners as competitors.\(^6\) So also, in 1874, the Midland Railway Company were allowed to be heard against certain clauses in the London and North Western Railway (Wales) Bill, giving running and other powers over a branch of the Monmouthshire Railway;\(^7\) and, in 1875, the London and North Western Railway Company were heard against the Metropolitan Railway Bill, which provided for the continuous use and joint management of several lines, for purposes of through traffic, in competition with the line of the petitioners.\(^8\)

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\(^1\) 3 C. & R. 23.
\(^2\) 2 ib. 50.
\(^3\) 3 ib. 131.
\(^4\) Garston and Liverpool Railway Bill, Group 13, 1861; resolution of general committee on railway and canal bills, 1861.
\(^5\) Smethurst, 56, *et seq.*; 1 C. & R. 172; 3 ib. 57. 88. 89. 267. 299 (Eastbourne Railway Bill); 1 R. & S. 3.
\(^6\) 1 C. & S. App. 102.
\(^7\) 1 C. & R. 96.
\(^8\) Ib. 175.
A steamboat company has been refused a hearing against the preamble of a bill empowering a railway company to raise further capital for the maintenance of steamboats, the railway company being already proprietors of steamers, under the authority of a former Act.¹

By standing order No. 135—

The owner, lessee, or occupier of any house, shop, or warehouse in any street through which it is proposed to construct any tramway, and who alleges in any petition against a private bill or provisional order, that the construction or use of the tramway proposed to be authorized thereby will injuriously affect him in the use or enjoyment of his premises, or in the conduct of his trade or business, shall be entitled to be heard on such allegations before any select committee to which such private bill or the bill relating to such provisional order is referred."

And the locus standi of these petitioners, familiarly known as "frontagers," has in numerous cases been allowed or disallowed by the court of referees: but it has been ruled that the standing order is not necessarily confined to an obstruction in front of a petitioner's house, it being open to him to show that the proposed tramway will affect his interests.²

The rights of petitioners have been further extended by the following standing orders:—

"Where a railway bill contains provisions for taking or using any part of the lands, railway, stations, or accommodations of another company, or for running engines or carriages upon or across the same, or for granting other facilities, such company shall be entitled to be heard upon their petition against such provisions or against the preamble and clauses of such bill."³

"It shall be competent to the referees on private bills to admit petitioners, being the municipal or other authority having the local management of the metropolis, or of any town, or the inhabitants of any town or district alleged to be injuriously affected by a bill, to be heard against such bill, if they shall think fit."⁴

¹ London, Chatham, and Dover Railway Bill, 1861, Minutes, i. 42. 3 C. & R. 415; R. & M. 100. 241. 251, per contra; 1 R. & S. 115. 195. 197.
³ See leading case of Caledonian Railway (Additional Powers) Bill, 1872; 2 C. & S. 256; in which and the following cases an unlimited or landowner's locus standi was allowed: 3 C. & R. 136. 201. 367. 481; R. & M. 89. 139 (Cuthcart Railway Bill), 311; 1 R. & S. 117. A "limited" locus standi was allowed in the following cases: 3 C. & R. 142. 177. 326. 313; R. & M. 252; 1 R. & S. 14. 152.
"The municipal or other local authority of any town or district, alleging in their petition that such town or district may be injuriously affected by the provisions of any bill relating to the lighting or water supply thereof, or the raising of capital for any such purpose, shall be entitled to be heard against such bill."

"It shall be competent to the referees on private bills to admit the petitioners, being the council of any administrative county or county borough, the whole or any part of which is alleged to be injuriously affected by a bill, to be heard against such bill, if they think fit."

"The council of any administrative county alleging in their petition that such administrative county, or any part thereof, may be injuriously affected by the provisions of any bill relating to the water supply of a town or district, whether situated within or without such county, shall be entitled to be heard against such bill."

And these orders relating to lighting and supply of water have superseded several previous decisions of the referees; and, in short, remove such cases from their jurisdiction.1

Petitioners claiming to be heard under the four latter standing orders must distinctly allege that the county, county borough, town, or district will be injuriously affected, and must be prepared to show some *prima facie* ground for such allegation.2 In some cases corporations have been heard as representing the whole body of merchants, traders, workmen, and others, residing in a borough.3 In the case of petitions from the inhabitants of a town, it must also be shown that they fairly represent the general body of inhabitants.4 Numerous decisions of the referees arising out of the application of this standing order have established the general grounds upon which such bodies are entitled to be heard: but the cases have varied so much in their circumstances, that no analysis of them would be adequate for the practical guidance of parties.5 It has been held that when a corporation has petitioned against a bill, and

1 See Dudley Gas Bill, 1831, 3 C. & R. 40; Fylde Water Bill, ib. 54; Birmingham Corporation Bill, 1885, 3 ib. 257. 292. 380; R. & M. 127. 167, *per contra*.
4 Smethurst, 75. 76; 1 C. & S. 85, et seq.; 2 C. & R. 78; 3 ib. 382. 442; R. & M. 110; 1 R. & S. 72.
also the inhabitants of the borough, that the latter were represented by the former, and were not entitled to be heard.¹

In many cases, consumers of gas and water have been admitted to oppose gas and water bills affecting their area of supply.² But where the petitioners were only affected in common with other ratepayers, they have failed to establish their claim.³ Residents in a new district, proposed to be supplied with gas, have no locus standi, as they are not compelled to use the gas which will be supplied, nor restrained from manufacturing their own.⁴

A ground of objection frequently taken to the locus standi of petitioners is that they are shareholders or members of some corporate body by whom the bill is promoted, and that, being legally bound by the acts of the majority, they are precluded from being heard as individual petitioners. Cases cited. This objection was argued at great length in the case of the Birmingham and Oxford Junction Railway Bill, in 1847, when the committee ⁵ decided that shareholders in the company were not entitled to be heard. Again, in the London, Brighton, and South Coast Railway Bill, in 1848,⁶ it was determined “that the general rule, that in the case of a joint-stock company the decision of the majority is binding on the minority, ought to be observed, and that the minority of the shareholders in this case had no locus standi before the committee.”

In 1850, the committees on the Shrewsbury and Hereford, and Shropshire Union, &c., and the Waterford and Kilkenny Railway Bills,⁷ determined that dissentient shareholders could not be heard. With very few exceptions,⁸ however, it had been the rule, in the Commons, not to hear dissentient

¹ King’s Lynn Gas Bill, 2 C. & S. 5. Per contra, 1 C. & R. 16; 2 ib. 52.
² 1 C. & R. 16. 135. 142. 143. 213; 2 ib. 10; 3 ib. 40. 118; R. & M. 12 (water), 137. 191 (gas); 1 R. & S. 53.
³ 1 C. & R. 144.
⁴ Ib. 267; 2 ib. 78.
⁵ Mr. Goulburn, chairman; Suppl. to Votes, 7th May, 1847.
⁶ Sir R. Peel, chairman; Suppl. to Votes, 1848, p. 309.
⁷ Ib. 1850, pp. 41. 43. 75. 182.
⁸ Manchester Cemetery Bill, 1848, Minutes of Committee, p. 136; South Yorkshire Railway and River Dunn Bill, 1852, Suppl. to Votes, 1852, p. 298; North British Railway Bill, 1853,ib. 1853, p. 716, &c.
shareholders, unless they had any interest different from that of the general body of shareholders. And in 1853, the house declared by standing order No. 131 that—

"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." 2

In 1867, the referees decided that the Great Eastern Railway Company were not entitled to be heard against the Tendring Hundred Railway Bill, on the ground that they were holders of shares in a portion of the company's capital, and that they failed to establish an interest distinct from that of the general body of the shareholders; 3 and later decisions of the referees have been founded, in each case, upon the nature of the interest of the petitioners, and the manner in which it is affected by the provisions of the bill. 4 But in 1876, by standing order No. 132—

"In case any proprietor, shareholder, or member of or in any company, association, or co-partnership, shall by himself, or any person authorized to act for him in that behalf, have dissented at any meeting called in pursuance of standing orders Nos. 62 to 66, or at any meeting called in pursuance of any similar standing order of the House of Lords, such proprietor, shareholder, or member shall be permitted to be heard by the committee on the bill, on a petition presented to the house, such petition having been duly deposited in the Private Bill Office." 5

For many years prior to its adoption by the Commons, a similar rule prevailed in the Lords; and shareholders who had dissented from the bill at the meeting called in pursuance of the Wharncliffe order (see p. 796) were expressly permitted to be heard, and were even heard without such dissent. In the case of preference shareholders, the Commons had been obliged to depart from their usual practice. 6

1 Suppl. to Votes, 1847, ii. pp. 1110, 1254; 1848, pp. 309, 388; 1850, pp. 72, 75; 1851, pp. 111, 115, 300, 371; 1852, p. 298; 1853, p. 1013.
2 3 C. & R. 77.
3 1 C. & S. 8, App.
4 Ib. 103; 1 C. & R. 43, 51, 89, 192; 2 ib. 101, 169, 273; 3 ib. 91; R. & M. 155, 162, 225.
6 South Eastern (3 and 4 shares), 1850, Suppl. to Votes, pp. 165, 195; South Devon Railway Bill, ib. p. 33; Shropshire Union, &c., Bill, ib. pp. 72, 73; York, Newcastle, and Berwick Bill, ib. p. 102.
The proprietor of preference shares has a special interest, often opposed to that of the general body of shareholders, and justice requires that he should not be excluded from a hearing. Yet, when it has appeared to the committee that preference shareholders had not such a special interest in the bill as to entitle them to be heard, their claim has not been admitted. The holders of "creditors' stock" have been refused a hearing against a railway bill; and the committee declined to reconsider their decision. It has been held that shareholders who dissented at a Wharncliffe meeting were not entitled to be heard, because the meeting, though held, had been unnecessary under the standing orders. Preference shareholders have been allowed a limited locus standi against the capital clauses of the bill, and against so much of the preamble as related thereto.

In the Queensferry Passage Bill, in 1848, it was decided that individual trustees of the Queensferry passage could not be heard against the bill, promoted by the general body of the trustees. In 1857, it was held that the vestry of St. George's, Hanover Square, was not entitled to be heard against the Finsbury Park Bill, on the ground that the vestry was represented in the Metropolitan Board of Works, by whom that bill was promoted. And in 1858, merchants, shipowners, and dock ratepayers of Liverpool were not admitted to be heard against the Mersey Docks and Harbour (New Works) Bill, on the ground that they formed part of a body represented by the trustees, who were the promoters of the bill. In 1865, the vestry of Bermondsey were refused a hearing against the Whitechapel and Holborn Improvement Bill, as being represented in the Metropolitan

1 London and North Western Railway (New Lines) Bill, 1875, 1 C. & R. 167; 2 ib. 169; 3 ib. 77.
2 Suppl. to Votes, 1855, p. 259.
3 Eastern Union Railway Bill, ib. 1856, I. p. 55. A holder of Lloyd's bonds has been heard against a railway company's bill by which his security was affected, 1 R. & S. 28.
4 Redditch Railway (Capital, &o.) Bill, Group 16, 1862; R. & M. 259.
5 Caledonian Railway Bill, 1872, 2 C. & S. 258.
6 Minutes of Committee, 14th April, 1848.
7 Minutes of Committee.
8 Minutes of Committees, 1858, vol. ii. p. 117.
Board of Works, the promoters of the bill. In 1871, the referees determined, in the case of the Ilkley Local Board Bill, that certain petitioners, being owners of property and ratepayers, could not be heard against the bill, being represented by the local board, by whom the bill was promoted. In the same year, in the case of the Bristol Port and Channel Dock Bill, promoted, among others, by the corporation of Bristol, it was held that such petitioners only as were owners of property in Bristol, and not municipal electors, were entitled to a hearing. But in 1872, in the case of the South London Gas Bill, it was decided that vestries, district boards, and individual consumers, as well as the Metropolitan Board of Works, were entitled to be heard. In the same year, it was ruled, in the case of the Metropolitan Street Improvements Bill, promoted by the Metropolitan Board of Works, that vestries, public bodies, and ratepayers, represented at the board, although their interests were divided, had no locus standi, and could not be heard against the common seal.

In 1876, it was held, in the case of the Chesterfield Special Borough Improvement and Extension Bill, that owners and occupiers outside the borough, who would become liable to new taxation under the bill, were entitled to be heard; that ratepayers within the borough, being represented by the corporation who promoted the bill, could not be heard against the common seal; but that certain petitioning owners, who were not ratepayers, having no voice in the election of the corporate body, were entitled to a locus standi. And, in the Huddersfield Water and Improvement Bill, 1876, it was decided that owners within municipal limits, when a new liability is to be imposed upon them, are not represented by the corporation, nor need they petition as a class. Each owner has a grievance affecting his individual property, and consequently a distinct locus standi.

1 Smethurst, App. 187. 2 2 C. & S. 97. 3 Ib. 121. 4 Ib. 220. 5 Ib. 265; other cases: ib. 6; C. & R. 233; R. & M. 78. 6 1 C. & R. 211; R. & M. 76. 78. 7 1 C. & R. 229; 2 ib. 149; ib.
 ruled that the interests of the inhabitants of a parish, to be merged in the borough, were distinct from those of the guardians, and that owners also were entitled to be heard.  

Objection is often taken that a petition is informal, according to the rules and orders of the house applicable to petitions generally (see p. 496), or as specially applicable to petitions against private bills. 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. On the 7th May, 1847, a motion was made that it be an instruction to the committee on the Great Northern Railway Bill, that they do entertain a petition, signed by the chairman of a company, as the petition of that company, although it does not bear the corporate seal of the company, but was negatived. In the Worcester New Gas Bill, 1848, a petition was not received, as not having been legally sanctioned by the commissioners, whose petition it purported to be. And in 1866, the referees refused a hearing to the commissioners of Bray against the Bray Improvement Bill, as the meeting at which their petition had been signed was proved not to have been duly convened. In 1857, in the East Somerset Railway Bill, the committee refused to entertain a petition signed by one trustee of a turnpike road, the Act requiring three signatures; and in 1866, the referees applied the same rule to petitioners against the Thames and Severn Navigation Bill and the Birmingham Waterworks Bill. In the case of the Caledonian Railway (Edinburgh Stations) Bill, 1866, the referees refused a hearing to petitioners who had subscribed the petition for other parties. But in the case of the Sligo Borough Improvement Bill, the referees allowed the Sligo town and harbour commissioners to be heard, on a petition signed

1 2 C. & R. 47; R. & M. 77.  
2 Minutes of Committee.  
3 102 C. J. 490.  
4 Minutes, p. 63.  
by the major part of a committee appointed by the governing body to direct the proceedings in reference to the opposition to the bill.¹ Petitioners have failed to secure a hearing before a committee, on account of forged signatures to their petition.² But the court of referees will not inquire into the genuineness of signatures,³ or into the legality of the corporate seal, these questions being for the consideration of the house.⁴

In 1874, a petition signed by the chairman of the Neath Authority Harbour Commissioners was held not to be the petition of the commissioners, as it contained no allegation of his authority to sign on their behalf.⁵ But the petition of a committee of poor law guardians, acting as a rural sanitary authority, signed by their chairman, under a resolution of the sanitary authority, has been admitted, as it appeared that the guardians, in that capacity, had no common seal.⁶

In 1877, a petition signed by several Derbyshire magistrates, who had been appointed a committee by the quarter sessions, for that purpose, was not entertained, as it contained no allegation that they had been authorized, either by the quarter sessions or the committee, to sign it.⁷ The directors of a shipping company have been heard, upon their petition, without any special authority from their company.⁸ A landowner has been allowed a hearing upon a petition signed by his agent, who had a general power of attorney for the administration of his estates.⁹ But evidence of authority to sign without a power of attorney is insufficient.¹⁰

It may also be objected that petitions do not distinctly specify the grounds on which the petitioners object to the bill.¹¹

¹ ¹ C. & S. App. 7.
² Glasgow Municipal Extension Bill, 1879.
³ ¹ C. & R. 119; 2 ib. 821.
⁵ ¹ C. & R. 117.
⁶ Uppingham Water Bill, 1876, ib. 272; also case of vicar and churchwardens authorized to sign at public meeting, 1 R. & S. 153; 3 C. & R. 316.
⁷ 2 ib. 5. 7.
⁸ Ib. 25. 261; 3 ib. 316; R. & M. 14.
¹⁰ 3 ib. 155.
bill. An objection of this nature may be fatal to the petition; as, for example, if the referees determine that the grounds there stated do not amount to an objection to the preamble of 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. The proper time for urging objections to parties being heard against the preamble is when their counsel or agent first rises to put a question to a witness, or to address any observations to the committee. Petitioners have been heard against the preamble of a bill, though the word "preamble" was not in the prayer of their petition, their intention being clearly shown by the context.

In some cases, the referees, having allowed a locus standi on some of the allegations of a petition, have left the relevancy of other allegations for the determination of the committee. In 1858, the office of works and public buildings was refused a hearing against the Victoria Station and Pimlico Railway Bill, as the board had not deposited a petition against the bill, by which the promoters might have been made acquainted with the grounds of opposition. Where two out of three petitioners had withdrawn their opposition to a bill, and the agent for the petition did not appear, but the remaining petitioner appeared before the committee by another agent, whom he had appointed, it was held that he was entitled to be heard.

On the 16th February, 1865, it was ordered "that on
every private bill to be considered by a committee of this house, all petitions which stand referred to such committee, if not previously withdrawn, be printed at the expense of the petitioners, and copies of such petitions, together with a copy of the bill to be considered, be delivered to each member of the committee on the morning of its first sitting."

If no parties appear on the petitions against an opposed bill, or, having appeared, withdraw their opposition before the evidence of the promoters is commenced, the committee is required to refer the bill back, with a statement of the facts, to the committee of selection, or, if a railway, tramway, tramroad, subway, or canal bill, to the general committee, who deal with it as an unopposed bill. And, on the other hand, if the chairman of ways and means informs the house that any unopposed bill should, in his opinion, be treated as opposed, it is again referred to the committee of selection, or the general committee, and dealt with accordingly; or an instruction is given to the committee on the group to sit and proceed with the bill. In 1855, the Westminster Land Company Bill was at once added to a group of private bills, by order of the house, without the intervention of the committee of selection; and an instruction was given to the committee on the bill to sit and proceed forthwith.

The committee on each group of bills is to take first into consideration the bill or bills named by the committee of selection, or by the general committee; and is to appoint the day for considering each of the other bills, and on which they will require the parties promoting and opposing to enter appearances; and the committee clerk is to give at least two clear days' notice of such appointment, in the Private Bill Office; and in case the committee shall postpone the consideration of any bill, notice is given of the day to which it is postponed. Before this arrangement was made, in 1849, all the parties concerned in the various bills com-

1 120 C. J. 69.
2 125 ib. 72; 126 ib. 218; Liverpool, &c., Insurance Company's Bill,
3 116 ib. 279.
prised in the same group were required to enter appearances on the first sitting of the committee; and although the bills were wholly unconnected in regard to locality or interest, the parties promoting and opposing one bill were detained, at enormous expense, while other bills were under consideration. It is the usual practice of committees to consider the several bills in a group, according to the order prescribed by the printed list; and this practice will not be departed from, unless sufficient grounds be shown for a different arrangement of the business. Copies of the bill as proposed to be submitted to the committee, and signed by the agent, are to be laid before each member, at the first meeting of the committee.

It is the duty of every committee to take care that the several provisions required by the standing orders of the house, to be inserted in private bills, are included in them wherever they are applicable; such as clauses for the safe custody of monies, for the payment of interest out of capital, and audit of accounts in bills authorizing the levy of fees, tolls, or other rate or charge; and for defining the level of roads, and otherwise protecting them, when altered by the construction of any public work, and for providing new dwellings for the labouring classes in case of the houses occupied by them being taken for the purposes of any work.

The constitution of committees on unopposed bills has already been described: but a short reference to their functions will be convenient in this place, to avoid any interruption in stating such orders of the house as apply equally to both classes of committees. The chairman of ways and means, and one of the two other members of the committee, or a referee, are a quorum; and unless the chairman be of opinion that the bill referred to them should be treated as an opposed bill, they proceed to consider the preamble, and all the provisions of the bill, and take care that they are conformable to the standing orders. The chief responsibility is imposed upon the chairman, who, being an officer of the house as well as a member,

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is entrusted, as already stated, with the special duty of examining, with the assistance of Mr. Speaker's counsel, every private bill, whether opposed or unopposed (see p. 721).

As there are no opponents of the bill before the committee, the promoters have only to prove the preamble, to the satisfaction of the committee, by the production of the necessary evidence, and by such explanations as may be required of them; and to satisfy the chairman, and the other members, of the propriety of the several provisions; that all the clauses required by the standing orders are inserted in the bill; and that such standing orders as must be proved before the committee have been complied with. If it should appear that the bill, from its character or s. o. 83. other circumstances, ought to be treated as an opposed bill by a more public tribunal, the chairman reports his opinion to the house, and the bill is referred to the committee of selection, or the general committee, who deal with the bill accordingly.¹

There are various orders of the house which are binding upon all committees on private bills, and others which relate only to particular classes or descriptions of bills. It is proposed to state these in their order; and afterwards to describe the ordinary forms observed in the hearing of parties, their counsel or agents, the settlement of the clauses, and the making of amendments.

All reports made under the authority of any public department upon a private bill, on being laid before the house, stand referred to the committee on the bill; and whenever any recommendation has been made in such a report, the committee are required to notice it in their report, and to state their reasons for dissenting, should such recommendation not be agreed to. And orders have been made, directing the board of trade to present a report upon the railway and canal bills of the session; and upon the

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bills for harbours, docks, and navigations;¹ and to report upon certain railway bills only.² Latterly, a copy of the report of the board of trade, upon all the railway, canal, tramway, gas, electric lighting, water bills, and provisional orders of the session, has been ordered to be laid before the house;³ and in pursuance of standing orders, presently to be noticed, other reports are made by the board.

On the 10th May, 1858, a report and correspondence with the office of works and public buildings were referred to the committee on the Victoria Station and Pimlico Railway Bill; and the committee reported that they had made provision, requiring that the approval of the first commissioner of works should be given to a certain portion of the work.⁴ On the 19th June, 1854, the Lords referred an admiralty report to the committee on the York, Newcastle, and Berwick Railway Bill, with an instruction to hear the board of admiralty, by their counsel and witnesses, in reference to the bill.⁵ The minutes of evidence taken before committees on bills, in former sessions, are frequently referred to committees on bills.⁶

The names of the members attending each committee are entered by the committee clerk in the minutes; and when a division takes place, the clerk takes down the names of the members, distinguishing on which side of the question they respectively vote; and such lists are to be given in, with the report, to the house.

The committee are precluded from examining into the compliance with such standing orders as are directed to be proved before the examiners, unless by special order from the house.⁷ Such an order is only given when the house, on the report of the standing orders committee, allow parties to proceed with their bill, on complying with certain

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¹ 112 C. J. 128; 117 ib. 42.
² 122 ib. 23. 102. 110; 16th May, 1873.
³ 132 ib. 4, 160.
⁴ 113 ib. 161. 166.
⁵ 85 L. J. 256.
⁶ 112 C. J. 156. 173. 205. 285; 122 ib. 221.
⁷ See Minutes of Committee on Belfast and West of Ireland Railway Bill, Suppl. to Votes, 1854, p. 506; Belfast and County Down Railway Bill, ib. p. 581; Dublin Central Tramways Bill, 1877, 132 C. J. 366. 378. 399 (increase of estimate to be the subject of additional provision).
standing orders which they had previously neglected. In
ordinary cases, it has been customary for the committee on
the bill to inquire whether the orders of the house have
been complied with, instead of referring that matter to the
examiner: but when any special inquiry in reference to the
standing orders has been necessary, the matter has been
referred to the examiner instead of to the committee; and
his certificate has been produced before the committee. 1

Compliance with such orders may be proved before the
committee, by affidavits sworn in the same manner as
affidavits produced before the examiners. The committee & 0. 142,
may also admit proof of the consents of parties concerned
in interest in any private bill, by affidavits sworn in the
same manner, or by the certificate in writing of such parties,
whose signatures are to be proved by one or more witnesses,
unless the committee require further evidence.

In all bills for carrying on any work by means of a com-
pany, commissioners, or trustees, provision is required to be
made for compelling subscribers to make payment of the
sums severally subscribed by them.

Railway bills have been the most important class of private
bills in modern times, and there are numerous standing orders applicable to them, to which the particular attention
of the committee on every railway bill, and of the promoters
and opponents of such bills, should be directed. By these
standing orders, (1) particular matters for the investigation
of the committee are pointed out; (2) certain fixed principles
of legislation are laid down, from which the committee,
except in special cases, will not be justified in departing;
and (3) particular clauses are required to be inserted.

