Consiglio regionale del Veneto

bracing a further period, also provided for the service of the year.[1]

Bills of aid and supply.

A bill founded upon a resolution of the committee of ways and means is drawn in the form of a bill of aid and supply; but a bill founded upon the resolution of another committee is generally prepared, and assented to by the Crown in the ordinary manner; and this circumstance may sometimes serve to indicate the proper course of proceeding, when it is doubtful in what committee a bill should originate.

CHAPTER XXII.

ISSUE OF WRITS, AND TRIAL OF CONTROVERTED ELECTIONS: BRIBERY AND CORRUPT PRACTICES.

Purport of this chapter.

THE law of elections, as declared by various statutes,[2] and by the decisions of committees of the House of Commons, has become a distinct branch of the law of England. It is, in itself, of too comprehensive a character to admit of a concise analysis for the general purposes of this work, and it has already been collected and expounded, in all its details, by many valuable treatises. 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.

Issue of writs.

Whenever vacancies occur in the House of Commons,

[1] 162 Hans. Deb., 3rd Ser., 2101.

[2] 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relating to elections, exclusive of acts for the trial of controverted elections, some few of which have since been repealed.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 Author's pamphlet on the Consolidation of the election laws, 1850.

from 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, and, when the house is sitting, by order of the House of Commons. The most frequent causes of vacancy are, the death of members, their elevation to the peerage, the acceptance of offices under the Crown, and the determination of election judges that elections or returns are void, upon any of the grounds which, by law, avoid them.

Vacancies during a session.

When the house is sitting. and the death of a member, his elevation to the peerage,[1] or other cause of vacancy is known, a writ is moved by any member, and on being seconded by another, 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.[2] 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;[3] and again, in 1859, the same rule was adopted.[4] But where the seat was claimed, it has been ruled that the writ should be withheld until after the trial of that claim:[5] or until the petition has been withdrawn.[6] 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,

Writs not issued while returns may be questioned.

Issue of writs, when election petitions are pending.

[1] See 26 Hans. Deb., 3rd Ser., 839, 11th March 1835; 2 Hatsell, 65, *n.*, 393–397.

[2] See Election Petitions Act, 1868, c. 6.

[3] Southampton and Carlow writs, 29th Dec. 1852.

[4] Sandwich and Norwich writs, 22nd June 1859; 154 Hans. Deb., 3rd Ser., 450. 454.

[5] Athlone election, 1859.

[6] Louth election (Mr. Chichester Fortescue), 1866.

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 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 any place will not interfere with the issue of a writ, on a vacancy occurring in the other.[3]

Vacancy by peerage.

If a member becomes a peer by descent, a writ is usually moved 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,

[1] 2nd Aug. 1859; 185 Hans. Deb., 3rd Ser., 865.

[2] Durham election (Mr. Grainger); 108 Com. J. 161.

[3] Lichfield writ (Sir G. Anson), 1841; 96 Com. J. 566. First Durham election petition, 1852–53.

[4] 74 Hans. Deb., 3rd Ser., 108 (Lord Abinger); 19th April 1844. Earl Powis, 103 Com. J. 162. Lord Panmure, 6th May 1852; 107 Ib. 193.

though a writ had been issued for the borough of Stamford, ordered a supersedeas of the writ.[1] 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 Seagrave in 1831.[2] 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.[3] 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.[4] If a member be created a peer, it is often the practice to move the new writ when he has kissed hands; but sometimes not until the patent has been made out, or the *recepi* endorsed.[5] 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.

Precedence of motion for new writ.

A motion for a new writ ordinarily takes precedence of other motions, as a question of privilege, and is made without notice: but by a resolution of the 5th April 1848, "in

[1] 64 Com. J. 49.

[2] 66 Ib. 31; 18 Hans. Deb., 1st Ser., 807; Lord Colchester's Diary, ii. 306. 340.

[3] 95 Com. J. 105; 52 Hans. Deb., 3rd Ser., 435. A peer applies to the lord chancellor for his writ of summons, to whom he produces his father's marriage certificate, proofs that he is the eldest son, and such further evidence as may be required.

[4] 116 Com. J. 4.

[5] Lord Eddisbury sat until 15th May 1848, although his creation had appeared in the "Gazette" on the 9th May; 103 Com. J. 513.

all cases where the seat of any member has been declared void by an election committee, 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;[1] and when such a notice was dropped, it was required to be renewed like other dropped notices.[2] In 1853 and 1854, it was ordered that no such motion should be made without seven days' previous notice in the Votes;[3] and in succeeding sessions, until 1860, and again in 1866, without two days' previous notice.[4] While those resolutions were in force, it was held that such notices for new writs, requiring notice, were not entitled to precedence.[5]

Supersedeas to writs.

If any doubt 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.[6] 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.[7]

[1] 103 Com. J. 423.

[2] Sligo writ, 28th June 1848; 99 Hans. Deb., 3rd Ser., 1289.

[3] 108 Com. J. 315; 109 Ib. 388.

[4] 112 Ib. 283; 113 Ib. 168; 26th Jan. 1860; 115 Ib. 21; 121 Ib. 186.

[5] See *supra*, p. 267.

[6] See 2 Hatsell, 80, *n.*; 16 Parl. Hist. 95. See also case of the city of Gloucester, 19th Dec. 1702.

[7] 64 Com. J. 48; 81 Ib. 223; 86 Ib. 134. 182; 106 Ib. 12 (Dungarvan writ).

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,[1] 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, 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,[2] to issue his warrant to the clerk of the Crown to make out a new writ.

Vacancies during the recess.

Speaker issues warrants.

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;[3] 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.

And, subject to the same provisions, by the 21st & 22nd 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

Acceptance of office during the recess.

[1] See the form of the certificate, in the Appendix.

[2] Prior to 26 Vict. c. 20, this period had been 14 days.

[3] That is to say, six days must elapse after the insertion of the notice, and then the writ can only be issued before the meeting of the house.

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. This Act does not apply to the acceptance of the offices of steward of the Chiltern Hundreds, or of the manors of East Hendred, Northstead, or Hempholme, or of escheator of Munster. 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.

Speaker's appointment of members.

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. Originally by the 52 Geo. III., c. 144, s. 3, but now by the Bankruptcy Act, 1869, ss. 123, 124, similar powers are given to the speaker, and to the members appointed by him, for issuing warrants, in the event of a seat having become vacant by the bankruptcy of a member.

Bankruptcy.

To whom warrants directed.

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 in Ireland.[1]

[1] 103 Com. J. 195.

Delivery of writs.

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 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.[1] In 1840, two writs were issued for Perthshire, instead of one, and the clerk of the Crown was examined in relation to the circumstance.[2]

Error in return.

If any error should appear in the return to a writ, such as a mistake in the name of the member returned;[3] or in the date of the return,[4] or in the division of the county for which the return is made,[5] 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 aud 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 did not conceive himself to be authorised to annex the indenture to the writ, but made a special certificate to the house of the facts.[6] This was taken into consideration on the 13th December, when the house ordered "that the members chosen to serve in the present Parliament for the borough of Barnstaple be called to the table of the house in order to be sworn;" and they were sworn accordingly.[7]

[1] Glasgow writ, 1837; 92 Com. J. 410. 418.

[2] 95 Ib. 122. 127.

[3] Newport (Hants), 1831, Mr. Hope Vere; 86 Com. J. 578.

[4] Carlow county, 1841; "November" being inserted instead of "December;" 96 Com. J. 3.

[5] Northampton county, 26th Feb. 1846; 101 Ib. 207; Worcester county (Eastern division), 25th Feb. 1859; 152 Hans. Deb., 3rd Ser., 855.

[6] 110 Com. J. 4; Sess Paper, 1854-5 (2).

[7] Ib. 7.

When no return is made.

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.[1]

Offices under the Crown.

By the 26th sect. of the Act 6 Anne, c. 7, 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." 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]

Where seats not vacated.

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

[1] Waterford writ, 1806; 61 Com. J. 169. 175; 6 Hans. Deb., 536. 562. 751. Great Grimsby, 1832; 86 Com. J. 758. 762, &c.; 72 Hans. Deb., 3rd Ser., 95. 159. 294. 460.

[2] 174 Hans. Deb., 3rd Ser., 1196. 1287.

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 usually held by 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.[1] 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.[2] The resumption of an office 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, do not hold office by appointment from the Crown, their seats are not vacated; nor would the acceptance of any other offices, of which the appointment does not vest directly in the Crown,[3] vacate a seat except in cases where a special disqualification is created by statute.

[1] 30 & 31 Vict. c. 102, s. 52, and Sch. H. The like clauses and schedules are also comprised in the Scotch and Irish Reform Acts of 1868.

[2] 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 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.

[3] 2 Hatsell, 44.

Under secretaries of state.

By the 22nd Geo. III., c. 82, not more than two principal 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 15th 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 recently, 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;[2] and again in 1858, by the 21 & 22 Vict. c. 106, on the appointment of a fifth secretary of state for India, it was provided that four principal and four under secretaries may sit as members of the House of Commons at the same time.[3] 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.[4] At the same time, as the law had been inadvertently infringed, it was thought necessary to pass a bill of indemnity.[5] An act was also passed,[6] 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, no one shall be capable of sitting and voting until the number is reduced to the statutory limit. And the same rule is further applied to

[1] 2 Hatsell, 63 *n.*
[2] 18 & 19 Vict. c. 10.
[3] 21 & 22 Vict. c. 106, s. 4.
[4] 174 Hans. Deb., 3rd Ser., 1231, &c.
[5] 27 & 28 Vict. c. 21.
[6] Ib. c. 34.

other offices, of which the number may be limited by statute.

Vice-president of the board of trade.

By the 30 & 31 Vict. c. 72, the office of vice-president of the board of trade, which had been an office of profit from the Crown, was abolished after the next vacancy, and the office of parliamentary secretary to the board of trade substituted, which office 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.

Offices under lord lieutenant.

By the 41 Geo. III., c. 52, s. 9, it is declared that offices accepted immediately or directly from the Crown of the United Kingdom, or by the appointment and nomination, or by any other appointment, subject to the approbation of the lord lieutenant of Ireland, shall vacate seats in Parliament.[1] But by the 6 Anne, c. 7, s. 28, the receipt of a new or other 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;[2] and to the office of master-general or lieutenant-general in the ordnance, accepted by an officer in the army;[3] and to military governments accepted by officers in the army.[4]

Military commands.

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 accepting a commission of governor or lieutenant-governor of any fort, citadel, or garrison, upon the military establishment, by a member, being an officer in the army, does not vacate his seat."[5] The acceptance of a commission in the militia does not vacate

[1] The various offices which have been held to vacate seats, may be collected from the several general journal indexes, tit. "Elections;" and from Rogers on Elections, p. 187.

[2] 2 Hatsell, 45, *n.*

[3] 22 June 1742.

[4] Case of General Carpenter, appointed Governor of Minorca and Port Mahon, 1716; General Conway, appointed to the government of Jersey, 1772; 17 Parl. Hist. 538. See also 2 Hatsell, 48, 49. 52, *n.*; 39 Com. J. 970; 54 Ib. 292.

[5] 22 Ib. 201.

Ambassador.

the seat of a member.[1] It has always been held that the office of ambassador, or other foreign minister, does not disqualify, nor its acceptance vacate the seat of a member:[2] but the acceptance of the office of consul or consul-general has been deemed to vacate a seat, though the member was considered to be re-eligible.[3] 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, compensations, or allowances for civil services, according to the provisions of the Superannuation Acts, do not disqualify the holder from being elected, or sitting or voting, as a member of the House of Commons.

Colonial governors.

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. 25, are incapable of being elected, or of sitting and voting; and cannot, therefore, be re-elected.[4]

New offices under the Crown.

Under the 6 Anne, c. 7, new offices, or places of profit under the Crown, created since the 25th October 1705, and new offices in Ireland under 33 Geo. III., c. 41, not only vacate the seats of any members who accept them, but also render persons incapable of being elected, or of sitting and voting as members of the House of Commons.

[1] Militia Acts, 42 Geo. III., c. 90, s. 172; c. 91, s. 167; 49 Geo. III., c. 120, s. 34, &c.

[2] 2 Hatsell, 22; 106 Com. J. 12; (Dungarvan writ). Great inconvenience arose from this construction of the law in 1869. In October of that year, Mr. Layard, member for Southwark, was appointed minister plenipotentiary at Madrid. His seat was not vacated by that appointment; nor under the 21st & 22nd Vict. c. 110, could the speaker issue a new writ during the recess, upon his acceptance of the Chiltern Hundreds. The vacancy, therefore, continued until after the meeting of parliament, in February, and several candidates were canvassing the borough, for about four months before the election.

[3] 2 Hatsell, 54, *n.*

[4] 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, &c., &c.

Postmaster general.

The office of postmaster-general having been considered a new office or place of profit under the Crown had usually been held by a peer: but by 29 & 30 Vict. c. 55, it was declared that the office 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.

Counsel to Secretary of State for India.

In the Cambridge election case, in 1866, it was determined that the counsel to the Secretary of State for India in council was disqualified to be elected or to sit and vote, as holding a new office created under the government of India Act, 1858;[1] and as Mr. Forsyth had sat and voted since his election, an act was passed to indemnify him against any penalties which he might have incurred.[2]

Chiltern Hundreds.

It is a settled principle of parliamentary law, that a member, after he is duly chosen, cannot relinquish his seat;[3] 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 those of steward or bailiff of her Majesty's three Chiltern Hundreds of Stoke, Desborough, and Bonenham; or of the manors of East Hendred, Northstead, or Hempholme; or of escheator of Munster; which, though they have sometimes been refused,[4]

[1] 121 Com. J. 220.

[2] 29 & 30 Vict. c. 20.

[3] 1 Com. J. 724; 2 Ib. 201. In 1775, Mr. George Grenville moved for a bill to enable members to vacate their seats, and contended that this was part of the ancient constitution of the house; 18 Parl. Hist. 411.

[4] See letter of Mr. Goulburn to Viscount Chelsea, Parl. Paper, 1842 (544). 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.

are ordinarily given by the treasury to any member who applies for them, unless there appears to be sufficient ground for withholding them; and are resigned again as soon as their purpose is effected.

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 these offices, have lately been omitted; and the discretion of the treasury is thus enlarged in granting them to persons unworthy of the favour of the Crown, who may desire to vacate their seats in Parliament.[1]

Accepted by a member disqualified.

In the session of 1847–8, a member having had doubts suggested whether he had not been disqualified at the time of his election, as a contractor, 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, which was extremely doubtful; and he accordingly applied for the Chiltern Hundreds. Some 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 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.[2]

Offices without salary.

In January 1821, Mr. Bathurst accepted temporarily, the office of President of the Board of Control, without its emoluments, in connexion with another cabinet office then held by him; and under those circumstances did not vacate his seat.[3]

Lord Warden of the Cinque Ports.

In 1861, Viscount Palmerston accepted the honorary office of Constable of Dover Castle and Lord Warden of

[1] Mr. Speaker's Note-book. The words omitted are "reposing especial trust and confidence in the care and fidelity of," &c.

[2] MS. note.

[3] 3 Lord Sidmouth's Life, 339.

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 the 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 however, that the warrant granted "all manner of wrecks," and of "fees, rewards, commodities, emoluments, profits, perquisites, 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]

Want of property qualification admitted.

A singular method of vacating a seat was that of Mr. Southey, in 1826, who had been elected for Downton, during his absence on the Continent. His return was not questioned, but he addressed a letter to the speaker, in which he stated that he had not the qualification of estate required by law.[2] The house waited until after the expiration of the time limited for presenting election petitions, and then issued a new writ for the borough.[3] A similar case occurred in 1847, when Mr. Cowan, member for Edinburgh, addressed a letter to the speaker, on the 25th November,[4] 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.[5]

Disqualification admitted.

Questions affecting the seats of members.

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. Thus, in 1839, the cases of Mr. Wynn, who

[1] 116 Com. J. 126; MS. memorandum.

[2] 82 Ib. 28.

[3] Ib. 108.

[4] 103 Com. J. 17.

[5] 8th December 1847; 103 Ib. 102.

had accepted the stewardship of Denbigh,[1] and of Mr. Whittle Harvey, who had accepted the office of registrar of hackney carriages,[2] were referred to a select committee. Again in 1848, the question whether Mr. Hawes had regularly taken the oaths, was referred to a committee;[3] and, in 1855, on a new writ being moved for Baron de Rothschild, on the ground that he had contracted for a Government loan, a committee was appointed to report whether Baron de Rothschild had vacated his seat, by reason of that contract.[4] In 1869, a committee was appointed to consider whether Sir Sydney Waterlow was disqualified from sitting and voting, under the statute 22 Geo. III., c. 45, relating to contractors. This practice, in fact, extends to members whose seats are called in question by any member of the house, the same protection as that afforded in the case of controverted elections.

Members vacating to be re-elected.

By the law of Parliament a member sitting for one place may not be elected for another: but must vacate his seat by accepting the Chiltern Hundreds, or some other office under the Crown, in order to be eligible as a candidate. 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 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.[5] Again in February 1865, The O'Donoghue

[1] 94 Com. J. 58.
[2] Ib. 29.
[3] See *supra*, p. 201.
[4] 110 Com. J. 325.
[5] 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

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.[1]

Petitioning candidates eligible.

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."[2] 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.[3]

Trial of controverted elections.

Another occasion for issuing new writs, is to give effect to the determination of a court upon the validity of an election; and this leads to the examination of the mode in which controverted elections have been tried and determined according to law.

Formerly by votes of the house.

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. Thus in 1741, Sir Robert Walpole, after repeated attacks upon his government, resigned at last, in consequence of an adverse vote upon the Chippenham election petition. "Instead of trusting to the merits of their respective causes," said Mr. Grenville, in proposing the measure which has since borne his name, "the principal dependence of both parties is their private interest among us; and it is scandalously notorious that

Grenville Act.

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.

[1] 120 Com. J. 4. 50.

[2] 21 Com. J. 136.

[3] This point was considered in 1849, when such a case seemed likely to occur: but there have been no precedents.

we are earnestly canvassed to attend in favour of the opposite sides, as if we were wholly self-elective, and not bound to act by the principles of justice, but by the discretionary impulse of our own inclinations; nay, it is well known that in every contested election, many members of this house, who are ultimately to judge in a kind of judicial capacity between the competitors, enlist themselves as parties in the contention, and take upon themselves the partial management of the very business upon which they should determine with the strictest impartiality."[1]

Constitution of committees under the Grenville Act.

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,[2] and of others which were passed at different times since 1770, was to select committees for the trial of election petitions by lot. By the last of these,[3] thirty-three names were balloted from the members present at the time, and each of the parties to the election was entitled to strike off eleven names, and thus reduce the number of the committee to eleven. Whichever party attended on the day appointed for a ballot, in the greatest force, was likely to have a preponderance in the committee; and the expedient of chance did not therefore operate as a sufficient check to party spirit, in the appointment of election committees. Partiality and incompetence were very generally complained of in the constitution of committees appointed in this manner; and in 1839, an Act was passed establishing a new system,

[1] See also 1 Cavendish Deb. 476. 505; 1 May's Const. Hist. (4th ed.) 362.

[2] In 1773, the Grenville Act was made perpetual, but not without the expression of very strong opinions against the limitations imposed by it upon the privileges of the house. See 17 Parl. Hist. 1071; also Lord Campbell's Chancellors, vol. vi., 98.

[3] 9 Geo. IV., c. 22.

upon different principles,—increasing the responsibility of individual members,—and leaving but little to the operation of chance.

Present system.

This principle was maintained, with partial alterations of the means by which it was carried out,[1] until 1868, when the jurisdiction of the house, in the trial of controverted elections, was transferred by statute, to the courts of law.[2]

Petitions, when to be presented.

At the commencement of each session the house orders,

"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 that there is no question upon the return for that place; and if anything shall come in question touching the return or election of any member, he is to withdraw during the time the matter is in debate; and, that all members returned upon double returns do withdraw till their returns are determined."

Members returned for two places.

1. The first part of this order regulates the manner of choosing for which place a member will sit, when he has been returned for more than one. 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.[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 bankruptcy. Upon this principle, on the 24th May 1842, Mr. O'Connell, who

[1] 11 & 12 Vict. c. 98.
[2] See *infra*, p. 647.
[3] 103 Com. J. 99, 100.
[4] Case of Mr. O'Connell, 1841; 96 Com. J. 564.

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]

Members to withdraw.

2. The second part of the order is in accordance with the general rule of the house, which requires every member to withdraw, where matters are under discussion in which he is personally concerned.[2]

Double returns.

3. When there is a double return, there are two certificates endorsed on the writ,[3] and both the names are entered in the return books. Both members may therefore claim to be sworn, and to take their seats:[4] 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, has been sanctioned by the law and practice of Parliament. In 1866, the numbers being equal, at the election for Helston, the returning officer returned one of the candidates only, instead of both; when after the report of an election committee, the house resolved "that according to the law and usage of Parliament, it is the duty of the sheriff or other returning officer in England, in case of an equal number of votes being polled for two or more candidates at an election, to return all such candidates."[5] In Scotland the making of double returns was directed by the Scoth Reform Act, 1832

[1] 97 Com. J. 302.

[2] See *supra*, pp. 348. 375.

[3] The ancient form of an indenture was abolished by the Parliamentary and Municipal Elections Act, 1872. 1st Sch., s. 44.

[4] 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. Again, in 1859, there were double returns for Knaresborough and Aylesbury, when the members were sworn in the same way.

[5] 121 Com. J. 436. 486.

(s. 33). In Ireland, on the other hand, a double return is expressly prohibited.[1] In order to avert double returns, as far as possible, it was provided by the Parliamentary and Municipal Elections Act, 1872, s. 2, 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.

The house, also, agrees to the following resolutions, in condemnation of irregular practices to influence the freedom of election :—

Voting of peers.

"That no peer of this 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."[2]

Interference of peers and lords lieutenant.

"That it is a high infringement of the liberties and privileges of the Commons of the United Kingdom for any lord of Parliament, or other peer or prelate,[3] not being a peer of Ireland at the time elected, and not

[1] 35 Geo. III., c. 29, s. 13, and 4 Geo. IV., c. 55, s. 68.

[2] See debate in the Lords, 27th June 1853, in which it was laid down that peers were restrained from voting by immemorial usage, irrespective of these resolutions; 128 Hans. Deb., 3rd Ser., 791. Again, on the 5th July 1858, Lord Campbell said, "A peer has no right to vote by the common law of England, for the election of members of the House of Commons." "The resolution of the Commons only declares the common law." And again, "Since the Reform bill, peers had frequently sought to register their votes for the election of members of the House of Commons, but the revising barristers had invariably, and most properly, refused to allow them." 151 Hans. Deb., 3rd Ser., 926, 927. 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 counsel for the noble appellants scarcely ventured to maintain their own case, and 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. Times report, 16th Nov. 1872.

[3] 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

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[1]; or for any lord lieutenant or governor of any county to avail himself of any authority derived from his commission, to influence the election of any member to serve for the Commons in Parliament."[2]

Bribery.

"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."[3]

Interference of ministers.

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."[4]

Administration of the election law.

Under the Act 11 & 12 Vict. c. 98, for the trial of election petitions, the House of Commons acted as a court administering the statute law. Little discretion was left to it beyond that of interpreting the Act, and executing its provisions. Every enactment was positive and compul-

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 Com. J. 25; 57 Ib. 376.

[1] See cases of Bishop of Carlisle, 16 Com. J. 548; of Duke of Leeds, 68 Ib. 344; 26 Hans. Deb. 796. 989, &c. Debate, 14th December 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 Hans. Deb., 3rd Ser., 1077; and Debate, 19th February 1846; 83 Ib. 1167. Stamford borough case, 1848; 98 Ib. 932. 976.

[2] For complaints made of lord-lieutenants interfering in elections, see Duke of Chandos, lord-lieutenant of Southampton, 37 Com. J. 507. 513. 538. 557; Duke of Bolton, a peer of parliament, in the same election, 37 Ib. 530.

[3] In 1722, several persons were committed, as being principal promoters of riots at Coventry; 20 Com. J. 60, 61.

