Consiglio regionale del Veneto

CHAPTER IX.

AMENDMENTS TO QUESTIONS, AND AMENDMENTS TO PROPOSED AMENDMENTS.

Objects and principle of an amendment.

THE object of an amendment is, generally, to effect such an alteration in a question as will enable certain members to vote in favour of it, who, without such alteration, must either have voted against it, or have abstained from voting. Without the power of amending a question, an assembly would have no means of expressing their opinions with consistency: they would either be obliged to affirm a whole question, to parts of which they entertained objections, or to negative a whole question, to parts of which they assented. In both cases a contradiction would ensue, if they afterwards expressed their true judgment in another form. In the first case supposed, they must deny what they had before affirmed; and in the second, they must affirm what they had before denied. Even if the last decision were binding, both opinions would have been voted, and probably entered in their minutes, and the contradiction would be manifest.

Sometimes the object of an amendment is to present to the house an alternative proposition, either wholly or partially opposed to the original question; and the form of an amendment is here convenient, as affording the house an opportunity of deciding, in one proceeding, upon the two propositions.[1]

The confusion which must arise from any irregularity in the mode of putting amendments, is often exemplified at public meetings, where fixed principles and rules are not observed; and it would be well for persons in the habit of

[1] See also *supra*, p. 279.

presiding at meetings of any description, to make themselves familiar with the rules of Parliament, in regard to questions and amendments; which have been tested by long experience, and are found as simple and efficient in practice as they are logical in principle.

Various modes of amendment.

An amendment may be made to a question, 1, by leaving out certain words; 2, by leaving out certain words, in order to insert or add others; 3, by inserting or adding certain words. The time for moving an amendment is after a question has been proposed by the speaker, and before it has been put. It is customary, and more convenient, to give notice of an amendment; but it is competent for any member to propose an amendment, without notice; nor is another member, who may have given notice of an amendment, entitled to precedence on that account:[1] as, according to the rules of debate, the member who first rises, and is called by the speaker, being in possession of the house, is entitled to conclude with any motion, which may properly be made at that time. The order and form in which the points arising out of amendments are determined, are as follow:—

Amendments without notice.

To leave out words.

1. When the proposed amendment is, to leave out certain words, the speaker says: "The original question was this," stating the question at length; "Since which, an amendment has been proposed to leave out the words," which are proposed to be omitted. He then puts the question, "That the words proposed to be left out stand part of the question." If that question be resolved in the affirmative, it shows that the house prefer the original question to the amendment, and the question, as first proposed, is put by the speaker. If, however, the question, "That the words stand part of the question," be negatived, the question is put, with the omission of those words; unless another amendment be then moved, for the insertion or addition of other words.

[1] See 84 Hans. Deb., 3rd Ser., 641, 5th March, 1846 (Andover Union), where it was so ruled by Mr. Speaker.

To leave out words, and to insert or add others.

2. When the proposed amendment is to leave out certain words, in order to insert or add others, the proceeding commences in the same manner as the last. If the house resolve "That the words proposed to be left out stand part of the question," the original question is put: but if they resolve that such words shall not stand part of the question, by negativing that proposition when put, the next question proposed is, that the words proposed to be substituted, be inserted or added instead thereof. This latter question being resolved in the affirmative, the main question, so amended, is put. It is sometimes erroneously supposed that a member who is adverse both to the original question, and to the proposed amendment, would express an opinion favourable to the question, by voting "that the words proposed to be left out stand part of the question." By such a vote, however, he merely declares his opinion to be adverse to the amendment. After the amendment has been disposed of, the question itself remains to be put, upon which each member may declare himself as distinctly as if no amendment whatever had been proposed. If, however, he be equally opposed to the question, and to the amendment, it is quite competent for him to vote with the "noes" on both.

Where the question and amendment are both objected to.

On the 19th June 1822, the house having struck out all the words of a question relative to tithes in Ireland, an amendment to add other words, was superseded by the house passing to the other orders of the day; and the original question was thus left, reduced to the initial word "that."[1]

Again, on the 8th December 1857, a majority of the house being adverse to a motion relating to joint-stock banks, and also to a proposed amendment, the original question was ultimately reduced to the word "that;" when, no other amendment being proposed, the speaker called upon the member whose notice stood next upon the paper.[2]

[1] 77 Com. J. 356.

[2] 113 Com. J. 10.

On the 21st June 1870, a motion being made that it is undesirable that opposed business should be proceeded with after 12 o'clock, an amendment was proposed to leave out "12" and insert "one." Upon division, the house resolved first, that "12" should not stand part of the question; and secondly, that "one" should not be inserted. The question thus stood with a blank, which no one proposed to fill up with any other words: when the house was happily relieved from its embarrassment by the withdrawal of the original motion.[1]

And again, on the 2nd July 1872, upon all the words of a motion relating to the established church after "that" having been left out, and the question for adding the words of the proposed amendment being negatived, the main question, as amended, was also put and negatived.[2]

To insert or add words.

3. In the case of an amendment to insert or add words, the proceeding is more simple. The question is merely put, that the proposed words "be there inserted" or "added." If it be carried, the words are inserted or added accordingly, and the main question, so amended, is put: but if negatived, the question is put as it originally stood,[3] unless it be afterwards proposed to insert or add other words.

Restrictions in proposing amendments.

Several amendments may be moved to the same question, but subject to these restrictions: 1. No amendment can be made in the first part of a question, after the latter part has been amended, or has been proposed to be amended, if a question has been proposed from the chair upon such amendment: but if an amendment to a question be *withdrawn*, by leave of the house, the fact of that amendment having been proposed will not preclude the proposal of another amendment, affecting an earlier part of the question, so long as it does not extend further back than the last words upon which the house have already expressed an opinion: for the withdrawal of the first amendment leaves the question in precisely the same condition as if no

[1] 125 Com. J. 270. [2] 127 Com. J. 314. [3] 113 Com. J. 201.

amendment had been proposed.[1] Each separate amendment should be proposed in the order in which, if agreed to, it would stand in the amended question;[2] and should a member, being in possession of the house, move an amendment, another member, before the question upon such amendment has been proposed from the chair, may intimate his intention of moving an amendment to an earlier part of the question, in which case the latter amendment will be allowed precedence.[3] But if the question has been already proposed from the chair upon the first amendment, the latter cannot be moved, unless the first be, by leave of the house, withdrawn. 2. When the house have agreed that certain words shall stand part of a question, it is irregular to propose any amendment to those words, as the decision of the house has already been pronounced in their favour:[4] but this rule would not exclude an addition to the words, if proposed at the proper time.[5] In the case of a second reading or other stage of a bill, however, it is not allowable to add words to the question, after the house has decided that words proposed to be left out should stand part of that question. Every stage of a bill, being founded upon a previous order of the house, is passed by means of a recognised formula, and may be postponed or arrested by acknowledged forms of amendment: but when any such amendment has been negatived, no other amendment, by way of addition to the question, can be proposed, which is not, in some degree, inconsistent with the previous determination of the house; and it has, therefore, never been permitted.[6] Nor can an amendment be made, by the addi-

[1] So ruled (privately) by Mr. Speaker, 19th Feb. 1845.

[2] 2 Hatsell, 123.

[3] See Debate on Address, 1st Feb. 1849. 102 Hans. Deb., 3rd Ser., 117; Mr. Disraeli and Mr. Grattan.

[4] See Debate on Ecclesiastical Titles Bill, 12th May 1851.

[5] 8th June 1810 (Address concerning the Lord Lieutenant of Ireland), 65 Com. J. 480.

[6] Such an amendment having been suggested on the 28th May 1866, on going into committee on the Representation of the People Bill, Mr. Speaker (privately) ruled that it would

tion of words to the question, for reading a bill a second time.[1] The same rule applies to amendments on going into committee of supply. 3. In the same manner, when the house have agreed to add or insert words in a question, their decision may not be disturbed by any amendment of those words: but here again, other words may be added. Such words, however, may not be to the same effect as those omitted by the amendment.[2]

But when a member desires to move an amendment to a part of the question proposed to be omitted by another amendment, or to alter words proposed to be inserted, it is sometimes arranged that only the first part of the original amendment shall be formally proposed, in the first instance, so as not to preclude the consideration of the second amendment. This course is not usual in the house itself, except upon the consideration of bills, as amended, or addresses to the Crown: but is continually adopted in the proceedings of committees of the whole house.[3] The convenience of the house may also be consulted, in some cases, by the withdrawal of an amendment, and the substitution of another, the same in substance as the first, but omitting certain words to which objections are entertained.[4]

Amendments to proposed amendments.

Another proceeding may also be resorted to, by which an amendment is intercepted, as it were, before it is offered to the house, in its original form, by moving to amend the first proposed amendment. In such cases the questions put by the

be irregular; and after a careful search, no such case could be found in the Journals. On the 4th June, Mr. Speaker also stated the rule from the chair, 183 Hans. Deb., 3rd Ser., 1918; and again, 186 Ib. 1285. Mr. Speaker's note-book.

[1] On the 21st July 1871, the Duke of Richmond gave notice of a resolution, by way of addition to the question, for the second reading of the Army Regulation Bill: but on the 27th, on the representation of Viscount Eversley, this notice was amended; and on the 31st the resolution was moved as an amendment to the question, in the usual form.

[2] Elementary Education, 5th March 1872. (Mr. Mundella's amendment not moved).

[3] See Amendments in Committee on the Government of India, 7th and 14th June 1858, &c.

[4] See Mr. Duncombe's amendment (Education), 22nd April 1847; 91 Hans. Deb., 3rd Series, 1236.

speaker deal with the first amendment as if it were a distinct question, and with the second as if it were an ordinary amendment. The original question is, indeed, for a time, laid aside; and the amendment becomes, as it were, a substantive question itself. Unless this were done, there would be three points under consideration at once, viz., the question, the proposed amendment, and the amendment of that amendment: but when the question for adopting the words of an amendment is put forward distinctly, and apart from the original question, no confusion arises from moving amendments to it, before its ultimate adoption is proposed.[1]

[1] It appears, from a curious letter of the younger Pliny (Plinii Epistolæ, lib. viii. ep. 14), that the Roman senate were perplexed in the mode of disentangling a question that involved three different propositions. It was doubtful whether the consul, Afranius Dexter, had died by his own hand, or by that of a domestic; and if by the latter, whether at his own request, or criminally; and the senate had to decide on the fate of his freedmen. One senator proposed that the freedmen ought not to be punished at all; another, that they should be banished; and a third, that they should suffer death. As these judgments differed so much, it was urged that they must be put to the question distinctly, and that those who were in favour of each of the three opinions should sit separately, in order to prevent two parties, each differing with the other, from joining against the third. On the other hand, it was contended that those who would put to death, and those who would banish, ought jointly to be compared with the number who voted for acquittal, and afterwards among themselves. The first opinion prevailed, and it was agreed, that each question should be put separately. It happened, however, that the senator who had proposed death, at last joined the party in favour of banishment, in order to prevent the acquittal of the freedmen, which would have been the result of separating the senate into three distinct parties. The mode of proceding adopted by the senate was clearly inconsistent with a determination by the majority of an assembly; being calculated to leave the decision to a minority of the members then present, if the majority were not agreed. The only correct mode of ascertaining the will of a majority, is to put but one question at a time, and to have that resolved in the affirmative or negative by the whole body. The combinations of different parties against a third cannot be avoided (which after all was proved in the senate); and the only method of obtaining the ultimate judgment of a majority, and reconciling different opinions, is by amending the proposed question until a majority of all the parties agree to affirm or deny it, as it is ultimately put to the vote. I was indebted to the late Mr. Rickman for a reference to Pliny's letter, accompanied by a very animated translation, which I regret is too long to be inserted.

The following is another example

Where the original amendment is either simply to insert, add, or omit words, an amendment may at once be proposed to it, without reference to the question itself, which will be dealt with when the amendment has been disposed of.

Amendments to proposed amendments, leaving out words.

The most difficult form, perhaps, is when the amendment first proposed is to leave out certain words of the original question; and an amendment is proposed to such proposed amendment, by leaving thereout some of the words proposed to be omitted, and thus, in effect, restoring them to the original question. In such a case a question is first put, that the words proposed to be omitted, stand part of the proposed amendment. If that question be affirmed, the question is then put, that all the words proposed to be omitted by the first amendment, stand part of the original question. But if it be negatived, a question is put, that the words comprised in the amendment, so amended, stand part of such original question.[1]

Leaving out words and adding others.

But where the original amendment is to leave out certain words, in order to insert or add other words, no amendment can be moved to the words proposed to be substituted, until the house have resolved that the words proposed to be left out, shall not stand part of the question. But so soon as the question is proposed for inserting or adding the words of the amendment, an amendment may be moved thereto.

A short example will make this latter proceeding more intelligible. To avoid a difficult illustration, (of which there

of the mode of determining a question without amendment, which involved a distinct contradiction. During the rivalry between Pompey and Cæsar it was proposed in the senate, either that they should both give up or both retain their troops. It is stated by Plutarch, that "Curio, with the assistance of Antonius and Piso, prevailed so far as to have it put to the regular vote. Accordingly he proposed that those senators should move off to one side who were in favour of Cæsar alone laying down his arms and Pompeius remaining in command; and the majority went over to that side. Again, upon his proposing that all who were of opinion that both should lay down their arms, and that neither should hold a command, only twenty-two were in favour of Pompeius, and all the rest were on the side of Curio."—Plutarch, Life of Pompey, by Professor Long, p. 80.

[1] 27 Com. J. 298; 39 Ib. 842; 64 Ib. 131.

are many in the Journals,[1]) let the simple question be, "That this bill be *now* read a second time;" to which an amendment has been proposed, by leaving out the word "now," and adding "this day six months;" and let the question that the word "now" stand part of the question, be negatived, and the question for adding "this day *six months*," be proposed. An amendment may then be proposed to such proposed amendment, by leaving out "six months," and adding "fortnight," instead thereof. The question will then be put, "That the words 'six months' stand part of the said proposed amendment." If that be affirmed, the question for adding "this day six months," is put; and if carried, the main question, so amended, is put, viz., "That this bill be read a second time this day six months." But if it be resolved, that "six months" shall not stand part of the proposed amendment, a question is put that "fortnight" be added; and, if that be agreed to, the first amendment, so amended, is put, viz., that the words "this day fortnight" be added to the original question. That being agreed to, the main question, so amended, is put, viz., "That this bill be read a second time this day fortnight."[2] Several amendments may be moved, in succession, to a proposed amendment, —subject to the same rules as amendments to questions.[3]

Amendments need not be relevant.

There is no rule which requires an amendment to be relevant to the question to which it is proposed to be made,[4] except in the case of an order of the day. But every amendment proposed to be made, either to a question or to a proposed amendment, should be so framed that if agreed to by the house, the question, or amendment as amended, would be intelligible and consistent with itself.

But must be intelligible and consistent.

Amendments moved before previous question.

It may sometimes happen, that an amendment clashes with the proposal of the previous question; in which case

[1] See Com. Gen. Journ. Indexes, 1774–1865, tit. *Amendments*. 108 Com. J. 516.

[2] Dublin Waterworks Bill, 27th February 1849.

[3] 6th March 1840 (Supply), 101 Com. J. 865.

[4] 23 Hans. Deb., 3rd Ser., 785; 38 Ib. 174.

the priority of either would depend upon the period at which the conflict arises. If the members who are about to offer these conflicting motions could previously arrange, with each other, the intended order of proceeding, it would generally be most convenient to move the amendment first; because it is manifestly reasonable to consider, in the first place, what the question shall be, if put at all; and, secondly, whether the question shall be put or not. Unless this course were adopted, an amendment, which might alter the question so as to remove objections to its being put, could not be proposed; for if the previous question were resolved in the affirmative, it must be put immediately by the speaker, as it stands; and if in the negative, the question would no longer be open to consideration. But if the amendment has been first proposed, it must be withdrawn or otherwise disposed of, before a motion for the previous question can be admitted.[1]

After previous question proposed.

If, on the other hand, the previous question has been first proposed by the speaker, no amendment can be received until the previous question is withdrawn.[2] If the members who moved and seconded the previous question, agree, by leave of the house, to withdraw it, the amendment may be proposed, but not otherwise.[3] If they refuse to withdraw it, the previous question must be put and determined. If, however, the house should generally concur in the amendments which were precluded from being put, they would permit a new and distinct question to be afterwards proposed, embodying the spirit of those amendments, upon which a separate vote might be taken.[4]

[1] On the 1st April 1862, after an amendment had been proposed but not made to a question relative to the Civil Service, the previous question was moved, and passed in the negative; 117 Com. J. 129. And the like proceeding occurred on the 9th June 1863 (Uniformity Act); 118 Ib. 269. See also proceedings relative to Kagosima, 119 Ib. 45; Denmark, Ib. 179. 174. Hans. Deb., 3rd Ser., 1376; Malt Duty, 120 Com. J. 117.

[2] Lord Lieutenant of Ireland, 25th Mar. 1858; 149 Hans. Deb., 3rd S., 712.

[3] 36 Com. J. 825.

[4] 2 Hatsell, 121.

In the Commons, every amendment must be proposed and seconded in the same manner as an original motion; and if no seconder can be found, the amendment is not proposed by the speaker, but drops, as a matter of course,[1] and no entry of it appears in the Votes.

CHAPTER X.

THE SAME QUESTION OR BILL MAY NOT BE TWICE OFFERED IN A SESSION.

Object of the rule.

It is a rule in both houses, not to permit any question or bill to be offered, which is substantially the same as one on which their judgment has already been expressed, in the current session.[2] This is necessary in order to avoid contradictory decisions, to prevent surprises, and to afford proper opportunities for determining the several questions as they arise. If the same question could be proposed again and again, a session would have no end, or only one question could be determined; and it would be resolved first in the affirmative, and then in the negative, according to the accidents to which all voting is liable.

Exceptions.

But, however wise the general principle of this rule may be, if it were too strictly applied, the discretion of Parliament would be confined, and its votes be subject to irrevocable error. A resolution may therefore be rescinded,[3] and an order of the house discharged, notwithstanding a rule *urged* (April 2nd 1604), "That a question being once

Votes rescinded.

[1] 177 Hans. Deb., 3rd Ser., 1528.
[2] 1 Com. J. 306, 434.
[3] Baron Smith; 89 Com. J. 59. Education (Inspectors' Reports) 1864, 119 Ib. 463.

made, and carried in the affirmative or negative, cannot be questioned again, but must stand as a judgment of the house."[1] Technically, indeed, the rescinding of a vote is the matter of a new question; the form being to read the resolution of the house, and to move that it be rescinded; and thus the same question which had been resolved in the affirmative is not again offered, although its effect is annulled. The same result is produced when a resolution has been agreed to, and a motion for bringing in a bill thereupon is afterwards negatived, as in the proposed reduction of the malt duty in 1833.[2]

To rescind a negative vote, except in the different stages of bills, is a proceeding of greater difficulty, because the same question would have to be offered again. The only means, therefore, by which a negative vote can be revoked, is by proposing another question, similar in its general purport to that which had been rejected, but with sufficient variance to constitute a new question; and the house would determine whether it were substantially the same question or not.

There is also a difficulty in discharging an order for an address to the Crown, after it has been presented to her Majesty; and thus, in 1850, an address having been agreed to for discontinuing the collection and delivery of letters on Sunday, and for inquiry into the subject, another address was agreed to, some time afterwards, for inquiring whether Sunday labour might not be reduced in the Post Office, without completely putting an end to the collection and delivery of letters.[3] Again, in 1856, when an address had been voted on the subject of national education in Ireland,[4] in which the majority of the house did not concur, instead of discharging the order for the address, a resolution was agreed to, for the purpose of qualifying the opinions embodied in the address;[5] and her Majesty's answer was

[1] 1 Com. J. 162. [2] 88 Ib. 317. 329. [3] 105 Ib. 383. 509.
[4] 111 Ib. 272. [5] Ib. 289.

framed in the spirit of the resolution, as well as of the address.[1]

Evasions of the rule.

A mere alteration of the words of a question, without any substantial change in its object, will not be sufficient to evade this rule. On the 7th July 1840, Mr. Speaker called attention to a motion for a bill to relieve dissenters from the payment of church rates, before he proposed the question from the chair.[2] Its form and words were different from those of a previous motion, but its object was substantially the same; and the house agreed that it was irregular, and ought not to be proposed from the chair. Again, on the 15th May 1860, the order for the second reading of the Charity Trustees Bill was withdrawn, as it was discovered to be substantially the same as the Endowed Schools Bill, which the house had already put off for six months.[3] So, also, on the 17th May 1870, a motion for an address in favour of emigration was not allowed to be made, being substantially the same as a resolution which had been negatived in the same session.[4] But when a motion for leave to bring in a bill has been rejected, it is competent to move for a committee of the whole house to consider the laws relating to the subject to which that bill referred; and this expedient has been used to evade the orders of the house.

It is also possible, in other ways, so far to vary the character of a motion, as to withdraw it from the operation of the rule.[5] Thus, in the session of 1845, no less than five distinct motions were made upon the subject of opening letters at the post-office, under warrants from the secretary of state. They all varied in form and matter, so far as

[1] 111 Com. J. 298. See also 111 Hans. Deb., 3rd Ser., 1404.

[2] 95 Com. J. 495; Mirror of Parl. 1840, p. 4387.

[3] 115 Ib. 249; Mr. Speaker's note book.

[4] 201 Hans. Deb., 3rd Ser., 824.

[5] See, for example, General Conway's motions on the American war, 22nd and 27th Feb. 1782; 38 Com. J. 814. 861. Proceedings upon the Malt duty in 1833; 88 Ib. 195. 317; and upon the Sugar duties in 1845; 100 Ib. 59. 69. 81.

to place them beyond the restriction: but in purpose they were the same, and the debates raised upon them embraced the same matters.[1] But the rule cannot be evaded by renewing, in the form of an amendment, a motion which has been already disposed of. On the 18th July 1844, an amendment was proposed to a question, by leaving out all the words after "that," in order to add, "Thomas Slingsby Duncombe, esq., be added to the committee of secrecy on the post-office:" but Mr. Speaker stated, that on the 2nd July, a motion had been made, "that Mr. Duncombe be one other member of the said committee;" that the question had been negatived; "and that he considered it was contrary to the usage and practice of the house that a question which had passed in the negative should be again proposed in the same session." The amendment was consequently withdrawn.[2] On the 10th February 1873, an amendment was proposed to a question relating to the sittings of the committee of supply on Mondays, to leave out from "that" to the end of the question, in order to add "a select committee be appointed to consider the best means of facilitating the despatch of public business." The house, upon a division, determined that the words proposed to be left out should stand part of the question, and the amendment was consequently lost. On the following day, upon a motion that on Tuesdays the house should meet at 2 p.m., and rise at 7 p.m., a member rose to move an amendment in nearly the same terms as that proposed on the former day. But the speaker interposed, and said: "The house, last night, on the amendment of the hon. member for Essex, refused to entertain the proposal that the mode of conducting the business of the house should be referred to a select committee, and it is therefore out of order to propose now, by another amendment, that such a course should be taken."

[1] 100 Com. J. 42. 54. 185. 199. 214. [2] 76 Hans. Deb., 3rd Ser., 1021.

On the 9th May 1870, it was ruled, that when an order for the appointment of a select committee had been discharged, and another order substituted, for the express purpose of omitting certain words in the original order of reference, an instruction to restore those words, could not be entertained.[1]

Motions withdrawn may be repeated.

The rule, however, does not apply to cases in which a motion has been by leave of the house withdrawn; for such a motion has not been submitted to the judgment of the house, and may, therefore, be repeated.[2]

And motions superseded.

On the 7th December 1857, a resolution was proposed for extending limited liability to joint-stock banks, to which an amendment was proposed affirming the same principle in a modified form. The house refused to permit either of these propositions to form part of the question, which was, consequently reduced to the single word "that." On the 11th February following, a bill to the same effect was brought in without objection, the house having pronounced its judgment upon a question not substantially the same.[3] So again on the 31st March 1859, an amendment was proposed, but not made, to a proposed amendment on the second reading of the Representation of the People Bill, expressing an opinion in favour of the ballot: but this was held not to preclude a motion, on a later day, for bringing in a bill for the taking of votes by way of ballot.[4]

On the 5th March 1872, a resolution was moved impugning the general operation of the Elementary Education Act, 1870, and enumerating several points in which it failed, including the payment of school fees to denominational schools. In opposition to it, an amendment was carried, affirming that it was too soon to review the provisions of the Act. On the 23rd April Mr. Candlish brought forward a

[1] Conventual and Monastic Institutions (Mr. Whalley).

[2] See motion on Railway Bills withdrawn 16th, and renewed 23rd May 1845; 80 Hans. Deb., 3rd S., 432. 798.

[3] See also proceedings on Negro Apprenticeship, 1838; 93 Com. J. 418. 541.

[4] 114 Com. J 145. 170

motion for leave to bring in a bill to repeal the 25th clause of the Education Act, which authorised the payment of school fees to denominational schools. Exception was taken to this motion, on the ground that substantially it had been embraced in the resolution of the 5th March, and excluded from consideration by the amendment. But it was held that a resolution in terms so general could not prevent a member from moving for leave to bring in a bill to repeal a single clause of the Act. Moreover a motion for leave to bring in this bill differed essentially from a resolution condemning, in general terms, the operation of the Act.

It will now be necessary to anticipate, in some measure, the proceedings upon bills which are reserved for future explanation:[1] but it is desirable to understand, at one view, the precise effect of a decision or vote, whatever may be the nature of the question.

Rule as applied to bills.

In passing bills, a greater freedom is admitted in proposing questions, as the object of different stages is to afford the opportunity of reconsideration; and an entire bill may be regarded as one question, which is not decided until it has passed. Upon this principle it is laid down by Hatsell, and is constantly exemplified, "that in every stage of a bill, every part of the bill is open to amendment, either for insertion or omission, whether the same amendment has been, in a former stage, accepted or rejected."[2] The same clauses or amendments may be decided in one manner by the committee, in a second by the house on the report, and, until recently, might have been dealt with again on the third reading; and yet the inconsistency of the several decisions will not be manifest when the bill has passed.

On the 8th August 1836, a clause was, after divisions, added on the report of the Pensions Duties Bill, to exempt the pension of the Duke of Marlborough from the provisions of that bill.[3] On the third reading an amendment

[1] Chapter XVIII. [2] 2 Hatsell, 135. [3] 91 Com. J. 762.

was proposed, by leaving out this clause, and the question that it should stand part of the bill was, on division, passed in the negative.[1] In 1864, in committee on the Poisoned Flesh Prohibition Bill, a clause was added providing that the bill should not extend to Ireland. This clause was left out on the consideration of the bill, as amended; and lastly, on the third reading, the bill was recommitted, when a proviso was introdnced imposing restrictions upon the operation of the bill in Ireland.[2] But in committee on a bill, a new clause or amendment will not be allowed, in contravention of a previous decision of the committee, unless there be some substantial variation in its purport.[3]

Bills once passed or rejected.

When bills have ultimately passed, or have been rejected, the rules of both houses are positive, that they shall not be introduced again: but the practice is not strictly in accordance with them. The principle is thus stated by the Lords, 17th May 1606:[4]

"That when a bill hath been brought into the house, and rejected, another bill of the same argument and matter may not be renewed and begun again in the same house in the same session where the former bill was begun: but if a bill begun in one of the houses, and there allowed and passed, be disliked and refused in the other, a new bill of the same matter may be drawn and begun again in that house whereunto it was sent; and if, a bill being begun in either of the houses, and committed, it be thought by the committees that the matter may better proceed by a new bill, it is likewise holden agreeable to order, in such case, to draw a new bill, and to bring it into the house."

It was also declared, in a protest, signed by seven lords, 23rd February 1691, in reference to the Poll Bill, in which a proviso contained the substance of a bill which had dropped in the same session; "that a bill having been dropped, from a disagreement between the two houses, ought not, by the known and constant methods of proceed-

[1] 91 Com. J. 817.

[2] 119 Ib. 425. 436, &c.; 176 Hans. Deb. 1611; Mr. Speaker's note-book.

[3] Poor Relief (Ireland) Bill, 29th May 1862. Representation of the People Bill, 17th June and 1st July 1867 (amendments of Mr. Laing and Mr. Horsfall). Parliamentary and Municipal Elections Bill, 2nd May 1872; amendment of Mr. Samuelson, for distinguishing candidates by colours. 211 Hans. Deb., 3rd Ser., 137.

[4] 2 Lords' J. 435.

ings, to be brought in again in the same session."[1] The Lords, nevertheless, agreed to that bill, but with a special entry, that "to prevent any ill consequences from such a precedent for the future, they have thought fit to declare solemnly, and to enter upon their books, for a record to all posterity, that they will not hereafter admit, upon any occasion whatsoever, of a proceeding so contrary to the rules and methods of Parliament."[2]

In the Commons it was agreed for a rule, 1st June 1610, that "no bill of the same substance be brought in the same session.[3] But a second bill has been ordered, with a special entry of the reasons which induced the House to depart from the usage of Parliament.[4] And when part of a bill has been omitted by the Lords, and the Commons have agreed to such amendment, the part so omitted has been renewed, in the same session, in the form of a separate bill.[5]

Lords' Journals inspected.

A common practice, however, has since grown up, with the sanction of both houses, by which these rules are partially disregarded. When the Lords, out of regard for the privileges of the Commons, defer the consideration of the amendments made by the committee on a bill, received from the Commons, for a period beyond the probable duration of the session, it is usual, if such amendments be otherwise acceptable, for the Commons to appoint a committee to inspect the Lords' Journals; and, on receiving their report, which explains the position of the bill in the Lords, to order another bill to be brought in. This bill often has precisely the same title, but its provisions are so far altered as to conform to the amendments made in the Lords. With these alterations it is returned to the Lords, received by them without any objection, and passed as if it

[1] 15 Lords' J. 90.
[2] 15 Ib. 90.
[3] 1 Com. J. 434. See also 158 Hans. Deb., 3rd Ser., 1348.
[4] 62 Com. J. 61.
[5] Drainage (Ireland) bill; and Drainage and Improvement of Land (Ireland) bill, 1863.

were an original bill. Such a bill is not identically the same as that which preceded it: but it is impossible to deny that it is "of the same argument and matter," and "of the same substance." This proceeding is very frequently resorted to, when the Lords' committee have inserted clauses imposing rates or tolls, or have otherwise amended a bill involving charges upon the people.[1] The House of Lords cannot agree to such clauses or amendments, without infringing upon the privileges of the Commons, and the bill is therefore dropped: but the Commons, by bringing in another bill, and adopting the amendments to which, in themselves, they are willing to agree, avoid any clashing of privileges; and the bill is ultimately agreed to by both houses.

Bills laid aside.

A proceeding somewhat similar may arise, when a bill is returned from the Lords to the Commons, with amendments which the latter cannot, consistently with their own privileges, entertain. In that case, the proper course, if the Commons be willing to adopt the amendments, is to order the bill to be laid aside, and another to be brought in.[2]

A third proceeding resembles the two last, in principle, but differs from both, in form. When the Lords pass a bill and send it down to the Commons, with clauses that trench upon the privileges of the latter, it is usual for the Commons to lay the bill aside, and to order another, precisely similar, to be brought in, which, having passed through all its stages, they send up to the Lords exactly in the same manner as if the bill had originated in the Commons.

Lords search Commons' Votes.

If a bill has been postponed or laid aside in the Commons, the Lords sometimes appoint a committee to search the Votes and Proceedings of the Commons,[3] and may, if they think fit, introduce another bill, and send it to the Commons.

[1] See further Chapter XXI.

[2] 91 Com. J. 777. 810; 100 Ib. 664; 103 Ib. 888. Deodands Abolition bill, 1845. Revenue Charges bill, 1854.

[3] 75 Lords' J. 590; 77 Ib. 505. See also *supra*, p. 241.

But in all the preceding cases, the disagreement of the two houses is only partial and formal, and there is no difference in regard to the entire bill. If the second or third reading of a bill sent from one house to the other, be deferred for three or six months, or if it be rejected, there is no regular way of reviving it in the same session; and, so imperative has that regulation been esteemed, that in 1707, Parliament was prorogued for a week, in order to admit the revival of a bill which had been rejected by the Lords.[1] In 1831, Parliament was prorogued from the 20th October to the 6th December, in order to bring in the third reform bill.[2]

Prorogation, to renew bills.

The rule has been construed with equal strictness in preventing the introduction of a second bill, at variance with the provisions of a bill already passed; and, in 1721, a prorogation for two days was resorted to, in order to enable Acts relating to the South Sea Company to be passed, contradictory to clauses contained in another Act of the same session. On the latter occasion, the Commons presented an address to the king, recommending a resort to the expedient of a prorogation, "as the ancient usage and established rules of Parliament make it impracticable" otherwise to prepare the bills.[3] Such a rule, however, was inconveniently restrictive of the discretionary power of Parliament: while recognised, it was not invariably observed,[4] and now it has been wholly set aside.

Amending Acts of the same session.

In order to avoid the embarrassment arising from the irregularity of dealing with a statute passed in the same session, it had, for many years, been the practice to add a clause to every bill, enacting, "that this Act may be amended or repealed by any Act to be passed in this session of Parliament." And by 13 & 14 Vict. c. 21, "every Act may be altered, amended, or repealed in the same session of

[1] 2 Burnet's Own Times, 467. 2 Coxe's Walpole, 8. 2 Hatsell, 127.
[2] 86 Com. J. 935.
[3] 19 Com. J. 639.
[4] 4th May 1772. 33 Ib. 726.

Parliament, any law or usage to the contrary notwithstanding; and the usual clause has, therefore, been omitted from all Acts passed since the session of 1850.

Proposals for suspending or resuming bills.

Schemes have also been introduced by high authorities, to provide, either by statute or resolution, for the suspension of bills, from one session to another, or for resuming proceedings upon such bills, notwithstanding a prorogation. These schemes have been discussed in Parliament, and carefully considered by committees: but various considerations have restrained the legislature from disturbing the constitutional law by which Parliamentary proceedings are discontinued by a prorogation.[1]

CHAPTER XI.

RULES OF DEBATE: MANNER AND TIME OF SPEAKING: RULES AND ORDERS TO BE OBSERVED BY MEMBERS IN SPEAKING, AND IN ATTENDING TO DEBATES.

Manner of speaking.

In the House of Lords, a peer addresses his speech "to the rest of the lords in general."[2] In the Commons, a member addresses the speaker; and it is irregular for him to direct his speech to the house, or to any party on either side of the house. A member is not permitted to read his speech, but may refresh his memory by a reference to notes.

[1] Earl of Derby's Parliamentary Proceedings Adjournment bill in 1848; 98 Hans. Deb., 3rd Ser., 329. 981. 1255; 99 Ib. 246. 100 Ib. 131. Report of Commons' Committee on Public Business, 1848. Report of Lords' Committee on Public Business, 1861. Report of Commons' Committee on Business of the House, 1861. Marquess of Salisbury's Parliamentary Proceedings bill in 1869; 194 Hans. Deb. 588, &c. Report of Joint Committee on Despatch of Business in Parliament, 1869.

[2] Lords' S. O. No. 17.

Reading speeches.

The reading of written speeches, which has been allowed in other deliberative assemblies, has never been recognised in either house of Parliament. A member may read extracts from documents, but his own language must be delivered *bonâ fide*, in the form of an unwritten composition. Any other rule would be at once inconvenient, and repugnant to the true theory of debate.[1]

In both houses, proper respect is paid to the assembly, by every member who speaks rising in his place,[2] and standing uncovered. The only exception to the rule is in cases of sickness or infirmity, when the indulgence of a seat is frequently allowed, at the suggestion of a member, and with the general acquiescence of the house.[3] In both houses, also, during a division, with closed doors, it is the practice for members to speak sitting and covered; but this practice is confined to questions of order, arising out of the division, and does not apply to distinct motions proposed for the adoption of the house. On the 10th July 1844, after the numbers had been reported by the tellers, but before they

[1] 1 Com. J. 494. 7 Hans. Deb. 208. 17 Ib., 3rd Ser., 1169, 19th Feb. 1846, Interference of peers at elections. But it seems to have been permitted in the Lords, 26th June 1845; 15 Ib., 3rd Ser., 1190. See also 1 Com. J. 272; and 17 Hans. Deb., 3rd Ser., 1281 (Mr. Cobbett). "14th May 1805, Mr. Jeffrey having read a long written speech without interruption, before putting the question, I called the attention of the house to it, and stated this to be a practice contrary to the received and established usage of debate, and necessary to be remarked upon, lest it should grow into a precedent: to which interposition the house entirely assented. At the close of the debate, Mr. J. again reading written arguments as a reply, I was called upon to interfere; and it seemed to be agreed that this was not to be done at all, except so far as resorting to notes and figures. I had in my mind the reprobation of this very practice of reading written arguments; as mentioned in vol. ii. of Grey's Debates." Lord Colchester's Diary, ii. 60. 24th Feb. 1813, Mr. Cochrane Johnstone then read a short speech, apologising for reading it (instead of delivering it in the usual way) by alleging indisposition, and the house allowed it. Ib. ii. 432.

[2] A member may speak from the galleries appropriated to members; but the practice is inconvenient, and not often resorted to.

[3] Lord Wynford, 64 Lords' J. 167. Mr. Wynn, Hans. Deb., 9th March 1843; and 9th July 1844 (Sudbury Disfranchisement), Lord Lyndhurst.

had been declared by the speaker, motions were made for disallowing the votes of certain members on the ground of personal interest, and as the doors were still closed, the member who made the first motion was proceeding to speak sitting and covered: but the speaker desired him to rise in his place, and the debate proceeded in the same way as if the doors had been opened.

Time of speaking.

It has been said, when treating of questions, that the proper time for a debate is after a question has been proposed by the speaker, and before it has been put; and it is then that members generally address the house or the speaker, and commence the debate. But there are occasions upon which, from irresolution, or the belief that others are about to speak, members permit the speaker to put the question, before they rise in their places. They are, however, entitled to be heard even after the voice has been given in the affirmative; but if it has also been given in the negative, they have lost their opportunity; the question is fully put, and nothing remains but the vote. It is explained in the standing orders of the Lords, "that when a question hath been *entirely* put, by the speaker, no lord is to speak against the question before voting;"[1] and a question being entirely put, implies that the voices have also been given.

On the 3rd May 1819, on the debate on the Catholic Question, the speaker had fully put the question (saying he thought the "noes" had it), when several members, including Mr. Peel and Mr. Plunket, desired to address the house; but the speaker ruled that the debate could not be re-opened, and that if members desired to speak upon the point of order, their observations could only be delivered in the way of advice to the speaker, by the members sitting and covered.[2]

[1] Lords' S. O. No. 22.

[2] 40 Hans. Deb. 79. 3rd May 1819, "after one negative voice given, Plunket pretended that he wished to speak, but this Mr. Wynn's solitary point of order withstood, and it was

On one occasion, in the Commons (27th January 1789), the debate was re-opened, after the question had been declared by the speaker to have been resolved in the affirmative: for a member had risen to speak before the question had been put, but had been unobserved by the speaker; and it was admitted that he had a right to be heard, although the question had been disposed of, before his offer to speak had attracted attention.[1]

Who entitled to speak.

From the limited authority of the speaker of the House of Lords, in directing the proceedings of the house, and in maintaining order, the right of a peer to address their lordships depends solely upon the will of the house. When two rise at the same time, unless one immediately gives way, the house call upon one of them to speak; and if each be supported by a party, there is no alternative but a division. Thus, on the 3rd February 1775, the Earl of Dartmouth and the Marquis of Rockingham both rising to speak, it was resolved, upon question, that the former "shall now be heard."[2] So again on the 28th May 1846, in a debate on the Corn bill, the Earl of Eglintoun, Lord Beaumont, and the Earl of Essex rose together. The Duke of Richmond moved that Lord Eglintoun be heard; but the lord chancellor then rose and moved that Lord Essex be heard, and having immediately put the question, declared that the contents had it. His decision was demurred to, but Lord Essex proceeded with his speech. On the 4th January 1811, in committee on the state of the nation, several peers rose to speak, and the chairman, Lord Walsingham, being appealed to, stated that he had no authority to call upon any noble lord to speak, in preference to another, that being a question which the house alone could determine. In the debate which ensued, several lords concurred in opinion, that though the ultimate determination

In the Lords.

not permitted." Mr. Rickman to Lord Colchester. Lord Colchester's Diary, iii. 74.

[1] 2 Hatsell, 102, *n.*

[2] 34 Lords' J. 306.

was with the house, yet the lord in the chair, or on the woolsack, ought in the first instance to point out the noble lord who appeared to him to have risen first.[1] And it appears that if the lord chancellor rises from the woolsack, to address the house, it is customary to give him precedence over other peers who may rise at the same time.[2]

In the Commons.

In the Commons, the member who, on rising in his place, is first observed by the speaker, is called upon to speak: but his right to be first heard depends, in reality, upon the fact of his having been the first to rise, and not upon his being first in the speaker's eye. It is impossible for the speaker to embrace all parts of the house in his view at the same moment; and it may sometimes be obvious to the house, that he has overlooked a member who had the best claim to be heard. When this occurs, it is not unusual for members to call out the name of the member who, in their opinion, is entitled to be heard; and, when the general voice of the house appears to give him the preference, the member called upon by the speaker usually gives way. If the dispute should not be settled in this manner, a question might be proposed, "which member was first up;" or, "which member should be heard;" or "that a particular member be heard."[3] But this mode of proceeding is very rarely adopted, and should be avoided, except in extreme cases, more especially as a member is often called upon to speak, not because he was up the first, but because the house desire to hear him. It is the speaker's duty to watch the members as they rise to speak; and, from his position in the house, he is better able to distinguish those who have

[1] 18 Hans. Deb. 719, *n.*

[2] Debate on Roman Catholic Relief Bill, 3rd April 1829, when the lord chancellor and Lord Kenyon rose together (see speeches of Lords Holland and Farnham).

[3] See debate, 12th March 1771, when a question arose between Col. Barré and Mr. Onslow, and the speaker's call upon the latter was disputed; 2 Cavendish Deb. 386.

priority than the house itself, and the decision should be left with him. In the Commons, not less than twenty members have often been known to rise at once, and order can only be maintained by acquiescence in the call of the speaker.[1]

When two members rise together.

It occasionally happens that two members rise at the same time, and on one of them being called upon by the speaker, the house are desirous of hearing the other. If the latter be a minister of the Crown, or have any other claim to precedence, the former rarely persists in speaking, but yields at once to the desire of the house. If, however, they should both be men of equal eminence, or supported by their respective parties; and if neither will give way, no alternative remains but a question that one of them "be now heard," or "do now speak." On the 20th March 1782, Lord North and the Earl of Surrey rose together; and on Mr. Fox moving that the latter be now heard, Lord North, with happy adroitness and presence of mind, spoke to that question, and announced his resignation, which he had been anxious to communicate to the house.[2] A similar contest arose between Mr. Pitt and Mr. Fox on the 20th February 1784;[3] and more recently between Sir R. Peel and Sir F. Burdett.[4] On the 9th July 1850, Mr. Locke being called upon by Mr. Speaker to proceed with a motion, of which he had given notice, and several members objecting on account of the lateness of the hour, Mr. Forbes Mackenzie rose in his place to speak upon the question that certain petitions do lie upon the table, and objection having been

[1] On the 26th Feb. 1872, observations were made concerning a supposed "Speaker's List" by which his choice was governed. Such a list, however, was disclaimed by the speaker himself, and by Mr. Gladstone on behalf of himself and the Secretary to the Treasury, 209 Hans. Deb., 3rd Ser., 1032.

[2] 1 Memorials of Fox, 295.

[3] 39 Com. J. 943. On the 12th January another dispute had arisen. Mr. Pitt claimed precedence, as having a message from the king; but as Mr. Fox had been in possession of the house before Mr. Pitt rose, and was interrupted by members coming to be sworn, the speaker decided in his favour; 24 Hans. Parl. Hist. 269.

[4] 86 Com. J. 517.

made to his proceeding,—a motion was made, "that Mr. Mackenzie do now speak," which was put and negatived; and Mr. Locke proceeded with his motion.[1] On the 18th May 1863, in committee of supply, the solicitor general and Mr. Nicol both rising, the former was called by the chairman: but several members calling upon the latter, a motion was made that Mr. Solicitor General do now speak. This motion, however, was withdrawn, and Mr. Nicol proceeded to address the committee. In a debate upon a bill, the priority of a member might formerly have been determined in another way, as, on the 6th June 1604, it was agreed for a rule, "that if two stand up to speak to a bill, he against the bill (being known by demand or otherwise) to be first heard."[2] This rule, however, may now be treated as obsolete; for, in order to elicit discussion, in the most convenient form, the speaker calls upon members on either side of the house alternately, who answer one another.

Precedence to member who has moved the adjournment of debate.

On resuming an adjourned debate, the member who moved its adjournment is, by courtesy, entitled to speak first; but for that purpose, he must rise in his place at the proper time, in order to avail himself of his privilege. On the 6th May 1853, the speaker said, "According to the practice of the house, when any honourable member moves the adjournment of a debate, he is said to be in possession of the house: but it is not on that account that the speaker calls on that member when the question is put, on the resumption of the debate; because unless he rises and addresses the chair, it is not the duty of the speaker to call upon him. It often happens, indeed, when a member moves the adjournment of a debate, he does not take advantage of his privilege of opening the debate, on the following night. If, however, he rises in his place when the question is put, and another member rises at the same time, he is entitled to precedence: but that depends upon the member himself, who ought to

[1] 105 Com. J. 509. 112 Hans. Deb., 3rd Ser., 1190. [2] 1 Com. J. 232.

rise in his place, if he wishes to claim any privilege."[1] But it has been ruled that where a member has moved or seconded a motion for the adjournment of a debate, and his motion has been negatived, he is not entitled to speak again to the main question;[2] and that the member whose subsequent motion for adjournment had been agreed to, was, therefore, entitled to be called upon, on resuming the debate.[3]

When a debate has been adjourned, upon a Wednesday, at a quarter before six, by virtue of the standing order, while a member was speaking, he has been allowed to resume the adjourned debate, and continue his speech.[4] A member having spoken upon the question that a bill be now read a second time, without concluding with an amendment, cannot afterwards move such an amendment, having been already heard upon the original question.[5]

New members.

A new member, who has not previously spoken, is generally called upon, by courtesy, in preference to other members, rising at the same time: but this privilege will not be conceded unless claimed within the Parliament to which the member was first returned.[6]

Priority, where notices of amendments given.

A difficulty sometimes arises where notices have been given of several amendments to a question, as on going into committee of supply. The member who rises first, after the question has been proposed, is entitled to be heard: but the members who have given notices of amendments are ordinarily called, as far as possible, in the order in which they stand upon the notice paper.

Must speak to the question.

When a member is in possession of the house (as it is

[1] 126 Hans. Deb., 3rd Ser., 1246. This rule has since been repeatedly maintained by the speaker, as in the case of Mr. Warren, 9th Feb. 1858.

[2] Mr. Beresford Hope and Mr. Cavendish Bentinck, 15th and 16th March 1869; 194 Hans. Deb., 3rd Ser., 1451. 1497.

[3] Galway Election, 8th May 1872 (Sir Colman O'Loghlen). See also p. 325.

[4] Hypothec (Scotland) Bill, 21st July 1869 (Mr. Orr Ewing).

[5] 191 Hans. Deb., 3rd Ser., 1083.

[6] On the 25th March 1859, it was claimed in vain for Mr. Beaumont, who had sat in the previous Parliament.

called), he has not obtained a right to speak generally: but is only entitled to be heard upon the question then under discussion, or upon a question or amendment intended to be proposed by himself,[1] or upon a point of order. Whenever he wanders from it, he is liable to be interrupted by cries of "question;" and in the Commons, if the topics he has introduced are clearly irrelevant, the speaker acquaints him that he must speak to the question. Thus, he has pointed out that, upon a motion for the appointment of a Committee upon the Game Laws, a member could not enter into a criticism of the various provisions of certain bills before the house, for the amendment of those laws.[2] The relevancy of an argument is not always perceptible,[3] and the impatience and weariness of members after a long debate, often cause vociferous interruptions of "question," which do not signify that the member who is speaking is out of order, so much as that the house are not disposed to listen to him. These cries are disorderly, and, when practicable, are repressed by cries of "order" from the house and the speaker: but nevertheless, when not mistimed, they often have the intended effect, and discourage a continuance of the debate. When they are immoderate and riotous, they not only disgrace the proceedings of the house, but frequently defeat the object they are intended to attain, by causing an adjournment of the debate.

Considerable laxity has prevailed in allowing irrelevant speeches upon questions of adjournment,[4] which are regarded as exceptions to the general rule. In 1849, the speaker endeavoured to enforce a stricter practice, and called upon members to confine their observations upon

[1] 59 Hans. Deb., 3rd Ser., 507.

[2] 195 Ib. 1718.

[3] See the celebrated debate, 6th May 1791, on the Quebec Government bill, in which Mr. Burke insisted upon the relevancy of Paine's Rights of Man, and the recent events of the French revolution. 2 Lord J. Russell's Life of Fox, 253.

[4] See Hans. Deb., 23rd and 26th June, and 24th and 25th Aug. 1848.

such motions, to the question properly before the house, viz., whether the house should adjourn or not.[1] But the house has not since acquiesced in any limitation of the supposed privilege of members, to speak upon every subject but that of the colourable question of adjournment. Until the discontinuance of the weekly question of adjournment from Friday till Monday, in 1861, an inconvenient latitude of discussion was also permitted. Nor did the house deprive members of this opportunity of raising general debates, without an equivalent: but required the committee of supply to be the first order of the day on Friday, when there is the like freedom of discussion.

No amendment admissible to question of adjournment, except as to time.

But though irrelevant discussions have been permitted on questions of adjournment, it should be well understood that no amendment can be proposed to such questions unless it relate to the time of adjournment. On Friday, 25th April 1856, on the question of adjournment till Monday, a noble lord rose to move an amendment relating to a day of thanksgiving on the restoration of peace, when the speaker acquainted him that such an amendment was quite irregular; the only amendment which could be moved, being that the house shall adjourn to some other day than Monday.[2] On Tuesday, the 27th May 1856, it was ruled,[3] that on the question "that the house, at its rising, do adjourn till Friday," an amendment to leave out the words "at its rising," in order to insert the word "now," was not admissible; the question "that this house do now adjourn" being always put as a distinct question, having no reference to the time at which it is proposed that the house should meet again. Accordingly, as soon as the question had been agreed to, a motion was made that this house do *now* adjourn.[4]

[1] See Hans. Deb., 5th Feb. and 22nd Feb. 1849. Ash Wednesday adjournments, 21st Feb. 1860; 156 Hans. Deb. 1473; 12th Feb. 1861; 161 Ib. 344.

[2] 141 Hans. Deb., 3rd Ser., 1541.

[3] Privately.

[4] 111 Com. J. 221.

Orders of the day and notices not to be discussed on question of adjournment.

Nor under cover of a question of adjournment, is it competent for a member to discuss the subject of any order of the day, as the house has appointed another time for its consideration; nor of any motion of which notice has been given. On Friday, the 7th March 1856, a member rose on the question for adjournment till Monday, to call attention to the Metropolis Local Management bill, which stood as an order of the day, for the same day. On proceeding to advert to that bill, the speaker interposed, and stated that it was highly irregular to anticipate, in this manner, the discussion of the order of the day, more particularly as the honourable member had a notice on the paper to move the postponement of the bill.[1] On Friday, 17th July 1857, on the question of adjournment till Monday, a noble lord raised a debate upon the subject of a bill of which he had given notice for the same evening; and being called to order, endeavoured to set himself right by moving "that this house do now adjourn," a course which, in no respect, corrected the irregularity.[2]

The same restraint is imposed on members, in debates on going into committee of supply and ways and means, where a similar latitude of discussion is otherwise permitted. On the 5th June 1856, on the question that the speaker do leave the chair to go into committee of supply, a discussion upon the Tenant Right bill, which had been read a second time and appointed for committee on a future day, was stopped by the interposition of the speaker.[3] And the same rule has been uniformly enforced in all later cases, whenever attempts have been made to anticipate the discussion of motions or bills already appointed for consideration.[4] In June

[1] 140 Hans. Deb., 3rd Ser., 2037.

[2] 146 Ib. 1699. See also 176 Ib. 1797; 185 Ib. 886; 187 Ib. 775; 189 Ib. 91.

[3] 142 Hans. Deb. 1026.

[4] 153 Hans. Deb., 3rd Ser., 333; 157 Ib. 1166. 1804; 159 Ib. 348; 165 Ib. 799; 167 Ib. 1139; 189 Ib. 91. 96; 210 Ib., 3rd Ser., 1815, &c.; 211 Ib. 1281; 212 Ib. 1430.

1863, Mr. Osborne having given notice of an amendment to a motion of Mr. Dillwyn, relative to the Church of Ireland, withdrew that notice of amendment after the first night's debate, and gave notice of it, as an independent amendment, on going into supply. This course was obviously irregular, as anticipating the adjourned debate upon Mr. Dillwyn's motion; and the matter was ultimately arranged by discharging the order for resuming the adjourned debate; and the ground being thus cleared, Mr. Osborne, on the 26th June, brought forward his amendment on going into committee of supply.

When no question is before the house.

It is a rule that should always be strictly observed, that no member may speak except when there is a question already before the house, or the member is about to conclude with a motion or amendment. The only exceptions which are admitted are, 1, in putting questions to particular ministers or other members of the house; and, 2, in explaining personal matters: but in either of these cases, the indulgence given to a particular member, will not justify a debate.

Questions to other members.

1. By the practice of both houses, questions are frequently put to ministers of the Crown[1] concerning any measure pending in Parliament, or other public event; and to particular members who have charge of a bill, or who have given notices of motions, or are otherwise concerned in some business before the house.[2] A question may be

[1] Perhaps the earliest example of a question to ministers is to be found on the 9th February 1721, when Lord Cowper asked a question of the administration, and was answered by the Earl of Sunderland. 7 Parl. Hist. 709.

[2] 192 Hans. Deb., 3rd Ser., 717. Of late years, questions have been permitted to the chairman, or other member, of the Metropolitan Board of Works, as being concerned in the administration of the metropolis. Hans. Deb., 14th March 1859; 12th May 1864; 27th April and 14th May 1868; 13th May 1869; 22nd June 1871; 14th March 1872. 209 Hans. Deb., 3rd Ser., 1954. Also to the chairman or other members of commissions; 18th Feb., 12th March, 1868; 12th April 1869; 15th Feb., 11th April, 30th June, 1870; 28th March and 25th May 1871. Also to trustees of the British Museum; 26th April 1869; 6th and 16th May 1870.

asked concerning the intentions of the Government, in any matters of legislation or administration, but not as to their abstract opinions upon general questions of policy.[1] When a question affects the character of a member, or reflects upon the conduct of other persons, it is more properly the subject of a motion which can be conveniently debated.[2] Notice is usually given of such questions in the Votes,[3] unless they relate to some matter of urgency, or to the course of public business. All questions should be limited, as far as possible, to matters immediately connected with the business of Parliament,[4] and should be put in such a manner as not to involve opinion, argument, or inference: nor are any facts to be stated, unless they be necessary to make the question intelligible.[5] In the same manner, an answer should be confined to the points contained in the question, with such explanation only as will render the answer intelligible: but a certain latitude is sometimes permitted, by courtesy, to ministers of the Crown.[6] It is irregular to refer to past debates, either in a question or answer, but a departure from this rule has been occasionally permitted, in order to clear up misunderstandings.[7] For the sake of greater freedom of discussion, the adjournment of the house has sometimes been moved, in putting questions; but such a course has generally been reserved for occasions of urgency;[8] and, if otherwise used, has been met by

[1] 204 Hans. Deb., 3rd Ser., 1764.