1. Whether the bill be opposed or unopposed, the pro-
motors, in proving the preamble of a railway bill, must be
prepared with sufficient evidence to satisfy the committee,
and enable them to report to the house the matters specially
referred to their consideration; and the reports should be
carefully prepared by the promoters of the bill.

1 Dublin Improvement, and Great C. J. 76. 81. 84; Metropolis Manage-
Northern Railway Bills, 1849, 104 ment Bill, 1893.
The committee are to report specially whether any report from any public department has been referred to the committee, and if so, in what manner its recommendations have been dealt with by the committee; and whether the railway is intended to cross on a level any railway, turnpike-road, or highway. The committee are also to report any other circumstances which, in their opinion, the house should be informed of.

Some of these orders for a special report are often inapplicable; and, in such cases, the committee state in their report their reasons for considering that any of them do not apply to the bill, and report upon the others.

2. The principles of legislation to be observed by the committee on a railway bill are as follows: No company is to be authorized to raise, by loan or mortgage, a larger sum than one-third of its capital; and until fifty per cent. on the whole of the capital has been paid up, the company is not to raise any money by loan or mortgage. Where the level of any road is to be altered in making a railway, the ascent of a turnpike-road is not to be more than one foot in thirty; and of any other public carriage-road not more than one in twenty; unless a report from an officer of the board of trade shall be laid before the committee, and unless the committee, after considering such report, and examining the officer, if they disagree with this report, shall recommend steeper ascents, with the reasons and facts upon which their opinion is founded. A sufficient fence of four feet, at least, is to be made on each side of every bridge which shall be erected. No railway is to be made across any railway, tramway, tramroad, or other public carriage-road, on the level, unless the report of some officer of the board of trade shall be laid before the committee, and unless the committee, after considering such report, and examining the officer, if they disagree with his report, shall recommend such level crossing, with the reasons and facts upon which their opinion is founded.

1 Many Irish railway companies have been authorized to borrow an amount equal to half the capital. Ballymena and Larne Railway Bill, 1885; Bray and Inniskerry Railway Bill, 1886; Kingstown and Kingsbridge Junction Bill, 1887.
founded; and in every clause authorizing a level crossing, the number of lines of rails is to be specified.

No railway company is to be authorized to construct or enlarge, purchase or take on lease, or otherwise appropriate any dock, pier, harbour, or ferry, or to acquire and use any steam-vessels for the conveyance of goods and passengers, or to apply any portion of their capital or revenue to other objects, distinct from the undertaking of a railway company, unless the committee report that such restrictions ought not to be enforced, with the reasons and facts upon which their opinion is founded; and where a committee has failed to report specifically such reasons and facts, the bills have been recommitted for that purpose.¹

No powers of purchasing, hiring, or providing steam-vessels are to be contained in a railway bill, by which other powers are sought, except when the transit of such steam-vessels is required to connect portions of railway belonging to, or proposed to be constructed by, such company.

The committee are to fix the tolls and determine the maximum rates of charge, for the conveyance of goods and passengers; or are to make a special report, with their report of the bill, explanatory of the grounds of their omitting to determine such maximum.

In the case of any bill relating to a railway, tramway, increase of canal, dock, harbour, navigation pier or port, seeking powers as to tolls, rates, or duties in excess of those already authorized, the bill is not to be reported by the committee until a report from the board of trade on the powers so sought has been laid before them, and the committee are to report specially in regard to the recommendations contained in the report of the board of trade. And in furtherance of the objects of this standing order, bills have been recommitted.²

In 1882, the general committee on railway and canal bills also recommended the insertion of clauses regulating tables

¹ Great Eastern and North British Railway Bills, 16th July, 1863; Caledonian Railway (Edinburgh Station) Bill, 1866; East London Railway Bill, 1870; Southampton Docks Bill, 1892.
² Exeter, Teign Valley, and Chagford Railway; Windsor, Ascot, and Aldershot Railway, 21st May, 1883.
of rates on goods. Under the Railway and Canal Traffic Act, 1888, provisional orders may be granted for fixing railway rates for merchandise (see p. 657).

In the case of a bill for the abandonment of a railway, tramroad, tramway, or subway, or any part thereof, and the release of any deposit money impounded as a security for completion, the committee have to report specially in regard to the recommendations contained in the report of the board of trade on the subject, which shall be presented to the house.

No railway company is to be authorized to alter the terms of any preference, or priority of interest, or dividend, unless the committee report that such alteration ought to be allowed, with the reasons on which their opinion is founded, together with the number of preference shareholders who have assented to or dissented from such alteration.¹

No powers of purchase, sale, lease, or amalgamation are to be given to railway companies, unless, previously to the application to Parliament, certain matters connected with the capital of such companies be proved to the satisfaction of the board of trade.²

No railway company is to be authorized, except for the execution of its original lines sanctioned by Parliament, to guarantee interest on any shares which it may issue for creating additional capital, or to guarantee any rent or dividend to any other railway company, until such first-mentioned company has completed and opened for traffic its original lines. In bills for the amalgamation of railway companies, the amount of capital created by such amalgamation is in no case to exceed the sum of the capitals of the companies so amalgamated.

In bills for empowering a railway company to purchase any other railway, no addition is to be made to the capital of the purchasing company, beyond the capital of the railway purchased; and in case such railway is to be purchased

¹ See also infra, p. 764.
² A clause has sometimes been inserted in bills for this purpose, suspending the operation of the power of transfer till the certificate of the board of trade has been produced. Roseneath and Fishguard Railway Bill, 1881; London and South Western Railway Bill, 1883.
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For amendment of S. O. 170A, see p. 853.

at a premium, no addition, on account of such premium, is to be made to the capital of the purchasing company.

No powers are to be given to any local authority to construct, acquire, or take on lease any tramway, or portion of tramway, beyond the limits of their district, unless it is in connection with a tramway belonging to or authorized to be constructed or acquired by the local authority, and unless the committee on the bill determine that, having regard to the special local circumstances, such construction, acquisition, or taking on lease ought to be sanctioned; and in that case the committee are to insert a clause for the protection of the local authority of the district in which such tramway or portion of tramway is situate, in the terms, mutatis mutandis, of sect. 43 of the Tramways Act, 1870, except that the period of seven years shall be substituted for the period of twenty-one years, and the period of three years for the period of seven years.

No powers are to be given to any local authority, to place or run carriages upon any tramway, and to demand and take tolls and charges in respect of the use of such carriages; but a committee on a tramway bill is enabled to insert a clause under which the board of trade would be empowered to grant a licence to a local authority to work a tramway belonging to themselves, on certain conditions mentioned in the standing order.

It is the duty of committees to take care that the provisions of the bill are in conformity with these principles and regulations: but no special form of enactment is prescribed for carrying the intentions of Parliament into effect. Some of these orders are not obligatory upon the committee, provided they report to the house their reasons for not enforcing them in any particular case. In other cases, the house has not entrusted the committee with discretionary powers: but committees have occasionally exercised a discretion, subject to the approval of the house, and have made special reports.¹

¹ York and North Midland Railway, 1850, Suppl. to Votes, p. 59; Eastern Union Railway, 1850, ib. p. 113; Manchester, Sheffield, and Lin-
Clause protecting existing preference shares, S. O. 160. 3. There are also special clauses which are to be inserted in every railway bill to which they are applicable.

Where it is proposed to authorize the company to grant any preference or priority in the payment of interest or dividends on any shares or stock, a clause is required to be inserted, providing that the granting of such preference shall not prejudice or affect any preference or priority in the payment of interest or dividends, on any other shares or stock already lawfully subsisting; unless the committee report that such provision ought not to be required, with the reasons on which their opinion is founded. 1

In every railway, tramway, tramroad, or subway bill providing for the construction of any new line, or for the extension of time for the completion of the work, the following provisions, founded upon the recommendation of a joint committee of Lords and Commons in 1867, are to be inserted. If promoted by an existing company having a railway, tramway, tramroad, or subway already opened for public traffic, a clause is to be inserted, providing that if the company fail to complete the line within the time limited by the Act, the company shall be liable to a penalty of 50l. a day, until the line has been completed and opened for public traffic, or until such penalty amounts to five per cent. on the estimated cost of the works. If promoted by an existing company for any of these purposes, not having a line already opened for public traffic, or which during the last year has not paid dividends upon its ordinary share capital, or by an existing company where an increase of capital is sought, or by persons not incorporated, a clause is

colnsshire Railway Bill, 1830, Suppl. to Votes, p. 151; ib. 1891, p. 1607; 146 C. J. 154.
1 For cases in which such reasons have been given, see Eastern Counties Railway Bill, ib. 1853, p. 158; Monkland Railways Bill, ib. 193; Great Northern Railway (No. 1) Bill, ib. 231; North British Railway Bill, ib. 287; Aberdeen Railway Bill, ib. 289; Great Western (Hen- ley, &c.) Bill, ib. 371; Carlisle Railway Bill, ib. 515; York, Newcastle and Berwick, &c., Bill, ib. 585, &c.; South Eastern Railway (Lewisham and Bromley) Bill, Suppl. to Votes, 1854, p. 92; Great Western (Shrewsbury and Birmingham, &c.) Bill, ib. p. 299; York, Newcastle, and Berwick, &c., Bill, ib. p. 387; Leeds Northern Railway Bill, ib. p. 457.
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to be inserted, providing that the deposits paid under the standing orders shall be retained, and made liable to forfeiture unless, before the time limited for completing the line, the company shall either open it for the public conveyance of passengers, or prove that they have paid up and expended one-half of their capital for the purposes of the Act. Another clause is required to be inserted, providing that the penalties recovered, or deposits forfeited, shall be applied to the compensation of landowners or other persons whose property may have been interfered with or affected.

A clause is to be inserted, providing that if the railway, tramway, tramroad, or subway is not completed within the period limited by the bill, the powers for making the same shall cease, and the period limited in case of a new line is to be for a railway within five years, for a tramroad within three years, and for a tramway within two years, and in the case of an extension of time so limited, within three, two, and one years respectively.

Where these provisions are not applicable to any particular bill, the committee are to make such other provision as they shall deem necessary for ensuring the completion of the line of railway or tramway.

In the case of every bill for incorporating a railway, canal, or tramroad company, or for giving powers to an existing company to which no Rates and Charges Order Confirmation Act applies, the committee are to fix the rates for merchandise traffic by reference to the Rates and Charges Order Confirmation Act of some other company applicable to the same. If in any such bill other than a railway bill the committee are of opinion that no such Act will apply, they are to insert a clause making applicable to such company the provisions of the Railway and Canal Traffic Act, 1888, as to the revision of rates.

1 See standing order No. 168A.
2 The time for both railways and tramways has been extended for longer periods, the committee mentioning the fact in their report, Midland Railway Bill, 1881; Golden Valley Railway Bill, 1882; Ban Navigation and Railway Bill, 1883; Pembroke and Fishguard Railway Bill, 1886; St. Helen's District Tramway Bill, 1881; Ipswich Tramway Bill, 1882.
By standing order No. 167, a clause is to be inserted in every railway bill, prohibiting the payment of interest or dividend to any shareholder in respect of calls, except on subscriptions which may have been prepaid. But on the 6th June, 1883, this standing order was amended, and the payment of interest out of capital may be allowed by the committee on the bill upon conditions set forth in the standing order.¹

And another clause is to be inserted, prohibiting a railway company from paying, out of the capital which they have been authorized to raise for the purposes of an existing Act, the deposits required by the standing orders to be made for the purposes of any application to Parliament for a bill for the construction of another railway.

In every bill for the construction of a tramroad of railway gauge, and intended to communicate with a railway, a clause is to be inserted providing that the Railway and Canal Traffic Acts shall apply to the company and tramroad; and the length of so much of it as is constructed along a street or road, or upon waste by the side of a street or road, is to be set forth.

And, lastly, a clause is to be inserted, providing that the railway shall not be exempted from the provisions of any general Acts, or from any future revision and alteration, under the authority of Parliament, of the maximum rates of fares and charges previously authorized.

In every railway, tramway, tramroad, or subway bill the length of the line is to be set forth in miles, furlongs, chains, and yards, or decimals of a chain, in the clause describing the works, with a statement, in the case of each tramway, whether it is a single or a double line.

A committee has inserted clauses compelling a railway company, under penalty of a suspension of its dividends, to apply to Parliament in the next session, for a bill to authorize the construction of a line of railway, which the company

¹ Four per cent. is the limit of interest mentioned in the standing order, but frequently three per cent. only has been the rate allowed. In the Mersey Railway (Various Powers) Bill, 1887, payment of interest out of capital was refused by the committee.
had pledged itself to make. And the preamble of a bill has been negativised, on proof that it was a violation of a pledge previously given by a company.

Where any agreement is to be sanctioned, such agree-
ment is to be printed as a schedule to the bill.

In the case of bills authorizing a local authority to borrow money under the Local Government Acts, without the sanction of the local government board, estimates of the proposed application of the money are to be recited in the bill, and proved before the committee.

Whenever application is made by a local authority in Local Ireland for new powers, the promoters are required to obtain a certificate, under the seal of the local government board in Ireland, whether such application is made with their sanction and approval, which certificate is to be reported upon by the committee.

In the case of bills promoted by or conferring powers on Police and sanitary local authorities, relating to police and sanitary regulations, the committee are required to report specially on the clauses which are in conflict with, deviation from, or in excess of, the general law, quoting the text of such clauses, and also with regard to byelaws, repayment of loans, borrowing powers, and other matters set forth in standing order No. 173A; and the report is to be printed and circulated with the votes.

The committee on a bill for confirming letters patent are Letters to see, in compliance with the standing orders, “that there be a true copy of the letters patent annexed to the bill.” This copy should be attached to the bill when first brought into the house; and if its omission were noticed in the house, at any time before the bill was in committee, the bill might be ordered to be withdrawn.

There are several standing orders relating specially to Inclosure and drainage bills, which is to be examined and enforced by the committee on

1 South Western Railway (Capital and Works) Act, 1855, 18 & 19 Vict. c. clxxxviii. ss. 62. 69; Suppl. to Votes, 1853, p. 945; ib. 1855, p. 251. 2 Mid-Sussex and Midhurst Junction Railway Bill, Group 3, 1860. 3 See order of the house, 1st March, 1893, 148 C. J. 95.
the bill. These are relative to the proof of notices, and of the allegations in the preamble of the bill; the consent bill, signed by the lord of the manor and the owners of property; a statement of the property of owners, assenting, dissenting, and neuter. On a report from the committee that the lord of the manor had declined to sign the bill, but did not oppose it, and desired to remain neuter, the part of the order relating to the consent of the lord of the manor has been dispensed with.\(^1\)

In the case of drainage bills, the assents of the occupiers as well as owners of land are to be proved, but not that of the lord of the manor.

In every bill for inclosing lands, it is ordered that provision be made for leaving an open space sufficient for purposes of exercise and recreation of the neighbouring population, and for its fencing and maintenance; also that the bill should contain the names of the commissioners proposed to be appointed, and compensations intended for the lord of the manor and others, and that the copies of such bills sent to persons interested, for their consent, should contain this information; that certain persons should be disqualified as commissioners; and that a clause should be inserted in the bill for settling the pay of the commissioners and for the passing of their accounts.

Whenever a private bill contains any provisions relating to the inclosure of land, which might be comprised in a provisional order, under the Acts for the inclosure and improvement of land, the committee are to make a special report to the house.

In every bill by which power is sought to take, compulsorily or by agreement, in the metropolis, twenty or more houses, or in any city, town, or parish in the rest of the United Kingdom, ten houses or more, occupied wholly or partially, as tenants or lodgers, by persons belonging to the labouring classes, clauses, which are fully set forth in standing order No. 183A, are to be inserted, providing that this power shall not be exercised by the promoters until they have obtained the approval of the "central authority" to

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\(^1\) Thetford Inclosure, 1st April, 1844, 99 C. J. 182.
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a scheme for providing sufficient accommodation for the persons to be displaced, and have given security for carrying out the scheme; for imposing adequate penalties on the promoters in case of their contraventions of these provisions; and for the payment of the expenses incurred by “the central authority.”

In the case of a bill for impounding the water of any river or stream, the committee are to inquire into the expediency of providing that the water to be supplied in compensation should be given in a continuous flow throughout the twenty-four hours of the day, and to report accordingly.

The committee on a turnpike-road bill relating to Ireland are to insert a clause providing for the qualification of commissioners.

In every bill for making gasworks or sewage-works, or for making, altering, or enlarging any sewage farm, cemetery, burial-ground, destructor, or hospital for infectious diseases, there is to be a clause defining the limits within which the same are to be made or constructed.

In every bill in which an existing gas or water company is authorized to raise additional capital, provision is to be made for the offer of such capital by auction, or tender, unless the committee report that such provision ought not to be required, with their reasons; and it is competent to the committee so to regulate the price of gas, that any reduction of the authorized standard price shall entitle the company to make a proportionate increase of dividend, and that any increase above the standard price shall involve a proportionate decrease of dividend.

Having adverted to the several orders which are to be observed by committees, in reference to the proof of compliance with the standing orders, and the peculiar provisions required to be inserted in particular bills, the general proceedings of committees upon opposed private bills may be briefly explained. These are partly regulated by the usage of Parliament, partly by standing orders, and partly by statute.
It may be mentioned, in the first place, that as regards the inquiries of these committees, an important amendment of the law has of late years been introduced. By the Act 21 & 22 Vict. c. 78, committees upon private bills were first empowered to administer oaths. The 34 & 35 Vict. c. 33 gave the same powers to committees upon bills for confirming provisional orders. But these provisions have since been superseded by the Parliamentary Witnesses Oaths Act, 1871, which empowered every committee of the House of Commons to administer an oath to witnesses examined before it.  

On the 16th February, 1864, the house resolved, "That the minutes of evidence on opposed private bills be printed at the expense of the parties, whenever copies of the same shall be required." And in the case of "hybrid" bills, to which this order does not extend, special orders are given that the parties have leave to print the minutes of evidence day by day, from the committee clerk's copy, if they think fit.

When counsel are addressing the committee, or while witnesses are under examination, the committee-room is an open court: but when the committee are about to deliberate, all the counsel, agents, witnesses, and strangers are ordered to withdraw, and the committee sit with closed doors. When they have decided any question, the doors are again opened, and the chairman acquaints the parties with the determination of the committee, if it concerns them.

The first proceeding of a committee on an opposed bill, when duly constituted, is to call in all the parties. The counsel in support of the bill appear before the committee; the petitions against the bill in which the petitioners pray to be heard, are read by the committee clerk; appearances are entered upon each petition with which the parties intend to proceed, and the counsel or agents appear in support of

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1 The Parliamentary Witnesses Oaths Act, 1871, repeals s. 1 of 21 & 22 Vict. c. 78, and s. 3 of 34 & 35 Vict. c. 3.
2 122 C. J. 158. 168. 413; Metropolitan Water Bills, 1851, 1852, 27th June, 1851, 106 ib. 315; 107 ib. 141; Electric Lighting P. O. Bill, 1883, 138 ib. 364.
them. And it was usual, at this time, until cases of locus
standi were heard by the court of referees (see p. 726), to
intimate that objections would be raised to the hearing of
petitioners. If no parties, counsel, or agents appear when a
petition is read, the opposition on the part of the petitioners
is held to be abandoned; and if parties have neglected to
take their appearance at the proper time, they will not be
entitled to be heard.\(^1\) In some special cases, however, indul-
gence has been granted to them.\(^2\) In one case, the agent who
had deposited a petition stated that there was no appearance
upon it; but another agent immediately entered an appear-
ance; and as it was shown that he had regularly obtained
the appearance paper from the Private Bill Office, on the
production of a letter from the secretary to the company,
written by order of the board of directors, stating that they
desired to change their agent, and authorizing him to prose-
cute their petition, the committee allowed the petitioners
to be heard.\(^3\) An appearance paper has been allowed to be
amended, where it stated that a petition praying to be heard
against the preamble related to clauses only.\(^4\) Where
petitions complain of matters arising during the sitting of
the committee, or of amendments proposed to be made in
the bill, appearances are allowed to be entered, as the occa-
sion arises.\(^5\)

Difficulties have sometimes arisen, when counsel have not
been retained, or are absent, in regard to the right of
solicitors to be heard as agents for the parties, unless they
have been entered as agents for the bill or petition, in the
Private Bill Office. In 1844, a solicitor was refused a
hearing as an agent before one of the sub-committees on
petitions for private bills, and it was ruled that such refusal
was justified by practice, and by the construction of the

\(^1\) Suppl. to Votes, 1849, pp. 204.
\(^2\) Minutes of Groups 3 and 8, 1860;
Group 3, 1862.
\(^3\) South Wales Railway Bill, ib.
1853, p. 829; Minutes of Committees,
692. 729; Minutes of Group 2, 1860;
Pontypool Gas and Water Bill, 1890,
Minutes of Committee; and see p.
729.
\(^4\) Pontypool Gas and Water Bill, 1890,
Minutes of Committee; and see p.
729.
\(^5\) Ib. Group 9, 1863.
\(^6\) Ibid. Group 3, 1859.
\(^7\) Minutes of Group 4, 1859; Group
C, 1861.
standing order;\textsuperscript{1} and this rule has since been followed by
the examiners. Before committees on private bills, how-
ever, solicitors have often been heard without objection,\textsuperscript{2}
where it has been for the convenience of the parties: but in
the Mersey Conservancy and Docks Bill, 1857, a solicitor,
whose name was specified in the appearance as solicitor for
a petition, on claiming to be heard, received an intimation
from the committee that he would not be entitled to
address the committee until he had entered himself as
a parliamentary agent.\textsuperscript{3} The Speaker, therefore, autho-
rized the clerks in the Private Bill Office to enter his
name as agent for the petition, in addition to that of the
agent who had originally taken out the appearance; the
latter being still responsible for the payment of the fees,
and for the observance of the rules and orders of the
house.

And the same rules have since been observed by
the referees.\textsuperscript{4}

In the case of a committee on a group of bills, as already
stated, the committee take the bill or bills first into con-
sideration, which have been named by the committee of
selection, or general committee; and unless a bill comprised
in the group be set down for the first day, the promoters
and opponents are not to enter their appearance on that day
in respect of such bill.

When the parties are before the committee, the senior
counsel for the bill opens the case for the promoters; unless
a preliminary objection should be raised by petitioners to
proceeding further with the bill.\textsuperscript{5}

These preliminary objections have not usually been
sustained; they ordinarily have referred to questions in-

\begin{itemize}
\item[1] 73 H. D. 3 s. 583.
\item[4] 1 C. & R. p. 3; ib. 215.
\item[5] Loudon and North Western
Railway Bill, 1873; Birmingham
Corporation Water Bill, 1875; Stock-
ton and Middlesborough Corporation
Water Bill, 1876; Brighton and
Hove Gas Bill, 1881; Tramways
Provisional Order (Birmingham)
Bill, 1881; Birkenhead Corporation
Improvement Bill, 1867 (sustained,
excessive alterations in a filled-up
bill); Hammersmith and Fulham
Recreation Ground Bill, 1884 (sus-
tained); Great Forest of Brecknock
Bill, 1893, &c.
\end{itemize}
herent to the principle and inception of the bill, and as such might have been raised on its second reading. As the bill has been referred by an order of the house to a committee for consideration, the strong presumption is that the duty of the committee is to deal with the bill on its merits, the more so since the argument used in support of a preliminary objection would generally be of equal avail at that stage of the proceedings. Preliminary objections have sometimes been sustained when they have arisen on matters which have occurred after the second reading of a bill.

Unlike the practice in regard to public bills, the preamble of a private bill is first considered; and if the preamble be opposed, the counsel addresses the committee more particularly upon the general expediency of the bill, and then calls witnesses to prove every matter which will establish the truth of the allegations contained in the preamble. In a railway bill, this is the proper occasion for producing evidence to satisfy the committee upon the most material of the points which, by the standing orders, they are obliged to report to the house. The witnesses may be cross-examined by the counsel who appear in support of the several petitions against the preamble, but not, as to the general case, by the counsel of parties who object only to certain provisions in the bill. Cross-examination is confined to matters comprised in the petitions, except when it is sought to discredit a witness. After the cross-examination, each witness may be re-examined by the counsel in support of the bill. When all the witnesses in support of the preamble have been examined, the case for the promoters is closed, unless the counsel for the bill has been permitted by the committee to make a speech summing up the evidence in lieu of an opening speech.

Every petition against a private bill, and every petition against a bill for confirming a provisional order or certificate, when petitioners entitled to be heard. S. O. 210.
which have been deposited in accordance with the standing orders, and in which the petitioners pray to be heard by themselves, their counsel, or agents, stands referred to the committee; and such petitioners, subject to the rules and orders of the house, shall be heard upon their petition, if they think fit, and counsel heard, in favour of the bill, against the petition. The petitioners are required to establish before the referees a locus standi according to the rules and usage of Parliament (see p. 732).