[4] 37 Ib. 507.

sory; the house, the committees, the speaker, the members, were all directed to execute particular parts of the Act; and, in short, it is not possible to conceive a legislative body more strictly bound by a public law, over which it had no control, and in administering which it had so little discretion.[1]

Election Petitions, &c., Act, 1868.

But by the Election Petitions and Corrupt Practices at Elections Act, 1868, the trial of controverted elections in England was confided to the Court of Common Pleas at Westminster, in Ireland to the Court of Common Pleas at Dublin, and in Scotland to the Court of Session. Petitions complaining of undue elections and returns are presented to those 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 a judge of one of those courts, within the county or borough concerned. The house has no cognisance of these proceedings until their termination: when the judge certifies his determination, in writing, to the speaker, which is final to all intents and purposes. He is 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. He may also make a special report as to other matters which, in his 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.

The judge is also to report the withdrawal of an election petition to the speaker, with his opinion whether the withdrawal was the result of any corrupt arrangement. All such certificates and reports are immediately communicated to the house by the speaker, and are treated like the reports of election committees under the former system. They are entered in the Journals; and orders are made for carrying

[1] Its helplessness was remarkably illustrated in the cases of disputed election recognisances, in the session of 1847–48.

the determinations 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 15th & 16th Vict. c. 57, for further inquiry into such corrupt practices. Where there is a double return, 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 the courts, 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 15th & 16th Vict. c. 57.

Proceedings of the house in matters of election.

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 s. 50 of the Elections 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 proper jurisdiction of the house, in determining questions affecting the seats of its own members, not arising out of controverted elections. It was plain, however, that this section applied to the questioning of returns by election petitions only. When controverted elections were tried by committees of the house, a sessional order required "all persons who will *question* any returns" to "*question* the same within fourteen days;" and under that order election petitions were received. In parliamentary language, therefore, to *question* a return was to controvert it by parties interested,—not to adjudge it by the house itself. During the continuance of that judicature, the house never attempted to interfere with controverted elections but after the time had expired for

receiving election petitions, it always held itself, not only free, but legally bound, to determine all questions affecting the seats of its members, as numerous precedents attest. Where returns were questioned, by petition, the matter was determined by the statutory tribunal: otherwise the house uniformly exercised its constitutional jurisdiction. And such continued 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 presented to the Court of Session in Scotland, complaining of the election of Sir Sydney Waterlow for the county of Dumfries, on the ground of his holding a government contract. In the ensuing session, however, this 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.[1] 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.[2] But, notwithstanding this conclusive precedent, it was contended in 1870, in the case of O'Donovan Rossa, that the house had become completely divested of the right of determining upon legal disqualifications affecting its own members. This argument, however, found no favour, it being justly said that it amounted to this, that even a peer chosen to sit could not be excluded, and that a lunatic was to be suffered to continue a member. It might have been added that a new writ could not be issued in the room of a member

[1] 124 Com. J. 12. 43. 82. 88.

[2] 94 Ib. 48; 103 Ib. 102.

accepting office, as the house was incapable of judging whether his seat had become vacant.[1] A petition relating to an election, but not questioning the return of the sitting member, may properly be received.[2]

Proceedings of house upon determination of election trials.

Where it has been determined that the sitting member was not duly elected,[3] 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 rasing out one name and inserting the other name instead thereof, which he accordingly does, at the table of the house.[4] In the case of a double return, the clerk of the Crown is ordered to attend and amend the return, by rasing out the name of one of the parties, and what relates to him in the return.[5] When the election is void, a new writ is ordered, unless the house shall think fit to suspend its issue.

Where there have been special reports concerning bribery,[6] or riots at elections,[7] the conduct of returning officers,[8] undue influence, and spiritual intimidation,[9] the alteration of the poll,[10] the absence, misconduct, or perjury of witnesses,[11] defects or uncertainty in the law,[12] the pro-

[1] Debates, 10th Feb. 1870.

[2] 194 Hans. Deb., 3rd Ser., 1185.

[3] 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's Note-book.

[4] 112 Com. J. 364, 365. 367. 121 Ib. 189; 123 Ib. 73; 127 Ib. 261.

[5] 97 Ib. 203; 124 Ib. 173. Montgomery election, 1848; 103 Ib. 218. Dumbartonshire election, 1866; 121 Ib. 156. The return by indenture was discontinued by the Parliamentary and Municipal Elections Act, 1872, and the certificate of return is now indorsed upon the writ.

[6] Such reports have been held to be a ground of disqualification. Peterborough case, 1853; 108 Ib. 826.

[7] Drogheda petition, 1857; 112. 383; Limerick City petition, 1859; 114 Ib. 338.

[8] Helston election, 1866; 121 Ib. 436.

[9] Mayo petition, 1857; 112 Ib. 307. Galway county election, 1872; 127 Ib. 258.

[10] 114 Ib. 330. 350; 115 Ib. 167.

[11] 115 Ib. 94. 167, &c.

[12] 93 Ib. 275; 97 Ib. 198; 98 Ib. 133; 103 Ib. 511. 965.

priety of suspending the writ,[1] or any other exceptional circumstances;[2] 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.

Amendment of the register.

Formerly where the poll had been altered by striking off the names of certain persons, as not having had a right to vote, the house has ordered that the town clerk of the borough do forthwith amend the register, by striking out such names in conformity with the report of the committee;[3] but in other similar cases such orders were not made.[4] By resolution 23rd June 1835, in all cases where an election committee reported that the names of any voters ought not to be placed on the register, or that any names had been unduly omitted, the speaker was directed to issue his warrant to the clerk of the peace, town clerk, or other officer with whom such register is deposited, to amend the register in conformity with the report of the committee.[5] In 1838, this resolution was suspended, so far as it applied to Scotland and Ireland.[6] And since the surrender of the judicature of the Commons in controverted elections, and the taking of votes by ballot, a scrutiny is conducted under new conditions, to which these precedents will probably not be applicable.

Proof of agency.

To facilitate inquiries into acts of bribery, committees were required by 4 & 5 Vict. c. 57 (now repealed), to receive general evidence of bribery, without prior proof of agency; and by the Election Petitions, &c. Act, 1868, unless the judge otherwise directs, any charge of a corrupt practice may be gone into, and evidence in relation thereto

[1] Beverley case, 1859; 114 Com. J. 359.

[2] 112 Ib. 292. 295. 369. 385; 114 Ib. 369; 121 Ib. 288.

[3] Wareham case, 1857; 112 Ib. 274.

[4] Cambridge, Bath, and Huntingdon County elections, 1857; 112 Com. J. 282. 365. 381.

[5] 90 Ib. 374.

[6] 93 Ib. 366.

received, before any proof has been given of agency, on the part of a candidate, in respect of such corrupt practice.

Bribery by agents incapacitates.

By this mode of inquiry, the discovery of acts of bribery was, undoubtedly, much facilitated; and in the course of the evidence, proofs or implications of agency were elicited, which might not have arisen if the evidence had been confined, in the first instance, to the strict proof of agency. This provision did not apply to charges of treating;[1] but was expressly extended to such charges by the Corrupt Practices Act, 1863.[2] Since the passing of this act, the seats of several members have been avoided by the acts of their agents; and committees have reported that sitting members have been, by or *through their agents*, guilty of bribery; and, at the same time, that there was no evidence to show that any acts of bribery were committed with their knowledge and consent.[3] Such determinations have been founded upon the principle, that though, without such proof, the member could not be sued for penalties,[4] yet, so far as his seat in Parliament is concerned, a proof of general agency for the management of an election is sufficient to make the principal civilly responsible for every unauthorised and illegal act committed by his agent, by which his own return had been secured. This principle, however, has been extended much further, and has been construed so as to attach some of the penalties of bribery to the principal, although such bribery has been committed by his agents, without his knowledge and consent. In 1842, the election of Mr. Harris for Newcastle-under-Lyme was

[1] Bodmin case; Power, Rodwell, and Dew, 134. Leicester case; Ib. 176. Chester County case; Ib. 219. Second Horsham case; Ib. 250. Kidderminster case; Ib. 263: but see also Cambridge and Wigan cases; Barron and Austin, 184. 788. Aylesbury case; Power, Rodwell, and Dew, 271.

[2] 26 Vict. c. 29, s. 8; now repealed.

[3] 97 Com. J. 260. 279. 551; 121 Ib. 190. 251, &c. Barron and Austin, 401. 453. 584. 609. Power, Rodwell, and Dew. 45. 75, &c.

[4] Felton *v.* Easthope, 1822; Rogers, 341. Hughes *v.* Marshall, 2 Tyrr. 134.

avoided, by reason of bribery, but the committee reported that "no evidence was given to show that these acts of bribery were committed with the knowledge and consent of Mr. Harris." Mr. Harris was re-elected, and petitioned against, and the committee determined, "that Mr. Harris having been declared, by a committee of the House of Commons, to have been guilty of bribery by his agents, at the previons election for the borough of Newcastle-under-Lyme, and that election having been avoided, was incapable of being elected at the election which took place in consequence of such avoidance."[1] And in later cases the same principle has been extended to unsuccessful candidates at a previous election.[2] By the Corrupt Practices Prevention Act, 1854, s. 36, it was enacted, that if any candidate shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at an election, such candidate shall be incapable of being elected or sitting in Parliament for the same county, city, or borough, during the Parliament then in existence. And by s. 46 of the Election Petitions and Corrupt Practice Act, 1868, the report of the judge on the trial of an election petition is to be deemed to be substituted for the declaration of an election committee. A further instrument for the detection of bribery has been found in the personal examination of the sitting members and candidates, under the new law of evidence.[3]

Corrupt Practices Act, 1854.

Sitting members examined.

By s. 43 of the Election Petitions and Corrupt Practices Act, 1868, where it is found, by the report of an election judge, that bribery has been committed by or with the knowledge and consent of any candidate, such candidate shall be deemed to have been personally guilty of bribery, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to, and of sitting in, the

Punishment of candidate guilty of personal bribery.

[1] Barron and Austin, p. 564.

[2] 2nd Cheltenham petition, and 2nd Horsham petition, 1848; 103 Com. J. 973. 1005; Power, Rodwell, and Dew, 225. 242.

[3] 14 & 15 Vict. c. 99.

House of Commons, for a period of seven years; and shall further be incapable, during that period, of being registered as a voter, and voting at any election in the United Kingdom; and of holding any office under 5 & 6 Will. IV., c. 76, or 3 & 4 Vict. c. 108, or any municipal office; and of holding any judicial office, and of being appointed, and of acting, as a justice of the peace.

Penalty for employing corrupt agent.

By s. 44 of the same act, if any candidate is proved to have personally engaged at the election, as a canvasser or agent for the management of the election, any person whom he knows to have been, within seven years, found guilty of any corrupt practice, the election of such candidate shall be void. And by s. 45, any person other than a candidate, found guilty of bribery or any proceeding in which, after notice of the charge, he has had an opportunity of being heard, shall, during a period of seven years, be incapable of being elected to and sitting in Parliament, and subject to the same civil disqualifications as a candidate found guilty of personal bribery.

Disqualifications of persons not candidates.

General corruption to be reported.

By the Corrupt Practices Act, 1863, the committee was required to report whether such corrupt practices have extensively prevailed. Formerly, when particular persons were proved, before election committees, to have been guilty of bribery, treating, and other corrupt practices, the house directed the attorney-general to prosecute them for such offences.[1] But by the Corrupt Practices Act, 1863, s. 9, it was provided, that when persons were reported guilty of bribery or treating, the report and evidence of a committee, or commission of inquiry, shall be laid before the attorney-general, with a view to his instituting a prosecution against such persons, if the evidence be, in his opinion, sufficient.[2]

[1] In cases relative to Ireland, the attorney-general for Ireland is directed to prosecute; Sligo case, 1854; 109 Com. J. 159. Lisburn case, 19th June 1863. In the Dublin case, 1831, "the law officers of the Crown in Ireland were directed to take immediate measures for bringing to justice such persons as may have been guilty of bribing voters." 86 Com. J. 779.

[2] In the Wakefield case, after the report of a commission of inquiry the

And this provision extends to reports of an election judge, under the Election Petitions, &c. Act, 1868, s. 16; and thus the intervention of the house, in such cases, is now rendered unnecessary by the direct operation of the law.[1]

Writs suspended.

When general and notorious bribery and corruption have been proved to prevail in parliamentary boroughs, the house has frequently suspended the issue of writs, with a view to further inquiry, and the ultimate disfranchisement of the corrupt constituency by Act of Parliament.[2]

Commissions of inquiry.

An effectual mode of investigating corrupt practices at elections was established by 15 & 16 Vict. c. 57, which provided that where both houses, by a joint address, represent to her Majesty that an election committee has reported to the House of Commons that corrupt practices have, or that there is reason to believe they have, extensively prevailed in any place, and pray for an inquiry, by persons named in such address, her Majesty is to appoint a commission, which has all necessary powers of inquiry.[3] And by the Election Petitions, &c. Act, 1868, such an address may be founded, in the same manner, upon the report of an election judge. And addresses have been

attorney-general instituted a prosecution, without the directions of the house, the matter being no longer within the sole cognisance of the house.

[1] Galway County election, 1872; explanations of attorney-general for Ireland, and debate, 23rd July 1872; 212 Hans. Deb., 3rd Ser., 1626.

[2] Liverpool, 86 Com. J. 458. 493. Warwick, 88 Ib. 611; 89 Ib. 9. 579. Carrickfergus, 88 Ib. 531. 599. Hertford, 88 Ib. 578. 649. In the three last cases, the writs were further suspended until 15 days after the commencement of the next session; and in 1834, were again suspended until the dissolution in Dec. 1834. Stafford, 90 Ib. 262, &c. Sudbury, 97 Ib. 188. 467, &c.; Act 7 & 8 Vict. c. 53. Ipswich, 97 Com. J. 221. 554. Yarmouth freemen, 103 Ib. 213; 11 & 12 Vict. c. 24. Harwich, 103 Com. J. 330. 702. In 1851, an act was passed for inquiring into bribery at St. Albans, 14 & 15 Vict. c. 106; and the result of this inquiry was the disfranchisement of that borough by 15 & 16 Vict. c. 9. It has been customary to order copies of such bills to be served upon the returning officer before the second reading; 99 Com. J. 443; 103 Ib. 366. Lancaster, Great Yarmouth, Reigate, and Totnes, 1866; see *infra*, p. 656.

[3] The payment of the expenses of such commissions has been further regulated by 32 & 33 Vict. c. 21, and 34 & 35 Vict. c. 61.

agreed to, pursuant to these acts, in the cases of Canterbury, Cambridge, Maldon, Barnstaple, Kingston-upon-Hull, and Tynemouth in 1853; Galway in 1857; Gloucester and Wakefield in 1859; Lancaster, Great Yarmouth, Reigate, and Totnes in 1866; and Beverley, Bridgwater, Cashel, Sligo, Dublin, and Norwich, in 1869.

Form of address.

The Canterbury election committee, 1853, in recommending further inquiry, did not report in the precise terms of the act, but adopted equivalent expressions. The address, however, necessarily followed the words of the Act;[1] and though this discrepancy did not pass without objection,[2] it was agreed to by both houses.[3] In the Clitheroe case the Lords declined to concur in an address.[4] 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.

Bills founded on reports of commissioners.

In 1854, bills were brought in founded upon reports of of the commissioners, in the cases of Canterbury, Maldon, Barnstaple, and Kingston-upon-Hull, for the prevention of bribery in those places; and in 1858, for the disfranchisement of the freemen of Galway: but all these bills miscarried, mainly in consequence of the indemnity granted, under the act of 15th & 16th Vict. to voters who had given evidence of corrupt practices. But by the Corrupt Practices Act, 1863, certificates of indemnity were made a protection in civil or criminal proceedings only; and could, therefore, no longer be urged as a bar to bills of disfranchisement. And accordingly, 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

[1] 108 Com. J. 338.

[2] See debates in Commons, 15th March, and in Lords, 12th April, 1853.

[3] See also Lords' debates, 30th May 1853, on the Maldon case, and protest of Lord St. Leonards.

[4] 108 Com. J. 490.

special acts; and in 1871 certain other voters of Norwich were disfranchised.

CHAPTER XXIII.

IMPEACHMENT BY THE COMMONS; GROUNDS OF ACCUSATION; FORM OF THE CHARGE; ARTICLES OF IMPEACHMENT; THE TRIAL AND JUDGMENT; PROCEEDINGS NOT CONCLUDED BY PROROGATION OR DISSOLUTION; PARDON NOT PLEADABLE. TRIAL OF PEERS. BILLS OF ATTAINDER AND OF PAINS AND PENALTIES.

Rarity of impeachments in modern times.

IMPEACHMENT by the Commons, for high crimes and misdemeanors beyond the reach of the law, or which no other authority in the state will prosecute, is a safeguard of public liberty well worthy of a free country, and of so noble an institution as a free Parliament: but, happily, in modern times, this extraordinary judicature is rarely called into activity.[1] The times in which its exercise was needed were those in which the people were jealous of the Crown; when the Parliament had less control over prerogative; when courts of justice were impure; and when, instead of vindicating the law, the Crown and its officers resisted its execution, and screened political offenders from justice: but the limitations of prerogative, the immediate responsibility of the ministers of the Crown to Parliament, the vigilance and activity of that body in scrutinizing the actions of public men, the settled administration of the law, and the direct influence of Parliament over courts of justice, which are, at the same time, independent of the Crown,[2] have prevented the consummation of those

[1] For the number of impeachments at different times, see *supra*, p. 55.

[2] By the Acts 13 Will. III. c. 2, s. 3, and 1 Geo. III. c. 23, the commis-

crimes which impeachments were designed to punish. The Crown is entrusted by the constitution with the prosecution of all offences; there are few which the law cannot punish; and if the executive officers of the Crown be negligent or corrupt, they are directly amenable to public opinion, and to the censure of Parliament.

Grounds of impeachment.

From these causes, impeachments are reserved for extraordinary crimes, and extraordinary offenders: but by the law of Parliament, all persons, whether peers or commoners, may be impeached for any crimes whatever.

Peers and commoners.

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 supposed authority of the case of Simon de Beresford, in the 4th Edward III.,[1] whether a commoner could be impeached for any capital offence.

Blackstone, relying upon this case, and overlooking later authorities, affirmed that "a commoner cannot be impeached before the Lords for any capital offence, but only for high misdemeanors."[2] And more recently Lord Campbell has expressed an opinion to the same effect.[3] Simon de Beresford, however, was not impeached by the Commons, but was charged before the Lords at the suit of the Crown; and after they had given judgment against him, they made a declaration, which by some has even been regarded as a statute,[4] "that the aforesaid judgment be not drawn into example or consequence in time to come, whereby the said peers may be charged hereafter to judge others than their peers, contrary to the law of the land." Whatever weight may be attached to this declaration, it clearly applies to cases similar to that of de Beresford, and cannot be extended

sions of judges are made *quamdiu se bene gesserint*; their salaries are ascertained and established: but it may be lawful to remove them upon the address of both houses of Parliament.

[1] 2 Rot. Parl. 53, 54; 4 Edw. III., Nos. 2 and 6.

[2] 4 Comm. c. 19.

[3] 3 Lives of the Chancellors, 358, 9. 410.

[4] 14 Lords' J. 260.

to impeachments by the Commons. In subsequent cases, the Lords violated their own declaration, by trying commoners for capital offences at the suit of the Crown;[1] and such trials were unquestionably contrary to Magna Charta[2] and to the common law. But an impeachment by the Commons is a proceeding of a character wholly distinct; and its legality has been recognised by Selden,[3] Lord Hale,[4] and other constitutional authorities,[5] and established by numerous parliamentary precedents.[6]

Case of Fitzharris.

The only case in which it appears to have been questioned by the Lords was that of Fitzharris. On the 26th March 1681, Edward Fitzharris was impeached of high treason: but the House of Lords, on being informed by the attorney-general that he had been instructed to indict Fitzharris at common law, resolved that they would not proceed with the impeachment.[7] The grounds of their decision were not stated; but from the protest entered in their Journals, from the resolution of the Commons, and from the debates in both houses, it may be collected that the fact of his being a commoner had been mainly relied on.[8] The Commons protested against the resolution of the Lords, as "a denial of justice, and a violation of the constitution of Parliaments;" and declared it to be their "undoubted right to impeach any peer or commoner for treason, or any other crime or misdemeanor:" but the impeachment was at an end, and the trial at common law proceeded. On his prosecution by indictment, Fitzharris pleaded in abatement that an impeachment was then pending against him

[1] Lord Hale, Jurisd. of House of Lords, 92.

[2] "Nec super eum *ibimus* nisi per legale judicium parium suorum."

[3] Judicature of Parliament, 3 Seld. Works, Part II. 1589.

[4] Jurisd. of the Lords, c. 16.

[5] 4 Hatsell, 60, *n.*; 84. 216, *n.*; 2 Hallam, Const. Hist. 144.

[6] Sir R. Belknap and others, and Simon de Beverley and others, 1383; 3 Rot. Parl. 238. 240. Judge Berkley and other judges, 1640; 4 Hatsell, 163, &c. O'Neile, Jermyn, Piercy, and others, 1641; 4 Hatsell, 187, &c.

[7] 13 Lords' J. 755.

[8] 8 Howell's St. Tr. 231–239; 2 Burnet's Own Times, 280; 4 Hans. Parl. Hist. 1333.

for the same offence, but his plea was overruled by the Court of King's Bench.[1]

Case of Sir A. Blair, and others.

The authority of this single and exceptional case, however, is of little value; and has been superseded by later cases. An impeachment for high treason was depending, at the very time, against Chief Justice Scroggs,[2] a commoner; and 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,[3] and negativing a motion for requiring the opinion of the judges, resolved that the impeachment should proceed.[4] 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.

Commencement of proceedings.

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 misdemeanors, 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.[5]

Articles of impeachment.

In the case of Warren Hastings, articles of impeachment had been prepared before his formal impeachment at the bar of the House of Lords: but the usual course has been to prepare them afterwards. A committee is appointed to

[1] 8 Howell's St. Tr. 326.
[2] 13 Lords' J. 752.
[3] See this report, 4 Hatsell, 428.
[4] 14 Lords' J. 260.
[5] 45 Ib. 350.

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 saving clause, to provide that the commons shall be at liberty to exhibit further articles from time to time.[1] The accused sends answers to each article, which together with all writings delivered in by him, are communicated to the Commons by the Lords;[2] and to these, replications are returned, if necessary.[3]

Accused taken into custody.

If the accused be a peer, he is attached or retained in custody, by order of the House of Lords;[4] if a commoner, he is taken into custody by the serjeant-at-arms attending the Commons,[5] by whom he is delivered to the gentleman usher of the black rod, in whose custody he remains,[6] unless he be admitted to bail by the House of Lords;[7] or be otherwise disposed of by their order.

Managers appointed.

The Lords appoint a day for the trial, and in the meantime the Commons appoint managers to prepare evidence and conduct the proceedings,[8] and desire the Lords to summon all witnesses who are required to prove their charges.[9] The accused may have summonses issued for the attendance of witnesses on his behalf, and is entitled to make his full defence by counsel.[10]

Witnesses summoned.

The trial.

The trial has usually been held in Westminster Hall, 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,[11] when the managers make their charges, and adduce evidence in support of them: but they

Charges to be confined to the articles.

[1] 60 Com. J. 482, 483.
[2] 20 Lords' J. 297; 18 Com. J. 391.
[3] 61 Com. J. 164.
[4] 20 Lords' J. 112; 27 Ib. 19.
[5] 16 Com. J. 242; 42 Ib. 793.
[6] 42 Ib. 796.
[7] 37 Lords' J. 724.
[8] 61 Com. J. 169.
[9] 61 Ib. 224.
[10] 20 Geo. II., c. 30; 45 Lords' J. 439.
[11] 45 Lords' J. 519.

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.[1] 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.

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 standing uncovered, 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.[2] 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.[3]

Commons demand judgment.

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. On the 17th March 1715, the Commons resolved, *nem. con.*, in the impeachment of the Earl of Winton,

"That the managers for the Commons be empowered, in case the House of Lords shall proceed to judgment before the same is demanded by the Commons, to insist upon it, that it is not parliamentary for

[1] 44 Com. J. 298. 320.
[2] Printed Trial of Lord Melville, p. 402.
[3] Ib. p. 413.

their lordships to give judgment, until the same be first demanded by this house."[1]

And a similar resolution was agreed to on the impeachment of Lord Lovat, in 1746.[2]

The judgment.