[2] See Mr. Speaker's observations, 210 Hans. Deb., 3rd Ser., 39; 213 Ib. 554.

[3] It was not until 1849 that a special place was assigned to such questions in the notice paper; and I can find no example of a question being printed at all before 1835 (27th February and 25th March 1835).

[4] See Speaker's ruling, 22nd Feb. 1849; 102 Hans. Deb., 3rd Series, 1100; and 155 Ib. 1345; and 22nd May 1862; 166 Ib. 2027; and 29th April 1864; 174 Ib. 1914.

[5] Hans. Deb., 13th Dec. 1847. See also Hans. Deb., 12th June 1853 (Sir F. Baring); 4th, 11th, and 18th May 1855; 17th July 1857; 6th May 1864; 175 Hans. Deb., 3rd Ser., 101; 206 Ib. 1602; 208 Ib. 781. 783. 842; 210 Ib. 1088.

[6] 161 Hans. Deb., 3rd Ser., 497; 174 Ib. 1423; 209 Ib. 466; 210 Ib. 153. 596.

[7] 210 Ib. 251.

[8] 196 Ib. 19.

the house with impatience and disfavour. Sometimes when an answer has been given, further questions are addressed to the minister upon the same subject, but no observations or comments are then permitted to be made.[1] In the Lords, a greater license of debate is permitted, in putting and answering questions, and commenting upon them, without any question being before the house.[2] In 1867, the Lords' committee on public business, while recognising and approving this practice, recommended that notice of questions should be given in the minutes, except in cases of urgency. And on the 2nd April 1868, it was resolved "That it is desirable when it is intended to make a statement or raise a discussion, on asking a question, that notice of the question should be given in the orders of the day and notices."[3]

If questions are put to ministers, when a question for adjournment has been proposed, a minister will not be permitted to answer a second question, as he has already spoken.[4] Sometimes replies have been given to questions addressed to ministers on a previous day, without a repetition of the question.[5]

Personal explanation.

2. In regard to the explanation of personal matters, the house is usually indulgent; and will permit a statement of that character to be made without any question being before the house. General arguments, however, or observations beyond the fair bounds of explanation, or too distinct a reference to previous debates, ought not to be used by the member who is permitted to speak, under these circumstances:[6] but if his object be clearly confined to the removal of any impression concerning his own conduct or words, he is generally permitted to proceed without interruption. This indulgence, however, should be granted with caution; for,

[1] 211 Hans. Deb., 3rd. Ser., 1994; 212 Ib. 298. 1624.
[2] Hans. Deb., 14th Dec. 1847.
[3] 100 Lords' J. 103.
[4] Hans. Deb., 11th Feb. 1853, &c. &c.
[5] Hans. Deb., 17th May 1852 (Frome Vicarage).
[6] Lord C. Paget, 14th March 1864; 173 Hans. Deb., 3rd Ser., 1913.

unless discreetly used, it is apt to lead to irregular debates.[1] In one case personal explanations were permitted to be made by one member, on behalf of another who was abroad.[2] Explanations have also been allowed on behalf of gentlemen whose conduct had been reflected upon in debate.[3]

To speak once only.

It is a rule strictly to be observed in both houses, that no member shall speak twice to the same question, except 1st, to explain some part of his speech which has been misunderstood; 2ndly, in certain cases, to reply at the end of a debate; and 3rdly, in committee.

To explain.

1. It is an ancient order of the House of Lords, that,

"No man is to speak twice to a bill at one time of reading it, or to any other proposition, unless it be to explain himself in some material part of his speech: but no new matter, and that not without the leave of the house first obtained. That if any lord stand up and desire to speak again, or to explain himself, the lord keeper is to demand of the house first whether the lord shall be permitted to speak or not; and that none may speak again to the same matter, though upon new reason arising out of the same; and that none may speak again to explain himself, unless his former speech be mistaken, and he hath leave given to explain himself; and if the cause require much debate, then the house to be put into committee."[4]

In the Commons, the privilege of explanation is allowed without actual leave from the house: but when a member rises to explain, and afterwards adverts to matters not strictly necessary for that purpose, or endeavours to strengthen by new arguments his former position, which he alleges to have been misunderstood, or to reply to other

[1] See Hans. Deb. 10th and 12th Feb. 1857; 16th April 1858; 4th June 1863 (Holyhead Packets). Lord Castlereagh, Lord J. Russell, and Mr. Disraeli, 19th April 1849; also cases of Mr. Keogh, Hans. Deb., 16th June 1853; of Mr. Stuart Wortley, 17th March, and of Mr. T. Duncombe, 18th March 1859; Lord Clarence Paget and Lord Robert Montagu, 23rd Feb. 1863; Mr. Sheridan and the Chancellor of the Exchequer, 17th March 1864; 174 Hans. Deb., 3rd Ser., 191; Mr. Lowe, Lord R. Cecil, Mr. Disraeli, and Mr. Walter, 18th April 1864; 174 Ib. 1203. Mr. Baillie Cochrane, the Chancellor of the Exchequer, and Mr. Roebuck, 28th March 1865; 178 Ib. 372.

[2] Mr. Bright, 16th March 1860, for Mr. Cobden.

[3] Case of Dr. Beke, 29th Nov. 1867; 190 Hans. Deb., 3rd Ser., 422; case of Mr. Reed, 210 Ib. 403.

[4] 3 Lords' J. 590. Lords' S. O. No. 21.

members, he is called to order by the house or by the speaker, and is desired by the latter to confine himself to simple explanation.[1] But here, again, a greater latitude is permitted in cases of personal explanation, where a member's character or conduct has been impugned in debate.[2]

Proper time for explanation.

The proper time for explanation is at the conclusion of the speech which calls for it: but it is a common practice for the member desiring to explain, to rise immediately the statement is made to which his explanation is directed, when, if the member in possession of the house gives way and resumes his seat, the explanation is at once received: but if the member who is speaking declines to give way, the explanation cannot then be offered.[3]

A second speech has been allowed to a minister, who had spoken early in the debate, in answer to a question which had rendered a ministerial explanation necessary,[4] or to answer a question addressed to him after he had spoken;[5] and also to members who had merely spoken upon an incidental issue, and not upon the main question.[6]

Reply.

2. A reply is only allowed, by courtesy, to the peer or member who has proposed a substantive question to the house. It is not conceded to a member who has moved any order of the day, as that a bill be read a second time; nor to the mover of an instruction to a committee of the whole

[1] 165 Hans. Deb., 3rd Ser., 1032; 167 Ib. 1216. Mr. Lowe and Lord R. Cecil, 13th May 1864; 175 Hans. Deb., 3rd Ser., 462.

[2] 15th June 1846 (Sir R. Peel and Mr. Disraeli).

[3] See explanation of this rule as stated by the speaker, 24th Nov. 1819; 41 Hans. Deb. 157. 27th March 1860, Mr. Gladstone and Mr. Whiteside; 157 Hans. Deb., 3rd Ser., 1407. Mr. Gladstone and Mr. Newdegate, 27th May 1861; 163 Ib. 83. Mr. Denman and the Chancellor of the Exchequer, 19th May 1865; 179 Ib. 572. Mr. Maguire and Sir R. Peel, 11th May 1866; 183 Ib. 800. Mr. Lawson and Mr. Gathorne Hardy, 22nd May 1868; 192 Ib. 749; 208 Ib. 343. 1190; 213 Ib. 728.

[4] Lord J. Russell, 3rd Feb. 1852; 119 Hans. Deb., 3rd Ser., 88. 153.

[5] The Attorney General, 8th April 1864; 174 Hans. Deb., 3rd Ser., 695.

[6] Government Annuities bill, 7th March 1864 (the Chancellor of the Exchequer and Mr. H. B. Sheridan); 173 Hans. Deb., 3rd Ser., 1549.

house,[1] or to a select committee,[2] or of a motion for referring a bill to a committee specially constituted, and enlarging its terms of reference,[3] nor to the mover of any amendment,[4] or of the previous question, which is in the nature of an amendment.[5] Under these circumstances, it is not uncommon for a member to move an order of the day, or second a motion without remark, and to reserve his speech for a later period in the debate. Formerly a member who had moved an order of the day, or seconded a motion, was precluded from afterwards addressing the house upon the same question, or was heard merely by the indulgence of the house:[6] but of late years, the option of speaking at a subsequent period of the debate has been conceded, whenever the moving or seconding is confined to the formality of raising the hat. But in moving an amendment a member cannot avail himself of this privilege,[7] as he must rise in his place to move an amendment, and thus cannot avoid addressing the house, however shortly. And as a member who moves an amendment cannot speak again, so a member who speaks in seconding an amendment, is equally unable to speak again upon the original question, after the amendment has been withdrawn, or otherwise disposed of. In both cases, the members have already spoken while the question was before the house, and before the amendment had been proposed from the chair. In some cases the indulgence of the house has been extended so far as to allow an explanatory reply, on questions which do not come within the ordinary rules of courtesy.[8] A reply

[1] 186 Hans. Deb., 3rd Ser., 1443.

[2] Conventual and monastic institutions, 9th May 1870 (Mr. Matthews).

[3] Charing Cross and Victoria Embankment bill, 1873 (Lord Elcho).

[4] 174 Hans. Deb., 3rd Ser., 2022.

[5] 8th Feb. 1858 (Operations in India, Mr. Disraeli).

[6] 28th Feb. 1821, 4 Hans. Deb., N. S., 1013.

[7] Mr. Bernal Osborne, 21st July 1851; 118 Hans. Deb., 3rd Ser., 1147. 1163. Mr. Lowe, 11th June 1855; 138 Ib. 1300. 1756.

[8] Hans. Deb., 1st March 1844 (Mr. T. Duncombe's amendment). 5th July 1855 (Police in Hyde Park).

has been permitted upon a substantive motion for an adjournment,[1] but is never allowed upon a motion for adjournment to supersede a question.

In committee.

3. In a committee of the whole house the restriction upon speaking more than once is altogether removed, as will be more fully explained in speaking of the proceedings of committees.[2]

New question.

The adjournment of a debate does not enable a member to speak again upon a question, when the discussion is renewed on another day, however distant:[3] but directly a new question has been proposed, as, "that this house do now adjourn," "that the debate be adjourned," "the previous question,"[4] or an amendment, members are at liberty to speak again; as the rule applies strictly to the prevention of more than one speech to each separate question proposed. Upon the same grounds, a member who has already spoken, may rise and speak again upon a point of order or privilege: but a member who has already spoken to a question, may not rise again to move an amendment, or the adjournment of the house, or of the debate, or any similar question, though he may speak to these new questions when proposed by other members. For the same reason, a member who has moved an amendment, which has been negatived, cannot speak to the original question, having already spoken to that question, in moving that amendment.[5] A member speaking to a question of order, must confine himself to that question, and may not refer to the general tenour of a speech.[6] So also a member, who has moved or seconded the adjournment of a debate, may not afterwards rise to move or second the adjournment of the house, having already spoken in the debate. On the 17th June 1870, no

[1] 139 Hans. Deb., 3rd Ser., 463. 17th March 1857; 144 Ib. 2398. 5th Feb. 1858. 4th April 1859 (Ministerial explanations). 11th April 1867; 186 Hans. Deb., 3rd Ser., 1505; 207 Ib. 1350; 210 Ib. 1846.

[2] Chapter XIII.

[3] 1 Com. J. 245.

[4] 65 Hans. Deb., 3rd Ser., 826.

[5] 190 Ib. 674; 211 Ib. 870; 212 Ib. 1118.

[6] 195 Ib. 2008.

less than ten divisions took place upon questions of adjournment, in order to defeat the Clerical Disabilities Bill. On this occasion, the rule which prevents a member, who has already moved or seconded a motion for adjournment, from making another similar motion,—or in other words which prohibits a member from speaking twice to the same question, —was strictly enforced; and as the minority was reduced to 21, it happened that not more than six members of that party were in a condition to move further adjournments. Hence, if the contest had been continued, the force of the minority would have been exhausted by three more divisions. At this period, however, the struggle was brought to a close; a division was taken on the main question, and the house adjourned at a quarter before four in the morning.

Order in debate.

For preserving decency and order in debate, various rules have been laid down, which, in the Lords, are enforced by the house itself, and in the Commons by the speaker in the first instance, and, if necessary, by the house. The violation of these rules any member may notice, either by a cry of "order," or by rising in his place, and, in the Lords, addressing the house, and in the Commons, the speaker. The former mode of calling attention to a departure from order is, perhaps, not strictly regular, and sometimes interrupts a member, and causes disturbance: but it is often practised with good effect: it puts the member who is irregular in his conduct upon his guard, arouses the attention of the house and the speaker, and prevents a speech to order, a reply, and perhaps angry discussion. When a member speaks to order, he should simply direct attention to the point complained of, and submit it to the decision of the house or the speaker.

Rules for members speaking.

The rules for the conduct of debates divide themselves into two parts, viz.: I., such as are to be observed by members addressing the house; and, II., those which regard the behaviour of members listening to the debate.

I. (1.) A member, while speaking to a question, may not

allude to debates of the same session upon any question or bill not then under discussion; (2), nor speak against, or reflect upon, any determination of the house, unless he intends to conclude with a motion for rescinding it; (3), nor allude to debates in the other house of Parliament; (4), nor use the Queen's name irreverently, or to influence the debate; (5), nor speak offensive and insulting words against the character or proceedings of either house; (6), nor against particular parties or members of the house, in which he is speaking.

A few words will suffice to explain the object and application of each of these rules.

Referring to prior debates.

(1.) It is a wholesome restraint upon members, to prevent them from reviving a debate already concluded: for otherwise a debate might be interminable; and there would be little use in preventing the same question or bill from being offered twice in the same session, if, without being offered, its merits might be discussed again and again.[1] The rule, however, is not always strictly enforced: peculiar circumstances may seem to justify a member in alluding to a past debate, or to entitle him to indulgence, and the house and the speaker will judge, in each case, how far the rule may fairly be relaxed. On the 30th August 1841, for instance, an objection was taken that a member was referring to a preceding debate, and that it was contrary to one of the rules of the house. The speaker said "that rule applied in all cases: but where a member had a personal complaint to make, it was usual to grant him the indulgence of making it."[2] And again on the 7th March 1850, he said, "The house is always willing to extend its indulgence, when an honourable member wishes to clear up any misrepresentation of his character: but that indulgence ought to be

[1] See Hans. Deb., 28th Feb., 1845 (where Mr. Roche had come from Ireland on purpose to ask Mr. Roebuck a question, but was stopped by Mr. Speaker).

[2] 59 Hans. Deb., 3rd Ser., 486. See also 65 Ib. 642, 26th July 1842.

strictly limited to such misrepresentations, and ought not to extend to any observations other than by way of correction."[1] Again, on the 3rd March 1856, a noble lord was allowed to refer to a former debate by way of personal explanation, but directly he proposed to introduce new matter he was stopped by the speaker, with the general acquiescence of the house;[2] and the same rule was explained and enforced on the 26th February 1858,[3] on the 4th June 1863, and on other occasions. Nor is a member allowed to refer to a speech made in a committee of the whole house.[4]

There appears, however, to be a technical difficulty in the strict enforcement of the rule in committee, where a debate in another committee is referred to, as one committee is not supposed to be cognisant of the debates of another.[5]

Reading from newspapers.

A member may not read any portion of a speech, made in the same session, from a printed book or newspaper.[6] This rule, indeed, applies strictly to all debates whatsoever, the publication of them being a breach of privilege: but of late years it has been relaxed, by general acquiescence, in favour of speeches delivered in former sessions.[7] It is also irregular to read extracts from newspapers, letters, or other documents referring to debates in the house.[8]

Indeed, until 1840, the reading of any extracts from a newspaper, whether referring to debates or not, had been restrained as irregular. On the 9th March 1840, the

[1] 7th March 1850 (Mr. Campbell and Mr. B. Osborne), 109 Hans. Deb., 3rd Ser., 462. See also 30th March 1846 (Sir J. Graham and Mr. Shaw), 85 Ib. 300.

[2] 140 Hans. Deb., 3rd Ser., 1708.

[3] Sir R. Bethell, Mr. Scott, and Mr. Warren; 149 Hans. Deb., 3rd Ser., 10–14.

[4] 154 Ib. 985.

[5] In Committee of Supply, Education Vote, 12th June, 1856. 142 Hans. Deb. 1354.

[6] 203 Ib. 1613, &c.

[7] On the 17th May 1794, Sir. W. Young objected to the reading of a speech of Sir R. Walpole: but the speaker decided it to be regular, drawing a distinction between the speeches of dead and living members. 31 Parl. Hist. 527.

[8] Hans. Deb., 27th Feb. 1846 (Mr. Ferrand). Mr. Stuart Wortley 17th March 1859; also 154 Hans. Deb., 3rd Ser., 1200; 160 Ib. 339; 168 Ib. 1198; 183 Ib. 826; 191 Ib. 2030; 206 Ib. 1330; 208 Ib. 1604.

speaker having called a member to order, who was reading from a newspaper, as part of his speech, Sir Robert Peel said, it would be drawing the rule too tight if members were restrained from reading relevant extracts from newspapers; and after a debate, the member proceeded to read from the newspaper, with the acquiescence of the house.[1] And on the 14th February 1856, when a member was called to order for reading from a newspaper, the speaker stated that, on a former occasion when he had attempted to enforce this rule, he had been overruled by the house.[2] And again, on the 9th March 1857, in Committee of Supply, the chairman, adverting to the preceding cases, decided that this rule could no longer be enforced.[3]

Reflecting upon votes of the house.

(2.) The objections to the practice of referring to past debates apply with greater force to reflections upon votes of the house; for these not only revive discussion upon questions already decided, but are also uncourteous to the house, and irregular in principle, inasmuch as the member is himself included in, and bound by, a vote agreed to by a majority.[4] It is very desirable that this rule should be observed: but its enforcement is a matter of considerable difficulty, as principles are always open to argument, although they may have been affirmed or denied by the house.

Allusions to debates in the other house.

(3.) The rule that allusions to debates in the other house are out of order, is convenient for preventing fruitless arguments between members of two distinct bodies who are unable to reply to each other, and for guarding against recrimination and offensive language, in the absence of the party assailed: but it is mainly founded upon the understanding that the debates of the other house are not known, and that the house can take no notice of them. Thus when, in 1641, Lord Peterborough complained of words spoken

[1] 52 Hans. Deb., 3rd Ser., 1063–1065.
[2] 140 Ib. 764.
[3] 144 Ib. 2106.
[4] 2 Hatsell, 234, *n.* See also 185 Hans. Deb., 3rd Ser., 1122; 186. Ib. 885.

concerning him by Mr. Tate, a member of the Commons, "their lordships were of opinion that this house could not take any cognisance of what is spoken or done in the House of Commons, unless it be by themselves, in a parliamentary way, made known to this house."[1] The daily publication of debates in Parliament offers a strong temptation to disregard this rule. The same questions are discussed by persons belonging to the same parties in both houses, and speeches are constantly referred to by members, which this rule would exclude from their notice.[2] The rule has been so frequently enforced, that most members, in both houses, have learned a dexterous mode of evading it, by transparent ambiguities of speech; and although there are few orders more important than this for the conduct of debate, and for observing courtesy between the two houses, none, perhaps, are more generally transgressed. An ingenious orator may break through any rules, in spirit, and yet observe them to the letter.[3]

Allusions to reports or proceedings.

The rule applies to debates only, and not to reports of committees of the other house. On the 9th June 1848, objection was taken that a member was quoting from a report made to the House of Lords, which had not been communicated to the Commons: but the speaker decided that the member was not out of order.[4] Nor can the rule be extended to the votes or proceedings of either house, as they are recorded and printed by authority.[5]

[1] 4 Lords' J. 582.

[2] See Lords' Debates, 3rd April 1845 (Lord Ashburton); Commons' Debates, 4th April 1845 (Lord J. Russell), on the Ashburton Treaty; Commons' Debates (Mr. Ffrench), 21st and 23rd July 1845; and Lords' Debates (Lord Brougham), 22nd and 24th July 1845, on the Irish Great Western Railway bill; Lords' Debates, 27th June 1848 (Earl Grey); and Commons' Debates 2nd April 1852 (Mr. Cobden); Lords' and Commons' Debates, 26th Feb. and 1st March 1858 (Sir R. Bethell and Lord Campbell), on the Conspiracy bill, 139 Hans. Deb., 3rd Ser., 4. 69; and 177 Ib. 1557; 183 Ib. 1098, as examples of the violation of this rule.

[3] See discussions, 29th May 1868; 192 Hans. Deb., 3rd Ser., 1077; 208 Ib. 1682.

[4] Hans. Deb., 9th June 1848.

[5] Since 1860, the Lords' Minutes

(4.) An irreverent use of her Majesty's name would be rebuked by any subject out of Parliament; and it is only consistent with decency, that no member of the legislature should be permitted openly to insult the Queen, in the presence of her Parliament. Members have not only been called to order on this account, but have been reprimanded, or committed to the custody of the serjeant, and even sent to the Tower.[1] Queen's name used in debate.

The irregular use of the Queen's name to influence a decision of the house is unconstitutional in principle, and inconsistent with the independence of Parliament. Where the Crown has a distinct interest in a measure, there is an authorised mode of communicating her Majesty's recommendation or consent, through one of her ministers:[2] but her Majesty cannot be supposed to have a private opinion, apart from that of her responsible advisers; and any attempt to use her name in debate, to influence the judgment of Parliament, would be immediately checked and censured.[3] To influence a debate.

On the 12th November 1640, it was moved that some course might be taken for preventing the inconvenience of his Majesty being informed of anything that is in agitation in this house before it is determined.[4] In the remonstrance of the Lords and Commons to Charles I., 16th December 1641, it was declared,

"That it is their ancient and undoubted right and privilege that your majesty ought not to take notice of any matter in agitation or debate in either of the houses of Parliament, but by their information or agreement; and that your majesty ought not to propound any condition, provision, or limitation, to any bill or act in debate or preparation in either house of Parliament, or to manifest or declare your consent or dissent, approbation or dislike, of the same, before it be presented to your majesty in due course of Parliament," &c.[5]

On the 17th December 1783, the Commons resolved,

have been placed upon the table of the House of Commons, for reference. 159 Hans. Deb., 3rd Ser., 856.

[1] 1 Com. J. 51; 15 Ib. 70; 18 Ib. 49. D'Ewes, 41. 244.

[2] See Chapter XVII.

[3] 1 Com. J. 697.

[4] 2 Ib. 27.

[5] 2 Ib. 344.

"That it is now necessary to declare, that to report any opinion or pretended opinion of his majesty, upon any bill or other proceeding depending in either house of Parliament, with a view to influence the votes of the members, is a high crime and misdemeanor, derogatory to the honour of the Crown, a breach of the fundamental privileges of Parliament, and subversive of the constitution of this country."[1]

On the 26th February 1808, in the debate on Mr. Canning's motion for papers relating to Denmark, Mr. Tierney said "the right hon. gentleman had forfeited the good opinion of the country, the house, and, as I believe, of his sovereign." This the speaker held to be such an introduction of the personal opinion of the sovereign into debate, respecting the conduct of a member of the house, as justified Mr. Tierney's being called to order.[2] On the 19th March 1812, complaints were made, in the House of Lords, of the use of the Prince Regent's name in debate.[3]

Explanations of the rule.

The rule, however, must not be construed so as to exclude a statement of facts, by a minister, in which the Queen's name may be concerned. In the debate on the Foreign Loans bill, 24th February 1729, Sir R. Walpole stated that he was "provoked to declare what he knew, what he had the king's leave to declare, and what would effectually silence the debate." Upon which his statement was called for, and he declared that a subscription of 400,000 *l.* was being raised in England for the service of the emperor. When he sat down, Mr. Wortley Montagu complained that the minister had introduced the name of the king to "overbear their debates:" but he replied, that as a privy councillor he was sworn to keep the king's counsel secret, and that he had therefore asked his majesty's permission to state what he knew, but which, without his leave, he could not have divulged; and thus the matter appears to have ended, without any opinion being expressed by the speaker, or by the house.[4]

[1] 39 Com. J. 842.

10 Hans. Deb. 757; 2 Lord Colchester's Diary, 139.

[3] 22 Hans. Deb. 51 *et seq.*

[4] 7 Chandler's Debates, 61. 64.

On the 9th May 1843, Sir Robert Peel said, "On the part of her Majesty I am authorised to repeat the declaration made by King William," in a speech from the throne, in reference to the legislative union between Great Britain and Ireland. On the 19th, an objection was raised to these expressions: but the speaker, after noticing the irregularity of adverting to former debates, expressed his own opinion,

"That there was nothing inconsistent with the practice of the house in using the name of the sovereign in the manner in which the right hon. baronet had used it. It is quite true that it would be highly out of order to use the name of the sovereign in that house, so as to endeavour to influence its decision, or that of any of its members, upon any question under its consideration: but he apprehended that no expression which had fallen from the right hon. gentleman could be supposed to bear such a construction."

And Lord John Russell explained, that "the declaration of the sovereign was made by the right hon. baronet's advice, because any personal act or declaration of the sovereign ought not to be introduced into that place;" to which Sir R. Peel added, "that he had merely confirmed, on the part of her Majesty, by the advice of the government, the declaration made by the former sovereign."[1]

Words against Parliament, or either house.

(5.) It is obviously unbecoming to permit offensive expressions against the character and conduct of Parliament to be used without rebuke; for they are not only a contempt of that high court, but are calculated to degrade the legislature in the estimation of the people. If directed against the other house, and passed over without censure, they would appear to implicate one house in discourtesy to the other; if against the house in which the words are spoken, it would be impossible to overlook the disrespect of one of its own members. Words of this objectionable character are never spoken but in anger; and, when called to order, the member must see the error into which he has been misled, and retract or explain his words, and make a satisfactory apology. Should he fail to satisfy the house in this manner, he will be

[1] 69 Hans. Deb., 3rd Ser., 24. 574.

punished by a reprimand, or by commitment.[1] It is most important that the use of such words should be immediately reproved, in order to avoid complaints and dissension between the two houses.

In 1614 Dr. Richard Neile, Bishop of Lincoln, uttered some words which gave offence to the Commons, and they complained of them in a message to the Lords, to which they received an answer that the bishop

"Had made solemn protestation, upon his salvation, that he had not spoke anything with any evil intention to that house, which he doth with all his heart duly respect and highly esteem, expressing with many tears his sorrow that his words were so misconceived, and strained further than he ever meant, which submissive and ingenuous behaviour of himself had satisfied the Lords; and their lordships assure the Commons that if they had conceived the lord bishop's words to have been spoken, or meant, to cast any aspersion of sedition or undutifulness upon that house, their lordships would forthwith have proceeded to the censuring and punishing thereof with all severity."

Their lordships added, that hereafter no member of their house ought to be called in question, when there is no other ground thereof but public and common fame only.[2] In 1701, a complaint was made by the Commons of expressions used by Lord Haversham, at a free conference, and numerous communications ensued, which were terminated by a prorogation.[3] On the 14th December 1641, exception being taken to words used by Lord Pierpoint, he was commanded to withdraw, and committed to the custody of the gentleman usher.[4] On the 20th May 1642, the Lord Herbert of Cherbury, having used offensive words in debate, was commanded to withdraw, and committed to the custody of the gentleman usher: but on the following day was released upon his submission.[5] On the 14th March 1770, exception was taken to certain words used in debate by the Earl of Chatham; and

[1] 9 Com. J. 147. 760; 10 Ib. 512; 11 Ib. 580. Mr. Duffy's case 5th May 1853; 108 Com. J. 461.

[2] 2 Lords' J. 713. See also 4 Lords' J. 582. 1 Com. J. 496. 499, &c. 2 Hatsell, 73.

[3] 13 Com. J. 629. 634. 637. 639.

[4] 4 Lords' J. 475.

[5] 5 Ib. 77.

the house resolved, "that nothing had appeared to this house to justify his assertion."[1]

Disrespectful or abusive mention of a statute would seem to be partly open to the same objections as improper language applied to the Parliament itself; for it imputes discredit to the legislature which passed it, and has a tendency to bring the law into contempt. More license, however, is allowed in speaking of a statute, than is consistent with this view of its danger; and, though intemperate language should always be repressed, it must be admitted that the frequent necessity of repealing laws justifies their condemnation in debate; and the severity of the terms in which they are condemned, can only be regarded as an argument for their repeal. Against a statute.

(6.) In order to guard against all appearance of personality in debate, it is a rule, in both houses, that no member shall refer to another, by name. In the upper house, every lord is alluded to by the rank he enjoys, as the "noble marquess," or the "right reverend prelate;" and in the Commons, each member is distinguished by the office he holds, by the place he represents, or by other designations, as "the noble lord the secretary for foreign affairs," the "honourable" or "right honourable gentleman the member for York," or the "honourable and learned member who has just sat down."[2] The use of temperate and decorous language is never more desirable than when a member is canvassing the opinions and conduct of his opponents in debate. The warmth of his own feelings is likely to betray him into hasty and unguarded expressions, which the excitement of his adversaries will exaggerate; and he cannot be too careful in restraining himself within those bounds which Parliament has wisely established. The imputation of bad motives, or motives different from those acknowledged; Personal allusions. Against members.

[1] 32 Lords' J. 476.

[2] Mr. Berkeley was called to order, 20th March 1860, for referring to members by name, as having spoken, in former sessions, against the ballot. 157 Hans. Deb., 3rd Ser., 939.

misrepresenting the language of another, or accusing him, in his turn, of misrepresentation; charging him with falsehood or deceit; or contemptuous or insulting language of any kind,—all these are unparliamentary, and call for prompt interference.[1] In one case it was proposed, some days after a debate, to express the regret of the house that a minister had not withdrawn certain imputations upon a member. The motion was not treated as a question of privilege entitled to precedence, nor was it held to relate to specific words used in debate, to which exception ought to have been taken at the time; and the motion merely served as an occasion for further explanations.[2]

In the Lords.

The rules of the House of Lords upon this point are very distinctly laid down in their standing orders, 13th June 1626:

"To prevent misunderstanding, and for avoiding of offensive speeches, when matters are debating, either in the house, or at committees, it is for honour sake thought fit, and so ordered, that all personal, sharp, or taxing speeches be forborne; and whosoever answereth another man's speech, shall apply his answer to the matter, without wrong to the person; and as nothing offensive is to be spoken, so nothing is to be ill taken, if the party that speaks it shall presently make a fair exposition, or clear denial of the words that might bear any ill construction; and if any offence be given in that kind, as the house itself will be very sensible thereof, so it will sharply censure the offender, and give the party offended a fit reparation and a full satisfaction."[3]

Words of heat.

On the 10th December 1766, notice was taken of some

[1] For examples of unparliamentary expressions, see Debate, 3rd March 1864; 173 Hans. Deb., 3rd Ser., 1406; and cases of Viscount Palmerston and Mr. Layard, 27th April 1855, and of Mr. Gathorne Hardy and Mr. Layard, 7th July 1864 (Vote of Confidence) as to the words "calumnious charges," 137 Hans. Deb., 3rd Ser., 1895; 176 Ib. 1003: also 186 Ib. 173. 422. 441. 884; 187 Ib. 953; 188 Ib. 1895; ("Dodge" ruled to be an unparliamentary expression; 193 Ib. 1297; so also "factious opposition," Ib. 1741; and "jockeyed," 198 Ib. 512; and accusing a member of having "deliberately raised a false issue," 205 Ib. 1743; and having "passed a somewhat impertinent censure," 206 Ib. 1685. But not "calumnious," 201 Ib. 1455. See also 211 Ib. 852; 212 Ib. 222. 1653; 213 Ib. 750, &c.

[2] 174 Hans. Deb., 3rd Ser., 306.

[3] Lords' S. O. No. 19. See also 12 Lords' J. 31; Mirror of Parl. 1833, p. 2855.

words that had passed between the Duke of Richmond and the Earl of Chatham; upon which they were required by the house to declare, upon their honour, "that they would not pursue any further resentment."[1] Lords.

The Lords are also prompt in their interference to prevent quarrels in debate between their members,[2] and extend their jurisdiction over them even further, by ordering

"That if any lord shall conceive himself to have received any affront or injury from any other member, either in the Parliament house, or at any committee, *or in any of the rooms* belonging to the Lords' House of Parliament, he shall appeal to the Lords in Parliament for his reparation; which if he shall not do, but occasion or entertain quarrels, declining the justice of the house, then the lord that shall be found therein delinquent shall undergo the severe censure of the House of Parliament."[3]

Sometimes the Lords have extended this principle to the prevention of quarrels which have arisen out of the house. On the 6th November 1780, the Lords being informed that the Earl of Pomfret had sent a challenge to the Duke of Grafton, upon a matter unconnected with the debates or proceedings of Parliament, declared the earl "guilty of a high contempt of this house," and committed him to the Tower.[4]

The House of Commons will insist upon all offensive words being withdrawn, and upon an ample apology being made, which shall satisfy both the house and the member to whom offence has been given.[5] If the apology be refused, or if the offended member decline to express his satisfaction, the house take immediate measures for preventing the quarrel from being pursued further, by committing both the members to the custody of the serjeant: whence they are not released until they have submitted themselves to the house, Commons.

[1] 31 Lords' J. 448.
[2] 16 Ib. 378; Earl Rivers and Earl of Peterborow, 8th Feb. 1698.
[3] Lords' S. O. No. 16.
[4] 36 Lords' J. 191.
[5] 78 Com. J. 224; 96 Ib. 401; 103 Ib. 442, 443; 107 Ib. 143. Sir R. Peel and the O'Donoghue, 1862; 117 Ib. 64; 165 Hans. Deb., 3rd Ser., 617; 167 Ib. 854. Sir R. Peel and Mr. Maguire, 11th May 1866; 183 Ib. 801.

and given assurance that they will not engage in hostile proceedings.[1]

In 1770, words of heat having arisen between Mr. Fox and Mr. Wedderburn, the former rose to leave the house, upon which the speaker ordered the serjeant to close all the doors, so that neither Mr. Fox nor Mr. Wedderburn should go out till they had promised the house that no further notice should be taken of what had happened.[2]

If words of heat arise in a committee of the whole house, they are reported by the chairman, and the house interposes its authority to restrain any hostile proceedings.[3]

Challenges.

The Commons will also interfere to prevent quarrels between members, arising from personal misunderstanding in a select committee, as in the case of Sir Frederick Trench and Mr. Rigby Wason, on the 10th June 1836. One of those gentlemen, on refusing to assure the house that he would not accept a challenge *sent from abroad*, was placed in custody; and the other, by whom the challenge was expected to be sent, was also ordered to be taken; nor were either of them released until they had given the house satisfactory assurances of their quarrel being at an end.[4]

The sending a challenge by one member to another, in consequence of words spoken by him in his place in Parliament, is a breach of privilege, and will be dealt with accordingly, unless a full and ample apology be offered to the house.[5] But it does not appear that the speaker or the house would interfere to prevent a quarrel from being proceeded with, where it had arisen from a private misunderstanding, and not from words spoken in debate, or in any

[1] 8 Hans. Deb., N. S., 1091; Lord Althorp and Mr. Sheil, 5th Feb. 1834; 89 Com. J. 9. 11; 91 Ib. 484, 485; 92 Ib. 270; 93 Ib. 657. 660.

[2] MS. Officers and Usages of the House of Commons, 1805, p. 138.

[3] 106 Com. J. 313.

[4] 91 Ib. 464. 468. 34 Hans. Deb., 3rd Ser., 410. 486.

[5] Case of Mr. Roebuck and Mr. Somers, 16th June 1845; 100 Com. J. 589. 81 Hans. Deb., 3rd Ser., 601. In 1798, however, the speaker did not interfere to prevent the duel between Mr. Pitt and Mr. Tierney: but went himself to Putney, where it was fought. 1 Lord Sidmouth's Life, 204. 206.

proceedings of the house, or of a committee.[1] In such cases if any interference should be deemed necessary, information would probably be given to the police. But in 1701, Mr. Mason, a member, having sent a challenge to Mr. Molyneux, a merchant, the house required his assurance that the matter should go no further.[2]

Words taken down.

Whenever any disorderly words have been used by a member in debate, notice should be immediately taken of the words objected to; and if any member desire that they may be taken down, the speaker or chairman, if it appear to be the pleasure of the house or the committee, will direct the clerk to take them down.[3] Even the speaker's own words have been, in this way, directed to be taken down.[4] The Commons have agreed, "that when any member had spoke between, no words which had passed before could be taken notice of, so as to be written down in order to a censure."[5] And on the 9th April 1807, the speaker decided that the words of Dr. Duigenan could not be taken down, though Lord Howick had immediately risen to order, and had objected to the words used. But another member and the speaker had spoken to the question of order, before the house expressed a wish to have the words taken down.[6] And again, when objection was taken to words, after a question had been put from the chair, it was ruled to be too late.[7] The same principle would seem to apply, if the member had afterwards been permitted to continue his speech without interruption; and this appears to be the rule in the Lords, where the words are required to be

[1] Private memorandum, 22nd Feb. 1849. But see case of Mr. Layard and Mr. Harvey Lewis, where offensive language had been used, in the division lobby, concerning a speech delivered at a public meeting, 16th May 1867; 122 Com. J. 221.

[2] 13 Ib. 444.

[3] 2 Hatsell, 269. 272 *n.* 66 Com. J. 391; 68 Ib. 322; 93 Ib. 312, 313. Debate 20th March 1851; 115 Hans. Deb., 3rd Ser., 266. 275.

[4] Feb. 16th, 1770; 1 Cavendish Deb. 463.

[5] 2 Hatsell, 269 *n.* See also 69 Hans. Deb., N. S., 566. 93 Com. J. 307. 312, 313; but see 13 Ib. 123.

[6] 9 Hans. Deb., 326.

[7] 205 Hans. Deb., 3rd Ser., 403.

taken down *instanter*.[1] If the words be taken down in a committee of the whole house, they are ordered to be reported, and the house deals with the matter as it may think fit.[2]

Citing documents not before the house.

Another rule, or principle of debate may be here added. A minister of the Crown is not at liberty to read, or quote from a despatch or other state paper, not before the house, unless he be prepared to lay it upon the table. This restraint is similar to that rule of evidence, in courts of law, which prevents counsel from citing documents which have not been produced in evidence. The principle is so reasonable that it has not been contested; and when the objection has been made in time, it has been generally acquiesced in. It has also been admitted that a document which has been cited, ought to be laid upon the table of the house, if it can be done without injury to public interests.[3] The same rule, however, cannot be held to apply to private letters or memoranda. On the 18th May 1865, the attorney-general, on being asked by Mr. Ferrand if he would lay upon the table a written statement and a letter to which he had referred, on a previous day, in answering a question relative to the Leeds bankruptcy court, replied that he had made a statement to the house upon his own responsibility, and that the documents he had referred to being

[1] 48 Hans. Deb., 3rd Ser., 321, 17th June 1839 (Beer Bill).

[2] Case of Mr. More, 3rd June 1626, 1 Com. J. 866; of Mr. Shippen, 4th December 1717, 18 Ib. 653; of Mr. Duffy, 5th May, 1853, 108 Ib. 461. 466.

[3] See Motion of Mr. Adam, March 4th, 1808, to censure Mr. Canning for having read to the house despatches and parts of despatches, none of which had then been communicated to the house, and some of which the house had determined should not be produced. 10 Hans. Deb., 1st Ser., 898; 2 Lord Colchester's Diary, 141. Mr. Canning and Mr. Tierney, 11th February 1818; 37 Hans. Deb., 338. Debate in Committee of Supply, 17th July 1857 (Sir C. Wood); 146 Hans. Deb., 3rd Ser., 1759. See Debate 23rd May 1862, on the Longford Election, in which Sir Robert Peel referred to information received by the Government without citing documents; and comments made upon this course, and precedents cited. 166 Hans. Deb., 3rd Ser., 2116. Also statement of rule by Viscount Palmerston, 12th May 1863; and 176 Hans. Deb., 3rd Ser., 962.

private, he could not lay them upon the table. Lord R. Cecil contended that the papers, having been cited, should be produced: but the speaker declared that this rule applied to public documents only.[1] Indeed, it is obvious that as the house deals only with public documents, in its proceedings, it could not thus incidentally require the production of papers which, if moved for separately, would be refused as beyond its jurisdiction. Members not connected with the government have also cited documents in their possession, both public and private,[2] which were not before the house: but though the house is equally unable to form a correct judgment from partial extracts, inconvenient latitude has sometimes been permitted, which it is doubtful whether any rule but that of good taste could have restrained.

The opinions of the law officers of the Crown, being confidential, are not usually laid before Parliament, nor cited in debate; and their production has frequently been refused: but if a minister deems it expedient that such opinions should be made known, for the information of the house, he is entitled to cite them in debate.[3]

Rules to be observed by members not speaking.

II. The rules to be observed by members present in the house during a debate are: (1), to keep their places; (2), to enter and leave the house with decorum; (3), not to cross the house irregularly; (4), not to read books, newspapers, or letters; (5), to maintain silence; (6), not to hiss or interrupt.[4]

To keep their places. Lords.

(1.) "The lords in the upper house are to keep their dignity and order in sitting, as much as may be, and are not to move out of their places without just cause, to the hindrance of others that sit near them, and the disorder of the house; but when they must cross the house, they are to make obeisance to the cloth of estate."[5]

[1] 179 Hans. Deb., 3rd Ser., 489.

[2] Debate, 8th March 1855, on naval operations in the Baltic, 137 Hans. Deb., 3rd Ser., 261.

[3] Riots at Belfast, 17th Feb. 1865; 177 Hans. Deb., 3rd Ser., 354, 355.

[4] Another rule, "that no member do take tobacco," is unworthy of a place in the text. See 11 Com. J. 137.

[5] Lords' S. O. No. 16.

Commons. In the Commons, also, the members should keep their places, and not walk about the house, or stand at the bar, or in the passages. On the 10th February 1698, it was ordered,

"That every member of this house, when he comes into the house, do take his place, and not stand in the passage as he comes in or goes out, or sit or stand in any of the passages to the seats, or in the passage behind the chair, or elsewhere that is not a proper place."[1]

If after a call to "order," members who are standing at the bar or elsewhere do not disperse, the speaker orders them to take their places; when it becomes the duty of the serjeant-at-arms to clear the gangway, and to enforce the order of the speaker, by desiring those members who still obstruct the passage, immediately to take their places. If they refuse or neglect to comply, or oppose the serjeant in the execution of his duty, he may at once report their names to Mr. Speaker.

Entering the house.

Lords. (2.) "Every lord that shall enter the house, is to give and receive salutations from the rest, and not to sit down in his place, unless he hath made an obeisance to the cloth of estate."[2]

Commons. Members of the Commons who enter or leave the house during a debate must be uncovered, and should make an obeisance to the chair while passing to or from their places.[3]

Crossing before members speaking.

Lords. (3). In the Lords, it has been seen that care should be taken in the manner of crossing the house, and it is especially irregular to pass between the woolsack and any peer who is addressing their lordships, or between the woolsack

Commons. and the table. In the Commons, members are not to cross between the chair and a member who is speaking,[4] nor between the chair and the table, nor between the chair and the mace, when the mace is taken off the table by the serjeant. When they cross the house, or otherwise

[1] 12 Com. J. 496; 19 Ib. 425.

[2] Lords' S. O. No. 15.

[3] See 8 Com. J. 264.

[4] This rule, however, is not observed when a member is speaking from the third or any higher bench from the floor.

leave their places, they should make obeisance to the chair.

(4). They are not to read books, newspapers, or letters in their places.[1] This rule, however, must now be understood with some limitations; for although it is still irregular to read newspapers, any books and letters may be referred to by members preparing to speak, but ought not to be read for amusement, nor for business unconnected with the debate.

(5.) Silence is required to be observed in both houses. Silence.
In the Lords, it is ordered,

"That if any lord have occasion to speak with another lord in this house, while the house is sitting, they are to go together below the bar, or else the speaker is to stop the business in agitation."[2] Lords.

In the Commons all members should be silent, or should converse only in a whisper. Whenever the conversation is so loud as to make it difficult to hear the debate, the speaker exerts his authority to restore silence by repeated cries of "order." On the 5th May 1641, it was resolved, Commons.

"That if any man shall whisper or stir out of his place to the disturbance of the house at any message or business of importance, Mr. Speaker is ordered to *present his name* to the house, for the house to proceed against him as they shall think fit."[3]

(6.) They are not to disturb a member who is speaking by hissing,[4] exclamations,[5] or other interruption. The following is the declaration of this rule by the House of Commons, 22nd January 1693:— Hissing or interruption.

"To the end that all the debates in this house should be grave and orderly, as becomes so great an assembly, and that all interruptions should be prevented, be it ordered and declared, that no member of this house do presume to make any noise or disturbance whilst any member shall be orderly debating, or whilst any bill, order, or other matter shall be in reading or opening; and in case of such noise or disturbance,

[1] 4 Com. J. 51.

[2] Lords' S. O. No. 20.

[3] 2 Com. J. 135.

[4] 1 Ib. 473. "Motion against hissing, to the interruption and hindrance of the speech of any man in the house, well approved of." 1604. 1 Com. J. 935.

[5] 13 Lords' J. 387 (E. of Clarendon and M. of Winchester, 28th November 1678).

that Mr. Speaker do call upon the member, by name, making such disturbance; and that every such person shall incur the displeasure and censure of the house."[1]

This rule is too often disregarded. In the House of Commons, the most disorderly noises are sometimes made, which, from the fulness of the house, and the general uproar maintained when 500 or 600 members are impatiently waiting for a division, it is scarcely possible to repress. On the 19th March 1872, while strangers were excluded, notice was taken of the crowing of cocks, and other disorderly noises proceeding from members, principally behind the chair; and the speaker condemned them as gross violations of the orders of the House; and could not refrain from expressing the pain with which he had heard them.[2]

"Hear, hear."

Without any such noises, however, there are words of interruption which, if used in moderation, are not unparliamentary: but when frequent and loud, cause serious disorder. The cry of "question" has already been noticed, and its improper use condemned. Another is that of "hear, hear," which has been sanctioned by long parliamentary usage, in both houses. It is generally intended to denote approbation of the sentiments expressed, and in that form, is a flattering encouragement to a member who is speaking; it is not uttered till the end of a sentence, and offers no interruption to the speech. But the same words may be used for very different purposes, and pronounced with various intonations. Instead of implying approbation, they may distinctly express dissent, derision, or contempt; and if exclaimed with a loud voice and before the completion of a sentence, no mode of interruption can be more distracting or offensive to the member who is speaking. Whenever exclamations of this kind are obviously intended to interrupt a speech, the speaker calls to "order," and, if per-

[1] 11 Com. J. 66. See also 1 Ib. 152.

[2] 210 Hans. Deb., 3rd Ser., 307.

sisted in, would be obliged to name the disorderly members, and leave them to be censured by the house.[1]

Misbehaviour to members in the house.

On the 15th December 1792, Mr. Whitmore having disturbed the debate by a disorderly interruption, was "named" by the speaker, and directed to withdraw.[2] On the 8th June 1852, "complaint being made by a member in his place, that Mr. Feargus O'Connor had been guilty of misbehaviour to him; Mr. Speaker informed Mr. O'C., that if he persisted in such conduct, it would be necessary for him to call the particular attention of the house towards him, in order that the house might take such steps as would prevent a repetition of it for the future. Upon which Mr. O'Connor rose in his place, and addressed the house, without expressing his regret for what had occurred. Whereupon Mr. Speaker called upon him *by name;* and Mr. O'Connor then apologised to the house for his misconduct."[3]

Interruptions in committee.

Indecent interruptions of the debate or proceedings, in a committee of the whole house, are regarded in the same light as similar disorders while the house is sitting. On the 27th February 1810, the committee on the expedition to the Scheldt reported that a member had misbehaved himself during the sitting of the committee, making use of profane oaths, and disturbing their proceedings. Mr. Fuller, the member complained of, was heard to excuse himself; in doing which he gave great offence by repeating and persisting in his disorderly conduct; upon which Mr. Speaker called upon him *by name*, and he was ordered to withdraw. It was immediately ordered, *nem. con.*, that "for his offensive words and disorderly conduct he be taken into the custody of the serjeant." The offence for which he was ultimately committed, may appear to have been his disorderly conduct before the house; but there can be no doubt that if, with-

[1] 1 Com. J. 483; 2 Ib. 135. See anecdotes of Mr. Speaker Onslow and Sir F. Norton, as to the calling of members by name; 1 Lord Sidmouth's Life, 692; Fox's Speech, 23rd April 1804.

[2] 30 Parl. Hist. 113.

[3] 107 Com. J. 277.

out giving fresh offence, he had failed in excusing himself for his misconduct in the committee, the house would have inflicted some punishment, either by commitment or reprimand. This member further aggravated his offence by breaking from the serjeant, and returning into the house in a very violent and disorderly manner, whence he was removed by the serjeant and his messengers.[1]

On the 9th June 1852, the house being in committee, Mr. F. O'Connor interrupted the proceedings of the committee by disorderly and offensive conduct towards a member, and the chairman was directed to report the same to the house. On the speaker resuming the chair, a motion was made that Mr. O'Connor do attend in his place forthwith: but it was represented that on the previous day he had been disorderly and had apologised, and that it was fruitless to deal with him again in the same manner. While his conduct was under discussion, he twice entered the house and approached the chair of Mr. Speaker, and then withdrew. It was thus obvious to the house that he must be dealt with summarily; and it was accordingly ordered, *nem. con.*, that for his disorderly conduct and contempt of this house, he be taken into the custody of the serjeant-at-arms.[2]

Authority of speaker. Lords.

In the enforcement of all these rules for maintaining order, the speaker of the House of Lords has no more authority than any other peer, except in so far as his own personal weight, and the dignity of his office, may give effect to his opinions, and secure the concurrence of the house. The result of his imperfect powers is, that a peer who is disorderly is called to order by another peer of an opposite party; and that an irregular argument is liable to ensue, in which each speaker imputes disorder to the last, and recrimination takes the place of orderly debate. There

[1] 65 Com. J. 134. 136.

[2] 107 Com. J. 278. Hans. Deb. 9th June 1852. On the 16th June he was discharged, on the report of a committee (to whom a petition of his sister had been referred), that arrangements had been made for his immediate removal to a lunatic asylum, 107 Com. J. 292. 301.

is no impartial authority to whom an appeal can be made, and the debate upon a question of order generally ends with satisfaction to neither party, and without any decision upon the matter to which exception had been taken.

Commons.

In so large and active an assembly as the House of Commons, it is absolutely necessary that the speaker should be invested with authority to repress disorder, and to give effect, promptly and decisively, to the rules and orders of the house. The ultimate authority upon all points is the house itself: but the speaker is the executive officer, by whom its rules are generally enforced. In ordinary cases, an infringement of the usage or orders of the house is obvious, and is immediately checked by the speaker: in other cases his attention is directed to a point of order, when he at once gives his decision, and calls upon the member who is at fault, to conform to the rule as explained from the chair. But doubtful cases may arise, upon which the rules of the house are indistinct or obsolete, or do not apply directly to the point at issue; when the speaker, being left without specific directions, refers the matter to the judgment of the house. On the 27th April 1604, it was "agreed for a rule, that if any doubt arise upon the bill, the speaker is to explain, but not to sway the house with argument or dispute;"[1] and in all doubtful matters this course is adopted by the speaker.[2]

Speaker always to be heard.

Whenever the speaker rises to interpose, in the course of a debate, he is to be heard in silence, and the member who is speaking, or offering to speak, should immediately sit down. It was agreed for a rule on the 21st June 1604, "that when Mr. Speaker desires to speak, he ought to be heard without interruption, if the house be silent and not in dispute:"[3] but this is an imperfect explanation of the practice, for the rising of the speaker is the signal for

[1] 1 Com. J. 187.

[2] See Lord Colchester's explanation of the speaker's duty, in such cases; 30th March 1808. 2 Diary, 141.

[3] 1 Com. J. 244.

immediate silence, and for the cessation of all dispute; and members who do not maintain silence, or who attempt to address the speaker, are called to order by the majority of the house, with loud cries of "order" and "chair."

Members to withdraw when their conduct is under debate.

It is a rule in both houses, that when the conduct of a member is under consideration, he is to withdraw during the debate. The practice is to permit him to learn the charge against him, and, after being heard in his place, for him to withdraw from the house. The precise time at which he should withdraw is determined by the nature of the charge. When it is founded upon reports, petitions, or other documents, or words spoken and taken down, which sufficiently explain the charge, it is usual to have them read, and for the member to withdraw before any question is proposed; as in the cases of Lords Coningesby, in 1720;[1] of Sir F. Burdett, in 1810;[2] of Sir T. Troubridge, in 1833;[3] of Mr. O'Connell, in 1836;[4] of Mr. S. O'Brien, in 1846;[5] of Mr. Isaac Butt, in 1858;[6] and of Mr. Lever, in 1861.[7] But if the charge be contained in the question itself, the member is heard in his place, and withdraws after the question has been proposed; as in the cases of Mr. Secretary Canning, in 1808;[8] and of Lord Brudenell, in 1836.[9] If the member should neglect or refuse to withdraw, at the proper time, the house would order him to withdraw. Thus, in the Lords, Lord Pierpoint, in 1641,[10] and Lord Herbert of Cherbury, in 1642,[11] were commanded to withdraw; and in the Commons, in 1715, it was ordered upon question and division, "that Sir W. Wyndham do now withdraw."[12] When a member's conduct has not been directly impugned by the form of the question, he has continued in the house and voted.[13]

Petitions complaining of members.

On the 17th May 1849, petitions were presented com-

[1] 21 Lords' J. 450.
[2] 65 Com. J. 224.
[3] 88 Ib. 470.
[4] 91 Ib. 42.
[5] 101 Com. J. 582.
[6] 113 Ib. 68.
[7] 116 Ib. 377. 381.
[8] 63 Ib. 149.
[9] 91 Com. J. 319.
[10] 4 Lords' J. 476.
[11] 5 Ib. 77.
[12] 18 Com. J. 49.
[13] Mr. Stansfeld, 17th March 1864; 174 Hans. Deb., 340.

plaining of the conduct of three members, as railway directors. The members were permitted to explain and defend their conduct, but did not afterwards withdraw. It being contrary to the standing orders of the house to make a motion, or to enter upon a debate on the presentation of a petition, unless it complains of some present personal grievance, or relates to a matter of privilege, the conduct of the members could scarcely be regarded as under the consideration of the house at that time, and as soon as the members were heard, the petitions were ordered to lie upon the table, without further debate. One of the members withdrew, but returned almost immediately to his seat.

Members in contempt.

On the 28th April 1846, the house had resolved that Mr. W. S. O'Brien, a member, had been guilty of a contempt: but the debate upon the consequent motion for his commitment was adjourned until a future day: upon which Mr. O'Brien immediately entered the house, and proceeded to his place. Mr. Speaker, however, acquainted him that it would be advisable for him to withdraw, until after the debate concerning him had been concluded.[1] The reason for this intimation was, that the member had been already declared to be in contempt, although his punishment was not yet determined upon. On the 30th, a request was made through a member, that he should be heard in his place: but this was regarded as clearly irregular, and he was not permitted to be heard.[2]

Adjournment of debates.