When petitioners appear against the preamble, their counsel either opens their case or reserves 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.\(^1\) It has been ruled that where a petitioner against a railway bill is admitted to be heard on a petition alleging a preferable line, described particularly in his petition, the engineer to be called in support of such line is entitled to produce, prove, and refer to plans and sections of the suggested line, as made by himself.\(^2\) But, of late years, it has not been usual to admit evidence of alternative schemes, unless they have been submitted to Parliament.\(^3\) As a general rule, each witness is to be examined, or cross-examined, throughout, by the same counsel. In the Shrewsbury and Birmingham Railway Bill, 1852, the committee resolved that "they must adhere

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1 Glasgow and South Western Railway Bill, Suppl. to Votes, 1853, p. 720; South Wales Railway Bill, ib. p. 1339; Minutes of Committees, 1856, vol. i. p. 56.
2 Midland Railway (Extension to Otley) Bill; Cork and Macroom, &c., Bill, 1861; Resolutions of general committee of railway and canal bills, 1861; 117 C. J. 267, &c.
3 Harrow and Rickmansworth Railway Bill, 1874; West Kent Drainage Bill, 1875; Sutton Bridge Docks Bill, 1875; Newport (Monmouthshire) Gas Bill, 1875; Provisional Order (Thirsk Water) Bill, 1873; Loughborough Local Board and Leicester Corporation Bills (competting), 1886 (admitted); Oldham Corporation Bill, 1886; Local Government Provisional Order (Bingley), 1889; Bilston Commissioners Bill; Newark and Trent Water Bill; Airdrie and Coatbridge Water (admitted, special circumstances), 1890.
to the rule that the same counsel should go through with the examination of each witness, unless by agreement between the parties, to be approved by the committee, it should be arranged otherwise, in order to meet the convenience of counsel."  
1 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 unless he had been present during the entire cross-examination. 
2 The only occasion, since the years 1847 and 1861, on which it has been sought to make the first part of this rule effective was in 1891, when the chairman of a committee proposed to enforce it; the proposal, however, was not adopted, nor did it meet with the concurrence of the chairmen of other committees; the latter part of the rule, as to re-examination, has been observed. When the evidence against the preamble is concluded, the case of the petitioners is closed, unless an opening speech has been waived; and the senior counsel for the bill replies on the whole case. 
3 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. Where there are numerous parties appearing on separate interests, the committee will make such arrangements as they think fit for hearing the different counsel. 
4 Sometimes the minutes of evidence on bills of a previous session, and other documents, are referred to a

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1 Suppl. to Votes, 1852, p. 287.
2 Ibid. 1847, vol. ii. pp. 1487, 1477; Resolutions of general committee of railway and canal bills, 1861.
3 City and South London Railway Bill, 1891, MS. Minutes of Evidence, 13th March, p. 7; Central London Railway Bill, 1891, ib. 4th March, p. 54.
4 In the Edinburgh, Perth, and Dundee Railway Bill, the committee held that the counsel for the bill was not entitled to a general reply; but that his reply must be confined to the case of the only petitioner who had adduced evidence, Suppl. to Votes, 1853, p. 720.
5 Great Western Railway, &c., Bill, ib. 1854, p. 495.
6 Ibid. 1852, p. 288. In the Severn Valley, &c., Group, the committee decided to hear two counsel only on the whole case presented by several bills, ib. 1853, p. 1031.
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 negative, as the case may be. Or, where there are competing bills in the same group, the cases are heard together, according to a long-established course of procedure, and the decision of the committee is postponed until after they have heard the evidence in support of all the bills; and occasionally, where the subject-matter of bills in the same group has been partly the same, committees have heard the cases separately, but have deferred their decision till after the conclusion of the last case. In some cases, the committee have resolved that the clauses which the promoters had agreed with the opponents to insert in the bill, should be produced before they proceeded to decide on the preamble. If the preamble be proved, the committee call in the parties, acquaint them with the decision, and then go through the bill clause by clause, and fill up the blanks; and when petitions have been presented against a clause, or proposing amendments, the parties are heard in support of their objections or amendments, as they arise; or opposed clauses may be postponed and considered at a later period in the proceedings, if the committee think fit. In accordance with the rules of the house in committee in dealing with a public bill, when all the clauses of the bill have been disposed of, new clauses may be offered either by members of the committee or by the parties. An alternative clause prepared by petitioners is frequently produced and considered in connection with a clause which is formally before the committee, and which may be amended or negatived in consequence; but if the clause be negatived, the alternative clause strictly should only be added when all the remaining clauses of the bill have been disposed of. Counsel claim the right of reply when they have brought

1 108 C. J. 495, 514; 117 ib. 267; 122 ib. 218; 132 ib. 83, &c.
up a new clause: but a distinction should be drawn in this respect between a purely alternative clause and a new clause; such an alternative clause is produced only in support of the argument against, and is virtually an amendment to a clause already formally before the committee, and it should be treated as an amendment only, without any right of reply; while counsel proposing a new and substantive clause for the consideration of the committee, when no other clause was before it, would not be so limited.¹ It is at this time also that officers of public departments sometimes appear, to secure the insertion of clauses protective of the property or interests of the Crown, or of navigations, and tidal lands, or otherwise concerning the public interests. On the 25th May, 1865, the Admiralty were allowed to attend by counsel at the next sitting of the South Eastern Railway Bill, to protect the Greenwich Observatory from injury. In 1871, the Office of Works and Public Buildings appeared by counsel against the Metropolitan Street Tramway (Westminster and Battersea Park Extension) Bill, and the London Street Tramways (Kensington, Westminster, and City Lines) Bill, as landowners.² In 1872, the treasury obtained the insertion of a clause in the International Communication Bill, providing access to Crown property. But, except in cases in which the consent of the Crown may be withheld from a bill, government departments are without any means of enforcing the adoption of their clauses, either by the parties or the committee; and their relations to the committee and Parliament are often not a little anomalous. It has, indeed, been determined that public departments have no right to be heard, except upon petition.³

¹ This rule as to the hearing of counsel on an alternative clause has received the assent and approval of Mr. Pope, Q.C., and Mr. Pember, Q.C.
² Minutes of Committee, Group 12, 1871.
³ Victoria Station and Pimlico Railway Bill, Group 6, 1858. In 1873, the postmaster-general petitioned against the Midland Railway Bill, but the petition was afterwards withdrawn. In the same year he also petitioned against the Deal, Walmer, and Adisham Railway Bill, the South Eastern Railway Bill, the North Metropolitan Tramways Bill, and the London and Aylesbury Railway Bill; and in the two first cases, appearances were entered.
It must be borne in mind that the committee may not admit clauses or amendments which are not within the order of leave; or which are not authorized by a previous compliance with the standing orders applicable to them, unless the parties have received permission from the house to introduce certain provisions, in compliance with petitions for additional provision. But if the committee are of opinion that such provisions should be inserted, the further consideration of the bill can be postponed, in order to give the parties time to petition the house for additional provision.\(^1\)

A committee has refused to entertain a clause giving powers to another company practically to annul the provisions of a bill, even when it appeared that the petition of that company had been withdrawn, on condition of the introduction of that clause. At the same time, the committee offered to obtain power from the house to hear the company, notwithstanding the withdrawal of their petition.\(^2\)

If the proof of the preamble be negatived, the committee report to the house, "That the preamble has not been proved." In 1836, the committee on the Durham (South West) Railway Bill were ordered to reassemble, "for the purpose of reporting specially the preamble, and the evidence and reasons, in detail, on which they came to the resolution that the preamble had not been proved."\(^3\) It has been ruled that 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.\(^4\) In 1854, the preambles of two out of three competing railway bills were declared not proved: but the successful bill, after it was reported, having been withdrawn, the two other bills were recommitted, and the preamble of one of them was declared to be proved.\(^5\)

\(^1\) Vide infra, p. 697; London and North Western (Northampton Branch) Bill, Suppl. to Votes, 1853, p. 964; ib. p. 1255.

\(^2\) Thames Tunnel Railway Bill, Minutes of Group 2, 1860.

\(^3\) 91 C. J. 396.

\(^4\) Group P, 1853, Suppl. to Votes, p. 957; Shrewsbury and Welshpool Railway Bill, 1838.

\(^5\) Group 1, Suppl. to Votes, 1854 pp. 175. 415.
1861, in the case of the Mold and Denbigh Junction Railway Bill, the committee reported that the preamble had not been proved: but all opposition having been subsequently withdrawn, the bill was recommitted to the former committee, who reported the preamble proved, and the bill was passed. In 1874, in the case of the Bolton-le-Sands, Warton and Silverdale Reclamation Bill, the committee having reported that the preamble had not been proved, the bill was afterwards recommitted to the former committee, with an instruction to the committee to strike out of the bill all powers for the compulsory taking of lands, to which any opposition was offered. And in several other cases, where compromises have afterwards been effected, and the promoters have consented to make amendments, the bills have been recommitted for that purpose.

In the Kingston Township Bill, 1873, while the case for the promoters was proceeding, it was made known that the town commissioners of Kingstown, by whom the bill was promoted, had been restrained by injunction from proceeding further with the bill, on the ground that they had failed to comply with the requirements of the Towns Improvement Act, 1847 (ss. 132, 133, and 142), and were not therefore entitled to come to Parliament. The commissioners, however, had also signed the petition for the bill, as individuals; and claimed to proceed with the bill in that capacity: but the committee resolved, “That the counsel for the promoters having stated that the commissioners had withdrawn from the promotion of the bill, the committee decided that they ought not to proceed further with the bill, and that they would report to the house that the preamble had not been proved.” This decision was founded, it is believed, upon the determination of the committee not to favour any evasion of the Towns Improvement Act, and of the injunction founded upon it. Attempts were afterwards made, without success, to obtain a rehearing, but the committee adhered to their determination.

1 116 C. J. 285. Peterborough Water Bill, 1873, was a similar case, where the promoters' claim to a recommittal was conceded, though it was not proceeded with.

2 129 ib. 174.

3 Ib. 225; 132 ib. 177.

4 Minutes of the Committee.
Alterations may be made in the preamble, subject to the same restriction as in the case of other amendments, that nothing be introduced inconsistent with the order of leave, or with the standing orders of the house applicable to the bill. Such amendments, however, are to be specially reported.¹

The proceedings of a committee to which a bill for confirming a provisional order or certificate has been referred with respect to any order or certificate to be confirmed thereby, are conducted in like manner as in the case of private bills, and are subject to the same rules and orders of the house as may be applicable, provided that when any order or certificate contained in such bill is opposed, the committee to whom it is referred shall consider all the orders and certificates therein comprised. The parties promoting the order or certificate are first heard, and their evidence thereon is taken; the petitioners against it follow, and they are heard, whether they oppose the order or certificate as a whole, or only on particular articles or clauses, and the promoters' counsel replies or not, according as the petitioners have or have not called evidence. On the conclusion of the case, the question is put to the committee, "That this order (or certificate) be confirmed," or "as amended be confirmed," which is resolved in the affirmative or negative, as the case may be; and the chairman, the preamble having been agreed to, reports the bill with the decision of the committee on the provisional orders both opposed and unopposed.

If all the orders or certificates comprised in a confirming bill are unopposed, the bill is treated by the committee of selection or the general committee on railway and canal bills, as the case may require, as an unopposed private bill (see pp. 709. 716).

Some difficulties are experienced by committees on provisional order bills where it becomes necessary to amend the order. If the provision inserted by way of amendment comes within the powers conferred by statute on the authority which grants the provisional order, it is inserted by the

¹ 113 C. J. 166. 180, &c.
committee in the text of the order, while, on the other hand, if the amendment be of such a nature that it is in excess of the powers so conferred, it is inserted in the confirming bill. New matter should not be introduced into the order which would be inconsistent with the public notice and advertisement of the purpose of the order, required by the Act under which the provisional order is granted.

In 1865, the important principle of restraining vexatious litigation by awarding costs was first introduced. By 28 & 29 Vict. c. 27, when a committee on a private bill shall decide that the preamble is not proved, or shall insert any provision for the protection of a petitioner, or strike out or alter any provision for the protection of such petitioner, and further unanimously report that petitioners have been unreasonably or vexatiously subjected to expense in defending their rights, they shall be entitled to recover costs from the promoters. And, on the other hand, when the committee shall unanimously report that the promoters have been vexatiously subjected to expense by the opposition of petitioners, they shall be entitled to recover costs from those opponents. But it is provided that no landowner who bonâ fide, at his own sole risk and charge, opposes a bill which proposes to take any part of his property, shall be liable to any costs in respect of his opposition. Since the passing of this Act, such costs have been awarded in several cases, but have

1 This practice has been followed in deference to the wishes of the local government board, who object, on the question of precedent, that an order emanating from them should contain provisions which they were not authorized by the enabling Act to have inserted in the order. It has been suggested that all amendments should be inserted in the order, and some method be adopted of distinguishing those made by the authority of Parliament.

2 It has been held that the Act has been duly complied with, if all the members of the committee present at the hearing of the case, provided that they form a quorum, have unanimously reported in the manner prescribed for entitling parties to recover costs. Minutes of the police and sanitary committee (consisting of nine members, with a quorum of five), Lancaster Corporation Bill, 1888.

3 London, Chatham, and Dover (Various Powers) Bill; North British Railway (Coatbridge, &c., Branches) Bill; Great Western Railway Bill, 1866; Brecon and Merthyr Tydvil Junction Railway Bill; Hull Docks Bill, 1867; Tivy Side Railway Bill, 1872; North Eastern Railway (Additional Powers) Bill, 1874; Local
more frequently been refused. In all such cases, the costs are to be taxed by the taxing officer of the House of Commons. In one case, the promoters having informed the committee that it was not their intention to proceed with the bill, a petitioner applied to the committee to report that the promoters not having adduced evidence, the preamble was not proved, and to consider an application for costs. But the committee decided to report that the parties had stated that it was not their intention to proceed with the bill, and that consequently the question of costs could not be entertained.¹ And this construction of the Act has since been followed.² The same principle has also been generally applied, where the promoters have already amended the bill to meet the objections of petitioners,³ or have not appeared in support of a provisional order.⁴ By the 34 & 35 Vict. c. 3, select committees upon bills for confirming provisional orders may award costs in like manner, and under the same conditions, as in the case of a private bill. In the case, however, of provisional orders granted under the authority of the Allotments Act, 1887, the Housing of the Working Classes Act, 1890, and the Allotments Act (Scotland), 1892, the question of costs is decided by a majority of the committee to whom the provisional order may be referred.⁵

Besides the matters which are required by the standing orders to be the subject of report by a committee (see p. 760, et seq.), there are particular duties of the chairman and of the committee on a private bill, in recording the proceedings of the committee, and reporting them to the house,
which remain to be noticed. These are distinctly explained
in the standing orders, and are as follows:

“Every plan and book of reference thereto which shall be produced
in evidence before the committee upon any private bill (whether the
same shall have been previously lodged in the Private Bill Office or
not), shall be signed by the chairman of such committee with his
name at length; and he shall also mark with the initials of his name
every alteration of such plan and book of reference which shall be
agreed upon by the said committee; and every such plan and book of
reference shall thereafter be deposited in the Private Bill Office.”

“The chairman of the committee shall sign, with his name at length,
a printed copy of the bill (to be called the committee bill), on which
the amendments are to be fairly written; and also sign, with the
initials of his name, the several clauses added in the committee.”

“The chairman of the committee shall report to the house that the
allegations of the bill have been examined, and whether the parties
concerned have given their consent (where such consent is required
by the standing orders) to the satisfaction of the committee.”

“The chairman of the committee shall report the bill to the house
whether the committee shall or shall not have agreed to the preamble
or gone through the several clauses, or any of them; or where the
parties shall have acquainted the committee that it is not their inten-
tion to proceed with the bill; and when any alteration shall have been
made in the preamble of the bill, such alteration, together with the
ground of making it, shall be specially stated in the report.”

“Whenever a recommendation shall have been made in a report on a
private bill from a department of the government referred to the com-
mittee, the committee shall notice such recommendation in their
report, and shall state their reasons for dissenting, should such recom-
modation not be agreed to.”

“The minutes of the committee on every private bill shall be brought
up and laid on the table of the house, with the report of the bill.”

If matters should arise in the committee, apart from the
immediate consideration of the bill referred to them, which
they desire to report to the house, the chairman should
move that leave be given to the committee to make a
special report.1 The house may also instruct the committee
to make a special report.2 In the case of the Devon and
Brighton railway competing lines.

1 Liverpool Docks, &c., and Bick-
enhead Dock, &c., Bills, 110 C. J.
298; Mersey Conservancy and Docks
Bill, 112 ib. 267. 269; Chelsea New
Bridge Bill, ib. 360. Concerning
parliamentary deposits, 120 ib. 285.
303; 134 ib. 229; 135 ib. 266; as to
forged signatures, 134 ib. 176.

2 London and Brighton Railway
Bills, 1837, 92 ib. 356. 417. 519. A
case of a very unusual character
occurred in 1837, which deserves
particular notice. The bills for
making four distinct lines of railway
to Brighton had been referred to the
same committee, when an unprece-
Dorset Railway Bill, 1853, the committee made a special report, explaining that they had rejected that bill in expectation of a preferable line of railway being proposed to Parliament, in the next session, by another company.\(^1\)

The attendance of witnesses before select committees has already been noticed. The power given to those committees of sending for persons, papers, and records, is not, however, entrusted to committees on private bills. The parties are generally able to secure the attendance of their own witnesses, without any summons or other process, and a large proportion of all the witnesses examined attend professionally. But when it becomes necessary to compel the attendance of an adverse or unwilling witness, or of any official person who would otherwise be unable to absent himself from his duties, application is made to the committee, who, when satisfied that due diligence has been used, that the evidence of the witness is essential to the inquiry, and that his attendance cannot be secured without the intervention of the house, direct a report to that effect to be made to the house; upon which an order is made for the witness to attend and give evidence before the committee.\(^2\) In one case, the committee reported that, in their opinion, a witness had been guilty of perjury.\(^3\)

Besides making the prescribed form of report, or special

dented contest arose among the promoters of the rival lines, and at length it was apprehended that the preamble of each bill would be negatived, in succession, by the combination of three out of the four parties against each of the lines in which the three were not interested, and on which the committee would have to determine separately. This result was prevented by an instruction to the committee "to make a special report of the engineering particulars of each of the lines, to enable the house to determine which to send back for the purpose of having the landowners hear and the clauses settled." This special report was made accordingly: but the house, being unable to decide upon the merits of the competing lines, agreed to address the Crown to refer the several statements of engineering particulars to a military engineer. On the report of the engineer appointed, in answer to this address, the house instructed the committee to hear the case of the landowners upon the direct line. Manchester, Sheffield, and Lincolnshire Railway Extension to London Bill, 1891.

\(^1\) Suppl. to Votes, 1853, p. 945; and see, in reference to the same case, Suppl. to Votes, 1853, p. 253. See also Special Report on Eastern Union Railway Bill, ib. p. 1159.

\(^2\) 105 C. J. 262; 110 ib. 121; 122 ib. 227; 127 ib. 99; 133 ib. 98; 134 ib. 187; 135 ib. 191; 137 ib. 101, &c.

\(^3\) 115 ib. 230.
reports in particular cases, committees have had leave given to report the minutes of evidence taken before them; which have been ordered to be printed, at the expense of the parties, if they think fit, and even in special cases, at the expense of the house; or have been referred to the committee on another bill of the same session.

If parties acquaint the committee that they do not desire to proceed further with the bill, that fact is reported to the house, and the bill will be ordered to be withdrawn; or the report to lie upon the table. On one occasion, a report was made, that from the protracted examination of witnesses, the promoters desired leave to withdraw their bill, and that the committee had instructed the chairman to move for leave to lay the minutes of evidence on the table of the house. In another case, the committee reported, "That the consideration of two bills should be suspended, in order to afford opportunity for the introduction of another bill;" and they recommended, "That every facility, consistent with the forms of the house, should be given to such a bill during the present session." 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.

It is the duty of every committee to report to the house the bill that has been committed to them, and not by long adjournments to withhold from the house the result of their proceedings; and therefore it has been prescribed by standing order that every committee on an opposed private bill shall report specially to the house the cause of any adjournment over any day on which the house shall sit. If any attempt of this nature be made to defeat a bill, the house will interfere to prevent it. Thus, in 1825, the committee on a

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1 81 C. J. 343; 91 ib. 238; 98 ib. 324; 107 ib. 357.
2 Clarence Railway Bill, 1843, Suppl. to Votes, 5th May, p. 83; Oxford, Worcester, and Wolverhampton Railway, &c., 1845, 100 C. J. 566; Subways (Metropolis) Bill, 1867, 122 ib. 413; Metropolitan Board of Works (Shoreditch Improvement) Bill, 1871, 126 ib. 120.
3 Northumberland (Atmospheric) Railway Bill, 1845, 100 ib. 556, &c.
4 104 ib. 510; 131 ib. 372.
5 129 ib. 98.
6 79 ib. 445.
7 Edinburgh Water Bills, 1846, 101 ib. 732.
8 Glasgow Waterworks Bill, 1848, Minutes, p. 97.
private bill having adjourned for a month, was “ordered to meet to-morrow, and proceed on the bill;”¹ and again, on the 23rd March, 1836, the house being informed that a committee had adjourned till the 16th May, ordered them "to meet to-morrow, and proceed on the bill."²

Whenever a committee adjourns, the committee clerk is required to give notice in writing to the clerks in the Private Bill Office, of the day and hour to which the committee is adjourned.

If a committee adjourn, without naming another day for resuming their sittings; or if, from the absence of a quorum, the committee be unable to proceed to business, or to adjourn to a future day, they have no power of reassembling without an order from the house, giving the committee leave to sit and proceed on a certain day.³

The proceedings of committees upon "hybrid bills" are generally similar to those of private bill committees; and they have the same power of examining witnesses upon oath, under the Parliamentary Witnesses' Oaths Act, 1871. Such committees consist of members nominated partly by the house, and partly by the committee of selection (see p. 719). ⁴

When the report has been made out and agreed to by the committee, the committee clerk delivers in to the Private Bill Office "the committee bill," being a printed copy of the bill, with the written amendments made by the committee; with every clause added by the committee regularly marked in those parts of the bill in which they are to be inserted. In strict conformity with this authenticated copy, the bill, as amended by the committee, is required by the standing orders to be printed at the expense of the parties. When printed, they must be delivered to the Vote Office, three clear days at least before the consideration of the bill: but it may not be delivered before the report of the bill has been made to the house; and agents, when they give notice at the Private Bill Office, of the day for the consideration of the bill, must produce a certificate from the Vote Office of the delivery of the amended printed bill on the proper day.⁵

¹ 80 C. J. 474. ² 91 ib. 195. ³ 105 lb. 201. ⁴ Order of the Clerk of the House, ⁵ 30th March, 1844.
In some cases, the alterations made by the committee have been so numerous and important, as almost to constitute the bill a different measure from that originally brought before the house. In such cases, the house has sometimes required the bill to be withdrawn, and another bill presented, which has been referred to the examiners. Thus, on the 21st May, 1849, on the report of the Holme Reservoirs Bill, notice being taken that almost the whole of the bill as brought in had been omitted, and a new set of clauses introduced, the bill was ordered to be withdrawn: ¹ but, unless the case be one of great irregularity, the later and better practice has been to refer the bill, as amended, "to the examiners, to inquire whether the amendments involve any infraction of the standing orders." ² If the examiner reports that there is no infraction of the standing orders, the bill proceeds without further interruption: but if he reports that there has been such an infraction, his report, together with the bill, will be referred to the standing orders committee.

In 1876, the Toll Bridges (River Thames) Bill—a hybrid bill—underwent so many important alterations in committee as to be substantially a new bill, and its opponents urged that it ought to be withdrawn. But the second reading of the bill had been postponed, while a select committee was considering the whole subject-matter of the bill; and when that committee had reported, the bill was read a second time and committed; and the report of the committee, together with other reports upon the same subject, was referred to the committee on the bill. These proceedings were regarded by the committee as in the nature of an instruction, and amendments had therefore been made, of a comprehensive

¹ 104 C. J. 320. 453.
² Metropolitan Cattle Market Bill, 1868, 123 C. J. 223; Toll Bridges River Thames Bill, 1876, 131 ib. 354; Dublin Central Tramways Bill, 1877, 132 ib. 396. In the case of the Smithfield Market Bill, 10th July, 1869, such a reference was refused, 115 ib. 370; in that of the Blackrock, &c., Tramways Bill, 1882, 187 ib. 81. 95, petitions, praying that the bill be referred to the examiner to inquire into the legality of the sealed bill, produced in proof of compliance with standing orders, were referred to the standing order committee, who refused the reference. The motion for the order so to refer the petitions was given without notice.
character, founded upon previous inquiries and recommendations. Under these exceptional circumstances, the Speaker suggested that the house would probably consider that the committee had not so far exceeded its powers as to require the withdrawal of the bill. But as private rights and interests were concerned in the bill, and in the amendments made by the committee, he recommended that it should be referred to the examiners. This was accordingly done; and though it appeared that in respect of some of the amendments the standing orders had not been complied with, the standing orders committee reported that they ought to be dispensed with; and the bill was allowed to proceed through all its further stages.¹

By standing order No. 213—

"the report upon every private bill shall lie upon the table; and the bill, if amended in committee, or a railway or tramway bill, shall be ordered to lie upon the table; but if not amended in committee, and not a railway or tramway bill, it shall be ordered to be read a third time."