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.[3] 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]

Proceedings not concluded by prorogation or dissolution.

So important is an impeachment by the Commons, that 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:[6] but as the preliminary proceedings of the House of Commons would require to be revived in another session, acts were passed in 1786 and in 1805, to provide that the proceedings depending in the House of Commons, upon the articles of charge against Warren Hastings and Lord Melville, should not be discontinued by any prorogation or dissolution of Parliament.[7]

[1] 18 Com. J. 405. [2] 25 Ib. 320.
[3] 22 Lords' J. 556; 27 Ib. 78.
[4] 22 Ib. 560.
[5] Ib. 554, 555; 20 Com. J. 541 (27th May 1725); 6 Howell's St. Tr. 762.
[6] 39 Lords' J. 191, and see Report of Precedents, Ib. 125; 46 Com. J. 136. 2 May's Const. Hist. (4th edit.), 93.
[7] 26 Geo. III. c. 96; 45 Geo. III. c. 125.

Pardon not pleadable.

In the case of the Earl of Danby, in 1679, the Commons protested against a royal pardon being pleaded in bar of an impeachment, by which an offender could be screened from the inquiry and justice of Parliament, by the intervention of prerogative.[1] Directly after the revolution, the Commons asserted the same principle, and within a few years it was declared by the Act of settlement,[2] "that no pardon under the great seal of England, shall be pleadable to an impeachment by the Commons in Parliament."

But may be given afterwards.

But, although the royal prerogative of pardon is not suffered to obstruct the course of justice, and 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.

Crimes for which peers are tried by their peers.

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 gives such trial have reference to the same offences, either at common law, or created by statute. For misdemeanors, and in cases of præmunire, it has been held that peers are to be tried in the same way as commoners, by a jury.[3]

In Parliament, or by court of lord high steward.

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

[1] See 4 Hatsell, 197, *n.* 208. 400-405; 3 Lord Macaulay's Hist. 407.

[2] 12 & 13 Will. III. c. 2.

[3] Rex *v.* Lord Vaux, 1 Bulstr. 197.

[4] Foster's Crown law, 141.

[5] After the trial his grace breaks the

court of the lord high steward.[1] This court was formerly constituted in so anomalous a manner, as scarcely to deserve the name of a court of justice. The lord high steward, himself nominated by the Crown, summoned to the trial, at his discretion, such peers as he selected, whose number was required to be not less than twelve: but was otherwise indefinite. The abuses arising out of this constitution of the court,[2] however, were remedied by the 7 Will. III., s. 3, which requires that, on the trial of a peer, all the peers shall be summoned.

Indictments against peers.

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.[3]

Accused peers at the bar.

Peers on trial before the Lords for misdemeanors are allowed a seat within the bar: but if tried for treason or felony, they are placed outside the bar.[4]

Trial of peers to be in full Parliament.

On the 14th January 1689, it was resolved by the Lords, "That it is the ancient right of the peers of England to be

white staff, and declares the commission dissolved. See published trial of the Earl of Cardigan.

[1] See 4 Bl. Comm. 260.

[2] See trial of Lord Delamere, 11 Howell's St. Tr. 539; 2 Lord Macaulay's Hist. 38.

[3] 99 Hans. Deb., 3rd Ser., 1050 (23rd June 1848); 80 Lords' J. 415.

[4] 3 Lord Campb. Lives of Chan., 538 *n.*

tryed only in full Parliament for any capital offences:"[1] but on the 17th, it was declared that this order should not "be understood or construed to extend to any appeal of murther or other felonye, to be brought against any peer or peers."[2]

Declaration concerning appeals of murther, &c.

Lord high steward.

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.[3]

Spiritual lords.

In the trial of peers, the position of the bishops is at once anomalous and ill-defined. Not being themselves ennobled in blood, they are "not of trial by nobility,"[4] but would be tried for a capital offence by a jury, like other commoners.[5] But 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. By the Act 7 Will. III., c. 3, it is enacted, "that upon the trial of any peer or peeress for high treason or misprision, all the peers who have a right to sit and vote in Parliament shall be duly summoned twenty days at least before every such trial; and that every peer so summoned and appearing, shall vote in the trial." This Act, however, does not "extend to any impeachment, or other proceeding in Parliament, in any kind whatsover." In other words, it relates solely to the trial of peers before the court of the lord high steward; and to this court no spiritual lord has ever been summoned, either before or since the passing of that Act. It expressly refers to "peers" only, and by a declaration of the House of Lords the "bishops are only lords of Parliament, and not peers." But when a peer is to be tried in

[1] Lords' S. O., No. 79.

[2] Ib. No. 64.

[3] 3 Lord Campb. Lives of Chan., 557 *n.*

[4] Lords' S. O., No. 79.

[5] 1st Inst. 31; 3rd Inst. 30; Gibs. Cod. 133; Gilbert's Exch. 40; 1 Burn's Eccl. Law. 221 *et seq.*; Trials of Bishop Fisher and Archbishop Cranmer, 1 Howell's St. Tr. 399. 771.

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.[1] Here, however, they are restrained from the full exercise of their judicial functions, by their ecclesiastical obligations. By the canons of the church,[2] they are prohibited from voting in cases of blood; and by the Constitutions of Clarendon,[3] 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."

Spiritual lords withdraw.

It was declared by the Lords, on the impeachment of the 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."[4] 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."[5]

Bishops vote in bills of attainder.

In passing bills of attainder, the bishops are not subjected to the same restraints as upon an impeachment. The proceedings, though judicial, are legislative in form; and as they consist of numerous stages, no particular vote involves 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.[6]

[1] 73 Lords' J. 16; Foster's Crown Law, 247.

[2] Gibson's Codex, 124, 125; and see 2 Burnet's Own Times, 216; and 3 Stillingfleet's Works, 820.

[3] 11 Hen. II., A.D. 1164; 1 Wilkins' Concilia, 435.

[4] 13 Lords' J. 571.

[5] 27 Ib. 76; 73 Ib. 43.

[6] 16 Lords' J. 44. 48; 13 Howell's St. Tr. 750, *et seq.*

Representative peers of Scotland,

By the 23rd article of the Act of Union with Scotland, it is delared, 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.

and Ireland.

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.

Bills of attainder and of pains and penalties.

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. They may be introduced into either house,[1] but ordinarily commence in the house of Lords; they pass through the same stages; and when agreed to by both houses, they receive the royal assent in the usual form. But the parties who are subjected to these proceedings are admitted to defend themselves by counsel and witnesses, before both houses; and the solemnity of the proceedings would cause measures to be taken to enforce the attendance of members upon their service in Parliament.[2]

The highest form of parliamentary judicature.

In evil times, this summary power of Parliament to punish criminals by statute has been perverted and abused; and

[1] In 1722, the bill of pains and penalties against Dr. Atterbury, Bishop of Rochester, was brought into the Commons: 20 Com. J. 165.

[2] See 25 Lords' J. 35. 364.

in the best of times it should be regarded with the severest jealousy: but whenever a fitting occasion arises for its exercise, it is, undoubtedly, the highest form of parliamentary judicature. In impeachments, the Commons are but accusers, and advocates; while the Lords alone are 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 XXIV.

DISTINCTIVE CHARACTER OF PRIVATE BILLS; PRELIMINARY VIEW OF THE PROCEEDINGS OF PARLIAMENT IN PASSING THEM.

Definition 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;[1] 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;[2] and the payment of fees, by the promoters, is an indispensable condition to their progress.

Bills concerning the metropolis.

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

[1] See *infra*, Chapt. XXIX., and 2 Hatsell, 281–288. A bill for the benefit of three counties has been held to be a private bill; 1 Com. J. 388.

[2] But see exceptions, *infra*, Chap. XXVI.

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 1858, and other similar bills,[1] were brought in, and passed through all their stages, as public bills. In 1851, and 1852, 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] And, in 1862 and 1863, bills for the embankment of the Thames were brought in as public bills: but, as private property and interests were affected, the standing orders were complied with, and other proceedings taken, as in the case of private bills. The same course was adopted, in 1867, with the Metropolis gas bill. Such bills, however, appear among the public orders of the day, and are treated in the house as public bills;[3] and petitions against them are presented to the house, and not deposited in the Private Bill Office. In 1857, the Thames Conservancy bill was introduced as a private bill.

City of London.

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.[4] Thus, even the bill

[1] Metropolitan Building acts, 8 & 9 Vict. c. 84; 9 & 10 Vict. c. 5; 18 & 19 Vict. c. 122; Metropolitan Police Courts, 1839, 1840. Metropolitan Sewers bills, 1848 and 1854.

[2] 106 Com. J. 191, &c.; see *infra* p. 709.

[3] Speaker's order, 1st April 1862: "The speaker directs that bills brought in on motion, for objects of a public nature, although they may affect private interests, and therefore come within the standing orders relating to private bills, shall in future be entered amongst the public orders of the day, and not placed on the private business paper."

[4] City Small Debts bills, 1847 and 1848; City Sewers bills, 1848 and 1851; City Elections bill, 1849; Coal Duties bill, 1851.

for establishing a police force within the city, was brought in upon petition, and passed as a private bill.[1] And in 1863, when it was sought to repeal that act by a public bill for 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;[2] while the government have proposed public measures, in the interests of the public, for the same object.[3] Again, the corporation and others sought, by means of private bills, to improve Smithfield market, or otherwise provide a suitable market for cattle;[4] 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.[5] 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.[6] 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.[7] 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.[8] In 1871, the Court of Hust-

[1] 94 Com. J. 175, &c.

[2] 104 Ib. 15; 107 Ib. 57; 119 Hans. Deb., 3rd Ser., 1035.

[3] 141 Hans. Deb., 3rd Ser., 314; 154 Ib. 946; 156 Ib. 282.

[4] 103 Com. J. 176; 106 Ib. 26.

[5] 106 Ib. 66, &c.

[6] 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; Annoyance Jurors (Westminster), 1861; Coal and Wine Duties continuance, 1861, 1863, and 1868.

[7] 176 Hans. Deb., 3rd Ser., 171.

[8] 202 Hans. Deb., 3rd Ser., 740.

ings (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]

Edinburgh and Dublin.

Bills concerning Edinburgh and Dublin have also been public or private, according to their objects, and the circumstances connected with their introduction.[2] The abolition of the annuity tax in Edinburgh has thus been the subject of both public[3] and private bills.[4] The collection of rates in Dublin has also been the subject of public and private bills;[5] while legislation for the port of Dublin has generally been proposed in public bills.[6]

Bill containing a Government guarantee.

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 government guarantee.[7]

A bill affecting four harbours.

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.[8]

A bill affecting public monuments.

In 1873, a public bill was introduced, for the protection and preservation of certain ancient monuments, in various

[1] Hans. Deb., 23rd March 1871.

[2] Edinburgh Courts of Justice bill, 1838; Edinburgh and Leith Agreement bill, 1838, &c.; Edinburgh Municipality bill, 1856 (private); General Register House bill, 1847 (public).

[3] 108 Com. J. 612; 112 Ib. 298.

[4] 107 Com. J. 48.

[5] 98 Ib. 62; 104 Ib. 342; 105 Ib. 329.

[6] 6 & 7 Will. IV. c. 117; 1 & 2 Vict. c. 36; 17 & 18 Vict. c. 22.

[7] 116 Com. J. 36. Mr. Speaker's Note-book.

[8] 24 & 25 Vict. c. 47.

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 character 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.

Administration of justice.

Bills relating to the administration of justice, and other public jurisdictions, have often been treated as public bills:[1] 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.[2]

Public administration.

In 1839, three measures were passed, as public bills, for improving the police in Manchester, Birmingham, and Bolton,[3] the provisions being compulsory upon those towns, in the interests of public order, and the chief commissioners of police being appointed by the Crown.[4] 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.[5] In 1865, a private

[1] 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, 1853, was brought in as a public bill, but was otherwise treated as a private bill.

[2] Hans. Deb., 10th March 1868.

[3] 2 & 3 Vict. cc. 87, 88. 95.

[4] Hans. Deb., 9th August 1839.

[5] See *supra*, p. 489.

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 license 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.[1] But on the second reading, an amendment was carried that the granting of licenses for the sale of intoxicating liquors is a subject which ought not, at present, to be dealt with by any private bill.[2]

Religious communities.

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 means of a private bill, the bill was withdrawn, and a public bill for affecting the same object was passed by both houses.[3] 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.

Church property.

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. On the other hand, the South Shields Parochial Districts bill was held to be a private bill, as it sought to

[1] 177 Hans. Deb., 3rd Ser., 651. [2] 120 Com. J. 92.
[3] 204 Hans. Deb., 3rd Ser., 1968.

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. 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. 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 to be properly a public bill.[1] Particular classes of local bills, which would otherwise be included in the category of private bills, are directed, by statute, to be treated as public 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]

Repeal of public acts by private bills.

It has been questioned whether a public act may properly be repealed or amended by a private bill; and undoubtedly such provisions demand peculiar vigilance, lest public laws

[1] 214 Hans. Deb., 3rd Ser, 282. [2] See *infra*, p. 682. [3] Mr. Speaker's Note-book.

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, the speaker ruled that no such objection, in point of order, could be sustained.[2]

Public and private acts, prior to 1798.

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, naturalisation 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 now in course of publication. And, since 1868, public acts of a local character have been printed with the local acts of each year.

Origin of private bills.

In treating of petitions, the origin of private bills has been already glanced at;[3] but it may be referred to again, in illustration of the distinctive character of such bills, and

[1] 2 & 3 Will. IV. c. 88 (local and personal).

[2] 176 Hans. Deb., 3rd Ser., 1619. But see debate in Lords, 28th June 1864, on second reading of Brokers' Bonds (City of London) bill; 176 Ib. 408.

[3] See *supra*, p. 543.

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 civilisation. 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.,[1] these special enactments were embodied in the form of distinct statutes.[2]

Peculiarity of proceedings on private bills.

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.

Legislative functions of Parliament

In passing public bills, Parliament acts strictly in its legislative capacity: it originates the measures which ap-

[1] See *supra*, p. 465.

[2] See Statutes of the Realm, by Record Commission, 9 Hen. VI.

pear for the public good, it conducts inquiries, when necessary, for its own information, and enacts laws according to its own wisdom and judgment. The forms in which its deliberations are conducted are established for its own 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, nor immediate influence upon the judgment of Parliament. in passing public bills.

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,[1] 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 Its functions partly judicial in passing private bills.

Suitors restrained by injunction.

[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.

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;[1] or which was promoted by a public body, in evasion of the Towns Improvement Act, 1847.[2] Parties have also been restrained, in the same manner, from appearing as petitioners against a private bill pending in the House of Lords.[3] 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 authorise the construction of a line of railway which the company had pledged itself to make, and in good faith to promote it.[4]

Principles by which Parliament is guided.

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;

[1] North Staffordshire Railway Company, 1850. The injunction was afterwards dissolved; 5 Railway and Canal Cases, 691. On the 27th May 1869, the directors of the London, Chatham and Dover Railway Company were restrained by Vice-Chancellor Stuart from further promoting a bill, which had already passed the Commons, and had been read a first time in the House of Lords, and from using the seal of the Company for any such, or the like purpose ("Times," 28th May 1869). But on the 31st May the Lords Justices discharged this order as not being justified by the circumstances of the case, while they acknowledged the authority of the court to make such an order, if the occasion should warrant it. 5 Chancery Appeals, 671.

[2] Kingstown Township bill, 1873. See also *infra*, p. 776.

[3] Hartlepool Junction Railway; 100 Hans. Deb., 3rd Ser., 784.

[4] South Western Railway, Capital and Works Act, 1855; 18 & 19 Vict. c. clxxxviii., ss. 62–69. See also Supplement to Votes, 1853, p. 945; Ib. 1855, p. 251.

yet, if Parliament apprehend 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 brought in aid of the legislature.[1]

Private bills pass through the same stages.

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.

Proposed plan of describing the progress of private bills.

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.[2] 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 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

[1] See *infra*, p. 730 *et seq.*

[2] See *supra*, pp. 466. 575 *et seq.*

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."[1] And this resolution has been held to extend to turnpike, harbour, drainage, and other similar bills.[2] But it has been held not to extend to 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. For many reasons, by far the greater number of private bills are still commenced in the Commons: but provision having been made, in 1858, for introducing, by arrangement, such bills into the Lords, as may be conveniently undertaken by that house,[3] 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 usually originate in the Lords, as naturalisation, name, estate and divorce bills, will, for the same reasons, be more conveniently followed from the Lords to the Commons.

Private legislation superseded by public acts.

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

[1] S. O., No. 221.

[2] Reading and Hatfield Road bill, 1858; Wexford Harbour bill, 1861, &c.

[3] See *infra*, p. 729.

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. The same principle may be still further extended hereafter: but in all cases in which any special legislation is sought for, which is not within the scope of general laws, application must still be made to Parliament.

General acts enumerated.

The principal statutes relating to matters which had usually been the subjects of private acts of Parliament may be briefly enumerated, in order to show the progress which has been made in this department of legislation.

Inclosures.

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.[1] 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;[2] and in 1845, the Inclosure Commissioners were constituted, to whom have been entrusted many of the powers previously exercised by Parliament. In some cases they have authority, under public acts,[3] to complete inclosures,

[1] 41 Geo. III. c. 109.
[2] 6 & 7 Will. IV. c. 115.
[3] 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 11 & 12 Vict. c. 99; 12 & 13 Vict. c. 83.

while, in other cases, they make provisional orders for the inclosure of lands, to which legal effect is given, from time to time, by public acts of Parliament.[1] Except, therefore, in any extraordinary and exceptional case not provided for by these public acts, a private act of inclosure is now unnecessary.[2] Several general statutes have also been passed, to promote the drainage and improvement of land,[3] by which the agency of the Inclosure Commissioners and of other public boards and officers, has been made available.

Drainage of lands.

Tithes.

Applications to Parliament for the commutation of tithes, and other similar purposes, were frequent until the passing of the General Tithe Commutation Act, in 1836,[4] and the constitution of commissioners, by whom that and other general laws[5] for the commutation of tithes have been carried into execution. General acts have also been passed to facilitate the enfranchisement of copyholds, and other manorial rights, the provisions of which are carried out by the copyhold and inclosure commissioners.[6]

Enfranchisement of copyholds.

Joint stock companies.

By several acts, and lastly by the "Companies Act, 1862,"[7] various powers and privileges may be secured by companies, which had previously formed the subjects of applications to Parliament. They may be incorporated, and may sue and be sued in the name of the company; and may also obtain limited

[1] 9 & 10 Vict. cc. 16. 117; 13 & 14 Vict. cc. 8. 66; 20 & 21 Vict. c. 31.

[2] For a return of the number of Inclosure Acts passed at different periods, and the acreage inclosed, see Sess. Paper, 1843 (325).

[3] 5 & 6 Vict. c. 89; 8 & 9 Vict. c. 69; 9 & 10 Vict. c. 4; (10 & 11 Vict. c. 32; 27 & 28 Vict. c. 82, Ireland); 9 & 10 Vict. c. 101; 10 & 11 Vict. c. 11; 11 & 12 Vict. c. 119; 11 & 12 Vict. c. 38 (113 Scotland); General Drainage Acts, 12 & 13 Vict. c. 100; 13 & 14 Vict. c. 31; Improvement of Land Act, 1864; 27 & 28 Vict. c 114.

[4] 6 & 7 Will. IV. c. 71.

[5] 7 Will. IV. & 1 Vict. c. 69; 1 & 2 Vict. c. 64; 2 & 3 Vict. c. 62; 3 & 4 Vict. c. 15; 5 & 6 Vict. c. 54; 9 & 10 Vict. c. 73; 10 & 11 Vict. c. 104; 23 & 24 Vict. c. 93.

[6] 4 & 5 Vict. c. 35; 6 & 7 Vict. c. 23; 7 & 8 Vict. c. 55; 9 & 10 Vict. c. 53; 10 & 11 Vict. c. 101; 14 & 15 Vict. c. 53; 15 & 16 Vict. c. 51; 16 & 17 Vict. c. 124; 18 & 19 Vict. c. 52; 20 Vict. c. 8; 21 & 22 Vict. c. 94.

[7] Amended by 30 & 31 Vict. cc. 47. 131.

liability for the shareholders; a privilege which has also been extended to joint stock banking companies.[1] So many powers, however, are still required by companies for special purposes, that applications to Parliament for incorporating and giving powers to companies are still frequent, independently of cases in which works are to be executed by public companies. For winding up the affairs of joint stock companies, unable to meet their pecuniary engagements, the extensive machinery of the court of chancery and of the court of bankruptcy has been brought into operation by the "Winding-up Acts,"[2] and Joint Stock Companies Acts, 1856 and 1857; and similar provision has been made for winding up the affairs of joint stock companies in Ireland.[3]

Railway companies.

By 9 & 10 Vict. c. 105, the commissioners of railways were constituted, to whom were transferred, by that act, all the powers and duties which had previously been executed by the Board of Trade.[4] The primary object of their appointment was to secure the general supervision of existing railways, and to assist Parliament in its railway legislation. Further powers were subsequently conferred upon them, by which applications to Parliament, in certain cases, were rendered unnecessary. By 11 & 12 Vict. c. 3, railway companies which had obtained parliamentary powers for the construction of railways, were enabled, under certain conditions, to obtain from the commissioners of railways, instead of from Parliament, an extension of the time limited by their acts, for the purchase of lands and the completion of works; and by 13 & 14 Vict. c. 83, and 32 & 33 Vict. c. 114, the agency of the commissioners or Board of Trade was made available, in the same manner, to facilitate the abandonment of railways and the dissolution of railway companies. By 14 & 15 Vict. c. 64, the act constituting the

Extension of time for purchase of lands, &c.

Abandonment of railways.

[1] 21 & 22 Vict. c. 91; 25 & 26 Vict. c. 89.

[2] 7 & 8 Vict. c. 111; 9 & 10 Vict. c. 28; 11 & 12 Vict. c. 45; 12 & 13 Vict. c. 108.

[3] 8 & 9 Vict. c. 98; Joint Stock Companies Acts, 1856 and 1857.

[4] 1 & 2 Vict. c. 98; 3 & 4 Vict. c. 97; 5 & 6 Vict. c. 55; 7 & 8 Vict. c. 85; 8 & 9 Vict. cc. 20. 33. 96.

commissioners of railways was repealed, and all their powers were transferred to the Board of Trade. Again, by 22 & 23 Vict. c. 59, facilities were given for the settlement of differences between railway companies by arbitration, which might otherwise have formed the subject of private bills. By 27 & 28 Vict. cc. 120, 121, and 33 & 34 Vict. c. 19, facilities were given for obtaining further powers for the construction of railways, through the agency of the Board of Trade. And in 1867, provision was made for the review and adjustment of the financial affairs of railway companies, without an application to Parliament.[1]

Tramways.

Powers have also been granted, under public statutes, for the construction of tramways in Scotland[2] and Ireland.[3] And in 1870, facilities were given for the construction of tramways in England and Scotland, by means of provisional orders of the Board of Trade, to be confirmed by Parliament.[4]

Local courts.

Private acts of Parliament for the establishment of small-debt courts, once very frequent, have been superseded, since 1846, by the establishment and regulation of county courts under general acts.

Poor and poor rates

And by the Poor Law Amendment Act of 1834, and subsequent acts for the general administration of the laws for the relief of the poor, private acts for all purposes connected with the poor and poor rates, have been rendered unnecessary.

Lighting, watching, police, and improvement of towns.