A motion for adjourning the debate may be offered at any period of the discussion; and in the Lords, whether seconded or not, must be disposed of before the debate can proceed. In the Commons, if it be not seconded, it drops like any other motion, and the debate is continued as if no such motion had been made: but if seconded, it must either be withdrawn or negatived, before the debate upon the question can be resumed. The speaker, however, will not allow a

[1] 85 Hans. Deb., 3rd Ser., 1198. [2] 85 Hans. Deb., 3rd Ser. 1291.

member to move the adjournment, if he have already spoken in the debate, lest, under cover of a new question, he should advert to topics connected with the debate itself: but if the adjournment be moved by any other member, he may then speak to that question.[1]

When a member moves the adjournment of a debate, with a view to speaking upon the main question on a future day, he should confine himself to that formal motion. On the 26th April 1866, Lord Cranborne rose to move the adjournment of the debate on the Representation of the people bill: but instead of making that motion, in the accustomed manner, without observations, he proceeded to comment upon a speech just delivered. Exception was taken to this course, and doubts were expressed whether he had not forfeited his right to speak on the following day. This objection was not pressed, but there can be no doubt that by speaking before the question of adjournment had been proposed from the chair, he was, in fact, speaking to the main question before the house, and could not claim to speak a second time, to the same question. Unless such a restriction were observed, the prohibition of more than one speech to each question, could easily be evaded; and its observance should, therefore, be enforced, as it is usually maintained in practice.[2]

It has been explained in a previous chapter,[3] in what manner it is customary to alternate motions for the adjournment of the house, and for the adjournment of the debate; and repeated motions to that effect, in opposition to the general desire of the house, cannot be restrained unless the house should alter its rules with reference to such motions.[4] It need scarcely be added that no such motion can be offered, so as to interrupt any member who is addressing the house:

[1] 1st May 1846 (Lord G. Bentinck), 16th May 1851 (Mr. Reynolds).

[2] 182 Hans. Deb., 3rd Ser., 2172; 183 Ib. 6.

[3] *Supra*, p. 275.

[4] See Mr. Speaker's Ev. before Committees on Public Business, 1848 and 1854.

but an adjournment of the debate has been agreed upon, for the purpose of enabling a member to continue his speech on another day.[1]

CHAPTER XII.

DIVISIONS. MODE OF DIVIDING IN BOTH HOUSES. PROXIES AND PAIRS. PROTESTS. MEMBERS PERSONALLY INTERESTED.

Members not present, when question put, cannot vote.

In the House of Lords every lord who desires to vote, must be present in the house when the question is put. And in the Commons, no member is permitted to vote, unless he was in the house when the question was put.

Precedents.

On the 16th March 1821, Mr. Speaker called the attention of the house to his having caused a member to vote in a division, who was not within the doors of the house when the question was put; and the house resolved, *nem. con.*, "that the said member had no right to vote, and ought not to have been compelled to vote on that occasion."[2] Another case occurred on the 27th February 1824, when, after a division, and before the numbers were reported by the tellers, it was discovered that a member had come into the house after the question was put; he was called to the table, and upon the question being put to him by Mr. Speaker, he declared himself for the "noes"; he was then let out of the

[1] 8th March 1809, "Mr. Perceval having spoken for three hours on the charges against the Duke of York, the house loudly called for an adjournment. Mr. Perceval stated that he had more to offer in concluding, and would go on or stop as the house pleased. The adjournment of the debate till the next day passed by acclamation. *N. B.* The first instance in my time of adjourning in the middle of a speech." Lord Colchester's Diary, ii. 172. 13 Hans. Deb., 1st Ser., 114.

[2] 76 Com. J. 172.

house by the serjeant, and his name was not reckoned by the tellers for the "noes," with whom he had voted.[1]

On the 3rd May 1819, after the numbers had been reported by the tellers, notice was taken that several members had come into the house after the question was put. Mr. Speaker desired any members who were not in the house when the question was put, to signify the same; and certain members having stated that they were not in the house, their names were struck off from the "yeas" and from the "noes" respectively; and the numbers, so altered, were reported by Mr. Speaker to the house.[2]

On the 2nd June 1825, the "noes" on a division were directed to go forth, and certain members refusing to retire from the lobby, the other members in the house were desired again to take their places, and the members were called in from the lobby. The speaker then asked one of the six members who had refused to retire, where he was when the question was put, and he replied that he had been in the lobby; upon which he was informed by Mr. Speaker that he could not be permitted to vote, and the serjeant was ordered to open the outer door of the lobby, that the six members might be enabled to withdraw.[3] On the 14th June 1836, the house was informed by a member who had voted with the majority on a former day, that he was not in the house when the question was put, and had therefore no right to vote on that occasion; and it was resolved that his vote should be disallowed.[4]

On the 5th July 1855, the chairman of the committee on the Tenants improvements (Ireland) bill, on reporting progress, stated that on a division in committee, when the numbers were reported at the table by the tellers, his at-

[1] 79 Com. J. 106. This case is entered so ambiguously in the Journal, that it might appear as if the member had been let out into the lobby, in order to vote with the "noes," who had gone forth; but such was not the fact, nor would such a proceeding have been consistent with the rules of the house.

[2] 74 Com. J. 393.

[3] 80 Ib. 483.

[4] 91 Ib. 475.

tention had been called to the fact that three members, who had voted in the majority, were in the lobby beyond the folding-doors, at the back of the speaker's chair, when the question was put, and asked whether they were entitled to vote. The speaker ruled "that to entitle a member to vote he must have been in the house and within the folding-doors, and must have heard the question put. After the glass has been turned, and before the question has been put, the officers of the house are bound to clear the lobbies of all members: any member not wishing to leave the house or to vote, is at liberty to retire to the rooms beyond the lobby." Mr. Speaker also stated, in reply to a question from the chairman, "that the vote of any member not present when the question is put, may be challenged before the question is put, or after the division is over."[1]

On the 14th February 1856, a member having been in one of the side lobbies when the question was put, refused to vote. On coming to the table he was told by the speaker "that not having been within the walls of the house, and not having heard the question put, he need not vote, but might withdraw."[2]

These precedents show that at whatever time it may be discovered that members were not present when the question was put, whether during the division, before the numbers are reported, or after they are declared, or even several days after the votes were given, such votes are disallowed. And in the Lords, a similar rule prevails.[3] In order to prevent the accidental absence of members at so critical a time, precautions are taken to secure their attendance, and to prevent their escape between the putting of the question and the division.

Strangers withdraw.

Until recently it was customary, before a division took place in either house, to enforce the entire exclusion of

[1] 110 Com. J. 352.
[2] 111 Ib. 47.
[3] 65 Lords' J. 481 (Local Jurisdiction bill, 1833).

strangers:[1] but in the Commons, since 1853,[2] strangers have only been required to withdraw from below the bar, and from the front gallery; and in the Lords, since 1857, strangers have not been required to withdraw from the galleries and the space within the rails of the throne.[3] In fact, they withdraw from those parts of the house only in which, if they remained, they would interfere with the division.

Proceedings prior to a division.

In the Commons the withdrawal of strangers formerly occupied a considerable time when many were present, but scarcely a minute when the galleries were not full. This inconvenience was removed by permitting strangers to remain in the gallery, and by providing that so soon as the voices have been taken, the clerk is to turn a two-minute sand-glass, and the doors are to be closed as soon after the lapse of two minutes as the speaker or chairman shall direct. The speaker, directly the debate is closed, puts the question, and when the voices have been taken, gives the order that "strangers must withdraw."[4] The clerk then turns the sand-glass, and while the sand is running, the doorkeepers ring a bell which communicates with every part of the building. This "division bell" is heard in the libraries, the refreshment rooms, the waiting rooms, and wherever members are likely to be dispersed; and gives notice that a division is at hand. Those who wish to vote hasten to the house immediately, and two minutes enable them all to reach their places. Directly the sand has run out, if all the members appear to have then entered the house, the speaker cries "order, order," and immediately the serjeant-at-arms, and the doorkeepers and messengers under his orders, close and lock all the doors leading into the house and the adjoining lobbies, simultaneously. Those members who arrive

Members present must vote.

[1] So recently as 1849, a committee of the Commons reported against any alteration of the practice: Rep. 1849 (498).

[2] Resolutions, 29th July 1853, made standing orders 19th July 1854.

[3] Resolutions, 10th March 1857.

[4] In the Irish Parliament strangers were permitted to be present during a division. See 1 Sir J. Barrington, Personal Sketches, 195.

after the doors are shut, cannot gain admittance, and those who are within the house, must remain there and vote.[1] On the 31st March 1848, a member having been found in the house who had not voted on either side, he was brought to the table, and was informed by Mr. Speaker that he must vote, whereupon the question was stated to him, and he declared that he voted with the ayes.[2] On the 1st July 1856, three members who had been in the house when the question was put, but had not voted, were required to declare themselves, and the speaker desired their names to be added to the ayes.[3] Again, in 1862, a member who, having heard the question put, had not passed the tellers, declared himself with the ayes, and was added to the numbers in the division.[4] On the 7th March 1866, a member having heard the question put, found the door locked before he reached the left lobby; and on declaring himself with the noes, his name was added to them;[5] and in other similar cases the same rule has frequently been applied,[6] as well in the house as in committee. On the 29th November 1852, however, notice having been taken that certain members had avoided voting on the previous Friday, by withdrawing to one of the rooms at the back of the speaker's chair, the speaker stated that in the new house those rooms had always been considered as out of the house, and that members withdrawing into them could not be required to vote.

Question twice put.

When all the doors are thus closed, the speaker again puts the question, and the ayes and noes respectively declare themselves. By the standing order of the 19th July 1854, the speaker is obliged to put the question twice,

[1] On the 16th June 1857, a peer remained in one of the division lobbies until after the doors had been locked; and the serjeant was directed to let him out, without making any report. See also 1 Lord Colchester's Diary, 519.

[2] Election Recognisances bill, 103 Com. J. 406.

[3] 111 Com. J. 313.

[4] 117 Ib. 151.

[5] 121 Ib. 140.

[6] 125 Ib. 300. 203 Hans. Deb., 3rd Ser., 460.

because the sand-glass is not turned until the voices have been taken; and in the meantime, members who were not present when the question was put, gain admittance to the house. None of these could vote unless the question were again put; and it is therefore the practice to put the question a second time after the doors are closed, in order that the whole house, having had notice of a division, may be able to decide upon the question when put by the speaker: but after the question has been once put, no member is permitted to speak;[1] and the debate cannot, therefore, be reopened after the turning of the sand-glass.

Divisions on Wednesday.

It has happened, on a Wednesday morning sitting, that the division on a question, which had been put by the speaker, was necessarily postponed until a future day. At six o'clock the speaker is bound, by the standing orders, to adjourn the house;[2] and on the 13th May 1846, the voices having been taken, and the house being about to divide at six o'clock, the speaker adjourned the house: but if the division had commenced before six o'clock, the speaker would have allowed it to proceed, as by the rules of the house the doors must remain closed until after the numbers have been reported. As no opposed business is now proceeded with after a quarter before six, these difficulties are avoided, sufficient time being thus allowed to conclude a division before the adjournment.

Votes upon an amendment.

A member who has not voted upon an amendment is nevertheless entitled to vote upon the main question, when subsequently put; and for that purpose has a right to be admitted to the house, so soon as the numbers have been declared after the first division. On the 28th May 1845, some members complained that they had been denied admittance to the house, between a division upon an amendment, and another upon the main question. The speaker stated that they had been improperly excluded, and that proper directions should be given to prevent the recurrence

[1] See *supra*, pp. 284. 310.

[2] See *supra*, p. 247.

of such an accident.[1] A similar complaint was made on the 13th March 1849, and the speaker again stated that the doors should have been opened after the first division, for the admission of members.[2] On the 4th June 1866, a complaint was made of obstructions to the return of members who had left the house to avoid a division upon an amendment. On that occasion, however, the doors were open, but the crowd of members going out, after the division, opposed the entrance of other members.[3]

Division in the Lords.

Until 1857, a division was effected in the Lords by the not-contents remaining within the bar, and the contents going below the bar: but in that year their lordships adopted nearly the same arrangements as those which had been in successful operation, for many years, in the Commons. The proceedings, as at present conducted, may be briefly described. When the question has been "entirely put," the lobbies on the right and left of the house are cleared of strangers, and the doors locked. The Lord Speaker appoints two tellers for each party, without respect to their degree.[4] The contents then go into the right lobby, and the not-contents into the left lobby, and on returning into the house are counted by the tellers, and their names recorded by clerks. The vote of the lord on the woolsack, or in the chair, is taken first, in the house; and any lord may, on the ground of infirmity, by permission of the house, be told in his seat. The tellers having counted the votes, announce them to the lord on the woolsack, or in the chair. Alphabetical lists of the names are printed with the votes; and similar lists, but arranged according to the rank of the peers on the roll, are also inserted in the Journal.[5] If a

[1] MS. note, 28th May 1845.

[2] Ib. 13th March 1849 (Church Rates division).

[3] 183 Hans. Deb., 3rd Ser., 1916.

[4] Until 1857, the two tellers were required to be of the same degree.

[5] Resolutions, 10th March 1857. Reports of the Lords' Committee on the Minutes and Journals, 1857. Standing orders 16th June 1857, amended 27th June 1865.

peer goes into the wrong lobby, the house will permit him to correct his error, instead of binding him to his vote, according to the practice of the other house. On the 13th May 1862, the Bishop of Winchester having intended to vote with the not-contents, inadvertently went into the wrong lobby, and discovering his mistake after his name had been noted by the division clerks, declined to pass the tellers, who reported the numbers without counting him. On stating to the house that he intended to vote with the not-contents, his vote was added to the numbers on that side, as reported by the tellers.[1] And on the 19th May, the same rule was declared for similar cases.[2]

When voices equal in the Lords.

In case of an equality of voices the not-contents have it, and the question is declared to have been resolved in the negative. When this occurs it is always entered in the Journal "Then, according to the ancient rule of the law"[3] or "the ancient rule in the like cases, '*semper præsumitur pro negante*,' &c."[4] The effect of this rule is altered when the house is sitting judicially, as the question is then put "for reversing, and not for affirming;"[5] and consequently if the numbers be equal, the house refuses to reverse the judgment, and an order is made that the judgment of the court below be affirmed.

Law lords.

As a general rule, none but "law lords," *i. e.*, peers who have held high judicial offices, vote in judicial cases, or otherwise interfere with the decisions of the house. All peers, however, are entitled to vote, if they think fit, and the right has been exercised in some very remarkable cases. In 1685, in the case of Howard *v.* the Duke of Norfolk, a decree of the Lord Keeper Guildford was reversed, after an angry debate, by a house attended by eighteen bishops and sixty-seven temporal peers.[6] In 1689, on Titus Oates'

Votes of other peers in judicial cases.

[1] 166 Hans. Deb., 3rd Ser., 1608.

[2] 94 Lords' J. 230, and standing orders, 27th June 1865.

[3] 33 Lords' J. 519.

[4] 14 Ib. 167, 168.

[5] Lords' S. O. No. 126.

[6] 14 Lords' J. 50. Select Chancery Cases. 3 Lord Camp. Lives of Chancellors, 485, 486.

writ of error, the judgment of the court below was affirmed, on a division, by thirty-five peers against twenty-three, in opposition to the unanimous opinion of the nine judges who attended.[1] A bill to annul this judgment was passed by the Commons, but, after much discussion between the houses, ultimately dropped in the Lords.[2] In Reeve *v.* Long, in 1694, the judgment of the court below was reversed by all the lords, without a division.[3] In 1697, the cause of Bertie *v.* Falkland was debated, like any other question, and the lay lords entered protests.[4] The case of Ashby *v.* White, in 1704, having been made a party question, and a subject of contest between the two houses, the judgment of the Court of Queen's Bench was reversed, on a division, by fifty against sixteen.[5] In the Douglas peerage case, in 1769, some lay lords took part in the debates and proceedings and entered a protest, but abstained from voting.[6] In Smith *v.* Lord Pomfret, in 1772, lay lords interfered and voted.[7] In Alexander *v.* Montgomery, in 1773, the lay lords voted, and the numbers being equal (four and four), the judgment was affirmed.[8] In 1775, judgment was given in Hill *v.* St. John, in the presence of lay lords, and with their authority, but without any division.[9] In the case of the Bishop of London *v.* Fytche, in 1783, the bishops voted as well as several lay lords, and the judgment was reversed, by nineteen to eighteen.[10] In the writ of error of the Queen *v.* O'Connell, in 1844, a discussion arose, in which some of the lay lords seemed inclined to exercise their right, but abstained from voting.[11]

The following are standing orders in regard to voting,

[1] Lords' J., 31st May 1689.

[2] 3 Lord Macaulay's Hist. 388.

[3] 16 Lords' J. 446. Sugden, Law of Real Prop., Introduction.

[4] 16 Lords' J. 230. 236. 240. 247.

[5] 17 Ib. 369.

[6] 32 Ib. 264. 16 Parl. Hist. 518. 1 Cavendish Deb. 618.

[7] 33 Lords' J. 303. 4 Walpole's Mem. of Geo. III., 285.

[8] 33 Lords' J. 519.

[9] Sugd., Law of Real Prop., Intr., 21.

[10] 36 Lords' J. 687. 2 Brown's Parl. Cases, 211. 5 Lord Campb. Chancellors, 523.

[11] 11 Clar. & Fin. 155. 421.

when no formal division takes place, which have little application to modern practice:—

Lords to keep their places upon voting.

"That after a question is put, and the house hath voted thereupon, no lord is to depart out of his place, unless upon a division of the house, until the house have entered on some other business."[1]

Manner of voting in the house.

"In voting, the lowest, after the question is put by the lord chancellor, begins first, and every lord in his turn rises, uncovered, and only says content or non-content."[2]

Any lords who desire to avoid voting may withdraw to the woolsacks, where they are not strictly within the house, and are not therefore counted in the division.

In the Commons.

The practice in the Commons, until 1836, was to send one party forth into the lobby, the other remaining in the house. Two tellers for each party then counted the numbers and reported them. In 1836, it was thought advisable to adopt some mode of recording the names of members who voted, and for this purpose several contrivances were proposed: but by that adopted and now in operation, there are two lobbies, one at each side of the house, and, on a division, the house is entirely cleared; one party being sent into each of the lobbies. The speaker, in the first place, directs the ayes to go into the right lobby, and the noes into the left lobby, and then appoints two tellers for each party;[3] of whom one for the ayes and another for the noes are associated, to check each other in the telling. If two tellers cannot be found for one of the parties, no division is allowed to take place. On the 4th June 1829, a member was appointed one of the tellers for the yeas: but no other member remaining in the house to be a teller for the yeas, the noes, who had gone forth, returned into the house, and Mr. Speaker declared that the noes had it.[4] In another case,

Tellers.

No division without two tellers.

[1] Lords' S. O. No. 24.

[2] Ib. No. 23. On the second reading of Queen Caroline's Degradation bill, in 1820, Lord Gage enforced this order, and each peer gave his vote, in his place, *seriatim*. 53 Lords' J. 751. 754. 2 Plumer Ward's Mem. 91.

[3] A member is bound to act as teller for that party with whom he has declared himself, when appointed by the speaker; and his refusal would be reported to the house. Private Mem. 7th July 1859.

[4] 84 Com. J. 379.

14th August 1835, the yeas were directed to go forth, and a member was appointed a teller: but no member going forth, nor any other member appearing to be a second teller for the yeas, Mr. Speaker declared the noes had it;[1] and several cases, of the same kind, have occurred more recently.[2]

Proposed restrictions upon divisions.

It would, indeed, be unreasonable to allow a division, when, without counting the majority, the minority obviously consists of one member only, opposed to the whole house; and it has often been suggested that a rule might be established, by which no division should be allowed, unless a certain number of members declared themselves with the minority, besides the tellers.[3]

Form of division in the Commons.

When there are two tellers for each party, the division proceeds, and the house is cleared. Two clerks are then stationed near each of the entrances to the house, holding lists of the members, in alphabetical order, printed upon large sheets of thick pasteboard, so as to avoid the trouble and delay of turning over pages. While the members are passing into the house again, the clerks place a mark against each of their names; and, at the same time, the tellers count the numbers. Members disabled, by infirmity, are told in the house.

When both parties have returned into the house, the tellers on either side come up to the table (the tellers for the majority being on the right); and one of the tellers for the majority reports the numbers. The speaker also declares them, and states the determination of the house. If the two tellers should differ as to the numbers on the side told by them, or if any mistake be discovered, there

[1] 90 Com. J. 550.

[2] 97 Ib. 183. 354; 98 Ib. 605. 23rd May 1850, 105 Com. J. 364. Votes, 16th June 1863. 127 Com. J. 121. 347.

[3] In the American House of Representatives there is a rule very similar to the suggestion contained in the text; viz., "No division and count of the house shall be in order, but upon motion seconded by at least one-fifth of a quorum of the members."—Standing Orders and Rules, No. 4. See also the author's pamphlet on Public Business in Parliament, 1849, 2nd edit., pp. 29, 30, and the second edition of this work, p. 274.

appears to be no alternative but a second division,[1] unless the tellers agree as to the mistake, when the numbers will be correctly reported by the speaker.[2] If a mistake is subsequently discovered, it will be ordered to be corrected in the Journal.[3] On the 28th November 1867, an error in the numbers reported by the tellers in a committee of the whole house, having been discovered before the chairman had left the chair, the chairman ordered the numbers to be corrected accordingly.[4]

Members in the wrong lobby.

The error of most frequent occurrence is that of a member going into the wrong lobby, through inadvertence; and in the Commons it has been the rule, in such cases, to hold the member bound by the vote he has actually given, without regard to his voice on the question, or his own declared intention. On the 9th April 1856, "one of the tellers for the noes stated that Mr. Wykeham Martin was with the noes, in the left lobby, but had refused to vote with them,"—the fact being that he had gone into that lobby by mistake. As he had heard the question put, he was informed that having gone forth into the left lobby, his

[1] In one case a stranger had been told with the noes. 33 Com. J. 212. On the 30th March 1810, a second division was taken on the Expedition to the Scheldt, 65 Ib. 235; and again on the 26th June 1860, in Committee on Tenure and Improvement of Land (Ireland) bill, 115 Com. J. 332. In this case a question was raised privately, whether a member, who had voted with the ayes in the first division, could afterwards vote with the noes: but it was held that as the first division had become null and void, the house could only deal with the member's voice and vote in the last and valid division. In committee on Parliamentary and Municipal Elections bill, 13th April 1872; 127 Com. J. 140.

[2] 103 Com. J. 102. Roman Catholic Relief bill, 8th December 1847.

[3] On the 19th February 1847, notice was taken that the number of the noes reported by the tellers on a previous day on the Railways (Ireland) bill did not correspond with the printed lists; and the tellers for the noes being present, stated that the number had been reported by them by mistake. The clerk was ordered to correct the number in the Journal, 102 Com. J. 131. On the 2nd May 1860, a similar proceeding took place, upon the Aggravated Assaults Act Amendment bill, 115 Com. J. 216; and again on the 13th March 1863, 118 Ib. 111; 124 Ib. 142; 126 Ib. 207; 127 Ib. 379.

[4] 123 Com. J. 16.

vote must be recorded with the noes.[1] On the 10th March 1859, one of the tellers, in committee, having reported that a member had not voted, though he had been in the house when the question was put, the member was directed by the chairman to come to the table, and having declared himself with the ayes, the chairman directed his name to be added to that party.[2] On the 15th March 1859, one of the tellers having reported that a member, not having heard the question put, had not voted, the speaker again stated the question to him, when he declared himself with the ayes, and the speaker directed his vote to be added accordingly.[3] On the 8th May 1860, notice was taken that a member had been in the division lobby with the noes, and having passed the division clerks, had avoided being counted by the tellers. The member stated that he had gone into the lobby with the noes by mistake: but the speaker directed his vote to be added to the noes.[4] Similar cases occurred on the 2nd July 1861,[5] on the 23rd June 1864,[6] and on the 6th March 1866.[7] On the 21st June 1864, Sir Colman O'Loghlen, in committee on the Court of Chancery (Ireland) bill, went into the wrong lobby; and having stated his case to the speaker, when the house was resumed, was told that having heard the question put, there was no remedy for his error.[8]

Casting voice of the speaker.

If the numbers should happen to be equal, the speaker (and in committee the chairman), who otherwise never votes, must give the casting voice. In the performance of this duty, he is at liberty to vote like any other member, according to his conscience, without assigning a reason: but, in order to

[1] 111 Com. J. 129. It was afterwards suggested that if he had stated that he had given his *voice* with the ayes, that party might have claimed his vote; and it may be worthy of consideration whether a member, under such circumstances, should not be allowed to declare himself at the table and have his vote recorded, according to his opinion. See cases in the Lords, *supra*, p. 358.

[2] 114 Com. J. 102.

[3] Ib. 111.

[4] 115 Ib. 229.

[5] 164 Hans. Deb., 3rd Ser., 210.

[6] 119 Com. J. 359.

[7] 121 Ib. 136.

[8] 176 Hans. Deb., 3rd Ser., 31.

avoid the least imputation upon his impartiality, it is usual for him, when practicable, to vote in such a manner as not to make the decision of the house final, and to explain his reasons, which are entered in the Journals.

Precedents.

On the 12th May 1796, on the third reading of the Succession Duty on Real Estates bill, there having been a majority against "now" reading the bill a third time, and also against reading it that day three months, there was an equality of votes on a third question, that the bill be read a third time to-morrow, when the speaker gave his casting vote with the ayes, saying "that upon all occasions when the question was for or against giving to any measure a further opportunity of discussion, he should always vote for the further discussion, more especially when it had advanced so far as a third reading; and that when the question turned upon the measure itself,—for instance, that a bill do or do not pass,—he should then vote for or against it, according to his best judgment of its merits, assigning the reasons on which such judgment would be founded.[1] Mr. Pitt, however, abandoned the measure.

On the 24th February 1797, Mr. Speaker Addington gave his casting vote in favour of going into committee on the Quakers bill, assigning as his reason, that he had prescribed to himself an invariable rule of voting for the further discussion of any measure which the house had previously sanctioned, as in this instance it had, by having voted for the second reading; but that upon any question which was to be governed by its merits, as, for instance, "that this bill do pass," he should always give his vote according to his judgment, and state the grounds of it.[2]

On the 8th April 1805, in the proceedings against Lord Melville, prior to his impeachment, the numbers were equal upon the *previous* question, and the speaker gave his casting vote in favour of the previous question, on the ground that

[1] Lord Colchester's Diary, 57.

[2] 1 Lord Sidmouth's Life, 187. 1 Lord Colchester's Diary, 85.

"the original question was *now* fit to be submitted to the judgment of the house."[1]

On the 5th June 1811, on a question for the appointment of a committee to inquire into delays in the Court of Chancery, the speaker voted with the ayes, it being upon a question "whether or not this house shall exercise its own power of inquiring into the causes of existing grievances."[2]

On the 14th June 1821, the speaker declared himself with the ayes, on a question for reading the amendments made by a committee to a bill a second time, "upon the ground of affording a further opportunity to the house of expressing an opinion upon the bill."[3]

Upon the second reading of a bill, 1st May 1828, the numbers being equal, Mr. Speaker stated, "that as the bill had been entertained by the house, although they were now undecided as to whether it should proceed or not, he considered that he should best discharge his duty by leaving the bill open to further consideration, and therefore gave his vote with the yeas."[4] The speaker acted upon the same principle on the third reading of a bill, 23rd June 1837;[5] and a similar course has generally been taken at other stages in the progress of bills—often, without stating any reason.[6]

On the 10th May 1860, the numbers being equal upon an amendment to a bill, on report, the speaker stated that as the house was unable to form a judgment upon the propriety of the proposed amendment, he should best perform his duty by leaving the bill in the form in which the committee had reported it to the house.[7] On the 19th June

[1] 60 Com. J. 202. 1 Lord Colchester's Diary, i. and xxii. 548.

[2] 66 Com. J. 395. 2 Lord Colchester's Diary, 334.

[3] 76 Com. J. 439.

[4] 83 Ib. 292.

[5] Caoutchouc Company bill. 92 Ib. 496. In this case the debate upon the next question, "that this bill do pass," was adjourned, and on the 28th June the bill was passed on division, the numbers being, ayes 58, noes 23. Ib. 519.

[6] 95 Com. J. 536; 96 Ib. 344; 98 Ib. 163; 102 Ib. 872; 113 Ib. 232.

[7] 115 Ib. 235.

1861, the numbers being equal on the third reading of the Church Rates Abolition bill, Mr. Speaker gave his casting vote for reasons partly determined by the stage of the bill, and partly by the peculiar circumstances connected with the measure itself. He stated that—

"They had now reached the third reading of the bill, and he found that the house hesitated, and was unable to decide whether the law should stand, or should be changed. As far as he was able to collect the opinion of the house from the course of the debate, it appeared to him that a prevailing opinion existed in favour of a settlement of the question, different, in some degree, from that contained in the bill; and he thought he should best discharge his duty by leaving to the future and deliberate judgment of the house to decide what change in the law should be made (if it should be their pleasure to make a change), rather than of taking the responsibility of the change on his single vote: he therefore declared himself with the noes."[1]

On the third reading of the Tests Abolition (Oxford) bill, 1st July 1864, an adverse amendment having been negatived by a majority of ten, a debate was raised upon the main question that the bill be now read a third time, during which many members came into the house; and upon the division the numbers were equal. Under these circumstances the speaker said he should afford the house another opportunity of deciding upon the merits of the bill, by declaring himself with the ayes; and the question that the bill do pass, was negatived by a majority of 2.[2] On the 24th July 1862, the numbers being equal on a question for disagreeing to a Lords' amendment, the speaker said he should support the bill, as passed by this house.[3] On the 2nd April 1821, however, the speaker voted with the noes on the second reading of a bill, and so threw it out, without assigning any reason for his vote.[4] And in some cases, not being the stages of bills, the speaker has given his casting vote without assigning reasons.[5]

[1] 116 Com. J. 282.
[2] 119 Ib. 388.
[3] 168 Hans. Deb., 3rd Ser., 785; Mr. Speaker's note-book.
[4] 76 Com. J. 229.
[5] 93 Ib. 587.

The principle by which the speaker is usually guided in giving his casting voice,—that of interfering as little as possible with the judgment of the house itself,—has been carried even further than in the case of bills. On the 26th May 1826, within a few days of the end of the session, a resolution was proposed in reference to the practice of the house in cases of bribery at elections. The previous question was moved, and, on a division, the numbers being equal, "Mr. Speaker said, that it being now his duty to give his vote, and considering the proposed resolution as merely declaratory of what are the powers and what is the duty of the house, and that any inaccuracy in the wording of the resolution might be amended, when in the new Parliament it must be re-voted, he should give his vote with the yeas."[1]

And on the 19th May 1846, on a question for referring a petition, complaining of bribery at Bridport, to a committee of inquiry, the numbers being equal, Mr. Speaker said, "that as the house had no better means of forming a judgment upon the question than the election committee, who had already declined to entertain it, and as it would still be open to any elector of the borough, under the provisions of the Act 5 & 6 Vict. c. 2, to present a petition to the house, praying that a committee, having power to examine upon oath, might be appointed to investigate the subject of bribery and compromise, he therefore declared himself with the noes."[2] On the 25th May 1841, on a motion for an address to the Crown in behalf of political offenders, Mr. Speaker declared himself with the noes, as "the vote, if carried, would interfere with the prerogative of the Crown."[3] On the 6th May 1851, the numbers being equal on a question for the house to resolve itself into committee on the duties on home-made spirits in bond, the speaker gave his casting vote in favour of the motion.[4] His

[1] 81 Com. J. 387.
[2] 101 Ib. 731.
[3] 96 Com. J. 344.
[4] 106 Ib. 205.

reasons are not entered in the Journal: but his vote was determined by the principle that the house would have further opportunities of reconsidering its decision, if the motion were carried.

On the 24th July 1867, the numbers being equal upon a proposed resolution relative to Trinity College (Dublin), Mr. Speaker stated "that this was an abstract resolution, which, if agreed to by the house, would not even form the basis of legislation: but undoubtedly the principle involved in it was one of great importance, and, if affirmed by a majority of the house, it would have much force. It should, however, be affirmed by a majority of the house, and not merely by the casting vote of its presiding officer. For these reasons he declared himself with the noes.[1]

Speakers speaking in committee.

But while in the chair the speaker is thus restrained, by usage, in the exercise of his independent judgment, in a committee of the whole house he is entitled to speak and vote like any other member. Of late years, however, he has generally abstained from the exercise of his right. This punctilious impartiality was not formerly observed by speakers. Among the earliest examples are those of Mr. Speaker Glanville, on the 4th May 1640, upon the granting of twelve subsidies to the king;[2] and of Mr. Speaker Lenthall, on the 22nd January 1641, against the "brotherly gift" to the Scottish nation.[3] Sir Fletcher Norton spoke strongly on the influence of the Crown, on the 6th April 1780; and Mr. Speaker Grenville, on the Regency question, on the 16th January 1789.[4] On the 17th December 1790, Mr. Speaker argued, at length, the question of the abatement of an impeachment, by a dissolution of Parliament, and cited a long list of precedents.[5] On the 4th December 1797, Mr. Speaker Addington addressed the committee on the assessed taxes, from the gallery.[6] The same speaker also

[1] 122 Com. J. 395.
[2] 1 Lord Clarendon's Hist. 242.
[3] D'Ewes Notes on Long Parliament; Harleian MSS. (162) p. 160.
[4] 27 Parl. Hist. 970.
[5] 28 Ib. 1043.
[6] Lord Colchester's Diary, i. 121.

addressed a committee on the union with Ireland, in 1799;[1] and again, 6th May 1800, in the committee upon the Inclosure bill.[2] In committee on the charges against the Duke of York, 16th February 1809, Mr. Speaker Abbot moved the commitment of Captain Sandon, a witness, for prevarication.[3] Again, on the 1st June 1809, he made a speech in committee on Mr. Curwen's bill for preventing the sale of seats in Parliament;[4] and on the 4th February 1811, in committee on the Lords' resolution for a commission for giving the royal assent to the Regency bill.[5] Finally he addressed a committee on the Roman Catholic Relief bill, in 1813, and carried an amendment excluding Catholics from Parliament, which caused the abandonment of the bill.[6] On the 26th March 1821, Mr. Speaker Manners Sutton spoke in committee on the Roman Catholic Disability bill;[7] and again on the 6th May 1825, in committee on a similar bill;[8] and on the 2nd July 1834, in committee on the bill for admitting dissenters to the universities, he spoke against the principle of the bill.[9] On the 21st April 1856, in committee of supply, the management and patronage of the British Museum by the principal trustees having been called in question, Mr. Speaker Shaw Lefevre spoke in defence of himself and his colleagues, with great applause. And lastly, on the 9th June 1870, Mr. Speaker Denison spoke and voted in committee on the Customs and Inland Revenue bill, in support of a clause exempting horses kept for husbandry from license duty, if used in drawing materials for the repair of roads.

Publication of division lists.

After the division, the sheets of pasteboard on which the

[1] 12th Feb. 1799; 1 Lord Sidmouth's Life, 219. 225. 1 Lord Colchester's Diary, 175; and see 34 Parl. Hist. 448; 2 Plowden's Hist. of Ireland, 909.

[2] Lord Colchester's Diary, i. 203.

[3] 12 Hans. Deb., 1st Ser., 743; 2 Lord Colchester's Diary, 166.

[4] 14 Hans. Deb., 1st Ser., 837. 2 Lord Colchester's Diary, 193.

[5] 18 Hans. Deb., 1st Ser., 1107. 2 Lord Colchester's Diary, 315. Plumer Ward's Mem. i. 379.

[6] Lord Colchester's Diary, i. p. xxiii; Ib. ii. 447.

[7] 4 Hans. Deb., N. S., 1451.

[8] 13 Ib. 434.

[9] 24 Hans. Deb., 3rd Ser., 1092.

names of members are marked, are examined by the division clerks, and sent off to the printer, who prints the marked names in their order; and the division lists are delivered on the following morning, together with the Votes and Proceedings of the house. This plan of recording the names of members on a division, has been quite successful; they are taken down with great accuracy, and no delay is occasioned by the process.[1]

Divisions in committee.

In committees of the whole house, divisions were formerly taken by the members of each party crossing over to the opposite side of the house: but the same forms are now observed in all divisions, whether in the house or in committee. A division in committee cannot be taken unless there be two tellers for each side, as in the house itself.[2]

Proxies.

In the Lords, not only those peers who are present may vote in a division, but, on certain questions, absent peers are entitled, by ancient usage, regulated by several standing orders, to vote by proxy. In 1867, however, a Lords' committee recommended that the practice of using proxies should be discontinued; and on the 31st March 1868, the house agreed to the following standing order:—

"That the practice of calling for proxies, on a division, shall be discontinued, and that two days' notice be given of any motion for the suspension of this standing order."[3]

No attempt has since been made to suspend this order, and the practice, though capable of being revived on any occasion at the pleasure of the house, may be regarded as in abeyance.

Pairs.

A practice, similar in effect to that of voting by proxy, has for many years been resorted to in the House of Commons. It has been shown, that no member can vote unless he be present when the question is put; and no sanction has ever been given, by the house, to any custom partaking of the character of delegation. But a system of

[1] In 1872, the process was somewhat accelerated by allowing a double stream of members to pass the division clerks.

[2] 15th June 1848 (Borough Elections bill). 23rd May 1850 (Wood used in ship-building), 105 Com. J. 364.

[3] Lords' S .O. xxxii. a; 100 Lords' J. 99.

negative proxies, known by the name of "pairs," enables a member to absent himself, and to agree with another member that he also shall be absent at the same time. By this mutual agreement, a vote is neutralized on each side of a question, and the relative numbers on the divison are precisely the same as if both members were present. The division of the house into distinct political parties facilitates this arrangement, and members pair with each other, not only upon particular questions, or for one sitting of the house, but for several weeks, or even months at a time. There can be no parliamentary recognition of this practice, although it has never been expressly condemned;[1] and it is therefore conducted privately by individual members, or arranged by the gentlemen who are entrusted by their political parties, with the office of collecting their respective forces on a division. The system has been found so convenient that it is also practised in the House of Lords.

Protest.

In addition to the power of expressing assent or dissent by a vote, peers may record their opinion, and the grounds of it, by a "protest," which is entered in the Journals, together with the names of all the peers who concur in it.

On the 27th February 1721, it was ordered,

When to be entered.

"That such lords as shall make protestation, or enter their dissents to any votes of this house, as they have a right to do without asking leave of the house, either with or without their reasons, shall cause their protestation or dissents to be entered into the clerk's book, the next sitting day of this house, before the hour of two o'clock, otherwise the same shall not be entered; and shall sign the same before the rising of the house the same day."[2]

Sometimes leave is given to lords to enter a protest against any vote of the house, some time after the period limited by the standing order.[3]

[1] On the 6th March 1743, a motion was made, "that no member of this house do presume to make any agreement with another member to absent themselves from any service of this house, or any committee thereof; and that this house will proceed with the utmost severity against all such members as shall offend therein;" but it was negatived, on division. 24 Com. J. 602.

[2] Lords' S. O. No. 33. As to dissents in judicial cases, see Macq. 28, 29.

[3] 101 Lords' Journ. 257. 480.

When a protest has been drawn up by any peer, other lords may either subscribe it without remark, if they assent to all the reasons assigned in it; or they may signify the particular reasons which have induced them to attach their signatures:[1] but, by the usage of the House of Lords the privilege of entering a protest is restricted to those lords who were present and voted upon the question to which they desire to express their dissent. But leave is sometimes given to Lords to sign the protest of another peer, although they were not present when the question was put.[2]

Protest expunged.

Any protest or reasons, or parts thereof, if considered by the house to be unbecoming, or otherwise irregular, may be ordered to be expunged.[3] Protests or reasons expunged by order of the house, have also been followed by a second protest against the expunging of the first protest or reasons, by which the object of the house has been defeated.[4] On the 10th April 1690, certain reasons having been expunged, the Duke of Somerset desired that, as he had protested for those very reasons, he might have leave to withdraw his name from the protest, which was granted to him, and to any other lords who pleased.[5]

Protest withdrawn.

On the 24th June 1824, leave was given to the peers who had entered a protest against the Earl Marshal's bill to withdraw and amend it, as it stated certain facts incorrectly.[6]

Personal interest. Peers.

In 1796, a general resolution was proposed in the Lords, "That no peers shall vote who are interested in a ques-

[1] Protests with reasons date from 1641. 2 Lord Clarendon, Hist. Reb., b. 4, p. 407.

[2] 101 Lords' J. 493. 10th Feb. 1823, "The Duke of Somerset had not voted on the question for the address, but had nevertheless protested against it; and upon motion, his protest, he having been present at the debate, though he had not voted, was allowed to stand on the Journal." 55 Lords' J. 492. Lord Colchester's Diary, iii. 273. See 87 Hans. Deb., 3rd Ser., p. 1137; protest against Corn Importation bill, where certain peers who had not been present, signed the protest.

[3] 16 Lords' J. 655. 757; 17 Ib. 55; 19 Ib. 220. 480, 481; 40 Ib. 49; 43 Ib. 82.

[4] 14 Ib. 459 (8th and 10th April 1690); 2 Burnet's Own Time, 41; 16 Lords' J. 655; 19 Ib. 220; 21 Ib. 695. 710; 22 Ib. 73; 43 Ib. 82.

[5] 14 Ib. 459.

[6] 11 Hans. Deb., N.S., 1482.

tion:" but it was not adopted.[1] It is presumed, however, that such a resolution was deemed unnecessary; and that it was held that the personal honour of a peer will prevent him from forwarding his own pecuniary interest by his votes in Parliament. By standing order No. 178, lords are "exempted from serving on the committee on any private bill, wherein they shall have any interest."

Commons.

In the Commons, it is a distinct rule, that no member who has a direct pecuniary interest in a question, shall be allowed to vote upon it: but in order to operate as a disqualification, this interest must be immediate and personal, and not merely of a general or remote description.

On the 17th July 1811, the rule was thus explained by Mr. Speaker Abbot: "This interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of his Majesty's subjects, or on a matter of state policy."[2] This opinion was given upon a motion for disallowing the votes of the bank directors upon the Gold coin bill, which was afterwards negatived without a division.

Questions of public policy.

No instance is to be found in the Journals in which the vote of a member has been disallowed, upon questions of public policy. On the 1st June 1797, however, Mr. Manning submitted to the speaker whether he might vote, consistently with the rules of the house, upon the proposition of Mr. Pitt, for granting compensation to the subscribers to the Loyalty loan, he being himself a subscriber. The speaker explained generally the rule of the house, and Mr. Manning declined to vote.[3] After the division, the votes of two other members were objected to as being subscribers, but one stated that he had parted with his subscription, and the other that he had determined not to derive any advantage to himself; upon which questions for disallowing their votes were severally negatived.[4]

[1] 40 Lords' J. 640. 650.
[2] 20 Hans. Deb. 1001.
[3] 33 Hans. Parl. Hist. 791.
[4] 52 Com. J. 632.

On the 3rd June 1824, a division took place on a "Bill for repealing so much of an Act 6 Geo. I., as restrains any other corporations than those in the Act named, and any societies or partnerships, from effecting marine insurances, and lending money on bottomry." An objection was made to the numbers declared by the tellers, that certain members who voted with the ayes were personally interested in the passing of the bill, as being concerned in the Alliance Insurance Company: but it was decided that they were not so interested as to preclude their voting for the repeal of a public act.[1]

On the 10th July 1844, on the question for hearing counsel against a bill for suspending certain actions for penalties under the gaming laws, objections were taken to the votes of members who were defendants: but one stated that it was not his intention to take advantage of the provisions of the bill, and plead the same in bar of such action; and the other that he had not been served with any process. Motions for disallowing their votes were, therefore, withdrawn.[2]

On the 11th July 1844, the vote of a member upon the second reading of a public bill relating to railways, was objected to upon the ground that he had a direct pecuniary interest as the proprietor of railroad shares: but a motion for disallowing his vote was withdrawn.[3]

Private bills.

The votes of members interested in private bills have frequently been disallowed. On the 20th May 1825, notice was taken that a member who had voted with the yeas on the report of the Leith Docks bill, had a direct pecuniary interest in passing the bill. He was heard in his place; and having allowed that he had a direct pecuniary interest in passing the bill; that on that account he had not voted in the committee on the bill; and that he had voted, in this instance, through inadvertence, his vote was ordered to be disallowed.[4]

[1] 79 Com. J. 455. [2] 99 Ib. 486. [3] 99 Ib. 491. [4] 80 Ib. 443.

In some cases the votes of members who were subscribers to undertakings, proposed to be sanctioned by bills, have been disallowed.[1] But it is not sufficient to be interested in a rival undertaking. On the 22nd February 1825, a member voted against a bill for establishing the London and Westminster Oil Gas Company, and notice was taken that he was a proprietor in the Imperial Gas Light and Coke Company, and thereby had a pecuniary interest in opposing the bill. A motion was made that his vote be disallowed: but after he had been heard in his place, it was withdrawn.[2]

On the 16th June 1846, objection was taken to the vote of a member who had voted with the noes, on the ground that he was a director and shareholder in the Caledonian Railway Company, and had a direct pecuniary interest in the rejection of the Glasgow, Dumfries, and Carlisle Railway bill. Whereupon he stated that the sole direct interest that he had in the Caledonian railway was being the holder of twenty shares, to qualify him to be a director in that undertaking; and that he voted against the Glasgow, Dumfries, and Carlisle railway, conceiving it to be in direct competition with the Caledonian railway, as decided by the legislature in the last session. A question for disallowing his vote on the ground of direct pecuniary interest, was negatived.[3]

On the second reading of the Birmingham and Gloucester Railway bill, 15th May 1845, objection was taken to one of the tellers for the noes, as being a landholder, whose property would be injured by the proposed line. A motion for disallowing his vote was withdrawn.[4]

If any doubt should be entertained by the house whether a vote should be disallowed or not, the member whose vote is under consideration should withdraw immediately after he has been heard in his place, and before the question is proposed.[5]

[1] 80 Com. J. 110; 91 Ib. 271.
[2] 80 Ib. 110.
[3] 101 Ib. 873.
[4] 100 Ib. 436. See also discussion relative to Birmingham Sewerage bill, 1852; 212 Hans. Deb., 3rd Ser., 1135–1137.
[5] 80 Com. J. 110; 91 Ib. 271

In Committees.

The principle of the rule which disqualifies an interested member from voting, must always have been intended to apply as well to committees as to the house itself: but it is undeniable that a contrary practice had very generally obtained in committees upon private bills, although it was not brought directly under the notice of the house before 1844. In the case of the Leith Docks bill, in 1825, noticed above, it may be observed that the member stated he had abstained from voting in the committee on the bill, on account of his pecuniary interest. Some years later, the intention of the house may be clearly collected from the following case. On the 20th March 1843, the chairman of ways and means having stated to the house that he had a personal interest in the Lancaster Lunatic Asylum bill, the house instructed the committee of selection to refer the bill to the chairman of the standing orders committee, instead of the chairman of ways and means.[1] At length on the 21st June 1844, the Middle Level Drainage bill committee instructed their chairman to report that a member "had received an intimation that he ought not to vote on questions arising thereon, by reason of his interest in the said bill;" and desired the decision of the house upon the following question: "Whether a member of the House of Commons, having property within the limits of an improvement bill, which property may be affected by the passing of the bill, has such an interest as, in the judgment of the house, disqualifies him as a member of the house and the representative of general local interests, from voting on all questions affecting the preamble or clauses of the said bill." On the 27th June, three different propositions were submitted to the consideration of the house, in answer to the question suggested by the committee, which, after a debate, were all ultimately withdrawn; when the house agreed to an instruction to the committee, "that the rule of this house relating to the vote, upon any question in the house, of a member having an

[1] 98 Com. J. 129.

interest in the matter upon which the vote is given, applies likewise to any vote of a member so interested, in a committee." Since that time, committees on opposed private bills have been constituted so as to exclude members locally, or personally, interested; and in committees on unopposed bills, such members are not entitled to vote.[1] And a member of a committee on an opposed private bill, or group of bills, will be discharged from any further attendance, if it be discovered after his appointment that he has a direct pecuniary interest in the bills, or one of them.[2]

Member interested may propose motion or amendment.

But though a member interested is disqualified from voting, he is not restrained, by any existing rule of the house, from proposing a motion or amendment. On the 26th July 1859, Mr. Whalley moved an amendment to a clause added by the Lords to a railway bill, in which he admitted that he was personally interested. In the debate, exception was taken to such an amendment having been proposed by a member having a pecuniary interest: but the speaker ruled that though it was a well-known rule of the house, that a member under such circumstances could not be permitted to vote, and though the course adopted was certainly most unusual, yet there was no rule by which the right of a member to make a motion was restrained, and he had been given to understand that Mr. Whalley did not intend to vote.[3]

Offer of money.

The law of Parliament regarding the acceptance of bribes or pecuniary rewards for parliamentary services, has been explained elsewhere.[4] And Parliament has also guarded against other indirect pecuniary influences.

Counsel before committees, &c.

A member is incapable of practising as counsel before the house, or any committee, not only with a view to prevent pecuniary influence upon his votes, but also because it

[1] S. O. Nos. 111, 112. 119.

[2] 101 Com. J. 904; 104 Ib. 357; 115 Ib. 218.

[3] 155 Hans. Deb., 3rd Ser., 459.

[4] See *supra*, p. 97.

would be beneath his dignity to plead before a court of which he is himself a constituent part. Nor is it consistent with parliamentary or professional usage for a member to advise, as counsel, upon any private bill, election petition, or other proceeding in Parliament.

Parliamentary agency.

It has also been declared contrary to the law and usage of Parliament, for any member to be engaged, either by himself or any partner, in the management of private bills, before this or the other house of Parliament, for pecuniary reward.[1]

Counsel before the Lords.

And, upon the same grounds, it was ordered, on the 6th November 1666,

"That such members of this house as are of the long robe shall not be of counsel on either side, in any bill depending in the Lords' House, before such bill shall come down from the Lords' House to this house."[2]

On the 12th July 1820, Mr. Brougham and Mr. Denman, the queen's attorney and solicitor general, the king's attorney and solicitor general, and Dr. Lushington, were permitted to plead as counsel at the bar of the House of Lords, against and in support of the bill then pending against her Majesty Queen Caroline: but such leave was not to be drawn into a precedent.[3] It was also understood that, if the bill should be received by the Commons, none of those gentlemen would be permitted to vote upon it.

On the 18th July 1842, leave was given to Mr. Roebuck to plead at the bar of the House of Lords, in support of the Sudbury Disfranchisement bill, which had already passed the Commons.[4] But on the 4th May 1846, the house declined to permit Mr. Charles Buller to attend as counsel before the House of Lords upon the Bolton Waterworks bill, which had passed the Commons, and had been sent up to the other house; the speaker saying, that in Mr. Roebuck's case the bill involved a matter of public policy:

[1] 85 Com. J. 107. [2] 8 Com. J. 646.
[3] 75 Com. J. 444; 2 Hans. Deb., N.S., 400. [4] 97 Com. J. 499.

but that he knew of no precedent of leave being given to a member to plead before the House of Lords on a private bill.[1]

Appeals and committee of privileges.

It was formerly the custom to give leave to members to plead at the bar of the House of Lords on appeals, the last instance being in 1710,[2] since which time members have been accustomed to plead without leave, in all judicial cases before the House of Lords, and before the committee of privileges.[3]

CHAPTER XIII.

COMMITTEES OF THE WHOLE HOUSE: GENERAL RULES OF PROCEEDING: CHAIRMAN: MOTIONS AND DEBATE: HOUSE RESUMED.

Mode of appointment.

A COMMITTEE of the whole house is, in fact, the house itself, presided over by a chairman, instead of by the speaker. It is appointed in the Lords by an order "that the house be put into a committee," which is followed by an adjournment of the house during pleasure. In the Commons it is appointed by a resolution, "That this house will immediately, or on a future day, resolve itself into a committee of the whole house." When a future day is appointed, the committee stands as an order of the day, which being read, a question is put by the speaker, "That I do now leave the chair;" and when that is agreed to, the speaker leaves the chair immediately, the mace is removed from the table, and placed under it, and the committee commences its sitting.

[1] 101 Com. J. 627; 86 Hans. Deb., 3rd Ser., 92; see also 8 Com. J. 322; 9 Ib. 86 (Dean Forest bill).

[2] 3 Com. J. 88; 10 Ib. 336; 16 Ib. 436.

[3] See 1 Hans. Deb., N.S., 402.

Chairman of Lords' committee.

The chair is taken, in the Lords, by the chairman of committees, who is appointed at the commencement of each session, by virtue of the standing orders of that house,[1] by which it is ordered that he

"Do take the chair in all committees of the whole house, and in all committees upon private bills, unless where it shall have been otherwise directed by this house."[2]

"That when the house is in a committee of the whole house, if the chairman of committees, or any lord appointed by the house in his place, shall be absent (unless by leave of the committee), the house be resumed."

In pursuance of these orders, in the absence of the chairman of committees, the committee cannot proceed to business: but the house is resumed, and a chairman is appointed by the house.[3] But another chairman is usually appointed before the house goes into committee, or for the whole day.[4] On the 10th February 1871, it was ordered, that Viscount Eversley be appointed to take the chair in committees of the whole house, in the absence of Lord Redesdale, from illness.[5]

Chairman of committees in the Commons.

In the Commons the chair (at the table) is generally taken by the chairman of the committee of ways and means. If a difference should arise in the committee concerning the election of a chairman, it must be determined by the house itself, and not by the committee. The speaker resumes the chair at once, and a motion being made, "That A. B. do take the chair of the committee; the speaker puts the question, which being agreed to, the mace is again removed from the table, and the committee proceeds to business under the chairman appointed by the house.[6]

On the 2nd February 1810, the speaker having left the chair for the house to go into committee of ways and means,

[1] Lords' S. O. No. 8.

[2] Ib. No. 44; and 42 Lords' J. 636.

[3] It was otherwise before the 3rd July 1848, when S. O. No. 44 was amended. See Lords' J. and Debates, 22nd June 1848.

[4] 80 Lords' J. 125. 406; 81 Ib. 233; 88 Ib. 38; 95 Ib. 106.

[5] 103 Ib. 12.

[6] 1 Com. J. 650; 9 Ib. 386; 13 Ib. 794; 21 Ib. 255; 65 Ib. 30, &c.; 3 Grey's Debates, 301.

Mr. W. Smith, addressing himself to Mr. Ley, the clerk, begged to say a few words to the house. The speaker interposed, and explained that if any difference of opinion arose on the subject of who should be called to the chair, it could not be discussed in the incomplete state in which the house then was. The chancellor of the exchequer then called upon Mr. Lushington to take the chair, and Mr. W. Smith upon Mr. Davies Giddy; whereupon the speaker immediately returned to the chair, and said that now was the time to propose who should be chairman of the committee.[1]

Conduct of business.

The proceedings are conducted in the same manner as when the house is sitting.[2] In the Lords, a peer addresses himself to their lordships, as at other times: in the Commons, a member addresses the chairman, who performs in committee all the duties which devolve upon the speaker in the house. He calls upon members as they rise to speak, puts the questions, maintains order, and gives the casting vote, in case of an equality of voices.

Casting voice of chairman.

On the 28th June 1848, in committee on the Roman Catholic Relief bill, the numbers in a division were equal, and the chairman gave his casting voice. It was stated, in debate, that no such case was recollected, and doubts were expressed as to the regularity of the proceeding: but a similar case had already arisen in committee on the Highways bill, on the 25th June 1834:[3] it was clearly consistent with the rules of the house, and has since been followed without question.[4] As regards select committees, the rule had been declared by the house;[5] and there can be no principle at variance with the practice which was adopted on this occasion.[6] In giving his casting voice, the chairman is governed by the same principles as the speaker. Thus,

[1] 15 Hans. Deb. 302.

[2] Lords' S. O. Nos. 42, 43.

[3] 89 Com. J. 430.

[4] 3rd Aug. 1859; 114 Com. J. 333. 21st May 1860; 115 Ib. 256. Rules and Orders, No. 203.