The bill reported to the house is a copy of the bill as amended in committee. The report upon a railway or tramway bill, or upon a bill promoted by a local authority, is ordered to be printed, and is circulated with the votes. Tramroad and subway bills are treated as railway bills. The minutes of proceedings of committees are also sometimes ordered to be printed.²

In the case of private bills ordered to lie upon the table, three clear days are required to intervene between the report and the consideration of the bill. And three clear days, at least, before the consideration of the bill, a copy of the bill, as amended in committee, is to be laid by the agent before the chairman of ways and means, and the counsel to the Speaker, and deposited with the public departments mentioned in standing order No. 84.

One clear day's notice, in writing, is required to be given by the agent for the bill, to the clerks in the Private Bill

¹ 131 C. J. 354, &c.; 203 H. D. 3 s. 1679; Mr. Speaker Brand's Notebook. ² Regent's Canal and Railway Bill, 1882, 137 C. J. 254.
Office, of the day proposed for the consideration of every private bill ordered to lie upon the table.

When it is intended by the promoters or opponents to bring up any clause, or to propose any amendment on the consideration of any bill ordered to lie upon the table, or any verbal amendment, on the third reading, notice is to be given, in the Private Bill Office, one clear day previously. No clause or amendment may then be offered, unless the chairman of ways and means has informed the house, or signified in writing to Mr. Speaker, whether, in his opinion, it be such as ought (or ought not) to be entertained by the house, without referring it to the standing orders committee. And the clause or amendment, when offered by a party promoting or opposing a bill, is to be printed; and when any clause is proposed to be amended, it is to be printed in extenso, with every addition or substitution in different type, and the omissions therefrom in brackets, and underlined. And on the day on which notice is given, the clause or amendment is to be laid before the chairman of ways and means, and the counsel to Mr. Speaker. But if any clause or amendment be proposed by a member, independently of the parties concerned in the bill, he may either give notice in the votes, as in the case of a public bill, or in the Private Bill Office.

If a clause or amendment be referred to the standing orders committee, there can be no further proceeding until the report has been brought up. When the clause or amendment has been offered on the consideration of the bill, they report whether it should be adopted by the house or not, or whether the bill should be recommitted. If a verbal amendment be offered on the third reading, they merely report whether it ought (or ought not) to be adopted by the house at that stage.

On the consideration of the bill, the house may, subject to the preliminary proceedings already described, and to the restriction imposed on such amendments by standing

1 112 C. J. 215. 275. 2 The expense of printing is borne by the party offering the clause or amendment.
order No. 41 (Public Business), (see Appendix), introduce new clauses or amendments, or the bill may be recommitted, or ordered to be considered on a future day. If any clause or amendment be opposed, its consideration is adjourned until the next sitting of the house.

When bills are recommitted, they are referred to the former committee; and no member can then sit, unless he had been duly qualified to serve upon the original committee on the bill, or be added by the house. In the case of a recommitted bill, two have sometimes been the quorum. Unless the bill be recommitted by the house, with express reference to particular provisions, the whole bill is open to reconsideration, in committee.

One clear day's notice is to be given by the committee clerk of the meeting of the committee; and a filled-up bill, as proposed to be submitted to the committee, on recommittal, is to be deposited by the agent in the Private Bill Office, two clear days before the meeting of the committee.

When amendments are made by the house on the consideration of a bill, or verbal amendments on the third reading, and when Lords' amendments have been agreed to, they are entered by one of the clerks in the Private Bill Office, upon the printed copy of the bill, as amended in committee. That copy is signed by the clerk, as amended, and preserved in the office.

One clear day's notice, in writing, is required to be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the third reading; and this notice may not be given until the day after the bill has been ordered to be read a third time. If necessary, the order for the third reading may be discharged, and the bill recommitted.

1 Blackrock, &c., Drainage Bill, 1893, was recommitted with an instruction to insert clauses altering the elective franchise and not cognate to the bill, August 4th, 1893.


3 Cleobury, North, &c., District Roads, 1856, 111 ib. 256; Bexley Heath Railway Bill, 1887, 142 ib. 166.

4 Edinburgh Extension Bill, 1885, 140 ib. 351; Bexley Heath Railway Bill, 142 ib. 166; Water of Leith Bill, 1889, 144 ib. 172.

On the third reading, verbal amendments only may be proposed. In other respects, this stage is the same as in public bills; the house finally approves of the entire bill, with all the alterations made since the second reading, and preparatory to its being passed and sent up to the House of Lords.¹

This is usually the stage at which the Queen's consent is signified to any bill affecting the property or interests of the Crown, or Duchy of Lancaster; and the consent of the Prince of Wales, when of age, on behalf of the Duchy of Cornwall.² On the 20th of April, 1852, notice being taken that her Majesty's interest was concerned in the Rhyl Improvement Bill, and that her consent had not been signified thereto, the proceedings on the third reading of the bill, on a previous day, were ordered to be null and void.³

No private bill is permitted to be sent up to the House of Lords, until a certificate is endorsed on the fair printed bill, and signed by the proper officers, declaring that such printed bill has been examined, and agrees with the bill as read a third time.

Every stage of a private bill, in its passage through the Commons, has now been described, with the several standing orders and proceedings applicable to each. In conclusion, it may be added: 1. "That no private bill may pass through two stages on one and the same day, without the special leave of the house;" and 2. "That, except in cases of urgent and pressing necessity, no motion may be made to dispense with any sessional or standing order of the house, without due notice thereof."

If the bill be subsequently returned from the Lords with amendments, notice is to be given, in the Private Bill Office, one clear day before they are to be considered, and if any amendments be proposed thereto, a copy of such amendments is to be deposited; and no such notice may be given until the day after that on which the bill has been returned from

¹ See p. 471.
² 108 C. J. 716; 110 ib. 334; 132 ib. 245, &c.
³ 107 ib. 157. See Blackwater (Youghal) Wooden Bridge, 1866, 121 ib. 423.
the Lords. A copy of such amendments is also to be laid before the chairman of ways and means, and the counsel to Mr. Speaker, before two o'clock on the day previous to that on which they are to be considered; and as the Lords' amendments may relate to matters which might be construed to involve an infringement of the privileges of the Commons; and the amendments proposed to them may be in the nature of consequential amendments, the Speaker's sanction must be obtained before they are proceeded with. Before Lords' amendments are taken into consideration, they are printed at the expense of the parties, and circulated with the votes; and where a clause has been amended or a Lords' amendment is proposed to be amended, it is printed in extenso, with every addition or substitution in different type, and omissions included in brackets and underlined. If any amendment be proposed to the Lords' amendments, involving a charge upon the people, it is committed to a committee of the whole house. In the case of the Great Northern Railway (Isle of Axholme Extension) Bill, the Lords' amendments were referred to a committee nominated by the committee of selection. In other cases, the Lords' amendments have been recommitted, or referred, to the former committee by whom the bills had been considered.

In case a bill should not be proceeded with in the Lords, in consequence of amendments having been made which infringe the privileges of the Commons, the same proceedings are adopted as in the case of a public bill, and the bill is laid aside. A committee is appointed to search the Lords' Journals, of which previous notice is to be given by the agent, in the Committee Clerks' Office; and on the report of the committee, another bill (No. 2) will be ordered, including the amendments made by the Lords.

1 See p. 477.
2 Ulverstone, &c., Railway Bill, 106 C. J. 358; Manchester Improvement Bill, ib. 398; Christchurch, &c., Tithe Bill, 1878, 138 ib. 400.
3 103 lb. 790.
4 Salford Improvement Bill, 1862, 117 ib. 360; Great Eastern Railway Bill, 1867.
5 Clauses dealing with the stamp duty were in the following bills, as brought from the Lords: Provident Life Assurance Company Bill, and the Imperial Fire Assurance Company Bill, 1889, 144 ib. 304. 306.
CHAPTER XXIX.

COURSE OF PROCEEDINGS IN THE LORDS UPON PRIVATE BILLS.

Formerly, the only private bills which could originate in the Lords were those which did not concern rates, tolls, or duties. But the convenient relaxation in the privileges of the Commons (see p. 647), and the desire which has been evinced to equalize the pressure of private business upon the two houses, has led to arrangements for the introduction of as near as may be half of the private bills into the House of Lords. The private bills which have always been first brought into the Lords are estate, naturalization, name and divorce bills, and such as relate to the peerage, which are now termed personal bills, in the Lords' standing orders; and the proceedings on these bills will form the subject of the next chapter. The private bills comprised in the two classes already enumerated (see p. 679) are distinguished in the Lords' standing orders as local bills; and it is proposed in the present chapter to follow the proceedings on these bills in the Lords, whether brought from the Commons, or commencing in the Lords in accordance with the arrangement above alluded to, by which the chairman of committees in the Lords and the chairman of ways and means determine what local bills are to be first considered in the House of Lords. Bills relating to the metropolis, to the release of parliamentary deposits forfeited to the Crown, and to police and sanitary regulations ordinarily originate in the House of Commons; and, on the other hand, it has been the custom that bills involving complicated questions of capital, or dealing with the constitution of insurance companies or with alterations of the memorandum of association of a limited company, or with patents, should be first considered in the House of Lords.
Bills for confirming provisional orders or certificates may also originate in the House of Lords (see p. 647).

It may here be observed that the progress of a bill through the Lords, after it has passed the Commons, is much facilitated by the practice of laying the bill before the Lords' chairman of committees and his counsel (see p. 722), and giving effect to their observations during the progress of the bill through the Commons. The amendments suggested in the Lords are thus embodied with the other amendments, before the bill has passed the Commons; and, unless the bill be opposed, its progress through the Lords is at once easy and expeditious. Another advantage of this mode of amending the bill, as it were by anticipation, is that numerous amendments may then be conveniently introduced, which could not be made by the Lords without infringing the privileges of the Commons.

A local bill is presented to the House of Lords without the preliminary petition which is required for the introduction of a private bill in the House of Commons, except when the promoters of a bill have failed to make the necessary deposits within the time limited by the standing orders. In this case a petition, with a copy of the bill annexed thereto, is presented to the house, and they are together referred to the examiner, who reports to the house that the standing orders have not been complied with, and the standing orders committee, to whom the report is referred, decide whether the circumstances of the case are such that the standing orders may be dispensed with and leave be given to introduce the bill.\(^1\)

On the 3rd August, 1854, the Lords first appointed examiners to take proofs of compliance with the standing orders, and the evidence taken before them was received by the standing orders committee, as if it had been given before themselves. On the 30th July, 1858, the same powers were delegated to the examiners which those officers had exercised for the Commons ever since their first appointment, in

\(^1\) Richardson and Co. (Warrants) Patent Bill, 1891; Portsea Island Bill, 1890; Worm's and Bale's Building Society Bill, 1893.
1846. By the present standing orders of their lordships, there are two officers of the house called "the examiners of standing orders for private bills," appointed by the house.

A printed copy of every local bill, proposed to be introduced into either house, is required to be deposited in the Office of the Clerk of the Parliaments, on or before the 17th December; and the examination of the bills so deposited is to commence on the 18th January. Any parties may appear before the examiners and be heard, by themselves, their agents and witnesses, upon a memorial addressed to the examiner, under precisely the same conditions as in the Commons.

The examiner certifies whether the standing orders have or have not been complied with; and when they have not been complied with, he certifies the facts upon which his decision is founded, and any special circumstances connected with the case; and his certificate is deposited in the Office of the Clerk of the Parliaments. If the examiner feels doubts as to the due construction of any standing order, he may make a special report, which will accompany his certificate.

Petitions for additional provision in private bills, originating in the House of Lords, are referred to the examiner, and he is to report to the house in respect of all standing orders which would have been applicable in the case of a bill.

By these arrangements the proofs of all the requirements of the standing orders which are to be complied with, prior to the introduction of the bill into either House of Parliament, are taken before the bill is brought into the House of Lords; and every bill, in the two classes, and every provisional order confirmation bill, brought from the Commons is referred, after the first reading, to the examiners, before whom compliance with such standing orders as have not been previously inquired into, are proved. The examiner gives two clear days' notice of his examination, either of a bill or of additional provisions; and memorials are to be deposited, with two copies, before twelve o'clock on the preceding day. The certificates of the examiners are laid
upon the table of the house, the first day on which the house sits after their deposit.

The standing orders committee is appointed at the commencement of every session, and consists of forty lords, besides the chairman of committees of the House of Lords, who is always chairman of the standing orders committee. Three lords, including the chairman, are a quorum.

The functions of this committee are now assimilated to those of the standing orders committee in the House of Commons. When any certificate of the examiner, stating that the standing orders have not been complied with, or any special report has been referred to them, they make a report in the same terms as that committee (see p. 700). The parties affected may be heard by the committee, provided they have deposited a statement, strictly confined to the points reported upon by the examiner. In all opposed cases such statements are to be printed. No party appearing before the committee will be allowed to travel into any matter not referred to in his statement. Such statements are to be lodged in the Office of the Clerk of the Parliaments, not later than three o'clock on the second day after the order for the meeting of the committee is made. Three clear days' notice is to be given of the meeting of this committee.

In addition to the standing orders already proved before the examiners, prior to the introduction of the bill, there are other orders, compliance with which is proved, at a later period, before the examiner, who in all cases reports whether they have or have not been complied with. They relate to particular classes or descriptions of bills, and will be stated as they respectively apply to each.

The order, commonly known as "The Wharncliffe Order," originated in the House of Lords, and, mutatis mutandis, was adopted by the House of Commons in 1858; it has often been amended, and now, divided into several orders, it appears in the standing orders of both houses as Nos. 62 to 66, which briefly are as follow:

By standing order No. 62, in the case of every bill, whether
originating in the House of Lords or the House of Commons, promoted by a company already constituted by Act of Parliament, proof is to be given before the examiner, before the second reading, that the several requirements of the standing order relating to the meeting of proprietors, and the approval of the bill by such proprietors holding at least three-fourths of the paid-up capital of the company, have been complied with.

By standing order No. 63, in the case of every bill, whether originating in the House of Lords or the House of Commons, empowering or requiring any company, society, association, or co-partnership formed or registered under the Companies Act, 1862, or constituted by Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnership, cost book regulations, or other instrument, and under the management of a committee, or directors, or trustees (and not being a company to which the preceding order applies), to do any act not authorized by the memorandum and articles of association, or other instrument or instruments constituting or regulating such company, society, association, or co-partnership, or authorizing or enacting the abandonment of the undertaking, or any part of the undertaking of any such company, society, association, or co-partnership, or the dissolution thereof, proof shall be given before the examiner, before the second reading of the bill, that the bill has been approved of by a majority of three-fourths in number and value of the proprietors, and similarly by a separate class of proprietors as distinct from the proprietors generally, so far as the bill relates to such class.

And under standing order No. 65, in the case of every bill brought from the House of Commons, in which the same provisions as are mentioned in standing order No. 63 have been inserted in that house, the same proofs are required to be given before the examiner.

By standing order No. 64, in the case of every bill brought from the House of Commons in which provisions have been inserted in that house, empowering the promoters thereof, being a company already constituted by Act of Parliament, proof is to be given before the examiner, before the second reading, that the several requirements of the standing order relating to the meeting of proprietors, and the approval of the bill by such proprietors holding at least three-fourths of the paid-up capital of the company, have been complied with.
proof of consent to subscriptions to another company.
S. O. 64.

When any bill contains a provision authorizing any company to subscribe or alter the terms of subscription towards, or to guarantee, or to raise any money in aid of, the undertaking of another company, proof is required before the examiner that the company so authorized has duly consented to such subscription, &c., at a meeting of proprietors, subject to the same provisions as the meeting directed to be held under order 64: but where such consent has been given, the bill in respect of such provision need not be submitted to the approval of a meeting to be held in accordance with that order.

These standing orders, Nos. 62 to 66, contain special requirements with regard to the notice to be given of meetings, the holding of a poll if demanded, the use of proxies and other matters for the conduct of the proceedings at the meetings, and the record of the result; and by these requirements the interests of every class of the proprietary are secured.

In case any proprietor, shareholder, or member of or in any company, society, association, or co-partnership shall, by himself or any person authorized to act for him in that behalf, have dissented at any
meeting called in pursuance of standing orders Nos. 62, 63, 64, 65, or orders 62–66, such proprietor, shareholder, or member shall be permitted to be heard by the examiner on the compliance with such standing order, by himself, his agents and witnesses, upon a memorial addressed to the examiner.

When any railway bill contains a provision by which certain railway payments are charged on grand jury cess or local rate in Ireland, it is to be submitted to, and approved by, the grand jury or local authority, and notice given thereof; and proof of compliance with these requirements is to be given before the examiners.

When in any bill brought from the House of Commons for the purpose of establishing a company for carrying on any work or undertaking, the name of any person or persons appears as manager, director, proprietor, or otherwise concerned in carrying such bill into effect, proof shall be required before the examiner that the said person or persons have subscribed their names to the petition for the bill, or to a printed copy of the said bill, as brought up to the House of Lords.

Whenever, during the progress through the House of Commons of any bill of the second class, any alteration has been made in any work authorized by such bill, proof is to be given before the examiners of the various matters which are the subject of the standing orders generally to be complied with in respect of bills of the second class, and which are fully set forth in the standing order No. 61 (see also p. 697).

A copy of every railway, tramroad, tramway, subway, and canal bill, as brought from the House of Commons, is to be deposited in the Office of the Board of Trade, not later than two days after the bill is read a first time; and afterwards a copy of the bill, as amended in committee, is to be deposited three days before the third reading; and proof of compliance with this order is to be given by depositing a certificate from the board, in the Private Bill Office.

Similarly, copies of all bills brought from the House of Commons, the objects of which are set forth in standing order No. 60A, affecting the jurisdiction of the following
government departments, are, not later than two clear days after first reading, to be deposited respectively at the Office of the Local Government Board, the General Register Office, and the Home Office, and compliance with this order is to be proved before the examiner.

These are the several standing orders of the Lords, which must be proved before the examiner or otherwise. Others will presently be added, in describing the further stages of bills.

No local bill is to be read a first time until after the examiner has certified compliance with the standing orders, and, if originating in the Lords, is to be read not later than three clear days after such certificate. No local bill brought from the Commons, or provisional order bill, is to be read a second time until after the certificate of the examiner; nor after certain dates (generally in June) determined by sessional orders.¹ Bills relating to charities are not to be read a second time until the house has received a report from the attorney-general. And railway, tramroad, tramway, and subway bills for increasing maximum rates are not to be read a second time until after a report from the board of trade has been laid upon the table. No local bill, originating in the House of Lords, is to be read a second time earlier than the fourth day, nor later than the seventh day, after the first reading, except in certain cases mentioned in standing order No. 91.

No petition praying to be heard upon the merits, against any local bill or provisional order confirmation bill brought from the House of Commons, will be received unless it be presented by being deposited in the Private Bill Office, before three o'clock in the afternoon, on or before the seventh day after the first reading. In the case of bills originating in the House of Lords, petitions are to be presented on or before the seventh day after the second reading.

No petition for additional provision is to be presented without the sanction of the chairman of committees; and no such petition will be received in the case of a bill brought from the House of Commons.

¹ 124 L. J. 79, and preceding years.
Any agreement intended to be scheduled to any bill shall contain a clause declaring the same to be made subject to such alterations as Parliament may think fit to make therein: but if the committee on the bill make any material alteration in any such agreement, it shall be competent to any party thereto to withdraw the same.

When powers are applied for to amalgamate with any other company, or to sell or lease the undertaking, or purchase or take on lease another undertaking, or to enter into traffic arrangements, all such particulars are to be specified in the bill as introduced into Parliament.

The second reading of a local bill is in most cases formal, and does not, as in the case of public bills, affirm the principle of the bill, which may therefore be called in question before a select committee.¹ The second reading is followed by the commitment. Unopposed local bills are referred to the chairman of committees, "and such lords as think fit to attend:" but the business is practically transacted by the chairman of committees, assisted by his counsel, and the responsibility is vested in the chairman by the house. Every bill has been previously examined by the chairman and his counsel: but at this period the chairman exercises the authority of his own office, combined with that of a committee of the house. In the absence of the chairman from illness, another peer has been appointed to take the chair in all committees, upon private bills, and other matters.² This supervision of private bills, by responsible officers, originated in the House of Lords; and for many years the House of Commons, relying upon the aid which its legislation received from the other house, did not adopt any similar arrangement of its own: but, as private business increased in importance, the house gradually entrusted to the chairman of ways and means many duties analogous to those performed by the chairman of committees in the

¹ See debate on motion to recommit the South-Eastern and London, Chatham, and Dover Railway Companies (Arbitration) Bill, 18th May, 1885, 298 H. D. 3 s. p. 650.
² Viscount Eversley, 13th Feb. 1871, 103 L. J. 15; 23rd April, 1874, 106 ib. 77; Earl of Selborne, 15th May, 1888, 120 ib. 180.
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House of Lords; and with the assistance of the counsel to Mr. Speaker, he is now charged with the supervision of all private bills (see p. 721).

The chairman of committees may, in any case, report his opinion to the house, that any unopposed bill on which he shall sit as chairman, ought to be proceeded with as an opposed bill.¹

Every opposed local bill or provisional order bill is referred to a select committee of five, selected by the committee of selection, by whom also the chairman is appointed. Lords are exempted from serving on the committee on any bill in which they are interested, and may be excused from serving for any special reasons, to be approved of, in each case, by the house. Every member of the committee is ordered to attend the proceedings during their whole continuance; and no lord who is not one of the five is permitted to take any part in the proceedings.

The committee of selection consists of the chairman of committees and four other lords, who select and propose to the house the names of the five lords who are to form a select committee for the consideration of each opposed local or provisional order bill, and appoint the chairman. On the 2nd April, 1868, it was resolved that the absence of any lord, except on sufficient reason, ought not to prevent the committee of selection from calling for his services.²

The attendance of the lords upon such committees is very strictly enforced. The committee is to

“Meet not later than eleven o'clock every morning and sit till four, and shall not meet at a later hour, nor adjourn at an earlier hour, without leave of the house, or without reporting the cause of such later meeting or earlier adjournment. No committee shall adjourn over any day except Saturday and Sunday, Christmas Day, and Good Friday, without leave of the house: but should a committee meet on a Saturday, the sitting is to be in conformity with this order.”

“If any member is prevented from continuing his attendance, the committee shall adjourn, and shall not resume its sittings in the absence of such member, without leave of the house: but if the house is not then sitting, the committee may, with the consent of all parties,

² 100 L. J. 103.
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Chapter XXIX. continue its sittings in the absence of any member, provided that the number of the committee be not less than four, and that the committee report accordingly to the house, at its next meeting."

The committee on the bill, whether opposed or not, perform the same duties as in the Commons. They examine the provisions of the bill, make amendments, add clauses, and, in particular cases, inquire into the compliance with such standing orders as are to be proved before them. No committee on a local or provisional order bill, however, may examine into the compliance with such standing orders as are required to be proved before the examiners.

If no parties appear on their petitions against a bill, or having appeared, withdraw their opposition, or are found to have no locus standi, the committee is forthwith to refer it back to the house, with a statement of the facts, and the bill is then dealt with by the chairman of committees as if originally unopposed.

The proceedings of a Lords' committee differ in no material point from those of a committee in the Commons, except as to questions of locus standi presently to be mentioned. By the 21 & 22 Vict. c. 78, any committee of the House of Lords may administer an oath to the witnesses examined before them; and thus the inconvenience of a previous attendance at the bar of the house is avoided. Petitions against the bill are referred, and the parties are heard by themselves, their counsel, agents, and witnesses, in the same manner, and subject to nearly the same rules, as in the Commons. Some are heard upon the preamble, and others against particular clauses, or in support of new clauses or amendments. The bill is gone through, clause by clause, and, after all amendments have been made, it is reported, with the amendments, to the house. Questions on the locus standi of the petitioners against a bill are heard by the committee to which the bill is referred, and in this respect the House of Lords have preserved the original practice of both houses, which was abandoned by the House

1 See debates on the absence of Lord Gardner, 24th and 26th June, 1845, 81 H. D. 3 s. 1104. 1190.
Proprietors dissenting at meeting under orders 62—66 may be heard against a bill.
Chamber of commerce, &c., may be heard against railway bill, or against rates proposed thereby.