Extensive provision for the lighting, watching, paving, cleansing, improving, and sanitary regulation of towns, has also been made by means of public acts. In 1833 an act was passed[5] to enable the ratepayers to make arrangements for the lighting and watching of their parishes. In 1828 an important act was passed for the lighting, watching, and cleansing of towns in Ireland,[6] the provisions of which, as since amended,[7] have been adopted by several towns. By

[1] 30 & 31 Vict. cc. 126, 127.
[2] 24 & 25 Vict. c. 69.
[3] 23 & 24 Vict. c. 152; 24 & 25 Vict. c. 102; 34 & 35 Vict. c. 114.
[4] 33 & 34 Vict. c. 78.
[5] 3 & 4 Will. IV. c. 90 (a previous act, 11 Geo. IV. c. 27, was thereby repealed).
[6] 9 Geo. IV. c. 82.
[7] 6 & 7 Vict. c. 93; 17 & 18 Vict. c. 103.

the 34 & 35 Vict. c. 109, more extended provision was made for the local government of towns in Ireland, by means of provisional orders, to be confirmed by Parliament. And by 35 & 36 Vict. c. 69, the local government board in Ireland was constituted for the administration of these acts.

Public Health and Local Government Acts.

By the Public Health Acts[1] the general board of health was constituted, by whom were exercised important powers of local inquiry and provisional legislation, for the paving and sewerage of towns, the supply of water, and other local improvements. In certain cases, the provisions of the Public Health Act were applied, on the report of the board of health, by her Majesty in council; and, in other cases, the provisional orders of the board were confirmed, from time to time, by Parliament, in public acts.[2] By 21 & 22 Vict. c. 97, the powers previously exercised by that board, for the protection of the public health, were vested in the Privy Council, and in the following year were made perpetual.[3] And by the Local Government Acts, 1858 and 1861,[4] still more extensive powers of local government were granted to towns, independently of Parliament, except in particular cases in which provisional orders of the secretary of state, whose authority, for some time, superseded that of the general board of health, required to be confirmed. By the 34 & 35 Vict. c. 70, the local government board was constituted, to which were transferred the functions of the secretary of state and Privy Council concerning the public health, together with the powers and duties of the Poor Law Board. And by the Public Health Act, 1872, provision is made for the granting of provisional orders concerning the public health and local government, by that board, to be confirmed by Parliament.

Improvement of towns in Scotland.

Provision by general law[5] is also made for regulating the police of towns and populous places in Scot-

[1] 11 & 12 Vict. c. 63; 17 & 18 Vict. c. 95.

[2] 12 & 13 Vict. c. 94; 13 & 14 Vict. cc. 32. 90. 108.

[3] 22 & 23 Vict. c. 3.

[4] Amended by 26 Vict. c. 17.

[5] 13 & 14 Vict. c. 33; 20 & 21 Vict. c. 72; 21 & 22 Vict. c. 65; 23 & 24 Vict. c. 96; 31 & 32 Vict. c. 102.

land, and for paving, draining, cleansing, lighting, and improving them: but in the improvement of towns so many special powers become necessary, in particular localities, which Parliament alone can confer, that application for private acts, for that purpose, are still numerous, and form a very important branch of private legislation.

Gas and water works.

By the 33 & 34 Vict. c. 70, facilities were given for obtaining powers for the construction of gas and water works, and for the supply of gas and water by means of provisional orders granted by the Board of Trade, and confirmed by Parliament; but this act does not apply to any place within the metropolis.

Piers and harbours and pilotage.

By the General Pier and Harbour Act, 1861,[1] provision has been made for the construction of piers and harbours, under provisional orders of the Board of Trade, confirmed by public acts of Parliament. Under the Merchant Shipping Act, 1862, provisional orders may be obtained, in like manner, concerning pilotage;[2] and under the Oyster and Mussel Fisheries Act, 1866, the Board of Trade are empowered to grant provisional orders for the establishment, improvement and maintenance of oyster and mussel fisheries.

Oyster and mussel fisheries.

Turnpike trusts.

By 14 & 15 Vict. c. 38, the secretary of state was empowered to make provisional orders for reducing the rate of interest, and for extinguishing arrears of interest charged on turnpike roads, which provisional orders were confirmed from time to time by public acts of Parliament.[3] In 1871, these powers of the secretary of state were transferred to the local government board. General acts are also annually passed for continuing turnpike acts which are about to expire; by which numerous applications for private bills are avoided.[4]

Constabulary acts.

The establishment of a police force, and police regulations, in English counties and boroughs, has been provided for by general constabulary acts.[5]

[1] Amended by 25 & 26 Vict. c. 19.
[2] 25 & 26 Vict. c. 63, s. 39.
[3] 21 & 22 Vict. c. 80, &c.
[4] 20 & 21 Vict. c. 24; 21 & 22 Vict. c. 63.
[5] 2 & 3 Vict. c. 93; 3 & 4 Vict. c. 88; 19 & 20 Vict. c. 69.

Entailed estates in Scotland.

By several acts affecting entailed estates in Scotland,[1] numerous complicated estate acts have been rendered unnecessary, as the matters which had been previously provided for by private legislation are now within the operation of the general law.

Incumbered estates in Ireland.

By the acts to facilitate the sale of incumbered estates in Ireland,[2] commissioners were entrusted with powers which could not otherwise have been exercised without the authority of private acts of Parliament; and the Landed Estates Court, Ireland, is now invested with still more general powers for the sale and transfer of land, whether incumbered or unincumbered.[3]

Naturalization of aliens.

By 7 & 8 Vict. c. 66, and 33 & 34 Vict. c. 14, aliens were enabled to obtain certificates of naturalization from the secretary of state, which conferred the same privileges as those which were formerly secured by special naturalization acts.[4]

Elementary Education Act, 1870.

By the Elementary Education Act, 1870, provision is made for the compulsory purchase of school sites, by virtue of provisional orders granted by the education department, and confirmed by Parliament.

Divorce Acts.

And, in conclusion, it may be added, with satisfaction, that applications to Parliament for divorce acts, have at length been nearly superseded by the establishment of a court for divorce and matrimonial causes, which has authority to dissolve marriages in England.[5]

[1] 10 Geo. III. c. 51; 5 Geo. IV. c. 87; 3 & 4 Vict. c. 48; 11 & 12 Vict. c. 36.

[2] 11 & 12 Vict. c. 48; 12 & 13 Vict. c. 77, &c.

[3] 21 & 22 Vict. c. 72.

[4] And see 10 & 11 Vict. c. 83 (Colonies); and *infra*, Chap. XXVII.

[5] 20 & 21 Vict. c. 85, amended by 22 & 23 Vict. c. 61; 23 & 24 Vict. c. 144; 25 & 26 Vict. c. 62. As the act is limited to England, persons beyond the jurisdiction of the court, in Ireland, India, and elsewhere, in some few cases, still apply for Divorce Acts.

CHAPTER XXV.

CONDITIONS TO BE OBSERVED BY PARTIES BEFORE PRIVATE BILLS ARE INTRODUCED INTO PARLIAMENT. PROOF OF COMPLIANCE WITH THE STANDING ORDERS.

The two classes of private bills.

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.

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 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.
Fishery, making, maintaining, or improving.
Gaol, or house of correction.
Land, inclosing, draining, or improving.
Letters patent, confirming, prolonging, or transferring the term of.
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.
Sewers and sewerage.[1]
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 authorised by a former Act, is proposed to be made.

[1] Standing orders of the Lords. In the Commons, bills for general sewerage, where no specific work is to be constructed, are included in city or town improvements.

2nd Class: 2nd Class.

Making, maintaining, varying, extending, or enlarging any

- Aqueduct.
- Archway.
- Bridge.
- Canal.
- Cut.
- Dock.
- Drainage,—making and maintaining any cut for drainage, being a new work, where it is not provided in the bill that the same shall not be of more than eleven feet width at the bottom.
- Embankment for reclaiming land from the sea, or any tidal river.
- Ferry, where any work is to be executed.
- Harbour.
- Navigation.
- Pier.
- Port.
- Railway.
- Reservoir.
- Sewer.
- Street.
- Tramway.
- Tunnel.
- Turnpike or other public carriage road.
- Waterwork.

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 almost 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.[1]

[1] The standing orders were printed, at length, in the first edition of this work, for the sake of improving their arrangement, and pointing out the numerous discrepancies between the orders of the two houses; but as the orders of both houses were afterwards assimilated, and arranged nearly in conformity with the plan there adopted, they were omitted in the second edition.

Preparing bills.

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.

Consolidation Acts.

If the bill be for any of the purposes provided for by the Consolidation Acts,[1] 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.

Preliminary Inquiries Act.

By the Preliminary Inquiries Act, 1851,[2] 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.[3]

Proof of compliance.

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 thus subjected to the heavy expense of proving them twice over, with an interval of some months between the

[1] Companies Clauses, Lands Clauses, and Railways Clauses Consolidation Acts, 1845 and 1863; Land Clauses Consolidation Act, 1869; 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, and Police Clauses Consolidation Acts, 1847, 1863, and 1871. 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 undertakings, 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.

[3] See *infra*, p. 730.

proofs. But in 1854, the Lords adopted a most convenient arrangement, 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 standing 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 gentlemen 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 both houses have concurred, for the assimilation and joint proof of their standing orders.

Examiners for standing orders in the Lords.

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 compliance with the standing orders of both houses are taken simultaneously.

Examiners of both houses.

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

General list of petitions.

House of Commons, and printed copies of the bills in the Parliament office of the House of Lords, 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 latter period, they may place their petition lower down in the list.[1] 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.

Memorials complaining of non-compliance.

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.

When to be deposited.

"If the same relate to petitions for bills numbered in the general lists of petitions;

From		
1 to 100	They shall be deposited on or before	Jan. 9
101 to 200		„ 16.
201 and upwards		„ 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 be deposited three clear days before the day first appointed for the examination of the petition.

[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.

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 before two 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.

How prepared.

These memorials are prepared in the same form, and are subject to the same general rules as petitions to the house,[1] 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.

Opposed and unopposed petitions distinguished.

Sittings of the examiners.

The public sittings of the examiners commence on the 18th of January, being about a fortnight before the meeting of Parliament.

Notice of examination.

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 9th January, and for the second hundred on the 16th January, as soon as the memorials relating to such petitions have been deposited.

Daily lists of petitions.

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

[1] See *supra*, p. 545 *et seq.*

"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.

Petitions struck off the list.

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 of the Commons, to strike the petition off the general list of petitions. The petition cannot afterwards be re-inserted 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 re-inserted, 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 re-inserted in the general list, the usual notice will be given by the examiner, and the case will be heard at the appointed time.

How to be re-inserted.

Statement of proofs.

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 standing orders, the agents for the memorialists are required to enter their appearances[1] upon each memorial, at this time, in

Appearances on memorials entered.

[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. 703.

order to entitle them to be subsequently heard. In the meantime the "formal proofs," as they are termed, proceed generally in the same manner, both in opposed and unopposed 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;[1] 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.

Formal proofs.

Under the standing orders of the Commons, "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. And though without any directions in regard to evidence, in the standing orders of the Lords, the examiners admit similar proofs for both houses.

Proof by affidavit.

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' witnesses, who have proved the deposit of documents, the ser-

Unopposed cases.

In opposed cases.

[1] One fair copy of such statement is required for the examiner, and another for the committee clerk.

vice 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 a 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.

Memorials complaining of non-compliance.

Attendance of witnesses.

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]

Specific statements of non-compliance.

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.

Preliminary objections.

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

[1] Wandle Waterworks, 1853; 108 Com. J. 257; 121 Ib. 114. 127.

any subsequent objections to particular allegations. It has 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 *primâ facie* reason for doubting their genuineness. The same rule is applied to the affixing 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."[1] 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.

Memorials subject to same rules as petitions.

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,

Preliminary objections to allegations.

Parties specially affected.

[1] 101 Com. J. 147.

considerable niceties often arise from the peculiar circumstances of each case.

Public objections.

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.

Questions of merits excluded.

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.

Decision and report and

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.

certificate of the examiner.

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.

Petition to be presented to the Commons.

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, 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]

Bills suspended and proceeded with in another session.

[1] 11th April 1859; 114 Com. J. 165. [2] 126 Com. J. 335. 35 & 36 Vict. c. 43.

CHAPTER XXVI.

COURSE OF PROCEEDINGS UPON PRIVATE BILLS INTRODUCED INTO 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.

Progress of private bills in the Commons.

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 introduced by a few observations explanatory of the general conduct of private business in the House of Commons.

Parliamentary agents.

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 revised in 1873, are to the following effect:

Declaration and recognizance.

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, regulations, 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 declaration, and entered into a recognizance or bond (if hereafter required), in the penal sum of 500*l.*, conditioned to observe the said declaration, such person shall be registered in a book to be kept in the private bill office, and shall then be entitled to act as parliamentary agent: Provided that upon the said declaration, recognizance or bond and registry, no fee shall be payable."

Form.

2. "The declaration before mentioned, and the recognizance and 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, 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, 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."

Appearance to be entered upon bills.

6. "No notice shall be received in the private bill office for any proceeding upon a petition for a bill, or upon a bill brought from the Lords (after such bill has been read a first time), 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."

Appearance to be entered on petitions against bills.

7. "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."

A fresh appearance on change of parliamentary agent.

8. "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."

Agents personally responsible.

9. "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 to the officers of the House of Commons."

Speaker may, on misconduct, prohibit agent from practising.

10. "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 misconduct 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."

11. "No person who has been prohibited from practising as a parliametary 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."

12. "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."

13. "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."

Registry of agents.

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.

Members may not be agents.

Besides these regulations, there are certain disqualifications for parliamentary agency. It was declared by a resolution of the house, 26th February 1830, *nem. con.*,

"That it is contrary to the law and usage of Parliament, that any member of this house should be permitted to engage, either by himself or any partner, in the management of private bills, before this or the other house of Parliament, for pecuniary reward."[1]

Nor officers of the house.

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.[2]

Notices of private business, how given.

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.

Hours for giving notices.

These notices will each be described in their proper places: but one rule applies to all of them alike:—they must be

[1] 85 Com. J. 107.

[2] Parl. Rep. No. 648, of 1833, p. 9; No. 606, of 1835, pp. 17. 19.

delivered before six o'clock in the evening of any day on which the house shall sit; and before two o'clock 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 sit again. 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]

If not duly given, proceedings void.

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.

Notices published.

III. The time set apart for the consideration of all matters relating to private bills, is between four and five 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."

Time for 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. On the 3rd April 1845, a member having given notice that he should, at the time of private business, make a motion for referring back a report, to the board of trade, for reconsideration; and having risen in his place for that purpose, was interrupted by Mr. Speaker, who stated that, in his opinion, that motion ought not to be considered as private business, and ought not to be brought forward at that time: but, as this was a new case, he submitted it

What to be deemed private business.

[1] 100 Com. J. 423; 101 Ib. 167; 106 Ib. 75; 107 Ib. 157; 122 Ib. 66.

to the decision of the house. Whereupon a motion was made, and question put, "That the member be now heard in support of the motion intended to be made by him, and that the question be proposed to the house;" which the house decided in the negative. In this case the petition for the bill had been referred to the committee on petitions for private bills, but there was, in fact, no bill before the house. It was upon this ground that the motion was ruled not to relate to private business, in such a way as to entitle it to be brought on at that time. If the same motion had been offered after the commitment of the bill, when the house would have referred the report of the railway department to the committee, it would have been received as a question relating to a private bill then in progress, and would have been properly brought on at the time of private business.[1] Resolutions for the amendment of the standing orders, and adjourned debates upon them, are always taken at this time. Sometimes particular matters are ordered to be taken into consideration at the time of private business.[2]

Order of proceedings on private business.

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, further proceedings are adjourned until the next sitting of the house.

Conduct of bills by members.

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

[1] 100 Com. J. 191; 79 Hans. Deb., 3rd Ser., 10; Bourke's Decisions, 290.
[2] 109 Com. J. 396, &c.

by a motion made by a member, and a question proposed and put (or supposed to be put) in the usual manner from the chair. Two members are generally requested by their constituents, or by the parties, to undertake the charge of a bill:[1] they receive notice from the agents when they will be required to make particular motions, of which the forms are prepared for them; and they attend in their places, at the proper time, for that purpose. In ordinary cases, the different proceedings being prescribed by the standing orders, the motion made is a mere form, preliminary to the usual order of the house; and, except in opposed cases, is generally made for all the bills in the list, by one member who, to the great convenience of the house and of the parties, undertakes this useful office.[2] But whenever any unusual proceeding becomes necessary, such as a special reference to the examiner, or a committee, or a departure from the standing orders or rules of the house, the member is required, except in urgent cases, to give notice of his intended motion; and afterwards to make the motion in the usual manner.

When special motions made.

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 proceeding 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.

"Private bill registers."

After these explanations, the proceedings in the house

[1] The names of the members who are ordered to prepare and bring in the bill, are printed on the back of it.

[2] For several years, this duty has been discharged by Mr. Charles Forster, M.P. for Walsall, and chairman of the committee on public petitions.

may be described, without interruption, precisely in the order in which they usually occur.

Petition for bill presented.

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]

When standing orders not complied with.

If the standing orders have been complied with, the bill 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, being laid upon the table, by the speaker, is also referred.

Petitions withdrawn, and other petitions presented.

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 withdrawn, and leave given to present petitions for seven separate bills.[2] 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 presented for five different bills.[3]

[1] Earl of Perth and Melfort's Compensation bill, 1856; 111 Com. J. 247.
[2] 100 Com. J. 136. [3] Ib. 138.

Private bills to be brought in upon petition.

There is an express standing order, that 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.[1] 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. Their further progress, 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. They are generally bills for carrying out national works, or relating to Crown property, or other public objects in which the government are concerned.[2]

Exceptions.

Provisional orders under the Public Health Act.

Bills to confirm provisional orders under the Public health act were treated as public bills, pursuant to that act: but no provision was made by the Nuisances removal act, for confirming schemes under that act, by means of public bills. In 1852, the Huddersfield burial ground bill (to confirm a scheme of the general board of health, under the Nuisances removal act), though brought in as a public bill, was otherwise treated as a private bill. The scheme was printed as the schedule to the bill: but while the bill was pending, it became necessary to amend the scheme; and as it would obviously have been objectionable to retain a

[1] 80 Com. J. 488. 490, 491.

[2] Knightsbridge and Kensington Openings bill, 1842; Holyhead Harbour bill, 1847; Caledonian Canal bill; Windsor Castle Approaches bill, 1848; Dublin Improvement (No. 2) bill, 1849; Portland Harbour 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 Embankment bills, 1862 and 1863; Metropolis Gas bills, 1867 and 1868; Admiralty and War Offices Rebuilding bill, 1873. Bills of this class are familiarly known as "hybrid."

scheme in the schedule, apparently as law, and yet inconsistent with the clauses of the bill, the whole scheme, as amended, was required to be printed in the ordinary form of clauses in a private bill, and the bill was re-committed.[1] It differed in no respect from a burial ground bill, and was held to be subject to the payment of fees. In 1855, a bill to amend that act, though brought in by the president of the board of health, was also treated as a private bill.

And Local government acts.

By "the Local government act, 1858," s. 77, every act confirming a provisional order of the secretary of state, is to be deemed a public general act. And if any petition be presented to either house against a provisional order, in the progress of the bill, for confirming it, the bill, so far as it relates to such order, may be referred to a select committee, and the petitioner be allowed to appear and oppose, as in the case of private bills. By the Local government board act, 1871, the functions of the secretary of state and privy council were transferred to the local goverment board. And by the Public health act, 1872, the provisional orders of that board are dealt with in the same manner. So also, by section 60 of the Charitable trusts act, 1853, every Act of Parliament confirming a scheme of the charity commissioners, shall be deemed a public general act. By the General Pier and Harbour act, 1861, the like provision is made for the confirmation of provisional orders by public acts, and the hearing of petitioners before a select committee. And parliamentary sanction is given in the same form to provisional orders in other similar cases.[2]

Charitable Trusts Act.

When provisional orders are amended.

Some difficulties were experienced by committees on such bills where it became necessary to amend the provisional orders, inasmuch as those orders were no longer the documents issued by the department, under the authority of the general acts: but since 1865, a simple expedient has been

[1] 107 Com. J. 218.

[2] See *supra*, p. 684.

adopted. The preamble recites that a provisional order has been made by the board of trade or other department, and amended by Parliament, and is, as so amended, set out in the schedule to the bill; and in the schedule appears the amended order referred to and confirmed by the bill, comprising every amendment introduced by the committee.[1]

Petitions for additional provision.

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 12 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.

When such petitions considered in committee of the whole house.

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.[2] In such cases the petition is presented, and the Queen's recommendation having been signified, the house resolves to go into committee on a

[1] Tyne Pilotage Act; 28 & 29 Vict. c. 44; Pier and Harbour Orders Confirmation Acts; 28 & 29 Vict. c. 58.

[2] See *supra*, 585.

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.[1] 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.

Land revenues of the Crown.

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 re-committed to a committee of the whole house, with an instruction to make provision.[2] 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 re-committed to a committee of the whole house, and an instruction given to make provision accordingly.[3]

Standing orders committee.

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

[1] Rock Life Assurance Company bill, 1849; 104 Com. J. 156. 162. Universal Railway Casualty Compensation Company bill, 1849; 104 Ib. 139. 149. Guardian Assurance Company bill, 1850; 105 Ib. 158. 204. Clerical, Medical, &c., and Licensed Victuallers' Assurance Companies bills, 1850; 105 Ib. 158. Law Property Assurance Company bill; General Reversionary and Investment Company bill, 1851; National Loan Fund Life Assurance Society bill, 1855; 110 Ib. 217. Globe Insurance Company bill, 1858; 113 Ib. 169. Law Life Assurance Society bill, 25th June 1863; Land Securities Company bill, 10th March 1864; Dundalk and Greenore railway (cancellation of bond), 15th May 1873, &c.

[2] 105 Com. J. 369. 423.

[3] 111 Ib. 266.

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.

When special report of examiner referred.

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 re-inserted, 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.

Other duties of standing orders committee.

Proceedings of standing orders committee.

According to the usual practice of this committee, written statements are prepared, on one side by the agent for the 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,[1] before they have agreed to their report.

Principles by which standing orders committee is governed.

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 consideration. 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 inadvertence, not amounting to *laches*, their case will be considered 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 circumstances. 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.

Report. Leave to proceed.

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,

[1] Edinburgh and Perth Railway bill, 1847; 102 Com. J. 226. 293; and evidence printed at the expense of the parties. Edinburgh and Northern Railway bill, 1849; 104 Ib. 37. 48. 70.

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 meantime 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.[1] 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.[2]

Standing orders not to be dispensed with.

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 unfavourable reports, which are merely ordered to lie upon the table.

Decision of standing orders committee overruled.

In some few cases the decision of the standing orders committee has been excepted to, and overruled by the house, either upon the consideration of petitions from the promo-

[1] 108 Com. J. 406.

[2] Dublin Improvement bill, 1849; 104 Com. J. 76. Great Northern Railway bill, 1849; Ib. 81.

ters,[1] or by a direct motion in the house, not founded upon any petition.[2] But as the house has generally been disposed to support the committee, attempts to reverse or disturb its decisions have rarely been successful.[3]

Report referred back to the committee.

In one case[4] 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 re-committed; 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 expedient that the standing orders should be dispensed with: but the committee, after investigation, repeated their

[1] Doncaster and Selby Road bill, 1832; 87 Com. J. 150. 163. London Bridge Approaches bill, 1834; 89 Ib. 81. 122. London City Police bill, 1839; 94 Ib. 228. 234. London and Greenwich Railway Enlargement and Station bill, 1840; 95 Ib. 113. 118. Great Northern Railway, &c. bill, 1862; 117 Ib. 307.

[2] Irish Great Western Railway bill, 5th May 1845; 100 Ib. 395; 80 Hans. Deb., 3rd Ser., 158. 175. Sunderland Dock (No. 2) bill, 1858; 113 Com. J. 230. Charing Cross Railway bill, 1862; 117 Ib. 273. London, Chatham, and Dover Railway bills (2), (3), and (4), 1867; Great Eastern Railway (finance) bill, 1867; 122 Ib. 162. 167. 204. 230.

[3] Birkenhead, Manchester, and Cheshire Junction Railway bill, 25th April 1845; 100 Ib. 338. Shrewsbury and Hereford Railway bill, 1846; 101 Ib. 486. 502.

[4] West Riding Union Railway, 1846; 101 Ib. 176. 223. 252.

[5] Liverpool Tramways bill, 1867; 122 Ib. 66.

resolution that the orders ought not to be dispensed with.[1] 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.[2]

Petitions for leave to deposit petitions for bills.