[5] 91 Com. J. 214; and see *infra*, p. 409.

[6] See Hans. Deb., 28th June 1848.

on the 29th July 1869, the members being equal in committee of supply, upon the reduction of a vote, the chairman declared himself with the noes, as the committee would have an opportunity of voting upon any other reduction of the proposed vote.[1]

General functions of committees of the whole house.

The ordinary function of a committee of the whole house is deliberation, and not inquiry. All matters concerning religion, trade, the imposition of taxes, or the grant of public money, are required to be considered in committee, as a preliminary to legislation; and any other questions which, in the opinion of the house, may be more fitly discussed in committee, are dealt with in that manner.[2] The provisions of every public bill are also considered in a committee of the whole house.

But important inquiries have been entrusted to such committees; as, for example, in 1744, the cause of the miscarriage of the fleet before Toulon;[3] in 1782, the want of success of the naval forces, during the American war;[4] in 1809, the conduct of the Duke of York;[5] in 1810, the failure of the expedition to the Scheldt;[6] and, in 1808 and 1812, the operation of the Orders in Council.[7] In conducting such inquiries, committees of the whole house have examined witnesses at the bar. But however imposing such a tribunal may be, it is obviously ill-adapted to close and consecutive examinations, while the time occupied by its inquiries is a serious impediment to the general business of the session. In 1790, committees of the whole house on the African slave trade were assisted in their inquiries by select committees appointed to take the examination of witnesses, and report the minutes of evidence to the house.[8] And of late years no such inquiries have been referred to committees of the whole house, while the investigation of

[1] 198 Hans. Deb., 3rd Ser., 950.
[2] Education, 1856; Government of India, 1858.
[3] 24 Com. J. 773.
[4] 38 Ib. 644.
[5] 64 Com. J. 15.
[6] 65 Ib. 14.
[7] 63 Ib. 199; 67 Ib. 333.
[8] 45 Ib. 11; 46 Ib. 149.

matters of equal importance has been more satisfactorily entrusted to secret and select committees.[1]

Matters committed.

A committee can only consider those matters which have been committed to them by the house. If it be desirable that other matters should also be considered, an instruction is given by the house, to empower the committee to entertain them.[2] An instruction should always be moved as a distinct question, after the order of the day has been read; and not as an amendment to the question for the speaker leaving the chair. The latter form has occasionally been resorted to,[3] but is an inconvenient mode of proceeding, unless its object be to prevent the sitting of the committee; as the amendment, if agreed to, supersedes the question for the speaker leaving the chair.

Instructions and amendments on going into committee.

All motions for instructions, unless founded upon resolutions of a committee of the whole house, and amendments to the question for Mr. Speaker leaving the chair,[4] except in the case of committees of supply and ways and means, are moved before the first sitting of the committee. By Standing Order, 25th June 1852,

"When a bill or other matter (except supply or ways and means) has been partly considered in committee, and the chairman has been directed to report progress, and ask leave to sit again, and the house shall have ordered that the committee shall sit again on a particular day, the speaker shall, when the order for the committee has been read, forthwith leave the chair, without putting any question, and the house shall thereupon resolve itself into such committee."

When there are several amendments.

When there are several amendments to be proposed to the question that the speaker "do now leave the chair," if the first amendment be negatived, by the house affirming that the words proposed to be left out shall stand part of the

[1] War in the Carnatic, 1781; 58 Com. J. 430. 435. Victualling the Navy, 1782; 58 Ib. 871. Naval Inquiry, 1805; 60 Ib. 214. 413. Army before Sebastopol, 1855; 110 Ib. 36; and see debate on its appointment; 136 Hans. Deb., 3rd Ser., 979. 1121.

[2] See 156 Hans. Deb., 3rd Ser., 1720 (French Treaty in Committee on Customs Act).

[3] 75 Com. J. 431; 76 Ib. 137, 138; 78 Ib. 107 (Bills); 80 Ib. 111; 88 Ib. 163; 113 Ib. 207; 150 Hans. Deb., 3rd Ser., 1503.

[4] See also Chapter XVIII. on BILLS.

question, no other amendment can be offered: but if the amendment be carried, and it be nevertheless desired to proceed with the order of the day, it is necessary to move that this house will immediately resolve itself into a committe of the whole house (a question which, under other circumstances, is omitted); when a second question for the speaker to leave the chair being proposed, another amendment may then be offered.[1]

Resolutions to be proposed in committee not to be discussed in the house.

When notice has been given of resolutions intended to be proposed in committee, it is irregular to anticipate the discussion of them on the question that the speaker do now leave the chair, as the house can have no cognisance of them, until they have been reported by the committee.[2] But when an amendment is proposed, affirming principles adverse to the intended resolutions, the sound principle of this rule cannot be observed.[3]

Motion not seconded in committee.

It is an established rule that a motion in committee need not be seconded, the propriety of which has sometimes been questioned. It derived confirmation from the former practice of appointing one teller only for each side, on a division in committee; and, although two tellers are now appointed, without whom no division in the lobbies is allowed to proceed, a question is still put from the chair on the motion of one member.

Previous question.

A motion for the previous question is not admitted in committee. The principle of this rule is not perhaps very clear:[4] but such a question is less applicable to the proceedings of a committee. A subject is forced upon the attention of the house, at the will of an individual member:

[1] Committee of Supply; (Amendment relating to assistant surgeons, Navy), 8th April 1850; 105 Com. J. 198. (Amendment relative to Billeting Soldiers), 7th April 1856; 111 Ib. 124. Forms of Prayer, 13th July 1858; 113 Ib. 306. 115 Ib. 454. Flogging in the Army, &c., 15th March 1867; 122 Com. J. 106; Recruits, 16th May 1867, Ib. 219.

[2] So ruled (privately) by the speaker in 1856, in reference to the proposed resolutions upon education.

[3] See Mr. Cobden's notice of amendment upon this same committee.

[4] Hatsell did not know the reason of the rule, and thought it inconvenient, ii. 116.

but in committee the subject has already been appointed for consideration by the house, and no question can be proposed unless it be within the order of reference. Motions, however, having the same practical effect as the previous question, have sometimes been allowed in committees on bills;[1] and a motion that the chairman do now leave the chair, offered before any resolution has been agreed upon, and with a view to anticipate and avert such resolution, has precisely the same effect as the previous question.[2]

Question of sums and dates.

On the 3rd November 1675, it was declared to be an ancient order of the house, "that when there comes a question between the greater and lesser sum, or the longer or shorter time, the least sum and longest time ought first to be put to the question."[3] This rule has more immediate reference to the committees of supply, and ways and means (where, however, it has been nearly superseded by later regulations): but is occasionally observed in other committees, in cases to which the rule is applicable.[4]

Resolution cannot be postponed.

A resolution proposed in a committee of the whole house cannot be *postponed:* it is a question before the committee which must be withdrawn, negatived, amended or agreed to: but, like a question proposed in the house itself, cannot be otherwise disposed of.[5]

Amendments to questions in committee.

When a resolution is proposed in a committee, every amendment may be moved, which might be moved to such a resolution, if proposed in the house itself.[6] Thus, in committee on the government of Canada, on the 14th April 1837, an amendment was moved to leave out all the words after "that," in a resolution, in order to add other words;[7] and again, a similar amendment was moved in committee on the government of India, on the 3rd May 1858.[8] Such a

[1] See Chapter XVIII., on BILLS.

[2] Mr. Henley's motion in Committee on Education, 10th April 1856; 111 Com. J. 134.

[3] 9 Ib. 367.

[4] See Chapter XXI., on SUPPLY.

[5] Government of India, 30th April 1858; 149 Hans. Deb., 3rd Ser., 2066.

[6] For examples of proceedings upon amendments to resolutions, see 108 Com. J. 190. 193. 198; 109 Ib. 254 113 Ib. 148. 159, &c.

[7] 92 Com. J. 264.

[8] 113 Com. J. 148.

proceeding, however, would not be admissible in considering the clause of a bill. In committee, amendments are proposed to the "proposed resolution," and not to the "question," as in the proceedings of the house.[1]

Royal message read.

Where a message from the Crown has been referred to a committee of the whole house, the proceedings are opened by the reading of such message by the chairman.[2]

Members may speak more than once.

The main difference between the proceedings of a committee and those of the house is, that in the former a member is entitled to speak more than once, in order that the details of a question or bill may have the most minute examination; or, as it is expressed in the standing orders of the Lords, "to have more freedom of speech, and that arguments may be used *pro et contra*."[3] These facilities for speaking are not often abused so as to protract the debates: but are rather calculated, in ordinary cases, to discourage long speeches, and to introduce a more free and conversational mode of debating. When a member may not speak more than once, he cannot omit any argument that he is prepared to offer, as he will not have another opportunity of urging it: but when he is at liberty to speak again, he may confine himself to one point at a time.

To speak standing.

Members must speak standing and uncovered, as when the house is sitting, although it appears that, in earlier times, they were permitted to speak either sitting or standing. On the 7th November 1601, in a committee on the subsidy or supply, Sir Walter Raleigh was interrupted by Sir E. Hobby, who said, "We cannot hear you; speak out; you should speak standing, that so the house might the better hear you." To this Raleigh replied, "that being a committee, he might either speak sitting or standing." Mr. Secretary Cecil rose next, and said, "Because it is an argument of more reverence, I chuse to speak standing."[4]

[1] This variation of practice appears to have been introduced in 1852; 108 Ib. 187, 188.

[2] 111 Com. J. 190; 112 Ib. 170; 116 Ib. 189, &c.

[3] Lords' S. O. No. 42.

[4] 1 Hans. Parl. Hist. 916.

It was ordered and declared by the Lords, 10th June 1714, House resumed.

"That when the house shall be put into a committee of the whole house, the house be not resumed without the unanimous consent of the committee, unless upon a question put by the lord who shall be in the chair of such committee."[1]

In the Commons, if any doubt should arise as to a point of order or other proceeding, which the committee cannot agree upon, or which may appear beyond their province to decide, the chairman should be directed to leave the chair, report progress, and ask leave to sit again. Thus, on the 2nd March 1836, a debate having concluded in committee, the chairman stated, that before he put the question, he wished to have the opinion of the committee as to the manner in which the committee should be divided, in case of a division; and it being the opinion of the committee, that this matter ought to be decided by the house, the chairman left the chair; and Mr. Speaker having resumed the chair, the chairman reported that a point of order had arisen in the committee, with respect to the manner in which the committee should be divided, upon which the committee wished to be instructed by the house. The house proceeded to consider this point, and Mr. Speaker having been requested to give his opinion, stated it to the house; after which the house again resolved itself into the committee, the question was immediately put, and the committee divided in the manner pointed out by the speaker.[2] In the same manner, on the 6th May 1853, a question of order having arisen upon a member's claim to speak, the chairman reported progress, and the speaker settled the point of order.[3] But unless the committee require directions from the house, the regularity of its proceedings cannot afterwards be questioned. Chairman leaves the chair. Commons.

[1] Lords' S. O., No. 44.
[2] 91 Com. J. 104.
[3] 126 Hans. Deb., 3rd Ser., 1240.

Speaker resumes the chair in certain cases.

If any public business should arise in which the house is concerned, the speaker resumes the chair at once, without any report from the committee; as if the usher of the black rod should summon the house to attend her Majesty or the lords commissioners in the House of Peers,[1] or if the time be come for holding a conference with the Lords.[2]

So, also, if any sudden disorder should occur[3] by which the honour and dignity of the house are affected, the urgency of such a circumstance would justify the speaker in resuming the chair immediately, without awaiting the ordinary forms.

On the 10th May 1675, a serious disturbance arose in a grand committee, in which bloodshed was threatened; when it is related that "the speaker, very opportunely and prudently rising from his seat near the bar, in a resolute and slow pace, made his three respects through the crowd, and took the chair." The mace having been forcibly laid upon the table, all the disorder ceased, and the gentlemen went to their places. The speaker being sat, spoke to this purpose, "That to bring the house into order again, he took the chair, though not according to order." No other entry appears in the Journal than that "Mr. Speaker resumed the chair:" but the same report adds, that though "some gentlemen excepted against his coming into the chair, the doing it was generally approved, as the only expedient to suppress the disorder."[4] The speaker certainly acted with judgment on that occasion, and it appears from a more recent case, that he was clearly not out of order.

On the 27th February 1810, a member who, for disorderly conduct, had been ordered into custody, returned into the house, during the sitting of a committee, in a very violent and disorderly manner; upon which Mr. Speaker resumed the chair, and ordered the serjeant to do his duty. When the member had been removed by the serjeant, the house

[1] 126 Com. J. 433.
[2] 67 Ib. 431.
[3] 1 Com. J. 837.
[4] 3 Grey's Deb. 129.

again resolved itself into the committee.[1] In less pressing cases of disorder, it has been usual for the committee to report progress; when the chairman reports the circumstances to the house.[2] On the 6th March 1815, while the house was in committee on the Corn Bill, tumultuous proceedings took place outside; and Mr. Lambton having complained that the house was surrounded by a military force, the speaker was sent for and the house was resumed.[3] The house has also been resumed on account of words of heat or disputes between members;[4] or when words have been taken down in order to be reported to the house.[5]

Forty members required.

A committee of the whole house, in the Commons, like the house itself, cannot proceed with business unless forty members be present: but it has no power of adjournment, as, according to the present rules, the sitting of the house itself would be concluded by such adjournment. When notice, therefore, is taken that forty members are not present, the chairman counts the committee, and if less than that number be present, he leaves the chair; and Mr. Speaker resumes the chair, and counts the house. If forty members be then present, the house again resolves itself into the committee:[6] but if not, the speaker adjourns the house, without a question first put, provided it be after four o'clock.[7] But if it be before four o'clock, the speaker continues sitting until forty members have come into the house, or until four o'clock, when he adjourns the house. So, also, if it appear on a division in committee, that forty members are not present, the chairman

[1] 65 Com. J. 134.

[2] 3rd July 1851 (The O'Gorman Mahon), 106 Com. J. 333; 9th June 1852 (Mr. F. O'Connor), 107 Ib. 278.

[3] 70 Com. J. 143; 2 Lord Colchester's Diary, 531.

[4] 10 Com. J. 806; 11 Ib. 480; 43 Ib. 467.

[5] 1 Ib. 866; 18 Ib. 653; 106 Ib. 313. Mr. Duffy, 5th May 1853, 108 Ib. 461.

[6] 8th July 1845; 100 Com. J. 701.

[7] 91 Com. J. 659; 121 Ib. 272. In December 1648, so many members were in prison that sometimes there were not enough to make a house, and the Speaker was "obliged to send to the guards to bring in some of their prisoners to make up the number of 40, and when the jobb was done, to receive them again into custody." Carte's Hist., iv. 601.

leaves the chair, and the speaker counts the house in the same manner.[1]

Cannot adjourn.

A committee of the whole house has no power either to adjourn its own sittings, or to adjourn a debate to a future sitting: but if a debate be not concluded, or if all the matters referred be not considered, in the Lords, the house is resumed, and the chairman moves, "that the house be again put into committee" on a future day; and in the Commons, the chairman is directed to "report progress, and ask leave to sit again." If the committee has agreed to certain resolutions, but is unable to conclude the discussion of other resolutions, it is customary to direct the chairman to report the former, and to report progress upon the latter.[2] So entirely is the principle of adjourning debates in committees of the whole house ignored, that when resolutions have been proposed, and progress reported before they were agreed to, at ensuing sittings of the committee, resolutions upon other distinct matters have been proposed, and agreed to, and the resolutions first proposed taken up again on a more distant day. Thus, on the 17th February 1851, in committee of ways and means, a resolution for the continuance of the income tax was proposed and progress reported. On the 18th March, a resolution was agreed to for paying 8,000,000 *l.* out of the consolidated fund; and on the 4th April, the resolution for the continuance of the income tax was again proposed, and agreed to.[3] And again, on the 28th April 1853, a resolution was proposed upon the income tax, and progress reported. The committee sat again the same day, when, instead of resuming the discussion upon that resolution, another resolution was proposed upon exchequer bills;[4] and on the 29th April, the resolution upon

Lords.

Commons.

[1] 85 Com. J. 60, &c.

[2] Customs and Corn Importation, 1846; 101 Com. J. 280. 281; Committee of Ways and Means (Income Tax), 1853; 108 Ib. 431. Customs, 1854; 109 Ib. 470. Supply, 5th Aug. 1867; 122 Ib. 429.

[3] 106 Com. J. 57. 104. 145.

[4] 108 Ib. 442.

the income tax was again proposed.[1] For this reason no member can claim to speak first on the renewal of a debate in committee, on the ground that he was in possession of the committee, when the chairman had reported progress.[2]

Motions to report progress, &c.

It is the practice for members who desire an adjournment, to move that the "chairman do report progress," in order to put an end to the proceedings of the committee on that day,—this motion, in committee, being analogous to that frequently made at other times, for adjourning the debate. A motion "That the chairman do now leave the chair," when carried, supersedes the business of a committee, as an adjournment of the house supersedes a question; and when the speaker resumes the chair, no report whatever is made from the committee.[3] But no such motion can be interposed while any member is speaking. On the 6th August 1855, in committee on the Crime and Outrage (Ireland) bill, while the question for reporting progress was under discussion, notice was taken that forty members were not present, and the chairman having counted the committee, left the chair. On the following day the committee was revived.[4]

A motion to report progress having been negatived, cannot be repeated during the pendency of the same question, being subject to the same rule as that observed in the house itself, which will not admit of a motion for the adjournment of the debate to be repeated, without some intermediate proceeding. It has, therefore, been customary to alternate the motion for reporting progress with the motion "that the chairman do now leave the chair." On the 7th June 1858, in committee on the government of India, a question for reporting progress having been nega-

[1] 108 Com. J. 446.

[2] So ruled by Mr. Speaker, 6th May 1853 (Mr. Duffy); and again by the chairman, 7th June 1858 (Mr. Roebuck).

[3] 86 Com. J. 403; 89 Ib. 381. 468; 90 Ib. 497. 561; 117 Ib. 177.

[4] 110 Ib. 449.

tived, the committee, some time afterwards, were prepared to assent to such a motion: but, in order to adhere to the rule, the chairman put the question upon a formal part of an amendment which had been proposed, before he proceeded to put the question for reporting progress.[1] In some cases committees have reported that they had not made progress.[2]

Sittings suspended.

But although a committee of the whole house cannot adjourn, its sitting may be suspended for a certain time, like the sitting of the house itself, as was done on the 11th August 1848;[3] but such a proceeding is rarely necessary, except during the occasional absence of the chairman.

Report.

If none of the interruptions and delays to which committees are liable should occur, the chairman is directed to report the resolutions or other proceedings to the house. Sometimes he is instructed to move for leave to bring in bills, or to inform the house of matters connected with the inquiries or deliberations of the committee, and until such report has been made, no reference may be made to it, nor to the proceedings of the committee.

Report of resolutions.

By standing order 19th July 1854, "every report from a committee of the whole house is to be brought up without any question being put." When the resolution of a committee relates to the grant of any public money, or the imposition of a tax upon the people, the chairman reports that the committee have agreed to a resolution which they have directed him to report to the house; and the house orders the report to be received on a future day: but resolutions upon all other matters are reported immediately. On the 25th July 1849, a committee of the whole house agreed to a resolution to authorise the collection of fees in the Court of Bankruptcy, by means of stamps, which was reported forth-

[1] 113 Com. J. 214; 150 Hans. Deb., 3rd Ser., 1688. See also Proceedings in Committee on Roman Catholic Charities bill, 21st June 1860.

[2] 116 Com. J. 300. 333. 356.

[3] 101 Hans. Deb., 3rd Ser., 90. See also 9 Com. J. 68.

with, as the fees were not increased, but the mode of collection only altered. The resolutions reported by a committee are twice read before they are agreed to by the house; and on the question for reading them a second time, any relevant amendment may be proposed,[1] or general discussion upon the subject matter raised: but when they have been read a second time, no amendment or debate is permitted except in regard to each resolution.[2] Every resolution may be amended,[3] disagreed to,[4] postponed,[5] or recommitted to the committee.[6] Resolutions which have been recommitted to a committee of the whole house, and reported, have been again recommitted to the committee.[7] The first reading (by the clerk) is a formal proceeding, without any question: but the question for reading resolutions a second time is put from the chair, and may be the subject of debate and amendment. An amendment proposed to the question for reading a resolution a second time, takes precedence of an amendment proposed to the resolution itself,[8] which is proposed after the second reading, and before the question is put, for agreeing with the committee in the resolution.[9]

In the Commons the principal proceedings in committees of the whole house are in reference to bills, and the voting of supply, and ways and means; of which a description will be found in the chapters relating to these matters.[10]

Grand committees.

Since 1832 the annual appointment of the ancient Grand Committees[11] for Religion, for Grievances, for Courts of Justice, and for Trade, has been discontinued. They had long since fallen into disuse, and served only to mark the ample jurisdiction of the Commons in Parliament. When they were accustomed to sit, they were, in fact, committees

[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.

of the whole house, like the modern committee of supply; and until 1641 little difference is to be detected in their constitution and proceedings.[1]

Committee of privileges.

The ancient committee of privileges is also analogous to a grand committee, consisting of certain members specially nominated, of all knights of shires, gentlemen of the long robe, and merchants in the house; and "all who come are to have voices." This committee is still appointed at the commencement of each session: but it is not nominated or appointed to sit, unless there be some special matter to be referred to it, as was the case in 1847.[2]

Entry of proceedings in the Journals.

In the Commons the proceedings of committees have been entered in the Journals since the 23rd February 1829, when the speaker submitted to the house that arrangements should be made to effect that object, to which the house assented.[3] All amendments in committee, on bills upon which divisions arise, are fully entered in the votes; but verbal amendments are only referred to in general terms.[4] And the Lords have recently adopted a similar form of entry in their Journals. These records, in both houses, are a valuable addition to the means of comprehending the forms of parliamentary procedure. It may be added, that in a committee of the whole house, it is customary for the clerk assistant to officiate as clerk.

[1] 1 Com. J. 220. 822. 1042, &c.; 2 Ib. 3. 153. 202. 321, &c. Lex. Parl. 339. Scobell, 38. See also 3 Lord Colchester's Diary, 481.

[2] 103 Com. J. 139 (West Gloucester Election).

[3] 84 Ib. 78.

[4] 191 Hans. Deb., 3rd Ser., 574.

CHAPTER XIV.

APPOINTMENT, CONSTITUTION, POWERS, AND PROCEEDINGS OF SELECT COMMITTEES IN BOTH HOUSES.

General province of a select committee.

A SELECT committee is composed of certain members appointed by the house to consider, or inquire into, any matters, and to report their opinion, for the information of the house. Like committees of the whole house, select committees are restrained from considering matters not specially referred to them by the house. When it is thought necessary to extend their inquiries beyond the order of reference, a special instruction from the house gives them authority for that purpose;[1] or if it be deemed advisable to restrict, or direct their inquiries, an instruction may be given by the house, prescribing the limits of their powers:[2] or otherwise directing their course of proceedings.[3] Inquiry by means of evidence is the most general object of a select committee: but committees may be appointed for any other purpose in which they can assist the house; and petitions, bills, and other documents are constantly referred to them for consideration.

Reports and papers referred.

It is a common practice to refer to a committee the reports of previous committees, and other printed reports and papers. Such a reference is usually intended to direct the particular attention of the committee to documents relating to the subject of their inquiry, or to explain or enlarge the original terms of the reference. And in case the committee should desire to cite, in their report, any document which

[1] 91 Com. J. 422. 687; 101 Ib. 636; 105 Ib. 497. Taxation of Ireland, 2nd March 1865; 120 Ib. 107. East India Communications, 23rd April 1866; 121 Ib. 243; 122 Ib. 351. Trade in Animals, 16th April and 30th July 1866; Ib. 222. 268. House of Commons (Arrangements) 8th July 1867.

[2] 75 Com. J. 259; 90 Ib. 522; 119 Ib. 146.

[3] 99 Ib. 284; 102 Ib. 24.

has been laid upon the table of the house, it is usual to move that it be referred to them.

Petitions referred.

Petitions relating to the subject of inquiry are also frequently referred, which are laid before the committee by the clerk from time to time.[1]

Appointment in the Lords.

In the House of Lords the special rules in regard to the appointment and constitution of select committees are few. By a standing order of the 5th May 1865,

"With regard to select committees of this house other than those on private bills, notice of any motion for naming the lords to serve on such committee, or for adding any lord to such committee, or for substituting any other lord for any lord named on such committee, shall be given and entered among the printed notices for the day, or previous to the day on which such motion shall be made."

The house resolves that a select committee be appointed, after which it is ordered that certain lords then nominated shall be appointed a committee to inquire into the matters referred, and to report to the house. Lords are nominated in the order of their precedence. Their lordships, or any three of them (or a greater number, if necessary), are ordered to meet at a certain time in the Prince's Lodgings, near the House of Peers, and to adjourn as they please. In special cases the Lords have appointed select committees by ballot.[2] There are also several standing or sessional committees appointed by the Lords at the commencement of every Session, viz., the committee of privileges, the sub-committee for the journals, the appeal committee, the standing order committee, the Parliament officer committee, and the library committee.[3]

Sittings and proceedings in the Lords.

The order of sitting on the Lords' committees, and other matters, are thus defined by the standing orders:

"If they be a select committee, they usually meet in one of the rooms adjoyning to the upper house, as the lords like; any of the lords of the committee speak to the rest uncovered, but may sit still if he please; the committees are to be attended by such judges or learned counsel as are appointed; they are not to sit there or be

[1] 189 Hans. Deb., 3rd Ser., 1047.

[2] 16 Lords' J. 758; 22 Ib. 116; 40 Ib. 198; and see *infra*, p. 409.

[3] The latter has not lately been appointed.

covered, unless it be out of favour for infirmity ; some judge sometimes hath a stool set behind, but never covers, and the rest never sit or cover. The Lord Chief Justice Popham did often attend committees ; and though he were chief justice, privy councillor, and infirm, yet would he very hardly ever be perswaded to sit down, saying it was his duty to stand and attend, and desired the lords to keep those forms which were their due."[1]

A select committee of the House of Lords may sit, notwithstanding any adjournment of the house, without special leave.

Witnesses, how summoned in the Lords.

The House of Lords do not give select committees any special authority to send for witnesses or documentary evidence, nor have the committees any such power: but parties are ordinarily served with a notice from the clerk attending the committee, that their attendance is requested on a certain day, to be examined before the committee. Until recently such witnesses were required, previously to their examination, to be sworn at the bar of the house: but by the 21st & 22nd Vict. c. 78, any committee of the House of Lords may now administer an oath to the witnesses examined before them. Where a positive order is thought necessary to enforce the attendance of a witness, or the production of documents, it emanates from the house itself. A select committee upon a bill cannot examine witnesses, except by order of the house. It is usual to give a Lords' committee power to appoint their own chairman: but when no such power is given, the chairman of committees (though not named as a member) is the chairman, by virtue of his office.

On the 25th June 1852, the Lords agreed to the following resolutions :[2]

Minutes of proceedings on Lords' committees.

"That to every question asked of a witness under examination in the proceedings of any select committee of the house, there be prefixed, in the minutes of the evidence, the name of the lord asking such question.

"That the names of the lords present each day on the sitting of any select committee be entered on the minutes of evidence, or on the

[1] Lords' S. O. No. 45.

[2] 84 Lords' J. 344.

minutes of the proceedings of the committee (as the case may be), and reported to the house on the report of such committee."

And on the 7th December 1852, the Lords agreed to the following resolution:

Divisions.

"That in the event of a division taking place in any select committee, the question proposed, the name of the lord proposing the question, and the respective votes thereupon of each lord present, be entered on the minutes of evidence, or on the minutes of the proceedings of the committee (as the case may be), and reported to the house on the report of such committee."

The chairman of a Lords' committee votes, like the other members, but has no casting vote, a question being decided in the negative, if the votes be equal.

Appointment, constitution, and practice in the Commons.

In order to ensure fairness and efficiency in the constitution and proceedings of select committees, and to make their conduct open to observation, the House of Commons have the following standing orders:

Number of members.

1. "That no select committee shall, without leave obtained of the house, consist of more than fifteen members; that such leave shall not be moved for without notice; and that in the case of members proposed to be added or substituted after the first appointment of the committee, the notice shall include the names of the members proposed to be added or substituted."

Attendance.

2. "That every member intending to move for the appointment of a select committee, do endeavour to ascertain previously, whether each member proposed to be named by him on such committee, will give his attendance thereupon."

Notice of names.

3. "That every member intending to move for the appointment of a select committee, shall, one day next before the nomination of such committee, place on the notices the names of the members intended to be proposed by him to be members of such committee."

List of members.

4. "That lists be fixed in some conspicuous place in the committee clerks' office, and in the lobby of the house, of all members serving on each select committee."

Questions to witnesses.

5. "That to every question asked of a witness under examination in the proceedings of any select committee, there be prefixed in the minutes of the evidence, the name of the member asking such question."

Minutes of proceedings.

6. "That the names of the members present each day on the sitting of any select committee be entered on the minutes of evidence, or on the minutes of the proceedings of the committee (as the case may be), and reported to the house on the report of such committee."

7. "That in the event of any division taking place in any select committee, the question proposed, the name of the proposer, and the respective votes thereupon of each member present, be entered on the minutes of evidence, or on the minutes of the proceedings of the committee (as the case may be), and reported to the house on the report of such committee." Divisions.

Appointment of members.

In compliance with the first of these orders, a select committee is usually confined to fifteen members: but if from any special circumstances a larger number should be thought necessary, the house will make an order that the committee do consist of a certain other number: but not until due notice has been given.[1] In special cases, the house have also thought fit to appoint certain committees by ballot;[2] or to name two members, and to appoint the rest of the committee by ballot;[3] or to choose twenty-one names by ballot, and to permit each of two members nominated by the house to strike off four from that number.[4] Members have also been nominated to serve on a committee, to examine witnesses, without the power of voting;[5] or to serve on a committee, and to take part in its proceedings, but without the power of voting.[6]

Committee on matters of privilege.

A committee upon a matter of privilege may be appointed and nominated forthwith without notice; such a committee having been held not to be governed by any of the orders applicable to the appointment and nomination of other select committees.[7]

Appointment by general committee of elections.

For several years, where the inquiry was of a judicial character, it was usual to delegate the nomination of the committee to the general committee of elections. In the Stamford borough case, 1848, the general committee were

[1] 92 Com. J. 91; 103 Ib. 114; 104 Ib. 54. 80; of 21 members (Civil bills (Ireland) bill, 1851), 106 Com. J. 218; of 31 members (Indian Territories, 1852), 107 Com. J. 168; of 30 members (Leasing Powers, &c. (Ireland) bills), 108 Com. J. 284.

[2] 74 Com. J. 64, &c. See also 3 Lord Colchester's Diary, 37.

[3] 88 Com. J. 144. 467, &c.

[4] 88 Ib. 160. 475.

[5] Carlow Election, 91 Com. J. 42.

[6] Ameer Ali Moorad's Claim, 1858; 113 Com. J. 68.

[7] 112 Ib. 232. 146 Hans. Deb., 3rd Ser., 97. 113 Com. J. 68. 148 Hans. Deb., 1855-1867.

instructed to select a chairman and eight other members, seven to be the quorum.[1] In the Derby case, 1852, the gentlemen named on the general committee[2] were instructed to select a committee of five members, and the parties had leave to appear by counsel and agents.[3] In the Berwick case, 1853, the general committee were instructed to select a chairman and six other members.[4] In the Sligo election case,[5] and also in Mr. Stonor's case, 1854, the general committee were instructed to appoint the committee, consisting of five members;[6] and, in the latter case, the house added one member, and directed the general committee to add another, to examine witnesses, but without the power of voting.[7] In some cases specially relating to controverted elections, the general committee was itself instructed to inquire into particular matters.[8]

In 1864, on the nomination of a committee upon education (Inspectors' Reports), a question being proposed that Mr. Bruce be one member of the committee, an amendment was moved and carried, that the committee do consist of five members to be nominated by the general committee of elections, and that two other members, to be named by the general committee, be appointed to serve on the committee to examine witnesses, but without the power of voting.[9] In 1865, the committee on the Leeds bankruptcy court consisted of five members, nominated by the general committee of elections, and two other members, to serve on the committee to examine witnesses, but without the power of voting.[10] The transfer of the judicature of the Commons, in matters of election, and the consequent discontinuance of

[1] 103 Com. J. 555.

[2] The speaker's warrant of appointment had been laid upon the table, but the period had not elapsed within which objections might be made to the members named.

[3] 108 Com. J. 158.

[4] Ib. 518.

[5] 109 Com. J. 36.

[6] Votes, 6th April 1854.

[7] 109 Com. J. 232.

[8] Cashel Election Petition, 1858; 113 Ib. 80. Lisburn Election, 1863; 118 Ib. 164.

[9] Votes, 2nd June 1864.

[10] 120 Com. J. 312.

the general committee of elections, has deprived the house of a convenient agency for the nomination of committees; and the committee of selection, which might be resorted to for the same purpose, whose functions are more properly concerned with private bills, is obviously less adapted for so exceptional a function, than the general committee, which was conversant with the political relations of all the members of the house. On the 15th March 1869, the committee on Naval Contracts was ordered to consist of seven members, five to be nominated by the committee of selection, and two to be added by the house.[1] A similar proposal was made on the 19th June 1873, in regard to the committee on the Cape of Good Hope and Zanzibar Mail Contract, but was withdrawn; and being renewed on the 26th, was, after full discussion, negatived by the house, upon division.[2]

Standing committees.

There is further an exceptional class of committees, called standing committees. The only committee properly so termed is one whose appointment, being by standing order, is permanent, the nomination only being renewed from session to session. Such is the committee of public accounts under a standing order of the 3rd April 1862. In the same category are the committee on standing orders, the committee of selection, and the general committee on railway and canal bills, though not expressly designated as standing committees. Occasionally a committee has been so called,—not quite accurately,—being re-appointed every session, as the Library committee, now discontinued, and the Kitchen and refreshment rooms committee.

Members added and discharged.

Members are frequently added to committees, and other members originally nominated are discharged from further attendance, after previous notice given in the Votes;[3] and if it be proposed to add members, so as to increase the

[1] 124 Com. J. 85. 87. [2] Hans. Deb. 19; 26th June 1873.
[3] 178 Hans. Deb., 3rd Ser., 956.

number of the committee beyond fifteen, or such other number as the house may have agreed upon, it is necessary to give notice of a motion that the committee shall consist of the larger number.[1]

Quorum.

Whatever may be the number of a committee, it is not probable that all could attend throughout the proceedings, and the house order, in each case, what number shall be a quorum. Where no quorum is named, it is necessary for all the members of the committees to attend. Three are generally a quorum in committees of the upper house, and in the Commons the usual number is five; but three are sometimes allowed,[2] and occasionally seven,[3] or nine,[4] or any other number which the house may please to direct. In two cases where the investigations of committees partook of a judicial character, the house named a quorum of five, but at the same time ordered the committee to report the absence of any member on two consecutive days.[5] Late in the session, the original quorum of a committee is sometimes reduced.[6]

A committee cannot proceed to business without a quorum, but must wait until the proper number of members have come into the room; and by standing order, 25th June 1852,

"If, at any time during the sitting of a select committee of this house, the quorum of members fixed by the house shall not be present, the clerk of the committee shall call the attention of the chairman to the fact, who shall thereupon suspend the proceedings of the committee until a quorum be present, or adjourn the committee to some future day."

On the 28th May 1852, an instruction was given to the Income and property tax committee to report the evidence

[1] 112 Com. J. 157, &c.

[2] 111 Ib. 8. 12. 120 Ib. 46.

[3] Army before Sebastopol, 1855; 110 Ib. 87. 125 Ib. 40. 126 Ib. 61, &c.

[4] Committee of privileges, 1854, 109 Com. J. 75. Oaths of members, 1857, 112 Ib. 374.

[5] Great Yarmouth and York Elections, 90 Ib. 457. 504

[6] 106 Com. J. 279. 116 Ib. 291.

of a witness although given when the quorum of the members of the committee was incomplete.[1]

Power to send for persons, papers, and records.

As the object of select committees is usually to take evidence, the House of Commons, when necessary, gives them "power to send for persons, papers, and records." By virtue of this authority, any witness may be summoned by an order, signed by the chairman, and he must bring all documents which he is informed will be required, for the use of the committee. Any neglect or disobedience of a summons will be reported to the house, and the offender will be treated in the same manner as if he had been guilty of a similar contempt to the house itself. This general notice of the power of committees in respect to witnesses will suffice, in this place, as the proceedings of Parliament in regard to the summoning, examination, and punishment of witnesses, will appear, more at length, in the next chapter.[2]

For papers and records only.

In 1849, the Fisheries (Ireland) committee was appointed, with power to send for *papers* and *records* only,[3] but examined witnesses who voluntarily tendered their evidence. This arrangement was made in order to save the expense of witnesses summoned in the usual manner; and placed the committee in the same position, in regard to the examination of witnesses, as a committee on a private bill.

A select committee on a bill, having power to send for persons, papers, and records, can only take evidence concerning that bill, unless the scope of its inquiries be enlarged by an instruction.[4]

Where papers require an address.

A select committee have no power to send for any papers which, if required by the house itself, would be sought by address. In such cases the chairman may either move an address in the house, or communicate with the Secretary of State to whose department the papers relate, who will lay them before Parliament if he thinks proper, by command of

[1] 107 Com. J. 254.
[2] See *infra*, p. 419.
[3] 104 Com. J. 75.
[4] Mr. Speaker's ruling, 18th March 1868; 190 Hans. Deb., 3rd Ser., 1870.

her Majesty. The papers, when received, will then be referred to the committee by the house. Nor is a committee at liberty to send for any papers which, according to the rules and practice of the house, it is not usual for the house itself to order. In the committee on the Thames Embankment, in 1871, objections were raised to the production of a case laid before the law officers of the Crown, on the ground that such a document was not usually required to be produced by the house itself: but when it appeared that this opinion had already been presented, with other papers, the production of the case, upon which that opinion was founded, could not be resisted, and the case was accordingly presented to the committee.[1]

In 1868, the select committee on the Boundaries of boroughs had leave to receive and call for maps, memorials, reports, papers, and records, concerning the said boroughs, and to confer with the boundary commissioners, and those employed under them in their inquiries, and with the members of the counties and boroughs affected.[2]

Appointment discharged.

Orders for the appointment of select committees are occasionally discharged;[3] and other committees, with different orders of reference, appointed.[4]

Presence of strangers.

When a select committee of the House of Lords are taking the examination of witnesses, strangers are rarely allowed to be present: but in the Commons, the presence of strangers is generally permitted. Their exclusion, however, may be ordered at any time, and continued as long as the committee may think fit. When they are deliberating, it is the invariable practice to exclude all strangers, in order that the committee may be exposed to no interruption or restraint.

[1] Minutes of the Committee. Private mem.

[2] 123 Com. J. 183.

[3] 93 Ib. 265; 99 Ib. 300; 108 Ib. 487; Conventual Establishments, 18th May 1854. This case presents examples of every conceivable obstacle that can be opposed to the nomination of a committee, after its appointment.

[4] Conventual and Monastic Institutions, 1870.

All the lords are entitled to attend the select committees of that house, subject to the following regulations:— All lords may come, but not vote.

"Here it is to be observed, that at any committee of our own, any member of our house, though not of the committee, is not excluded from coming in and speaking, but he must not vote; as also he shall give place to all that are of the committee, though of lower degree, and shall sit behind them, and observe the same order for sitting at a conference with the Commons."[1]

But this privilege does not extend to a secret committee.

Members of the House of Commons have claimed the right of being present, as well during the deliberations of a committee as while the witnesses are examined; and although, if requested to retire, they would rarely make any objection, and on the grounds of constant practice and courtesy to the committee, they ought immediately to retire when the committee are about to deliberate; yet it appears that the committee, in case of their refusal, have no power to order them to withdraw. Presence of members.

On the 24th April 1626, Mr. Glanvyle, from the select committee on the charges against the Duke of Buckingham, stated that exceptions were taken by some members of the house against the examinations being kept private, without admitting some other members thereof, and desired the direction of the house. It is evident from this statement that the committee had exercised a power of excluding members; and though it is said in the Journal that much dispute arose upon the general question, "whether the members of the house, not of a select committee, may come to the select committee," no general rule was laid down: but in that particular case the house ordered, Precedents. Charges against the Duke of Buckingham.

"That no member of the house shall be present at the debate, disposition, or penning of the business by the select committee; but only to be present at the examination, and that without interposition."[2]

An opinion somewhat more definite may be collected from the proceedings of the India judicature committee, East India judicature.

[1] Lords' S. O. No. 46. [2] 1 Com. J. 849.

Mr. Barwell.

in 1782. In that case the committee were about to deliberate upon the refusal of Mr. Barwell to answer certain questions; and on the room being cleared, he insisted upon his privilege, as a member of the house, of being present during the debate. The committee observed, that Mr. Barwell being the party concerned in that debate, they thought he had no right to be present. Mr. Barwell still persisted in his right, and two members attended the speaker, and returned with his opinion, that Mr. Barwell had no right to insist upon being present during the debate; upon which Mr. Barwell withdrew. Here the ground taken by the committee for his exclusion was, that he was concerned in the debate, and not simply that, as a member, he had no right to be present at their deliberations. The house soon afterwards ordered,

"That when any matter shall arise on which the said committee wish to debate, it shall be at their discretion to require every person, not being a member of the committee, to withdraw."

The inference from this order must be, that the committee would not otherwise have been authorised to exclude a member of the house.[1]

King's physicians.

When committees were appointed to examine the physicians of King George III., in 1810 and 1811, the house also ordered, "That no member of this house, but such as are members of the committee, be there present."[2]

Election proceedings committee, 1852.

In 1852, the committee on election proceedings resolved "that it was desirable for the interests of the inquiry, and all parties concerned, that no person should be present, except the witness under examination," and induced two members to withdraw, "without deciding on their right to be present." A third member insisted upon his right to be present, which was not contested by the committee; and he was not induced to withdraw until after the committee had

[1] 38 Com. J. 870.

[2] 66 Com. J. 6; 67 Ib. 17.

resolved to adjourn if he persisted in remaining.[1] On the 29th June, the committee, to prevent further misunderstandings, reported that they had unanimously resolved, "that it was desirable that no person should be present, except the witness under examination: but that the committee, having reason to believe that the right of members to be present at their proceedings will be insisted on, had directed the chairman to call the attention of the house to the subject." The exclusion proposed, in this case, extended not only to the deliberations of the committee, but also to the examination of witnesses, and was not sanctioned by the house.[2]

Irish poor committee, 1849.

On the 23rd February 1849, in the case of the Irish poor committee, the speaker stated, that although it had been the practice for members, not being members of the committee, to withdraw while the committee were deliberating or dividing; yet if members persisted in remaining, the committee have no power to exclude them, unless by application to the house.[3]

Army before Sebastopol.

On the 1st March 1855, a report was brought up from the committee, on the Army before Sebastopol, "That, in the opinion of this committee, the objects for which they have been appointed will be best attained, the danger of injustice to individuals be prevented, and the public interest best protected, if the committee be a committee of secrecy." On the following day, when the report was considered, strong objections were urged, in debate, to the proposed secrecy of the committee, and the motion of the chairman, "that the committee be a committee of secrecy," was withdrawn.[4]

Rochdale election.

On the 20th June 1857, the select committee on the Rochdale election resolved, "That the object of the inquiry will best be promoted, by the investigation being carried on in the presence of the members of the committee alone."

[1] Minutes of proceedings of the committee, MS.

[2] 97 Com. J. 438.

[3] 102 Hans. Deb., 3rd Ser., 1183.

[4] 137 Ib. 18.

This resolution was communicated to several members outside, by the committee clerk, and the greater part of them went away: but Colonel French entered the room, asserted his right to be present; and then, out of courtesy to the committee, withdrew. On the 22nd June, he brought the matter to the notice of the house, and appealed to the speaker, whether a select committee was able to constitute itself a secret committee, without an order of the house. The chairman disclaimed, on the part of the committee, any intention of asserting a power of excluding members: it had merely agreed to a resolution that, in its opinion, the inquiry would be best conducted in their absence. It was for them to defer to that opinion, or not, at their discretion. The speaker, after citing the case of the Irish poor committee, 1849, said that there was no doubt that a select committee had no power to enforce the exclusion of any members of the house, and that, in truth, there had been no difference of opinion upon this question between the committee and other honourable members.[1]

General results.

These precedents leave no doubt that members cannot be excluded from a committee room by the authority of the committee; and that if there should be a desire on the part of the committee, that members should not be present at their proceedings, when there is reason to apprehend opposition, they should apply to the house for orders similar to those already noticed. At the same time, it cannot fail to be observed, that such applications have not been very favourably entertained by the house.

Secret committees.

But when, in the opinion of the house, secrecy ought to be maintained, secret committees are appointed,[2] whose inquiries are conducted throughout with closed doors; and it is the invariable practice for all members, not on the com-

[1] 146 Hans. Deb., 3rd Ser., 137. See also debate, 16th May 1861, on the complaint of Mr. MacEvoy; 162 Hans. Deb., 3rd Ser., 2095.

[2] 53 Lords' J. 115. 38 Com. J. 430. 435. 65 Ib. 37. 92 Ib. 26. 99 Ib. 461. 112 Ib. 24.

mittee, to be excluded from the room throughout the whole of its proceedings.[1] On several occasions secret committees, in both houses, have been chosen by ballot.[2]

When members attend the sittings of a committee, they assume a privilege similar to that exercised in the house, and sit or stand without being uncovered.

Chairman chosen.

The first proceeding of a committee is to choose a chairman, who is ordinarily called to the chair by the general voice of the members present: but in the event of a difference of opinion, the choice is governed by the same rules as those observed by the house in the election of a speaker.[3]

Divisions.

Every question is determined, in a select committee, in the same manner as in the house to which it belongs. In the Lords' committees, the chairman votes like any other peer; and if the numbers on a division be equal, the question is negatived, in accordance with the ancient rule of the House of Lords, "*semper præsumiter pro negante.*" In the Commons, the practice is similar to that observed in divisions of the house itself.

Casting voice of chairman.

On the 25th March 1836, the house was informed that the chairman of a select committee had first claimed the privilege to vote as a member of the committee, and after-

[1] "In the course of the debate (on the Committee of Secrecy on the Bank of England), Mr. Fox and Mr. Grey both stated distinctly and expressly, and without contradiction, that the nature of a committee of secrecy was only that it excluded from their proceedings all strangers: but that the members of the committee were not otherwise bound to individual secrecy out of the committee, than as their own sense of duty or propriety might suggest, according to the nature and object of their inquiry." Lord Colchester's Diary, 9th March 1797, i. 91. For a discussion as to the peculiarities of a secret committee, see debates upon the Budget and Navy Estimates, 22nd Feb. 1848; 96 Hans. Deb., 3rd Ser., 987. 1056. Bank Acts Committee, 12th Feb. 1857; 144 Hans. Deb., 3rd Ser., 596.

[2] 41 Lords' J. 96. 113 (Bank). 42 Ib. 176 (Treasonable Conspiracy in Ireland). 43 Ib. 97 (Suspension of Habeas Corpus). 56 Com. J. 259 (State of Ireland). 67 Ib. 492 (State of Counties). 74 Ib. 64 (Bank). On the state of the country (Lords), 5th Feb. 1818, 37 Hans. Deb. p. 155.

[3] Minutes of committees; Savings banks, 1849; Bills of Exchange bill, 1855; Rochdale election, 1857; Tenure and Improvement of Land (Ireland) act; 1865.

wards, when the voices were equal, of giving a casting vote as chairman; and that such practice had, of late years, prevailed in some select committees:[1] upon which the house declared, "That, according to the established rules of Parliament, the chairman of a select committee can only vote when there is an equality of voices."[2]

Committees on private bills.

But in committees on private bills, a different practice has been introduced, as it is ordered,

"That all questions shall be decided by a majority of voices, including the voice of the chairman; and whenever the voices are equal, the chairman shall have a second or casting vote."[3]

This deviation from the ordinary rule of voting in select committees was rendered necessary by the peculiar constitution of group committees, then consisting of five members only. When one member was absent, a difficulty arose in determining a question without some new regulation: for otherwise two members could have decided every question, although the chairman agreed with the remaining member; and in 1864, this difficulty was further increased by the reduction of such committees to four members.[4]

Adjournment of committees.

A select committee may adjourn its sittings from time to time, and occasionally a power is also given by the house

From place to place.

to adjourn from place to place;[5] or from time to time,

[1] This misconception of the usage of parliament may have arisen from the peculiar practice of election committees, as regulated by Act of Parliament.

[2] 91 Com. J. 214. In the Committee on the Consolidation of the Customs and Inland Revenue, 1863, Mr. Horsfall, the chairman, had prepared a report, which was negatived by a majority of one. Mr. Cardwell then proposed a report embodying the opinions of the majority: but at the next meeting of the committee, Mr. Horsfall declined to resume the chair, and proposed that Mr. Cardwell should take it,—his object being to obtain a majority in favour of his own views. The matter being referred to Mr. Speaker, he expressed an opinion that the course proposed was contrary to the spirit of parliamentary proceedings, and Mr. Horsfall resumed the chair: but a committee so balanced being unable to agree, they merely reported the evidence without any opinion.—*Mr. Speaker's Note-book.*

[3] S. O. 126.

[4] 119 Com. J. 460.

[5] 89 Ib. 419; 101 Ib. 152; 105 Ib. 215; 107 Ib. 279; 108 Ib. 453 111 Ib. 318.

and from place to place.[1] This power of adjournment from place to place is generally intended to enable a committee to hold its sittings in different parts of London, as the Mint committee of 1837 at the Mint; the Coal Mines committee of 1852 at the Polytechnic Institution; the National Gallery committee of 1853 at the National Gallery; and the Oaths committee of 1850 at the house of Mr. Wynn, a member of the committee, who was sick. But in 1834, the committee on the Inns of Court appointed a quorum to go into Essex, to take the evidence of a witness who was unable to move from home. In 1858, it was proposed to give the power of adjourning from place to place to the committee on Contracts (Public Departments), in order to enable it to hold its sitting at Weedon; but the proposal was withdrawn, and a royal commission appointed. In 1863, this power was granted to the committee on the Thames Conservancy, to empower it to visit different parts of the river, to which its inquiry extended.[2] In 1864, the same power was given to the committee on Schools of Art.[3] In certain cases, select committees have been appointed expressly for the purpose of taking the examination of witnesses who were incapacitated by sickness from attending personally to be examined before the house or its committees.[4]

Committees appointed to examine sick witnesses.

Without special leave, no committee of the Commons may sit during the evening sitting of the house, or after any adjournment for a longer period than till the next day. By a standing order of the Commons, 25th June 1852, it is ordered,

Not to sit during sitting, or after adjournment of the house.

"That the serjeant-at-arms attending this house do, from time to time, when the house is going to prayers, give notice thereof to all committees; and that all proceedings of committees, after such notice, be declared to be null and void, unless such committees be otherwise empowered to sit after prayers."

Prayers.

[1] 108 Com. J. 350.
[2] Votes, 28th May 1863.
[3] 119 Com. J. 255.
[4] 61 Ib. 435. 2 Hatsell, 138, *n.*

But by another standing order, 21st July 1856, it is ordered,

"That on Wednesdays, and other morning sittings of the house, all committees shall have leave to sit, except while the house is at prayers, during the sitting, and notwithstanding the adjournment of the house."

And in order to avoid any interruption to urgent business before committees, leave is frequently obtained, on the meeting of the house in the afternoon, for a committee to sit till five o'clock, or such other hour as may be agreed upon; and on Friday night leave is given, when necessary, to a committee to sit on Saturday, notwithstanding the adjournment of the house.

Of late years orders have usually been made that no committees shall have leave to sit on Ascension Day until two o'clock,[1] in order to enable members to attend morning service. And on Ash Wednesday committees rarely sit: but, if necessary, meet after two o'clock, to which hour the house is adjourned.

Adjournment of committees.

A select committee ought to be regularly adjourned from one sitting till another, though in practice the re-assembling of the committee is sometimes left to be afterwards arranged by the chairman, by whose direction the members are summoned for a future day: but this practice, not being regular, can only be resorted to for the convenience of the members, and with their general concurrence. In 1871, a complaint was made, that after a day had been fixed for the next meeting of the committee by the chairman, he had, after consulting several members of the committee, appointed an earlier day: but it was ruled that, under the circumstances explained to the house, such a proceeding was not irregular.[2]

To sit *de di in diem.*

Sometimes a committee has been ordered to sit *de die in diem.*[3] In 1869 an instruction was given to the committee

[1] 111 Com. J. 168; 112 Ib. 157; 116 Ib. 193; 117 Ib. 234; 120 Ib. 298. See also *supra*, p. 224.

[2] 205 Hans. Deb., 3rd Ser., 685.

[3] 123 Com. J. 183.

on naval contracts to sit and proceed forthwith, and to sit from day to day.[1]

In 1856, the Masters and Operatives committee was revived[2] in consequence of an irregularity in its adjournment; being the first instance, it is believed, of such a proceeding, except in the case of committees on private bills. A select committee revived.

Where select committees have been appointed to inquire into matters in which the private interests, character or conduct of any persons appeared to be concerned, petitions praying to be heard by counsel have been referred, and counsel ordered.[3] Counsel.

The evidence of the witnesses examined before a select committee is taken down in short-hand, and printed daily for the use of the members of the committee. In the Lords, the printing is authorised by a special order of the house, in each case: in the Commons, it is done according to long established practice. A copy of his own examination is also sent to each witness for his revision, with an instruction that he can only make verbal corrections, as corrections in substance must be effected by re-examination. The alterations should be confined to the correction of inaccuracies, or the necessary explanation of any answer, and are required to be in the handwriting of the witness himself, unless he is disabled by accident or infirmity, in which case they may be written by another person at his dictation. The corrected copy should be returned without delay to the committee clerk, who is to examine the corrections, and if any appear to be irregular, he is to submit them to the chairman. If the evidence be not returned, with corrections, in six days, or some other reasonable time, according to the circumstances, it will be printed in its original form.[4] Printed minutes of evidence.

On the 20th July 1849, an instruction was given to a

[1] 124 Com. J. 87.

[2] 111 Ib. 298.

[3] 62 Ib. 110; 77 Ib. 405; 88 Ib. 169. 568. 588.

[4] Instructions by Mr. Speaker, 16th April 1861; and see 189 Hans. Deb., 3rd Ser., 1223.

select committee to re-examine a witness "touching his former evidence," as it appeared that he had corrected his evidence more extensively than the rules of the house permitted, and his corrections had consequently not been reported by the committee.[1]

In 1849, a committee of the House of Lords reported that the alterations made by some of the witnesses were so unusual, that they had ordered the alterations and corrections to be marked, and printed in the margin.[2]

Not to be published until reported.

Neither the members, nor the witnesses to whom these copies are entrusted, are at liberty to publish any portion of them, until they have been reported to the house. On the 21st April 1837, it was resolved by the Commons,

"That according to the undoubted privileges of this house, and for the due protection of the public interest, the evidence taken by any select committee of this house, and documents presented to such committee, and which have not been reported to the house, ought not to be published by any member of such committee, nor by any other person."[3]

In some cases, leave has been given to the parties appearing before a select committee to print the evidence from the committee clerk's copy, from day to day.[4]

Draft report not to be published.

Any publication of the report of a committee, before it has been presented to the house, is treated as a breach of privilege. On the 31st May 1832, complaint was made of the publication of a draft report of a committee, in a Dublin newspaper: the proprietor admitted that he had sent the copy, and stated that he was willing to take the responsibility upon himself, but must decline to give information which might implicate any other person. He was accordingly declared guilty of a breach of privilege, and committed to the custody of the serjeant.[5]

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

[1] 104 Com. J. 525.