"In case any proprietor, shareholder, or member of or in any company, society, association, or co-partnership shall, by himself or any person authorized to act for him in that behalf, have dissented at any meeting called in pursuance of any of the aforesaid standing orders Nos. 62, 63, 64, 65, and 66, or at any meeting called in pursuance of any similar order of the House of Commons, such proprietor, shareholder, or member shall be permitted, on petitioning the house, to be heard by the committee on the bill, by himself, his counsel or agents and witnesses."

"Where a chamber of commerce or agriculture, or other similar body sufficiently representing a particular trade or business, in any district to which any railway bill relates, petition against the bill, alleging that such trade or business will be injuriously affected by the rates and fares proposed to be authorized by the bill, it shall be competent for the select committee to whom the bill is referred, if they think fit, to hear the petitioners or their counsel or agents and witnesses on such allegations against the bill, or any part thereof, or against the rates and fares proposed to be authorized by the same."

Similarly, with the House of Commons, since 1889, a petitioner against a bill originating in the House of Commons, who has discussed clauses in that house, is not on that account to be precluded from opposing the preamble of the bill in the House of Lords.

The directions to Lords' committees upon local bills are generally similar to those of the Commons, already described, and the greater part of the standing orders relating to railway and other local bills are the same (see p. 759, et seq.). They differ, however, in regard to particular matters, which, by special standing orders, are required to be proved or enforced, either in relation to all bills or to bills of particular classes or descriptions. These orders may now be enumerated.

Compliance with the following standing orders specially relating to bills for extending the terms of letters patent, is to be proved before the committee on the bill:

"Every bill for restoring any letters patent shall have a true copy of such letters patent annexed thereto, and the total amount of fees on the patent . . . shall be deposited with the comptroller-general of
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patent designs and trademarks before the meeting of the committee on the bill, and such deposit proved before the committee.

"In any case in which a bill to restore a patent is entertained, the following clauses shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after it has been announced as void in the official journal of the Patent Office, with such alterations as the circumstances of each case may require.

"No action or other proceeding shall be commenced or prosecuted, nor any damage recovered:

"(1) In respect of any infringement of the said patent which shall have taken place after the day of (the day on which the patent was announced to be void in the official journal), and before the passing of this Act.

"(2) In respect of the use or employment at any time hereafter of any machine, machinery, process, or operation actually made or carried on within the United Kingdom and the Isle of Man, or of the use or sale of any article manufactured or made in infringement of the said patent, after the said day of and before the passing of this Act. Provided that such use, sale, or employment is by the person or corporation by or for whom such machine, or machinery, or article was bonâ fide manufactured or made, or such process or operation was bonâ fide carried on, his, or their executors, administrators, successors, or vendees, or his or their assigns.

"(3) In respect of the use, employment, or sale at any time hereafter by any person or corporation entitled for the time being under the preceding subsection to use or employ any machine, machinery, process, or operation of any improved or additional machine or machinery, or any improved, extended, or developed process or operation, or of any article manufactured or made by any of the means aforesaid, in infringement of the said patent. Provided that the use or employment of any such improved or additional machine or machinery, or of any such improved, extended, or developed process or operation, shall be limited to the buildings, works, or premises of the person or corporation by or for whom such machine or machinery was manufactured, or such process or operation was carried on within the meaning of the preceding subsection, his or their executors, administrators, successors, or assigns.

"If any person shall, within one year after the passing of this Act, make an application to the board of trade for compensation in respect of money, time, or labour expended by the applicant upon the subject-matter of the said patent, in the bonâ fide belief that such patent had become and continued to be void, it shall be lawful for the said board, after hearing the parties concerned, or their agents, to assess the amount of such compensation, if in their opinion the application ought to be granted, and to specify the party by whom and the day on which such compensation shall be paid, and if default shall be made in payment of the sum awarded, then the said patent shall, by virtue of this Act, become void, but the sum awarded shall not in that case be recoverable as a debt or damages."
The same provision is made, as in the House of Commons, in regard to bills in which power is sought to take houses inhabited by the working classes, and in regard to enclosure bills for preserving open spaces for recreation-grounds (see p. 768).

The following orders respecting a cemetery or burial-ground are to be observed by the committee on the bill:—

"In every bill for making or constructing gasworks or sewage works, or works for the manufacture or conversion of the residual products, or for making or constructing, altering, or enlarging any sewage farm, cemetery, burial-ground, destructor, hospital for infectious disease, or railway or tramroad to be worked by electricity supplied from a generating station, there shall be inserted a clause defining the limits within which such gasworks, sewage works, farm, cemetery, burial-ground, destructor, hospital, or generating station may be made or constructed."

"In every bill for making, altering, or enlarging any cemetery or burial-ground, a clause shall be inserted prohibiting the making, altering, or enlarging such cemetery or burial-ground within 300 yards of any house of the annual value of 50L, or of any garden or pleasure-ground occupied therewith, except with the consent of the owner, lessee and occupier thereof in writing."

In the case of railway, tramroad, tramway, and subway bills, in addition to the general inquiries conducted by the committee, they are ordered to observe that particular provisions be inserted for restricting loans on mortgage; for maintaining the levels of roads, and for restraining the crossing of roads on a level. They are also required to observe the same rules, and to introduce the same clauses and provisions, as in the Commons, relative to the fixing of rates and charges, the completion of the railway, the application of the deposit money, the protection of holders of preference stock or shares, the restriction as to the purchase, &c., of steam-vessels by railway companies, the payment of interest out of capital or of parliamentary deposits out of capital, and the financial arrangements of companies in cases of purchase and amalgamation, the application of the provisions of the Railway and Canal Traffic Act as to the revision of rates, and the working of tramways by local authorities, and other matters which are the subject of
similar standing orders in the House of Lords (see pp. 760-766). All these provisions, however, would be included in a bill originating in the House of Commons.

By standing order No. 117, the committee on a railway or tramway bill may insert a clause prohibiting the use of compulsory powers of purchase, if the direct object of the bill be to serve private interests, together with further clauses that no penalty should accrue for non-completion, and for the return of the deposit money to the promoters.

The following clause is also required to be inserted in every railway bill:

"The directors appointed by this Act shall continue in office until the first ordinary meeting to be held after the passing of the Act, and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by this Act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by this Act being eligible as members of such new body."

No local bill reported from a select committee shall be recommitted before the third day on which the house shall sit after notice of the motion to recommit the bill.

In order to ensure attention to bills affecting public interests, the chairman of committees may propose that any local bill be recommitted to a committee of the whole house: 1 but no local bill so recommitted is, by reason of such commitment, to be allowed to proceed as a public bill.

A copy of every railway, tramroad, tramway, and subway bill, as amended in committee, is to be deposited at the board of trade three days before the third reading, and of every local bill as so amended at the Treasury and the General Post Office.

It is further ordered that all local bills in which any amendments have been made in the committee, shall be reprinted as amended, previously to the third reading, unless the chairman of committees shall certify that the reprinting of such bill is unnecessary.

No amendment may be moved to any bill on the report 1 Oriental Bank Corporation Bill, 1873; Nottingham Corporation Bill, 1882.
or third reading, unless it have been submitted to the chair-
man of committees, and printed copies (unless he shall con-
sider printing to be unnecessary) deposited in the Office of
the Clerk of the Parliaments one clear day, at least, prior
to such report or third reading.

When a private bill has been read the third time, and
passed, it is either returned to the Commons, with amend-
ments, or a message is sent to acquaint the Commons that
it has been agreed to without any amendment. The ordinary
proceedings in the Commons upon amendments made to
such bills were described in the last chapter (see p. 791).
In the event of any disagreement between the houses in
reference to amendments, the same forms are observed as in
the case of public bills (see p. 479).

Bills for confirming provisional orders or certificates, if
unopposed, are passed through all their stages like public
bills: but these bills, if they comprise orders or certificates
both opposed and unopposed, are dealt with by a select
committee in respect of the opposed orders or certificates,
and are then considered in a committee of the whole house,
and proceed as public bills.

"Hybrid bills," as in the House of Commons, are referred
to the examiners, and, if opposed, are sent to a select com-
mittee, as in the case of an ordinary local bill; but the
relaxation of the privileges of the Commons in regard to
tolls and charges for services performed does not extend to
such bills.¹

Instructions to committees on local and personal bills
are rarely given by the House of Lords, though instances
of this mode of procedure have occurred.²

¹ River Lee Conservancy Bill, 1868; see supra, p. 647.
² See 124 L. J. 112. The com-
mittee on the London Improvements
Bill, 1893, treated as an instruction
a resolution of the house passed on
the 25th July of the same year, to
the effect that a clause in the bill,
authorizing the principle of taxation
for betterment, ought not to be em-
bodied in a private bill, and refused
to hear the parties on the clause.
CHAPTER XXX.

RULES, ORDERS, AND COURSE OF PROCEEDINGS IN THE LORDS
UPON PRIVATE OR PERSONAL BILLS: AND PROCEEDINGS
OF THE COMMONS UPON PRIVATE BILLS BROUGHT FROM
THE LORDS. LOCAL AND PERSONAL AND PRIVATE ACTS
OF PARLIAMENT.

Having traced the progress of local bills through every personal stage in the House of Lords, it is time to advert to the proceedings peculiar to personal bills which have always been first solicited in the Lords.

All estate, divorce, naturalization, and name bills, and all personal other private bills not elsewhere specified as local bills, are termed personal bills.

No personal bill is to be brought into the house except on petition for leave to bring in such bill, and a printed copy of the proposed bill is to be annexed to the petition. All one or more of the parties principally concerned in the consequences of the bill, must sign the petition that desires leave to bring in such bill.

“A copy of every personal bill is to be delivered to every person Personal concerned before the second reading; and, in case of infancy, such copy is to be delivered to the guardian, or next relation of full age, not concerned in the consequences of the bill. In any case in which concerned, an infant is or may be interested in the consequences of an estate bill, S. O. 152. the chairman of committees may, if he think fit, require that such infant shall be represented before the committee on the bill by a person to be appointed as or in the nature of a guardian or protector of infant by the lord chancellor or the lord keeper of the great seal by writing under his hand.”

To these rules, however, there is a remarkable exception. Bills for reversing attainders; for the restoration of honours and lands; and for restitution in blood, are first signed by

1 Earl of Aylesford’s Estate Bills, 1883 and 1884, 10th May, 1883, 115 C. J. 142; 7th July, 1884, 116 L. J. 28th April, 1890, 122 ib. 238.
the Queen, and are presented by a lord to the House of Peers, by command of the Crown; after which they pass through the ordinary stages of public bills, and are sent to the Commons. Here the Queen’s consent is signified before the first reading; and if this form be overlooked, the proceedings will be null and void. After the second reading, the bill is committed to several members specially nominated, “and all the members of this house who are of her Majesty’s most honourable privy council, and all the gentlemen of the long robe.” Such bills receive the royal assent in the usual form, as public bills.

The Lords, having power to consult the judges in matters of law, order that—

Every petition for an estate bill not approved by the High Court of Justice concerning estates in land in England, shall, on presentation, be referred to two of the judges of the said court, who shall report to the house, under their hands, whether, presuming the allegations contained in the preamble to be proved to the satisfaction of the lords spiritual and temporal in Parliament assembled, it is reasonable that the bill do pass into a law, and whether the provisions thereof are proper for carrying its purposes into effect, and what amendments, if any, are required therein; and in the event of their approving the said bill, they are to sign a copy of the same, containing the required amendments (if any).

There are similar orders, mutatis mutandis, in respect of Scotch and Irish estate bills; except that the parties are heard, the evidence taken, and the consents to the bill and acceptances of trusts proved, before the judges to whom the bill is referred, instead of before the committee of the House of Lords.

No estate bill will be read a first time, until a copy of the petition and of the report of the judges has been delivered to the chairman of committees.

Notice of an estate bill is to be given to every mortgagee, before the second reading.

Petitions for English estate bills referred to two of the judges, S. O. 153.

Scotch and Irish estate bills, S. O. 154.

Notice to mortgagees, S. O. 157.

1 Drummond’s Restitution Bill, 1853, 108 C. J. 578.
2 108 ib. 584.
3 56 L. J. 260. 425; and Report of Precedents, ib. 286; Maxwell’s Restitution Bill, 1848, 80 ib. 270.

Petition, &c., to be delivered to chairman of committees, S. O. 156.
No committee is to sit upon any estate bill until ten days after the second reading.

Petitions against estate bills are to be presented at such time, and such proceedings are to be taken thereon, as the chairman of committees shall, in each case, having regard to all the circumstances, direct.

At the commencement of every session, an order is made that no petitions for private bills shall be received after a certain day; nor any report from the judges thereon, after another day more distant:¹ but this order, like the preceding, refers to estate bills alone.

The several proceedings of committees on estate bills, the consents and acceptances of trusts, the evidence required, the provisions to be inserted, and all other matters, are specifically directed by the standing orders.

Both houses have retained their standing orders in regard to divorce bills, as, for the present at least, parties beyond the jurisdiction of the court for divorce and matrimonial causes in England may still apply for divorce Acts. Applications for divorce Acts now come only from Ireland, where a divorce a mensa et thoro can be obtained from the High Court of Justice, but not a dissolution of marriage enabling the parties to marry again. Similarly, before the year 1869, the courts in India had only power to decree a divorce a mensa et thoro: but in that year, by Act No. IV. of 1869, s. 7, the high and district courts were directed, subject to the provisions of the Act in all suits and proceedings thereunder, to act and give relief on principles and rules which, in the opinion of the said courts, are as nearly as may be conformable to the principles and rules on which the court for divorce and matrimonial causes in England acts and gives relief.² Divorce cases are, however, exceptional; and it will be sufficient to direct the attention of parties interested to the standing orders themselves, without a more particular allusion to them.

¹ The order is not enforced where a peer is the petitioner, or if proceedings be pending in chancery, or if the bill has been rendered necessary by circumstances arising too late for compliance with this order.
It may be stated, in regard to divorce bills, that when the adultery was alleged to have been committed in India, depositions taken before the judges in India were admitted as evidence, and under the Act 1 Geo. IV. c. 101, when a warrant had been issued for the examination of witnesses, the proceedings upon the bill were not discontinued by any prorogation or dissolution of Parliament, until the examination had been returned: but "such proceedings might be resumed and proceeded upon in a subsequent session, or in a subsequent Parliament, in either house of Parliament, in like manner, and to all intents and purposes, as they might have been in the course of one and the same session."  

It is ordered "that no bill for naturalizing any person born in any foreign territory shall be read a second time, until the petitioner shall produce a certificate from one of her Majesty's principal secretaries of state respecting his conduct;" and that no such bill shall be read a second time, unless the consent of the Crown has been previously signified. But certificates of naturalization being now granted by the secretary of state, under the 7 & 8 Vict. c. 66, and 33 Vict. c. 14, naturalization Acts are no longer applied for, except in a few exceptional cases, where more extended privileges are sought than are granted under the general law, and especially the right of sitting in Parliament, which, though not expressly conferred, has been given, in effect, by later naturalization Acts.  

No particular interval is enforced between the first and second readings of personal bills, and if printed copies of the bill have been delivered, and the bill be unopposed, it may be read a second time on any future day. If it be opposed upon its principle, this is the proper stage for taking the decision of the house upon it.

1 Geo. IV. c. 101, s. 4. See Munroe's Divorce Bill, presented and read first 6th June, 1861; royal assent, 30th June, 1862. This is the last case of a divorce bill from India.

Bishop of Jerusalem, 1846; Mr. Tufton, 1849; Giustiniani, 1857, 1860; Bolckow, 1868; Sir Richard Wallace, 1873; De Virte and Baron Mackay, 1877; Baron de Ramingen, 1880, passed in two days; Prince Henry of Battenberg, 1885; Schlesinger, 1889; Mrs. Martin, 1890; Pohl, 1890.
It is not usual for petitions to be presented, praying to be heard against any private bills on the second reading, except divorce and peerage bills; and in those cases, whether there are opposing petitions or not, counsel are heard and witnesses examined at the bar, in support of the bill on the second reading.

All the ordinary personal bills are referred to an open committee, consisting, as already explained, of the chairman of committees and such lords as think fit to attend, who inquire whether all the standing orders applicable to such bills, not already proved before the examiner, have been complied with, and take care that the proper provisions are inserted.

Unlike other private bills, divorce bills, instead of being committed to an open committee, or to a selected committee, are committed, like public bills, to a committee of the whole house.

When a local or personal bill is reported from a committee, and any amendments that may have been made are agreed to by the house, the bill is ordered to be read a third time on a future day.

The bills sent down to the Commons pass through the same stages, and are subject to nearly the same rules, as other private bills, except that name bills need not be printed. All local and personal bills, and bills for confirming provisional orders or certificates, when received from the Lords, are read a first time, and, unless they be name or divorce bills, are referred to the examiners of petitions for private bills. Two clear days' notice is given of the examination of every such bill, and memorials complaining of non-compliance with the standing orders may be deposited before twelve o'clock on the day preceding that appointed by the examiner. If the examiner reports that the standing orders have been complied with, or that no standing orders are applicable, the bills are read a second time. Not less than three clear days, nor more than seven, are required to elapse between the first and second reading, unless the bill
has been referred to the examiners, in which case it is not to be read a second time later than seven clear days after his report, or that of the standing orders committee. Three clear days' notice of the second reading is to be given, but not until the day after the first reading. After the second reading, every such bill, except a divorce bill, is referred to the committee of selection, or to the general committee on railway and canal bills, as the case may be, to be dealt with in committee either as opposed or unopposed as if originating in the House of Commons (see p. 715), but if unopposed, it is committed to the chairman of ways and means and two other members, of whom one at least is not to be locally or otherwise interested in the bill, or one member and a referee. There must be three clear days between the second reading of a name or ordinary estate bill and the sitting of the committee, and six clear days if the estate bill relates to Crown, Church, or corporation property, or property held in trust for public or charitable purposes. One clear day's notice is given, by the clerk to the committee of selection, of the sitting of the committee. Amendments are rarely made to such bills, after they have been received from the Lords; and on being reported from the committee they are, therefore, ordered to be read a third time. One clear day's notice of such third reading is to be given, but not until the day after the bill has been ordered to be read a third time. Some bills, however, are received by the Commons at so late a period of the session, that it becomes necessary to suspend the standing orders, and to permit them to proceed without the usual intervals and notices.

In the case of an estate bill, the committee are to report specially to the house if it contains provisions extending either the term or the area of any settlement of land, and the report is to be printed and circulated with the votes.

All that need be said of divorce bills in the Commons is that at the commencement of each session a committee is nominated, consisting of nine members, of whom three are a quorum, and is denominated "the select committee on divorce bills." To this committee all divorce bills are
committed after the second reading. There are several orders applicable to such bills, which need not be enumerated.

On the 13th June, 1854, Berens' divorce bill had been read a third time and passed, when intelligence was received of the death of Mr. Berens, the husband and petitioner for the bill. On the following day the proceedings upon the third reading were ordered to be null and void. Another day was named for the third reading, but the bill was subsequently allowed to drop.

All private bills, during their progress in the Commons, are known by the general denomination of private bills: but in the Lords the several bills, which are divided into the first and second class, are now distinguished in the standing orders as local bills; and estate, divorce, naturalization, name, and other bills not specified as local bills, are termed personal bills. After they have received the royal assent, private bills are divided into three classes: (1) Local and personal, declared public; (2) Private, printed by the Queen's printers; and (3) Private, not printed.

1. Every local and personal Act passed before the year 1851, contained a clause, declaring that it "shall be a public Act, and shall be judicially taken notice of as such:" but by Lord Brougham's Act of 1850, for shortening the language of Acts of Parliament, it is enacted that every Act "shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such Act," and the "public clause" has consequently been omitted from all local and personal Acts since that time. Acts of this class receive the royal assent in the form of public Acts. The practice of declaring particular Acts of a private nature to be "public Acts," commenced in the reign of William and Mary, and was soon extended to nearly all private Acts, by which felonies were created, penalties inflicted, or tolls imposed. Such Acts were printed with the other statutes

1 13 Vict. c. 21, s. 7.
2 Preface to Spiller's Index to the Statutes.
of the year, and were not distinguishable from public Acts, except by the character of their enactments: but since 1798 they have been printed in a separate collection, and are known as local and personal Acts. With the exception of inclosure, or inclosure and drainage Acts, all the bills of the two classes so often referred to are included in this category, and have contained the public clause. In some special cases where local and personal Acts have been of an unusually public character, they have not only contained the ordinary public clause, but have been printed amongst the public general Acts.

Since 1867, a considerable class of Acts, previously included in the collection of the public general Acts, have been transferred to the local and personal Acts. These are Acts for the confirmation of provisional orders, and for various local purposes. This change was introduced with a view to reduce the inconvenient bulk of the statute-book, and has been carried out as far as circumstances will admit.

2. From 1798 to 1815, the private Acts, not declared public, were not printed by the Queen’s printers, and could only be given in evidence by obtaining authenticated copies from the statute rolls in the Parliament Office: but since 1815, the greater part of the private Acts have been printed by the Queen’s printers, and have contained a clause declaring that a copy so printed “shall be admitted as evidence thereof by all judges, justices, and others.” These consist, almost exclusively, of inclosure, or inclosure and drainage, and estate Acts. Since Lord Brougham’s Act, this evidence clause has been retained, with the addition of an enactment that the “Act shall not be deemed a public Act.”

3. The last class of Acts are those which still remain unprinted: they consist of name, naturalization, divorce, and other strictly personal Acts, of which a list is always printed by the Queen’s printers, after the titles of the other private Acts.

1 In the black-letter edition of the public general acts.

2 Manchester Stipendiary Magis-

trate Acts, 53 Geo. III. c. 72; 7 & 8 Vict. c. 30; Manchester Warehousing Act, 7 & 8 Vict. c. 31.
A local and personal Act, declared public, may be used for all purposes, as a public general statute. It may be given in evidence upon the general issue, and will be judicially noticed, without being formally set forth. Nor is it necessary to show that it was printed by the Queen's printers, as the words of the public clause do not require it, and the printed copy of a public Act is supposed to be used merely for the purpose of refreshing the memory of the judge, who has already been acquainted with its enactments. A private Act, on the contrary, whether printed or not, must be specially pleaded, and given in evidence like any other record. If printed, the copy printed by the Queen's printers is received as an examined copy of the record; if not printed, an authenticated copy is produced from the statute rolls in the Parliament Office.¹

By the Act 8 & 9 Vict. c. 113, s. 3, it is enacted “that all Queen's copies of private and local and personal Acts of Parliament not public Acts, if purporting to be printed by the Queen’s printers,” “shall be admitted as evidence thereof by all courts, judges, justices, and others, without any proof being given that such copies were so printed.”

¹ Phillipps & Amos, 611.
CHAPTER XXXI.

FEES PAYABLE BY THE PARTIES PROMOTING OR OPPOSING PRIVATE BILLS. TAXATION OF COSTS OF PARLIAMENTARY AGENTS, SOLICITORS, AND OTHERS.

The fees which are chargeable upon the various stages of private bills, and are payable by the several parties promoting or opposing such bills, have been settled in both houses, and are published in the standing orders.

It is declared by the Commons, "That every bill for the particular interest or benefit of any person or persons, whether the same be brought in upon petition or motion, or report from a committee, or brought from the Lords, hath been and ought to be deemed a private bill, within the meaning of the table of fees;" and that "the fees shall be charged, paid, and received at such times, in such manner, and under such regulations as the Speaker shall from time to time direct."

In both Lords and Commons, the promoters of provisional orders or certificates are exempt from the payment of fees; but the opponents are not so. In the Commons, only half of the fees for proceedings in the house are charged on estate, divorce, naturalization, and name bills. No fees on an indemnity or restoration bill are charged in the House of Lords.

The fees on "hybrid bills," the objects of which are mostly of a public nature, are usually remitted; but the petitioners against these bills are charged with them.

In both houses, there are officers whose special duty it is to take care that the fees are properly paid by the agents who are responsible for the payment of them (see p. 692). If a parliamentary agent, or a solicitor acting as agent for any bill or petition, be reported as a defaulter in the payment of the fees of the house, the Speaker orders that he shall not be permitted to enter himself as a parliamentary
agent, in any future proceeding, until further directions have been given. In the House of Commons, the whole of the fees were formerly collected and carried to a fee fund, whence the salaries and expenses of the establishment were partly defrayed; the balance being supplied from the Consolidated Fund: but by the 12 & 13 Vict. c. 72, all moneys arising from the fees of the house are carried to the Consolidated Fund; and the officers are paid from the public revenues. In the House of Lords, the fees upon private bills are carried to a fee fund, and thence, since 1868, have been paid to the treasury, after deducting any amount which may be required to supplement the interest on the invested fee fund existing in 1868 for the payment of pensions. The salaries and expenses of the official establishment of the House of Lords are now included in the estimates.