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.[3] 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 23rd 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.

To deposit petitions for bills after time

If parties desire to solicit a bill during the current ses-

[1] Votes, 27th March and 17th April 1863.

[2] 125 Com. J. 78.

[3] Manchester and Southampton Railway bill, 1847; 102 Com. J. 269, &c. Belfast and West of Ireland Railway bill; Bagenalstown and Wexford Railway bill, 1854. South London Railway (No. 3), 1860; 115 Ib. 94. Hastings Western Water (No. 2), 1861; 116 Ib. 139. Southam Railway (No 2), 1863.

sion, who have not deposited a petition for the bill before the 23rd 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]

Bill presented.

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 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.[2]

Schedules added.

On the 20th February 1846, the solicitor and agent for a bill petitioned for leave to add schedules which had been accidentally omitted from the printed copies of the

[1] Ratcliff Gas Company, 1854; 109 Com. 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), 1863; 121 Ib. 218; 122 Ib. 171.

[2] Great Dover Road bill, 11th March 1861; 116 Com. J. 99; 161 Hans. Deb., 3rd Ser., 1715.

bill, and the house allowed the parties to make the alteration.[1]

Rates and tolls in *italics*.

The proposed amount of all rates, tolls, fines, forfeitures, or penalties, or other matters which must be settled in committee, are ordered to be inserted in *italics*, in the printed bill. These were formerly left as blanks, and are still technically regarded by the house as blanks to be filled up by the committee on the bill: but it is more convenient that the particular amounts intended to be proposed, should be known at the same time as the other provisions of the bill.

First reading.

Copies of bill delivered to doorkeepers.

The several bills, after they have been presented in the 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 to the doorkeepers in the lobby of the house, for the use of members.

Consent of proprietors to be proved.

After the first reading of a bill conferring additional powers on the promoters, being a company already constituted by act, compliance with standing orders Nos. 73 and 74, concerning the consent of proprietors, is to be proved before the examiner.

Proceedings before second reading.

Between the first and second reading 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

[1] Southport Improvement bill, 20th and 23rd February 1846; 101 Ib. 183. 185.

Bill examined in private bill office.

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 with the standing orders, or the order of leave, the order for the second reading is discharged, the bill is withdrawn, and leave is given to present another.[2] 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.

Withdrawn if informal.

Peers' names.

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."[3]

If a violation of the standing orders.

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

[1] North Union Railway bill, 1846; 101 Com. J. 371.

[2] 92 Com. J. 254. 425; 99 Ib. 187. 211; 104 Ib. 71; 105 Ib. 40; 106 Ib. 209; 108 Ib. 289, &c.

[3] By Speaker's order, 15th Feb. 1859.

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.[1] 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.[2] Their report was referred to the standing orders committee, who determined that the standing orders ought not to be dispensed with, and the bill was not proceeded with.[3]

Second reading.

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.[4] This is the first occasion on which the bill is brought before the house, otherwise than *pro formâ*, or in connection with the standing orders; and if the bill be opposed, upon its principle, it is the proper time for attempting its defeat. 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

[1] Midland Railway Branches bill, 1845; 100 Com. J. 219.

[2] 100 Ib. 247.

[3] Ib. 262. 385. 419.

[4] But see Minutes of Committee on Mersey Conservancy bill, 1857; and 147 Hans. Deb., 3rd Ser., 133.

Postponed, if opposed.

offered until the next session.[1] 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 next day's sitting, unless any member, on behalf of, or in concert with, the promoters, moves its postponement until a more distant day.[2]

On the 23rd June 1857, on the second reading of the Finsbury Park bill, a false issue, as it were, was raised. The bill was for making a park out of rates upon the metropolis: but an intimation was given that the government had favourably entertained an application for a contribution of 50,000 *l.* from the consolidated fund, to which great objection was raised in debate. Lest the bill should be lost, on this ground, though it contained no provision for that purpose, it was suggested that a member should move the adjournment of the debate, and that all who objected to the public grant should vote for that motion, and thus give the promoters an opportunity of determining whether they would proceed with their bill. The adjournment was accordingly moved, and carried upon a division.[3]

Government contracts.

By a standing order of the 13th July 1869, where a postal or telegraphic contract with Government requires to be confirmed by Act of Parliament, the bill for that purpose should not be introduced and dealt with as a private bill, and 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.

Commitment.

When a private bill has been read a second time, and committed, it stands referred, if not a railway, canal, or divorce bill, to the "committee of selection;" if a railway 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

[1] See *supra*, p. 304.

[2] See Deb., on London, Chatham, and Dover Railway bill, 6th July 1863.

[3] 146 Hans. Deb., 3rd Ser., 236.

(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]

Bills committed by mistake.

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. 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.[2]

Instructions.

The committee of selection consists of the chairman of the standing orders committee, who is, *ex officio*, chairman, and of five other members nominated by the house at the commencement of every session, of whom three are a quorum. This committee classifies all private bills not being railway or canal bills, nominates the chairman and members of committees on such bills, and arranges the time of their sitting, and the bills to be considered by them.

Committee of selection.

Its proceedings and duties.

The general committee on railway and canal bills generally consists of about eight members (of whom three 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 and canal bills, this committee has functions similar to those of the committee of

General committee on railway and canal bills.

[1] 127 Com. J. 135.

[2] 210 Hans. Deb., 3rd Ser., 1260.

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, not being railway or canal bills, are laid by the promoters before the committee of selection, and of railway and canal bills, before the general committee, at the first meeting of such committees respectively; and each committee forms into groups such bills as may be conveniently submitted to the same committee; and names the bill or bills which shall be taken into consideration on the first day of the meeting of the committee.

Constitution of committees on private bills.

The committee on every opposed railway and canal bill or group of such bills, consists of four members and a referee,[1] or four[2] 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.

Unopposed bills.

Every unopposed private bill, not being a road bill, is referred, by the committee of selection, to the chairman of the committee of ways and means and one of the members who had been ordered to prepare and bring in the bill, and one other, a member not locally or otherwise interested, or a referee.[3]

Road bills.

All road bills, whether opposed or unopposed,

[1] By order, 19th March 1868.

[2] Reduced from five, in 1864.

[3] For bills originating in the Lords, see *infra*, p. 812; and S. O. Nos. 9. 107 & 112.

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 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.

When considered as opposed.

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.

Notice given to selected members.

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 of selection will report his name to the house, and he will be ordered to attend the committee on the bill:[1] or to attend the house in his place, where, on offering sufficient excuses for his neglect, he will be ordered to attend the committee.[2]

Members refusing to attend.

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

[1] 103 Com. 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 Com. J. 94. 99. 106.

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.[1]

Case of Mr. Smith O'Brien.

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.[2]

One member substituted for another.

Members added by the house.

The committee of selection have the power of discharging any member or members of a committee, and substituting other members.[3] 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.[4]

Interval between second reading and committee.

First sitting of committee fixed.

An interval of eight 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, naturalisation bills, and estate bills (not relating to crown, church, or corporation property, &c.), when there are to be three 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 and canal bill. In the execution of their various duties, the committee of selection have power to send for persons, papers and records.

[1] 100 Com. J. 399; Hans. Deb., 3rd Ser., 166.

[2] See *supra*, p. 216. Special Rep. of committee of selection, 24th April 1846; 101 Com. J. 566. 582. 603; 85 Hans. Deb., 3rd Ser., 1071. 1152. 1292. 1300. 1351; 86 Ib. 966. 1198.

[3] Until 1858, this power was exercised by the house itself, after the first meeting of the committee.

[4] 124 Com J. 177.

Instructions to committee of selection.

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] or to refer a bill to another committee;[3] or to remove a bill from a group, and refer it to a separate committee;[4] or to withdraw a bill from one group and place it in another;[5] or to refer private bills to a group of railway bills;[6] or to refer a bill to the chairman of the committee on standing orders, and two other members.[7] Private bills connected with government works, or Crown property, are generally referred to a select committee nominated by the house, to whom five members are added by the committee of selection;[8] and occasionally public bills have been committed to a select committee to be nominated by the committee of selection.[9] Sometimes private bills affecting the metropolis 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 was afterwards ordered

[1] 100 Com. 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] 105 Ib. 418.

[6] Thames Embankment bill, and Thames Embankment (Chelsea) bill, 1868.

[7] Rock Life Assurance Company bill, 1869.

[8] Fisher-lane (Greenwich) Improvement bill; 100 Com. 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.

[9] Passing Tolls bill, 13th Feb. 1857. Metropolis Local Management bill, 14th June 1860; 115 Com. J. 304.

to nominate five members to serve upon the committee.[1] A hybrid bill, the Metropolis Gas bill, was re-committed to that committee.[2] 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.[3] But in 1872, a motion to commit the Metropolitan Street Improvements bill to a committee constituted in a similar manner was negatived.[4] And again, in 1873, a like motion was negatived in the case of the Charing Cross and Victoria Embankment Approach bill.[5] Committees on bills for confirming provisional orders are ordered to be nominated by the committee of selection, as in the case of a private bill.[6] And instructions have been given to the committee of selection to appoint the first meeting of committees on an earlier day,[7] or forthwith;[8] or not to fix the sitting of committees upon certain classes of bills until a later period;[9] or other special instructions relating to the first meeting of committees.[10] On the 18th February 1846, an instruction was given to the committee of selection, that the committee on a bill be postponed for a fortnight, to give time for another bill, the petition for which was then before the sub-committee on petitions, to be brought forward, in order that both should be referred, as competing bills, to the same committee.[11]

Certain railway and canal bills referred to a joint 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

[1] 123 Com. J. 66. 74.
[2] Ib. 126.
[3] 126 Ib. 59. 65. 126.
[4] 127 Ib. 75.
[5] 128 Ib. 73.
[6] 121 Ib. 340. 368; 122 Ib. 203.
[7] 100 Com. J. 730; 101 Ib. 475; 105 Ib. 145; 107 Ib. 300; 114 Ib. 304; 115 Ib. 427; 120 Ib. 405; 121 Ib. 490; 122 Ib. 427.
[8] 103 Ib. 700; 105 Ib. 513; 107 Ib. 300.
[9] 105 Com. J. 72. 84; 106 Ib. 67.
[10] 107 Ib. 279. 300; 108 Ib. 539. 797; 109 Ib. 406; 111 Ib. 256; 113 Ib. 276.
[11] Edinburgh Water bill; 101 Com. J. 162.

by a committee of three lords.[1] 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. 126, 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.

Chairman of ways and means, and counsel.

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 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;[2] 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.

Copies of bill laid before them.

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 before chairman of Lords' committees.

[1] 128 Com. J. 179.

[2] Practically, this is done as soon as the bills are deposited in the private bill office.

Chairman to determine in which house bills are to be first considered.

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 before sitting of committee.

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 meantime 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 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

Supervision by public departments.

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 for the improvement and sewerage of towns 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.

Preliminary inquiries act.

When the amendments consequent upon these various 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 clauses, the chairman of ways and means submitted to the house that the bill should be withdrawn.[4]

Limits to such amendments.

The clerk to the committee of selection, or to the general committee, gives at least four clear days' notice of the meeting of the committee; 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 agent is to give four clear days' notice of the committee, and in the case of a

When first meeting postponed.

[1] The powers of the secretary of state in such cases were transferred, by the Local Government Act, 1871, to the local government board. See also *infra*, p. 759. 761.

[2] 14 & 15 Vict. c. 49; amended by 25 & 26 Vict. c. 69; and see *supra*, p. 692.

[3] 108 Com. J. 406.

[4] Bristol Parochial Rates bill, 1845; 100 Com. J. 535.

recommitted bill, three clear days' notice; and one clear day's notice of the postponement of the first meeting of the committee.

Filled-up bill to be deposited.

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.[1] 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.[2] The omission of the agents had arisen from the fact, that the bills had undergone no alterations since they had been printed with the petition, and in such cases it had not been customary to deposit a filled-up bill, as required by the standing order.

Declaration of members of committees.

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 by each of the members.[3] If a member who has signed this declaration should subsequently discover that he has a direct pecuniary interest in a bill,[4] or in a company who are peti-

[1] 100 Com. J. 261. 302.
[2] Ib. 302. 304.
[3] See Suppl. to Votes, 1854, p. 605; Votes 1862, p. 453.
[4] Suppl. to Votes, 1849, p. 168; Ib 1850, p. 72; Ib. 1851, p. 312; 10

tioners against a bill,[1] he will state the fact to the committee, and will be discharged by the house, or by the committee of selection, from further attendance.

Quorum to be always present.

When all 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:[2] 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 to absent themselves.

Proceedings suspended if quorum not present.

Members absent reported.

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.[3] 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.[4]

Excused, &c.

If quorum cannot attend.

When chairman absent.

Referees on private bills.

In 1864, 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

Com. J. 386; 101 Ib. 904; 104 Ib. 357.

[1] 105 Com. J. 225; 108 Ib. 518. 524; Suppl. to Votes, 1853, p. 777. 1 June 1858; 113 Com. J. 200; 3 May 1860, 115 Ib. 218.

[2] Amended S. O., 19th March 1868.

[3] 110 Com. J. 123. 294; 112 Ib. 156. 168; 122 Ib. 97. 150.

[4] See Votes, 1857, p. 212.

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 authorised by the referees. According to 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 is the decision of the right of petitioners to be heard before committees, to which more particular reference will presently be made.

Their duties in 1864.

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

Changes in 1865, 1867, and 1868.

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] And, lastly, in 1868, in order to avoid the evils incident to 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 committees of the house. 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.[3]

Petitions for and against private bills, how presented.

All petitions in favour of or against or otherwise relating to private bills (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, *stands referred* to the committee on the bill, without any distinct reference from the house. And subject to the rules and orders of the house, the petitioners who have prayed to be heard by themselves, their counsel or agents, are to be heard upon their petition accordingly, if they think fit, and

Petitions withdrawn.

Petitions against bill to stand referred.

[1] Instruction to committee of selection, 1st March 1867; 122 Com. J. 80.

[2] 30 & 31 Vict. c. 136.

[3] See *infra*, p. 738.

counsel heard in favour of the bill against such petition.

Death of petitioners.

Where petitioners have died after the deposit of their petitions, their sons (or their agents) 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 their late fathers,[1] or to deposit a new petition after the time limited.[2]

Appearances on petitions.

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. 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.[3]

Rules as to hearing petitioners.

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,[4] 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

[1] Lincolnshire Estuary bill, 1851; 106 Com. J. 226. 233.

[2] Duke of Portland (Ardrossan and Glasgow Railway bill); 109 Com. J. 206; Suppl. to Votes, 1854, p. 606.

[3] 103 Com. J. 552; and see Suppl. to Votes, 1848, p. 395.

[4] In the Heysham Pier Company (railways) bill, 1866, the committee determined that when Sunday was the last day for depositing a petition, its deposit on Monday was not a compliance with the order, and refused to hear the petitioners. But in later cases, 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 Locus Standi Reports, 4.

was ruled that such part was not referred to the committee.[1]

Petitions deposited after time.

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.[2]

Special reference of petitions.

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 given to the committee to entertain the petition.[3]

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.[4]

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 reference to any question of *locus standi*.[5] And in some other cases general powers to hear petitioners against bills have been given to committees, which, without expressly alluding to *locus standi*, have practically left such questions to the discretion of the committee.[6] In other cases such

[1] 83 Hans. Deb., 3rd Ser., 487.

[2] 108 Com. J. 284. 670; Votes, 1854, p. 211. 329, &c.

[3] 104 Com. J. 302.

[4] 119 Com. J. 167. 190.

[5] 124 Ib. 63.

[6] 126 Ib. 59. 65. 93; 127 Ib. 312, &c.

powers have been given, subject to the rules, orders, and proceedings of the house.[1]

Grounds of objection to be specified.

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.

Petitions in favour.

Petitions in favour of private bills may influence the decision of the house, upon the second reading, but 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 not examine witnesses in respect of their contents or signatures.[2]

Cases of *locus standi* before court of referees.

Such being the general rules relating to petitions, it is now necessary to enter upon an important change, recently introduced, in the mode of adjudicating upon formal objections to petitions, and the rights of petitioners to be heard. Prior to 1864, 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

[1] 128 Com. J. 87. 176.

[2] Minutes of Group 2, 17th April 1861.

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. 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.

Rules for the hearing of such cases.

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, and of the grounds of their objection, to the clerk to the referees, and to the agents for the petitioners, within seven clear days after the deposit of the petition: but the referees may allow such notices to be given, under special circumstances, after the time limited. Such notices may also be withdrawn, by notice in writing to the clerk to the referees. The seven clear days allowed for serving such notices of objection are exclusive of the day on which the petition was deposited, and of the day on which the notice is served.[1] It has been ruled that the service of such notices by post is not sufficient.[2]

When due service has been proved, if no one appears in support of the petition, the *locus standi* of the petitioners will be disallowed.[3]

[1] London, Chatham, and Dover, &c. Railways bill, 1866. Smethurst on *locus standi*, 6; and App. 97.

[2] Smethurst on *locus standi*, 7, and App. 98.

[3] Ib. 8; App. 91.

Counsel heard.

Such being the arrangements for hearing questions of *locus standi*, on the day appointed for hearing any case before the court of referees, the counsel for the promoters gives in a statement of objections to the right of petitioners to be heard against the preamble, or clauses of the bill, as the case may be; 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.

Allegations admitted.

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.[1]

Petitions against the preamble.

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. 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.[2] 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. This is also the proper time for objecting that petitioners are not entitled to be heard on any other grounds. Such questions, however, are now rarely argued before committees; as, since 1864, the referees have decided upon the rights of petitioners to be heard, without

[1] Smethurst on *locus standi*, 12; App. 93.

[2] Suppl. to Votes, 1843, p. 131; 1850, p. 45. 199, &c.

prejudice, however, to the power of the committee to decide upon any question as to such rights, arising incidentally in the course of their proceedings.

Locus standi.

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. The lord of a manor has established his claim to be heard against a bill affecting his manorial rights.[1] The owners of river waters, springs, or wells, injuriously affected by bills, are entitled to be heard.[2] 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 not entitled to be heard, unless the question of tolls be involved in the bill.[3] 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.[4] The referees, however, have not decided that in no case could an individual trader be heard.[5] In the case of the Great Western and Bristol and Exeter railway companies bill, 1867, which, while authorising 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

[1] Bute Docks bill, 1866; Smethurst, App. 95; Bradford Water bill, 1869; 1 Clifford and Stephens' Reports, 39.

[2] Smethurst 22–26. 31. Southport Water bill, 1867; M.S. Minutes of referees.

[3] Lancashire and Yorkshire Railway bill, 1852; Suppl. to Votes, p. 150. Great Western, Shrewsbury, and Birmingham, &c., bill; Ib. p. 306. 308. 314; South Yorkshire Railway, &c., Group 11 A, 1862; Great Western and West Midland Railways amalgamation, Group 13, 1863.

[4] Smethurst, 37–47; Fawcett, 38–45.

[5] Smethurst, 129; 1 Clifford and Stephens, 49–51.

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.[1]

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*.[2] But an owner showing that he has sustained special damage, has been allowed a limited *locus standi*.[3] Lessees of minerals beneath a line proposed to be abandoned have been refused a *locus standi*.[4] The owners of land authorised 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:[5] 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.[6] So also a landowner, with whom a company had contracted to restore land not required for

[1] MS. Minutes of referees; 1 Clifford and Stephens, 55. See also case of Midland and Glasgow, and South Western Railways (amalgamation) bill, 1867; Ibid.

[2] Eastern Counties Railway; Suppl. to Votes, 1852, p. 84; London, Brighton, and South Coast Railway bill, 1868; 1 Clifford and Stephens' Reports, 27.

[3] Caledonian Railway bill, 1869; 1 Clifford and Stephens' Reports, 28.

[4] Ib. 29.

[5] Llanelly Railway and Docks bill, 1866; Smethurst, App. 110; Dublin Trunk Connecting Railway bill, 1867; MS. Minutes of referees; Great Western Railway (additional powers) bill, 1866; 1 Clifford and Stephens' Reports, 31.

[6] Metropolitan Railway bill, 1867; MS. Minutes of referees.

the railway, within a certain time, has been allowed a hearing against a clause extending 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 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.[2] But 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, the committee have held that the petitioners were not entitled to be heard.[3] And 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:[4] but in another case, it has been held that a landowner, 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.[5] 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.[6] Petitioners whose property was not taken, but who apprehended injury, by reason of the contiguity of a railway, have been refused a hearing;[7] and this rule has been strictly adhered to, in numerous cases, by the referees.[8] In some exceptional cases, however, of special danger, disturbance, or injury, petitioners

[1] Metropolitan Railway bill, 1867; MS. Minutes of referees.

[2] Drayton Junction Railway bill; Wrexham, Mold, and Connah's Quay Railway bill, 1867; Ibid.

[3] Cork and Waterford Railway bill, Suppl. to Votes, 1854, p. 340.

[4] Severn Valley Railway bill, 1856; Minutes, vol. i. p. 114.

[5] Lancaster and Carlisle Railway bill, 1858; Minutes, vol. i. p. 114.

[6] Smethurst, 19.

[7] Suppl. to Votes, 1847, i. 323.

[8] Smethurst, 26–28; 101, 102. 117; Crystal Palace and South London Junction Railway bill, 1869; 1 Clifford and Stephens, 40.

so affected have been allowed a hearing.[1] 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.[2]

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.[3] The owners of mineral property have been refused a *locus standi* as landowners :[4] but have been heard against the provisions of bills relating to tolls.[5] 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.[6] In other cases, where clauses affecting petitioners have been omitted from the bill as submitted to the committee, it has been determined that the petitioners could not claim to he heard.[7] A hearing against the preamble has been refused to landowners where the promoters have agreed to insert a proviso in the bill that their land should not be taken.[8] A landowner will not be heard if no power is taken in the bill for the purchase of his land otherwise than by agreement.[9] The owner of an equitable interest in land has been heard, where the legal estate was vested in trustees.[10] 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

[1] 1 Clifford and Stephens, 40–44.

[2] East Gloucestershire Railway bill, 1862.

[3] Suppl. to Votes, 1847, ii. 1070. 1113.

[4] Ib. 1853, p. 713.

[5] North Staffordshire Railway bill, 1865; Smethurst, App. 120.

[6] Suppl. to Votes, 1847, ii. p. 1207; 1850, p. 147.

[7] Colne Valley and Halstead Railway, and Witney Railway bills, Group 5, 1859; Wimbledon and Dorking Railway bill, Group 3, 1860; Teign Valley Railway bill, Group 4, 1863.

[8] Caledonian Railway bill, Group 17, 1860.

[9] Aldrington, Hove and Brighton Gas bill, 1866; Smethurst, App. 107.

[10] Radstock and Bath Railway bill, 1865; Ib. 17.

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.[1]

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:[2] but the *locus standi* of petitioners has been disallowed, where their opposition in the other house has been withdrawn, and they have consented to protective clauses.[3] 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:[4] 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.[5] 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 that the railway is unnecessary, or reference to the preamble except in the prayer of the petition.[6] 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.[7] And, it has further been held that a landowner has a general *locus standi* against an *omnibus* railway bill, however limited his interest.[8] It has been held that the abstraction of underground water by a waterworks bill, does not give parties whose water supply may be affected,

[1] Suppl. to Votes, 1850, p. 45. 99. 175. 181; Ib. 1852, p. 301. 314; Ib. 1853, p. 959. 1008, &c.; Ib. 1854, p. 316. 435. 487.

[2] Thames Subway bill, 1866; Smethurst, App. 162.

[3] Ib. 95.

[4] 108 Com. J. 572.

[5] Suppl. to Votes, 1853, p. 1000.

[6] Resolution of gen. committee of railway and canal bills, 1861.

[7] Liverpool Improvement bill, 1867; 1 Clifford and Stephens' Reports, 19; App. 49.

[8] London and North Western Railway bill, 1868; Ib. App. 62, 63; Caledonian Railway bill, 1870; 2 Ib. 37.

a right to be heard.[1] But a *locus standi* has been allowed where a conduit was proposed to be taken through part of the property of the petitioner.[2] The owners of surface waters have maintained their right to be heard as landowners.[3]

Locus standi against amalgamation bills.