[2] Audit of Railway Accounts (North Wales Railway).

[3] 92 Com. J. 282.

[4] The Metropolis Water bill. 1871; 126 Com. J. 292.

[5] 87 Com. J. 360.

munication with France was published in two newspapers, while it was under consideration. The committee vainly endeavoured to trace the parties from whom the copy had been originally obtained, but recommended improved regulations for the printing, distribution, and custody of such documents.[1]

Draft resolutions or report.

When the evidence has been concluded, the chairman prepares resolutions, or a draft report, which it is customary to print and circulate among the members, before they are considered. Resolutions are open to discussion and amendment, subject to the same rules as in a committee of the whole house.[2] When a resolution has been agreed to, the committee are unable to review and amend it. When there are more than one series of resolutions, it is usual to move that those to be proposed by Mr. A. (generally the chairman) be now taken into consideration; which question may be amended by leaving out "Mr. A." and inserting "Sir W. H.;" and the opinion of the committee being ascertained, the consideration of the resolutions preferred by them is proceeded with. A draft report is read a first time *pro formâ*, and a second time paragragh by paragraph, every part being liable to amendment, according to the ordinary rules which govern amendments. A question is also put that each paragraph, or each paragraph as amended, stand part of the report. In case there should be two or more draft reports, proposed by different members, they are severally read a first time, when a question is proposed that the draft report proposed by Mr. C. be now read a second time, paragraph by paragraph; to which an amendment may be moved to leave out "Mr. C." and insert "Lord D.;" and when the committee have decided which of the rival reports shall be accepted for consideration, it is proceeded with, paragraph by paragraph. New paragraphs may also be inserted, throughout the report, or added, by way of amendment. When the whole report

[1] Rep. p. vi., Sess. 1850 (381). [2] *Supra*, p. 385.

has been agreed to, a question is put that it be the report of the committee to the house.

Power to report.

A committee have no power to report either their opinion, or the minutes of evidence taken before them, without receiving power for that purpose from the house. Accordingly, where this power has not been given on the first appointment of the committee, the chairman, before he brings up the report, moves that the committee have power to report their observations or opinion, and minutes of evidence, as the case may be. When the committee have agreed to a report upon the subject referred to them, the chairman should obtain power to report their observations: but when they have agreed to resolutions only, he should obtain power to report their "opinion." When a committee desire to make a report to the house relating to any circumstance beside the immediate order of reference, they obtain leave to make a special report.[1]

Power to report from time to time.

It is the general custom to withhold the evidence until the inquiry has been completed, and the report is ready to be presented: but whenever an intermediate publication of the evidence, or more than one report, may be thought necessary, the house will grant leave, on the application of the chairman, for the committee to "report its opinion or observations, from time to time," or to "report minutes of evidence" only, from time to time.[2] And until the report and evidence have been laid upon the table, it is irregular to refer to them in debate;[3] or to put questions in reference to the proceedings of the committee.[4] If a committee, not having power to report from time to time, make a report to the house, its sittings are assumed to have been closed; and if further proceedings were desired, it would be necessary to revive the committee.

A committee re-appointed cannot report the evidence

[1] 111 Com. J. 279. 360, &c.
[2] 74 Lords' J. 80 &c. 92 Com. J. 18. 167. 112 Ib. 282, &c.
[3] 159 Hans. Deb., 3rd Ser., 814. 193 Ib. 1124.
[4] 189 Ib. 604.

taken before the committee in the previous session, except as a paper in the appendix. To obviate that difficulty, on the 29th April 1852, the house ordered the evidence of the previous session to be laid before them; and when presented it was referred to the committee, with leave to report it forthwith.[1]

Publication of draft reports.

There have been instances in which the chairman of a committee, after the committee had reported, has published his own draft report, which had not been accepted, accompanied in some cases by additional arguments and illustrations;[2] and no objection had been urged against such a publication: but on the 21st July 1858, it was brought to the notice of the house, that the chairman of a committee had published and circulated, in the form of a parliamentary proceeding, a draft report which he had submitted to the committee, but which had not been entertained by them, accompanied by observations reflecting upon the conduct and motives of members of that committee. No formal vote was sought for on this occasion: but it was generally agreed that the proceeding was irregular, and contrary to the usage of Parliament.[3]

Reports cancelled.

In one case the report of a committee had been made, and ordered to be printed, in the previous session, but was, in fact, prepared by the chairman after the prorogation. A committee was appointed to consider the circumstances under which the document purporting to be the report of the committee had been ordered to be printed; and on their report being received, the house resolved, "That the document was not a report which had been agreed to by the said committee, and that the said document be cancelled."[4] On the 28th April 1863, notice being taken that the analysis of evidence appended to the report of the

[1] Property Tax Committee, 107 Com. J. 177.

[2] Agricultural Distress, 1836. Income Tax, 1861.

[3] 151 Hans. Deb., 3rd Ser., 1867.

[4] 102 Com. J. 254. 682. Hans. Deb., 16th June 1847.

select committee on Sewage of Towns in the last session, comprised observations and opinions not within the scope of such analysis, it was ordered to be cancelled.[1]

Reports of committees.

When the evidence has not been reported by a committee, it has sometimes been ordered to be laid before the house.[2] It is usual, however, to present the report, evidence, and appendix together, which are ordered to lie upon the table, and to be printed. In presenting a report, the chairman appears at the bar, and is directed by the speaker to bring it up. On the 18th May 1865, it was ordered by the Lords, "that any report presented by a select committee shall not merely be laid upon the table of the house, but shall be printed and circulated, and notice shall be given on the minutes, of the day on which it may be intended to take the report into consideration.[3]

Any appropriate motion may be founded upon a report: as that it be recommitted;[4] or taken into consideration on a future day;[5] or communicated to the Lords at a conference.[6] In 1850, the house, instead of ordering the evidence taken before a committee to be printed, referred it "to the secretary of state for the colonies, for the consideration of Her Majesty's government."[7]

[1] 118 Com. J. 189.
[2] 88 Ib. 671; 105 Ib. 637, &c.
[3] 97 Lords' J. 208.
[4] 76 Com. J. 213; 88 Ib. 583; Azeem Jah (forgery of signatures to petitions, 1865), 120 Ib. 252.
[5] 86 Ib. 167.
[6] 91 Ib. 9.
[7] 105 Ib. 661 (Ceylon committee).

CHAPTER XV.

WITNESSES: MODES OF SUMMONS AND EXAMINATION: ADMINISTRATION OF OATHS: EXPENSES.

How summoned by the Lords.

ALL witnesses who are summoned to give evidence before the House of Lords, or any committee of the whole house, are ordered to attend at the bar on a certain day, to be sworn; and they are served with the order of the house, signed by the clerk of the Parliaments. And if a witness be in the custody of a keeper of a prison, the keeper is ordered to bring him up in custody, in the same manner.[1] If the house have reason to believe that a witness is purposely keeping out of the way, to avoid being served with the order, it has been usual to direct that the service of the order at his house shall be deemed good service.[2] If, after such service of the order, the witness should not attend, he is ordered to be taken into custody:[3] but the execution of this order is sometimes stayed for a certain time.[4] If the officers of the house do not succeed in taking the witness into custody by virtue of this order, the last step taken is to address the Crown to issue a proclamation, with a reward for his apprehension.[5]

Peers, &c., how summoned.

When the evidence of peers, peeresses, or lords of Parliament has been required, the lord chancellor has been ordered to write letters to them, desiring their attendance to be examined as witnesses:[6] but they ordinarily attend and give evidence without any such form.

Witnesses summoned by the Commons.

When the attendance of a witness is desired, to be examined at the bar, by the House of Commons, or by a committee of the whole house, he is simply ordered to

[1] 68 Lords' J. 513. 558.
[2] 66 Ib. 295. 358.
[3] Ib. 400.
[4] Ib. 358.
[5] Ib. 441, 442.
[6] Ib. 144.

attend at a stated time;[1] and the order, signed by the clerk of the house, is served upon him personally, if in or near London; and if at a distance, it is forwarded to him by the serjeant-at-arms, by post, or, in special cases, by a messenger. If he should be in the custody of the keeper of any prison,[2] or sheriff,[3] the speaker is ordered to issue his warrant, which is personally served upon the keeper, or sheriff, by a messenger of the house, and by which he is directed to bring the witness in his custody to be examined. If the order for the attendance of a witness be disobeyed, he may be ordered to be sent for in custody of the serjeant-at-arms, and Mr. Speaker be ordered to issue his warrant accordingly;[4] or he may be declared guilty of a breach of privilege, and ordered to be taken into the custody of the serjeant.[5] Any person, also, who aids or abets a witness in keeping out of the way, is liable to a similar punishment.[6] When the serjeant has succeeded in apprehending such persons, they are generally sent to Newgate for their offence.[7]

If a witness should be in custody, by order of the other house, his attendance is secured by a message, desiring that he may attend in the custody of the black rod, or the serjeant-at-arms, as the case may be, to be examined.[8]

By select committees.

The attendance of a witness to be examined before a select committee, is ordinarily secured by an order signed by the chairman, by direction of the committee: but if a party should neglect to appear when summoned in this manner, his conduct is reported to the house, and an order is immediately made for his attendance at the bar of the house. If, in the meantime, he should appear before the

[1] 78 Com. J. 240. 91 Ib. 338.

[2] 10 Ib. 476. 82 Ib. 464. 86 Ib. 795. 93 Ib. 210. 96 Ib. 193. 97 Ib. 227. 99 Ib. 89. 126 Ib. 228.

[3] 93 Ib. 353.

[4] 95 Ib. 58. See, also as to the form of the warrant, *supra*, p. 177 (Howard *v.* Gosset).

[5] 106 Com. J. 48, &c.

[6] 90 Ib. 330.

[7] Ib. 343, 344.

[8] 11 Ib. 296. 305. 15 Ib. 376. 19 Ib. 461, 462. 21 Ib. 356. 926.

committee, it is usual to discharge the order for his attendance:[1] but if he still neglect to appear, he is dealt with as in the other cases already described. The attendance of a witness before a committee on a private bill, is generally secured by the promoters and opponents themselves, without any order or other process: but if a witness should decline to attend at the instance of the parties, his attendance is enforced by an order of the house.[2]

On private bills.

When witnesses have absconded, and cannot be taken into custody by the serjeant-at-arms, addresses have been presented to the Crown for the issue of proclamations, with rewards for their apprehension.[3]

Witnesses absconding.

If the evidence of a member be desired by the house, or a committee of the whole house, he is ordered to attend in his place on a certain day.[4] But when the attendance of a member is required before a select committee, it is the custom to request him to come, and not to address a summons to him in the ordinary form. The proper course to be adopted by committees, in reference to members, has been thus laid down by two resolutions of the Commons, of the 16th March 1688:

Attendance of members, how required.

"That if any member of the house refuse, upon being sent to, to come to give evidence or information as a witness to a committee, the committee ought to acquaint the house therewith, and not summon such member to attend the committee."

"That if any information come before any committee that chargeth any member of the house, the committee ought only to direct that the house be acquainted with the matter of such information, without proceeding further thereupon."[5]

There has been no instance of a member persisting in a refusal to give evidence: but members have been ordered by the house to attend select committees.[6] In 1731, Sir Archibald Grant, a member, was committed to the custody

[1] 91 Com. J. 352.
[2] 104 Ib. 386. 110 Ib. 267. 112 Ib. 263, &c.
[3] 75 Ib. 419. 82 Ib. 345, &c.
[4] 61 Com. J. 386. 64 Ib. 17. 65 Ib. 21. 30, &c.
[5] 10 Ib. 51.
[6] 19 Ib. 403.

of the serjeant-at-arms, "in order to his forthcoming to abide the orders of the house," and was afterwards ordered to be brought before a committee, from time to time, in the custody of the serjeant.[1] On the 28th June 1842, a committee reported that a member had declined complying with their request for his attendance.[2] A motion was made for ordering him to attend the committee, and give evidence: but the member having at last expressed his willingness to attend, the motion was withdrawn.[3]

The customary courtesy to members was also observed, in securing their attendance as witnesses before an election committee; and warrants were not therefore issued by the speaker to summon them to attend, although he had a statutory power to issue them.

Attendance of members of the other house.

If the attendance of a peer should be desired, to give evidence before the house, or any committee of the House of Commons,[4] the house sends a message "to the Lords, to request that their lordships will give leave to the peer in question to attend, in order to his being examined" before the house, or a committee, as the case may be, and stating the matters in relation to which his attendance is required. If the peer should be in his place when this message is received, and he consents, leave is immediately given for him to be examined, if he think fit. If not present, a message is returned on a future day, when the peer has, in his place, consented to go.[5] Exactly the same form is observed by the Lords, when they desire the attendance of a member of the House of

[1] 21 Com. J. 851, 852.

[2] 97 Ib. 438.

[3] Ib. 438. 453. 458. See also Report of Precedents, Ib. 449.

[4] 82 Ib. 394. 88 Ib. 173. 179.

[5] The jealousy of the House of Lords of the attendance of its members in the House of Commons, is shown by the following standing order, which, though not immediately applicable to them as witnesses, may be noticed in passing:

25th November 1696. "That no lord of this house shall go into the House of Commons whilst the house, or any committee of the whole house, is sitting there, without the leave of this house first had."—Lords' S. O. No. 62.

Commons. A message is also sent requiring the attendance of a member to be examined, when the Lords are sitting on the trial of an impeachment;[1] but if the Lords be sitting as a court of criminal judicature on the trial of a peer, they will *order* the attendance of a member of the House of Commons without a message.[2] Whenever the attendance of a member of the other house is desired by a committee, it is advisable to give him private intimation, and to learn that he is willing to attend, before a formal message is sent to request his attendance. But these formalities, though occasionally adopted,[3] are not usual or necessary in the case of private bills, where the attendance of witnesses is voluntary.[4] If a member should be in custody when leave is given him to attend the House of Lords, the serjeant-at-arms is ordered to permit him to attend, in his custody.[5]

Officers of either house.

The same ceremony is maintained between the two houses in requesting the attendance of officers connected with their respective establishments: but when leave is given them to attend, the words "if they think fit," which are used in the case of members, are omitted in the answer.[6]

Peers, not being lords of Parliament.

Whether a peer, who is not a lord of Parliament, may be ordered to attend in the same form as a commoner, is a matter upon which the two houses have not agreed. On the 3rd May 1779, the Earl of Balcarras, of the peerage of Scotland, was ordered to attend the House of Commons.[7] On the 5th June 1806, the house ordered the attendance of Lord Teignmouth,[8] of the peerage of Ireland, and he

[1] 12 Lords' J. 84; 16 Ib. 33. 747.

[2] 3 Hatsell, 21, *n.*

[3] Liverpool Docks bill (Lord Harrowby), 103 Com. J. 438; Salford Borough bill, 108 Ib. 434. Thames Embankment Approaches bill, 1873 (Duke of Northumberland). In this case the attendance of the Duke was desired by the committee itself, and not by the parties.

[4] 3 Hatsell, 21. See *supra*, p. 421.

[5] 11 Com. J. 296. 305. 15 Ib. 376. (Mr. W. S. O'Brien). 101 Ib. 603.

[6] 83 Ib. 278; 91 Ib. 75; 103 Ib. 658; 112 Ib. 61; 113 Ib. 255.

[7] 37 Ib. 366.

[8] 61 Ib. 374.

attended accordingly: but the House of Lords, at a conference, took exception to the mode of summons, and stated, "That it doth not appear that there is any other precedent but that of the Earl of Balcarras in 1779, in which either house of Parliament, desiring information of a peer of the realm, has required his attendance for that purpose, by an order of such house." To this, however, the Commons replied, that Lord Teignmouth "is not a lord of Parliament, nor hath the right and privilege of sitting in the House of Lords, nor is entitled to any of the privileges thereupon depending." The Lords continued to maintain the privilege of peerage as apart from the privilege of Parliament, and resolved, "That it is the undoubted privilege of all the peers of the United Kingdom of Great Britain and Ireland, except such as may have waived their privilege of peerage by becoming members of the Commons' House of Parliament, to decline, if they so think fit, to attend the House of Commons, for the purpose of giving information upon inquiries instituted by the said house, and that the said house has no right to enforce such attendance; and that it is the incumbent duty of this house to maintain and uphold such the privilege of all the peers aforesaid, and to protect them against any attempt to enforce their attendance on the House of Commons, contrary to such privilege."[1] But this resolution was not communicated to the Commons.[2]

Peers under accusation.

In 1805, the Commons having sent a message to the Lords, desiring the attendance of Viscount Melville, to be examined before the committee of Naval Inquiry, the Lords acquainted them, at a conference, that the course adopted by the Lords "has been to permit their members, on their own request, to defend themselves in the House of

[1] 45 Lords' J. 812.

[2] See 2 Hatsell, App. 9. 2 Lord Colchester's Diary, 69. 73; 1st June 1825. "The chancellor, by Mr. Cowper's advice, thought it necessary to have leave given by the house for the Archbishop of Dublin's attendance before the Commons' committee, although, not being on the rota, he has no seat in the House of Peers, or duty to discharge there." 3 Lord Colchester's Diary, 394.

Commons, on points on which the Commons have not previously passed criminating resolutions against them, and to give evidence before the house or any committee thereof on those points only on which no matter of accusation is depending against them;" and within these limitations they gave leave to Lord Melville to attend,[1] though the Commons did not think fit to examine him.[2]

Inquiry to have been previously ordered.

Before any such message is sent to the other house, or any witness is otherwise summoned, it is right that the house should previously have directed an inquiry into the matter upon which evidence is sought.[3]

Mode of examination.

These being the various modes of securing the attendance of witnesses to give evidence before either house of Parliament, the mode of examination is next to be considered.

Lords.

In the House of Lords, every witness is sworn at the bar who is about to be examined by the house, or by a committee of the whole house. But lords of Parliament, and peers not being lords of Parliament, and peeresses, are sworn at the table of the house, by the lord chancellor.[4] An Irish peer, being a member of the House of Commons,

[1] 60 Com. J. 265. 1 Lord Colchester's Diary, 558; and see 4 Hatsell, 485.

[2] 60 Com. J. 272. By a standing order of the 20th January 1673, "The lords conceive that it may deeply intrench into the privileges of this house, for any lord of this house to answer an accusation in the House of Commons, either in person or by sending his answer in writing, or by his councel there. Upon serious consideration had whereof, and perusal of the said precedents in this house, it is ordered, that for the future no lord shall either go down to the House of Commons, or send his answer in writing, or appear by councel to answer any accusation there, upon penaltie of being committed to the black rod, or to the Tower, during the pleasure of this house."—Lords' S. O. No. 61.

[3] On the 31st March 1813, a motion being made for a message to the Lords for the attendance of Lord Moira to give information concerning the Princess of Wales, the speaker desired the attention of the house to the proceeding as novel and unparliamentary; "the rule being, according to all precedents, not to desire the attendance of witnesses of any sort, excepting upon a matter pending in the house, and which the house had previously resolved to examine." The motion was superseded by reading the order of the day. 68 Com. J. 364. 2 Lord Colchester's Diary, 434.

[4] 38 Lords' J. 68, 69. Lords' J., 14th July 1845; 15 June 1855.

is sworn at the bar, as a Commoner.[1] The Lords formerly claimed the privilege of being examined upon honour, instead of upon oath. On the 22nd May 1732, the committee of Privileges reported that the Lords should be examined in all courts, upon protestation of honour only, and not upon the common oath;[2] and in an earlier instance the house had declared a master in chancery guilty of a breach of privilege for having refused to receive a protestation of honour by Lord Plymouth:[3] but this supposed privilege has long since been abandoned, and peers are everywhere examined upon oath, even in the House of Lords itself. If counsel be engaged in an inquiry at the bar, the witnesses are examined by them, and by any lord who may desire to put questions. When counsel are not engaged, the witnesses are examined by the Lords generally. A lord of Parliament is examined in his place; and peers not being lords of Parliament, and peeresses, have chairs placed for them at the table.[4]

Oaths administered by Lords' committees.

Until recently, every witness about to be examined before a select committee, had been required to attend previously at the bar, to be sworn. This practice was attended with much inconvenience, and it was repeatedly suggested that it should be altered by statute. On the 11th June 1857, the Lords applied a partial remedy, by resolving "that select committees, in future, shall examine witnesses without their having been previously sworn, except in cases in which it may be otherwise ordered by the house."[5] And in 1858, a more complete remedy was provided by statute 21st & 22nd Vict. c. 78, by which "any committee of the House of Lords, may administer an oath to the witnesses before such committee."

[1] Viscount Palmerston, 16th July 1844.

[2] 24 Lords' J. 136. [3] 14 Ib. 18.

[4] 25 Ib. 303. See also Ib. 100; 38 Ib. 69; 46 Ib. 172. 189, where the judges of the Court of Justiciary in Scotland had chairs set for them at the bar, to be examined.

[5] 89 Lords' J. 60; Report on Oaths of Witnesses, 1857 (15).

In select committees, witnesses are placed in a witness-box, or at the short-hand writer's table, to be examined: but members of the House of Commons are allowed a seat near the table, where they sit uncovered. Committees.

False evidence before the Lords, being upon oath, has always rendered a witness liable to the penalties of wilful and corrupt perjury; and prevarication, or other misconduct of a witness, is also punished as a contempt.[1] Oaths.

By the laws of England, the power of administering oaths has been considered essential to the discovery of truth: it has been entrusted to small debt courts, and to every justice of the peace: but until 1871 it was not enjoyed by the House of Commons, the grand inquest of the nation. From what anomalous cause, and at what period, this power, which must have been originally inherent in the High Court of Parliament, was retained by one branch of it, and severed from the other, cannot be satisfactorily established: but, even while the Commons were contending most strenuously for their claim to be a court of record, they did not advance any pretension to the right of administering oaths. The two houses, in the course of centuries, have appropriated to themselves different kinds of judicature: but the one has exercised the right of administering oaths without question, while the other, except during the Commonweath,[2] never asserted it.

During the 17th century the Commons were evidently alive to the importance of this right, and anxious to exercise it: but, for reasons not explained, they admitted, by various acts, that the right was not inherent in them; and resorted to various expedients in order to supply the defect in their own authority.[3] 1. They selected some of their own members, who were justices of the peace for Middlesex, to administer oaths in their magisterial capacity,—a prac- Expedients of the Commons.

[1] 48 Lords' J. 371, &c.

[2] See 6 Com. J. 214. 451; 7 Ib. 55. 287. 484, &c. See also 2 Ib. 455. See further the Author's evidence before the Committee on Witnesses (House of Commons), in 1869.

[3] 2 Hatsell, 151 *et seq.*

tice manifestly irregular, if not illegal, since justices may only adminster oaths in investigating matters within their own jurisdiction, as limited by law.[1] 2. They sent witnesses to be examined by one of the judges.[2] 3. They sought to aid their own inquiries by having their witnesses sworn at the bar of the House of Lords;[3] and by examining witnesses on oath before joint committees of both houses;[4] in neither of which expedients were they supported by the Lords.

To examine in the most solemn manner.

All these methods of obtaining the sanction of an oath to evidence taken at their instance, were so many distinct admissions of their own want of authority: but in the 18th century, a practice of a different character arose, which appeared to assume a right of delegating to others, a power which they had not claimed to exercise themselves. On the 27th January 1715, they empowered justices of the peace for Middlesex to examine witnesses in the most solemn manner before a committee of secrecy;[5] and the same practice was resorted to in other cases.[6] On the 12th January 1720, a committee was appointed to inquire into the affairs of the South Sea Company, and the witnesses were ordered to be examined before them in the most solemn manner, without any mention of the persons by whom they were to be sworn.[7] Between this time and 1757, several similar instances occurred:[8] but from that year, the most important inquiries were conducted, without any attempt to revive so anomalous and questionable a practice. And at length, in 1871, in pursuance of the recommendations of a select committee of 1869, an act was passed, empowering the House of Commons and its committees to administer oaths to witnesses, and attaching to false evidence the penalties of perjury.[9] By standing orders

Power of administering oaths conferred by statute, 1871.

[1] 9 Com. J. 521; 10 Ib. 682.
[2] 10 Ib. 415. 417.
[3] 8 Ib. 325. 327.
[4] 2 Ib. 502; 8 Ib. 647. 655.
[5] 18 Ib. 353.
[6] 18 Com. J. 596; 19 Ib. 301.
[7] 19 Ib. 403.
[8] 21 Ib. 851, 852. 2 Hatsell, 151-157.
[9] 34 & 35 Vict. c. 83.

of the 20th February 1872, made pursuant to this act, oaths are administered to witnesses, before the house or a committee of the whole house, by the clerk at the table; and before a select committee, by the chairman, or by the clerk atttending the committee. It has been held that a joint committee of the two houses has the same power of swearing witnesses as committees sitting separately, in the usual manner.[1] The power of administering oaths to witnesses has also been extended to the courts of referees.[2] By the Evidence Amendment Acts, 1869 and 1870, where a judge or person having authority to administer an oath is satisfied that the taking of an oath is not binding upon the conscience of a witness, he may make a promise and declaration.

Courts of referees.

To secure respect to the authority of the house in its inquiries, two resolutions are agreed to at the beginning of each session:

False evidence a breach of privilege.

1. "That if it shall appear that any person hath been tampering with any witness, in respect of his evidence to be given to this house, or any committee thereof, or directly or indirectly hath endeavoured to deter or hinder any person from appearing or giving evidence, the same is declared to be a high crime and misdemeanor; and this house will proceed with the utmost severity against such offender."

2. "That if it shall appear that any person hath given false evidence in any case before this house, or any committee thereof, this house will proceed with the utmost severity against such offender."

The house has rarely failed to act up to the spirit of these resolutions with strictness and severity, and the Journals abound with cases in which witnesses have been punished by commitment to the serjeant-at-arms, and to Newgate, for prevaricating, or giving false testimony, or suppressing the truth; for refusing to answer questions, or to produce documents in their possession.[3] If any witness

[1] Railway Amalgamation Bills Committee, 1873.

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

[3] Orange Lodges (Colonel Fairman), 90 Com. J. 504. 520. 564; 103 Ib. 258; 112 Ib. 354. See also "Committees," "Complaints," "House," "Elections," and "Witnesses," in the General Journal Indexes.

be guilty of such misbehaviour before a committee of the whole house or a select committee, the circumstance is reported to the house, by whom the witness is dealt with.[1]

Protection to witnesses.

While the house punishes misconduct with severity, it is careful to protect witnesses from the consequences of their evidence, given by order of the house. On the 26th May 1818, the speaker called the attention of the house to the case of the King *v.* Merceron,[2] in which the short-hand writer of the house[3] was examined without previous leave, and it was resolved, *nem. con.*,

Short-hand writers.

"That all witnesses examined before this house, or any committee thereof, are entitled to the protection of this house, in respect of anything that may be said by them in their evidence;" and "That no clerk or officer of this house, or short-hand writer employed to take minutes of evidence before this house, or any committee thereof, do give evidence elsewhere, in respect of any proceedings or examination had at the bar, or before any committee of this house, without the special leave of the house."[4]

Whenever the parties to a suit desire to produce such evidence, or any other document in the custody of officers of the house, in a court of law, they petition the house, praying that the proper officer may attend, and produce it.[5] During the recess, however, it has been the practice for the speaker, in order to prevent delays in the administration of justice, to allow the production of minutes of evidence and

[1] Penryn Election Bill, 1827; 82 Com. J. 473.

[2] 2 Starkie, N. P. Cases, 366.

[3] It appears that short-hand writers were first employed by the Lords, in 1786, upon the slave-trade inquiries; and by the Commons, in 1792, on the Eau Brink Drainage. In 1802, they were introduced into all election committees by Mr. Michael Angelo Taylor's bill. 3 Lord Colchester's Diary, 332.

[4] 73 Com. J. 389. But, on the 7th Feb. 1873, it was ruled (privately) that an order of the house was not required to enable the short-hand writer of the house, who had attended the trial of Galway election before Mr. Justice Keogh (under the Election Petitions and Corrupt Practices Act, 1868) to attend the trial of certain prosecutions at Dublin, for undue influence at that election. By the 24th section of that Act, the short-hand writer of the House of Commons is required to take notes of the evidence before the election judge, but not as an officer of the house; and in this case it was only two of his deputies whose attendance was required.

[5] 106 Com. J. 212. 277; 107 Ib. 291, &c.

other documents, on the application of the parties to a private suit. But should the suit involve any question of privilege, especially the privilege of a witness, or should the production of the document appear, on other grounds, to be a subject for the discretion of the house itself, he will decline to grant the required authority. It has been held by the courts that the evidence of members, of proceedings in the House of Commons, is not to be received without the permission of the house, unless they desire to give it;[1] and, according to the usage of Parliament, no member is at liberty to give evidence elsewhere in relation to any debates or proceedings in Parliament, except by leave of the house of which he is a member.[2]

Evidence of members in courts.

The protection afforded to witnesses by the privileges of Parliament, against suits and molestation, on account of their evidence, has been noticed elsewhere;[3] and on extraordinary occasions, where further protection has been deemed necessary to elicit full disclosures, acts have been passed to indemify witnesses from all the penal consequences of their testimony.[4]

Indemnity to witnesses.

When a witness is examined by the House of Commons, or by a committee of the whole house,[5] he attends at the bar, which is then kept down. If the witness be not in custody, the mace remains upon the table; when, according to the strict rule of the house, the speaker should put all the questions to the witness, and members should only suggest to him the questions which they desire to be put:[6] but, for the sake of avoiding the repetition of each question, members are usually permitted to address their questions directly to the witness, which, however, are still supposed to be put

Examined at the bar.

[1] Chubb *v.* Salomons, 3 Carrington and Kirwan, 75.

[2] 18 Hans. Deb., N.S., 968-974.

[3] *Supra*, p. 152.

[4] Election Compromises, 1842; 5 & 6 Vict. c. 31. Sudbury Disfranchisement, 1843; 6 & 7 Vict. c. 11. Gaming Transactions, 1844; 7 & 8 Vict. c. 7.

[5] 2 Hatsell, 140: but see 2 Com. J. 26.

[6] See 1 Com. J. 536.

through the speaker.[1] When a witness is in the custody of the serjeant-at-arms, or is brought from any prison in custody, it is the usual, but not the constant practice, for the serjeant to stand with the mace at the bar. When the mace is on the serjeant's shoulder, the speaker has the sole management; and no member may speak, or even suggest questions to the chair.[2] In such cases, therefore, the questions to be proposed should either be put in writing, by individual members, or settled upon motions in the house, and given to Mr. Speaker before the prisoner is brought to the bar.[3] If a question be objected to, or if any difference should arise in regard to the examination of a witness, he is directed by the speaker to withdraw, before a motion is made, or the matter is considered. In committee of the whole house, any member may put questions directly to the witness. Where counsel are engaged, the examination of witnesses is mainly conducted by them, subject to the interposition of questions, by members; and where any question arises in regard to the examination, the parties, counsel, and witnesses, are directed to withdraw. Whenever witnesses are examined at the bar, the short-hand writer of the house is in attendance there, and takes minutes of their evidence.

Members, lords of Parliament,* &c.

Members of the house are always examined in their places;[4] and peers, lords of Parliament, the judges, and the lord mayor of London, have chairs placed for them within the bar, and are introduced by the serjeant-at-arms.[5] Peers sit down covered, but rise and answer all questions uncovered. The judges and the lord mayor are told by the

[1] 146 Hans. Deb., 3rd Ser., 97; 150 Ib. 1063.

[2] 2 Hatsell, 140.

[3] Ib. 142, and *n*.

[4] "Agreed that members ought not to be brought to the bar unless they are accused of any crime;" 10 Com. J. 46. On the 12th January 1768, Wilkes being brought to the bar in custody, objected that he could not appear there without having taken the oaths: but his objection was overruled.

[5] The same forms are observed when a peer desires to address the house, as in the case of Viscount Melville, 11th June 1805; 5 Hans. Deb. 250; and Duke of Wellington, 1st July 1814; Abbot's Speeches, 84. 2 Lord Colchester's Diary, 6-8.

speaker that there are chairs to repose themselves upon; which is understood, however, to signify that they may only rest with their hands upon the chair backs.[1]

When a peer is examined before a select committee, it is the practice to offer him a chair at the table, next to the chairman; where he may sit and answer his questions covered.

Expenses of witnesses.

When a witness is summoned at the instance of a party, his expenses are defrayed by him: but when summoned for any public inquiry, to be examined by the house or a committee, his expenses are paid by the Treasury, under orders signed by the clerk of the Parliaments, the clerk of the House of Commons, or by chairmen of committees in either house. In order to check the expenses of witnesses examined before committees, the House of Commons have adopted certain regulations, by which the following particulars are annexed, in a tabular form, to the printed proceedings of every committee: 1. The name of the witness; 2. His profession or condition; 3. By what member the motion was made for his attendance; 4. The date of his arrival; 5. The date of his discharge; 6. Total number of days in London; 7. Number of days under examination, or acting specially under the orders of the committee; 8. Expenses of journey to London and back; 9. Expenses in London;[2] 10. Total expenses allowed to each witness, and to all collectively. No witness residing in or near London is allowed any expenses, except under some special circumstances of service to the committee.[3] Every witness should report himself to the committee clerk on his arrival in Lon-

[1] 2 Hatsell, 149; where all these forms are minutely described.

[2] A witness is allowed his actual travelling expenses, and for every day or part of a day that he is necessarily kept from home, at the following rates, viz.: a barrister, physician, civil engineer or architect, 3 *l.* 3 *s.*; a solicitor, surgeon, or land surveyor, 2 *l.* 2 *s.*; a clergyman, or non-professional gentleman, 1 *l.* 1 *s.*; a mechanic, &c., 10 *s.* Special allowances have also been made to defray the expenses of official substitutes.

[3] See Report, 1840, No. 555.

don, or he will not be allowed his expenses for residence, prior to the day of making such report.

The Lords have appointed a select committee to inquire into the expenses that should be allowed to witnesses, and have received their report in detail, before the items were agreed to.[1]

CHAPTER XVI.

COMMUNICATIONS BETWEEN THE LORDS AND COMMONS. MESSAGES AND CONFERENCES; JOINT COMMITTEES, AND COMMITTEES COMMUNICATING WITH EACH OTHER.

Different modes of communication.

THE two houses of Parliament have frequent occasion to communicate with each other, not only in regard to bills which require the assent of both houses, but with reference to other matters connected with the proceedings of Parliament. There are four modes of communication: viz. 1. By message; 2. By conference; 3. By joint committees of Lords and Commons; and, 4. By select committees of both houses communicating with each other. These will each be considered in their order.

Messages.

1. A message is the most simple and frequent mode of communication; it is daily resorted to for sending bills from one house to another; for requesting the attendance of witnesses; for the interchange of reports and other documents; and for communicating all matters of an ordinary description, which occur in the course of parliamentary proceedings.[2] It is also the commencement of the more

[1] 62 Lords' J. 910.

[2] On the 17th Feb. 1866, the Lords sent a message to the Commons, requesting them to continue sitting for some time, to which the latter agreed, the object being to insure the passing of the Habeas Corpus Suspension (Ireland) bill on that day.

important modes of intercourse, by means of conferences and joint committees. A very important change in the form of sending messages was introduced in 1855; but as the former practice is still recognised by the orders of both houses, and may at any time be revived, it will be necessary to describe it. Prior to 1847, the Lords ordinarily sent messages by the masters in chancery, their attendants; and on special occasions by their assistants, the judges; while the Commons always sent a deputation of their own members.[1]

From the Lords to the Commons.

Bills relating to the Crown or royal family were sent to the Commons by two judges:[2] but when the judges were on circuit, or for other causes were not in attendance, such bills were sent by one judge and one master in chancery.[3] Whenever the Lords sent a message otherwise than by their usual messengers, an explanation was sent, and the Commons acquiesced in the reasons assigned, "trusting that the same will not be drawn into precedent for the future."[4]

By the judges.

By masters in chancery and others.

The Commons sent messages to the Lords by one of their own members (generally the chairman of the committee of ways and means, or a member who had charge of a bill), who, until 1847, was required to be accompanied by at least seven others. Eight was formerly the common number which formed a quorum of a select committee, and was probably, for this reason, adopted as the number for carrying a message to the House of Lords.[5]

Messages from the Commons to the Lords.

Much inconvenience had been sustained by requiring so many messengers to communicate the most ordinary matters; more especially as each bill formed the subject of a distinct message, accompanied by all the customary formalities; and, on the 12th July 1847, the Lords communicated the following resolutions, at a conference:

[1] Lords' S. O. No. 49.
[2] 80 Com. J. 573. 86 Ib. 514. 805.
[3] 86 Ib. 713.
[4] 17 Parl. Hist. 423. 72 Com. J. 5. 85 Ib. 652. 88 Ib. 727. 90 Ib. 650.
[5] See also Chapter XVIII., on Bills.

"1st. That the Lords are willing to receive from the Commons *in one message*, all Commons' bills when first brought up to this house; all Lords' bills returned from the House of Commons without any amendments made thereto, and all Commons' bills returned therefrom with the Lords' amendments thereto agreed to, without any amendment; a list of such bills, with a statement of the assent of the Commons thereto, being brought by the messengers from the House of Commons, and delivered together with the bills so brought up.

"2nd. That whereas, by custom heretofore, all messages from the House of Commons to the House of Lords have been attended by eight members of the House of Commons; and whereas the attendance of so many may occasionally be inconvenient to the members of the said house, the Lords desire to communicate to the Commons their willingness to receive such messages when brought up by *five* members only."[1]

In return for this concession the Commons resolved,

"That the Commons should be willing to receive messages from the Lords brought by one master in chancery instead of two masters, as heretofore."[2]

And without any express resolution they have since received a message by one judge, instead of two, bringing the agreement of the Lords to a bill relating to the royal family.[3] But in 1857, the Lords returned the Princess Royal's Annuity bill by two judges; in 1861, they returned the Princess Alice's Annuity bill; and, in 1863, the Prince of Wales's Annuity bill, in the same manner. This unexpected revival of an obsolete custom proved less conducive to dignity than to ridicule.[4] In 1866, the Princess Mary of Cambridge's Annuity bill was returned by the clerk.[5] In 1871, the message communicating the agreement of the Lords to the Princess Louise's Annuity bill was brought by two judges.[6]

In 1855, a much greater change was introduced, mainly caused by the abolition of the office of master in chancery. On the 24th May, the following resolutions, which had

[1] 102 Com. J. 861.

[2] Ib. 868.

[3] Duke of Cambridge's Annuity bill, 1850; 105 Com. J. 661. Princess Helena's Annuity bill, 1866; 121 Com. J. 164.

[4] On this occasion, a ceremony, once regarded as solemn, provoked shouts of laughter.

[5] 121 Com. J. 410.

[6] 126 Ib. 57.

been communicated by the Lords, at a conference, were agreed to by the Commons:

"That in addition to the present practice with regard to messages between the houses, one of the clerks of either house may be the bearer of messages from the one to the other; and that messages so sent be received at the bar by one of the clerks of the house to which they are sent, at any time whilst it is sitting or in committee, without interrupting the business then proceeding."[1]

Except in the rare instances just referred to, both houses have since sent their messages in this convenient and suitable manner; and it will be unnecessary to describe the ceremonies with which messengers were formerly received in both houses.[2]

General character of a conference.

2. A conference is a mode of communicating important matters by one house of Parliament to the other, more formal and ceremonious than a message, and sometimes better calculated to explain opinions and reconcile differences. By a conference both houses are brought into direct intercourse with each other, by deputations of their own members; and so entirely are they supposed to be engaged in it, that while the managers are at the conference, the deliberations of both houses are suspended.

Subjects for a conference.

Either house may demand a conference upon matters which, by the usage of Parliament, are allowed to be proper occasions for such a proceeding: as, for example, 1. To communicate resolutions or addresses to which the concurrence of the other house is desired.[3] 2. Concerning the privileges of Parliament.[4] 3. In relation to the course of proceeding in Parliament.[5] 4. To require or communicate statements of facts on which bills have been passed by the other house.[6] 5. To offer reasons for disagreeing to, or insisting on amendments made by one house, to bills passed by the other.

[1] 110 Com. J. 254.

[2] See 3rd edit. of this work, p. 338.

[3] 87 Com. J. 421; 88 Ib. 488; 89 Ib. 232; 95 Ib. 422; 112 Ib. 363, &c.

[4] 9 Com. J. 344.

[5] 89 Ib. 220; 90 Ib. 656; 91 Ib. 225; 102 Ib. 861.

[6] 19 Ib. 630.

When to be demanded.

On all these and other similar matters it is regular to demand a conference: but as the object of communications of this nature is to maintain a good understanding and co-operation between the houses, it is not proper to use them for interfering with and anticipating the proceedings of one another, before the fitting time. Thus, while a bill is pending in the other house, it is irregular to demand a conference concerning it; and although this rule was not formerly observed with much strictness, it was distinctly declared by the House of Commons, in 1575, to be "according to its ancient rights and privileges, that conference is to be required by that court which, at the time of the conference demanded, shall be possessed of the bill, and not of any other court."[1] The convenience and propriety of this rule is so obvious that it has now, for a long course of years, been invariably observed, with regard not only to bills, but also to resolutions that have been communicated. For instance, if the Commons have communicated a resolution to the Lords, they must wait until some answer has been returned, and not demand another conference upon the same subject. When the Lords are prepared with their answer, it is their turn to demand another conference.

Purpose to be stated.

In demanding a conference, the purpose for which it is desired should be explained, lest it should be on a subject not fitting for a conference; as concerning a bill in possession of the house of whom the conference is demanded, or any other interference with the independent proceedings of the other house; in which case a conference might properly be declined. Thus, on the 2nd August 1641, the Commons declined a conference which had been demanded "without any expression of the subject or matter of that conference, which is contrary to the constant course of either house."[2] And on the 22nd March 1678, the Commons, instead of agreeing to a conference, sent a message to acquaint the

[1] 1 Com. J. 114.

[2] 2 Com. J. 581.

Lords "that it is not agreeable to the usage and proceedings of either house, to send for a conference without expressing the subject-matter of that conference."[1] On the 29th October 1795, the Lords demanded a conference (on the attack upon his Majesty that day) without stating the purpose. The speaker interposed, and a message was returned by the Lords' messengers, that it was contrary to the usage of Parliament to send a message in that form.[2] The causes of demanding a conference need not, however, be stated with minute distinctness. It has been held sufficient to specify that they were "upon a matter of high importance and concern, respecting the due administration of justice;"[3] "upon a subject of the highest importance to the prosperity of the British possessions in India;"[4] "upon a matter deeply connected with the interests of his Majesty's West India colonies;"[5] and "upon a matter essential to the stability of the empire, and to the peace, security, and happiness of all classes of his Majesty's subjects."[6] None of these expressions pointed out the precise purpose of the conference, but they described its general object, in each case, so far as to show that it was a proper ground for holding a conference.

Reasons offered by message or conference.

Conferences have been most frequently demanded, in order to offer reasons for disagreeing to amendments to bills; and until 1851, this was the only course of proceeding on such occasions. But by resolutions of both houses, agreed to at conferences 12th and 15th May 1851, where one house disagrees to any amendments made by the other, or insists upon any amendments to which the other house has disagreed, it will receive reasons for their disagreeing or insisting, as the case may be, by *message*, without a conference, unless at any time the other house should desire to

[1] 9 Com. J. 555.
[2] 51 Ib. 5; 32 Parl. Hist. 188; and see 4 Hatsell, 23.
[3] 85 Com. J. 473 (Sir J. Barrington).
[4] 88 Com. J. 488 (E. I. C. Charter).
[5] 81 Ib. 116 (Slaves).
[6] 89 Ib. 232 (Union with Ireland).

communicate the same at a conference.[1] And in 1866, messages were substituted for conferences, in communicating addresses for commissions under the Corrupt Practices Act.

Since these resolutions were agreed to, there has been only one instance of a conference, where a message would have been admissible.[2] When any amendment made by the other house is disagreed to, a committee is appointed to draw up reasons for such disagreement; and when the reasons prepared by the committee are reported to the house and agreed to, a message is sent to communicate such reasons,[3] or to desire a conference.

Time and place of meeting.

It is the peculiar privilege of the Lords to name both the time and place of meeting, whether the conference be desired by themselves or by the Commons;[4] and when they agree to a conference, they at the same time appoint when and where it shall be held. Both houses communicate to each other their agreement to a conference, by messages in the ordinary manner.

Managers appointed.

Each house appoints managers to represent it at the conference, and it is "an ancient rule, that the number of the Commons named for a conference are always double to those of the Lords."[5] It is not, however, the modern practice to specify the number of the managers for either house. The managers of the house which desires the conference are the members of the committee who drew up the reasons, to whom others are frequently added; and on the part of the other house, they are usually selected from those members who have taken an active part in the discussions on the bill, if present; or otherwise any members are named who happen to be in their places. But it is not customary, nor consistent with the principles of a conference, to appoint

[1] 106 Com. J. 210. 217. 223.

[2] Oaths bill, 1858; 113 Com. J. 182.

[3] 106 Com J. 438. 108 Ib. 809 Representation of the People bil 1867; 122 Com. J. 440.

[4] 1 Ib. 154; and see this claim as stated by the Lords, 9 Com. J. 348.

[5] 1 Com. J. 154.

any members as managers, unless their opinions coincide with the objects for which the conference is held.[1]

Duty of managers.

The duty of the managers is confined to the delivery and receipt of the resolutions to be communicated, or the bills to be returned, with reasons for disagreeing to amendments. They are not at liberty to speak, either to enforce the resolutions or reasons communicated, or to offer objections to them. One of their number reads the resolutions or reasons, and afterwards delivers the papers on which they are written, which is received by one of the managers for the other house. When the conference is over, the managers return to their respective houses and report their proceedings.

Conferences in regard to bills.

Messages have now practically superseded conferences in relation to bills, but the former course of proceedings must still be briefly explained. Let it be supposed that a bill sent up from the Commons has been amended by the Lords and returned; that the Commons disagree to their amendments, draw up reasons, and desire a conference, that the conference is held, and the bill and reasons are in possession of the House of Lords. If the Lords should be satisfied with the reasons offered, they do not desire another conference, but send a message to acquaint the Commons that they do not insist upon their amendments. But if they insist upon the whole or part of their amendments, they desire another conference, and communicate the reasons of their perseverance. If the Commons should be still dissatisfied with these reasons, and persist in their disagreement to the Lords' amendments, they were formerly precluded, by the usage of Parliament, from desiring a third conference; and unless they allowed the bill to drop, laid it aside, or deferred the consideration of the reasons and amendments, they desired a free conference. This practice, however, was departed from on one special occasion. In 1836, after two conferences upon the Municipal Corporations bill, a free conference was held, according to ancient usage:[2]

[1] 1 Com. J. 350; 122 Ib. 438.

[2] 91 Com. J. 783.

but the disagreement between the two houses continued, and the consideration of the Lords' amendments and reasons was postponed for three months. In the following session, another bill was brought in, to which various amendments were made by the Lords, to which the Commons disagreed. The results of the free conference, however, had been so unsatisfactory, that the usage of Parliament was departed from, and four[1] ordinary conferences were successively held, which so far accommodated the differences between the two houses, that the bill ultimately received the royal assent.

Free conference.

A free conference differs materially from the ordinary conference; for, instead of the duties of the managers being confined to the formal communication of reasons, they are at liberty to urge their own arguments, offer and combat objections, and, in short, to attempt, by personal persuasion, to effect an agreement between the houses, which the written reasons had failed in producing. If a free conference should prove as unsuccessful as the former, the disagreement is almost helpless: but if the house in possession of the bill should at length be prepared to make concessions, in the hope of an ultimate agreement, it is competent to desire another free conference upon the same subject; or if any question of privilege or other new matter should arise, an ordinary conference may be demanded.[2] Until 1836, no free conference had been held since the year 1740, nor has there been any subsequent example.

Forms of holding.

It only remains to notice the manner in which conferences are held. When the time appointed has arrived, business is suspended in both houses, the names of the managers are called over, and they leave their places, and repair to the conference chamber. The Commons, who come first to the conference, enter the room uncovered, and remain standing the whole time within the bar, at the table.[3]

[1] 92 Com. J. 466. 512. 589. 646.

[2] 4 Hatsell, 42–45. 52.

[3] By order 16th January 1702, none but managers are to stand within the bar.

The Lords have their hats on till they come just within the bar of the place of conference, when they take them off and walk uncovered to their seats: they then seat themselves, and remain sitting and covered during the conference. The lord (usually the lord privy seal) who receives or delivers the paper of resolutions or reasons stands up uncovered while the paper is being transferred from one manager to the other: but while reading it he sits covered. When the conference is over, the Lords rise from their seats, take off their hats, and walk uncovered from the place of conference. The lords who speak at a free conference, do so standing and uncovered.[1]

The Lords have the following standing orders in regard to the manner of holding conferences:—

"The place of our meeting with the lower house upon conference is usually the Painted Chamber,[2] where they are commonly before we come, and expect our leisure. We are to come thither in a whole body and not some lords scattering before the rest, which both takes from the gravity of the lords, and besides may hinder the lords from taking their proper places. We are to sit there, and be covered: but they are at no committee or conference ever either to be covered, or sit down in our presence, unless it be some infirm person, and that by connivance in a corner out of sight, to sit, but not to be covered."[3]

Commons not to be covered.

"None are to speak at a conference with the lower house but those that be of the committee; and when anything from such conference is reported, all the lords of that committee are to stand up."[4]

None to speak at a conference but those of the committee.

"No man is to enter at any committee or conference (unless it be such as are commanded to attend) but such as are members of the house, or the heir apparent of a lord who has a right to succeed such lord, or the eldest son of any peer who has a right to sit and vote in this house, upon pain of being punished severely, and with example to others."[5]

No stranger to be at a conference or committee.

3. There are several early instances of the appointment of joint committees of the two houses:[6] but until 1864,

Joint committees of Lords and Commons.

[1] 4 Hatsell, 28, *n.*

[2] After the fire, in 1834, the Painted Chamber was fitted up and occupied as the temporary House of Lords. In the new building there was a conference hall or chamber, which was still called the Painted Chamber. 113 Com. J. 178. It is now converted into a dining-room for the Commons.

[3] Lords' S. O. No. 50.

[4] Ib. No. 51.

[5] Ib. No. 52; see also 1 Com. J. 156.

[6] 3 Hatsell, 38 *et seq.*

no such committee had been appointed since 1695.[1] A rule similar to that adopted in regard to conferences, that the number on the part of the Commons should be double that of the Lords, obtained in the constitution of joint committees; and was inconsistent with any practical union of the members of the two houses, in deliberation and voting. The principal advantages of a joint committee were that the witnesses were sworn at the bar of the House of Lords,[2] and that one inquiry, common to both houses, could be conducted preparatory to any decision of Parliament: but the power possessed by the Commons of out-voting the Lords,—their right to meet their lordships without the respectful ceremonies observed at a conference, and their share in the privilege of taking the evidence of sworn witnesses,—naturally rendered a joint committee distasteful to the House of Lords, by whom no power or facilities were gained in return. At length, in 1864, the chief obstacle was overcome by the appointment of a joint committee, of equal numbers representing both houses, on the railway schemes of that session, affecting the metropolis. This important proceeding, which originated with Mr. Milner Gibson, was eminently successful. The Commons, having appointed a committee of five members, requested the Lords "to appoint an equal number of lords to be joined with the members of this house." The Lords accordingly appointed a committee of five lords to join the committee of the Commons, and proposed a time for the meeting of the committee. The committee of the Commons received power to agree in the appointment of a chairman, and concurred in the choice of the Lord President.[3] And in 1867, by desire of the House of Lords, another joint committee was appointed upon Parliamentary deposits;[4] and several joint committees have since been appointed.[5] In 1872, power

[1] 22nd April 1695; 11 Com. J. 314.
[2] 2 Ib. 502; 5 Ib. 647. 655.
[3] 173 Hans. Deb. 291. 311. 493.
[4] 188 Hans. Deb. 423.
[5] Despatch of public business 1869; 124 Com. J. 87. Railway Companies

was given to the Commons' committee to join in the appointment of a chairman of the joint committee on railway amalgamation, and a member of the Commons was elected chairman. In 1873, the railway and canal bills, containing powers of amalgamation, were committed to a joint committee of Lords and Commons. In this case it was not thought necessary to give the committee power to join in the appointment of a chairman, such a proceeding being usual in the Lords, but not in the Commons; and a member of the Commons was again chosen as chairman.

Select committees communicating with each other.

4. A modification of the practice of appointing joint committees may be effected by putting committees of both houses in communication with each other. In 1794, the Commons had communicated to the Lords certain papers which had been laid before them by the king, in relation to corresponding societies, together with a report of a committee of secrecy; and on the 22nd of May 1794, the Lords sent a message, to acquaint the Commons that they had referred the papers to a committee of secrecy, and had "given power to the said committee to receive any communication which may be made to them, from time to time, by the committee of secrecy appointed by the House of Commons;[1] to which the Commons replied that they had given power to their committee of secrecy to communicate, from time to time, with the committee of secrecy appointed by the Lords.[2] And similar proceedings were adopted, upon the inquiry into the state of Ireland, in 1801, which was conducted by secret committees of the Lords and Commons communicating with each other;[3] and again in 1861, power was given to the select committee on the business of the house to communicate, from time to time, with a select committee of the House of Lords upon the same subject.[4]

Other means of communication.

A few words may be added concerning other means of

Amalgamation, and Tramways (Metropolis) 1872; 127 Com. J. 61. 83.

[1] 49 Com. J. 619.

[2] Com. J. 620.

[3] 66 Ib. 287. 291.

[4] 116 Ib. 77; 93 Lords' J. 13.

communication between the two houses, less open and ostensible than those already described. The representation of the Executive Government by ministers, in both houses, who have a common responsibility for the measures and policy of the State, secures uniformity in the direction of the councils of these independent bodies. Every public question is presented to them both, from the same point of view: the judgment of the cabinet, and the sentiments of the political party which they represent, are adequately expressed in each house; and a general agreement is thus attained, which no formal communications could effect. The organisation of parties also exercises a marked influence upon the relations of the two houses. When ministers are able to command a majority in the Lords as well as in the Commons, concord is assured. The views of the dominant party are carried out spontaneously, in both houses, as if they were a single chamber. But when ministers enjoying the confidence of the majority of the Commons are opposed by a majority of the Lords, it is difficult to avert frequent disagreements between the two houses. The policy approved by one party is condemned by the other; and the minority in the Commons naturally look for the support of the majority in the Lords. Hence the decisions of one house are often contested by the other. When this conflict of opinion arises upon a bill, the proceedings which ensue have already been explained. When it arises upon a question of policy or administration, the course pursued is, in great measure, determined by the character of the difference. The two houses may differ upon abstract questions without any grave consequences. But if the policy of the government is condemned, or their conduct censured, or legislation arrested in one house, it is natural that the other should be ready with resolutions in support of the cause of which it approves. Thus during the contest between Mr. Pitt and the coalition, in 1784, the Lords were forward in giving countenance to the minister, in his struggle with a hostile

majority of the Commons.[1] Again, in the great reform crisis of 1831–32, the Commons supported the ministers and their cause, when they were imperilled by the hostility of the Lords.[2] And in 1839, when the opposition, in the Commons, had failed to arrest the establishment of a system of national education under an order in council, by an address to the Crown, the Upper House presented an address condemning the scheme, but without effect.[3] In 1850, when the Lords censured the government for the course taken in reference to the claims of Don Pacifico upon Greece, the Commons came to the rescue, with a vote of approval and confidence.[4]

In 1871, a bill having been passed by the Commons for the abolition of purchase in the army, and providing compensation to the officers, which was refused a second reading by the Lords, a royal warrant was issued cancelling former regulations by which the purchase of commissions had been sanctioned. The Lords were thus constrained to reconsider the bill in order to secure the pecuniary interests of the officers; but in proceeding with the bill they placed on record a condemnation of the issue of the warrant. It became a matter for consideration whether the Commons should be invited to respond to this adverse resolution: but as legislation was not arrested, and the vote of the Lords was without effect upon the policy or political position of ministers, the passing of the bill was accepted as a sufficient approval of the course adopted, without any retaliatory resolution.