In the case of Chippendale's Divorce Bill in 1850, the promoter petitioned to be allowed to prosecute the bill in formâ pauperis, and in both houses this privilege was conceded to him, on proof of his inability to pay the fees. The committee on the bill in the Commons, to whom his petition had been referred, distinguished his case from that of the suitor for any other kind of bill, and considered that the remission of the fees would not afford a precedent in other parliamentary proceedings.¹

The last matter which need be mentioned in connection with the passing of private bills, is the taxation of the costs incurred by the promoters, opponents, and other parties. Prior to 1825, no provision had been made by either house, as in other courts, for the taxation of costs incurred by suitors in Parliament. In 1825, an Act was passed to establish such a taxation in the Commons;² and in 1827, another Act was passed to effect the same object in the Lords.³ Both these Acts, however, were very defective, and have since been repealed. By the present “House of Commons” and “House

¹ See report, 25th July, 1850, 105 C. J. 563. In 1604, counsel was assigned to a party, in a private bill, in formâ pauperis, he “being a very poor man,” 1 ib. 241.
² 6 Geo. IV. c. 69.
³ 7 & 8 Geo. IV. c. 64.
of Lords Costs Taxation Acts," as amended by subsequent Acts, a regular system of taxation has been established in both houses.

In each house there is a taxing officer, having all the necessary powers of examining the parties and witnesses on oath, and of calling for the production of books or writings in the hands of either party to the taxation. Lists of charges have been prepared, in pursuance of these Acts, in both houses, defining the maximum charges which parliamentary agents, solicitors, and others will be allowed to charge for the various services usually rendered by them.  

Any person upon whom a demand is made by a parliamentary agent or solicitor, for any costs incurred in respect of any proceedings in the house, or in complying with its standing orders, may apply to the taxing officer for the taxation of such costs. And any parliamentary agent or solicitor who may be aggrieved by the non-payment of his costs, may apply, in the same manner, to have his costs taxed, preparatory to the enforcement of his claim. The client, however, is required by the Act to make this application within six months after the delivery of the bill. But the Speaker in the Commons, or the Clerk of the Parliaments in the Lords, on receiving a report of special circumstances from the taxing officer, may direct costs to be taxed after the expiration of six months.

The taxing officer of either house is enabled to tax the whole of a bill brought before him for taxation, whether the costs relate to the proceedings of that house only, or to the proceedings of both houses; and also other general costs incurred in reference to the private bill or petition. And each taxing officer may request the other, or the proper officer of any other court, to assist him in taxing any portion of a bill of costs. And the proper officers of other courts may, in the same manner, request the assistance of the taxing officer of either house in the taxation of parliamentary costs.

1 10 & 11 Vict. c. 69; 12 & 13 Vict. c. 78; 28 Vict. c. 27; 42 & 43 Vict. c. 17.

2 These lists are printed, for distribution to all persons who may apply for them.
In the Commons, the taxing officer, if requested so to do by the parties, reports his taxation to the Speaker, and in the Lords, to the Clerk of the Parliaments. If no objection be made within twenty-one days after such report, either party may obtain from the Speaker or Clerk of the Parliaments, as the case may be, a certificate of the costs allowed, which in any action brought for the recovery of the amount so certified, will have the effect of a warrant of attorney to confess judgment, unless the defendant shall have pleaded that he is not liable to the payment of the costs.

By the House of Commons Costs Taxation Act, 1879, the powers of the taxing officer were extended to costs in respect of provisional orders and certificates, and bills promoted by public authorities, and opposition to public bills. If requested by a secretary of state, or by the local government board, he is also required to tax costs incurred in respect of any bill or provisional order or certificate.
APPENDIX.

I. STANDING AND SESSIONAL ORDERS.
II. INSTRUCTIONS.
III. EXAMPLES OF AMENDMENTS TO PROPOSED AMENDMENTS.
IV. PROCLAMATIONS FOR THE SUMMONS OF PARLIAMENT.
V. FORMS OF CERTIFICATES FOR ISSUE OF WRITS BY MR. SPEAKER DURING A RECESS.

I.

STANDING ORDERS: PUBLIC BUSINESS.

HOUSE OF COMMONS.

Resolved—

SITTINGS OF THE HOUSE.

1.—[24th February, 1888.] That, unless the house otherwise order, the house shall meet every Monday, Tuesday, Thursday, and Friday, at three of the clock, and shall, unless previously adjourned, sit till one of the clock a.m., when the Speaker shall adjourn the house without question put, unless a bill originating in committee of ways and means, or unless proceedings made in pursuance of any Act of Parliament, or standing order, or otherwise exempted as hereinafter provided, from the operation of this standing order, be then under consideration.

That at midnight on Mondays, Tuesdays, Thursdays, and Fridays, except as aforesaid, and at half-past five of the clock on Wednesdays, the proceedings on any business then under consideration shall be interrupted; and, if the house be in committee, the chairman shall leave the chair, and make his report to the house; and if a motion has been proposed for the adjournment of the house, or of the debate, or in committee, That the chairman do report progress, or do leave the chair, every such dilatory motion shall lapse without question put; and the business then under consideration, and any business subsequently appointed, shall be appointed for the next day on which the house shall sit, unless the Speaker ascertains by the preponderance of voices that a majority of the house desires that such business shall be deferred until a later day.

Provided always, That on the interruption of business the closure may be moved; and if moved, or if proceedings under the closure rule be then in progress, the Speaker or chairman shall not leave the chair.
until the questions consequent thereon and on any further motion, as provided in the rule, "Closure of Debate," have been decided. That after the business under consideration at twelve and half-past five respectively has been disposed of, no opposed business shall be taken; and the orders of the day, not disposed of at the close of the sitting, shall stand for the next day on which the house shall sit.

That a motion may be made by a minister of the Crown at the commencement of public business, to be decided without amendment or debate, to the following effect: "That the proceedings on any specified business, if under discussion at twelve this night, be not interrupted under the standing order, 'Sittings of the House.'"

Provided always, That after any business exempted from the operation of this resolution is disposed of, the remaining business of the sitting shall be dealt with according to the provisions applicable to business taken after twelve o'clock.

Provided also, That the chairman of ways and means do take the chair as deputy Speaker, when requested so to do by Mr. Speaker, without any formal communication to the house. And that Mr. Speaker do nominate, at the commencement of every session, a panel of not more than five members to act as temporary chairman of committees, when requested by the chairman of ways and means.

**WEDNESDAY SITTINGS.**

2.—[5th August, 1853.] That the house do meet every Wednesday, at twelve o'clock at noon, for private business, petitions, orders of the day, and notices of motions, and do continue to sit until six o'clock, unless previously adjourned.

3.—That when such business has been disposed of, or at six o'clock precisely, notwithstanding there may be business under discussion, Mr. Speaker do adjourn the house without putting any question.

**MORNING SITTINGS.**

4.—[7th March, 1888.] That, unless the house shall otherwise order, whenever the house shall meet at two o'clock, the house will proceed with private business, petitions, motions for unopposed returns, and leave of absence to members, giving notices of motions, questions to ministers, and such orders of the day as shall have been appointed for the morning sitting.

5.—That on such days, if the business be not sooner disposed of, the house will suspend its sitting at seven o'clock; and at ten minutes before seven o'clock, unless the house shall otherwise order, Mr. Speaker shall adjourn the debate on any business then under discussion, or the chairman shall report progress, as the case may be, and no opposed business shall then be proceeded with.

6.—That when such business has not been disposed of at seven o'clock, unless the house shall otherwise order, Mr. Speaker (or the chairman, in case the house shall be in committee) do leave the chair,
and the house will resume its sitting at nine o'clock, when the orders of
the day not disposed of at the morning sitting, and any motion
which was under discussion at ten minutes to seven o'clock, shall
be set down in the order book after the other orders of the day.

7.—That whenever the house shall be in committee at seven o'clock,
the chairman do report progress when the house resumes its sitting.

8.—[3rd March, 1892.] That the sittings of the house at nine
o'clock be held subject to the provisions of standing order No. 1, which
relate to the interruption of business and the adjournment of the
house.

ADDRESS (QUEEN'S SPEECH).

9.—[29th February, 1888.] That the stages of committee and
report on the address to her Majesty, to convey the thanks of the
house for her Majesty's most gracious speech to both houses of
Parliament, at the opening of the session, be discontinued.

ORDERS OF THE DAY.

10.—[3rd May, 1861, and 7th March, 1888.] That, unless the Orders of
the day on
house shall otherwise direct, all orders of the day set down in the
order book for Mondays, Wednesdays, Thursdays, and Fridays, shall
be disposed of before the house will proceed upon any motions of
which notices shall have been given, the right being reserved to her
Majesty's ministers of placing government business, whether orders
or motions, at the head of the list on every order day, except
Wednesday.

11.—That, while the committees of supply, and ways and means are
Orders of
open, the first order of the day on Friday shall be either supply or
ways and means; and that on that order being read, the question shall
be proposed, "That Mr. Speaker do now leave the chair."

12.—[29th February, 1888.] That after Whitsuntide, public bills,
other than government bills, be arranged on the order book so as to
give priority to the bills most advanced, and that Lords' amendments
to public bills appointed to be considered, be placed first, to be
followed by third readings, considerations of report, bills in progress
in committee, bills appointed for committee, and second readings.

13.—[5th August, 1853.] That at the time fixed for the commence-
ment of public business, on days on which orders have precedence
of notices of motions, and after the notices of motions have been
disposed of on all other days, Mr. Speaker do direct the Clerk at the question
table to read the orders of the day, without any question being put.

14.—[5th August, 1853, and 7th March, 1888.] That the orders of Order in
the day be disposed of in the order in which they stand upon the
paper; the right being reserved to her Majesty's ministers of placing the day
government orders or motions at the head of the list, in the rotation shall be
in which they are to be taken on the days on which government bills disposed of,
have precedence.
GOVERNMENT BUSINESS.

15.—[28th February, 1888.] That on days on which government business has priority, the government may arrange such government business, whether orders of the day or notices of motions, in such order as they may think fit.

MOTIONS FOR BILLS, AND NOMINATION OF COMMITTEES.

16.—[7th March, 1888.] That on Tuesdays and Fridays, and, if set down by the government, on Mondays and Thursdays, motions for leave to bring in bills, and for the nomination of select committees, may be set down for consideration at the commencement of public business. If such motions be opposed, Mr. Speaker, after permitting, if he thinks fit, a brief explanatory statement from the member who moves and from the member who opposes any such motion respectively, may, without further explanatory statement, put the question thereon, or the question, That the debate be now adjourned.

ADJOURNMENT OF THE HOUSE.

17.—[27th November, 1882.] That no motion for the adjournment of the house shall be made until all the questions on the notice paper have been disposed of, and no such motion shall be made before the orders of the day, or notices of motions have been entered upon, except by leave of the house, unless a member rising in his place shall propose to move the adjournment, for the purpose of discussing a definite matter of urgent public importance, and not less than forty members shall thereupon rise in their places to support the motion; or unless, if fewer than forty members and not less than ten shall thereupon rise in their places, the house shall, on a division, upon question put forthwith, determine whether such motion shall be made.

18.—[3rd May, 1861.] That while the committees of supply, and ways and means are open, the house, when it meets on Friday, shall, at its rising, stand adjourned until the following Monday, without any question being put, unless the house shall otherwise resolve.

NOTICES OF MOTIONS.

19.—[5th August, 1858.] That no notice shall be given beyond the period which shall include the four days next following on which notices are entitled to precedence; due allowance being made for any intervening adjournment of the house, and the period being in that case so far extended as to include four notice days falling during the sitting of the house.

QUESTIONS TO MEMBERS.

20.—[7th March, 1888.] That notices of questions be given by members in writing to the Clerk at the table, without reading them
vivâ voce in the house, unless the consent of the Speaker to any particular question has been previously obtained.

ORDER IN DEBATE.

21.—[28th February, 1880, and 22nd November, 1882.] That, whenever any member shall have been named by the Speaker or by the chairman of a committee of the whole house, immediately after the commission of the offence of disregarding the authority of the chair, or of abusing the rules of the house by persistently and wilfully obstructing the business of the house or otherwise, then, if the offence has been committed by such member in the house, the Speaker shall forthwith put the question, on a motion being made, no amendment, adjournment, or debate being allowed, "That such member be suspended from the service of the house;" and, if the offence has been committed in a committee of the whole house, the chairman shall, on a motion being made, put the same question in a similar way, and if the motion is carried, shall forthwith suspend the proceedings of the committee and report the circumstance to the house; and the Speaker shall thereupon put the same question, without amendment, adjournment, or debate, as if the offence had been committed in the house itself.

If any member be suspended under this order, his suspension on the first occasion shall continue for one week; on the second occasion, for a fortnight; and on the third or any subsequent occasion, for a month.

Provided always, That suspension from the service of the house shall not exempt the member so suspended from serving on any committee for the consideration of a private bill to which he may have been appointed before his suspension.

Provided also, That not more than one member shall be named at the same time, unless several members, present together, have jointly disregarded the authority of the chair.

Provided always, That nothing in this resolution shall be taken to deprive the house of the power of proceeding against any member according to ancient usages.

22.—[27th November, 1882.] That when a motion is made for the adjournment of a debate or of the house during any debate, or that the chairman of a committee do report progress, or do leave the chair, the debate thereupon shall be confined to the matter of such motion; and no member, having moved or seconded any such motion, shall be entitled to move or second any similar motion during the same debate.

23.—[27th November, 1882, and 28th February, 1888.] That if Mr. Speaker or the chairman of a committee of the whole house shall be of opinion that a motion for the adjournment of a debate, or of the house, during any debate, or that the chairman do report progress, or do leave the chair, is an abuse of the rules of the house, he may forthwith put the question thereupon from the chair, or he may decline to propose the question thereupon to the house.
Irrelevance or repetition.

24.—[27th November, 1882, and 28th February, 1888.] That Mr. Speaker or the chairman, after having called the attention of the house or of the committee to the conduct of a member who persists in irrelevance, or tedious repetition either of his own arguments or of the arguments used by other members in debate, may direct him to discontinue his speech.

ORDERS RELATING TO CLOSURE OF DEBATE.

25.—[18th March, 1887, and 7th March, 1888.] That, 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.

When the motion, "That the question be now put," has been carried, and the question consequent thereon has been decided, any further motion may be made (the assent of the chair as aforesaid not having been withheld) which may be requisite to bring to a decision any question already proposed from the chair; and also if a clause be then under consideration, a motion may be made (the assent of the chair as aforesaid not having been withheld), That the question, That certain words of the clause defined in the motion stand part of the clause, or That the clause stand part of, or be added to, the bill, be now put. Such motions shall be put forthwith, and decided without amendment or debate.

Provided always, That this rule shall be put in force only when the Speaker or the chairman of ways and means is in the chair.

26.—[28th February, 1888.] That questions for the closure of debate under standing order No. 25 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.

ORDER IN THE HOUSE.

27.—[28th February, 1888.] That Mr. Speaker or the chairman do order members, whose conduct is grossly disorderly, to withdraw immediately from the house during the remainder of that day's sitting; and that the Serjeant-at-arms do act on such orders as he may receive from the chair, in pursuance of this resolution. But if, on any occasion, Mr. Speaker or the chairman deems that his powers under this standing order are inadequate, he may name such member or members, in pursuance of standing order, "Order in Debate," or he may call upon the house to adjudge upon the conduct of such member or members.

Provided always, That members who are ordered to withdraw under this standing order, or who are suspended from the service of the house under the standing order, "Order in Debate," shall forthwith
withdraw from the precincts of the house, subject, however, in the case of such suspended members, to the proviso in that standing order regarding their service on private bill committees.

DIVISIONS.

28.—[19th July, 1854.] That so soon as the voices have been taken, the Clerk shall turn a two-minute sand-glass, to be kept on the table for that purpose, and the doors shall not be closed until after the lapse of two minutes, as indicated by such sand-glass.

29.—That the doors shall be closed so soon after the lapse of two minutes as the Speaker or the chairman of the committee of the whole house shall think proper to direct.

30.—[29th February, 1853.] That Mr. Speaker or the chairman may, after the lapse of two minutes as indicated by the sand-glass, if in his opinion the division is frivolously or vexatiously claimed, take the vote of the house or committee, by calling upon the members who support and who challenge his decision, successively to rise in their places; and he shall thereupon, as he thinks fit, either declare the determination of the house or committee, or name tellers for a division. And, in case there is no division, the Speaker or chairman shall declare to the house or the committee the number of the minority who had challenged his decision, and their names shall be thereupon taken down in the house, and printed with the list of divisions.

PUBLIC BILLS.

31.—[5th August, 1853.] That when any bill shall be presented by a member, in pursuance of an order of this house, or shall be brought from the Lords, the questions, "That this bill be now read a first time," and "That this bill be printed," shall be decided without amendment or debate.

32.—[5th August, 1853.] That when a bill or other matter (except supply, or ways and means) has been partly considered in committee, and the chairman has been directed to report progress, and ask leave to sit again, and the house shall have ordered that the committee shall sit again on a particular day, the Speaker shall, when the order for the committee has been read, forthwith leave the chair, without putting any question, and the house shall thereupon resolve itself into such committee.

33.—[19th July, 1854, and 21st July, 1886.] That bills which may be fixed for consideration in committee on the same day, whether in progress or otherwise, may be referred together to a committee of the whole house, which may consider on the same day all the bills so of the referred to it, without the chairman leaving the chair on each separate bill. Provided, That, with respect to any bill not in progress, if any member shall object to its consideration in committee, together with other bills, the order of the day for the committee on such bill shall be postponed.
34.—[19th July, 1854.] That it be an instruction to all committees of the whole house to which bills may be committed, that they have power to make such amendments therein as they shall think fit; provided they be relevant to the subject-matter of the bill; but that if any such amendments shall not be within the title of the bill, they do amend the title accordingly, and do report the same specially to the house.

35.—[27th November, 1882.] That, in committee on a bill, the preamble do stand postponed until after the consideration of the clauses, without question put.

36.—[19th July, 1854.] That the questions for reading a bill a first and second time in a committee of the whole house be discontinued.

37.—[19th July, 1854.] That in going through a bill no questions shall be put for the filling up words already printed in *italics*, and commonly called blanks, unless exception be taken thereto; and if no alterations have been made in the words so printed in *italics*, the bill shall be reported without amendments, unless other amendments have been made thereto.

38.—[19th July, 1854.] That on a clause being offered in the committee on the bill, or on the consideration of report of a bill, Mr. Speaker or the chairman do desire the member to bring up the same, whereupon it shall be read a first time without question put, but no clause shall be offered on consideration of report without notice.

39.—[5th August, 1853.] That at the close of the proceedings of a committee of the whole house on a bill, the chairman shall report the bill forthwith to the house, and when amendments shall have been made thereto, the same shall be received without debate, and a time appointed for taking the same into consideration.

40.—[27th November, 1882.] That when the order of the day for the consideration of a bill, as amended in the committee of the whole house, has been read, the house do proceed to consider the same without question put, unless the member in charge thereof shall desire to postpone its consideration, or a motion shall be made to recommit the bill.

41.—[28th February, 1888.] That upon the report stage of any bill, no amendment may be proposed which could not have been proposed in committee without an instruction from the house.

42.—[21st July, 1856.] That no amendments, not being merely verbal, shall be made to any bill on the third reading.

43.—[19th July, 1854.] That Lords' amendments to public bills shall be appointed to be considered on a future day, unless the house shall order them to be considered forthwith.

44.—[24th July, 1849.] That with respect to any bill brought to this house from the House of Lords, or returned by the House of Lords to this house, with amendments, whereby any pecuniary penalty, forfeiture, or fee shall be authorized, imposed, appropriated, regulated, varied, or extinguished, this house will not insist on its ancient and undoubted privileges in the following cases:—
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1. When the object of such pecuniary penalty or forfeiture is to secure the execution of the Act, or the punishment or prevention of offences.

2. Where such fees are imposed in respect of benefit taken or service rendered under the Act, and in order to the execution of the Act, and are not made payable into the treasury or exchequer, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same, either in respect of deficit or surplus.

3. When such bill shall be a private bill for a local or personal Act.

45.—[24th July, 1849.] That the precise duration of every temporary law be expressed in a distinct clause at the end of the bill.

STANDING COMMITTEES ON BILLS RELATING TO LAW, TRADE, &c.

46.—[7th March, 1888.] That the resolutions of the house of the Revival of standing committees, of the 1st December, 1882, relating to the constitution and proceedings of standing committees for the consideration of bills relating to law, and courts of justice, and legal procedure, and to trade, shipping, and manufactures, be revived, and that trade shall include agriculture and fishing.

47.—That two standing committees be appointed for the consideration of all bills relating to law and courts of justice and legal procedure, and to trade, shipping, and manufactures, which may, by order of the house, in each case, be committed to them; and the procedure in such committees shall be the same as in a select committee, unless the house shall otherwise order. Provided, That strangers shall be admitted, except when the committee shall order them to withdraw. Provided also, That the said committees shall be excluded from the operation of the standing order of July 21st, 1856, and the said Committee shall not sit whilst the house is sitting, without the order of the house. Provided also, That any notice of amendment to any clause in a bill which may be committed to a standing committee, given by any honourable member in the house, shall stand referred to such committee. Provided also, That twenty be the quorum of such standing committees.

48.—That each of the said standing committees do consist of not less than sixty nor more than eighty members, to be nominated by the committee of selection, who shall have regard to the classes of bills committed to such committees, to the composition of the house, and to the qualifications of the members selected; and shall have power to discharge members from time to time, and to appoint others in substitution for those discharged. The committee of selection shall also have power to add not more than fifteen members to a standing committee in respect of any bill referred to it, to serve on the committee during the consideration of such bill.
49.—That the committee of selection shall nominate a chairman's panel, to consist of not less than four nor more than six members, of whom three shall be a quorum; and the chairman's panel shall appoint from among themselves the chairman of each standing committee, and may change the chairman so appointed from time to time.

50.—That all bills which shall have been committed to one of the said standing committees shall, when reported to the house, be proceeded with, as if they had been reported from a committee of the whole house. Provided, That the provisions of the standing order, "Consideration of a Bill, as amended," shall not apply to a bill reported to the house by a standing committee.

COMMITTEES OF THE WHOLE HOUSE.

51.—[28th February, 1888, and 17th February, 1891.] That whenever an order of the day is read for the house to resolve itself into committee (not being a committee to consider a message from the Crown, or the committee of supply, or of ways and means, or the committee on the East India Revenue Accounts), Mr. Speaker shall leave the chair without putting any question, and the house shall thereupon resolve itself into such committee, unless notice of an instruction thereto has been given, when such instruction shall be first disposed of.

52.—[27th November, 1882.] That when the chairman of a committee has been ordered to make a report to the house, he shall leave the chair without question put.

53.—[19th July, 1864.] That every report from a committee of the whole house be brought up without any question being put.

SUPPLY, AND WAYS AND MEANS.

54.—[28th July, 1870.] That this house will, in future, appoint the committees of supply, and ways and means, at the commencement of every session, so soon as an address has been agreed to in answer to her Majesty's speech.

55.—[3rd May, 1861.] That the committees of supply, and ways and means shall be fixed for Monday, Wednesday, and Friday, and may also be appointed for any other day on which the house shall meet for despatch of business.

56.—[27th November, 1882, and 7th March, 1883.] That, whenever the committee of supply stands as an order of the day on Monday or Thursday, Mr. Speaker shall leave the chair without putting any question, unless on first going into supply on the army, navy, or civil service estimates respectively, or on any vote of credit, an amendment be moved, or question raised, relating to the estimates proposed to be taken in supply.

PUBLIC MONEY.

57.—[11th June, 1713, 25th June, 1852, and 20th March, 1866.] 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
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public revenue, whether payable out of the Consolidated Fund or out of moneys to be provided by Parliament, unless recommended from the Crown.

58.—[29th March, 1707.] That this house will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a committee of the whole house.

59.—[25th March, 1715.] That this house will not receive any petition for compounding any sum of money owing to the Crown, upon any branch of the revenue, without a certificate from the proper officer or officers annexed to the said petition, stating the debt, what prosecutions have been made for the recovery of such debt, and setting forth how much the petitioner and his security are able to satisfy thereof.

60.—[22nd February, 1821.] That this house will not proceed upon any motion for an address to the Crown, praying that any money may be issued, or that any expense may be incurred, but in a committee of the whole house.

61.—[21st July, 1856] That this house will not receive any petition, Charge on or proceed upon any motion for a charge upon the revenues of India, but what is recommended by the Crown.