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, according to the degree in which the interests of the opposing companies have been affected. In the case of the York, Newcastle and Berwick (Newcastle and Carlisle railway, and Maryport and Carlisle railway amalgamation) bills, the Lancaster and Carlisle and the Caledonian railway companies were refused a *locus standi* against the preambles of the bills, but were admitted to be heard against the clauses.[4] In the case of the York, Newcastle and Berwick, York and North Midland, and Leeds Northern railways amalgamation bill, the *locus standi* of the Hull and Selby railway company was objected to, and, after argument, admitted.[5] In the case of the Aberdeen and Scottish Midland Junction railways amalgamation bill the *locus standi* of the Dundee and Arbroath railway company was admitted, and that of the Scottish Midland railway company refused.[6] And in other more recent cases before committees and the referees, some companies have been admitted to be heard against amalgamation bills,[7] and others refused.[8]

In the case of the Edinburgh and Glasgow, and Stirling

[1] Southport Water bill, 1867; Ib. 20; App. 13; Birkenhead Improvement bill, 1867; Ib. 22; Windsor and Eton Water bill, 1868, Ib.

[2] Bradford Water bill, 1868; Ib. 23.

[3] Ib. 24.

[4] Suppl. to Votes, 1849, p. 64.

[5] Ib. 1854, p. 609.

[6] 1856, Minutes, p. 67; Suppl. to Votes, p. 73.

[7] 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; Fawcett, 25 *et seq.*

[8] Manchester, Sheffield, and Lin-

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.[1] 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.[2] And where it appeared that the promoters were debarred by an agreement from executing the works proposed to be authorised by the bill, the committee decided that the bill could not be further proceeded with.[3]

Competition.

It had formerly been held, as a parliamentary rule, that competition did not confer a *locus standi:* but in course of time, this rule was considerably relaxed, and numerous exceptions were, in practice, admitted. 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 *locus standi* immediately became 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 de-

Landowners.

colnshire 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; Fawcett, 26; Midland and Glasgow and South-Western railway companies bill, 1867; 1 Clifford and Stephens, 55; App. 72.

[1] Minutes of Committees, 1858, p. 385.

[2] Oxford, Worcester, and Wolverhampton, and Newport and Abergavenny, &c., railways amalgamation bill; Minutes of Group 7, 1860.

[3] Devon Central railways bill; Minutes of Group 3, 1861, p. 90.

[4] But see Monmouthshire railway and canal bill; Suppl. to Votes, 1852, p. 283, 284.

frayed all the costs of the nominal petitioners. A variation of the practice, however, was introduced as regards competing schemes referred to the same committee; and in 1848, the rule was further relaxed in favour of the proprietors of canals or navigations.[1] An existing water or gas company was held to have no *locus standi* against a new company proposing to supply the same district, unless their property were taken or interfered with; but in later cases this rule was not enforced.[2] At length, in 1853, the house agreed to a standing order, by which it was competent to the committee on any private bill, and since 1864, 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,[3] or refused[4] 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.[5]

Running Powers.

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,[6] but this precedent has not been followed by the referees, who have not allowed parties to be heard against the granting of running powers

[1] 103 Com. J. 309; and see Suppl. to Votes, 1850, p. 147, 148.

[2] Great Central Gas Consumers' Company bill, 1850; Minutes.

[3] Dublin and Meath Railway bill, 1858; Minutes of Committees, i. 447; and see ii. Ib. 300 (one water company heard against another, on the ground of competition). See cases decided by referees collected, Smethurst, 37–70; App. 133–167; and Fawcett on the Court of referees 24–31; also cases of Brecon and Merthyr railway, and Rhymney railway bills, 1867; MS. minutes of referees; Batley Corporation water bill, 1871; 2 Clifford and Stephens' Reports, 97; Birmingham and Lichfield railway bill, 1872. Ib. 223.

[4] Minutes of Committees, 1856; vol. i. p. 59; 1857, vol. i. p. 165; 1858, vol. i. p. 268–387; and see Smethurst, 50. 54, &c.; Fawcett, 23 *et seq.* In 1858, a proposal for limiting this order was withdrawn. North and South Western Junction railway bill, 1871; 2 Clifford and Stephens' Reports, 116; Alcester and Stratford-upon-Avon Railway bill, 1871. Ib. 128.

[5] 1 Clifford and Stephens, 60–83.

[6] Garston and Liverpool Railway bill, Group 13, 1861; Resolution of general committee on railway and canal bills, 1861.

and other facilities, or powers of amalgamation, to other companies.[1] 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.[2]

Steamboats.

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.[3]

In the case of railway and canal bills, the rights of petitioners have been further extended by the following standing orders:

In what cases railway companies to be heard.

"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 the preamble and clauses of such bill."

Municipal authorities and inhabitants of towns, &c.

"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."

Petitioners claiming to be heard under the latter standing order must distinctly allege that the town or district will be injuriously affected, and must be prepared to show some *primâ facie* ground for such allegation.[4] In some cases corporations have been heard as representing the whole body of merchants, traders, workmen, and others, residing in a

[1] Smethurst, 56 *et seq.*

[2] MS. minutes of referees.

[3] London, Chatham, and Dover Railway bill, 1861; Minutes i. 42.

[4] Smethurst, 71–75; Fawcett, 31–38.

borough.[1] 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.[2] 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.[3] It has been held when a corporation has petitioned against a bill, and also the inhabitants of the borough, that the latter were represented by the former, and were not entitled to be heard.[4]

Shareholders or other persons represented.

Another important ground of objection 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 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.[7] In 1857, it was held that

[1] Gun Barrel proof bill, 1868; Clifford and Stephens, 57.

[2] Smethurst, 75, 76; Fawcett, 32; 1 Clifford and Stephens, 85 *et seq.*

[3] See Clifford and Stephens, 84-102.

[4] King's Lynn Gas bill; 2 Clifford and Stephens, 5.

[5] Mr. Goulburn, chairman; Suppl. to Votes, 7th May 1847.

[6] Sir R. Peel, chairman; Suppl. to Votes, 1848, p. 309.

[7] Minutes of committee, 14th April 1848.

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.[1] And in 1858, merchants, shipowners, and dock rate-payers 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.[2] In 1865, the vestry of Bermondsey were refused a hearing against the Whitechapel and Holborn improvement bill, as being represented in the Metropolitan Board of Works, the promoters of the bill.[3] 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.[4] 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.[5] But in 1872, in the case of the South London gas bill, it was held that vestries, district boards, and individual consumers, as well as the Metropolitan Board of Works, were entitled to be heard.[6] In the same year it was held 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*.[7] In 1850, the committees on the Shrewsbury and Hereford, the Shropshire Union, &c., and the Waterford and Kilkenny railway bills,[8] determined that dissentient shareholders

[1] Minutes of committee.

[2] Minutes of committees, 1858, vol. ii., p. 117.

[3] Smethurst, App. 187.

[4] 2 Clifford and Stephens' Reports, 97.

[5] 2 Clifford and Stephens' Reports, 121.

[6] Ib. 220.

[7] Ib. 265.

[8] Suppl. to Votes, 1850, p. 41. 43. 75. 182.

could not be heard. On the other hand, in the Manchester cemetery bill, in 1848, objection was taken to the *locus standi* of certain petitioners, being trustees and proprietors of shares in the cemetery, on the ground that they were a minority of a corporate body, in respect of interest in which body they opposed the bill: but the committee determined that they were entitled to be heard.[1] In the South Yorkshire railway and river Dunn bill, 1852, the committee held that a shareholder should be heard against the clauses, but not against the preamble.[2] In the North British railway bill, 1853, shareholders in the company were heard against the bill.[3] With very few exceptions, however, it had been the rule, in the Commons, not to hear dissentient shareholders, unless they had any interest different from that of the general body of shareholders.[4] And in 1853, the house declared by a standing order 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."[5]

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;[6] 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.[7]

Rule in the Lords.

In the Lords a different rule has prevailed; and share-

[1] Minutes of committee, p. 136.
[2] Suppl. to Votes, 1852, p. 298.
[3] Ib. 1853, p. 716.
[4] Suppl. to Votes, 1847, ii. p. 1110. 1254; 1848, p. 309. 398; 1850, p. 72. 75; 1851, p. 111. 115. 300. 371; 1852, p. 298; 1853, p. 1013.
[5] Com. S. O. No. 132; and see Minutes of Morayshire railway bill, June 6, 1860.
[6] MS. minutes of referees.
[7] 1 Clifford and Stephens, 103-110.

holders who have dissented from the bill at the meeting called in pursuance of the Wharncliffe order,[1] are expressly permitted to be heard, and have even been heard without such dissent.[2] In the case of preference shareholders, the Commons had been obliged to depart from their usual practice.[3] 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.[4] The holders of "creditors' stock" have been refused a hearing against a railway bill; and the committee declined to reconsider their decision.[5] It has been held that shareholders who dissented at a Wharncliffe meeting were not entitled to be heard, such meeting, though held, having been unnecessary under the standing orders.[6] 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.[7]

Preference shareholders.

Objection may also be taken that a petition is informal, according to the rules and orders of the house applicable to petitions generally,[8] 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.[9] On the 7th May

Informalities in petitions.

Common seal.

[1] See *infra*, p. 792.

[2] Caledonian Railway, &c. bill, by order, 17th July 1850.

[3] 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.

[4] Suppl. to Votes, 1855, p. 259.

[5] Eastern Union Railway bill; Suppl. to Votes, 1856, i. p. 55.

[6] Redditch Railway (Capital, &c.) bill, Group 16, 1862.

[7] Caledonian Railway bill, 1872; 2 Clifford and Stephens' Reports, p. 258.

[8] See *supra*, p. 545.

[9] Minutes of committee.

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.[1] 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.[2] 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.[3] 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;[4] and in 1866, the referees applied the same rule to petitioners against the Thames and Severn Navigation bill, and the Birmingham Waterworks bill.[5] 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.[6] 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 by the major part of a committee appointed by the governing body to direct the proceedings in reference to the opposition to the bill.[7]

When petitions not specific.

It may also be objected that petitions do not distinctly specify the grounds on which the petitioners object to the bill. An objection of this nature may be fatal to the petition; as, for example, if the committee, or referees, determine that the grounds there stated do not amount to an objection to the preamble of the bill.[8] Petitioners have been heard

[1] 102 Com. J. 490.
[2] Minutes, p. 63.
[3] Smethurst, App. 174.
[4] Minutes of committees, 1857, i. p. 141.
[5] Smethurst, App. 97.
[6] Smethurst, App. 89.
[7] MS. minutes of referees.
[8] Suppl. to Votes, 1848, p. 322; 1849, p. 173; 1851, pp. 103. 108, 109, 110. Minutes of committees, 1857, ii. p. 707; Ib. 1858, i. p. 142.

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.[1] And the committee may also direct a more specific statement of objections to be given in, limited to the grounds of objection which had been inaccurately stated, or may refuse such an indulgence to the petitioners.[2] 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.[3] 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.[4]

Names withdrawn from petitions.

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."[5]

Petitions against bills to be printed.

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 and canal bill, to the general committee, who deal with it

When opposed bills to be treated as unopposed.

[1] Minutes of committees, 1856, i. p. 65.

[2] Devon and Dorset Railway bill; Suppl. to Votes, 1853, p. 1001.

[3] Minutes of committees, 1858, i. 130.

[4] Minutes of committees, 1856, i. p. 50.

[5] 120 Com. J. 69.

as an unopposed bill. And this order has been held to apply where it was decided, before the evidence of the promoters was commenced, that a petitioner had no right to appear.[1]

When unopposed bills to be treated as opposed.

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.[2] 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.[3]

Order in which bills are considered by the committee.

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, comprised 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 in which they were read a second time; and this practice will not be departed from, unless sufficient grounds be

[1] Minutes of committees, 1857, vol. i., 143.

[2] 125 Com. J. 72; 126 Ib. 218.

[3] 110 Ib. 279.

shown for a different arrangement of the business.[1] 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.

Copies of the bills to be laid before members.

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.[2]

Questions decided by majority.

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. Some of these provisions relate to private bills generally, and others to particular classes of bills. Of the former are clauses for the safe custody of monies, and audit of accounts in bills authorising 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.

Provisions to be inserted in bills.

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, 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, is entrusted, as already stated, with the special

Committees on unopposed bills.

Special orders and rules.

[1] Minutes of committees, 1856, vol. ii., p. 137; Ib. 1857, vol. ii., p. 634.

[2] See Warrington and Altrincham Railway bill; Suppl. to Votes, 1853, p. 789.

duty of examining, with the assistance of Mr. Speaker's counsel, every private bill, whether opposed or unopposed. A copy of the bill, signed by the agent, as proposed to be submitted to the committee, is ordered to be laid before each member of the committee at their first meeting; and similar copies have already been laid before the chairman and Mr. Speaker's counsel two clear days before such meeting.[1] In some cases the alterations proposed in bills have been so material, that committees have reported that it was desirable that the bills should be withdrawn, and that the parties should be permitted to introduce new bills, embracing the proposed amendments.[2]

Filled-up bill to be delivered.

Duties of the committee.

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 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 general committee, who deal with the bill accordingly.[3]

Orders relating to all committees on bills, whether opposed or unopposed.

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 par-

[1] For the other duties of chairman of ways and means, see *supra*, p. 729 *et seq.*

[2] Wigan and Walsall Improvement bills, and Manchester Corporation Waterworks bill, 1848; 98 Com. J. 120; 99 Ib. 411; see also *supra*, p. 731.

[3] Waterford and Limerick Railway bill, 1850; South Eastern Railway (3 and 4 shares) bill; 105 Com. J. 133. 281. Chard Railway bill; 108 Ib. 587; King's Lynn Gas bill, 1870; South Essex Reclamation bill, 1871.

ties, their counsel or agents, the settlement of the clauses, and the making of amendments.

Reports from public departments referred.

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 bills for harbours, docks, and navigations:[1] but latterly the board has been directed to report upon certain railway bills only.[2]

Other documents referred.

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.[3] 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.[4] The minutes of evidence taken before committees on bills, in former sessions, are frequently referred to committees on bills.[5]

Sometimes also the inquiries of committees on private bills have been extended, by instructions, to subjects of a more general and enlarged character. For example, in 1866, an instruction was given to the committee on the London (City) Corporation Gas bill, to inquire into the Metropolis Gas Act, 1860.[6] In the same year, an in-

[1] 112 Com. J. 128; 117 Ib. 42.
[2] 122 Ib. 23. 102. 110. 16th May 1873.
[3] 113 Ib. 161. 166.
[4] 86 Lords' J. 256.
[5] 112 Com. J. 156. 173. 205. 235, 122 Ib. 221.
[6] 121 Ib. 136.

struction was given to the committee on the London (City) Traffic Regulation bill, to inquire into the best means of regulating the traffic of the metropolis;[1] and in 1867, the committee on the East London Water (Thames Supply) bill, were instructed to inquire into the Metropolis Water Act, 1852.[2]

Names of members entered in minutes.

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.

What standing orders to be inquired into.

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.[3] 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 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;[4] and his certificate has been produced before the committee.[5]

Proof of compliance by affidavit.

Compliance with such orders may be proved before the committee, by affidavits sworn in the same manner as affidavits produced before the examiners.[6] The committee may also admit proof of the consents of parties concerned

[1] 121 Com. J. 106.

[2] 122 Ib. 65.

[3] 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.

[4] Dublin Improvement, and Great Northern Railway bills, 1849; 104 Com. J. 76. 81.

[5] Ib. 84.

[6] See *supra*, p. 697.

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.

Railway bills.

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.

Special reports.

1. Whether the bill be opposed or unopposed, the promoters, 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.

Matters to be specially reported.

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.

When the standing orders do not apply.

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. All such reports should be carefully prepared by the promoters of the bill, and submitted for the approval of the committee, before the conclusion of their sittings.

Restrictions on loans.

2. The principles of legislation to be observed by the committee on a railway bill are as follow. No company is to be authorised 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.

Ascent of roads.

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 his report, shall recommend steeper ascents, with the reasons and facts upon which their opinion is founded.

Fence to bridges.

A sufficient fence of four feet, at least, is to be made on each side of every bridge which shall be erected.

Level crossings.

No railway is to be made across any railway, turnpike road, 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; and in every clause authorising a level crossing, the number of lines of rails is to be specified.

Steam-vessels.

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; and no railway company is to be authorised to construct or appropriate any dock, pier, harbour, or ferry, or to acquire and use any steam-vessels, or to apply their capital or revenue to other objects, 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 com-

mittee has failed to report specifically such reasons and facts, the bills have been re-committed for that purpose.[1]

Committee to fix tolls and charges.

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.

Preference dividends not to be altered.

No railway company is to be authorised 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.[2]

Matters to be proved before board of trade.

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. And it has been held that application is made to Parliament by presenting the petition for the bill to the house, and not by depositing it in the private bill office, or proving compliance with the standing orders.

When application is construed to be made to Parliament.

Company not to guarantee dividend until completion of lines.

No railway company is to be authorised, 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.

Limitation of capital on amalgamation.

Additional capital for pur-

In bills for empowering a railway company to purchase

[1] Great Eastern and North British Railway bills, 16th July 1863; Caledonian Railway (Edinburgh Station) bill, 1866.

[2] See also *infra*, p. 764.

chasing a railway.

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 at a premium, no addition, on account of such premium, is to be made to the capital of the purchasing company.

Duty of committee as regards these provisions.

It is the duty of the committee 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]

Clause protecting existing preference shares.

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 authorise 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.[2]

[1] York and North Midland Railway, 1850, Suppl. to Votes, p. 59; Eastern Union Railway, 1850, Ib. p. 113; Manchester, Sheffield, and Lincolnshire Railway bill, 1850, Ib. p. 151.

[2] For cases in which such reasons have been given, see Eastern Counties Railway bill, Suppl. to Votes, 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 (Henley, &c.) bill, Ib. 371; Carlisle Railway bill, Ib. 515; York, Newcastle, and Berwick, &c. bill, Ib. 585, &c.; South Eastern Railway (Lewishan and Bromley) bill, Ib. 1854, p. 92; Great Western, Shrewsbury, and Birmingham, &c. bill, Ib. p. 299; York, Newcastle,

Clause imposing penalty until line be opened.

In every railway or tramway bill providing for the construction of a new railway or tramway, or for the extension of time for the completion of a railway or tramway, 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 or tramway 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 50 *l.* 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 railway or tramway company, not having a railway or tramway already opened for public traffic, or which during the last year has not paid dividends upon its ordinary share capital, or by an existing railway or tramway company where an increase of capital is sought, or by persons not incorporated, a clause is 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.

Bond to be entered into for completion of line.

Time for completing line.

A clause is to be inserted providing that the railway or tramway in the case of a new line, is to be completed within five years, and in the case an extension of time, within three years.

Other provision for completion of line.

Where these provisions are not applicable to any parti-

and Berwick, &c. bill, Suppl. to Votes, 1854, p. 387; Leeds Northern Railway bill, Ib. p. 457.

cular 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.

Interest or dividend not to be paid on calls.

A clause is to be inserted in every railway bill, prohibiting the payment of interest or dividend in respect of calls under such bill (except the interest by way of discount on subscriptions prepaid, agreeably to Act 8 Vict. c. 16, s. 24), out of any capital which they have been authorised to raise, either by means of calls, or of any power of borrowing.

Deposits not to be paid out of capital.

And another clause is to be inserted, prohibiting a railway company from paying, out of the capital which they have been authorised 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.

Railway not to be exempt from general acts.

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 authorised.

Enforcement of pledges.

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 authorise the construction of a line of railway, which the company had pledged itself to make.[1] And the preamble of a bill has been negatived, on proof that it was a violation of a pledge previously given by a company.[2]

Agreement to be annexed to bill.

Where any agreement is to be sanctioned, such agreement is to be printed as a schedule to the bill.

Letters patent bills.

The committee on a bill for confirming letters patent are to see, in compliance with the standing orders, "that there be a true copy of the letters patent annexed to the bill."

[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.

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.

Inclosure and drainage bills.

There are several standing orders relating specially to bills for the inclosure and drainage of lands, compliance with which is to be examined, and enforced by the committee on 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; and the names, qualifications, and pay of the commissioners. 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]

Drainage bills.

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.

Inclosure bills.

Clause for leaving open space for exercise and recreation.

It is ordered that in every bill for inclosing lands, 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.

Turnpike roads (Ireland).

The committee on a turnpike road bill relating to Ireland are to insert a clause providing for the qualification of commissioners.

Limits of burial ground or gasworks to be defined.

In every bill for making a burial ground or cemetery, or the erection of gas works, there is to be a clause defining the limits within which the same are to be erected or made.

General proceedings of committees on opposed bills.

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 pro-

[1] Thetford Inclosure, 1st April 1844; 99 Com. J. 182.

ceedings 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.

Witnesses examined upon oath.

It may be mentioned, in the first place, that as regards the inquiries of these committees, an important amendment of the law has recently 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.[1]

Minutes of evidence to be printed.

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.[2]

Room, when open.

Cleared.

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 concern them.

Parties appear before the committee.

The first proceeding of a committee on an opposed bill, when duly constituted, is to call in all the parties. The

[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 Com. J. 158. 168. 413.

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 them.[1] And it was usual, at this time, until cases of *locus standi* were heard by the court of referees,[2] to intimate that objections would be raised to the hearing of petitioners.[3] 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 enter their appearance at the proper time, they will not be entitled to be heard.[4] In some special cases, however, indulgence has been granted to them.[5] In one case, the agent who had deposited a petition stated that there was no appearance upon it: but another agent immediately entered an appearance; 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 authorising him to prosecute their petition, the committee allowed the petitioners to be heard.[6] 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.[7] Where petitions complain of matters arising during

When there is no appearance.

[1] By a standing order, 3rd January 1701, it was ordered, "That it be an instruction to the committee of privileges and elections, that they do admit only two counsel of a side, in any cause before them." 13 Com. J. 648. This order has been understood to apply to all committees (62 Hans. Deb., 3rd Ser., p. 311); but, by its words, it would appear to be limited to a committee which is no longer in existence, and in practice it is certainly not observed.

[2] See *supra*, p. 733.

[3] Suppl. to Votes, 1845, p. 1538; Ib. 1854, p. 430, &c.

[4] Ib. 1849, p. 204. 228. South Wales Railway bill; Suppl. to Votes, 1853, p. 829. Minutes of committees, 1857, vol. ii. p. 793; and *supra*, pp. 703. 736. Minutes of Group 2, 1860.

[5] Minutes of Groups 3 and 8, 1860; Group 3, 1862.

[6] Minutes of Group 9, 1863.

[7] Ib. Group 3, 1859.

the sitting of the committee, or of amendments proposed to be made in the bill, appearances are allowed to be entered, as the occasion arises.[1]

Hearing of solicitors.

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 standing order;[2] and this rule has since been followed by the examiners. Before committees on private bills, however, solicitors have often been heard without objection,[3] 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.[4] The speaker, therefore, authorised 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.

Case opened.

In the case of a committee on a group of bills, as already stated, the committee take the bill or bills first into consideration, 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.

[1] Minutes of Group 4, 1859; Group C. 1861.

[2] 73 Hans. Deb., 3rd Ser., 583.

[3] Minutes of Committees, 1857, vol. ii., pp. 645. 647, &c.

[4] Ib. p. 28.

When the parties are before the committee, the senior counsel for the bill opens the case for the promoters. 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.[1] The witnesses may be cross-examined by the counsel who appear in support of the several petitions against the preamble,[2] but not, as to the general case, by the counsel of parties who object only to certain provisions in the bill. 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 right to an opening speech have been waived by the counsel for the bill.

Proof of preamble.

Every petition against a private bill, or a bill to confirm any provisional order, or provisional certificate which has been deposited not later than ten clear days after the first reading, 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.[3]

When petitioners entitled to be heard.

When counsel are allowed to be heard against the

Proceedings on preamble.

[1] See *supra*, p. 761. The formal matters required to be reported, are generally proved at a later period.

[2] Suppl. to Votes, 1852, pp. 150, 151. 188, 189, &c.