[1] May's Const. Hist., 4th Ed., 75–83.
[2] Ib. 143.
[3] Ib. 415; 48 Hans. Deb., 3rd Ser., 229 *et seq.*
[4] 82 Lords' J. 222; 105 Com. J. 475.

CHAPTER XVII.

COMMUNICATIONS FROM THE CROWN TO PARLIAMENT; THEIR FORMS AND CHARACTER: HOW ACKNOWLEDGED: ADDRESSES TO THE CROWN: MESSAGES TO MEMBERS OF THE ROYAL FAMILY; AND COMMUNICATIONS FROM THEM.

Queen present in Parliament.

THE Queen is always supposed to be present in the High Court of Parliament, by the same constitutional principle which recognises her presence in other courts:[1] but she can only take part in its proceedings by means which are acknowledged to be consistent with the parliamentary prerogatives of the Crown, and the entire freedom of the debates and proceedings of Parliament. She may be present in the House of Lords, at any time during the deliberations of that house, where the cloth of estate is: but she may not be concerned in any of its proceedings, except when she comes in state for the exercise of her prerogatives. In earlier times the sovereign was habitually present in the House of Lords, as being his council, whose advice and assistance he personally desired. King Henry VI., in the ninth year of his reign, declared, with the advice and consent of the Lords, "That it shall be lawful for the Lords to debate together in this present Parliament, and in every other for time to come, in the king's absence, concerning the condition of the kingdom, and the remedies necessary for it."[2] Whence it appears that, at that time, it was customary for the king to be present at the deliberations of the Lords, even if his presence was not essential to their proceedings. When he ceased to take a personal part in their deliberations, it was still customary for the sovereign

[1] See Hale, Jurisd. of Lords, c. 1. B.; and 2 Inst. 186. Fortescue, c. 8 (by Amos), with note

[2] 3 Rot. Parl. 611.

to attend the debates as a spectator. Charles II.,[1] and his successors, James II., William III.,[2] and Queen Anne,[3] were very frequently present: but this questionable practice, which might be used to overawe that assembly, and influence their debates,[4] has wisely been discontinued since the accession of George I.[5] And, according to the practice of modern times, the Queen is never personally present in Parliament, except on its opening and prorogation; and occasionally for the purpose of giving the royal assent to bills during a session.[6]

The various constitutional forms by which the Crown communicates with Parliament, and by which Parliament communicates with the Crown, will now be noticed in succession, according to their relative importance and solemnity.

Communications from the Crown, in person or by commission.

The most important modes by which the Crown communicates with Parliament are exemplified on those occasions when her Majesty is present, in person or by commission, in the House of Lords, to open or prorogue Parliament, and when a royal speech is delivered to both houses. In giving the royal assent to bills in person or by commission, the communication of the Crown with the Parliament is

[1] 12 Lords' J. 318. "Charles II. being sat, he told them it was a privilege he claimed from his ancestors to be present at their deliberations; that, therefore, they should not for his coming interrupt their debates, but proceed, and be covered;"—Andrew Marvell's Letters, p. 405. Nor was Charles II. an inattentive observer; for on the 26th January 1670, he reprimands the Lords for their "very great disorders, both at the hearing of causes, and in debates amongst themselves;" 12 Lords' J. 413.

[2] William III. was present during the debate on the second reading of the Abjuration bill, 2nd May 1690. 14 Lords' J. 483. 3 Lord Macaulay's Hist. 347.

[3] She was present for the first time on the 29th November 1704, "at first on the throne, and after, it being cold, on a bench at the fire." Jerviswood Corr, 15, cited by Lord Stanhope, Reign of Queen Anne, 166. She was present on the 15th November and 6th December 1705; Ib. 205. 208.

[4] See 2 Lord Macaulay's Hist. 35.

[5] 2 Hatsell, 371, *n.*; Chitty on Prerogatives, 74. The last occasion appears to have been the attendance of Queen Anne, on the 9th and 12th January 1710, during the debates upon the war with Spain.

[6] 63 Lords' J. 885.

of an equally solemn character.[1] On these occasions the whole Parliament is assembled in one chamber, and the Crown is in immediate and direct communication with the three estates of the realm.

By message under the sign manual.

The mode of communication next in importance is by a written message under the royal sign manual, to either house singly,[2] or to both houses separately.[3] The message is brought by a member of the house, being a minister of the Crown, or one of the royal household.[4] In the House of Lords, the peer who is charged with the message, acquaints the house that he has a message under the royal sign manual, which her Majesty had commanded him to deliver to their lordships. And the lord chancellor then reads the message at length, all the lords being uncovered; and it is afterwards read, or supposed to be read, again, at the table, by the clerk.[5] In the House of Commons the member who is charged with the message appears at the bar, where he informs the speaker that he has a message from her Majesty to this house signed by herself; which, on being desired by the speaker, he brings up to the chair. The message is delivered to the speaker, who reads it at length, while all the members of the house are uncovered.

Subjects of such messages.

The subjects of such messages are usually communications in regard to important public events which require the attention of Parliament;[6] the prerogatives, or property of the Crown;[7] provision for the royal family;[8] and various matters in which the executive seeks for pecuniary aid from Parliament.[9] They may be regarded, in short, as additions

[1] See Chapter XVIII.

[2] 86 Com. J. 488.

[3] 66 Lords' J. 958; 89 Com. J. 575.

[4] If brought by one of the household, he appears in uniform,—in the Lords, in his place,—in the Commons, at the bar.

[5] 66 Lords' J. 958.

[6] 40 Lords' J. 186; 44 Ib. 74; 82 Com. J. 111.

[7] 85 Com. J. 466; 89 Ib. 189. 579.

[8] 43 Lords' J. 566; 86 Com. J. 719; 105 Ib. 539, 18th July 1850 (Duke of Cambridge); 82 Lords' J. 368, 22nd July 1850; 112 Com. J. 153 (Princess Royal, 1857); Prince of Wales, 1863; Princess Helena, and Princess Mary of Cambridge, 1866, &c.

[9] 42 Lords' J. 361; 82 Com. J. 529.

to the royal speech, at the commencement of the session, submitting other matters to the deliberation of Parliament, besides the causes of summons previously declared.

Should be communicated to both houses.

This analogy between a royal speech, and a message under the sign manual, is supported by several circumstances common to both. A speech is delivered to both houses, and every message under the sign manual should also be sent, if practicable, to both houses: but when they are accompanied by original papers, they have occasionally been sent to one house only. The more proper and regular course is to deliver them on the same day, and a departure from this rule has been a subject of complaint:[1] but from the casual circumstance of both houses not sitting on the same day, or other accidents, it has frequently happened that messages have been delivered on different days.[2]

On matters of supply.

In the royal speech, the demand for supplies is addressed exclusively to the Commons, but it still forms part of the speech to both houses; and in the same manner, messages for pecuniary aid are usually sent to both houses: but the form differs so far as to acknowledge the peculiar right of the Commons in voting money, while it seeks no more than the concurrence of the Lords.[3]

The Lords have taken exceptions to any message for supplies being sent exclusively to the Commons,[4] and for upwards of a century it has been the custom, with few exceptions,[5] to send such messages to both houses; which is consistent with their constitutional relations, in matters of supply.[6]

Verbal messages.

Another form of communication from the Crown to either

[1] 2 Hatsell, 366, *n.*

[2] 66 Lords' J. 958; 89 Com. J. 575; 82 Lords' J. 368; 105 Com. J. 539.

[3] 73 Lords' J. 28; 96 Com. J. 29 (Lord Keane). 88 Lords' J. 129; 111 Com. J. 186 (Sir F. Williams), &c.

[4] 25th June 1713; 28th February 1739. 2 Hatsell, 366, *n.*

[5] An exception was the message in regard to the provision for her Majesty Queen Adelaide, on the 14th April 1831, which was presented to the Commons alone; 86 Com. J. 488.

[6] See Lords' and Commons' Gen. Journ. Indexes, tit. "Messages."

house of Parliament, is in the nature of a verbal message, delivered, by command, by a minister of the Crown, to the house of which he is a member. This communication is used whenever a member of either house is arrested for any crime at the suit of the Crown; as the privileges of Parliament require that the house should be informed of the cause for which their member is imprisoned, and detained from his service in Parliament. Thus, in 1780, Lord North informed the House of Commons that he was commanded by his Majesty to acquaint the house, that his Majesty had caused Lord George Gordon, a member of the house, to be apprehended, and committed for high treason.[1] And at the same time Lord North presented, by command, the proclamation that had been issued, in reference to the riots in which Lord George Gordon had been implicated.

Members imprisoned.

Military courts martial.

In the same manner, when members have been placed under arrest, in order to be tried by military courts martial, a secretary of state, or some other minister of the Crown, being a privy councillor, informs the house that he had been commanded to acquaint them of the arrest of their member, and its cause.[2]

Naval courts martial.

Communications of the latter description are made when members have been placed under arrest, to be tried by naval courts martial: but in these cases they are not in the form of a royal message, but are communications from the lord high admiral or the lords commissioners of the Admiralty, by whom the warrants are issued for taking the members into custody; and copies of the warrants are, at the same time, laid before the house.[3]

Arrest in Ireland.

In 1848, the arrest of a member in Ireland, on a charge of treason, was communicated to the house by a letter from the lord lieutenant, addressed to the speaker.[4]

The other modes of communicating with Parliament are

[1] 37 Com. J. 903.
[2] 58 Ib. 597; 59 Ib. 33; 70 Ib. 70.
[3] 62 Com. J. 145; 64 Ib. 214; 67 Ib. 246. See also *supra*, p. 147.
[4] 103 Ib. 888; 8th August 1848 (Mr. W. S. O'Brien).

by the royal "pleasure," "recommendation," or "consent," being signified.

Queen's pleasure signified.

The Queen's pleasure is signified at the commencement of each Parliament, by the lord chancellor, that the Commons should elect a speaker; and when a vacancy in the office of speaker occurs in the middle of a Parliament, a communication of the same nature is made by a minister, in the house.[1] Her Majesty's pleasure is also signified for the attendance of the Commons in the House of Peers; in regard to the times at which she appoints to be attended with addresses; and concerning matters personally affecting the interests of the royal family.[2] At the end of a session, also, the royal pleasure is signified, by the lord chancellor, that Parliament should be prorogued. Under this head may likewise be included the approbation of the speaker elect, signified by the lord chancellor.

Royal recommendation or consent.

The royal recommendation is signified to the Commons by a minister of the Crown, on receiving petitions,[3] on motions for the introduction of bills,[4] or on the offer of other motions, involving any public expenditure or grant of money not included in the annual estimates, whether such grant is to be made in the committee of supply, or any other committee;[5] or which would have the effect of releasing or compounding any sum of money owing to the Crown.[6] The royal consent is given, by a privy councillor, to motions for leave to bring in bills;[7] or to amendments to bills,[8] or to bills in any of their stages,[9] or to instructions to committees on bills,[10] or to Lords' amendments to bills,[11]

[1] See *supra*, p. 191.

[2] 86 Com. J. 460.

[3] 112 Ib. 219; 119 Ib. 177.

[4] 98 Ib. 167; 101 Ib. 615; 104 Ib. 412; 113 Ib. 31.

[5] See Chapter XXI. on SUPPLY.

[6] 75 Com. J. 152. 167; 89 Ib. 52. See also Chapter XXI.

[7] 106 Com. J. 232; 107 Ib. 142; 117 Ib. 79. In 1853, the Queen's consent *and* recommendation were signified to the Land Revenues bill; 108 Ib. 625.

[8] 101 Com. J. 843; 107 Ib. 321; 124 Ib. 222.

[9] 2nd reading, 108 Ib. 375; 110 Ib. 290; 3rd reading, Ib. 115, &c.

[10] Civil List Bill, 1837; 93 Com. J. 204.

[11] 101 Com. J. 892; 103 Ib. 729; 126 Ib. 355.

which concern the royal prerogatives, the hereditary revenues, or personal property or interests of the Crown or duchy of Cornwall.[1] When the Prince of Wales is of age, his own consent is signified, as Duke of Cornwall, in the same manner.[2] The mode of communicating the recommendation and consent is the same: but the former is given at the very commencement of a proceeding, and must precede all grants of money; while the latter may be given at any time during the progress of a bill, in which the consent of the Crown is required; and has even been signified on the final question that this bill do pass.[3] Where bills have been suffered, through inadvertence, to be read a third time and passed, the proceedings have been declared null and void.[4]

Consent of the Crown withheld.

On the 1st July 1844, on the third reading of the St. Asaph and Bangor Dioceses bill, in the House of Lords, it was stated by the Duke of Wellington, that her Majesty's ministers had not been instructed to signify the consent of the Crown to the bill, and that the royal prerogative was affected by it. The lord chancellor then desired to be instructed by the house whether he was at liberty to put the question, until her Majesty's royal consent had been given; upon which a committee was appointed to search for precedents, whether the lord speaker can, according to the usage of this house, put the question "that this bill do pass?" until the consent of her Majesty is given.[5] This committee reported that there were no precedents:[6] but that the bill belonged to that class to which it had been the usage to give the consent of the Crown before passing the house; and that it had been the custom to receive such consent at various stages.[7]

[1] 77 Com. J. 408; 86 Ib. 485. 550; 91 Ib. 548; 105 Ib. 492.

[2] 118 Ib. 310; 119 Ib. 368.

[3] 98 Ib. 287; 99 Ib. 309; 104 Ib. 192; 105 Ib. 338.

[4] 107 Ib. 157. See also Chap. XVIII., as to Restitution bills.

[5] 76 Hans. Deb., 3rd Ser., 122.

[6] 1st Rep. 76 Hans. Deb., 3rd Ser., 294.

[7] 2nd Rep., Ib. 422.

The consent of the Crown was still withheld, and the bill was consequently withdrawn.[1] And in 1866, on the third reading of the Blackwater bridge bill, notice being taken that the Queen's consent had not been signified, Mr. Speaker declined to put the question.[2] In 1868, the Peerage (Ireland) bill was withdrawn upon the second reading, when it was intimated that ministers would not advise her Majesty to give her consent to the bill at a later stage.[3]

Crown places its interests at the disposal of Parliament.

Another form of communication, similar in principle to the last, is when the Crown "places its interests at the disposal of Parliament," which is signified in the same manner, by a minister of the Crown.[4] In 1833, the king had referred, in his speech from the throne, to a measure relating to the church temporalities in Ireland, and before going into committee upon that subject, his majesty's recommendation had been signified. Yet objection was taken upon the second reading of the bill, that the king had not formally placed his interests in the Irish bishoprics at the disposal of Parliament;[5] and a communication, in proper form, was afterwards made to that effect. In 1868, the Government being unwilling to advise the Queen to place her interest in the temporalities of the bishoprics and benefices in Ireland at the disposal of Parliament, the House of Commons voted an address to her Majesty, praying that such interest should be placed at their disposal. In reply, the Queen desired that her interest should not stand in the way of the consideration of any measure relating to the Irish church,[6] and the bill for suspending appointments to bishoprics and benefices in Ireland was proceeded with, and passed by the Commons, in opposition to the ministers of the Crown.

Constitutional character of these communications.

These several forms of communication are recognised

[1] 76 Hans. Deb., 3rd Ser., 591.
[2] 121 Com. J. 423.
[3] 191 Hans. Deb., 3rd Ser., 1564.
[4] Church Temporalities (Ireland) bill, 1833; 88 Com. J. 381; Church of Ireland bill, 1835; 90 Ib. 447; 91 Ib. 427; 95 Ib. 385, &c.
[5] Hans. Deb., 6th May 1833.
[6] 123 Com. J. 160. 170.

as constitutional declarations of the Crown, suggested by the advice of its responsible ministers, by whom they are announced to Parliament, in compliance with established usage. They cannot be misconstrued into any interference with the proceedings of Parliament, as some of them are rendered necessary by resolutions of the House of Commons, and all are founded upon parliamentary usage, which both houses have agreed to observe. This usage is not binding upon Parliament: but if, without the consent of the Crown, previously signified, Parliament should dispose of the interests or affect the prerogative of the Crown, the Crown could still protect itself, in a constitutional manner, by the refusal of the royal assent to the bill. And it is one of the advantages of this usage, that it obviates the necessity of resorting to the exercise of that prerogative.

How acknowledged.

Having enumerated all the accustomed forms in which the royal will is made known to Parliament, it may now be shown, in the same order, in what manner they are severally acknowledged by each house.

Addresses in answer to written messages.

The forms observed on the meeting and prorogation of Parliament, and the proceedings connected with the address in answer to the royal speech, were described in the seventh chapter,[1] and the royal assent to bills will be treated of hereafter.[2] Messages under the royal sign manual are generally acknowledged by addresses in both houses, which are presented from one house by the "lords with white staves," *i.e.* the Lord Steward and the Lord Chamberlain; or sometimes by other lords specially named; and from the other by privy councillors, in the same manner as addresses in answer to royal speeches, when Parliament has been opened by commission.[3] In reply to war messages, the addresses have sometimes been drawn up by committees,[4] and presented by the whole house. On the last occasion,

[1] *Supra*, pp. 203. 248.
[2] *Infra*, Chapter XVIII.
[3] See *supra*, p. 207.
[4] In 1793 and 1803.

31st March 1854, the address was presented by the whole house, but was not drawn up by a committee.[1]

In the Commons, however, it is not always necessary to reply to messages under the sign manual by address; as a prompt provision, made by that house, is itself a sufficient acknowledgment of royal communications for pecuniary aid. The House of Lords invariably present an address, in order to declare their willingness to concur in the measures which may be adopted by the other house;[2] but the bills consequent upon messages relating to grants are presented by the speaker of the Commons, and are substantial answers to the demands of the Crown. The rule, therefore, in the Commons, appears to be, to answer, by address, all written messages which relate to important public events,[3] or matters connected with the prerogatives, interests, or property of the Crown;[4] or which call for general legislative measures:[5] but, in regard to messages relating exclusively to pecuniary aids, of whatever kind, to consider them in a committee of the whole house, on a future day, when provision is made accordingly.[6]

Exceptions in the Commons.

When the house is informed, by command of the Crown, of the arrest of a member to be tried by a military court martial, it immediately resolves upon an address of thanks to her Majesty, "for her tender regard to the privileges of this house,"[7] And in all cases in which the arrest of a member for a criminal offence is communicated, an address of thanks is voted in answer.[8] But as the arrest of a member to be tried by a naval court martial does not proceed immediately from the Crown, and the communication is only made from the Lords of the Admiralty, no address is necessary in answer to this indirect form of message.

To verbal messages.

[1] 109 Com. J. 169; 132 Hans. Deb., 3rd Ser., 307.
[2] 63 Lords' J. 892.
[3] 82 Com. J. 114.
[4] 85 Ib. 466; 89 Ib. 578; 95 Ib. 520.
[5] 85 Com. J. 214.
[6] 86 Ib. 488. 491; 105 Ib. 539. 544; 112 Ib. 153; 121 Ib. 99, &c.
[7] 70 Ib. 70.
[8] 37 Com. J. 903.

On royal pleasure, &c., being signified.

The matters upon which the royal pleasure is usually signified need no address in answer, as immediate compliance is given by the house; and the recommendation and consent of the Crown, as already explained, are only signified as introductory to proceedings in Parliament, or essential to their progress.

Addresses.

These being the several forms of acknowledging communications proceeding from the Crown, it now becomes necessary to describe those which originate with Parliament. It is by addresses that the resolutions of Parliament are ordinarily communicated to the Crown. These are sometimes in answer to royal speeches or messages, but are more frequently in regard to other matters, upon which either house is desirous of making known its opinions to the Crown.

Joint addresses.

Addresses are sometimes agreed upon by both houses, and jointly presented to the Crown, but are more generally confined to each house singly. When some event of unusual importance[1] makes it desirable to present a joint address, the Lords or Commons, as the case may be, agree to a form of address, and, having left a blank for the insertion of the title of the other house, communicate it at a conference, and desire their concurrence. The blank is filled up by the other house, and a message is returned, acquainting the house with their concurrence, and that the blank has been filled up. Joint addresses are also agreed to, for the appointment of commissions to inquire into corrupt practices at elections[2]; and in 1866, the Commons signified their willingness to substitute a message for a conference in such cases,[3] in which the Lords concurred,[4] and messages have since been resorted to in all such cases.[5] Such addresses are presented either by both houses in a body,[6] or by two

[1] 87 Com. J. 421; 89 Ib. 235. Outrage upon the Queen, 1840, 95 Ib. 422. Outrage upon the Queen, 1842, 97 Ib. 324.

[2] See Chapter XXII.

[3] 121 Com. J. 256.

[4] By resolution, 24th April 1866.

[5] 124 Com. J. 125. 169.

[6] 87 Ib. 424; 72 Lords' J. 393; 74 Ib. 279.

peers and four members of the House of Commons;[1] and they have been presented also by committees of both houses;[2] by a joint committee of Lords and Commons,[3] and by the lord chancellor and the speaker of the House of Commons:[4] but the lords always learn her Majesty's pleasure, and communicate to the Commons, by message, the time at which she has appointed to be attended.

Separate addresses.

The addresses of the Commons in answer to the royal speech at the commencement of the session are formally prepared by a committee, upon whose report they are agreed to, after having been twice read: but at other times, except on some few special occasions,[5] no formal address is prepared, and the resolution for the address is alone presented. In 1854, an address was moved, and agreed to in proper form, instead of in the customary form of a resolution, without being referred to a committee;[6] and though it has been customary, for upwards of 150 years, to present such resolutions, not only by privy councillors but by the house itself;[7] yet whenever an address is to be presented by the whole house, it is better that it should be moved in that form, or prepared by a committee; as the mere resolution for an address cannot be read by the speaker to her Majesty, with the same effect as a formal address expressly prepared for that purpose.[8] Sometimes addresses are agreed to upon the report of committees of the whole house,

[1] 85 Com. J. 652; 112 Ib. 423; 114 Ib. 373.

[2] 1 Ib. 877.

[3] 2 Ib. 462.

[4] 23rd Dec. 1708; 16 Com. J. 54.

[5] Convention with Spain, 1738; 23 Com. J. 277. Peace with France and Spain, 1762; 29 Ib. 395. Treaty with France, 1787; 42 Ib. 401; Treaty of peace, 6th May 1856; 111 Com. J. 182, &c.

[6] Address on the war with Russia, 31st March 1854; 109 Com. J. 169; 132 Hans. Deb., 3rd Ser., 307.

[7] See 2 Hatsell, 388.

[8] On the 6th February 1858, both houses had agreed to resolutions only. The speaker, however, in addressing the Queen introduced this preface: "Most gracious Sovereign, your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, have resolved, *nem. con.*," &c. &c. The lord chancellor read the resolution of the Lords without any preface, according to ancient usage.

not only in relation to matters involving public expenditure,[1] but concerning other public affairs.[2] Addresses, or resolutions for addresses, are ordered to be presented by the whole house;[3] by the lords with white staves, or privy councillors;[4] and, in some peculiar cases, by members specially nominated.[5]

Their subjects.

The subjects upon which addresses are presented are too varied to admit of enumeration. They have comprised every matter of foreign[6] or domestic policy;[7] the administration of justice;[8] the confidence of Parliament in the ministers of the Crown;[9] the expression of congratulation or condolence (which are agreed to *nem. con.*);[10] and, in short, representations upon all points connected with the government and welfare of the country. But they ought not to be presented in relation to any bill depending in either house of Parliament.[11]

Mode of presenting.

When a joint address is to be presented by both houses, the lord chancellor and the House of Lords, and the speaker and the House of Commons, proceed in state to the palace at the time appointed. The speaker's state coach and the carriages of the members of the House of Commons, are entitled, by privilege or custom, to approach the palace through the central Mall in St. James's Park. Whether this distinction be enjoyed as part of their privilege of freedom of access to her Majesty, or by virtue of any other right or custom, it is peculiar to the Commons, who always take this route, while the Lords advance by the ordinary carriage-road.

[1] See Chapter XXI. on SUPPLY.

[2] State of the nation, 22nd Dec. 1783; Chancellor of the Duchy of Lancaster, 24th Dec. 1783; 39 Com. J. 848. 855; Defence of the kingdom, 20th June 1803; 58 Ib. 528, &c.

[3] 92 Com. J. 492; 113 Ib. 31.

[4] 92 Lords' J. 19.

[5] 10 Com. J. 295; 67 Ib. 391.

[6] 78 Ib. 278; 82 Ib. 118; 88 Ib. 471. Assassination of President Lincoln, 1865; 120 Ib. 229.

[7] 89 Com. J. 235.

[8] 85 Ib. 472.

[9] 7 Ib. 325.

[10] 105 Ib. 508; 108 Ib. 371; 113 Ib. 31; 123 Ib. 142, &c.

[11] 12 Lords' J. 72. 81. 88; 8 Com. J. 670; 1 Grey's Debates, 5.

Joint addresses.

On reaching the palace, the two houses assemble in a chamber adjoining the throne-room, and when her Majesty is prepared to receive them, the doors are thrown open, and the lord chancellor and the speaker[1] advance side by side, followed by the members of the two houses respectively, and are conducted towards the throne by the lord chamberlain. The lord chancellor reads the address, and presents it to her Majesty, on his knee, to which her Majesty returns an answer, and both houses retire from the royal presence.

Separate addresses.

When addresses are presented separately, by either house, the forms observed are similar to those already described, except that addresses of the Commons are then read by their speaker. Each house proceeds by its accustomed route to the palace, and is admitted with similar ceremonies. In presenting the address, the mover of the address in the Lords is on the right hand of the chancellor, and the seconder on his left: while the mover and seconder of the address in the Commons are on the left hand of the speaker. When the lord chancellor or speaker has read the address, he presents it to her Majesty, kneeling upon one knee.

Dress of peers and members.

It is customary for all the lords, without exception, who attend her Majesty, to be in full dress: but the greater part of the members of the House of Commons, generally assert their privilege of freedom of access to the throne, by accompanying the speaker in their ordinary attire.[2]

Answers to addresses.

When addresses have been presented by the whole house, the lord chancellor in one house, and the speaker in the other, report the answer of her Majesty; but when they have been presented by the lords with white staves, or by privy councillors only, the answer is reported by one of those members who have had the honour of attending her Majesty, being generally in the House of Lords, the lord chamberlain, who appears in levée dress, with his white

[1] The speaker is always on the left hand of the chancellor.

[2] They are not permitted to enter the royal presence with sticks or umbrellas. See 2 Hatsell, 390, *n.*

staff; and in the House of Commons, one of the royal household, who appears at the bar, and on being called by the speaker, reads her Majesty's answer. If a member of the household appears, at the bar, with the answer to an address, the proceedings of the house are sometimes interrupted, until the answer has been received.[1]

Resolutions communicated.

Another mode of communication with the Crown, less direct and formal than an address, has been occasionally adopted; when resolutions of the house,[2] and resolutions and evidence taken before a committee[3] have been ordered to be laid before the sovereign. In such cases the resolutions have been presented in the same manner as addresses, and answers have sometimes been returned.[4]

Messages to the royal family.

It is to the reigning sovereign or regent alone that addresses are presented by Parliament: but messages are frequently sent by both houses to members of the royal family, to congratulate them upon their nuptials,[5] or other auspicious events;[6] or to condole with them on family bereavements.[7] Resolutions have also been ordered to be laid before members of the royal family. Certain members are always nominated by the house to attend those illustrious personages with the messages or resolutions; one of whom afterwards acquaints the house (in the Lords, in his place, or at the table; and, in the Commons, at the bar) with the answers which were returned.[8]

Communications from the royal family.

Communications are also made to both houses by members of the royal family, which are either delivered by members in their places,[9] or are conveyed to the house by letters addressed to the speaker.[10]

[1] 108 Com. J. 438.

[2] 37 Ib. 330; 39 Ib. 884; 40 Ib. 1157; 60 Ib. 206; 67 Ib. 462; 78 Ib. 316, &c.

[3] 90 Ib. 534.

[4] 39 Ib. 885; 60 Ib. 211.

[5] 72 Lords' J. 53; 73 Com. J. 424; 95 Ib. 88.

[6] 40 Lords' J. 584; 74 Ib. 6.

[7] 53 Lords' J. 367; 75 Com. J. 480; 105 Ib. 508.

[8] 53 Lords' J. 369; 72 Ib. 53. 95 Com. J. 95; 105 Ib. 539. 52 Hans. Deb., 3rd Ser., 343; Ib., 18th July 1850.

[9] 58 Com. J. 211; 75 Ib. 288.

[10] 64 Ib. 86; 68 Ib. 253; 69 Ib. 324. 433.

Such being the direct and formal communications between the Crown and Parliament, it may be added that the presence of ministers, in both houses, maintains the closest relations of the Crown with the legislature. The representation of every department of the State, by members of Parliament, and the principles of ministerial responsibility, long since established in our constitution, bring the executive government and the legislature into uninterrupted intercourse, and combined action. Where no formal communication, between the Crown and Parliament, is technically required, the introduction of a measure by her Majesty's ministers, attests the royal approval; and when amendments are made, by either house, which ministers accept instead of abandoning the measure, or resigning office, they are under an obligation to advise the Queen to signify her royal assent to the bill, when it has been agreed to by both houses. Again, when the measures or policy of ministers are condemned by Parliament, a change of administration restores agreement between the executive and the legislature. Ministers are responsible alike to the Crown and to Parliament, and so long as they are able to retain the confidence of both, the harmonious action of the several estates of the realm is secured.[1]

Responsible ministers in both houses.

[1] For further illustrations of the constitutional relations of ministers with Parliament, see 4 Macaulay's Hist. 430, *et seq.*; May's Const. Hist. chap. 7; 2 Tod's Parl. Government, 231, *et seq.*; Bagehot on the English Constitution.

CHAPTER XVIII.

PROCEEDINGS OF PARLIAMENT IN PASSING PUBLIC BILLS: THEIR SEVERAL STAGES IN BOTH HOUSES. ROYAL ASSENT.

General nature of a bill.

IT has been explained in previous chapters, in what manner each separate question is determined in Parliament; and the proceedings upon bills will require less explanation, if it be borne in mind that all the rules in relation to questions and amendments are applicable to the passing of bills. If bills were not a more convenient form of legislation, both houses might enact laws in the form of resolutions, provided the royal assent were afterwards given. In the earlier periods of the constitution of Parliament, all bills were, in fact, prepared and agreed to in the form of petitions from the Commons, which were entered on the Rolls of Parliament, with the king's answer subjoined; and at the end of each Parliament the judges drew up these imperfect records into the form of a statute, which was entered on the Statute Rolls.[1] This practice was incompatible with the full concurrence of the legislature, and matters were often found in the Statute Rolls, which the Parliament had not petitioned for, or assented to. Indeed, so far was this principle of independent legislation occasionally carried, that in the 13th and 21st of Richard II., commissions were appointed for the express purpose of completing the legislative measures, which had not been determined during the sitting of Parliament.[2] These usurpations of legislative power were met with remonstrances in particular instances,[3] and at

Ancient mode of enacting laws.

[1] Rot. Parl. *passim.*

[2] 3 Rot. Parl. 256 (13 Ric. II.); Ib. 368 (21 Ric. II.) Stat. 21 Ric. II. c. 16.

[3] 3 Rot. Parl. 102 (5 Ric. II. No. 23). 3 Ib. 141 (6 Ric. II. No. XXX). 3 Ib. 418 (1 Hen. IV). Hale's Hist. Common Law, 14 Reeve's Hist. of the English Law. Pref. to Cotton's Abridgment. Ruffhead's Statutes, Preface.

length, in the 2nd Hen. V., the Commons prayed that no additions or diminutions should in future be made, nor alteration of terms which should change the true intent of their petitions, without their assent; for they stated that they had ever been "as well assenters as petitioners." The king, in reply, granted "that henceforth nothing should be enacted to the petitions of the Commons contrary to their asking, whereby they should be bound without their assent; saving always to our liege lord his real prerogative to grant and deny what him lust, of their petitions and askings aforesaid."[1]

No distinct consequences appear to have immediately followed this remarkable petition; and, so long as laws were enacted in the form of petitions, to any portion of which the king might give or withhold his assent, and attach conditions or qualifications of his own, the assent of the entire Parliament was rather constructive than literal; and the Statute Rolls, however impartially drawn up, were imperfect records of the legislative determinations of Parliament. But petitions from the Commons, which were originally the foundation of all laws, were ultimately superseded; and in the reign of Henry VI. bills began to be introduced, in either house, in the form of complete statutes, which were passed in a manner approaching that of modern times, and received the distinct assent of the king, in the form in which they had been agreed to by both houses of Parliament. It is true that Henry VI. and Edward IV. occasionally added new provisions to statutes, without consulting Parliament:[2] but the constitutional form of legislating by bill and statute, agreed to in Parliament, undoubtedly had its origin and its sanction in the reign of Henry VI.

Origin of modern system.

Before the present method of passing bills in Parliament is entered upon, it may be premised that the practice of

Similarity of practice in both houses.

[1] 4 Rot. Parl. 22, No. X.

[2] Ruffhead's Statutes, Preface. Cotton's Abridgment, Preface.

the Lords and Commons is so similar in regard to the several stages of bills, and the proceedings connected with them, that, except where variations are distinctly pointed out, the proceedings of one house are equally descriptive of the proceedings of the other.

Where bills originate.

As a general rule, bills may originate in either house: but the exclusive right of the House of Commons to grant supplies, and to impose and appropriate all charges upon the people,[1] renders it necessary to introduce by far the greater proportion of bills into that house. Bills relating to the relief and management of the poor, for example, involve, almost necessarily, some charge upon the people, and generally originate with the Commons. Two bills only relating to the poor have been sent to the Commons by the Lords, during the present century. The first, in 1801, was laid aside, *nem. con.*, when Mr. Speaker called attention to it:[2] the second, in 1831, was received but not proceeded with, the first reading being postponed for three months.[3] But amendments involving the principle of a charge upon the people have frequently been made to such bills by the Lords, which on account of the extreme difficulty of separating them from other legislative provisions to which there was no objection, have been assented to by the Commons.[4] Such amendments, however, ought not to interfere with regard to the amount of the tax, the mode of levying or collecting it, the persons who shall pay or receive it, the manner of its appropriation, or the persons who shall have the control and management of it.[5] In any of these cases, the Commons may insist upon their privi-

Poor law bills.

[1] See 8 Com. J. 311. 602; and Chapter XXI.

[2] 56 Com. J. 88.

[3] 86 Ib. 784.

[4] Poor Law Amendment (England) bill, 1834; 25 Hans. Deb., 3rd Ser., 1207. Irish Poor Relief bill, 1838; 44 Hans. Deb., 3rd Ser., 575. Municipal Corporations (Ireland) bill, 1838; 44 Hans. Deb., 3rd Ser., 871. Poor Relief (Ireland) bill, 1st June 1847; 92 Hans. Deb., 3rd Ser., 1299; 94 Ib. 457. Poor Relief (Ireland) bill, 27 July 1849; 107 Hans. Deb., 3rd Ser., 1043.

[5] See speaker's ruling on Municipal Corporations (Ireland) bill, 1839; 50 Hans. Deb., 3rd Ser., 3.

leges; and it is only by waiving them in particular instances, and under special circumstances, that such amendments have ever been admitted. This restriction, however, has not been held to apply to bills comprising charges upon the property and revenues of the Church of England[1] or Queen Anne's bounty.[2] But it has been ruled that a bill cannot be received from the Lords, affecting the revenues arising, under the Church temporalities (Ireland) act, from a tax, rate, or assessment, imposed upon all benefices.[3] Bills have been brought from the Lords, without objection, affecting the property and land revenues of the Crown, the proceeds of which have not been directed, by any statute, to be carried to the Consolidated Fund.[4]

Restitution bills.

On the other hand, the Lords claim that bills for the restitution of honours and in blood should commence with them; and such bills are presented to that house by her Majesty's command.[5] And in the Commons the Queen's consent is signified, before the first reading. This form having been inadvertently omitted in Drummond's (Duke de Melfort's) restitution bill in 1853, the proceedings were declared null and void; and, the Queen's consent being signified, the bill was again read a first time.[6] Bills of attainder, and of pains and penalties, have generally originated in the House of Lords, as partaking of a judicial character. Any bill concerning the privileges or proceedings of either house, should, in courtesy, commence in that house to which it relates.[7] But bills affecting privileges of the other house have, nevertheless, been admitted

[1] Bishoprick of Manchester bill, 1847; Ecclesiastical Commissioners (England) bill, 1843.

[2] Church Endowment bill, 1843.

[3] 6 & 7 Vict. c. 57; MS. Book of Precedents.

[4] Waste Lands (Australia) bill, 1846.

[5] Maxwell's Restitution bill, 1848; Drummond's Restitution bill, 1853; Lord Lovat's Restitution bill, 1854; Carnegie's Restoration bill, 1855.

[6] 108 Com. J. 576. 578.

[7] 3 Hatsell, 69. 2 Stephen's Blackstone, 372. Votes by Proxy Abolition bill, 1832; 11 Hans. Deb., 3rd Ser., 1156. See Debate in the Lords on the Court of Chancery Improvement bill (then in the Commons), 23rd June 1851.

Act of grace or general pardon.

without objection.[1] A bill for a general pardon, or act of grace, as it is commonly termed, originates with the Crown, and is read once only in each house, all the members being uncovered,—after which it receives the royal assent in the ordinary form.[2] Such a bill cannot be amended by either house of Parliament: but must be accepted in the form in which it is received from the Crown, or rejected.[3] An Act of indemnity, protecting persons against the consequences of any breach of the law, is proceeded with as an ordinary bill.[4]

Public and private bills.

Bills are divided into the two classes, of public and private bills. The former, relating to matters of public policy, are introduced directly by members of the house, while the latter are founded upon the petitions of parties interested. As the distinctive character of private bills, and the proceedings of Parliament in relation to them, will form the subject of the Third Book, the present chapter is strictly confined to the passing of bills of a public nature. The greater part of these proceedings apply equally to both classes of bills: but the progress of private bills is governed by so many peculiar regulations and standing orders, in both houses, that an entire separation of the two classes can alone make the progress of either intelligible.

Public bills presented in the Lords.

In the House of Lords, any peer is at liberty to present a bill, and to have it laid upon the table, without notice:[5] but in the Commons, a member must obtain permission from

Ordered in the Commons.

the house, before he can bring in a bill. Having given notice, he must move "that leave be given to bring in a bill," and add the proper title of his proposed measure. It is usual, in making this motion, to explain the object of the

[1] Members' Seats Vacating bill (Lords), 8th June 1832; 64 Lords' J. 286. The Irish bishops were excluded from their seats in the House of Lords, in 1869, by a bill brought from the Commons. Lords Spiritual bill, 1870; 125 Com. J. 269.

[2] 14 Lords' J. 502, 503 (1690). 25 Com. J. 406 (1747).

[3] See 4 Burnet's Own Time, 121. 3 Lord Macaulay's Hist. 575.

[4] 96 Com. J. 542; 121 Ib. 239.

[5] 3 Hans. Deb. 24; 13 Ib., 3rd Ser., 1188. By standing order 3rd July 1848, the name of the lord presenting a bill is printed in the minutes.

bill, and to give reasons for its introduction: but unless the motion be opposed, this is not the proper time for any lengthened debate upon its merits. When an important measure is offered by a member, this opportunity is frequently taken for a full exposition of its character and objects: but where the proposed bill is not of an important character, debate should be avoided at this stage, unless it be expected that the motion will be negatived, and that no future occasion, therefore, will arise for discussion. Unopposed bills have been allowed to be brought in by one member, on behalf of another: but a bill to which any opposition is raised, must be moved by the member who has given notice of its introduction.[1] If the motion be agreed to, the bill is ordered to be prepared and brought in by the mover and seconder,[2] to whom other members are occasionally added.[3] Instructions are sometimes given to these gentlemen to make provision in the bill, for matters not included in the original motion and order of leave;[4] and sometimes the orders that certain gentlemen do bring in bills are discharged, and other gentlemen are appointed to bring them in.[5] In nominating these gentlemen, however, a debate is not allowed upon the merits of the bill itself.[6] Amendments have occasionally been made to a question for leave to bring in a bill, by which its proposed title has been altered.[7] In this way, on the 20th February 1852, the proposed title of the Militia bill was amended, on division. The ministers resigned, and a bill was afterwards brought in by the new administration, in conformity with the

[1] 209 Hans. Deb., 3rd Ser., 330.

[2] This order is ordinarily merely formal: but on the 20th Feb. 1852, Lord Palmerston having carried an amendment to the title of the Militia bill, as proposed by Lord J. Russell, a discussion arose upon the question, by whom the bill should be brought in; 119 Hans. Deb., 3rd Ser., 876.

[3] 91 Com. J. 613. 632; 113 Ib. 92.

[4] 106 Ib. 347; 107 Ib. 368, &c.

[5] 110 Ib. 35. 48; 124 Ib. 40, &c.

[6] Public Works (Manufacturing Districts) bill (Mr. Hennessy, 8th June 1863); 171 Hans. Deb., 3rd Ser., 478.

[7] 70 Com. J. 62; 71 Ib. 430.

amended order.[1] A bill has been ordered as an amendment to a question for a resolution of the house;[2] and on the 17th April 1834, a bill to admit Dissenters to the Universities was ordered, as an amendment to a question for an address to the Crown for that purpose.[3]

Preliminaries.

In some cases, proceedings preparatory to the bringing in of bills, first occupy the attention of the house. Sometimes resolutions have been agreed to by the house, and bills immediately ordered, as in the cases of the Liverpool elections bill,[4] and the Bribery and treating bill,[5] in 1831: at other times, resolutions of the house in a former session have been read, and bills ordered thereupon.[6] On the 5th March 1811, resolutions of a former session, relating to the Slave trade were read, and a bill ordered *nem. con.*[7] In 1833, the introduction of the bill for the abolition of slavery was preceded by several resolutions.[8] The Regency bills of 1789 and 1811 were founded upon resolutions which had been reported from a committee of the whole house, communicated to the House of Lords, and agreed to, and afterwards presented by both houses to the Prince of Wales and the Queen.[9] On other special occasions, resolutions agreed to by both houses, at a conference, have preceded the introduction of a bill.[10] It has not been uncommon, also, to read parts of speeches from the throne, Queen's messages, Acts of Parliament, entries in the Journal, reports of committees, or other documents in possession of the house, as grounds for legislation, before the motion is made for leave to bring in a bill.[11] On the 30th April 1868, a question, that the oath taken by Roman Catholic members previous to the

[1] 107 Com. J. 68. 131.
[2] 81 Ib. 61.
[3] 22 Hans. Deb., 3rd Ser., 900.
[4] 86 Com. J. 821. [5] 86 Ib. 821.
[6] 62 Ib. 588; 75 Ib. 65; 82 Ib. 442.
[7] 66 Ib. 148.
[8] 88 Ib. 482.
[9] 27 Parl. Hist. 1122. 18 Hans. Deb., 1st Ser., 418, &c. 1 May's Const. Hist. 180 *et seq.* (4th Edit.)
[10] Slave Trade, 1806; 61 Com. J. 393. 401. Renewal of East India Company's Charter, 1813; 78 Ib. 595.
[11] 82 Ib. 442; 91 Ib. 639; 95 Ib. 470; 107 Ib. 186.

alteration of their oath in 1866, be read by the clerk at the table, was negatived.[1] But the most frequent preliminary to the introduction of bills is the report of resolutions from a committee of the whole house, in conformity with standing orders applicable to such bills. The chairman is sometimes directed by the committee to move the house for leave to bring in a bill or bills; and sometimes the resolutions are simply reported, and after being agreed to by the house, a bill is ordered thereupon; or upon some only;[2] or a bill upon some of the resolutions, and other bills upon other resolutions.[3] Sometimes several resolutions have been reported, and agreed to, and another resolution directing the chairman to move for a bill pursuant to the said resolutions, has been reported separately, on which the chairman immediately proceeded to move for a bill.[4]

Bills originating in committee.

Certain classes of bills are required to originate in a committee of the whole house; and if, by mistake, this form has been omitted, all subsequent proceedings are vitiated, and must be commenced again. By two standing orders of the 9th and 30th April 1772, it is ordered,

Relating to religion and trade.

"That no bill relating to religion, or trade, or the alteration of the laws concerning religion, or trade, be brought into this house, until the proposition shall have been first considered in a committee of the whole house, and agreed unto by the house."[5]

By a standing order of the 20th March 1707,

Public money.

"This house will not proceed upon any petition, motion, or *bill*, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a committee of the whole house."[6]

By a standing order, 20th March 1866,[7]

Charge upon the subject.

"If any motion be made in the house for any aid, grant, or charge upon the public revenue, whether payable out of the consolidated fund, or out of monies to be provided by Parliament, or for any charge upon

[1] 123 Com. J. 143; 191 Hans. Deb., 3rd Ser., 1582.

[2] 81 Ib. 44; 86 Ib. 669; 123 Ib. 113.

[3] 80 Ib. 471; 103 Ib. 981, &c.

[4] 113 Ib. 235.

[5] 14 Com. J. 211; 33 Ib. 678. 714.

[6] 15 Ib. 367; 16 Ib. 405.

[7] Being the resolution 18th Feb. 1667, and standing order 25th June 1852, amended.

the people, the consideration and debate thereof shall not be presently entered upon, but shall be adjourned till such further day as the house shall think fit to appoint, and then it shall be referred to a committee of the whole house, before any resolution or vote of the house do pass therein."

Construction of rules; as to religion.

The standing order concerning religion has usually been construed as applying to religion in its spiritual relations —its doctrines, profession or observances: but not to the temporalities or government of the church, or other legal incidents of religion. The distinction, however, between spiritual and temporal matters is often so nice, that a correct and uniform application of the rule is not always observable in the precedents which are to be found in the Journals. The Roman Catholic relief bills in 1825, 1829, and 1848, were brought in upon resolutions of committees;[1] and bills for removing civil disabilities of the Jews;[2] for the relief of Dissenters;[3] for amending the Acts relating to the Roman Catholic College of Maynooth;[4] for altering the oaths of members;[5] for the abolition of religious tests in the Universities of Oxford, Cambridge, and Dublin;[6] for amending the laws relating to burials;[7] and concerning endowed schools,[8] have originated in committee: while, in 1833, bills to enable Quakers, Moravians, and Separatists to make an affirmation instead of an oath, were ordered without any previous resolution of a committee.[9] On the 6th June 1816, the standing order was held to apply to a bill for the punishment of persons disturbing congregations in a Roman Catholic chapel, or assaulting any Roman Catholic clergy-

[1] 80 Com. J. 144; 84 Ib. 116; 103 Ib. 22. There were, however, exceptions to this practice in 1846 and 1847; 101 Com. J. 59; 102 Ib. 88.

[2] 88 Com. J. 287: 89 Ib. 222; 91 Ib. 418; 103 Ib. 124. But in 1830 and 1841, it was otherwise; 23 Hans. Deb., 3rd Ser., 1287; 96 Com. J. 35.

[3] 68 Com. J. 451.

[4] 100 Ib. 193.

[5] 104 Com. J. 74; 121 Ib. 63.

[6] 12th Feb. 1867; 18th Feb. 1868. 127 Com. J. 11, &c.

[7] 1824; 79 Com. J. 181. 1862; 117 Ib. 99, &c.

[8] 1860; 115 Ib. 20. In the same year the Charity Trustees bill, having the same object, was ordered in, upon motion.

[9] 88 Ib. 305. 365.

man while officiating therein.[1] On the 27th May 1862, it was ruled to extend to a bill to amend the law relating to the religious instruction of Roman Catholic prisoners.[2] The Irish Church bill, 1869, was founded upon resolutions of a committee of the whole house, as it contained provisions affecting the articles, doctrines, rites, and discipline of that church.[3] On the other hand, the Church temporalities (Ireland) bill, of 1833, which may be said to have reconstituted the church government in that country, was not, on that account, required to originate in a committee.[4] So also the Tithe commutation bills; the bills for carrying into effect the recommendations of the ecclesiastical commissioners, in regard to the revenues of the Church of England;[5] and various bills relating to the building of churches and chapels, the holding of benefices in plurality, the enforcing the residence of the clergy, and other matters affecting the church,[6] have all been introduced upon motion, without any previous resolution of a committee. In 1848, a bill relating to Roman Catholic charities was brought in without a committee, as it concerned revenues or temporalities, and not religion.[7] And in 1851, the Ecclesiastical titles bill was held, after full consideration, not to come within the standing order.[8] In 1860, the Religious worship bill concerning the celebration of divine worship in private houses was held not to concern religion,—two previous acts on the same subject having been introduced without a preliminary committee.[9] The Ecclesiastical vestments bill was also ruled not to concern religion, in the sense of the standing order, but only church government and discipline.[10] On the 22nd July 1863, objection was taken to a general

[1] 71 Com. J. 431. 34 Hans. Deb., 1012.
[2] 167 Ib., 3rd Ser., 61.
[3] 124 Com. J. 57.
[4] 88 Ib. 35.
[5] 91 Ib. 17; 93 Ib. 377; 94 Ib. 29.
[6] 3 & 4 Vict. c. 113; 102 Vict. c. 106; 14 & 15 Vict. c. 72, &c.
[7] 102 Com. J. 22.
[8] 116 Hans. Deb., 3rd Ser., 872.
[9] 115 Com. J. 75. 156 Hans. Deb., 3rd Ser., 1204.
[10] 29th Feb. 1860; 115 Com. J. 98; 156 Hans. Deb., 3rd Ser., 2043.

bill for repealing obsolete statutes, that it concerned religion and trade: but as the bill had come from the Lords, the rule did not apply; nor would the objection otherwise seem to have been well founded.[1]

Trade.

The standing order regarding trade, was for many years construed as extending to such bills only as related to foreign commerce, and the import and export of commodities; and was not applied to bills affecting particular trades, or the internal trade of the country:[2] but of late years the house has reverted to what appears to have been the original intention of the standing order, which was probably designed to embrace the same classes of bills as had formerly been within the province of the grand committee for trade. Accordingly, it has been held to apply not only to trade generally, but also to any particular trade, if directly affected by a bill.[3] On this account, bills to regulate the sale of beer,[4] of bread,[5] and of marine stores,[6] and for the regulation of public houses, refreshment houses, and beer houses,[7] have been required to originate in a committee; and, in 1840, the Copyright of designs bill was withdrawn, as affecting the trade of calico printers and others,[8] and in subsequent sessions was brought in upon resolution from a committee. Yet bills relating to the copyright of books[9] have been suffered to proceed without a previous committee. On an objection being taken, 19th February 1840, that a copyright bill related to trade, the speaker held that it did not directly interfere with trade, in any sense in which that term is used in the standing orders.[10]

[1] 172 Hans. Deb., 3rd Ser., 1213; Private mem.

[2] Between 1801 and 1820 upwards of fifty bills were brought in upon motion, relating to the sale or manufacture of bread, flour, butter, malt, hops, linen, cotton, flax, lace, silk, wool, leather, coals, fire-arms, and other articles.

[3] Mirror of Parl. 1840, pp. 1108, 1109.

[4] 106 Com. J. 205. 362; 109 Ib. 395; 110 Ib. 420.

[5] 88 Ib. 673; 103 Ib. 747.

[6] 159 Hans. Deb., 3rd Ser., 724.

[7] 186 Ib. 160.

[8] 95 Com. J. 176.

[9] 97 Ib. 83. The Copyright Act, 54 Geo. III. c. 156, had been brought in, upon motion.

[10] Mirror of Parl. 1840, p. 1110.

So also bills relating to the Bank of England,[1] joint stock banks, and banking,[2] have originated in committee. In 1857, the Bank issues indemnity bill originated in committee, as it not only indemnified the bank for past illegal issues, but contained a clause authorising a continued excess of issues for a limited time. Numerous bills, however, relating to joint stock banks, have been ordered without a previous committee.[3] Bills relating to partnership and joint stock companies, have originated in committee:[4] but a bill for the registration of partnerships has been ordered upon motion.[5] In 1848, the Sheep, &c. diseases bill, being merely sanitary, was ordered to be brought in without a committee;[6] but in the same year, a bill regulating the importation of foreign sheep, &c. was introduced in committee;[7] and again in 1866, the Cattle plague bill, and the Cattle diseases bill, which interfered with the importation of cattle, were also introduced in committee.[8] On the 6th February 1844, the speaker decided that a bill to regulate the employment of children in factories, did not come within the meaning of the standing order.[9] But bills regulating the coalwhippers and ballast-heavers of the port of London, have been held to come within the standing order.[10] On several occasions bills for the regulation of fairs and markets have been ordered, without a committee, having been considered in the light of police regulations, rather than of trade.[11] Bills for the regulation of weights and measures have been treated as questions of public policy, affecting the whole community, and not merely the interests of trade.[12] Bills in restraint of Sunday trading have been regarded as

[1] Bank Act, 1844; Bank Issues Indemnity bill, 1857–58.

[2] 94 Com. J. 468; 100 Ib. 468; 112 Ib. 239.

[3] *E. g.* in 1842, 1854, 1855, 1856, and 1858.

[4] 111 Com. J. 13.

[5] 113 Ib. 129.

[6] 103 Ib. 863.

[7] 103 Com. J. 857.

[8] 121 Ib. 55.

[9] 72 Hans. Deb., 3rd Ser., 286.

[10] 98 Com. J. 349; 101 Ib. 246; 106 Ib. 140. 120 Hans. Deb., 3rd Ser., 784.

[11] Fairs and Markets (Ireland) bill, 1854, 1855, 1857, and 1858.

[12] 114 Com. J. 235; 115 Ib. 370.

measures of police and public decency, and not concerning trade so as to require a committee.[1] And so also of bills for regulating the sale of liquors and the hours for closing public houses on Sunday.[2] The Burgh harbours (Scotland) bill, 1852, was held to be one concerning trade, and having been introduced without a committee, was withdrawn;[3] and other bills concerning harbours have since originated in committee.[4] It has been held that the standing orders relate to the trade and taxation of a British colony, as well as to the trade and taxation of the United Kingdom. The Australian colonies government bill, 1849, contained clauses relating to the trade and commerce, and altering the customs duties of those colonies, and the bill was withdrawn, and another bill presented with the taxing clauses printed in italics.[5] And other bills of the like character have been founded upon the resolutions of committees.[6]

Grants of public money.

No grant of public money is ever attempted to be made in a bill, without the prior resolution of a committee: but bills are often introduced in which it becomes incidentally necessary to authorise the application of money to particular purposes. In order to accomplish this object without any violation of the standing order, the money clauses are originally inserted in the bill in italics: a committee of the whole house is afterwards appointed to consider of authorising the advance of money (the Queen's recommendation being signified); and, on their report being made and agreed to by the house, the committee on the bill make provision accordingly.[7] Formerly an instruction was given for that purpose: but since the standing order of the 19th July 1854, enabling

[1] Sunday Trading bills, 1833, 1834, 1835, 1838, 1844, 1848, 1849, 1851, 1855, 1863, and 1868.

[2] Sale of Liquors on Sunday bills, 1867 and 1868; Sale of Liquors (Ireland) bill, 1867.

[3] 107 Com. J. 105.

[4] 117 Ib. 271, &c.

[5] (Clauses 28, 29.) 104 Com. J. 424. (1849).