62.—[20th March, 1866.] That if any motion be made in the house for any aid, grant, or charge upon the public revenue, whether payable out of the Consolidated Fund, or out of moneys to be provided by Parliament, or for any charge upon the people, the consideration and debate thereof shall not be presently entered upon, but shall be adjourned till such further day as the house shall think fit to appoint, and then it shall be referred to a committee of the whole house before any resolution or vote of the house do pass therein.

PACKET, &c., CONTRACTS.

63.—[13th July, 1863.] That in all contracts extending over a period of years, and creating a public charge, actual or prospective, entered into by the government for the conveyance of mails by sea, or for the purpose of telegraphic communications beyond sea, there should be inserted the condition that the contract shall not be binding until it has been approved of by a resolution of the house.

64.—That every such contract, when executed, should forthwith, if Parliament be then sitting, or, if Parliament be not then sitting, within fourteen days after it assembles, be laid upon the table of the house. That the contract shall not be binding until it has been approved of by a resolution of the house.

65.—That in cases where any such contract requires to be confirmed and dealt with as a private bill, and that power to the government to enter into agreements by which obligations at the public charge shall be undertaken, should not be given in any private Act.

P.
### SELECT COMMITTEES.

| Sitting of committees. | 66.—[21st July, 1856.] That all committees shall have leave to sit, except while the house is at prayers, during the sitting, and notwithstanding any adjournment of the house. |
| Number on select committees. | 67.—[25th June, 1852.] That no select committee shall, without leave of the house, consist of more than fifteen members; that such leave shall not be moved for without notice; and that in the case of members proposed to be added or substituted, after the first appointment of the committee, the notice shall include the names of the members proposed to be added or substituted. |
| Consent from members to attend. | 68.—That every member intending to move for the appointment of a select committee do endeavour to ascertain previously whether each member proposed to be named by him on such committee will give his attendance thereupon. |
| Notice of names of members. | 69.—That every member intending to move for the appointment of a select committee shall, one day next before the nomination of such committee, place on the notices the names of the members intended to be proposed by him to be members of such committee. |
| Lists of members serving. | 70.—That lists be affixed in some conspicuous place in the committee office, and in the lobby of the house, of all members serving on each select committee. |
| Entry of questions asked of witnesses. | 71.—That to every question asked of a witness under examination, in the proceedings of any select committee, there be prefixed in the minutes of the evidence the name of the member asking such question. |
| Entry of names of members. | 72.—That the names of the members present each day on the sitting of any select committee be entered on the minutes of evidence, or on the minutes of the proceedings of the committee (as the case may be), and reported to the house on the report of such committee. |
| Entry of divisions. | 73.—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 the proceedings of the committee (as the case may be), and reported to the house on the report of such committee. |
| Presence of quorum. | 74.—That if, at any time during the sitting of a select committee of this house, the quorum of members fixed by the house shall not be present, the clerk of the committee shall call the attention of the chairman to the fact, who shall thereupon suspend the proceedings of the committee until a quorum be present, or adjourn the committee to some future day. |
| Report of opinion and observations. | 75.—[9th August, 1875.] That every committee having power to send for persons, papers, and records, shall have leave to report their opinion and observations, together with the minutes of evidence taken before them, to the house, and also to make a special report of any matters which they may think fit to bring to the notice of the house. |
| Notice to committees of prayers. | 76.—[25th June, 1852, and 21st July, 1856.] That the Serjeant-at-arms attending this house do, from time to time, when the house is
going to prayers, give notice thereof to all committees; and that all proceedings of committees, after such notice, be declared to be null and void, unless such committees be otherwise empowered to sit after prayers.

PUBLIC ACCOUNTS.

77.—[3rd April, 1862, and 28th March, 1870.] That there shall be a standing committee, to be designated "The Committee of Public Accounts," for the examination of the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure, to consist of eleven members, who shall be nominated at the commencement of every session, and of whom five shall be a quorum.

PUBLIC PETITIONS.

78.—[14th April, 1842, and 5th August, 1853.] That every member offering to present a petition to the house, not being a petition for a private bill, or relating to a private bill before the house, do confine himself to a statement of the parties from whom it comes, of the number of signatures attached to it, and of the material allegations contained in it, and to the reading of the prayer of such petition.

79.—That every such petition not containing matter in breach of No debate the privileges of this house, and which, according to the rules or usual practice of this house, can be received, be brought to the table by the direction of the Speaker, who shall not 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.

80.—That, in the case of such petition complaining of some present Petitions personal grievance, for which there may be an urgent necessity for providing an immediate remedy, the matter contained in such petition may be brought into discussion on the presentation thereof.

81.—That all other such petitions, after they shall have been ordered Petitions to lie on the table, be referred to the committee on Public Petitions, without any question being put: but if any such petition relate to any matter or subject, with respect to which the member presenting it has given notice of a motion, and the said petition has not been ordered to be printed by the committee, such member may, after notice given, move that such petition be printed with the votes.

82.—That, subject to the above regulations, petitions against any Petitions resolution or bill imposing a tax or duty for the current service of the year, be henceforth received, and the usage under which the house has refused to entertain such petitions be discontinued.

SPEAKER.

83.—[20th July, 1855.] That whenever the house shall be informed Office of by the Clerk at the table of the unavoidable absence of Mr. Speaker, Speaker, the chairman of the committee of ways and means do perform the
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84.—[6th April, 1835.] That no member’s name be affixed to any seat in the house before the hour of prayers; and that the Speaker do give directions to the door-keepers accordingly.

85.—[29th April, 1858.] That any member having secured a seat at prayers shall be entitled to retain the same until the rising of the house.

86.—[30th April, 1866.] That members may take and subscribe the oath required by law, at any time during the sitting of the house, before the orders of the day and notices of motions have been entered upon, or after they have been disposed of: but no debate or business shall be interrupted for that purpose.

87.—[1st July, 1880.] That every person returned as a member of this house, who may claim to be a person for the time being by law permitted to make a solemn affirmation or declaration instead of taking an oath, shall henceforth (notwithstanding so much of the resolution adopted by this house on the 22nd day of June last as relates to affirmation) be permitted, without question, to make and subscribe a solemn affirmation in the form prescribed by "The Parliamentary Oaths Act, 1866," as altered by "The Promissory Oaths Act, 1888," subject to any liability by statute.

WITNESSES BEFORE THE HOUSE AND ITS COMMITTEES.

88.—[20th February, 1872.] That any oath or affirmation taken or made by any witness before the house, or a committee of the whole house, be administered by the Clerk at the table.

89.—That any oath or affirmation taken or made by any witness before a select committee may be administered by the chairman, or by the clerk attending such committee.

STRANGERS.

90.—[5th February, 1845.] That the Serjeant-at-arms attending this house do, from time to time, take into his custody any stranger whom he may see, or who may be reported to him to be, in any part of the house or gallery appropriated to the members of this house, and also any stranger who, having been admitted into any other part of the house or gallery, shall misconduct himself, or shall not withdraw when strangers are directed to withdraw, while the house, or any com-
mittee of the whole house, is sitting; and that no person so taken into custody be discharged out of custody without the special order of the house.

91.—That no member of this house do presume to bring any stranger into any part of the house or gallery appropriated to the members of this house, while the house, or a committee of the whole house, is sitting.

92.—[19th July, 1854.] That, except when Mr. Speaker or the chairman of a committee of the whole house shall otherwise direct, his order for the withdrawal of strangers during a division shall be understood to apply to strangers occupying seats below the bar and in the front gallery, and shall be enforced by the Serjeant-at-arms accordingly.

93.—[7th March, 1888.] That if, at any sitting of the house, or in committee, any member shall take notice that strangers are present, Mr. 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 fit, order the withdrawal of strangers from any part of the house.

LETTERS.

94.—[25th June, 1852.] That, to prevent the intercepting or losing of letters directed to members of this house, the person appointed to bring letters from the General Post-Office to this house, or some other person to be appointed by the postmaster-general, do for the future, every day during the session of Parliament, Sundays excepted, constantly attend, from ten of the clock in the morning, till seven in the afternoon, at the place appointed for the delivery of the said letters, and take care, during his stay there, to deliver the same to the several members to whom they shall be directed, or to their known servant or servants, or other persons bringing notes under the hands of the members sending for the same.

95.—That the said officer do, upon his going away, lock up such letters as shall remain undelivered; and that no letter be delivered but within the hours aforesaid.

96.—That the said orders be sent to the postmaster-general at the commencement of each session.

97.—That when any letter or packet directed to this house shall come to Mr. Speaker, he do open the same; and acquaint the house, at their next sitting, with the contents thereof, if proper to be communicated to this house.

SEASONAL ORDERS.

Ordered, That all members who are returned for two or more places in any part of the United Kingdom do make their election for which of the places they will serve, within one week after it shall appear...
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that there is no question upon the return for that place; and if any-
thing shall come in question touching the return or election of any
member, he is to withdraw during the time the matter is in debate;
and that all members returned upon double returns do withdraw till
their returns are determined.

Resolved, That no peer of the realm, except such peers of Ireland as
shall for the time being be actually elected, and shall not have
declined to serve, for any county, city, or borough of Great Britain,
hath any right to give his vote in the election of any member to serve
in Parliament.

Resolved, That it is a high infringement of the liberties and privi-
leges of the commons of the United Kingdom for any lord of Parlia-
ment, or other peer or prelate, not being a peer of Ireland at the time
elected, and not having declined to serve for any county, city, or
borough of Great Britain, to concern himself in the election of
members to serve for the Commons in Parliament; except only any
peer of Ireland, at such elections in Great Britain respectively where
such peer shall appear as a candidate, or by himself, or any others, be
proposed to be elected; or for any lord-lieutenant or governor of
any county to avail himself of any authority derived from his com-
mission, to influence the election of any member to serve for the
Commons in Parliament.

Resolved, That if it shall appear that any person hath been elected
or returned a member of this house, or endeavoured so to be, by
bribery, or any other corrupt practices, this house will proceed with
the utmost severity against all such persons as shall have been
wilfully concerned in such bribery or other corrupt practices.

Resolved, That if it shall appear that any person hath been tamper-
ing with any witness, in respect of his evidence to be given to this
house, or any committee thereof, or directly or indirectly hath
endeavoured to deter or hinder any person from appearing or giving
evidence, the same is declared to be a high crime and misdemeanour; Feb. 1700,
and this house will proceed with the utmost severity against such
offender.

Resolved, That if it shall appear that any person hath given false
evidence in any case before this house, or any committee thereof, this
house will proceed with the utmost severity against such offender.

Ordered, That the commissioners of the police of the metropolis do
take care that, during the session of Parliament, the passages through
the streets leading to this house be kept free and open, and that no
obstruction be permitted to hinder the passage of members to and
from this house, and that no disorder be allowed in Westminster Hall,
or in the passages leading to this house, during the sitting of Parlia-
ment, and that there be no annoyance therein or thereabouts; and 24th Aug.
1647, 4 ib. 677;
that the Serjeant-at-arms attending this house do communicate this
order to the commissioners aforesaid.

guard" do protect the house, and an order to the constables, 19th Jan. 1693, 11 lb. 52.*

* References supplied by Mr. Bull.
II.

INSTRUCTIONS.

CLASSIFIED EXAMPLES ILLUSTRATING PROCEDURE ON INSTRUCTIONS.

Class 1.—Cases when an instruction was necessary to empower a committee on a bill to consider the amendments proposed by the instruction.

Class 2.—Cases when instructions were ruled out of order, because the committee possessed the power which the instruction would confer.

Class 3.—Cases when instructions were ruled out of order, because they were foreign to the subject-matter of the bill.

Class 4.—Cases of instructions to extend the scope of a bill throughout the United Kingdom.

Addresses from the chair regarding the scope and nature of instructions, and also upon an undue resort to the right of moving instructions (see p. 843).

Class 1.—Cases when an instruction was necessary to empower a committee on a bill to consider the amendments proposed by the instruction:

(1) Markets and Fairs (Ireland) Bill, 1862.—To insert provisions for the equalization of weights and measures in all mercantile transactions throughout Ireland.\(^1\)

(2) County Votes Registration Bill, 1865.—To insert provisions relating to the duties and powers of revising barristers to cities and boroughs.\(^2\)

(3) Union Chargeability Bill.—To insert in this bill, which regulated the charges upon parishes within existing unions, provisions to facilitate, in certain cases, the alteration of the limits of existing unions.\(^3\)

(4) Representation of the People Bills, 1860 and 1866.—To insert provisions for restraining bribery and corruption at elections.\(^4\)

(5) Representation of the People Bill, 1867.—To insert provisions affecting the law of rating, the incidence of taxation, and the rights of owners and occupiers, pursuant to general and local Acts, irrespectively of the franchise.\(^5\)

(6) Sale of Intoxicating Liquors on Sunday (Ireland) Bill, 1877.—

\(^1\) 165 H. D. 3 s. 1876.  
\(^2\) 129 C. J. 254.  
\(^3\) 129 lb. 255.  
\(^4\) 158 H. D. 3 s. 1866; 183 ib. 1320.  
\(^5\) 186 ib. 1270.
To insert provisions for the supervision by the police of refreshment-houses, on all days of the week, and for increased penalties on the unlawful sale of liquor.1

(7) Land Purchase (Ireland) Bill, 1888.—To insert in the bill—which was restricted to the creation of an advance of 5,000,000l. for the purposes of Lord Ashbourne's Act, 1885—clauses dealing with arrears due from tenants who sought to avail themselves of the power given by the bill to purchase their holdings.2

(8) Land Purchase (Ireland) Bill, 1888.—To insert provisions to enable the land commission to permit a tenant to combine with the purchase of his holding the purchase of adjacent grass lands, and of lands not devoted to tillage.3

(9) Local Government (Electors) Bill, 1888.—To insert provisions in the bill with a view to assimilate the qualification of electors of guardians of the poor, and the abolition of the plural vote, to the conditions prescribed in the bill with regard to electors of county authorities.4

(10) Tithe Rent-Charge Recovery Bill, 1889.—To insert provisions for a gradual redemption of tithe rent-charge on an equitable basis; and for a readjustment of the method for taking the tithe rent-charge averages; and to review and revise the settlement made by the Tithe Commutation Act of 1836.5

(11) Allotments Act, 1887, Amendment Bill, 1890.—To insert provisions creating, by popular election, local authorities in smaller areas than those of the sanitary authorities, and to confer upon them larger powers for acquiring and managing land for the purposes of allotments than those in force under the Allotments Act, 1887; and also to substitute parishes in vestry assembled, for those rural sanitary authorities that were the operative bodies prescribed by the bill.6

(12) Local Government (England and Wales) Bill, 1888.—To insert provisions for the reform of parish vestries.7

(13) Elementary Education Bill, 1891.—To insert provisions to raise the standard for partial and total exemption in schools receiving free grants.8

(14) Private Bill Procedure (Scotland) Bill, 1891.—To insert provisions for the simplification of the procedure, and the reduction of the cost of provisional orders.9

Class 2.—Cases when instructions were unnecessary, because the committee possessed the power which the instructions would confer:

(1) Representation of the People Bill, 1884.—To insert provisions dealing with the registration of electors.10

(2) Local Government (England and Wales) Bill, 1888.—To insert

1 132 C. J. 288.
2 143 ib. 482; 331 H. D. 3 s. 33.
3 331 H. D. 34. 61.
4 143 C. J. 197.
5 144 ib. 429.
6 145 ib. 283.
7 143 ib. 264; 326 H. D. 3 s. 1440.
8 324 H. D. 1870; 146 C. J. 404.
9 332 H. D. 3 s. 154. 155.
10 287 ib. 828.
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a provision transferring the duties discharged by the high sheriff, as returning officer at elections of county representatives, to the chairman of a county council; also provisions enabling a county council to appoint a standing committee to superintend the administration and financial business of the council, during the intervals between the sittings or sessions of a council; and provisions giving a county council compulsory powers for the erection of one gymnasium for every 100,000 inhabitants.¹

(3) Local Government (Scotland) Bill, 1889.—To insert clauses enabling county councils to purchase land by agreement, or under compulsory powers, for the purposes of public utility. Speaker's ruling (private).

(4) Purchase of Land (Ireland) Bill, 1890.—To insert clauses creating local authorities in Ireland, whose assent should be necessary to the imposition of any liability upon local revenues for the purposes of the bill.²

(5) Western Australian Constitution Bill, 1890.—To insert clauses enacting that the bill should not come into operation until the Act recited in the schedule to the bill, which conferred a constitution upon the colony, was amended by assimilating the franchise, and the qualifications of members of the legislative council and assembly of Western Australia, to those of other Australian colonies. Speaker's ruling (private).

(6) Local Taxation (Customs, &c.) Bill, 1890.—To insert clauses defining the principle upon which licences for the sale of liquor should be extinguished relatively to the population, the wishes, and the rateable value of each licensing district, and to fix a maximum value for renewable licences, which should be imperative upon the county councils. Speaker's ruling (private).

Class 3.—Cases of instructions ruled out of order, as being foreign to the subject-matter of the bill:

(1) Arms (Ireland) Continuance Bill, 1886.—To insert clauses dealing with the law relating to poor law guardians, labourers' dwellings, and the franchise in corporate towns in Ireland. Speaker's ruling (private).

(2) East India (Purchase and Construction of Railways), 1887.—To insert provisions imposing harbour dues and charges on her Majesty's ships conveying material for government railways in India. Speaker's ruling (private).

(3) Criminal Law Amendment (Ireland) Bill, 1887.—To insert provisions to prevent the exaction of unfair and excessive rents. Speaker's ruling (private).

(4) Criminal Evidence Bill, 1888.—To insert provisions conferring on prisoners tried by the courts of summary jurisdiction in Ireland a right of appeal, similar to the right possessed by the like class of prisoners in England. Speaker's ruling (private).

¹ 326 H. D. 3 s. 1440. ² 345 ib. 346.
(5) Local Government (England and Wales) Bill, 1888.—To insert clauses giving county councils power to appoint and remove justices of the peace, and dealing with the property qualification of the justices, and to create fishery boards with power to acquire harbours, levy rates, and generally to promote fishing industry.\(^1\)

(6) Land Law (Ireland) Bill, 1888.—To insert in the bill which related solely to the tenure of land, and did not touch the charges thereon, provisions dealing with family charges upon land. Speaker’s ruling (private).

(7) Land Purchase (Ireland) Bill, 1888.—To insert in this bill—of which the sole object was an advance of money, for the purposes prescribed by the Purchase of Land (Ireland) Act, 1885—clauses dealing with arrears of rent due, not from tenants who sought to avail themselves of the rights given by the bill, but from the Irish tenantry in general; to insert clauses in the bill excepting minerals, mining rights, and foreshores from sales under the Purchase of Land (Ireland) Act, 1885, and vesting that class of property in the Crown.\(^2\)

(8) Local Government (Scotland) Bill, 1889.—To insert provisions empowering sea-coast towns in Scotland to raise loans for harbour purposes under the Harbour and Passing Tolls Act, 1881, and to create local councils for that purpose. Speaker’s ruling (private).

(9) Tithe Rent-Charge Recovery Bill, 1889 and 1890.—To insert clauses exempting persons from payment of tithe who objected to its application to the Church of England; to apply tithe rent-charge recoverable in Wales to purposes generally acceptable to the Welsh people, or to public education in Wales; to insert provisions that prescribed, when a receiver had been appointed under the bill, the owner as regards the occupier, subject to the provisions of the Agricultural Holdings Act, and responsible for the proper repair of the farm buildings, &c.; and also provisions dealing with the status of the ecclesiastical commissioners.\(^3\)

(10) Private Bill Procedure (Scotland) Bill.—To insert clauses authorizing the commissioners under the bill, or the secretary for Scotland upon their report, to grant to local authorities provisional orders for the purposes for which powers are conferred on local authorities by private Acts; and to insert clauses to substitute a joint committee of both houses of Parliament for the commission to be appointed by the bill; and to enable the joint committee to dispense with a local inquiry.\(^4\)

Class 4.—Cases of instructions to extend the scope of a bill throughout the United Kingdom. A committee can, without an instruction, extend the operation of a bill to Scotland or Ireland, if the bill be not by the title restricted to England. In the following cases an instruc-

\(^1\) 326 H. D. 3 s. 1440.  \(^2\) 331 ib. 33.  \(^3\) 339 H. D. 3 s. 1062.  \(^4\) 352 ib. 154. 155.
tion was required to extend the operative effect of a bill beyond the limits and scope contained in the provisions of the bill as brought into the house:—

(1) Sunday Trading (Metropolis) Bill, 1855.—To insert a clause applying the provisions of the bill to the United Kingdom. Speaker's ruling (private).

(2) Supreme Court of Judicature Bill, 1873.—To insert in this bill, which dealt with the constitution of a supreme court, and the better administration of justice in England, clauses which provided for the hearing of appeals from Scotland and Ireland.

(3) Poor Law Amendment Bill, 1879.—To insert into this bill, which was confined to the English law, provisions which amended and repealed the Scotch poor law.¹

(4) The Game Laws Amendment (Scotland) Bill, 1879.—To insert clauses which extended the operation of the bill to England.²

(5) Crofters (Scotland) Bill, 1886.—To extend the scope of the bill, which was limited to the highlands and islands of Scotland, to other parts of Scotland.³

Addresses from the Chair regarding Instructions.

The following statement regarding procedure on instructions was made by the Speaker, in deference to an application made to him in the house:—

"I have naturally, within the last few weeks, given special attention to the subject, and if the right hon. gentleman and the house will permit me, I would like to state my views as explicitly as I can to the house. I have searched the precedents connected with instructions. The house will perhaps be best put in the possession of my views on the subject when I say that there is a very vast and material difference between an instruction to a committee, and an amendment on the second reading of a bill, such as a resolution which traverses the principle of the bill. When a bill has been read a second time, the house has assented to the principle of the bill. In the last few years a standing order has been passed, stating that when the house is prepared to go into committee, the Speaker is to leave the chair without question put: but there is a reservation made with regard to instructions to the committee. It would be obvious to the house, that if an instruction moved on that occasion were to traverse the principle of the bill, or go so far outside the limits and scope and framework of the bill, so as to set up an alternative scheme, or a counter proposition to the bill, that would virtually be a second reading debate over again. It would be an amendment to the principle of the bill, and would therefore reduce to a minimum, and would nullify altogether, the provision which the house has passed in the standing order which states that, when the house is prepared to go

¹ 244 H. D. 8 s. 1600.
² 304 H. D. 3 s. 110. 117.
³ 249 lb. 175.
into committee, I should leave the chair at once without any question put. There is nothing in the precedents, I believe, which go beyond an instruction of this nature—an instruction to amplify the machinery of the bill to carry out the general purpose and scope of the bill within the general framework and idea of the bill. There is no instruction, that I am aware of, certainly not since the alteration in the standing order, which could be construed into the traversing of the principle of the second reading of a bill.”

During session 1890, instructions to the number of seven, ten, and fifteen, were put down to three bills, several of the instructions standing in the name of the same member. An amendment of a closure nature to restrain the further proposal of instructions to one of these bills (see p. 213, n. 3) was proposed in consequence. The Speaker’s attention having been called to the unusual form of this amendment, he made the following statement:—

“The house is indebted to the right hon. gentleman for having called attention to this matter. No doubt the amendment standing in the name of the right hon. gentleman, the president of the local government board, is not out of order. It resembles the motion familiar to the house, that the house do pass to the orders of the day, by which the house disemembarrases itself of matter which it does not wish to pass judgment on, and proceeds to its appointed business. The motion, I acknowledge, is primæ facie to be regarded with some suspicion as a form of closure: but on the other hand, I must call the attention of the house to the fact that there are a great number of instructions on the paper, more than one, I think, being in the name of the same hon. member. This is the first session, I think, that this practice has been extensively adopted, and there are two other bills in regard to which notices of a still larger number of instructions have been given. In my opinion the house ought to take notice of this. The new rule that the Speaker should leave the chair without question being put, would obviously be somewhat modified, if not robbed altogether of force, if a great number of instructions are put down so as to prevent the Speaker from leaving the chair—instructions which, in the case before us, might occupy the house for several sittings; and if one hon. member is to be entitled to put down more than one instruction in his name, it gives him a greater right of speaking than he has on the second reading of the bill itself.”

1 345 H. D. 3 s. 347. See also the Speaker’s rulings on the series of instructions moved on the Representation of the People Bill, 1860, 158 ib. 1861–1888; the Local Government (England and Wales) Bill, 1888, 326 ib. 1440; Private Bill Procedure (Scotland) Bill, 1891, 352 ib. 154; Elementary Education Bill, 1891, 354 ib. 1870. See also Mr. Speaker’s rulings (Government of Ireland Bill), 5th and 8th May, 1893.

2 2nd May, 1890, 344 ib. 19.
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Examples of Amendments to Proposed Amendments.

For leaving out words of Proposed Amendments, such Amendments being to omit words from the Question.