[3] See *supra*, p. 544.

preamble, one of them either opens the case of the petitioners, 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] 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 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."[3] 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.[4] When the evidence against the preamble is concluded, the case of the petitioners is closed, unless an opening speech have been waived; and the senior counsel for the bill replies on the whole case.[5] If the petitioners do not examine witnesses,

[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 Ib. 267, &c.

[3] Suppl. to Votes, 1852, p. 287.

[4] Suppl. to Votes, 1847, vol. ii., pp. 1457. 1477; Minutes of Proceedings, 1861, p. 84; Resolutions of general committee of railway and canal bills, 1861.

[5] In the Edinburgh, Perth, and Dundee Railway bill, the committee

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[1]) 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.[2] Sometimes the minutes of evidence on bills of a previous session, and other documents, are referred to a committee,[3] and may be commented upon by counsel, and considered by the committee.

Question upon preamble.

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 decision of the committee upon the preamble of the first bill is usually postponed until after they have heard the evidence in support of the other bills. 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.[4] 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 objec-

Clauses considered.

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.

[1] Great Western Railway, &c., bill; Suppl. to Votes, 1854, p. 495.

[2] Suppl. to Votes, 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.

[3] 108 Com. J. 495. 514; 117 Ib. 267; 122 Ib. 218.

[4] North Metropolitan Railway bill; Suppl. to Votes, 1854, p. 451.

tions or amendments, as they arise. Clauses may be postponed and considered at a later period in the proceedings, if the committee think fit. When all the clauses of the bill have been agreed upon, new clauses may be offered, either by members of the committee, or by the parties. 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 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, they 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 boards have no right to be heard, except upon petition.[1] 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 authorised 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

What clauses admissible.

[1] 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.

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] Instructions of a restrictive character are sometimes given, which are carried out by the committee. Thus, on the 14th April 1851, an instruction was given to the committee on the East Lancashire Railway bill, "to strike out of the said bill all powers of interference with other companies, and restrict the promoters to the remaining objects of the bill."[3] Sometimes the committee, pursuant to instructions, agree to divide the bill into two or more bills, in which case each bill is gone through separately, and amended.[4] And in other cases, also pursuant to instructions, the committee unite or consolidate two bills into one.[5]

Preamble not proved.

If the proof of the preamble be negatived, the committee report to the house, "That the preamble has not been proved to their satisfaction." In 1836, the committee on the Durham (South West) Railway bill, were ordered to re-assemble, "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."[6] 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:

[1] 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] 106 Com. J. 165.

[4] Portsmouth Railway bill; Suppl. to Votes, 1854, p. 181.

[5] 110 Com. J. 188. 201; Suppl. to Votes, 1848, p. 337; Ib. 1849, p. 98; Ib. 1851, p. 111; Ib. 1855, p. 353.

[6] 91 Com. J. 396.

but that the bill should be re-committed for that purpose.[1] 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 re-committed, and the preamble of one of them was declared to be proved.[2] In 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 subsequenty withdrawn, the bill was re-committed to the former committee, who reported the preamble proved, and the bill was passed.[3]

In the Kingstown 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.[4] Attempts were afterwards made, without success, to obtain a re-hearing, but the committee adhered to their determination.

[1] Group P., 1853, Suppl. to Votes, 957; Shrewsbury and Welchpool Railway bill, 1858.

[2] Group 1; Suppl. to Votes, 1854, p. 175. 415.

[3] 116 Com. J. 285.

[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.[1] Such amendments, however, are to be specially reported.[2]

Alterations in preamble.

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.[3] 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

Costs awarded in certain cases.

[1] See Report on revision of standing orders, 1843, p. iii.

[2] 113 Com. J. 166. 180, &c.

[3] London, Chatham and Dover (various powers) bill, 1866; North British Railway (Coatbridge, &c. branches) bill, 1866; Great Western Railway bill, 1866; Brecon and Merthyr Tydvil Junction Railway bill, 1867; Hull Docks bill, 1867; Tivy Side Railway bill, 1872.

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] By the 34 & 35 Vict. c. 3, select committees upon bills for confirming, or giving effect to, provisional orders, may award costs in like manner, and under the same conditions, as in the case of a private bill.

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 follow:

Plan, &c., to be signed by chairman.

"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."

Committee bill and clauses to be signed by chairman.

"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."

Chairman to report on allegations of bill, &c.

"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."

Committee to report bill in all cases.

"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 intention 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."

Minutes of committee.

"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."

Special reports.

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

[1] Abbotsbury Railway bill (Group 3), 1873.

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. 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 unprecedented 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 heard and the clauses settled."[2] 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.[3] 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.[4] In the case of the Devon and 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.[5]

Brighton railway competing lines.

It has been explained in another part of this work, that

Witnesses, how to be summoned.

[1] Liverpool Docks, &c., and Birkenhead Docks, &c., bills; 110 Com. J. 298. Mersey Conservancy and Docks bill; 112 Ib. 267. 269. Chelsea New Bridge bill; 112 Ib. 360. Concerning parliamentary deposits, 119 Ib. 125; 120 Ib. 285. 303.

[2] 92 Com. J. 356.

[3] 92 Com. J. 417.

[4] Ib. 519.

[5] Suppl. to Votes, 1853, p. 945; and see, in reference to the same case, Suppl. to Votes, 1855, p. 253. See also Special report on Eastern Union Railway bill, Ib. p. 1159.

committees upon private bills are not entrusted by the house with the power usually given to other select committees, of sending for persons, papers, and records. The parties are generally able to secure the attendance of their own witnesses, without any summons or other process. A large proportion of all the witnesses examined, attend professionally; and local interest in the bill, or liberal payments for loss of time, rarely fail in attracting abundance of voluntary testimony. 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.[1]

Evidence reported.

Besides making the prescribed form of report, or special 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,[2] and even in special cases, at the expense of the house;[3] or have been referred to the committee on another bill.[4]

On the 27th June 1851, it was ordered, "That the parties promoting and opposing the Metropolis Water bill be permitted to print the evidence taken before the committee, day by day, from the short-hand writer's notes, if they so

[1] 105 Com. J. 262; 110 Ib. 121; 122 Ib. 227; 127 Ib. 99, &c.

[2] 81 Ib. 343; 91 Ib. 338; 98 Ib. 324; 107 Ib. 357.

[3] Clarence Railway bill, 1843; Suppl. to Votes, 5th May, p. 83. Oxford, Worcester, and Wolverhampton Railway, &c., 1845; 100 Com. J. 566; Subways (Metropolis) bill, 1867; 122 Com. J. 413; Metropolitan Board of Works (Shoreditch Improvement) bill, 1871; 126 Ib. 120.

[4] Northumberland (Atmospheric) Railway bill, 1845; 100 Ib. 536, &c.

think fit;"[1] and a similar order was made in 1852, in reference to the same inquiry.[2] In one case the committee reported that, in their opinion, a witness had been guilty of perjury.[3]

Reports that parties do not proceed, &c.

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;[4] 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.[5] 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."[6] 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.[7]

All bills to be reported.

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, or by an informal discontinuance of their sittings, to withhold from the house the result of their proceedings. If any attempt of this nature be made to defeat a bill, the house will interfere to prevent it. Thus, in 1825, the committee on a private bill having adjourned for a month, was "ordered to meet to-morrow, and proceed on the bill;"[8] and again, on the 23rd March 1836, the house being informed that a committee had adjourned till the

[1] 106 Com. J. 315.

[2] 107 Ib. 141; see also *supra*, p. 768.

[3] Minutes, 1860, iii. 183; 115 Com. J. 230.

[4] 104 Ib. 510.

[5] 79 Ib. 445.

[6] Edinburgh Water bills, 1846; 101 Com. J. 732.

[7] Glasgow Waterworks bill, 1848; Minutes, p. 97.

[8] 80 Com. J. 474.

16th May, ordered them "to meet to-morrow, and proceed on the bill."[1] And now, every commmittee on an opposed private bill is required by the standing orders to report specially to the house the cause of any adjournment over any day on which the house shall sit.

Adjournment of committees.

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.

Committees revived.

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 re-assembling without an order from the house; and the committee is said to be revived, when this intervention of the house is resorted to. The form in which the order is usually made is, "That the committee be revived, and that leave be given to sit and proceed on a certain day."[2] To avoid an irregularity in the adjournment, care should be taken to appoint a day, before the proceedings of the committee are interrupted by the serjeant-at-arms giving notice that the speaker is at prayers.

Hybrid bills in committee.

The proceedings of committees upon "hybrid bills" are generally similar to those of private bill committees; and since 1871, they have had the same power of examining witnesses upon oath. The relaxation of the privileges of the Commons, in regard to tolls and charges, does not extend to such bills, but only to bills to confirm provisional orders or certificates, which may now be freely introduced into the House of Lords.[3] Petitioners heard against such bills are charged with the fees of the house.

Report.

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

[1] 91 Com. J. 195.
[2] 105 Ib. 201.
[3] River Lee Conservancy bill, 1868; and see *supra*, p. 681.

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 doorkeepers, 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 doorkeeper, of the delivery of the amended printed bill on the proper day.[1]

Amended bill to be printed; and delivered.

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:[2] 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."[3] If the examiner report that there is no infraction of the standing orders, the bill proceeds without further interruption: but if he report that there has been such an infraction, his report, together with the bill, will be referred to the standing orders committee.

Bills withdrawn or referred to examiner after report.

The report of the bill is ordered to lie upon the table, and the bill, if amended in committee, or a railway bill, is

Report to lie upon the table.

[1] Order of the clerk of the house, 30th March 1844.

[2] 104 Com. J. 320. 453.

[3] River Dee Conservancy; Belfast Improvement; Lee River Trust bills, 1850; 105 Com. J. 446. 481. 485; Whitechapel Improvement bill, 1853; 108 Com. J. 557. In the case of the Smithfield Market bill, 10th July 1860, such a reference was refused, 115 Ib. 370.

ordered to lie upon the table; and every other bill, when reported, is ordered to be read a third time. The bill reported to the house is a duplicate copy of the committee bill, including all the amendments and clauses as agreed to by the committee.

Interval between report and consideration of bill.

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 at the office of the board of trade.

Bill as amended to be laid before chairman of ways and means.

Notice of consideration of bill;

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 consideration of every private bill ordered to lie upon the table.

Consideration of bill; clauses and amendments.

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,[1] notice is to be given, in the private bill office, one clear day previously.

When referred to standing orders committee.

No clause or amendment may then be offered, unless the chairman of ways and means have 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.

Clauses or amendments to be printed.

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.[2] And on the day on which notice is given, the clause or amendment is to be laid before the chairman of ways

[1] 112 Com. J. 215. 275.

[2] The expense of printing is borne by the party offering the clause or amendment.

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.

Report of standing orders committee.

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.

Clauses and amendments.

On the consideration of the bill, the house may, subject to the preliminary proceedings already described, 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.

Recommitment.

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.[1] In the case of a recommitted bill, two has sometimes been the quorum.[2] Unless the bill be recommitted by the house, with express reference to particular provisions, the whole bill is open to reconsideration, in committee.

Notice of committee.

Three clear days notice is to be given by the agent, 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.

[1] Warrington and Altrincham Railway bill, 1853; 108 Com. J. 698.

[2] Cleobury, North, &c., District Roads, 1856; 111 Com. J. 256.

Entry of amendments on report or third reading; and Lords' amendments.

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.

Notice of third reading.

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]

Third reading.

On the third reading, verbal amendments only may be proposed, subject to the rules already stated in regard to the consideration of the bill as amended. 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.[2]

Queen's consent.

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.[3] 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.[4]

Certificate of examination.

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

[1] 106 Com. J. 202. 209.

[2] See *supra*, p. 518, *et seq.*

[3] 108 Com. J. 716. 110 Ib. 334.

[4] 107 Com. J. 157. See Blackwater (Youghal) wooden bridge, 1866; 121 Com. J. 423.

printed bill has been examined, and agrees with the bill as read a third time.

No bill to pass through more than one stage in a day.

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."

When standing orders to be dispensed with.

Lords' amendments.

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 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,[1] the speaker's sanction should 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

[1] See *supra*, p. 523.

committee of the whole house.[1] 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.[2] In other cases, the Lords' amendments have been re-committed, or referred, to the former committees, by whom the bills had been considered.[3]

Committee to search Lords' Journals.

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. 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.

CHAPTER XXVII.

COURSE OF PROCEEDINGS IN THE LORDS, UPON PRIVATE BILLS SENT UP FROM THE COMMONS.

Private bills originating in the Commons.

FORMERLY, the only private bills which could originate in the Lords were those which did not concern rates, tolls, or duties. But the recent relaxation in the privileges of the Commons,[4] and the desire which has been evinced to equalise the pressure of private business upon the two houses, has led to arrangements for the introduction of a certain proportion of bills into the House of Lords. The

[1] Ulverstone and Lancaster Railway bill; 106 Com. J. 358. Manchester Improvement bill; Ib. 398.

[2] 103 Com. J. 790.

[3] Nene Valley Drainage bill, 1852; Salford Improvement bill, 1862; 117 Ib. 360. Great Eastern Railway bill, 1867.

[4] See *supra*, p. 681.

private bills which have always been first brought into the Lords are estate, naturalisation, name and divorce bills, and such as relate to the peerage. In tracing the progress of private bills through this house, it will be convenient to assume that the bills comprised in the two classes, already enumerated,[1] have been sent up from the Commons, and that the last description of bills only are brought in upon petition. As the progress of the former has been already followed through the Commons, it is now proposed to pursue them through their various stages in the Lords.

The two classes of bills.

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 chairman of the Lords' committees and his counsel,[2] 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.

Bills submitted to chairman, &c., while bill pending in Commons.

Whenever a private bill, in the nature of an estate bill, is brought up from the Commons, it is read a first time; and a copy of the bill, signed by the clerk, is referred to two of the judges in rotation, not being lords of Parliament, who are to report their opinion, whether, presuming the allegations of the preamble to be satisfactorily established, it is reasonable that the bill do pass; and whether the provisions are proper for carrying its purposes into effect, and what alterations or amendments are necessary. In the event of their approving the bill, they are to sign the same:

Bills in the nature of estate bills referred to the judges.

[1] See *supra*, p. 690.

[2] See *supra*, p. 729.

but, except in special cases, no other Commons bills are referred to the judges.

Examiners of standing orders.

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 order 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 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 private bill, except estate, name, naturalisation and divorce bills, 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, together with the memorials which have been heard, are addressed to the clerk of the Parliaments, and deposited in his office. 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.

In cases of petitions for additional provision in private bills, originating in the House of Lords, the examiner is to give two days' notice of the day on which it will be examined, and he is to report to the house whether

the standing orders have or have not been complied with, &c.

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, 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; and memorials are to be deposited, with two copies, before 12 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 orders to be subsequently proved will be presently noticed.

Standing order committee.

The standing order committee is appointed at the commencement of every session, and consists of forty lords, besides the chairman of the Lords' committees, who is always chairman of the standing order committee; and 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.[1] The party praying for a dispensation with the standing orders may put in a written statement, which may be met by a written statement from the opposing party; both parties confining themselves strictly to the points reported on by the examiner, or determined by the committee, upon any special report. They also hear the parties in explanation of their written statements, whenever such explanation is deemed necessary.

[1] See *supra*, p. 712.

Such statements are to be lodged in the office of the clerk of the Parliaments, not later than three o'clock on the day before that on which the committee are appointed to meet. Three clear days' notice is to be given of the meeting of this committee.

Petitions complaining of non-compliance with standing orders.

Any parties are "at liberty to appear and to be heard by themselves, their agents, and witnesses, upon any petition which may be referred to this committee, complaining of non-compliance with the standing orders not proved before the examiners, provided the matter complained of be specifically stated in such petition, and that it be presented," if the bill be brought from the Commons, "on or before the second sitting day after the introduction of the bill."

What matters to be reported.

It is ordered, in reference to cases in which compliance has not already been proved before the examiner,

"That such committee shall report whether the standing orders have been complied with; and if it shall appear to the committee that they have not been complied with, they shall state the facts upon which their decision is founded, and any special circumstances connected with the case, and also their opinion as to the propriety of dispensing with any of the standing orders in such case."[1]

The decision of the committee is ordinarily conclusive, but, in special cases, is liable to reversal by the house.[2]

Other standing orders.

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. They relate to particular classes or descriptions of bills, and will be stated as they respectively apply to each.

It is directed by an order, commonly known as "The Wharncliffe order," which has been often amended, and is now divided into several sections[3]:

Meeting of proprietors in case of certain bills originating in the Lords.

1. Every bill originating in this house, and conferring additional powers on the promoters thereof, being a company

[1] Lords' S. O., No. 178. 4th July 1851.

[2] Smithfield Market Removal bill,

[3] S. O., No. 185.

already constituted by Act of Parliament, shall after the first reading be referred to the examiners, who shall report as to compliance with the several directions of that order, relative to the meeting of proprietors, and their approval of the bill submitted to them.

Bill to be submitted to a meeting of proprietors of incorporated companies in certain cases.

2. In the case of every bill brought from the House of Commons, in which provisions have been inserted in that house, to empower any company already constituted by Act of Parliament to execute, undertake, or contribute towards any work other than that for which it was originally established, or to sell or lease their undertaking or any part thereof, or to amalgamate the same or any part thereof with any other undertaking, or to abandon their undertaking or any part thereof, or to dissolve the said company, &c.; the examiner shall report as to compliance with the order requiring the consent of the proprietors.

Meeting of members of limited companies.

3. Every bill originating in this house, and empowering any company, association, or co-partnership formed or registered under the Companies Act, 1862, or otherwise than by Act of Parliament, to do any act not authorised by the articles of association is, after the first reading, to be referred to the examiners, who are to report as to compliance with the directions of the order, requiring the consent of a majority of three-fourths in number and value, of the shareholders.

4. Similar requirements are exacted in the case of such bills brought from the Commons.

It is ordered,

Proprietor dissenting may petition to be heard.

"That in case any proprietor of any company who, by himself or any person authorised to act for him in that behalf, have dissented at any meeting called in pursuance of the first and third sections of the aforesaid standing order (No. 185), such proprietor shall be permitted to be heard by the examiner on the compliance with such standing order, by himself, his agents and witnesses, on a memorial to be addressed to the examiner, to be deposited, together with two copies thereof, in the office of the clerk of the Parliaments, before twelve o'clock, on the day before that appointed for the examination, or on

petitioning the house, by the committee on the proposed bill, by himself, his counsel or agents and witnesses."

"If any company authorised to subscribe to the undertaking of another company, shall petition the house for leave to be heard against any alteration of the bill made in the House of Commons, materially affecting the conditions under which their subscription was agreed to, such petition shall be referred to the standing order committee, and the said committee shall report whether it is reasonable, and to what extent they should be heard; and if the committee report that it is so reasonable, leave may be given accordingly."

The Wharncliffe order in the Commons.

In 1858, the Commons also adopted the Wharncliffe order for the first time; and after the first reading of any bill brought from the House of Lords, to empower a company already constituted by Act of Parliament, to execute or contribute towards any work, other than that for which it was originally established, &c. the bill is referred to the examiners, who are to report as to compliance or non-compliance with that order.

It is further ordered by the Lords,

Consent of directors, &c., who are named in a bill, to be proved.

That when in any bill to be hereafter introduced into this house for the purpose of establishing a company for carrying on any work or undertaking, the name of any person or persons shall be introduced 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 said bill, or to a printed copy of the said bill, as brought up or introduced into the house, or that he or they are persons in whose names the deposit required by the orders of this house is made.

That when any bill as introduced into Parliament, or as amended or proposed to be amended on petition for additional provision, contains a provision authorising any company to subscribe towards or to guarantee, or to raise any money in aid of the undertaking of another company (which bill is not brought in by the company so authorised, or of which such company is not a joint promoter), proof shall be required before the examiner, that the company so authorised has consented to such subscription, guarantee, or raising of money, at a meeting of the proprietors of the ordinary shares in such company, held specially for that purpose, in the same manner and subject to the same provisions as the meeting directed to be held under the first section of this order, and that such consent was given by such proprietors, present in person or by proxy, holding at least three-fourths of the ordinary paid-up capital of the company represented at such meeting, such proprietors being qualified to vote at

the meeting in right of such capital; and that the notices for the bill state the sum proposed to be subscribed, or guaranteed, or raised, and also state that the consent of the company has been given as aforesaid, &c [1]

In any case in which such consent has been given, it shall not be necessary to submit the bill in respect of such provision as aforesaid to the approval of a meeting, to be held in accordance with the first section of the Wharncliffe order.

Notices to be given and deposits made where work is altered in Parliament.

There are two important orders relating to alterations of plans after their original deposit, which are also proved before the examiners. The first requires that whenever any alteration has been made, or is desired by the parties to be made, in any work of the second class, after the introduction of the bill into Parliament, plans and sections of such alterations are to be deposited with the clerks of the peace, &c. two weeks before the introduction of the bill into that house; and notices are to be published, and application made to the owners, lessees, and occupiers of the lands through which the alteration is intended to be made, and their consent proved before the examiner. The second requires,

Deposit of plans of alterations in the House of Lords.

"That previous to any bill for making any work, included in the second class, being brought to this house from the Commons, in which any alteration has been made in its progress through Parliament, a map or plan, and section of such work, showing any variation, extension, or enlargement which is intended to be made in consequence of such alteration, shall be deposited in the office of the clerk of the Parliaments; and that such map or plan, and section, shall be on the same scale, and contain the same particulars, as the original map or plan, and section of the said work."

Railway bills.

A copy of every railway bill, as brought into the House of Lords, 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.

These are the several standing orders of the Lords, peculiar to that house, which must be proved before the

[1] See order as amended, 4th August 1873.

examiner, or otherwise. Others will presently be added, in describing the further stages of bills.

Private bills of every description are subject to the following standing order:

Private bills to be printed before second reading, and delivered to parties before meeting of committee.

"That for the future no private bill shall be read in this house a second time, until printed copies thereof be left with the clerk of the Parliaments, for the perusal of the Lords; and that one of the said copies shall be delivered to every person that shall be concerned in the said bill, before the meeting of the committee upon such bill; and in case of infancy, to be delivered to the guardian or next relation of full age, not concerned in interest or in the passing of the said bill."

Not to be read before the hearing of causes.

By another standing order, when any cause shall be appointed to be heard, no private bill whatsoever shall be read that day, before the hearing of the cause.

Petitions against bills, when to be presented.

No petition praying to be heard upon the merits, against any bill brought from the Commons, in either of the two classes, will be received by the house 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.

Bills for regulating trade and extending patents.

No bill for the regulation of any trade, or the extension of the term of a patent, is to be read a second time until a select committee has reported upon the expediency of taking it into further consideration. And bills for incorporating, or giving powers to, joint-stock companies (except for executing public works, and some other purposes),[1] are not to be read a second time until a select committee has reported "that three-fourths of the capital intended to form the joint-stock of the company is deposited in the Bank of England, or vested in exchequer bills, or in the public funds, in the names of trustees;" and if the company have been previously constituted by royal charter, it is to be proved to a committee, before the second reading, that three-fourths of the capital have been paid up by the individual proprietors.

Bills respecting joint-stock companies.

[1] Electric telegraphs were added to the exceptions, in 1854; and waterworks and gas works, in 1873.

Where a company is to lend money on the security of land.

Every private bill by which powers are taken by a company to lend money on the security of land, for the purposes of improvement, and to obtain securities for the same, which the borrowers could not grant without the authority of Parliament, are to be referred to a select committee, and the bill as reported, is to be printed, and circulated before any further stage is taken thereon.[1]

It is ordered,

Houses of the labouring classes.

"That in the case of any bill for making any work, in the construction of which compulsory power is sought to take, in any city, town, or parish, fifteen houses, or more, occupied either wholly or partially as tenants or lodgers, by persons belonging to the labouring classes, the promoters be required to deposit in the office of the clerk of the Parliaments, on or before the 31st day of December, a statement of the number, description and situation of the said houses, the number (so far as they can be ascertained) of persons to be displaced, and whether any and what provision is made in the bill for remedying the inconvenience likely to arise from such displacement; and that such statement be referred to the committee on the bill, and that the said committee do inquire into and report thereon;" and that in every such bill a clause be inserted to enact that the company shall, not less than eight weeks before taking any such houses, make known their intention to take the same, by placards, handbills, or other general notice, placed in public view upon, or within a reasonable distance from, such houses, and that the company shall not take such houses until they have obtained the certificate of a justice that it has been proved to his satisfaction that the company have made known their intention to take the same in manner required by this provision.