[6] Australian Colonies Government bill, 1850; 105 Com. J. 54. Canada bill, 1823; 78 Ib. 332. Newfoundland Appropriation of Duties bill, 1832; 87 Ib. 392.

[7] Public Offices (Site and Ap-

the committee on the bill to make any amendment relevant to the subject-matter of the bill, the practice of moving an instruction in such cases, has been discontinued. When the main object of a bill is the grant of money, it is invariably brought in upon the resolution of a committee, in the first instance. But several important bills, obviously designed to create a public charge, yet containing other provisions not immediately connected with the proposed grant of money, have been brought in, upon motion, the money clauses being printed in italics.[1] In such cases the principle of the bill is discussed, and if approved, the necessary pecuniary provision is subsequently made: otherwise the bill is either lost upon the second reading, or dropped in consequence of the recommendation of the Crown being withheld. Where it is proposed to authorise advances on the security of public works, out of monies already applicable to such purposes, no previous vote in committee is necessary:[2] but where additional funds are to be provided for such advances, they must be first voted in committee.[3]

The fee funds of the Court of Chancery have been held not to be public money within the orders of the house.[4] Nor is the appropriation of the proceeds of an existing charge, where no new burthen is imposed, required to originate in committee.[5]

proaches) bill, 1865. 177 Hans. Deb., 3rd Ser., 1308.

[1] Lord G. Bentinck's Railways (Ireland) bill, 4th Feb. 1847; Electric Telegraphs bill, 1st April 1868; Railways (Ireland) bill, 5th March 1872; Mr. Speaker's ruling, 209 Hans. Deb., 3rd Ser., 1952.

[2] Employment of Poor (I.) 16th May 1822. Railways (I.) bill, 1847 (advance of 16,000,000 *l.*), (Lord G. Bentinck). Drainage (I.) act, 5 & 6 Vict. c. 89. Public Works (Manufacturing Districts) bill, 1863. Drainage (I.) act, 9 Vict. c. 4. sec. 10. 31, 51. Public Works (I.) act, 9 Vict. c. 1.

[3] Exchequer bills for temporary relief, 1817; 72 Com. J. 220; 57 Geo. III. c. 34.

[4] Courts of Justice Building (Money) bill, 14th March 1862; 165 Hans. Deb., 3rd Ser., 1561.

[5] Thames Embankment bill, 18th March 1862. 165 Hans. Deb., 3rd Ser., 1826. In this case, however, the London coal and wine duties being a local tax,—though affecting trade,—would not have been subject to this rule.

Tax upon the people.

The house are no less strict in proceedings for levying a tax, than in granting money; and it is the practice, without any exception, for all bills that directly impose a state charge upon the people, to originate in a committee of the whole house. To bring a proposition under this rule, however, it must directly involve a charge upon the people, it not being sufficient that it would diminish the public income. Thus, on the 30th June 1857, a bill was brought in to repeal section 27 of the Superannuation act, which required an abatement to be made from official salaries; it being held, after consideration of the point, that this was merely a diminution of public income, similar to the reduction of a tax, and was not an increase of the salaries, nor of the public charge in respect of salaries. Nor has this rule been held to apply to bills authorising the levy or application of rates for local purposes, by local officers or authorities representing, or acting on behalf of, the rate-payers.[1] On the 15th July 1858, objection was taken to the introduction of a bill for the main drainage of the metropolis, without a preliminary committee, as it was alleged to be a bill for imposing charges upon the people: but as it appeared that the expense of the proposed works was to be paid out of local rates upon the metropolis, and that it was intended to propose a resolution, in a committee of the whole house, for a treasury guarantee for the repayment of money borrowed on the security of those rates, it was ruled that the bill could at once be brought in,—local rates never having been regarded as coming within the standing order.[2] On the 16th July 1858, exception was taken to a clause in the

Local taxation.

[1] Metropolis Police bill, 84 Com. J. 233. Coal Trade (Port of London) bills, 86 Ib. 558. Poor Law Amendment bill, 1834. Municipal Corporations bill, 1835. Poor Relief (Ireland) bill, 93 Com. J. 90. Collection of Rates bill, 1839. Highway Rates bill, 94 Ib. 363. Prisons (Scotland) bill, 94 Ib. 22. Metropolis Local Management bill, 1855. Union Relief Aid (Distress in Manufacturing Districts) bill, 1862. Rating bill, Valuation bill, and Consolidated Rate bill, 1873. But the Rate in Aid bill (Irish Famine), 1849, originated in committee, as it levied a general rate, the funds being under the management of government officers.

[2] 151 Hans. Deb., 3rd Ser., 1519.

Corrupt practices prevention bill, that it imposed a charge upon county and borough rates: but the chairman held that such a charge, not being for public revenue, could regularly be proposed in committee on the bill, without a preliminary resolution.[1] Neither has the rule been construed to apply to bills imposing charges upon any particular class of persons for their own use and benefit. Thus, in 1848, the Merchant seamen's fund bill, imposing a duty of a shilling a ton on all ships in the merchant service, for raising a fund for the support of aged seamen and the maintenance of lights, was brought in without any previous vote of a committee, authorising such duty.[2] And again, in 1850, a similar bill was introduced, authorising a deduction from the wages of masters, seamen, and apprentices, to form a fund for their relief.[3] The rule has generally been held to apply to bills authorising the imposition or appropriation of taxes in the colonies;[4] though such bills would rather appear to fall within the principle of local taxation. In 1833, notice was taken that the Church temporalities bill (which proposed to levy "an annual tax" upon all benefices in lieu of first fruits) should have originated in a committee. Before the house decided upon this point, a select committee was appointed to examine precedents, and on receiving their report, in which it was stated that no precedent precisely similar had been discovered, but "that the general spirit of the standing orders and resolutions of the house required that every proposition to impose a burthen or charge on any class of the people, should receive its first discussion in a committee of the whole house,"[5] the order for reading the bill a second time was discharged, and the bill was withdrawn: but, in 1836, the Tithe commutation bill, by which a rent-

[1] 151 Hans. Deb., 3rd Ser., 1601.

[2] 103 Com. J. 57.

[3] 105 Ib. 54.

[4] 14 Geo. III. c. 88; 3 Geo. IV. c. 119. Newfoundland bill, 1832; 87 Com. J. 386. Canada Government bill, 1840; 95 Ib. 380. 385. Australian Colonies Government bills, 1849 and 1850; 104 Ib. 424; 105 Ib. 54.

[5] Parl. Paper, No. 86, of 1833.

charge upon the land was created in lieu of tithes, was ordered, upon motion;[1] and, in 1864, an objection being taken that the Church rates commutation bill, which created a charge upon real property in lieu of church rates, ought to have been founded upon the resolution of a committee, it was overruled.[2]

Bills for reduction of taxes.

A bill for diminishing or repealing any tax or public charge, is brought in upon motion,[3] unless it be proposed to substitute any other tax or charge; or unless the bill also relate to trade, or to customs which are held to concern trade.

A second bill brought in, on the same resolutions.

If a bill which has originated in committee be afterwards withdrawn, and another bill ordered, it is not necessary to resort to a second committee, unless it be proposed to make further charges not previously sanctioned: but the resolutions, or some of them, on which the first bill was founded, are read, and another bill is ordered.[4]

Capital punishments.

A resolution of 1771, "That no bill, or clause in any bill, do pass this house, by which capital punishment is to be inflicted, unless the same shall have been referred to a committee of the whole house," was not made a standing order;[5] and appears to have fallen into oblivion with the harsh policy which it was designed to check.[6]

Other bills originating in committee.

These are the only classes of bills which are required, by any order or usage, to originate in a committee: but in some other cases, it has been deemed advisable, for particular reasons, to initiate legislation by preliminary discussion in committee, as in 1856, on the subject of education,[7]

[1] 91 Com. J. 17.

[2] 174 Hans. Deb., 3rd Ser., 1701.

[3] Repeal of stamp duty on admission to corporations, and repeal of 4½ per cent. duties, 1838. Repeal of duty on bricks, 1839. Penny Postage bill, 1840. Stamp Duty on Policies of Insurance, 2nd July 1844. Paper Duties bill, 1860.

[4] 111 Com. J. 126; 112 Ib. 185.

[5] 33 Ib. 417.

[6] On the 21st March 1861, in committee on the Mutiny bill, Mr. Hennessy called attention to this resolution: but the chairman ruled that it had fallen into desuetude. 162 Hans. Deb., 3rd Ser., 201.

[7] 111 Com. J. 87.

and in 1858, on the government of India.[1] Again, in 1867, it was proposed to found the Representation of the People bill upon resolutions to be previously discussed in committee: but ultimately the bill was brought in without any preliminary proceedings.[2] As the house may refer any matters whatever to the consideration of a committee, this course is not inconsistent with any Parliamentary principle: but it is open to these objections,—that it involves a double discussion of the same questions in committee, and that it reverses the accustomed order of proceeding, by giving precedence to the consideration of the details of a measure, instead of to the principle. It has, however, been deemed inconsistent with usage, for a minister who had brought in a bill, which was then standing for a second reading, to propose resolutions in a committee, having the same legislative objects, until the order for the second reading of the bill had been discharged.[3]

When preliminary committees may sit.

Where a preliminary vote is to be taken in a committee, for imposing duties or granting money, the committee is appointed for a future day: but where it relates to religion or trade, or any other matter, the house will immediately resolve itself into a committee, for the purpose of agreeing to the introduction of a bill.

Preparing bills.

In preparing bills, care must be taken that they do not contain provisions not authorised by the order of leave, that their titles correspond with the order of leave,[4] and that they are prepared in proper form; for, if it should appear, during the progress of a bill, that these rules have not been observed, the house will order it to be withdrawn.[5] A clause for instance, relating to the qualification of members, was held to be unauthorised in a bill for regulating the expenses at elections.[6] Such objections, however, should

[1] 149 Hans. Deb., 3rd Ser., 853. 1654.
[2] 185 Ib. 214. 1203.
[3] 149 Ib. 1595.
[4] 102 Com. J. 832; 103 Ib. 522.
[5] 80 Ib. 329; 82 Ib. 325. 339; 84 Ib. 261; 92 Ib. 254.
[6] 90 Ib. 411.

be taken before the second reading; for it has not been the practice to order bills to be withdrawn, after they are committed, on account of any irregularity which can be cured while the bill is in committee,[1] or on recommitment.[2] But in the case of the Income Tax and Inhabited House Duties bill, 1871, objection having been taken after the report, and the recommitment of the bill, that the bill comprised provisions relating to the inhabited house duty, which were beyond the order of leave, and that the second reading had been agreed to, under a misapprehension of its contents, the government at once consented to withdraw the bill.[3]

Blanks or italics.

All dates, and the amount of salaries, tolls, rates, or other charges were formerly required to be left blank: but the more convenient practice of printing such matters in italics is now adopted. Technically the words so printed are still known as blanks, and are not a part of the bill until agreed to by the committee, though by a standing order of the 19th of July 1854, the former practice of expressly inserting them in committee has been discontinued.[4]

Bills presented.

A bill may be presented on the same day, and during the same sitting, as that in which it is ordered: but some other votes are generally allowed to be passed before it is offered. It is presented by one of the members who were ordered to prepare and bring it in.[5] A member who is about to present a bill, should take his draft to the Public Bill Office, where it will be prepared in a proper form for presentation: and, when he has it ready, he should watch his opportunity for presenting it. By an order of the 10th December 1692, it is desired "that every member presenting any bill (or petition) to this house, do go from his place down to the bar of the house, and bring the same up

[1] 71 Hans. Deb., 3rd Ser., 403. MS. Precedent Book.

[2] Clerk of Petty Sessions (Ireland) bill, 1858.

[3] Hans. Deb., 9th & 11th May 1871.

[4] See *infra*, p. 503.

[5] 33 Com. J. 255. If any other member presents it, it is entered as being done "by order."

from thence to the table;"[1] and in accordance with this rule, the member appears at the bar, and the speaker calls upon him by name. He answers, "A bill, sir;" and the speaker desires him to "bring it up;" upon which he carries it to the table, and delivers it to the clerk of the house, who reads the short title aloud; when the bill is said to have been "received by the house."[2] After a bill has been received in either house, a question is put "That this bill be now read the first time," which is rarely objected to, either in the Lords or Commons;[3] and in the Commons can only be opposed by a division. By standing order, 25th June 1852, it is ordered,

First reading and printing.

"That when any bill shall be presented by a member in pursuance of an order of this house, or shall be brought from the Lords, the questions, 'That this bill be *now* read a first time;' and 'That this bill be printed,' shall be decided without amendment or debate."

It is to be observed that when the question for the first reading of a bill is negatived, the house merely determines that the bill shall not *now* be read; and the question may therefore be repeated on a future day, as in the case of the County Elections bill, 1852, where it was twice negatived.[4] After the first vote of the house, the bill was no longer among the orders of the day: but notice was given, and a motion made, to read the bill a first time.[5]

How bills are read.

So soon as the house has ordered a bill to be now read a first (second or third) time, its short title, as entered in the orders of the day, and indorsed on the bill, is read aloud by the clerk, which is taken to be a sufficient compliance with the order of the house. On the 14th May 1868, a motion being made that a bill be read by the clerk at the table, the speaker explained that this was an exploded practice, and the motion was withdrawn.[6]

Breviates of bills.

It was formerly the practice for the clerk, on the first

[1] 10 Com. J. 740.
[2] See 1 Com. J. 223.
[3] Lords' S. O. No. 34. 17 Com. J. 9. 88 Ib. 614.
[4] 107 Com. J. 174. 201.
[5] Votes, 7th May 1852.
[6] Established Church (Ireland) bill; 191 Hans. Deb., 3rd Ser., 322.

reading, to read to the house, first, the title, and then the bill itself; after which the speaker read the title, and opened to the house the effect and substance of the bill, either from memory or by reading his breviate, which was filed to the bill;[1] and sometimes he even read the bill itself.[2] So tedious a practice is rendered unnecessary by the circulation of printed copies of the bill; and the analysis of the several clauses, which is often prefixed to the bill, supplies the place of the ancient breviate. The practice of affixing a breviate or brief to every bill, prevailed during the greater part of the 17th century.[3]

Second reading.

When the bill has been read a first time, the question next put in the Commons, is, "That this bill be read a second time." The second reading, however, is not taken at that time: but a future day is named, on which the bill is ordered to be read a second time. The bill is then ordered to be printed, in order that its contents may be published and distributed to every member, before the second reading. Every public bill is printed, except ordinary supply bills, which merely embody the votes of the committees of supply and ways and means, and the annual mutiny bills, which are the same, with very few exceptions, year after year. But by resolution, 24th March 1863, a sufficient number of the appropriation and indemnity bills are ready for delivery, at the Vote Office, before the committee;[4] and the same arrangement is made with reference to the mutiny bills. In the Lords, the questions for the printing and second reading of a bill on a future day are rarely put: but are entered in the minutes, upon an intimation from the peer who has charge of the bill. After a bill has been presented, and read a first time, it is not regular to make any other than clerical alterations in it.[5] On the 28th March 1873, notice being taken that the

[1] 1 Com. J. 380. 456.

[2] Order and course of passing bills in Parliament, 4to, 1641. 1 Com.J. 298.

[3] 1 Com. J. 347; 6 Ib. 570.

[4] 118 Ib. 134.

[5] 108 Hans. Deb., 3rd Ser., 969.

University Tests (Dublin) bill had been materially altered since the first reading, in order to meet objections raised in a debate upon another bill, the speaker ruled that after the first reading, a bill was no longer the property of the member himself, but passed into the possession of the house. The order for the second reading was accordingly discharged, and the bill withdrawn; and leave being given to present another bill, instead thereof, another bill was at once presented.[1]

Bills withdrawn, and other bills presented.

It frequently happens, that before the second reading of a bill, it becomes necessary to make considerable changes in its provisions, which can only be accomplished, at this stage, by discharging the order for the second reading, and withdrawing the bill. The ordinary practice has been to order a bill to be withdrawn, and to give leave to bring in another bill. And this course is always necessary, if there be any change of title: but where the bill is withdrawn, for the purpose of making numerous amendments, without any change of title, a simpler form of proceeding has occasionally been adopted. So soon as the first bill has been withdrawn, the order of leave for bringing in the bill, is read, and "leave is given to *present* another bill, instead thereof" upon the same order of leave. This was done in 1814;[2] and the practice has since been revived, with much convenience.[3] It is an old parliamentary rule that a bill brought from the other house should not be withdrawn; and this rule is still observed in the Lords: but of late years it has been occasionally departed from in the Commons. When the bill is not withdrawn, the motion for reading it a second time is withdrawn, and the bill is thus dropped; but this is a less convenient course than the withdrawal of the bill itself. Nor is there any obvious

[1] 215 Hans. Deb. 300.

[2] 69 Com. J. 369.

[3] Fisheries (Ireland) bill, 1853; 108 Com. J. 612. Poor Law Amendment bill, and Lunatic Asylums (Ireland) bill, 1856. Universities (Scotland) bill, 15th May 1862. 111 Ib. 211. 213; 117 Ib. 202.

objection to the latter, in the case of a bill brought from the other house, for it is no less in possession of the house, at the time, than if it had originated there.

Second reading.

By a standing order of the House of Lords, it is ordered,

"That the name of the lord who moves the second reading of any public bill shall be entered on the Journals of this house."

"That the name of the lord presenting a public bill to this house, and of the lord who shall give notice to the clerk assistant that he intends to move the second reading of any public bill brought up from the Commons, shall be printed in the minutes of proceedings of this house, in connexion with the same."[1]

Bills for regulation of trade (Lords).

And by another standing order, no bill for the regulation of any trade is to be read a second time until a select committee has reported upon the expediency of proceeding with it;[2] and where this stage has been omitted, the order for the second reading has been discharged, and the committee appointed.[3]

The day having been appointed for the second reading, the bill stands in the order book, amongst the other orders of the day, and is called on in its proper turn, when that day arrives. If the bill has not yet been printed, the postponement of the second reading is rarely resisted: but when the house has already ordered a bill to be *now* read a second time, the execution of that order cannot be arrested by requiring the clerk to read the whole bill, the reading of the title being now the only form recognised by usage.[4] This is regarded as the most important stage through which the bill is required to pass; for its whole principle is then at issue, and is affirmed or denied by a vote of the house. The member who has charge of the bill moves, "That the bill be now read a second time;" and usually takes this

[1] Lords' S. O. No. 34.

[2] Coalwhippers (Port of London) bills, 1851 and 1857; 83 Lords' J. 463; 89 Ib. 192.

[3] Coal Trade bill, 1836; 68 Ib. 836.

[4] Mr. Pope Henessy's objection, 23rd March 1865; 178 Hans. Deb., 3rd Ser., 181; Established Church (Ireland) bill 1868; 192 Ib. 322.

opportunity of enlarging upon its merits. Sometimes, however, it is agreed to defer the discussion of the principle until a later stage of the bill. As the house has already ordered that the bill shall be read a second time, and the second reading stands as an order of the day, the motion for now reading the bill a second time need not be seconded, and the same rule applies to other similar stages. The opponents of the bill may simply vote against this question, and so defeat the second reading on *that* day:[1] but this course is rarely adopted, because it still remains to be decided on what other day it shall be read a second time, or whether it shall be read at all; and the bill, therefore, is still before the house, and may afterwards be proceeded with.[2] But when the question for now reading a bill a second time has been negatived, it may be immediately followed by an order for reading the bill a second time that day three or six months.[3] The ordinary practice, however, is to move an amendment to the question, by leaving out the word "now," and adding "three months,"[4] "six months," or any other term beyond the probable duration of the session. The postponement of a bill, in this manner, is regarded as the most courteous method of dismissing the bill from any further consideration, and is resorted to, not only on the second reading, but at subsequent stages. Another reason for using this form of amendment is, that the house has already ordered that the bill shall be read a second time; and the amendment, instead of reversing that order, merely appoints a more distant day for the second

Amendments to question for second reading.

[1] 88 Com. J. 399; 97 Ib. 354; 99 Ib. 486; 105 Ib. 672; 114 Ib. 243; Church-rates Redemption bill, 6th May 1863; Judgments Law Amendment bill, 13th May 1863; 118 Ib. 206. 221, 222; University Education (Ireland) bill, 11th March 1873.

[2] Parliamentary Electors bill; 102 Ib. 822. 837. 872. 901.

[3] 106 Ib. 139; 107 Ib. 267; 110 Ib. 199.

[4] On the 12th March 1852, the second readings of three Parliamentary Reform bills were put off for three months, which period, reckoned by lunar months, had elapsed on the 4th June, when they appeared amongst the orders of the day.

reading. The same form of amendment is adopted, when it is desired to postpone the second reading for any shorter time.

Amendments in the form of resolutions.

It is also competent to a member who desires to place on record any special reasons for not agreeing to the second reading, or other subsequent stage of a bill, to move, as an amendment to the question, a resolution declaratory of some principle adverse to, or differing from, the principles, policy, or provisions of the bill;[1] or expressing opinions as to any circumstances connected with its introduction or prosecution;[2] or otherwise opposed to its progress;[3] or seeking further information in relation to the bill by committees,[4] commissioners,[5] the production of papers,[6] or, in the Lords, the opinions of the judges.[7] Every such resolution, however, like other amendments upon orders of the day, must "strictly relate to the bill which the house, by its order, has resolved upon considering."[8] Thus, in 1873,

[1] Corn Importation bill, 1842; 97 Com. J. 113. Property Tax bill, 1842; 97 Ib. 321. Factories bill, 1844; 99 Ib. 265. Bank Charter bill, 1844; Ib. 396. Sugar Duties bill, 1844; Ib. 421. Poor Law Amendment bill, 1844; Ib. 468. Joint Stock Banks bill, 1844; Ib. 530. Lunatics bill, 1845; 100 Ib. 721. Landed Property (Ireland) bill, 1847; 102 Ib. 216. Representation of the People bill, 1859; 114 Ib. 125. In this case the speaker stated that in the time of his predecessor, between 40 and 50 such resolutions had been moved as amendments to stages of bills; 153 Hans. Deb., 3rd Ser., 1006.

[2] Ecclesiastical Titles bill, 1851; 103 Com. J. 114. Inhabited House Duty bill, 1851; 106 Ib. 321. Conspiracy to Murder bill, 1858; 113 Ib. 65. Paper Duty Repeal bill, third reading, 8th May 1860 (Sir S. Northcote), 115 Ib. 229.

[3] Corrupt Practices bill, 1848; 80 Lords' J. 819. Lower Canada Government bill, 1839; 94 Com. J. 431. Ecclesiastical Duties and Revenues bill, 1840; 95 Ib. 469. Arms (Ireland) bill, 1843; 98 Ib. 473. Bishopric of Manchester bill, 1847; 102 Ib. 864. Australian Colonies Government bill, 1850; 105 Ib. 334. Government of India bill, 23rd June 1853; 108 Ib. 609. Representation of the People bill, 1866 (Lord Grosvenor's amendment on second reading), 121 Ib. 213.

[4] 82 Lords' J. 284; 83 Ib. 201; 85 Ib. 279; 88 Ib. 337; 65 Ib. 209 (Stafford Bribery bill). In this case a select committee was appointed to inquire into the allegations of the preamble. 95 Com. J. 476; 98 Ib. 354. 398. 552; 99 Ib. 31; 104 Ib. 384; 105 Ib. 139; 110 Ib. 238.

[5] 95 Ib. 469 (Amendment for an Address); 100 Ib. 719.

[6] 88 Lords' J. 543; 102 Com. J. 865; 106 Ib. 382; 107 Ib. 186.

[7] Bank Charter bill, 1833; 65 Lords' J. 613.

[8] Report on Public and Private Business, 1837 (No. 517), p. 5; 143 Hans. Deb., 3rd Ser., 643.

a resolution proposed to be moved upon the second reading of the Roads and Bridges (Scotland) bill, that the house diclines to entertain *any legislation* involving the compulsory imposition of local burthens, &c., &c., was held to affect other bills as well as that under consideration, and was therefore revised so as to apply to that particular bill only.[1] When such a resolution amounts to no more than a direct negation of the principle of the bill, it is an objectionable form of amendment;[2] but there are special cases for which it may be well adapted. On the 21st February 1854, an amendment was made to the question for reading the Manchester Education bill a second time, that "education to be supported by public rates, is a subject which ought not, at the present time, to be dealt with by any *private* bill," which gave legitimate expression to the opinion of the house. It must be borne in mind, however, that the resolution, if agreed to, does not formally arrest the progress of the bill, the second reading of which may be moved on another occasion. The effect of such an amendment is merely to supersede the question for *now* reading the bill a second time; and the bill is left in the same position as if the question for now reading the bill a second time had been simply negatived,[3] or superseded by the previous question. The house refuses, on that particular day, to read the bill a second time, and gives its reasons for such refusal; but the bill is not otherwise disposed of.[4] Such being the technical effect of a resolution, so carried, it need scarcely be said that its moral and political results vary according to the character and importance of the resolution itself, the support it has received, and the means there may be of meeting it, in the

[1] 11th June 1873.

[2] Jewish Disabilities bill, 1848; 103 Com. J. 414.

[3] See *supra*, p. 487.

[4] In 1861, the second reading of the Marriage Law Amendment bill having been superseded by a resolution, the speaker, on being appealed to by its mover, suggested that the best course would be to withdraw the bill and introduce another, in harmony with the expressed opinion of the house. 162 Hans. Deb., 3rd Ser., 892.

further progress of the bill. Thus the amendment to the second reading of the Conspiracy to Murder bill, in 1858, being also a vote of censure, was not only fatal to that measure, but caused the immediate fall of Lord Palmerston's ministry. Again, the amendment to the second reading of the Reform bill, of 1859, was decisive as to that measure, and led to a dissolution. So on the 22nd July 1872, a resolution being carried, on the Thames Embankment (land) bill, that having regard to the advanced period of the session and the pressure of more important business, it was not expedient to proceed further with the consideration of the bill, the bill was necessarily abandoned. But where the resolution merely relates to some provision of the bill, it does not arrest its progress, provided the principle affirmed can be accepted, or successfully resisted at a further stage. Thus, on the 6th May 1872, on going into committee upon the Education (Scotland) bill, a resolution was carried, affirming that instruction in the holy scriptures was an essential part of education, and ought to be provided for in the bill. To give effect to this resolution it was necessary to move an amendment in committee, of which Mr. Gordon, the mover of the resolution, gave notice. This amendment was negatived; and the resolution of the house was thus practically reversed. As it is a well-known and unquestioned rule that "in every stage of a bill, every part of the bill is open to amendment, whether the same amendment has been, in a former stage, accepted or rejected,"[1] and as the committee are entitled to form an independent judgment upon every amendment proposed, this proceeding was in strict conformity with parliamentary usage; and the decision of the committee was again open to review by the house itself, upon the consideration of the bill as amended. Where the objection to a bill is of a more limited and peculiar character, it may be more conveniently reserved as an instruction to the committee, at a later stage,

[1] 2 Hatsell, 135.

or for amendments in committee.[1] When a resolution was about to be moved, anticipating discussion upon various provisions of the bill, which were the subjects of amendments in committee, the speaker has pointed out the irregularity of such a proceeding, and the motion was not made.[2] In the Lords, resolutions relating to a bill have been moved separately, before the order of the day, and not by way of amendment,[3] a course which would be incompatible with the rules of the other house. No amendment can be moved on the second reading or other stage of a bill, by way of addition to the question.[4]

Previous question.

Sometimes the previous question is moved on the second reading[5] and other stages of bills:[6] but it is not so appropriate as other proceedings in more common use. It is also open to the same objection as a simple negative of the second reading, as the bill is not disposed of, but may be appointed to be read on another day.

Bills dropped.

It may here be stated, that if no motion be made for the second reading or other stage of a bill, or for its postponement, it is allowed to drop, and does not appear again upon the order book, unless another day be appointed for its consideration. Sometimes a bill has been read a second time by mistake or inadvertence; when the proceedings have been declared null and void, and another day has been appointed for the second reading.[7]

Bills rejected.

Instances of rejecting bills altogether were formerly not uncommon, but are now comparatively rare; two cases only appearing in the Journals of the Commons for upwards of half a century:[8] but in the Lords the practice has been

[1] See *infra*, pp. 494. 501.

[2] 192 Hans. Deb., 3rd Ser., 1571.

[3] Supreme Court of Judicature bill, (Lord Redesdale), 2nd May 1873.

[4] See *supra*, pp. 292, 293.

[5] 113 Com. J. 220; 116 Ib. 103. 135. 137. County Franchise bill, 1864, and Borough Franchise bill, 1864 and 1865; 119 Com. J. 160. 234; 120 Ib. 247.

[6] 8 Ib. 421; 10 Ib. 762; 13 Ib. 292; 26 Ib. 270. 592; 30 Ib. 418; 99 Ib. 504.

[7] Masters and Operatives bill, 1859; 114 Com. J. 139; 153 Hans. Deb. 816.

[8] 37 Com. J. 444; 80 Ib. 425.

more general.[1] In more ancient times bills were treated with even greater ignominy.[2] On the 23rd January, in the 5th Elizabeth, a bill was rejected and ordered to be torn:[3] so, also, on the 17th March 1620, Sir Edward Coke moved "to have the bill torn in the house;" and it is entered, that the bill was accordingly "rejected and torn, without one negative."[4] And even so late as the 3rd June 1772, the Lords having amended a money clause in the Corn bill, Governor Pownall moved that the bill be rejected, which motion being seconded, the speaker said, "that he would do his part of the business, and toss the bill over the table." The bill was rejected, and the speaker, according to his promise, threw it over the table, "several members on both sides of the question kicking it as they went out."[5]

There is no restriction in regard to the time at which motions for rejecting bills may be made: but, if the house think fit, such rejection may be voted on the first, second, or third readings, or any other stage of the bill. It has been thought better, however, to notice the practice in this place, in connexion with the postponement of bills, in order to save repetition, when the other stages are under consideration.

Counsel.

The second reading is the stage at which counsel are more usually heard, whenever the house is of opinion that a public bill is of so peculiar a character, as to justify the hearing of parties whose interests, as distinct from the general interests of the country, are directly affected by it.[6]

[1] See Gen. Indexes to Lords' J., tit. "Bills."

[2] 1 Com. J. 252. 262. 311.

[3] Ib. 63.

[4] Ib. 560.

[5] 17 Parl. Hist. 512–515.

[6] Cotton Factories bill, 1818; 51 Lords' J. 662; 88 Com. J. 501; 90 Ib. 587, &c. Municipal Corporations bill (Lords), 1833. Warwick Borough bill (Lords), 1834. Stafford Disfranchisement bill (Lords), 1836. Canada Government bill (Commons) 1838, Mr. Roebuck. Jamaica bill (Commons), 22nd and 23rd April, and 7th June 1839; and Lords, 28th June. Ecclesiastical Duties and Revenues bill (Lords), 1840. Sudbury Disfranchisement bill (Lords), 1842 and 1844. For further explanations of the prin-

It is a general principle of legislation, that a public bill being of national interest, should be debated in Parliament upon the grounds of public expediency; and that the arguments on either side should be restricted to members of the house, while peculiar interests are represented by the petitions of the parties concerned. Questions of public policy can only be discussed by members: but where protection is sought for the rights and interests of public bodies, or others, it has not been unusual to permit the parties to represent their claims by counsel. Counsel have also been heard at various other stages of bills, as well as on the second reading.[1] In the case of bills of pains and penalties, or disabilities, it has been usual to order a copy of the bill, and the order for the second reading, to be served upon the parties affected, and to hear them by counsel.[2] The attorney general has also been ordered to appoint counsel to manage the evidence, at the bar of the house, in support of the bill,[3] or to take care that evidence be produced in support of the bill.[4]

When a bill has been read a second time, a question is put, "that this bill be committed," which, though open to debate, amendment, and division, like any other question,[5] is rarely opposed,[6] being a mere formal sequel to the second reading. When this question has been agreed to, a day is named for the committee. On the order of the day being read for the committee, it is moved in the Lords, that the house be now put into committee on the bill; to which an amendment may be moved, that the house be put into com- Lords.

ciple upon which Parliament has permitted counsel to be heard against public bills and precedents cited, see Lords' debate on Australian Colonies bill, 10th June 1850; 111 Hans. Deb., 3rd Ser., 943.

[1] See Com. Gen. Journ. Indexes, tit. "Counsel."

[2] Wilson's Disabilities bill, 1737. Rumbold's Pains and Penalties bill, 1782. Queen's Degradation bill, 1820 (Lords).

[3] Rumbold's bill, 7th May 1782.

[4] O'Sullivan's Disabilities bill, 5th May 1869; 124 Com. J. 180.

[5] 93 Com. J. 234; 95 Ib. 529; 98 Ib. 354; 105 Ib. 476.

[6] Lords' S. O. No. 34.

Commons.

mittee on a future day, beyond the probable duration of the session. When the order of the day is read in the Commons, for the house to resolve itself into a committee on the bill, the speaker puts a question, "That I do now leave the chair," to which the proper amendment is, to leave out from the word "that," to the end of the question, in order to add, "this house will on this day 'three months,' or 'six months,' resolve itself into the said committee." If attention were not paid to this form of amendment, the absurdity might arise of ordering Mr. Speaker to "leave the chair this day six months." It is not competent to move any amendment by way of addition to the question, that Mr. Speaker do now leave the chair.[1]

Instructions to committees on bills.

But before the house resolves itself into committee, an instruction may be given to the committee, empowering them to make provision for any matters not relevant to the subject-matter of the bill.[2] According to the rules and general practice of Parliament, an instruction does not *order* a committee to make any provision: but merely instructs them "that they have power" to make it.[3] In the Lords, indeed, mandatory or imperative instructions are occasionally given concerning the provisions of bills.[4] And in the Commons such instructions were formerly not without re-

[1] Mr. Speaker's note-book, 28th May 1866; and see *supra*, p. 292.

[2] It has been ruled that notice of an instruction should be given, 176 Hans. Deb., 3rd Ser., 1940.

[3] On the 13th July 1803, Mr. Pitt moved an instruction to the committee on the Income Duty bill, "that it do make provision for the like abatements, &c." "I stated my doubts to the house upon the regularity of such an instruction, as being unnecessary. That the purpose of an instruction was to give a *power* to a committee to do that which it could not do without that power. Whereas, with a view to the present object of making *abatements*, the committee were competent already so to do. Also, I stated that no instruction was in itself obligatory. The latter point Mr. Addington afterwards illustrated by pointing out that even the committee could not act upon the instruction, without a question put upon the thing to be done, which of itself implied that the instruction was not conclusive upon the committee." 1 Lord Colchester's Diary, 431. See also 2 Lord Sidmouth's Life, 144. The instruction was negatived by 150 to 50; 58 Com. J. 606; 36 Parl. Hist. 1668. See also 189 Hans. Deb., 3rd Ser., 1070.

[4] 65 Lords' J. 551; 68 Ib. 151; 83 Ib. 443.

cognition.[1] But according to modern practice mandatory instructions are now confined to proceedings unconnected with the provisions of bills.[2] If the proposed provision be relevant, it cannot be the subject of an instruction, which would be nugatory, as the committee would already have the power which it is the object of the instruction to confer.[3] The following examples will serve to illustrate the conditions under which instructions are necessary, in order to enable committees to introduce provisions which would otherwise exceed a fair interpretation of the rule concerning relevant amendments.

Examples of instructions.

On the 13th June 1855, it was ruled (privately) by the speaker, that without an instruction it would not be competent to the committee on the Sunday Trading (Metropolis) bill to extend its provisions to the United Kingdom: such a proposal being more properly indeed the subject of a new bill:[4] but bills with a general title, applying to England and Scotland only, may be extended to Ireland, without an instruction.[5] Again, on the 20th March 1862, it was ruled that an instruction was required to enable the committee on the Markets and Fairs (Ireland) bill, to provide for the equalisation of weights and measures on all mercantile transactions in Ireland.[6] On the 10th March 1859, a clause to repeal the provisions of the 5 Geo. I. c. 4, prohibiting any mayor from resorting to any public meeting for religious worship, other than of the Church of England, with the ensigns of office, was held not to be relevant to a bill to amend

[1] 6 Hans. Deb., 3rd Ser., 268, 269. 21 Com. J. 836; 30 Ib. 832. Starch Duties bill, 55 Ib. 42; 57 Ib. 418. 647; 65 Ib. 282; 66 Ib. 299. Representation of the People bill, 1831; 86 Ib. 759. Municipal Corporations bill, 14th July 1835; 90 Ib. 451.

[2] 13 Com. J. 466. 759; 16 Ib. 426. 493. 604; 17 Ib. 292. 296; 46 Ib. 170. 269; 48 Ib. 635; 49 Ib. 360.

[3] 195 Hans. Deb., 3rd Ser., 847; 207 Ib. 402.

[4] MS. notes.

[5] Settled Estates Drainage bill, 4th June 1840; Copyhold bill, 20th May 1841. In 1851, an instruction was given to the committee on the bill to continue the property tax, empowering them so amend the Act 5 & 6 Vict. c. 35, by which the tax had been granted.

[6] 165 Hans. Deb., 3rd Ser., 1876.

the law relating to municipal elections.[1] On the 10th May 1865, an instruction was deemed necessary to enable the committee on a bill for the registration of county voters, to extend certain provisions relating to the duties and powers of revising barristers, to cities and boroughs;[2] and on the 11th May 1865, it was ruled that an instruction was needed to entitle the committee on the Union Chargeability bill, which regulated the charges upon parishes within existing unions, to make provision for altering the boundaries of unions, which had been the subject of a distinct act.[3] In 1860, and again in 1866, an instruction was given to the committee on the Representation of the People bill, that they have power to make provision for restraining bribery and corrupt practices.[4] And in 1867, an instruction was given to the committee on the Representation of the People bill, after full consideration, to enable them to alter the law of rating, as it was intended by several amendments to alter that law, not merely in reference to registration and the rights of voting, which would have been relevant, but in respect of the incidence of taxation and the rights and interests of owners and occupiers, then governed by general and local acts, irrespectively of the franchise.[5] On the 30th June 1873, an instruction was held to be necessary to enable the committee on the bill for the constitution of a supreme court, and the better administration of justice, in England, to provide for the hearing of appeals from Scotland and Ireland.

An instruction cannot be given to make any provision, if it be of such a nature that it ought to have been considered in a committee of the whole house, as imposing a charge upon the people, or concerning religion or trade;[6] for otherwise the rules of the house would be evaded.

On the 4th June 1860, notice had been given of no less

[1] MS. Minute.
[2] 179 Hans. Deb., 3rd Ser., 98.
[3] Ib. 116.
[4] 158 Ib. 1966; 183 Ib. 1320.
[5] 186 Ib. 1270.
[6] See *supra*, p. 471 *et seq.* On the 18th June 1862, an instruction to the committee on the Sale of Spirits bill, having been held to concern trade, was withdrawn. 167 Hans. Deb., 3rd Ser., 699.

than nine instructions to the committee on the Representation of the People bill, which served to illustrate most of the rules and principles applicable to such proceedings. Some were held to be inadmissible, as the committee had already power to make the required provision; some as being mandatory in form; two, on the ground that, as they related to religion, a preliminary committee was necessary; and one as referring to the United Kingdom, in anticipation of two other bills for amending the representation of Scotland and Ireland, already appointed for consideration. An amendment to a proposed instruction was also overruled, as referring to a matter within the competence of the committee, and also as being mandatory.[1]

When and how to be moved.

The most proper and convenient time for moving an instruction is, after the order of the day for the committee on the bill has been read, and before any question has been proposed thereon; when it should be proposed as a distinct motion. Instructions have sometimes been moved in the form of an amendment to the question for the speaker leaving the chair;[2] but this course is inconvenient; for if the amendment be agreed to, it supersedes the main question, and thus prevents the speaker from leaving the chair, which is not the object of the amendment, nor the desire of its mover. Hence where notice has been given of moving an instruction to the committee on a bill, and also of an amendment to the question for the speaker to leave the chair, precedence is given to the former.[3] Any number of instructions may be moved in succession, to the committee on the same bill; as each question for an instruction is separate, and independent of every other. Amendments may also be moved to a question for an instruction:[4] provided the amendment be so framed that if agreed to, the question, as amended, would retain the form of an instruc-

[1] 158 Hans. Deb., 3rd Ser., 1951-1988.

[2] 75 Com. J. 435; 76 Ib. 137, 138; 78 Ib. 107; 80 Ib. 111; 88 Ib. 163; 113 Ib. 207.

[3] 149 Hans. Deb., 3rd Ser., 1406. Union Chargeability bill, 11th May 1865; 179 Hans. Deb., 3rd Ser., 116.

[4] 101 Com. J. 813.

tion, and its matter be such as may properly form the subject of an instruction. On the 28th May 1866, notice having been given of a motion to refer the Representation of the People bill and the Redistribution of Seats bill to the same committee, and of an instruction to empower the committee to consolidate those bills into one, another notice was given of an amendment to the proposed instruction, in the form of a resolution condemning the principles and provisions of the latter bill. It was, however, ruled (privately) that no such amendment could be moved to the instruction. A doubt was, indeed, raised whether the amendment could not be moved to the prior question for referring the two bills to the same committee: but, after much consideration, it was held that this motion was also in the nature of an instruction, and that the two motions, though forming the subject of two questions, were substantially one instruction. The first referred the two bills to the committee; the second empowered the committee to consolidate them. And it was admitted that great inconvenience would arise if resolutions, which could not be otherwise interposed between the reading of the order of the day, and the question founded upon it, were allowed under cover of an amendment to an instruction. This view was acquiesced in by all parties, and arrangements were accordingly made by which the amendment was moved to the question for the speaker leaving the chair.[1]

Resolutions in the nature of instructions.

A distinct resolution is sometimes moved as an amendment to the question for the speaker leaving the chair, which, if agreed to, may have the same ultimate effect as an instruction, by declaring the opinion of the house, to which effect can afterwards be given in proper form.[2] Such

[1] Private mem. 183 Hans. Deb., 3rd Ser., 1347.

[2] Warwick Borough bill, 5th March 1834; 89 Com. J. 91. Established Church bill, 8th July 1836; 91 Ib. 639. Poor Relief (Ireland) bill, 9th May 1837; 92 Ib. 358. Freemen's Admission bill, 10th May 1837; 92 Ib. 364. Colleges (Ireland) bill, 23rd June 1845; 100 Ib. 621. Election Recognisances bill, 15 March 1848; 103 Ib. 330. Representation of the

a resolution may thus be moved, when an instruction would be irregular ;[1] for if it comprise matters which, by the rules of the house, must be first considered in a committee, effect is afterwards given to the resolution, by a vote in committee, and by founding upon it, if necessary, an instruction to the committee on the bill. The form of an instruction is such as to preclude the house from complying with these preliminary formalities, as it takes immediate effect, and it would therefore be irregular, under such circumstances, to move it. In the same manner, in cases where an instruction would be irregular, the objects contemplated by it being within the general powers of the committee, a resolution may be moved, embodying the opinion of the house.

Before first sitting of committee.

All such motions, however, whether in the form of instructions or of amendments, should be made before the first sitting of the committee ; for by a standing order, 25th June 1852, if the bill have already been partly considered, the speaker will forthwith leave the chair when the order for the committee has been read; and there is consequently no opportunity for offering such a motion. An instruction cannot be moved as a distinct notice, apart from the order of the day for the committee on a bill, unless it be founded on the report of a committee of the whole house, in which case the proceeding is necessarily separated from the order of the day.[2] But, otherwise, irregular discussions would be raised upon bills appointed for consideration at other times. By standing order, 19th July 1854,

Several bills may be referred to one committee ;

"Bills which may be fixed for consideration in committee on the same day, whether in progress or otherwise, may be referred together to a committee of the whole house, which may consider on the same day all the bills so referred to it, without the chairman leaving the chair on each separate bill ; provided that, with respect to any bill not in progress, if any member shall object to its consideration in committee

People bill, 1867 (Captain Hayter), 186 Hans. Deb., 3rd Ser., 1278.

[1] Sugar Duties bill, 14th March 1845 (Mr. Hawes). Church Rates Abolition bill, 21st April 1858 (Mr. Puller).

[2] 105 Com. J. 635.

with other bills, the order of the day for the committee on such bill shall be postponed."

And consolidated into one bill.

This course is now frequently adopted, with much convenience and saving of time.[1] Two or more bills may also be referred to the same committee, with an instruction to the committee that they have power to consolidate them into one bill.[2]

Instructions to hear counsel.

Sometimes also, petitions have been referred to the committee on a bill, with an instruction that they have power to hear counsel and examine witnesses.[3]

Bill considered in committee.

If the house agree to the question for the speaker leaving the chair, the mace is removed from the table, and the committee begin the consideration of the bill. As its principle has been affirmed at the second reading, the details of the bill are to be examined in committee, clause by clause, and line by line, and every blank filled up; for which purpose the permission to speak more than once offers great facilities.

Proceedings in committee.

In the Lords the first proceeding of the committee is to

[1] 114 Com. J. 253; 124 Ib. 63. In some cases after an amendment, proposed but not made, to the question that the speaker do now leave the chair, other orders of the day for committees on bills have been read, and the bills committed to the same committee, before the speaker was ordered to leave the chair. 19th June, 17th July 1846; 101 Com. J. 276. 353.

[2] Representation of the People and Redistribution of Seats bill, 28th May 1866; 183 Hans. Deb., 3rd Ser., 1319. For other precedents of such instructions, see 19 Com. J. 522; 20 Ib. 143; 21 Ib. 832. 836; 22 Ib. 162; 30 Ib. 164. 832; 58 Ib. 568; 106 Ib. 365; 124 Ib. 246; 125 Ib. 246.

[3] Corn Regulation bill, 1791; 46 Com. J. 466. Sinecure Offices bill, 1812; 67 Ib. 309. Weymouth Borough bill, 1813; 68 Ib. 362. Apprentices bill, 1814; 69 Ib. 335. Penryn Bribery bill, 1819; 74 Ib. 441. Silk Trade bill, 1824; 79 Ib. 180. Coventry Magistracy bill, 1827; 82 Ib. 536. East Retford Disfranchisement bill, 1828; 83 Ib. 122. Liverpool Franchise bill, 1832. Municipal Corporations bill, 1835; 67 Lords' J. 329; Municipal Corporations (Ireland) bill, 1839; 71 Ib. 259; 87 Ib. 461. Limitation of Actions (Ireland) bill, 1843; 98 Ib. 538. Gaming Actions Discontinuance bill, 1844; 76 Ib. 550. 553. St. Alban's Disfranchisement bill, 1851; 84 Ib. 101. See also debate on Colonel Wilson Patten's motion for hearing the electors of Lancaster before the committee on the Representation of the People bill, 1867; 186 Hans. Deb., 3rd Ser., 982.

postpone the title, which is there treated as a part of the bill: but in the Commons the committee do not consider the title, unless it requires amendment. The preamble is next postponed, which, in the Commons, is the first proceeding.[1] This course is adopted because the house has already affirmed the principle of the bill, on the second reading, and it is therefore the province of the committee to settle the clauses first; and then to consider the preamble in reference to the clauses only. By this rule the preamble is made subordinate to the clauses, instead of governing them. It was not observed, however, in the Bishoprick of Manchester bill, 1847,[2] nor in the Education (Scotland) bill, 1855;[3] in which cases the question for postponing the preamble was put and negatived; and the preamble considered before the clauses. The same course was proposed in the Ecclesiastical Titles bill, 1851, but was not adopted by the committee.[4] Upon the question for postponing the preamble, a discussion has, on rare occasions, been raised upon the principle of the bill.[5] On the 29th June 1869, in committee on the Irish Church bill, in the House of Lords, a long debate was raised upon the postponement of the preamble, which was, however, agreed to without a division.[6]

Preamble postponed.

The chairman then proceeds to read the number of each clause in succession, together with the short marginal note which explains its objects. A member is not at liberty to speak generally upon a clause, upon its being called by the chairman, there being no question before the committee until an amendment has been moved, or a question put that the clause stand part of the bill.[7] If no amendment be offered to any part of a clause, the chairman at once puts the question, "That

Amendments, when to be offered.

[1] The preliminary questions for reading the bill a first and second time were discontinued by standing order, 19th July 1854.

[2] 102 Com. J. 911. 932.

[3] 110 Ib. 289.

[4] 106 Ib. 231.

[5] 186 Hans. Deb., 3rd Ser., 1835.

[6] 197 Ib. 689.

[7] Representation of the People bill, 18th June, 1866 (Chancellor of the Exchequer); 84 Hans. Deb., 3rd Ser., 536.

this clause stand part of the bill," and proceeds to the next: but when an amendment is proposed, he states the line in which the alteration is to be made, and puts the question in the ordinary form. Members who are desirous of offering amendments in committee, should watch carefully the progress of the bill, and propose them at the proper time; for if the committee have passed on to another clause, or even amended a later line or words in the same clause, amendments cannot be made in an earlier part of the bill. Whenever several amendments are about to be moved to the same clause, the chairman proposes each of them in such a form as not to exclude any later amendments; and with this view he often proposes only the first words of an earlier amendment.[1] No amendment can properly be proposed to a clause which is irrelevant to the subject-matter of such clause: but it should be submitted to the committee, at the end of the bill, as a separate clause.[2] Neither may an amendment be proposed to leave out from the word "That," to the end of the clause, in order to substitute other words,—such an amendment being in the nature of a new clause.[3] In such a case the regular course is to negative the question, that the clause stand part of the bill, and to bring up a new clause, at the proper time. But when an amendment has already been made at the beginning of a clause, and it is afterwards proposed to leave out the remainder of the clause, such an amendment has been held to be regular.[4] When a clause has been amended, the question put from the chair is, "That this clause, as amended, stand part of the bill;" and no other amendment can be proposed to a clause, after this question has been proposed from the chair.[5] By standing order, 19th July 1854,

[1] 181 Hans. Deb., 3rd Ser., 539; 184 Ib. 445.

[2] Divorce and Matrimonial Causes bill, 6th Aug. 1857; 147 Hans. Deb., 3rd Ser., 1190. 1198. Manor Courts (Ireland) bill, 23rd Feb. 1859 (MS. Minute).

[3] 196 Hans. Deb., 3rd Ser., 74, &c.

[4] Irish Land bill, 1st April 1870; 200 Ib. 1057.

[5] 147 Hans. Deb., 3rd Ser., 1191.

"In going through a bill, no questions shall be put for the filling up of words already printed in italics, and commonly called 'blanks,' unless exception be taken thereto; and if no alterations have been made in the words so printed in italics, the bill is to be reported without amendments, unless other amendments have been made thereto." Proceedings upon blanks.

Where, for any reason, real blanks have been left, according to the former practice, if it be desired to fill them up with words different from those first proposed, a distinct motion is made upon each proposal, instead of moving an amendment upon that first suggested. The chairman puts the question upon each motion separately, and in the order in which they were made.[1] It was formerly an occasional, but not the constant practice, to put first the motion for a smaller sum or longer time:[2] but according to later practice, this rule has not been observed in committees upon bills. Thus, on the 18th July 1856, in committee on the Vice-President of the Committee of Council on Education bill, it was proposed to fill up the blank, for the salary of the office, with 2,000 *l.*: it was afterwards proposed to fill it up with 1,200 *l.*; and the question was put and decided upon the sum first proposed.[3] Where the proposed sum has already been printed in italics, and another sum is proposed, the latter is put in the form of an amendment, without reference to the relative amount of the two proposals.[4]

When bills are introduced with clauses which involve charges upon the public revenue, whether payable out of the consolidated fund, or out of monies to be provided by Parliament,[5] or whether by way of direct payment or guarantee,[6] or impose any tax or state burthen upon the people, such clauses are printed in italics, and cannot be agreed to by the committee on the bill unless such charges or taxes have previously been reported by a committee, and agreed Money clauses.

[1] 93 Com. J. 526; 94 Ib. 265. 465. 497.
[2] 88 Ib. 617.
[3] 111 Ib. 363.
[4] 110 Ib. 223; 111 Ib. 353.
[5] Amended standing order, 20th March 1866.
[6] Main Drainage of the Metropolis bill, 1858. Canada railway loan, 1867.

to by the house, either before or after the introduction of the bill. Where it appeared that certain payments directed to be made would be discharged out of civil contingencies, a preliminary committee was held to be necessary.[1] Clauses involving local taxation only are not printed in italics, nor previously voted in committee.[2]

Drawbacks.

In 1857, the sugar duties had been voted in the committee of ways and means: the bill granted a drawback upon sugar imported into the Isle of Man, which had not been voted; and it was ruled (privately) that such a drawback might properly be enacted in the bill.[3]

Duties not to be increased by committee on the bill.

If a schedule of duties has been reported from a committee, and agreed to by the house, the committee on the bill cannot increase such duties, nor add any articles not previously voted;[4] but if the duties so voted are less than those payable under the existing law, it is competent for the committee on the bill to increase them, provided such increase be not in excess of the existing duties.[5] Any duty, voted in a preliminary committee, may be reduced by the committee on the bill.

Repeal of exemptions from duty.

But where exemptions from duty are repealed, and the duty therefore increased, a preliminary committee is necessary, before the committee on the bill can agree to such a provision.[6] Nor will a clause or amendment be received, granting costs against the Crown, or revenue officers, and thereby imposing a public charge, unless authorised by preliminary proceedings.[7]

Land revenues.

It appears that the land revenues of the Crown may be

[1] St. Alban's Inquiry Commission bill, 1851.

[2] 179 Hans. Deb., 3rd Ser., 481.

[3] MS. Precedents.

[4] MS. Precedents, 20th March 1846.

[5] Ib. 26th March 1846; and see Chap. XXI. (SUPPLY).

[6] Stamp Duties bill, 1854; 109 Com. J. 334. This question was raised 30th April 1863, on the Customs and Inland Revenue bill; but it affected the construction of a preliminary resolution granting a renewal of the property tax, and not the principle of this rule, which was not controverted.

[7] 12th May 1862, Sir H. Willoughby's proviso in Customs and Inland Revenue bill; 166 Hans. Deb., 3rd Ser., 1593.

applied to improvements of Crown property, without a preliminary vote, although, by statute, such land revenues are carried to the consolidated fund.[1]

Remission o advances.

It has also been held, that where advances have been made by the Treasury, under statutes, and it has been proposed to remit the repayment of them, no previous vote in a committee of the whole house is necessary.[2]

What amendments admissible.

Amendments may be made in every part of the bill, whether in the preamble, the clauses, or the schedules; clauses may be omitted, and new clauses and schedules added. In the Lords, new clauses are brought up and inserted in their proper places, while the committee are going through the bill:[3] but in the Commons, all the clauses of the bill are considered before any new clauses are brought up and added to the bill. In committee on the Mutiny bill in 1867, an exceptional course was adopted for the sake of convenience, and certain clauses were postponed until after the consideration of a new clause relating to flogging in the army.[4] An amendment or new clause cannot be brought up which is substantially the same as one already negatived by the committee.[5]

New clauses and schedules.

There appears to have been considerable diversity of practice, at different periods, in the method of dealing with new clauses, and with the schedules to a bill. Sometimes the schedules were considered immediately after the original clauses of the bill, and then new clauses were brought up;[6] and, on other occasions, new clauses were offered immediately after the original clauses of the bill were disposed

[1] Newborough Church bill, 1 Will. IV. c. 59. Hainault Forest bill, 1851. Pimlico Improvement bill, 1852. Sunk Island Roads bill, 1852. Whychwood Forest bill, 1853.

[2] Consolidated Annuities (Ireland), 18th July 1853. Portumna Bridge bill, 1858; Leith Harbour and Docks bill, 1860; Holyhead Roads bill, 1861; Irish Church bill, 1869 (Maynooth).