A motion was made, and the question being proposed, "That it is necessary to the most essential interests of this kingdom, and peculiarly incumbent on this house, to pursue, with unremitting attention, the consideration of a suitable remedy for the abuses which have prevailed in the government of the British dominions in the East Indies; and that this house will consider as an abettor of those abuses, and an enemy to his country, any person who shall presume to advise his Majesty to prevent, or in any manner interrupt, the discharge of this important duty;"

And an amendment was proposed to be made to the question, by leaving out the words, "and that this house will consider as an abettor of those abuses, and an enemy to his country, any person who shall presume to advise his Majesty to prevent, or in any manner interrupt, the discharge of this important duty;"

An amendment was proposed to be made to the said proposed amendment, by leaving out the words, "an abettor of those abuses, and;"

And the question being put, "That the words, 'an abettor of those abuses, and,' stand part of the said first proposed amendment;"—it passed in the negative.

Then the question being put, "That the said amendment, so amended, 'and that this house will consider as an enemy to his country any person who shall presume to advise his Majesty to prevent, or in any manner interrupt, the discharge of this important duty,' stand part of the question;"—it was resolved in the affirmative.

Then the main question, so amended, being put—

Resolved, "That it is necessary to the most essential interests of this kingdom, and peculiarly incumbent on this house, to pursue, with unremitting attention, the consideration of a suitable remedy for the abuses which have prevailed in the government of the British dominions in the East Indies; and that this house will consider as an enemy to his country any person who shall presume to advise his Majesty to prevent, or in any manner interrupt, the discharge of this important duty;"

Motion made, and question proposed, "That when the Anglican 123 C. J. Church in Ireland is disestablished and disendowed, it is right and 159, 7th May, 1868, necessary that the grant to Maynooth and the Regium Donum be dis- continued; and that no part of the secularized funds of the Anglican Church, or any state funds whatever, be applied in any way, or under (Ireland)."
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any form, to the endowment or furtherance of the Roman Catholic
religion in Ireland, or to the establishment or maintenance of Roman
Catholic denominational schools or colleges;"

Amendment proposed, to leave out from the first word "That" to
the end of the proposed resolution, in order to add the words, "when
legislative effect shall have been given to the first resolution respecting
the Established Church of Ireland, it is right and necessary that the
grant to Maynooth and the Regium Donum be discontinued."

Question put, "That the words proposed to be left out stand part
of the proposed resolution;"—it passed in the negative.

Question proposed, "That the words, 'when legislative effect shall
have been given to the first resolution respecting the Established
Church of Ireland, it is right and necessary that the grant to Maynooth
and the Regium Donum be discontinued,' be added, instead thereof."

Amendment proposed to the said proposed amendment, by adding,
at the end thereof, the words, "due regard being had to all personal
interests."

Question, "That those words be there added;"—put, and agreed to.

Amendment proposed to the said proposed amendment, as amended,
by adding, at the end thereof, the words, "and that no part of the
endowments of the Anglican Church be applied to the endowment of
the institutions of other religious communions."

Question put, "That those words be there added;"—it passed in
the negative.

Question, "That the words, 'when legislative effect shall have been
given to the first resolution respecting the Established Church of
Ireland, it is right and necessary that the grant to Maynooth and the
Regium Donum be discontinued, due regard being had to all personal
interests,' be added to the word 'That' in the original question;"—
put, and agreed to.

Original question, as amended, "That when legislative effect shall
have been given to the first resolution respecting the Established
Church of Ireland, it is right and necessary that the grant to Maynooth
and the Regium Donum be discontinued, due regard being had to all
personal interests;"—put, and agreed to.

The order of the day being read for the committee of supply;
And a motion being made, and the question being proposed, "That
Mr. Speaker do now leave the chair;"

An amendment was proposed to be made to the question, by leaving
out from the word "That" to the end of the question, in order to add
the words, "the Indian import duty on cotton goods, being unjust alike
to the Indian consumer and the English producer, ought to be abolished,
and this house is of opinion that the expenditure incurred for the
Afghan War affords no satisfactory reason for the postponement of the
promised remission of this duty," instead thereof.

And the question being put, "That the words proposed to be left
out stand part of the question;"—it passed in the negative.

And the question being proposed, "That the words, 'the Indian
import duty on cotton goods, being unjust alike to the Indian consumer
and the English producer, ought to be abolished, and this house is of opinion that the expenditure incurred for the Afghan War affords no satisfactory reason for the postponement of the promised remission of this duty; be added, instead thereof;"

An amendment was proposed to be made to the said proposed amendment, by leaving out from the word "goods" to the end of the question, in order to add the words, "is a tax which ought ultimately to be abolished; but that, in view of the present state of Indian finances, it is highly inexpedient to deal with the matter at the present moment," instead thereof.

And the question being put, "That the words, 'being unjust alike to the Indian consumer and the English producer, ought to be abolished, and this house,' stand part of the said proposed amendment;"—it was resolved in the affirmative.

And the question being put, "That the words, 'is of opinion that the expenditure incurred for the Afghan War affords no satisfactory reason for the postponement of the promised remission of this duty,' stand part of the said proposed amendment;"—it passed in the negative.

Another amendment was proposed to be made to the said proposed amendment, by adding after the words, "this house," the words, "accepts the recent reduction in these duties as a step towards their total abolition, to which her Majesty's government are pledged."

And the question being put, "That those words be there added;"—it was resolved in the affirmative.

And the question being put, "That the words, 'the Indian import duty on cotton goods, being unjust alike to the Indian consumer and the English producer, ought to be abolished, and this house accepts the recent reduction in these duties as a step towards their total abolition, to which her Majesty's government are pledged,' be added to the word 'That' in the original question;"—it was resolved in the affirmative.

Then the main question, so amended, being put—

Resolved, "That the Indian import duty on cotton goods, being unjust alike to the Indian consumer and the English producer, ought to be abolished, and this house accepts the recent reduction in these duties as a step towards their total abolition, to which her Majesty's government are pledged."

The order of the day being read, for resuming the adjourned debate 140 C. J. on the amendment which, upon the 23rd day of this instant February, 71, 27th March, 1885, was proposed to be made to the question, "That an humble address be presented to her Majesty, humbly representing to her Majesty that the course pursued by her Majesty's government, in respect to the affairs of Egypt and the Soudan, has involved a great sacrifice of valuable lives and a heavy expenditure without any beneficial result, and has rendered it imperatively necessary, in the interests of the British Empire and the Egyptian people, that her Majesty's government should distinctly recognize, and take decided measures to fulfil, the special responsibility now incumbent on them to assure a good and stable government to Egypt and to those portions of the Soudan which are necessary to its security;"
APPENDIX.

And which amendment was, to leave out from the first word "That" to the end of the question, in order to add the words, "this house, while refraining from expressing an opinion on the policy pursued by her Majesty's government in respect to the affairs of Egypt and the Soudan, regrets the decision of her Majesty's government to employ the forces of the Crown for the overthrow of the power of the Mahdi," instead thereof;

And the question put, "That the words proposed to be left out stand part of the question;"—it passed in the negative.

And the question being proposed, "That the words, 'this house, while refraining from expressing an opinion on the policy pursued by her Majesty's government in respect to the affairs of Egypt and the Soudan, regrets the decision of her Majesty's government to employ the forces of the Crown for the overthrow of the power of the Mahdi,' be added to the word 'That' in the main question;"

An amendment was proposed to be made to the said proposed amendment, by leaving out from the word "this" to the end thereof, in order to add the words, "government has failed to indicate any policy in reference to Egypt and the Soudan which justifies the confidence of this house or the country;"

And the question being put, "That the words proposed to be left out stand part of the said proposed amendment;"—it passed in the negative.

And the question being put, "That the words, 'government has failed to indicate any policy in reference to Egypt and the Soudan which justifies the confidence of this house or the country,' be there added;"—it passed in the negative.

The original question was thus left, reduced to the initial word "That" (see "questions mutilated by amendments," p. 278).

AMENDMENT PROPOSED, in page 3, line 21, after the word "precedents," to insert the words, "and so far as respects property without just compensation: Provided that nothing in this sub-section shall prevent the Irish Legislature from dealing with any public department, municipal corporation, or local authority, or with any corporation administering public funds, so far as concerns such funds:"

"—Question proposed, "That those words be there inserted:"

Amendment proposed to the proposed amendment, to leave out from the word "administering" to the end of the proposed amendment, in order to add the words, "for public purposes, taxes, rates, cess, dues, or tolls, so far as concerns the same:"

"—Question, "That the words proposed to be left out stand part of the proposed amendment," put, and negatived.

Question proposed, "That the words, 'for public purposes, taxes, rates, cess, dues, or tolls, so far as concerns the same,' be added to the proposed amendment:"

"—Amendment proposed to the amendment to the proposed amendment, to leave out the words, "so far as concerns the same:"

"—Question, "That the words proposed to be left out stand part of the amendment to the proposed amendment," put, and agreed to.

Words added to the proposed amendment.

Amendment, as amended, agreed to.
IV.

Proclamations for the Summons of Parliament.

Proclamation for assembling Parliament on a Day earlier than that to which it stood Prorogued.

By the Queen.

A PROCLAMATION.

VICTORIA, R.

Whereas our Parliament stands prorogued to Thursday the fourteenth day of December next; and whereas, for divers weighty and urgent reasons, it seems to us expedient that our said Parliament shall assemble and be held sooner than the said day: We do, by and with the advice of our Privy Council, hereby proclaim and give notice of our royal intention and pleasure that our said Parliament, notwithstanding the same now stands prorogued, as hereinbefore mentioned, to the said fourteenth of December next, shall assemble and be held for the despatch of divers urgent and important affairs, on Tuesday the twelfth day of December next; and the Lords Spiritual and Temporal, and the Knights, Citizens, and Burgesses, and the Commissioners for Shires and Burghs of the House of Commons, are hereby required and commanded to give their attendance accordingly, at Westminster, on the said twelfth day of December, one thousand eight hundred and fifty-four.

Given at our Court at Windsor, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty-four, and in the eighteenth year of our reign.

GOD save the Queen.
Proclamation for assembling Parliament for the Despatch of Business, upon a Day already appointed for its Assembling.

By the Queen.

A Proclamation.

Victoria, R.

Whereas our Parliament stands prorogued to Thursday the seventeenth day of January next: We, by and with the advice of our Privy Council, hereby issue our Royal Proclamation, and publish and declare our royal will and pleasure, that the said Parliament shall, on the said Thursday the seventeenth day of January, one thousand eight hundred and seventy-eight, assemble and be holden for the despatch of divers urgent and important affairs; and the Lords Spiritual and Temporal, and the Knights, Citizens, and Burgesses, and the Commissioners for Shires and Burghs of the House of Commons, are hereby required and commanded to give their attendance accordingly, at Westminster, on the said Thursday the seventeenth day of January, one thousand eight hundred and seventy-eight.

Given at our Court at Windsor, this twenty-second day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and in the forty-first year of our reign.

God save the Queen.
V.

Forms of Certificates to Authorize the Speaker to Issue a Warrant for a New Writ during a Recess.


We whose names are underwritten, being two members of the House of Commons, do hereby certify that M. P., late a member of the said house, serving as one of the knights of the shire for the county of [or as the case may be] died upon the day of ; or, is become a peer of Great Britain, and that a writ of summons hath been issued under the great seal of Great Britain to summon him to Parliament [as the case may be], or has accepted the office of [as the case may be], and has been gazetted thereto in the Gazette, dated the day of , and has thereby vacated his seat; and we give you this notice, to the intent that you may issue your warrant to the Clerk of the Crown, to make out a new writ for the election of a knight to serve in Parliament for the said county of [or as the case may be] in the room of the said M. P. Given under our hands this day of .

To the Speaker of the House of Commons.

Note.—That in case there shall be no Speaker of the House of Commons, or of his absence out of the realm, such certificate may be addressed to any one of the persons appointed according to the directions of the Act 24 Geo. III.
CERTIFICATE TO SPEAKER OF THE HOUSE OF COMMONS, UNDER THE BANKRUPTCY ACT, 1883, SEC. 33.

Bankruptcy Rules, 1886, Form 169.

In the matter of the said A. B., of , a bankrupt, it is hereby certified by this Court to the Right Honourable the Speaker of the House of Commons, that the said A. B., being a member of the Commons House of Parliament, was by an order made by this Court on the day of 188 , adjudged a bankrupt. And that although six months have expired since the date of the said order of adjudication, the said order of adjudication hath not been annulled, nor have the debts of the creditors who proved debts under the bankruptcy been fully paid or satisfied.

Certified under the seal of the Court, this day of , 188 .

By the Court,

Registrar.
MATTERS ARISING IN PARLIAMENT BETWEEN
7TH JULY AND 22ND SEPTEMBER, 1893.

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P. 542, n. †. Lords' Bill (Public Revenues) (see p. 856).
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P. 761. Amendment of standing order No. 159 (see p. 857).
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P. 769. Amendment of standing order No. 188 (see p. 857).
P. 790. Amendments on consideration (Blackrock, &c., Bill) (see p. 857).
P. 348, n. 1. Speaker's casting vote (see p. 855).

P. 79. The publication of a letter by a member of the house grossly reflecting on the conduct of the Speaker was brought forward, as a breach of privilege, on the 4th July; though the decision of the house was not taken upon the matter. On the 7th July, the writer of the letter claimed to make a personal explanation thereon from his place in the house; but he used the opportunity to repeat the gross imputation on the Speaker's conduct, which had been contained in the published letter. On the motion of the prime minister, the house resolved that the letter was a breach of privilege, and a motion was made for the suspension of the member. An apology having been obtained from him, the motion was withdrawn.† (See also note, p. 333, n. 8.)

† 14 Parl. Deb. 820. 1094.
P. 187. When the words uttered by Mr. Speaker from the chair are called forth by the proceeding then before the house, his words are entered, either with or without the order of the house, in the "votes," and upon the journal. An address, however, delivered from the chair on the 31st July, made on the request of the prime minister at the close of a personal explanation relating to the disorder which arose in committee on the 27th July, was entered in the journal, on the motion of the prime minister.  

P. 200. The Serjeant, in obedience to Mr. Speaker's direction, removed from the gallery of the house a stranger who was behaving in a disorderly manner.  

P. 237, n. 2. A member having asked the prime minister whether it was the intention of the Government to put a close, by resolution, to the proceedings upon the report stage of the Government of Ireland Bill, the Speaker interposed and stated that he regarded such a question to be out of order, because when a minister makes a motion he judges of the circumstances of the time, and it is impossible that he can say beforehand what he will do, when a certain date arrives. It was not in accordance with the dignity of this house that questions like that should be asked or answered.  

P. 256, n. 4. See Mr. Chamberlain's notice of an amendment to a motion dealing with the business of the house, as stated in the house, 18th August, and as the motion appeared upon the notice paper.  

P. 311, n. 1. The Speaker declared that it was a very wholesome rule in this house not to allude to statements or debates of the present session in the other house, as to do so might bring the two houses into collision.  

P. 332, n. 1. The Speaker ruled that confidential documents, or documents of a private nature passing between officers of a department and the department, cited in debate, are not necessarily laid on the table of the house, especially if the minister declares that they are of a confidential nature. It would, he said, be a precedent dangerous to the public service, if it were decided that such documents ought to be laid upon the table.  

P. 333, n. 8. On Mr. Speaker's suggestion, a member who had been directed to withdraw was recalled to afford him an opportunity of making an apology to the house.  

Pp. 338, 366. Government of Ireland Bill. At 10 o'clock, 27th July, whilst the committee was proceeding to a division, a complaint, made before the division was commenced, that a member had been insulted by the repetition of an offensive word, was brought before the attention of the chairman, together with the name of the member who had uttered those offensive words. The word was, on the direction of the chairman, taken down, and the chairman left the chair to report the matter to the house.

1 Votes, 1st Aug. 1893.  
2 Times, 24th Aug. 1893.  
3 10th Aug. 1893.  
4 21st Aug. 1893.  
5 10th Aug. 1893.  
6 Ibid.  
7 7th July, 1893, 14 Parl. Deb.  
8 a. 1108.
MATTERS ARISING BETWEEN 7TH JULY AND 22ND SEPT. 855

The Speaker resumed the chair, and, on the chairman's report, he called upon the member who was charged with the utterance of the offensive word to say whether he had made use of the word complained of, or not. The member called upon by the Speaker, admitted the use of the word, expressed his sincere regret, and tendered his humble apologies to the house.

Thereupon other honourable members made complaint of other cases of disorder, but the Speaker intervened, and expressed his earnest hope that, without recrimination between honourable members, the committee would proceed in an orderly manner with the business of the evening; and the house again resolved itself into the committee.¹

P. 366, n. 4. Government of Ireland Bill. The chairman ruled that certain words, being out of order, must be withdrawn. The member who used the words refused to obey the direction given from the chair. The chairman thereupon directed the member to leave the house, under standing order No. 27; and he subsequently withdrew.²

P. 375, n. 3. 27th July, 1893. The standing committee on trade, after a motion had been agreed to by the committee that they should not proceed further with the Plumbers' Registration Bill, reported that they were of opinion that there was no prospect of their dealing with the bill by amendments in a satisfactory manner; and that they had therefore resolved not to proceed further with the consideration of the bill, and to report the same, so far as amended, to the house.³

P. 429, n. 5. Address to congratulate her Majesty on the marriage of the Duke of York and Princess Victoria Mary of Teck.⁴

P. 431, n. 2. Messages of congratulation on the marriage of the Duke and Duchess of York to the Prince and Princess of Wales, and to the Duke and Duchess of York.⁵

P. 462, n. 2. Government of Ireland Bill. Upon the report stage of this bill, the Speaker ruled that certain clauses were out of order, because the subjects contained in the clauses should be introduced into the bill by way of amendment; also because a clause would inflict a charge upon the people, and because clauses needed an instruction; and these rulings would have been equally applicable in committee.⁶

P. 466. Government of Ireland Bill. Upon the report stage of this bill, a motion having been made to omit the preamble, objection was taken whether, in the debate upon this motion, discussion was allowable upon the whole scope and policy of the bill, as on the occasion of a second reading.

The Speaker: The rule is that on report the whole bill is open to review. Without entering into any controversy, or seeming to favour one side more than another, I am bound to say that to open a second reading discussion on the preamble, on report, when an opportunity of

¹ 148 C. J. 469.
² Votes, 11th July, 1893.
⁴ Votes, 14th July; answer, 17th July, 1893.
⁵ Votes, 14th July, 1893; answer from the Prince and Princess of Wales, 18th July, and from the Duke and Duchess of York, 28th July, 1893.
⁶ 7th and 15th Aug. 1893.
reviewing the bill as a whole will occur again on the third reading, seems to me to be extending the limits of the discussion on the report to a length that is not usual, though I cannot say it is out of order, inasmuch as the whole bill, including the preamble, is open to revision.

During the progress of the debate on the proposal to omit the preamble, the Speaker intervened, and stated that the whole bill was clearly not before the house. The hon. member had been within his right in discussing the preamble of the bill, but to bring the whole bill under consideration would be a violation of standing order No. 40, which directs that when a bill is brought up on report, the house do proceed at once to consider the clauses of the bill, without general discussion of the bill as a whole. The preamble should, therefore, be considered as a clause, and the discussion thereon should be as much confined to it, as if a clause was under discussion. Again, subsequently, the Speaker said that the hon. member was proceeding as if the question before the house was that the bill, as amended, be now considered. That stage had been deliberately abolished; and the hon. member was only in order in discussing the preamble as if it were a clause of the bill.

P. 477. Reference has been made on this page to the following reprint of No. 267 of the Rules, Orders, &c., of the House of Commons, as it affords a clear and effective statement of the procedure of the house on Lords' amendments:

"When a bill is returned from the Lords with amendments, the amendments are read and agreed to, or agreed to with amendments, or disagreed to, or the further consideration thereof put off for three or six months, or the bill ordered to be laid aside.

"On the consideration of a bill returned by the Lords, with amendments, no amendment can be proposed to a Lords' amendment, save an amendment strictly relevant thereto; nor can an amendment be moved to the bill, unless the amendment be relevant to or consequent upon either the acceptance or the rejection of a Lords' amendment.

"When this house has disagreed to a Lords' amendment, the Lords may return the bill with further amendments thereto, consequent upon the rejection of their amendment, or with amendments proposed as alternative to the amendments disagreed to by this house.

"When the Lords return the bill with a message that they insist on an amendment to which this house has disagreed, this house may either agree, with or without amendment, to the amendment to which it had previously disagreed, and make, if necessary, a consequential amendment to the bill; or may postpone the consideration of the Lords' amendments for six months; or discharge the order thereon, and withdraw the bill; or order the Lords' amendments to be laid aside."

P. 542, n. †. Nullum Tempus (Ireland) Act, 1876, Amendment (Lords) Bill withdrawn, because the bill affected the public revenues.

P. 636. Amendment of standing order No. 194. This order has

1 15th Aug. 1893.
2 Times, 14th July; Votes (Lords), 20th July, 1893, p. 1257.
been amended by the insertion of the words, "by the creation of stock or on loan," after the word "money" (line 2), and only those bills promoted by the London County Council, containing power to raise money by the creation of stock or on loan are required to be introduced as public bills. This express definition of the purpose of this part of the order removes from its operation bills for raising money in any other manner, as for instance the London Owners' Improvement Rate or Charge Bill, which, introduced as a private bill, was, on the 9th February, 1893, ruled by the Speaker, under the standing order as it previously stood, to be properly the subject of a public bill.¹

P. 667. By the Law of Commons Amendment Act, 1893 (56 & 57 Vict. c. 57), "an enclosure or approval of any part of a common, purporting to be made under the Statute of Merton or Westminster the Second, shall not be valid unless it is made with the consent of the Board of Agriculture;" who, "in giving or withholding their consent," "shall have regard to the same considerations and hold the same inquiries" as are required by the Commons Act, 1876, before an application for a provisional order is granted.

P. 761. Amendment of standing order No. 159. Under this standing order as amended, the committee on a railway, &c., bill are only required to fix the maximum rate for the conveyance of passengers and the charges for parcels by passenger train; standing order No. 166A dealing with the rates for goods.²

P. 763. Amendment of standing order No. 170A. The standing order as amended requires the committee, in addition to inserting the clause therein mentioned, "to specify what portion of the tramway will be situate beyond the district of the local authority to which the power of construction, &c., is given."³

P. 769. Amendment of standing order No. 188. The standing order as amended includes "a station for generating electric powers," together with the other works therein mentioned with regard to which the limits of construction are to be defined by a clause.⁴

P. 790. Amendments on report of a bill. By standing order No. 41 (Pub. Bus.), passed in 1888, and applicable to private as well as to public bills, no amendment may be proposed, on consideration, which could not have been proposed in committee without an instruction from the house. On consideration of the Blackrock and Kingstown Drainage, &c., Bill it was sought to move a clause for assimilating the franchise for the election of the commissioners for the township of Blackrock with that of the township of Kingstown: but this being contrary to the standing order, the bill was recommitted to the former committee, with a mandatory instruction to insert clauses for this purpose. The instruction being mandatory, the same object was attained as if the standing order had not existed. Thus a radical change was made in the constitution of a local authority established by Acts of Parliament (The Towns Improvement (Ireland) Act, 1854, and the Blackrock Township Act, 1863), without any of the preliminary

¹ Votes, 24th Aug. 1893. ² lb. ³ lb. ⁴ lb.
notices by advertisement, and otherwise, required by the standing orders with regard to private bills; and local and personal interests were affected without the possibility of the parties concerned being heard in objection before the tribunal to which the bill had been referred. By standing orders Nos. 97, 216, and 218, provision is made by which, through the intervention of the chairman of ways and means and the standing orders committee, amendments on consideration of a bill as amended, beyond the order of leave and involving an infraction of the standing orders, may be dealt with, and the question be considered whether they should or should not be entertained by the house; and it is suggested that these standing orders might be made applicable to recommitted private bills.

P. 348, n. 1. The journal entry of the occasion when the Speaker gave his casting vote on the 25th July, 1887, is as follows:—

The order of the day being read for the second reading of the Marriages Confirmation (Antwerp) Bill;
And a motion being made, and the question being proposed, "That the bill be now read a second time;" and a debate arising thereupon;
And a motion being made, and the question being put, "That the debate be now adjourned;"—
The house divided—
The yeas to the right.
The nos to the left.

Tellers for the yea$$s\{Mr. Tomlinson
\{Mr. Byron Roo$$d\} 75.
Tellers for the no$$s\{Mr. Stuart
\{Mr. Henniker Heaton\} 75.

And the numbers being equal, Mr. Speaker stated that, under the circumstances, he gave his voice with the yeas. So it was resolved in the affirmative.

Ordered, That the debate be adjourned till this day.\(^2\)

\(^1\) Parl. Deb. 4th Aug. 1893.  
\(^2\) 142 C. J. 397.
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