Amalgamation bills.

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.

Second reading and commitment.

The second reading, as in the Commons, affirms generally the principle of the bill, subject to the proof of the allegations of the preamble, before the committee, and is immediately followed by the commitment.

Unopposed bills referred to open committees.

Unopposed private bills are referred to "all the lords present this day," who are presided over by the chairman of the Lords' committees,

[1] S. O., No. 192.

assisted by his counsel. These open committees are attended by any of the lords who had been present: but the business is practically transacted by the chairman of committees, and the responsibility is vested in him by the house.

Counsel to chairman of committees.

Every private 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.[1] 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 House of Lords. And with the assistance of the counsel to Mr. Speaker, he is now charged with the supervision of all private bills.

Unopposed bills when treated as opposed.

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.[2]

Committees on opposed bills.

Every opposed private bill is referred to a select committee of five, selected by the committee of selection, by whom also the chairman is appointed. Every one 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. 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.

[1] Viscount Eversley, 13th Feb. 1871; 103 Lords' J. 15.

[2] Oriental Bank Corporation bill, 1873.

Committee of selection.

These committees are appointed in a manner very similar to that adopted in the Commons. A committee is named by the house every session, consisting 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 private 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.[1]

Sittings of committees on bills.

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 adjourn at an earlier hour without specially reporting the cause of such adjournment to the house, at its next meeting; nor adjourn over any days except Saturday and Sunday, Christmas Day, and Good Friday, without leave of the house."

"If any member is prevented from continuing his attendance, the committee shall adjourn, and report the cause of such member absenting himself to the house if then sitting, or at its next meeting, and shall not resume its sittings without leave of the house."[2]

Proceedings of committees on bills.

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 bill, however, included in either of the two classes, may examine into the compliance with such standing orders as are required to be proved before the examiners.

Where opposition withdrawn.

If no parties appear on their petitions against a bill, or having appeared, withdraw their opposition, the committee is forthwith to refer it back, with a statement of the facts, to the chairman of committees, to be dealt with by him as if originally unopposed.

Witnesses on oath.

The proceedings of a Lords' committee differ in no ma-

[1] 103 Lords' J. 103.

[2] See debates on the absence of Lord Gardner, 24th and 26th June, 1845; 81 Hans. Deb., 3rd Ser., 1104. 1190.

terial point from those of a committee in the Commons. By the 21st & 22nd 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.

Petitioners heard.

When petitions against the bill are referred, 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: but the committee require both parties to state all the amendments which they intend to propose, before the room is cleared for the purpose of deliberating upon the preamble. The bill is gone through, clause by clause, and after all amendments have been made, it is reported, with the amendments, to the house.

It is ordered by the Lords, that proprietors dissenting at a meeting held under the Wharncliffe order, may be heard before the examiners on the compliances with such standing order, or on petitioning the house, by the committee on the bill.

If any company, authorised to subscribe to the undertaking of another company, petition for leave to be heard against an alteration of the bill in the House of Commons, materially affecting the conditions under which their subscription was agreed to, the petition is referred to the standing order committee; and if the committee report that it is reasonable they should be heard, they are heard accordingly before the committee on the bill.

Special standing orders to be proved or enforced.

The proceedings of Lords' committees upon private bills differ, in some cases, from those of a committee in the Commons, 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.

Payment of

The first relates to the payment of the purchase-money

of lands, &c. into the Court of Chancery, and applies generally to private bills, in which powers are given for the purchase or exchange of lands, where sums are to be laid out in the purchase of lands, but is more particularly applicable to estate bills. It is ordered, that in all such bills provision shall be made for the payment of the purchase-money into the Court of Chancery in England, or into one of the banks of Scotland established by act or royal charter, or into the Court of Chancery in Ireland; with special conditions particularly laid down in the standing orders.[1] And certain powers, in reference to the purchase-money so deposited, are required to be given to commissioners in inclosure or drainage bills, when they find any difficulty in obtaining a purchase in land of equal value, or when the purchase is otherwise disadvantageous.[2]

purchase-money into the Court of Chancery, &c.

Inclosure and drainage bills.

In all bills, the committees on which are to receive proof of consents, it is ordered,

"That no notice shall be taken by the committtee of the consent of any person, except trustees for a charity, to any private bill, unless such person appear before such committee, or proof be made to such committee, by two credible witnesses, that such person is not able to attend, and doth consent to the said bill."

Consents to private bills to be personal, or proof of disability.

"That the consent of all trustees for charitable purposes may be given to any private bill by which the estate, revenues, management, or regulation of the charity may be effected, by each of such trustees signifying his assent to such bill by signing a printed copy of the said bill, in the presence of one credible witness, who shall attest such signature."

How consent of trustees for charitable purposes to be signified.

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:—

Letters patent bills, special orders.

1. "That no bill for extending the term of any letters patent for any invention or discovery granted under the great seal of England, Scotland, or Ireland, shall be read a third time in this house unless it shall appear that the letters patent, the term of which it is intended by such bill to extend, will expire within two years from the commencement of the session of Parliament in which the application for such bill shall be made."

2. "That no such bill shall be read a third time unless it shall appear that the application to Parliament for extending the term of

[1] Lords' S. O., No. 186 (1). [2] Lords' S. O., No. 186 (2).

the letters patent is made by the person, or by the representatives of the person who himself originally discovered the invention for which such letters patent were granted by his majesty; and that the knowledge of such invention was not acquired by such person as aforesaid, by purchase or otherwise, from the inventor or owner of the same, or by information that such invention was known and pursued in any foreign country."

The following order respecting a cemetery or burial ground is to be proved before the committee on the bill:—

Cemetery or burial ground.

"That no bill for erecting or making any cemetery or burial ground shall be read a third time, unless the committee on such bill shall report that such bill contains a provision whereby the company, or persons or person intended to be authorised by such bill to make or erect such cemetery or burial ground, are restricted from erecting or making the same, or any part thereof, within 300 yards of any house of the annual value of 50*l.*, or having a plantation or ornamental garden or pleasure ground occupied therewith, except with the consent of the owner, lessee, and occupier thereof, in writing."

It was further ordered, on the 25th February 1867, that where in any bill application is made for powers to take any churchyard, burial ground, or cemetery, or to disturb the bodies interred therein, copies of the plans, sections, and books of reference, gazette notice and bill shall be deposited at the home office; and any report from the secretary of state shall stand referred to the committee on the bill. But the powers of the Secretary of State have since been transferred, by statute, to the local government board.

Levels of roads.

The committee on the bill are to make the same provision, as in the Commons, as to the level of roads, when altered by making any public work, and as to the height of the fences; and that unless the work be completed within a limited time, the powers of the act are to cease, except in regard to so much of the work as shall have been completed.

Time limited for completing works.

But the first of these orders being also enforced by the Commons, a provision is made in that house to effect the proposed object, if omitted in the original bill;[1] and a clause embodying the purport of the second, is always

[1] See *supra*, p. 765.

inserted in bills of the second class, when first introduced in the Commons.

Provisions required to be inserted in railway bills.

In the case of railway 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 non-payment of interest on calls or deposits out of capital, and the financial arrangements of companies in cases of purchase and amalgamation.[1] All these provisions, however, being included in the bill when it leaves the Commons, need not be more particularly mentioned here.

A clause is also required to be inserted in every railway bill:

Election of directors in railway companies.

"That 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."

Reports of board of trade referred.

In the case of railway bills, and bills whereby any municipal corporation, local board, improvement commissioners, or other local authority, are authorised to borrow any money, or to construct any work, any report from the board of trade, or local government board, upon any such bill, or the objects thereof, is referred to the committee on the bill.

Recommittal of bills.

Notice is required to be given of a motion to re-commit a private bill, which may not be proposed before the third day on which the house sits after the notice has been given.

Recommitment to com-

In order to ensure attention to bills affecting public

[1] Lords' S. O., No. 189; and see *supra*, p. 763, *et seq.*

mittee of the whole house.

interests, the chairman of committees may propose that any bill, in either of the two classes, be re-committed to a committee of the whole house; and printed copies of such bills are to be delivered to the Lords at least two days before the committee.

Amended bills to be reprinted.

It is further ordered, that all private 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 the committee shall certify that the reprinting of such bill is unnecessary.

Amendments on report and third reading.

No amendment may be moved to any bill on the report or third reading, unless it have been submitted to the chairman of committees, and printed copies, in any case in which he shall not consider the amendments verbal, deposited with the clerk of the Parliaments one clear day, at least, prior to such report or third reading.

Proceedings after third reading.

When a private bill has been read a third time, and passed, it is either returned to the Commons, with amendments, 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.[1] 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.[2]

[1] See *supra*, p. 786.

[2] See *supra*, p. 525.

CHAPTER XXVIII.

RULES, ORDERS, AND COURSE OF PROCEEDINGS IN THE LORDS UPON PRIVATE BILLS BROUGHT INTO THAT HOUSE UPON PETITION; AND PROCEEDINGS OF THE COMMONS UPON PRIVATE BILLS BROUGHT FROM THE LORDS. LOCAL AND PERSONAL, AND PRIVATE ACTS OF PARLIAMENT.

Private bills originating in the Lords.

HAVING traced the progress of private bills received from the Commons, through every stage in the House of Lords, until they are returned to the house in which they originated, it is time to advert to the proceedings peculiar to those bills which are first solicited in the Lords.

It is ordered,

Petitions for bills.

"That for the future no private bill, except bills included in either of the classes of private bills, shall be brought into this house until the house be informed of the matters therein contained, by petition to this house for leave to bring in such bill;" and, "that all parties concerned in the consequences of any private [*i.e.* estate] bill shall sign the petition that desires leave to bring such private bill into this house."

Bills for restitution of honours and in blood.

To this rule, 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 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, 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.[1] 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."[2] Such bills receive the royal assent in the usual form, as public bills.[3]

[1] Drummond's Restitution bill, 1853; 108 Com. J. 578.

[2] 108 Com. J. 584.

[3] 56 Lords' J. 260. 425; and Report of Precedents, Ib. 286. Maxwell's Restitution bill, 1848; 80 Lords' J. 270. 365. Lord Lovat's Restitution bill, 1854.

The Lords having power to consult the judges in matters of law, order

Petitions for estate bills referred to two of the judges.

"That when a petition for a private [*i.e.* estate] bill shall be offered to this house, it shall be referred to two of the judges, who, after perusing the bill, without requiring any proof of the allegations therein contained, are to report to the house their opinion thereon, under their hands; and 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 such bill do pass into a law, and whether the provisions thereof are proper for carrying its purposes into effect, and what alterations or amendments, if any, are necessary in the same: and in the event of their approving the said bill, they are to sign the same."

Where settled in chancery.

And any other bill, in the nature of an estate bill, is also referred to the judges, whenever such a reference is deemed advisable. But where an estate bill has been settled in the court of chancery, the petition is not referred to the judges.[1]

Time limited for petitions for bills.

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;[2] but this order, like the preceding, refers to estate bills alone. All further proceedings upon such bills are suspended until the report of the judges is received, as it is ordered,

Judges' report.

"That no private bill, the petition for which shall be referred to two of her Majesty's judges, shall be read a first time until a copy of the said petition, and of the report of the judges thereupon shall be delivered, by the party or parties concerned, to the lord appointed by this house to take the chair in all committees."

When this has been done, the bills may proceed through their several stages. But before the proceedings of the house are entered upon, it will be necessary to cite several special standing orders relating to particular bills.

[1] Lords' minutes, 1851; 151. 160. 181.

[2] 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.

In all cases where trustees are appointed by any private bill, the trustees are to appear personally before the committee, and accept the trust under their hands. Trustees.

Where bills for confirming provisional orders, or bills in either of the two classes already enumerated, originate in the House of Lords, and are not referred to the judges, or approved by the Court of Chancery, petitions praying to be heard against them upon the merits, will not be received unless presented on or before the seventh day on which the house sits after the bill has been read a first time. Petitions against bills originating in the Lords.

Where charity estates, or the patronage or constitution of any charity, in England or Ireland are affected by a bill, notice in writing is to be given to the attorney-general; and no such bill is to be read a second time until a report has been received from him. Bills affecting charities.

In the case of private bills concerning estates in land or heritable subjects in Scotland, it is ordered, that when the petition is offered to the house, Petitions for Scotch estate bills.

"It shall be referred to two of the judges of the Court of Session, who are forthwith to summon all parties before them who may be concerned in the bill; and after hearing all the parties, and perusing the bill, are to report to the house the state of the case, and their opinion thereupon, under their hands, and are to sign the bill."

The same method is ordered to be adopted before the second reading of Scotch Estate bills sent up from the Commons; but in practice, nearly all bills of this nature are first solicited in the Lords, whose proceedings are greatly facilitated by their power of delegating inquiries to the judges. There are other orders for regulating the consents to Scotch Estate bills, and the mode of proving such consents; the consent of heirs of entail; and the proportion of consents necessary. And provision is made for cases in which an estate bill is promoted by a tenant in tail, under age, and a remainder-man withholds his consent. Consents to Scotch estate bills.

In reference to estate bills generally, there are several other orders in force—1. Where a petitioner is tenant Estate bills generally.

for life, and another tenant in tail; 2. Where women have an interest; 3. Where children have an interest; 4. Where the tenant in tail is under age; 5. Trustees to consent in person in certain cases; 6. That the appointment of new trustees under the act, is to be made with the approbation of the Court of Chancery; 7. Notice to be given to mortgagees when the petition for the bill is presented; 8. That bills for exchanging or selling settled estates are to have schedules of their value annexed; 9. In bills for selling lands and purchasing others, provision is to be made for the deposit of the purchase-money.

Concerning bills for selling lands and purchasing others in Scotland.

In bills for selling lands, and purchasing or settling others, in Scotland, the committee on the bill are to take care that the values be fully made out, and to provide other securities for the fulfilment of the agreement; which are particularly described in the standing orders.[1]

Irish estate bills.

The standing orders in relation to Irish estate bills are similar to those concerning estates in Scotland, being referred to two judges of the Court of Queen's Bench, Common Pleas, or Exchequer, in Ireland, who inquire and report and receive consents in the same manner.

Consents.

And the same instruction is given to the judges, as in the case of Scotland, to require the personal presence of persons consenting, except in certain cases.

In regard to bills for selling lands, and purchasing or settling others in Ireland, an order similar to that in relation to Scotch bills, *mutatis mutandis*, is binding upon the committee upon the bill.

Divorce bills.

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; and particularly in India, whence a large proportion of such applications have ordinarily proceeded; but as these are

[1] All these orders are printed at length in the published collection of the standing orders of the Lords relative to private bills.

exceptional cases, for which it may be hoped that the legislature will soon provide a more convenient tribunal, it will be sufficient to direct the attention of parties interested to the standing orders themselves, without a more particular allusion to them.

No naturalization bill to be read a second time without a certificate, &c.

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 his 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 & 34 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.[1]

When judges' report received on estate bills.

When the reports from the judges upon petitions for estate bills have been delivered to the chairman of committees, the bills may be presented and read a first time. If, however, a report of the judges should be adverse to an entire bill, it would probably not be offered to the house at all; and if the report should object to particular provisions or suggest others, the bill would be altered before its presentation.

Second reading of bills.

No particular interval is enforced between the first and second readings, 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.

Petitions against second reading.

It is not usual for petitions to be presented, praying to

[1] Bishop of Jerusalem, 1846; Mr. Tufton, 1849; Giustiniani, 1857, 1860; Bolckow, 1868; Sir Richard Wallace, 1872.

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.

Depositions in India in divorce cases.

It may be stated in regard to divorce bills, that when the adultery is alleged to have been committed in India, depositions taken before the judges in India are admitted as evidence. By the Act 1 Geo. IV., c. 101, when any person petitioning either house of Parliament for a divorce bill, states that the witnesses necessary to substantiate the allegations of the bill are resident in India, the speaker of such house may issue his warrant or warrants to the judges of the supreme courts of Calcutta, Madras, or Ceylon, or to the recorder of Bombay, for the examination of witnesses; and the evidence taken before them, accompanied by a declaration that the examinations have been fairly conducted, is admissible in either house of Parliament. The proceedings upon a divorce bill, when a warrant has been issued under this act, are not discontinued by any prorogation or dissolution of Parliament, until the examination shall have been returned: but "such proceedings may 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."[1]

Warrant for taking depositions, how obtained.

When a petitioner prays that evidence may be taken in India by virtue of this act, his petition is referred to a committee, upon whose report the orders are made for issuing the necessary warrants, and the bill is read a first time. No further proceeding can then take place until the depositions have been returned from India; and, unless they are received in time to proceed while Parliament is sitting, the bill is not read a second time until the following session. If the proceedings of ecclesiastical and other courts

[1] 1 Geo. IV. c. 101, s. 4.

have been laid before the house, upon a divorce bill, in the preceding session, the agent may petition the house to dispense with a second copy.[1]

First and second class bills.

In the case of first and second class bills originating in the Lords, the house copy of the bill is to be deposited before three o'clock in the Parliament Office, not later than three clear days after the examiner's certificate has been laid on the table; and the bills are referred, after the first reading, to the examiners, before whom compliance with such orders as have not been previously inquired into shall be proved. Such bills are to be read a second time not earlier than the fourth, nor later than the seventh day after the first reading

Petitions on merits.

Every petition in favour of or against any bill, or otherwise relating thereto (not being a petition for leave to present a bill, or for additional provision), shall 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, or, if the house shall not be sitting, on the first sitting-day afterwards. It is also ordered that all petitions praying to be heard upon the merits, against any bill, in either of the two classes, be printed by the petitioners, and ten copies deposited in the committee clerks' office, as soon as printed. The agents are also directed to deposit in the committee clerks' office six copies of every opposed bill, immediately after the presentation of any petition praying to be heard against it.[2]

Commitment.

All the ordinary private bills for estates, naturalization, names, and other matters, are referred to an open committee, consisting, as already explained, of the lords then present;[3] who inquire whether all the standing orders applicable to such bills have been complied with, and take care that the proper provisions are inserted. The committee on an estate

[1] 78 Lords' J. 1043.

[2] Orders, 16th Feb. and 7th March 1865.

[3] See *supra*, p. 797.

bill may not sit until ten days after the second reading. It is a standing order of the house,

"That the lord who shall be in the chair of a committee to whom any private bill shall be committed, shall state to the house, when the report of such committee is made, how far the orders of the house, in relation to such private bill, have or have not been duly complied with."

Divorce bills to a committee of the whole house.

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.

Report. Third reading, &c.

When a private bill is reported from a committee, and any amendments that may have been made are agreed to by the house,[1] the bill is ordered to be read a third time on a future day, when it is read a third time, passed, and sent to the House of Commons, in the usual form.

Lords' private bills in the Commons.

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.

Referred to examiners.

The bills 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 bill brought from the Lords, 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 report 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. 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

Second reading and commitment.

[1] "The lord that makes the report is to explain to the house the effect and coherence of each amendment." Lords' S. O., No. 47.

of selection, by whom 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. There must be three clear days between the second reading of a name or ordinary estate bill and the sitting of the committee, and eight clear days if the estate bill relate 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. Many of these 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.

Notices and intervals.

Standing orders suspended.

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.

Divorce bills in the Commons.

In the case of Chippendall's divorce bill in 1850, the committee made a special report, recommending the remission of the fees on account of the poverty of the promoter; and their report was agreed to by the house.[1] 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

Fees remitted.

Death of petitioner for bill.

[1] 105 Com. J. 563; and see *infra*, p. 817.

named for the third reading, but the bill was subsequently allowed to drop.

Divisions of private bills.

All private bills, during their progress in the Commons, are known by the general denomination of private bills: but in the Lords the term "private" is applied *technically* to estate and other personal bills only, all other bills being distinguished as "local and personal," although in the standing orders no such distinction is expressed. 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.

Local and personal acts.

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,"[1] 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.[2] Such acts were printed with the other statutes of the year,[3] 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

[1] 13 Vict. c. 21, s. 7.

[2] Preface to Spiller's Index to the statutes.

[3] In the black letter edition of the public general acts.

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.[1]

Private acts printed.

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."

Private acts not printed.

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.

Legal distinctions.

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.

1 Manchester Stipendiary Magistrate acts, 53 Geo. III. c. 72; 7 & 8 Vict. c. 30. Manchester Warehousing act, 7 & 8 Vict. c. 31.

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]

Queen's printers' copies.

By the Act 8 & 9 Vict. c. 113, s. 3, it is enacted "that all 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."

CHAPTER XXIX.

FEES PAYABLE BY THE PARTIES PROMOTING OR OPPOSING PRIVATE BILLS. TAXATION OF COSTS OF PARLIAMENTARY AGENTS, SOLICITORS, AND OTHERS.

Fees payable on private bills.

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. The tables of fees are well known to parliamentary agents, and to suitors; they are published in the standing orders of the Commons, and in the House of Lords they are separately printed, and are readily accessible to parties interested.

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,

[1] 2 Phillipps & Amos, 611.

and under such regulations, as the speaker shall from time to time direct."[1]

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.[2] 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 monies 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 have also been appropriated to a general fee fund.

How collected, and applied.

In the case of Chippendall'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.[3]

Divorce bill *in formâ pauperis*.

In pursuance of an address of the House of Commons, in 1829, the fees payable upon all bills for continuing or amending Turnpike Road Acts, which receive the royal assent, are

Turnpike road continuance acts.

[1] Table of fees.

[2] See *supra*, p. 702.

[3] See report, 25th July 1850; 105 Com. J. 563. In 1604, counsel was assigned to a party, in a private bill, *in formâ pauperis*, he "being a very poor man." 1 Com. J. 241.

discharged by the treasury.[1] But such acts are now usually continued by a General Turnpike Act Continuance bill.

Taxation of costs.

The last matter which need be mentioned in connexion 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 of Lords Costs Taxation Acts,"[4] a regular system of taxation has been established in both houses, and every facility is afforded for ascertaining the reasonable and proper costs arising out of every application to Parliament.

Taxing officers.

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 charges which parliamentary agents, solicitors, and others will be allowed to charge for the various services usually rendered by them.[5]

Lists of charges.

Applications for taxation.

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

[1] 84 Com. J. 90.
[2] 6 Geo. IV. c. 69.
[3] 7 & 8 Geo. IV. c. 64.
[4] 10 & 11 Vict. c. 69; 12 & 13 Vict. c. 78.
[5] These lists are printed, for distribution to all persons who may apply for them.

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 the six months.

To be within six months after delivery of bill.

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 their assistance in the taxation of parliamentary costs.

Costs of both houses taxed together.

In the Commons the taxing officer 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, 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.

Certificate to have the effect of a warrant to confess judgment.

APPENDIX.

I.—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 holden 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 holden 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.

II.—FORM OF CERTIFICATE TO AUTHORIZE THE SPEAKER TO ISSUE A WARRANT FOR A NEW WRIT DURING A RECESS.

Schedule of 24 *Geo. III. sess.* 2, *c.* 26, *and* 21 *&* 22 *Vict. c.* 110.

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 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.

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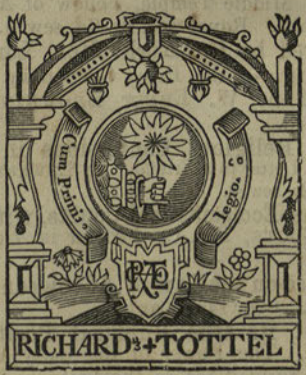

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[1] 119 Com. J. 171.
[2] 174 Hans. Deb., 3rd Ser., 1551.
[3] 112 Com. J. 227; 119 Ib. 333.
[4] 75 Ib. 379; 76 Ib. 440; 95 Ib. 169.
[5] 77 Ib. 314; 83 Ib. 509.
[6] 77 Ib. 314; 119 Ib. 122.
[7] 83 Ib. 533.
[8] Tithes (Ireland), 2nd April 1832; 87 Com. J. 242. Maynooth College (Consolidated Fund) Report, 28th April 1845; 100 Com. J. 351.
[9] 112 Com. J. 175.
[10] See Chapters XVIII. and XXI.
[11] 1 Com. J. 873.