[3] 88 Lords' J. 234. Representation of the People bill, 30th July 1867; Lords' Minutes, pp. 1277. 1279.

[4] 186 Hans. Deb., 3rd Ser., 768. 912.

[5] 211 Ib. 137. 2026.

[6] Poor Law Amendment bill, 18th July 1844; Turnpike Trusts (South Wales) bill, 24th July 1844; 99 Com. J. 517. 536.

of; and this latter course is the latest and most approved form of procedure.[1] It is, in nearly all cases, most convenient to consider every clause of the bill before the schedules, which are merely supplementary to the bill. But if, in any particular instance, there should be some special reason for taking the schedules before the new clauses, that course might be adopted. The new clauses proposed by the minister, or other member in charge of the bill, are proposed before other new clauses.[2]

Where there are several schedules to a bill, they are treated in the same manner as clauses. They are taken *seriatim;* and it is not until they have all been considered that new schedules can be offered. If one schedule be disagreed to, another cannot be offered to supply its place until the remaining schedules have been disposed of. A new schedule is brought up, read a first time and second time, amended, if need be, and added to the bill.[3]

In the Commons, all amendments were formerly required to be within the scope and title of the bill; but by standing order, 19th July 1854,

Special report if title amended.

"Any amendment may be made to a clause, provided the same be relevant to the subject-matter of the bill, or pursuant to any instruction, and be otherwise in conformity with the rules and orders of the house: but if any amendment shall not be within the title of the bill, the committee are to amend the title accordingly, and report the same specially to the house."[4]

No amendment should be admitted which is in the nature of a previous question.[5] If it be convenient, clauses may be postponed, unless they have been already partly considered and amended, in which case it is not regular to postpone them.[6] But if a proposed amendment be withdrawn,

[1] Parliamentary Representation bill, June 1867, &c.

[2] 208 Hans. Deb., 3rd Ser., 802.

[3] Metropolitan Buildings bill, 17th July 1844; 99 Com. J. 512; Parl. Rep. bill, 1867; 122 Com. J. 365; 188 Hans. Deb., 3rd Ser., 1280.

[4] Rules and Orders, No. 362.

[5] But see proceedings in committee on Reform bill, 1832; 87 Com. J. 133. 141. 165. 173,—questions and amendments concerning Amersham, Helston, Gateshead, and South Shields.

[6] 207 Hans. Deb., 3rd Ser., 722.

the clause may be postponed.[1] Postponed clauses are considered after the other clauses of the bill have been disposed of, and before any new clauses are brought up. If any new clause be offered, the chairman desires the member to bring it up, and it is read a first time without any question being put.[2] A question is then put for reading the clause a second time, and if agreed to, the clause may be amended, before the question is put for adding it to the bill. The committee may divide one clause into two; or decide that the first part of a clause, or the first part of a clause with a schedule, shall be considered as an entire clause.[3] A new clause, however, will not be entertained if inconsistent with other clauses already agreed to by the committee;[4] or if substantially the same as another clause previously negatived.[5] When instructions have been given by the house for that purpose,[6] the committee may receive clauses or make provision in the bills committed to them, which they could not otherwise have considered.[7] If a clause or amendment irrelevant to the subject-matter of the bill be offered, the chairman will decline to put the question.[8]

In compliance with instructions, also, the committee may consolidate two bills into one, or divide one bill into two or more;[9] or examine witnesses and hear counsel.[10] When all the clauses and schedules have been agreed to, and any new clauses or schedules added, the preamble, which had been postponed, is considered, and, if necessary, is amended so as to conform to amendments made in the bill;[11] and the chairman puts the question, "That this be the preamble of the bill," which he reads (short) to the committee. Lastly,

[1] Supreme Court of Judicature bill, 8th July 1873.

[2] Standing order, 19th July 1854.

[3] 86 Com. J. 728; 87 Ib. 80; 89 Ib. 409.

[4] Municipal Elections bill, 1859; 114 Com. J. 103.

[5] 179 Hans. Deb., 3rd Ser., 538.

[6] See *supra*, p. 494.

[7] 179 Hans. Deb., 3rd Ser., 522.

[8] 111 Com. J. 213.

[9] 73 Lords' J. 188; 85 Ib. 294; 107 Com. J. 140. 223; 108 Ib. 645; 116 Ib. 376 (three bills); 124 Ib. 194; 126 Ib. 121. 127 Ib. 230, &c.

[10] See *supra*, p. 500.

[11] 99 Com. J. 48. 154; 100 Ib. 135; 104 Ib. 505.

in the Lords the title of the bill is considered and agreed to; and in the Commons, when any amendment is to be made to the title, this is the last proceeding of the committee.[1] When two bills are to be consolidated, the preambles of the two bills are severally postponed, and the clauses of each are successively proceeded with. When a bill is to be divided into one or more bills, it is usual to postpone those clauses which are to form a separate bill, and when they are afterwards considered, to annex to them a preamble, enacting words and title. The separate bills are subsequently reported.[2]

Bills committed *pro formâ.*

When the lord, or member, having change of a bill desires to introduce numerous amendments, in order to meet the views of other members, or otherwise to improve the measure, and render it more generally acceptable to the house, he may express his desire that the bill shall be committed *pro formâ*,—a course which is rarely objected to. In such cases the proposed amendments are not separately considered; nor is any question put upon the several clauses of the bill. The proceeding being entirely formal, all discussion is avoided, and the chairman reports the bill, with the amendments, to the house; and it is reprinted in its amended form, and re-committed for a future day. It is not, however, regular to commence the consideration of a bill in the usual way, and to deal with the remaining clauses *pro formâ:* but it has been arranged that all subsequent amendments, though put from the chair, shall be accepted without discussion.[3] When a bill has been committed *pro formâ*, it is not regular to introduce, without full explanation, amendments of so extensive a character as virtually to constitute it a different bill from that which has been

[1] 110 Com. J. 223; 111 Ib. 276; 112 Ib. 373.

[2] Newspaper Stamps bill, 1836. Inland Revenue bill, 1861, divided into three bills. 116 Ib. 385. Trades Unions' bill 1871; 126 Ib. 121; 205 Hans. Deb., 3rd Ser., 977.

[3] Literary and Scientific Societies bill, 4th June 1856.

read a second time by the house, and committed. In 1856, the Partnership Amendment bill having been committed *pro formâ*, it was extensively amended: but no amendment was inserted which it was not clearly competent for the committee to entertain; yet, when an objection was urged that it had become a new bill, the minister in charge of it, while denying the alleged extent of the amendments, consented to withdraw the bill.[1] When the amendments affect the principle of the bill, the more regular and convenient course is to withdraw the bill, and present another.[2] When a bill, having been committed *pro formâ*, is re-committed, it is afterwards considered, like any other bill, committed for the first time, and not, as is sometimes erroneously supposed, like a bill in progress. A question is put for Mr. Speaker leaving the chair, and amendments may be moved to it, in the usual way.

Proceedings of committee not known until reported.

The house is not supposed to be informed of any of the proceedings of the committee until the bill has been reported; and any discussion of the clauses, with the speaker in the chair, is consequently irregular. For this reason, on a motion for postponing the further sitting of the committee on the Scotch Poor Law bill, on the 17th July 1845, on the ground of certain alterations which had been made in committee, Mr. Speaker stopped the discussion of the merits of those alterations.

Report of progress.

If the committee cannot go through the whole bill at one sitting, in the Lords, the chairman puts a question that the house be resumed, which being agreed to, he leaves the chair, and moves that the house be put into committee on a future day; and in the Commons, the committee direct the chairman to report progress, and ask leave to sit again. Sometimes, where several bills have been referred to the same committee, a report is made that they had not made any progress in certain bills.[3] When the bill has been fully

Report of the bill.

[1] 140 Hans. Deb., 3rd Ser., 2200.

[2] See *supra*, p. 485.

[3] 111 Com. J. 316; 115 Ib. 295; 124 Ib. 268.

considered, the chairman puts a question, "That I do report this bill without amendment," or, "with the amendments, to the house;" which being agreed to, the sitting of the committee is concluded, and Mr. Speaker resumes his chair; upon which the chairman approaches the steps of the speaker's chair, and reports from the committee that "they had gone through the bill, and had made amendments," or "several amendments thereunto." If no amendments have been made, he reports "that they had gone through the bill, and directed him to report the same, without amendment."

When committee make no report.

Sometimes, however, the proceedings of a committee on a bill are brought abruptly to a close, by an order "that the chairman do now leave the chair;"[1] in which case, the chairman, being without instructions from the committee, makes no report to the house. A bill disposed of, in this manner, disappears from the order book, and is generally regarded as defunct:[2] but as the house cannot be bound by the decision of a committee, and has not itself agreed to any vote by which the bill has been postponed for the session, it is competent for the house to appoint another day for the committee, and to proceed with the bill.[3] When the committee on a bill is so revived, its proceedings are resumed at the point at which they were interrupted,—having been valid, and duly recorded in the minutes, until the chairman was directed to leave the chair.[4]

So also, if notice be taken, or if it appear, upon a division,

[1] 90 Com. J. 497. 562; 105 Ib. 345; 111 Ib. 201; 112 Ib. 310; 126 Ib. 339.

[2] "No committee can destroy a bill, but they can lay it down." More's Notes of Debates in the Long Parliament, 14th April 1641. Harl. MSS.

[3] Paupers Removal bill, 1815; 70 Com. J. 384. 410. 455. General Turnpike bill, 1827; 82 Ib. 365. 399. 410. Savings Banks and Friendly Societies bill, 1860; 115 Ib. 402. 427. Court of Chancery (Ireland) bill, 21st and 22nd June 1864, and Mr. Speaker's decisive ruling on the latter day, 176 Hans. Deb., 3rd Ser., 99. It was also ruled, according to precedent, that no notice was necessary of the revival of the committee. Joint Stock Companies (Voting Papers) bill, 22nd and 23rd June 1864.

[4] Savings Banks and Friendly Societies bill, 31st July 1860: MS. Committee minute-book.

that forty members are not present, the chairman, being without instructions, makes no report to the house. The house, however, in such cases, has constantly appointed other days for the committee. On the 6th August 1855, a novel course was adopted, scarcely consistent with the usage of the house, in regard to public bills. The committee on the Crime and Outrage (Ireland) bill, having made no report, was *revived*, and ordered to sit and proceed to-morrow.[1]

Proceedings on report.

In the Lords, the bill is at once reported if there be no amendments: but there is a standing order, 28th June 1715, which declares "that no report be received from any committee of the whole house, the same day such committee goes through the bill, when any amendments are made to such bill."[2] In the absence of the chairman of committees, leave has been given to another peer to report the amendments.[3] On the 2nd April 1868, it was resolved, that in entering in the Journals the reports of bills amended in committees of the whole house, the only name entered therewith shall be that of the lord who moves the reception of the report, and takes charge of the bill, in that stage.[4]

By standing order of the Commons, 25th June 1852,

"At the close of the proceedings of a committee of the whole house on a bill, the chairman shall report the bill forthwith to the house, and when amendments shall have been made thereto, the same shall be received without debate, and a time appointed for taking the same into consideration."

When the report has been received, if no amendments have been made, the bill is ordered to be read a third time on a future day. If amendments have been made by the committee, the report is a formal proceeding, and the bill as amended, is ordered to be taken into consideration on a future day. If the title has been amended, such amendment is specially reported.[5] In the Lords, no bill may be read a third time on the same day on which it is reported

[1] 110 Com. J. 449.
[2] Lords' S. O. Nos. 36, 37.
[3] 91 Lords' J. 33.
[4] 100 Lords' J. 103.
[5] 115 Com. J. 343; 120 Ib. 95, &c.

from the committee, unless the standing orders be suspended for that purpose :[1] but in the Commons, bills reported from a committee, without amendments, have frequently been read a third time on the same day, especially at the end of a session.[2]

Bills reprinted.

At this stage it is customary to reprint the bill, if several amendments have been made; for no verbal explanation of numerous amendments can possibly make the amended bill intelligible; and the practice of both houses is to rely more upon a reprint of the bill, than upon any proceedings in the house, on the report of very numerous or important amendments. A bill, as amended in committee, cannot be ordered to be printed until it has been reported to the house: but occasionally, while a bill has been in progress, the amended clauses, so far as they have been agreed to, have been printed, by direction of the speaker, and circulated with the votes.[3]

Clauses added, and amendments made.

When the bill as amended by the committee is considered, the entire bill is open to consideration, and new clauses may be added, and amendments made, whether they be within the scope and title, or even relevant to the subject-matter of the bill, or not.[4] The vicious practice of adding provisions to bills, quite foreign to their object, which was formerly not uncommon, is now very rarely tolerated: but the house has not imposed any formal restraint upon its own discretion, in admitting whatever amendments it may think proper, though not within the title, which may be afterwards amended, on the third reading.[5] The house may exercise, directly, the same power which it sometimes grants to committees, by way of instruction. Thus, on the 11th July 1853, on the third reading of a Stamp Duties bill, an

[1] Lords' S. O. No. 37.

[2] 97 Com. J. 480. 482; 107 Ib. 335; 113 Ib. 352, &c.

[3] Representation of the People bill, 1867; 187 Hans. Deb., 3rd Ser., 1863; Irish Church bill, 1869; Irish Land bill, 1870.

[4] 99 Com. J. 63.

[5] 202 Hans. Deb., 3rd Ser., 1386.

amendment was made, providing that drafts on bankers payable to order should be sufficient authority for payment, without proof of endorsement.[1]

No clause may be offered at this stage, unless notice has been given;[2] and it has been held that such notice must comprise the words of the clause intended to be proposed; and where a clause has been offered, differing materially from the notice, it has not been entertained.[3] Nor can this defect of notice be supplied by an amendment being proposed to the clause by another member; as the clause cannot be amended until it has been received and read a second time.[4] New clauses are first offered; after which amendments may be made to the several clauses of the bill as reported by the committee. When a member offers a clause on the consideration of the bill as amended, the speaker desires him to bring it up, when it is read a first time, without question put.[5] A question is afterwards proposed, "that it be read a second time;" which is the proper time for opposing the clause. If this question be affirmed, amendments may then be proposed to the clause. Sometimes the motion for reading the clause a second time, and also the clause itself, are, by leave of the house, withdrawn.[6] The last question put by the speaker is, "That this clause, or this clause as amended, be added to (or made part of) the bill." The member who offers the clause is entitled to speak on bringing it up (no other debate being allowed), and again, on the question that it be read a second time. Each amendment proposed to the clause can be discussed according to the usual rules of debate; and lastly, on the question that the clause (whether amended or not) be added, a further debate

[1] 108 Com. J. 671, and MS. Book of Precedents; see also Assessed Taxes bill, 9th Feb. 1854; 109 Ib. 47.

[2] Standing order, 19th July 1854.

[3] Oxford University bill, 26th June 1854. 109 Com. J. 336. 134 Hans. Deb., 3rd. Ser., 694; Government of India bill, 6th July 1858 (Mr. Seymour); 151 Ib. 1036. See also Representation of the People bill, 1867 (Col. Wilson Patten); 188 Ib. 1452.

[4] 134 Hans. Deb., 3rd Ser., 694.

[5] Standing order, 19th July 1854.

[6] 112 Com. J. 332. 393, &c.

may arise.[1] Clauses containing rates, penalties, or other blanks, must also pass through a committee before they are added to the bill;[2] but a whole clause increasing any burden on the people, cannot be added unless the bill is recommitted. An amendment involving a direct charge upon the public revenue, will not be put from the chair;[3] or if it has been agreed to inadvertently, it will be cancelled.[4] Nor may any amendment be made which increases a tax, or repeals an existing exemption from a tax: but where the committee on the bill have inserted an exemption from a tax, it has been held to be regular to strike it out.[5] Where it has appeared that a proposed amendment would vary the incidence of taxation, the speaker has declined to put the question[6] But where a charge has been imposed upon the ratepayers in committee, an amendment to omit the clause has been held to be regular, although its omission left other parties, already liable by law, still chargeable with certain expenses.[7] Where a bill proposed to relieve the Consolidated Fund of a charge of 20,000*l.*, and an amendment was moved to a Lords' amendment, which would have had the effect of reducing the extent of that relief to 18,000*l.*, it was held to be admissible, at that stage.[8] Where an amendment is proposed by leaving out a clause of the bill, a question is put, that such clause "stand part of the bill."[9]

Bills recommitted.

It often becomes necessary to recommit a bill to a committee of the whole house, and occasionally to a select committee, before it is read a third time; and a recommitment of the bill is always advisable, when numerous amendments are to be proposed.

[1] See 1st June 1863; Mr. Lygon's objection on Report of Inland Revenue bill; 171 Hans. Deb., 3rd Ser., 188.

[2] 97 Com. J. 424; 119 Ib. 316; 120 Ib. 356.

[3] 112 Ib. 393.

[4] County Courts bill, 111 Ib. 371.

[5] Drainage bill, 1840.

[6] 123 Com. J. 157; 191 Hans. Deb., 3rd Ser., 1878.

[7] Expenses of hustings, 23rd July 1868; 193 Ib. 1688.

[8] 193 Ib. 1887. 1920.

[9] 113 Com. J. 285. 339.

Proceedings of committee reviewed on report.

At this stage the proceedings of the committee are otherwise open to review. Thus, a clause inserted in committee, by mistake, has been struck out;[1] and clauses having been introduced not relevant to the subject-matter of the bill, the bill has been recommitted in respect of those clauses.[2]

A bill may be recommitted: 1. Without limitation, in which case the entire bill is again considered in committee, and reported with "other" or "further" amendments. 2. The bill may be recommitted with respect to particular clauses or amendments only,[3] or to the clauses in which amendments are proposed to be made, and the preamble.[4] 3. On clauses or schedules being offered, or intended to be proposed, the bill may be recommitted with respect to these clauses or schedules.[5] In these two latter cases no other parts of the bill are open to consideration.[6] 4. The bill may be recommitted, and an instruction given to the committee, that they have power to make some particular or additional provision.[7] If the member who has charge of the bill, and other members also, desire the recommitment of a bill, the former has priority in making the motion for that purpose.[8]

Again recommitted.

A bill may be recommitted as often as the house thinks fit. It is not uncommon for bills to be again recommitted once or twice,[9] and there are cases in which a bill has been six, and even seven times, through a committee of the whole house, in consequence of repeated recommitments.[10] The proceedings on the report of a recommitted bill are similar to those already explained: the report is received at once, and the bill, as amended, is ordered to be taken into con-

[1] 109 Com. J. 403.

[2] 119 Ib. 172.

[3] 83 Ib. 533; 94 Ib. 510; 124 Ib. 282; 126 Ib. 440.

[4] Bank Notes Issue bill, 1865, &c.; 120 Com. J. 304; 125 Ib. 208. 346.

[5] 92 Ib. 415; 108 Ib. 570; 115 Ib. 293; 116 Ib. 121; 120 Ib. 348; 126 Ib. 289; 127 Ib. 427.

[6] 179 Hans. Deb., 3rd Ser., 826.

[7] 89 Com. J. 127; 107 Ib. 294.

[8] Bank Notes Issue bill, 25th May 1865.

[9] 77 Lords' J. 325; 83 Com. J. 354; 89 Ib. 286; 93 Ib. 605; 94 Ib. 318.

[10] 65 Ib. 384. 396. 420; 69 Ib. 420; 444. 460.

sideration on a future day. Sometimes, after the house has ordered a bill to be read a third time on a future day, this order is discharged, and the bill recommitted,[1] or ordered to be withdrawn;[2] and with a view to the recommitment of a bill, amendments are occasionally moved to the question for reading a bill a third time, that the order for the third reading be discharged, or that the bill be recommitted.[3]

Committed to select committees.

Notwithstanding the facilities for discussion afforded by a committee of the whole house, the details of a bill may often be considered more conveniently, by a select committee. Indeed, according to the ancient practice, all ordinary bills were committed to select committees, and none but the most important were reserved for the consideration of a committee of the whole house. Every public bill, however, is now considered in committee of the whole house, whether it be also committed to a select committee or not. Sometimes a bill is referred to the same select committee as other bills already committed:[4] or to committees appointed to inquire into or consider other matters:[5] or two or more bills are referred to the same committee.[6] When it has not been determined, until after the second reading, to commit a bill to a select committee, the order, or order of the day, as the case may be, for the committee of the whole house, is read and discharged, and the bill is committed to a select committee;[7] or, when the question is proposed for the house to resolve itself into committee, or for the speaker leaving the chair, an amendment may be made by leaving out all the words from "That" to the end of the question, and adding, "the bill be committed to a

[1] 110 Com. J. 117; 111 Ib. 208; 113 Ib. 318. 339. 384, &c.

[2] 110 Ib. 419; 112 Ib. 380. 392, &c.

[3] 112 Ib. 391; 118 Ib. 167. 274.

[4] 84 Lords' J. 172; 92 Ib. 70. 245; 116 Com. J. 146; 120 Ib. 65, &c.

[5] 103 Com. J. 929; 105 Ib. 396; 106 Ib. 243; 111 Ib. 59; 114 Ib. 67; 115 Ib. 87.

[6] 119 Ib. 165; 120 Ib. 65.

[7] 72 Lords' J. 355; 110 Com. J. 143; 111 Ib. 207; 112 Ib. 337; 119 Ib. 256.

select committee."[1] In the Lords, a bill is sometimes committed to a private committee of the lords present this day.[2] When it is deemed advisable to take evidence, the necessary powers are given to the committee for that purpose.[3]

Title amended by select committee.

The order of the house concerning the making of relevant amendments in a bill, without an instruction, and amending a title, is, in terms, confined to committees of the whole house: but as the rules of select committees have generally been made, as far as possible, conformable to those of the house itself, and of committees of the whole house, this amended practice has been followed by select committees,[4] without any exception having been taken to it, and may be considered as authorised by the usage of the house.

Bills reported from select committees.

When the bill is reported from a select committee, it is recommitted to a committee of the whole house,[5] unless it be first recommitted to the same select committee.[6] If, in addition to reporting the bill, with or without amendments, the committee desire to inform the house of any matters relating to the bill, leave is obtained to make a special report.[7]

Provisional order bills.

When public bills for confirming provisional orders or schemes of boards or commissions, for the inclosure or drainage of land, for the local government of towns, the construction of piers and harbours, the regulation of charities, or other matters, have been opposed by parties locally interested in particular orders, it has been customary to commit such bills, so far as they relate to the place concerned, to

[1] 87 Lords' J. 205. 432; 92 Ib. 646; 109 Com. J. 230; 111 Ib. 337; 119 Ib. 99.

[2] 66 Lords' J. 150. 583.

[3] 104 Com. J. 253; 106 Ib. 164.

[4] Pier and Harbour Orders Confirmation bill, 1863; 118 Com. J. 248; Government Annuities bill, 1864; 119 Ib. 255. Municipal Corporations (Borough Funds) bill and Wild Fowl Protection bill, 1872; 127 Ib. 169. 342.

[5] 106 Com. J. 393; 107 Ib. 199.

[6] 97 Ib. 446; 98 Ib. 487; 106 Ib. 239.

[7] 110 Ib. 236; 176 Ib. 354; 120 Ib. 386.

a select committee, to be appointed by the committee of selection, in the same manner as in the case of a private bill.[1] The same course has also been adopted in the case of other public bills affecting a particular place.[2]

Discontinuance of ingrossment.

The ancient system of ingrossing all bills upon parchment, after the report, was discontinued in 1849; when both houses agreed to substitute bills, printed on vellum, by the Queen's printer, for the parchment rolls.[3] These arrangements were confined to public bills during the session of 1849; but on the 27th July they were extended, in future sessions, to local, personal, and private bills, except as to the printing of such bills by one printer for both houses.[4] By the adoption of this system, the old form of question "that this bill be ingrossed," which always followed after the report, or further consideration of report, is dispensed with.

Third reading.

On the third reading, the judgment of the house is expressed upon the entire bill, as it stands after all the amendments introduced in committee, and at other stages. Every amendment may be proposed to the question for now reading the bill a third time, which has already been described in reference to the second reading. Sometimes the question for the third reading has been negatived: but, as previously stated, such a vote is not fatal to the bill. On the 18th April 1853, the question for reading the Combination of Workmen bill a third time was negatived: but on the 20th, another day was appointed for the third reading; and the bill was subsequently read a third time and passed. In the Lords, new clauses may be added, and amendments made

[1] Inclosure bill (Chigwell), 5th May 1862; 117 Com. J. 178. Pier and Harbour bill (Llandudno and Rhyl), 12th May 1863. Land Drainage (Provisional Orders) bill, (Morden Carrs), 28th May 1863. Local Government Supplemental bill (Matlock Bath), 4th May 1863; 118 Ib. 199. 220. 239. Pier and Harbour bill, 1864; 119 Ib. 256; 127 Ib. 291.

[2] Harwich Harbour bill, 28th May 1863; 118 Com. J. 240. See also *infra*, Chapter XXVI.

[3] 81 Lords' J. 16. 25; 104 Com. J. 51.

[4] 104 Com, J. 578. 620.

to the bill, at this stage; and the same practice formerly prevailed in the Commons: but by a standing order of the 21st July 1856, "no amendments, not being merely verbal, shall be made to any bill on the third reading;" and since that time the only amendments admitted have been within the scope of that order.[1] If material amendments are required to be made, it is usual to discharge the order for the third reading, to recommit the bill, and introduce the amendments in committee. In such cases it has been customary to consider the bill as amended, and to read it a third time, immediately.[2]

Bill passed.

Occasionally, a bill is read a third time, and "further proceedings thereon" are adjourned to a future day:[3] but the general practice is to follow up the third reading with the question, "That this bill do pass." This question has sometimes passed in the negative, after all the preceding stages of the bill have been agreed to:[4] but though amendments have been proposed,[5] and debates and divisions have occasionally taken place at that stage,[6] it is not usual to divide upon it. Sometimes a bill is passed *nemine contradicente*.[7]

Title of the bill.

In the Lords, the original title of a bill is amended at any stage at which amendments are admissible, when alterations in the body of the bill have rendered any change in the title necessary; but in the Commons, the original title

[1] 112 Com. J. 210. 377. 380; 114 Ib. 361; 121 Ib. 183.

[2] New Zealand Government Act Amendment bill, 7th August 1857; 112 Com. J. 384. Stamp Duties bill, 31st March 1860; 115 Com. J. 174.

[3] After the third reading of the Queen's Degradation bill in the House of Lords, 10th Nov. 1820, the further consideration of the bill was put off for six months; 53 Lords' J. 762.

[4] 76 Com. J. 413; 80 Ib. 617; 89 Ib. 497; Tests Abolition (Oxford) bill, 1864; 119 Ib. 388.

[5] 76 Com. J. 495; 84 Ib. 332; 91 Ib. 580; 93 Ib. 214; 97 Ib. 520; 101 Ib. 628.

[6] Reform bill, 1831; 86 Com. J. 860. Ecclesiastical Titles bill, 1851; 106 Ib. 335. Succession Duty bill, 1853; 108 Ib. 692. Bribery bill, 28th July 1854. Education (Scotland) bill, 12th July 1855; 110 Ib. 372; 117 Ib. 383.

[7] Mr. Speaker's Retirement bill, 1857; 112 Com. J. 110.

is not amended during the progress of the bill, unless the house agree to divide one bill into two, or combine two into one, or the committee have amended the title. The last question to be determined is, "That this be the title of the bill," which is accordingly read by the speaker. Amendments may then be offered to the title, which are generally such as render it comformable with amendments which may have been made to the bill since its first introduction.[1] When such amendments are material, the short title by which the bill is distinguished in the Votes is also altered.[2] It may be as well to recall to mind in this place, that the standing order of the Commons, 17th November 1797, requiring the duration of a temporary law to be expressed both in the title and in a clause at the end of the bill, was rescinded on the 24th July 1849, when the following standing order was substituted:

Temporary laws.

"That the precise duration of every temporary law be expressed in a distinct clause at the end of the bill."[3]

By Act 48 Geo. III., c. 106, if a bill be in Parliament for the continuance of any temporary act, and such act expires before the royal assent is given to the bill, the act to be continued does not lapse in the interval.

The bill not to be altered otherwise than by amendment.

Throughout all these stages and proceedings, the bill itself continues in the custody of the clerk, or other officers of the house, and no alteration whatever is permitted to be made in it, without the express authority of the house or a committee, in the form of an amendment regularly put from the chair, and recorded by the clerk at the table, or by the chairman in committee.[4]

Communicated from Lords to Commons.

The next step is to communicate the bill to the other house. It has been already stated elsewhere that the Lords

[1] 104 Com. J. 581; 105 Ib. 338; 117 Ib. 378.

[2] 109 Ib. 316; 111 Ib. 309; 112 Ib. 384; 116 Ib. 373. 392.

[3] 104 Ib. 558.

[4] See debate, 3rd June 1782, as to alterations alleged to have been made without authority by Mr. Burke, Paymaster of the Forces, in the ingrossment of a bill for regulating the pay office. 23 Parl. Hist. 989. 3 Wraxall's Mem., 431.

ordinarily send their bills to the Commons by the clerk of the Parliaments, or a clerk at the table.[1] When the bill has originated in the Lords, "a message is ordered to be sent to the House of Commons to carry down the said bill, and desire their concurrence." If the bill has been sent up from the Commons, and has been agreed to, without amendment, the Lords send a message "to acquaint them, that the Lords have agreed to the said bill without any amendment," but do not return the bill: but if they have made amendments, they return the bill with a message, "that the Lords have agreed to the same with some amendments, to which their lordships desire their concurrence."[2]

From Commons to Lords.

The Commons send up their bills to the Lords by their clerk, or by one of the clerks at the table, who delivers it at the bar, to one of the clerks at the table of that house. The form of message adopted by the Commons in sending bills to the upper house is similar, *mutatis mutandis*, to that used by the House of Lords. On the 4th August 1870, the Lords made a new standing order, "that when a bill brought from the House of Commons shall have remained on the table of this House for twelve sitting days, without any lord giving notice of the second reading thereof, such bill shall not any longer appear in the minutes, and shall not be further proceeded with, in the same session.[3] And in 1873, the Public Worship Facilities bill, brought from the Commons, having come under the operation of this order, was accordingly removed from the minutes. But on the 20th May, the order was suspended in respect of that bill, which was allowed to proceed. Every bill received from the Lords, whether amended or not, is returned to them by the Commons, their lordships' house being the place of custody for bills, prior to the royal assent.[4]

[1] See *supra*, p. 437.

[2] 74 Lords' J. 382.

[3] 103 Lords' J. 621.

[4] In sending bills from the Commons to the Lords, it was formerly the custom to wait until several had passed, when they were carried up together, and delivered at the bar of

Bills sent by mistake.

If a bill or clause be carried to the other house by mistake, or if any other error be discovered, a message is sent to have the bill returned, or the clause expunged, or the error otherwise rectified, by the proper officer.[1] In 1844, an amendment made by the Lords, in the Merchant Seamen's bill, was omitted from the paper of amendments returned with the bill, to the Commons. After all the amendments received by the Commons had been agreed to, the Lords acquainted the Commons, at a conference, that another amendment had been omitted, by mistake, and desired their concurrence: but the speaker having stated that, in his opinion, it would establish a most inconvenient and dangerous precedent if they entertained the amendment, the house gave reasons, at a conference, for not taking the amendment into consideration, and the Lords did not insist upon it.[2]

Consideration of Lords' amendments.

By a standing order of the 19th July 1854, Lords' amendments to public bills are appointed to be considered on a future day, unless the house shall order them to be considered forthwith; and, accordingly, whenever expedition is necessary, an order that the amendments be considered forthwith, precedes the consideration of them.[3] Whenever

the Lords in the following order: 1. Lords' bills; 2. Commons' bills amended by the Lords; 3. Public bills in order, according to their importance; and, 4. Private bills, in such order as the speaker appointed. It was then usual for 30 or 40 members to accompany the member who had charge of the bills. On the 17th March 1588, a private bill was sent up with only four or five members, and the Lords took exception to the smallness of the number, and said, "that they had cause to doubt that it passed not with a general consent of the house, because it passed not graced with a greater number, and left it to the consideration of the house to send it back in such sort as it was fit."—D'Ewes, 447. Order and Course of Passing Bills in Parliament, 4to. 1641.

[1] Com. J. 132; 75 Ib. 447; 78 Ib. 317; 80 Ib. 512; 91 Ib. 639. 758; 92 Ib. 572; 609. Lunatic Asylums bill; 100 Ib. 804. Poor Employment (Ireland) bill; 101 Ib. 1277. Cruelty to Animals bill, 103 Ib. 736. Burial Acts Amendment bill, 1857; 112 Ib. 420. Hereford and Brecon Railway bill, 1859; 114 Ib. 241; 119 Ib. 370. 374.

[2] 99 Com. J. 637, 638. 644; 76 Hans. Deb., 3rd Ser., 1994.

[3] 110 Com. J. 458. 464, &c.; 135 Hans. Deb., 3rd Ser., 1411.

the amendments are of unusual importance they are ordered to be printed separately; or, in some cases, the bill, as amended by the Lords, is ordered to be printed.[1] When the order of the day is read for considering Lords' amendments to a bill, a question is put, "that the Lords' amendments be now taken into consideration," to which an amendment may be moved, to leave out "now," and add "this day three months;"[2] or to leave out "now taken into consideration," and add "laid aside:"[3] but generally the house at once proceeds to the consideration of the amendments, which, after being read a second time, are severally agreed to, or otherwise disposed of. Where the Lords have added a clause, leaving a blank for a penalty, the house has gone into committee on the clause, and filled up the blank.[4]

Amendments agreed to or amended.

If one house agree to a bill passed by the other, without any amendment, no further discussion or question can arise upon it; but the bill is ready to be put into the commission, for receiving the royal assent. If a bill be returned from one house to another with amendments, these amendments must either be agreed to by the house which had first passed the bill, or the other house must waive their amendments: otherwise the bill will be lost. Sometimes one house agrees to the amendments, with amendments, to which the other house agrees.[5] Occasionally, this interchange of amendments is carried even further, and one house agrees to amendments with amendments, to which the other house agrees with amendments; to which, also, the first house in its turn, agrees.[6] A Lords' amendment has been divided, and a separate question put upon each part of it.[7] Sometimes one house does not insist upon its amendments, but makes other amendments.[8] But it is a rule, that neither house may,

Consequential amendments.

[1] 111 Com. J. 312. 324. &c.
[2] 113 Ib. 349.
[3] 97 Ib. 278; 99 Ib. 572; 108 Ib. 393.
[4] 123 Ib.. 345; 126 Ib. 420.
[5] 90 Ib. 575.
[6] 111 Com. J. 373; 112 Ib. 416; 118 Ib. 381. 412; 125 Ib. 384; 127 Ib. 158. 413.
[7] Irish Church bill, 1869; 124 Com. J. 332.
[8] 125 Ib. 403.

at this time, leave out or otherwise amend anything which they have already passed themselves; unless such amendment be immediately consequent upon amendments of the other house, which have been agreed to, and are necessary for carrying them into effect.[1] And if an amendment be proposed to a Lords' amendment, not consequent on, or relevant to such amendment, the question will not be put from the chair.[2] In 1678, it was stated by the Commons at a conference, "that it is contrary to the constant method and proceedings in Parliament, to strike out anything in a bill which hath been fully agreed and passed by both houses;"[3] and in allowing consequential amendments, either in the body of the bill, or in the amendments, the spirit of this rule is still maintained.[4] So binding, indeed, has it been held, that in 1850, a serious oversight as to the commencement of the act, having been discovered in the Pirates' Head Money bill, before the Lords' amendments had been agreed to, no attempt was made to correct it by way of amendment,[5] but a separate act was passed for the purpose. The title of a bill has been amended, to make it conform to amendments made by the Lords to the body of the bill.[6] In some cases the Lords have left out clauses or words, to which amendments the Commons have disagreed: but on restoring such clauses or words have, at the same time, proposed to amend them.[7]

[1] 116 Com. J. 415; 120 Ib. 197; 124 Ib. 205; 125 Ib. 192; 126 Ib. 381; 127 Ib. 305, &c.

[2] 115 Ib. 494.

[3] 9 Ib. 547; and see also 1 Ib. 388.

[4] Municipal corporations (Ireland) bills, 1836, 1838, and 1840; 91 Com. J. 592; 93 Ib. 829; 95 Ib. 604; 97 Ib. 577. 597. Parliamentary Voters (Ireland) bill, and County Courts Extension bill, 1850; 105 Ib. 592. 596. 631. Patent Law Amendment bill, 1852; 107 Ib. 358. Oxford University bill, 1854; 135 Hans. Deb., 3rd Ser., 828. Dulwich College bill, 1857; 112 Com. J. 420. Poor Law Boards (Payment of Debts) bill, 1859. In this case the Commons disagreed to a clause inserted by the Lords, on the ground of privilege, but inadvertently agreed to a subsequent amendment, which was consequent on that clause. The Lords did not insist upon their clause, and corrected the latter part of the bill by a consequential amendment; 114 Com. J. 375. Other examples will be found. 115 Ib. 394. 491. 495. 501; 117 Ib. 344. 368; 121 Ib. 472.

[5] 105 Com. J. 471.

[6] 109 Ib. 486; Votes 1868, p. 127.

[7] Municipal Corporations (Ireland)

Where the Lords have made amendments to a bill which appear to affect the privileges of the Commons, in regard to matters of aid or supply, yet are not such as to render it necessary to lay the bill aside, the amendments are sometimes agreed to with a special entry in the Journal, explaining the grounds of such agreement.[1] These several agreements and amendments are communicated by one house to the other, with appropriate messages. An amendment made by one house to an amendment made by the other, should be relevant to the same subject-matter. A departure from this rule was permitted, under peculiar circumstances, in the case of the Bolton Police bill, 1839: but the Lords agreed to it with a special entry in the Journal, that it was not to be drawn into a precedent; and a protest was signed by five very influential peers against agreeing to the amendment, because it had "no relation with the subject-matter of the amendment made by this house; and is inconsistent with the usual course and practice in relation to the amendment of bills, established between the two houses of Parliament."[2] Where an amendment made by the Lords has been agreed to, by mistake, with an amendment, the proceedings have been ordered to be null and void, and the amendment disagreed to.[3]

Amendments agreed to, with special entries.

When it is determined to disagree to amendments made by the other house,—1. The bill may be laid aside: 2. The consideration of the amendments may be put off for three or six months, or to any time beyond the probable duration of the session: 3. A message may be sent to communicate reasons for disagreeing to the amendments; or, 4. A conference may be desired with the other house. The two first modes of proceeding are only resorted to when the privileges of the house are infringed by the bill,

When amendments disagreed to.

Conferences.

bill, 4th Aug. 1838; 93 Com. J. 824, 825, 826; 118 Ib. 326, 365; 125 Ib. 346; 127 Ib. 305. 343.

[1] 112 Com. J. 392. 418; 120 Ib. 449, &c. See also *infra*, Chapt. XXI. (SUPPLY.)

[2] 71 Lords' J. 643.

[3] Ware, Hadham, and Buntingford Railway, 1858; 113 Com. J. 264.

or when the ultimate agreement of the two houses is hopeless;[1] the latter are preferred whenever there is a reasonable prospect of mutual agreement and compromise. Sometimes when an amendment affects the privileges of the house, it is disagreed to, the only reason offered to the Lords being that it would interfere with the public revenue, or affect the levy and application of rates, or alter the area of taxation, or otherwise infringe the privileges of the house; and it is added that the Commons do not deem it necessary to offer any further reason, hoping the above reason may be sufficient.[2] This hint of privilege is generally accepted by the Lords, and the amendment is not insisted upon. The practice of Parliament in regard to conferences has been fully explained elsewhere,[3] and it would be unnecessary and irksome to describe, at length, every variety of procedure which may arise in the settlement of amendments to bills by conference.[4] It will be sufficient to state generally, that when a bill has been returned by either house to the other, with amendments which are disagreed to, a message is sent, or a conference is desired, by the house which disagrees to the amendment, to acquaint the other with the reasons for such disagreement, in order to reconcile their differences, and, if possible, by mutual concessions to arrive at an ultimate agreement.[5] If such agreement cannot be secured, the bill is lost for the session.

When house agrees or does not insist, no reasons are offered.

When one house agrees to amendments made by the other, or does not insist upon its own amendments, or upon

[1] 110 Com. J. 417.

[2] Naval Prize Balance bill, 1850; Tramways (Ireland) bill 1860; Juries bill, 1862; Peace preservation (Ireland) bill, 1870; Intoxicating Liquors Licences Suspension bill, 1871. 126 Com. J. 432; 208 Hans. Deb., 3rd Ser., 1736.

[3] *Supra*, p. 437, &c.

[4] All the minute details of practice may by traced by referring to the head "Conferences," in the last three Commons' General Journal Indexes; but more particularly by following the proceedings upon the Municipal Corporations bill in 1836, to which ample references will be found in the Index to the Journal of that year, and at p. 413 of the General Index 1820–1837.

[5] See 4 Hatsell, 49.

its disagreement to amendments, no reasons are offered; the object of reasons being to persuade the other house, and not to justify a resolution of its own. Thus, on the 21st July 1858, the Lords having made an amendment to the Oaths bill, upon which they insisted, after reasons had been offered against it, at a conference: but having in the meantime passed a separate bill virtually to effect the same object—the admission of Jews to Parliament,—the Commons, in order to record the true circumstances of the case, without departing from the usage of Parliament, agreed to a resolution, "That this house does not consider it necessary to examine the reasons offered by the Lords for insisting upon the exclusion of Jews from Parliament, as, by a bill of the present session, their lordships have provided means for the admission of persons professing the Jewish religion, to seats in the legislature." After which a message was sent to acquaint the Lords that the house did not insist upon their disagreement, without any reasons.[1]

Conference, by whom desired.

It will only be necessary to add, that it is irregular to demand a conference with the house which is in possession of a bill; which rule was thus affirmed by the Commons, 13th March 1575: "That by the ancient liberties and privileges of this house, conference is to be required by that court which, at the time of the conference demanded, shall be possessed of the bill, and not of any other court."[2] As the conference is desired by that house which is in possession of the bill, the bill which is the subject of the conference is always delivered by the managers, with the reasons and amendments, to the house with whom the conference was desired.

Indorsement of bills.

The official record of the assent of one house to bills passed, or amendments made by the other, is by indorsement of the bill in old Norman French. Thus, when a bill is passed by the Commons, the clerk of the house[3]

[1] 113 Com. J. 332.

[2] Ib. 114. See *supra*, 438.

[3] In his absence the clerk assistant is authorised to indorse bills.

writes upon the top of it, "*Soit baillé aux seigneurs.*" When the Lords make amendments, it is returned with an indorsement, signed by the clerk of the Parliaments, "*A ceste bille avesque des amendmens les seignieurs sont assentus.*" When it is sent back with these amendments agreed to, the clerk of the House of Commons writes, "*A ces amendmens les communes sont assentus;*" and bills are communicated by the Lords to the Commons with similar indorsements, *mutatis mutandis.* When amendments are *disagreed to,* such disagreement is not indorsed upon the bill, but forms the subject of a message to communicate reasons or to demand a conference.

If amendments made by the Lords are agreed to by the Commons, the latter return the bill with the message signifying their agreement. But if amendments made by the Commons are agreed to by the Lords, their lordships send a message, but retain the bill for the royal assent.

Royal assent.

When bills have been finally agreed to by both houses, they only await the royal assent to give them, as Lord Hale says, "the complement and perfection of a law;"[1] and from that sanction they cannot legally be withheld.[2] So binding is this principle, that doubts have arisen whether a Commons' bill may be read a third time and passed by the Lords, without amendment, after a commission has been submitted to the Queen, and before it is brought down to Parliament. For this reason, such third readings have sometimes been postponed: but this has not been an invariable practice.[3] On the 3rd June 1856, the Commons having adjourned, for want of 40 members, before a commission was received, another commission was appointed for the 5th, and in the meantime intimation was given that no bills should be returned to the Lords agreed to without amendment, or with

[1] Jurisd. of Lords, c. 2.

[2] See 2 Hatsell, 339. 13 Lords' J. 756. 2 Burnet's Own Time, 274. 3 Lord Campbell's Lives of the Chancellors, 354.

[3] See Whale Fisheries bill, 10th July 1789; 38 Lords' J. 497.

Lords' amendments agreed to, until after the commission, lest it should become necessary to alter the commission, so as to embrace them. For the purpose of obtaining the royal assent, bills remain in the custody of the clerk of the Parliaments, except money bills, which are returned to the Commons before the royal assent is given; and when several have accumulated, or when the royal assent is required to be given without delay to any bill, the lord chancellor has notice that a commission is wanted. The clerk of the Parliaments then prepares two lists of the titles of all the bills: one of these copies being for the clerk of the Crown to insert in the commission, and the other for her Majesty's inspection, before she signs the commission. Money bills are placed first in these lists, which are followed by public bills, local and personal, and private bills. When the Queen comes in person to give her royal assent, the clerk of the Parliaments waits upon her Majesty in the robing room, before she enters the house, reads a list of the bills, and receives her commands upon them.[1]

Session is not concluded by royal assent.

It was formerly a matter of doubt whether a session was not concluded by the royal assent being signified to a bill. So far back as 1554, the House of Commons declared against this construction of law,[2] and yet in 1625, it was thought necessary to pass an act to declare that the session should not be determined by the royal assent being given to that and certain other acts;[3] and again in 1670, a clause to the same effect was inserted in an act:[4] but since that time, without any express enactment, the law has become defined by usage, and the royal assent is now given to every bill, shortly after it has been agreed to by both houses, without any interruption of the session.

By commission.

During the progress of a session, the royal assent is generally given by a commission issued under the great seal for that purpose. The first instance in which the royal

Origin of giving royal assent by commission.

[1] Mr. Birch's Ev. No. 413, of 1843.
[2] 1 Com. J. 38.
[3] 1 Car. I., c. 7.
[4] 22 & 23 Car. II., c. 1, s. 9.

assent appears to have been given by commission, was in the 33rd of Henry VIII., although proceedings very similar had occurred in the 23rd and 25th years of the reign of that king.[1] The lord chancellor produced two acts agreed to by the Lords and Commons; one for the attainder of the queen and her accomplices, and the other for proceeding against lunatics in cases of treason; each act being signed by the king, and the royal assent being signified by a commission under the great seal, signed by the king, and annexed to both the acts.[2] To prevent any doubts as to the legality of this mode of assenting to an act, the two following clauses were put into the act for the attainder of the queen:—

"Be it declared by authority of this present Parliament, that the king's royal assent, by his letters patent under his great seal and assigned with his hand, and declared and notified in his absence to the Lords spiritual and temporal, and to the Commons, assembled together in the high house, is and ever was of as good strength and force as though the king's person had been there personally present, and had assented openly and publickly to the same. And be it also enacted, that this royal assent, and all other royal assents hereafter to be so given by the kings of this realm, and notified as is aforesaid, shall be taken and reputed good and effectual to all intents and purposes, without doubt or ambiguity; any custom or use to the contrary notwithstanding."[3]

Form of commission.

In strict compliance with the words of this statute, the commission is always "by the Queen herself, signed with her own hand," and attested by the clerk of the Crown in chancery. But on the 7th March 1702, William III. signed, with a stamp, the commission assenting to the Abjuration Act.[4] And towards the latter end of the reign of George IV., it became painful to him to sign any instrument with his own hand, and he was enabled, by statute, to appoint one or more person or persons, with full power and authority to each of them to affix, in his Majesty's presence, and by his Majesty's command, given by word of mouth, his Majesty's

[1] 33 Hen. VIII., c. 21. Stat. of the Realm, vol. i. p. lxxiii.

[2] 1 Lords' J. 198.

[3] Stat. of the Realm, vol. i. p. lxxiv.

[4] 5 Macaulay's Hist., 308.

royal signature, by means of a stamp to be prepared for that purpose;[1] and the commission for giving the royal assent to bills on the 17th June 1830, bears the stamp of the king, attested according to the provisions of that act.[2]

Regency bill, 1811.

On the 5th February 1811, the Regency bill received the royal assent by commission, under peculiar circumstances. The king was incapable of exercising any personal authority: but the great seal was nevertheless affixed to a commission for giving the royal assent to that bill. When the Commons had been summoned to the bar of the House of Lords by the lords commissioners, the lord chancellor said, "My lords and gentlemen, by the commands, and by virtue of the powers and authority to us given by the said commission, we do declare and notify his Majesty's royal assent to the act in the said commission mentioned, and the clerks are required to pass the same in the usual form and words;" after which the royal assent was signified by the clerk in the usual words, "*Le roy le veult.*"[3]

Form of royal assent by commission.

The form in which the royal assent is signified by commission is as follows:—Three or more of the lords commissioners, seated on a form between the throne and the woolsack in the House of Lords, command the usher of the black rod to signify to the Commons that their attendance is desired in the house of peers to hear the commission read, upon which the Commons with the speaker immediately come to the bar. The commission is then read at length, and the titles of the bills being afterwards read by the clerk of the Crown, the royal assent to each is signified by the clerk of the Parliaments, in Norman French; and is so entered in the Lords' Journal. A money bill being carried up by the clerk of the House of Commons, is presented by

[1] 11 Geo. IV. c. 23.
[2] 62 Lords' J. 732.
[3] 48 Ib. 70. 18 Hans. Deb., 1124. See also Debates, 27th Feb. 1804 (Commons); 1st and 9th March 1804 (Lords). 1 Twiss, Life of Eldon, 2nd edit., 416. 418.

the speaker, and receives the royal assent before all other bills. The assent is pronounced in the words, "*La reyne remercie ses bons sujets, accepte leur benevolence, et ainsi le veult.*" For a public bill the form of expression is, "*La reyne le veult;*" for a private bill, "*Soit fait comme il est desiré;*" upon a petition demanding a right, whether public or private, *Soit droit fait comme il est desiré.*" In an act of grace or pardon which has the royal assent before it is agreed to by the two houses, the ancient form of assent was, "*Les prelats, seigneurs, et communes, en ce present parlment assemblées, au nom de touts vos autres sujets, remercient tres humblement vostre majesté, et prient à Dieu vous donner en santé bonne vie et longue;*"[1] but according to more modern practice, the royal assent has been signified in the usual form, as to a public bill.[2] The form of words used to express a denial of the royal assent would be, "*La reyne s'avisera.*"[3] The necessity of refusing the royal assent is removed by the strict observance of the constitutional principle, that the Crown has no will but that of its ministers; who only continue to serve in that capacity so long as they retain the confidence of Parliament. This power was last exercised in 1707, when Queen Anne refused her assent to a bill for settling the militia in Scotland.[4]

Royal assent refused.

Use of the Norman French.

During the Commonwealth, the lord protector gave his assent to bills in English: but on the Restoration, the old form of words was reverted to, and only one attempt has since been made to abolish it. In 1706, the Lords passed a bill "for abolishing the use of the French tongue in all proceedings in Parliament and courts of justice." This bill dropped in the House of Commons; and although an act passed in 1731 for conducting all proceedings in courts of justice in English, no alteration was made in the old forms

[1] D'Ewes, Journ. 35.
[2] 20 Lords' J. 546; 27 Ib. 137.
[3] 1 Ib. 162; 13 Ib. 394 (with reasons); 18 Ib. 506.
[4] 18 Lords' J. 506.

used in Parliament. Until the latter part of the reign of Edward III., all parliamentary proceedings were conducted in French, and the use of English was exceedingly rare until the reign of Henry VI. All the statutes were then enrolled in French or Latin, but the royal assent was occasionally given in English. Since the reign of Henry VII., all other proceedings have been in the English language, but the old form of royal assent has still been retained.[1]

Given by the Queen in person.

The royal assent is rarely given in person, except at the close of a session, when the Queen attends to prorogue the Parliament, and then she signifies her assent to such bills as may have passed since the last commission was issued: but bills for making provision for the honour and dignity of the Crown, such as bills for settling the civil lists, have generally been assented to by the sovereign in person, immediately after they have passed both houses.[2] When her Majesty gives her royal assent to bills in person, the clerk of the Crown reads the titles, and the clerk of the Parliaments makes an obeisance to the throne, and then signifies her Majesty's assent, in the manner already described. A gentle inclination, indicative of assent, is given by her Majesty, who has, however, already given her commands to the clerk of the Parliaments, as shown above.

Ingrossment rolls.

When acts are thus passed, the original ingrossment rolls (or, since 1849, the authenticated vellum prints) are

[1] See Pref. to Statutes of the Realm, for a history of the progress of the English language in parliamentary proceedings. See also Rep. of Stat. Law Commrs. 1835 (406), p. 16.

[2] See Civil List bills, 75 Com. J. 258; 86 Ib. 517; 93 Ib. 227. On the 2nd of August 1831, the speaker, after a short speech in relation to the bill for supporting the royal dignity of her Majesty Queen Adelaide, delivered it to the clerk, when it received the royal assent in the usual form; but the Queen, attended by one of the ladies of her bedchamber, and her maids of honour, was present, and sat in a chair placed on a platform raised for that purpose between the archbishops' bench and the bishops' door, and after the royal assent was pronounced, her Majesty stood up and made three courtesies, one to the king, one to the lords, and one to the commons.—63 Lords' J. 885, and Index to that volume, p. 1157. The precedent here followed was that of George III. and Queen Charlotte: Earl Grey's Corr. with Will. IV., i. 314.

preserved in the House of Lords; and all public and local and personal acts, and nearly all private acts, are printed by the Queen's printer, and printed copies are referred to as evidence in courts of law. The original rolls or prints may also be seen when necessary, and copies taken, on the payment of certain fees.

Commencement of Act.

All Acts of Parliament, of which the commencement was not specifically enacted, were formerly held, in law, to take effect from the first day of the session: but the clerk or clerk assistant of the Parliaments is now required by act 33 Geo. III., c. 13, to indorse, in English, on every act of Parliament, immediately after the title, the day, month, and year, when the same shall have passed and received the royal assent, which indorsement is to be a part of the act, and to be the date of its commencement, when no other commencement is provided in the act itself.

Forms not binding in the progress of bills.

The forms commonly observed by both houses, in the passing of bills, having been explained, it must be understood that they are not absolutely binding. They are founded upon long parliamentary usage, indeed: but either house may vary its own peculiar forms, without question elsewhere, and without affecting the validity of any act which has received, in proper form, the ultimate sanction of the three branches of the legislature. If an informality be discovered during the progress of a bill, the house in which it originated will either order the bill to be withdrawn, or will annul the informal proceeding itself, and all subsequent proceedings: [1] but if irregularities escape detection until the bill has passed, no subsequent notice can be taken of them, as it is the business of each house to enforce compliance with its own orders and practice.

Bills passed with unusual expedition.

In the ordinary progress of a bill, the proceedings either follow from day to day, or some days are allowed to intervene between each stage subsequent to the first reading; yet

[1] 106 Com. J. 82. 209; 108 Ib. 578.

when any pressing emergency arises, bills are frequently passed through all their stages in the same day, and even by both houses.[1] And, in some extraordinary cases, the royal assent has also been signified on the same day.[2] This unusual expedition is commonly called "a suspension of the standing orders," and in the Lords is at variance with a distinct order against the passing of a bill through more than one stage in a day,[3] and which is formally dispensed with on such occasions;[4] but there are no orders to be found in the Journals of the Commons, which forbid the passing of public bills in this manner; and it is nothing more than an occasional departure from the usage of Parliament. From the urgent necessity of such cases, the bills so passed are often of great importance in themselves, and may require more deliberation than bills passed with the ordinary intervals. On this ground the practice may appear objectionable: but it must be recollected that no bill can pass rapidly without the general, if not unanimous, concurrence of the house. One stage may follow another with unaccustomed rapidity: but they are all as much open to discussion as at other times; and a small minority could protract the proceedings for an indefinite period. In less important bills

[1] 58 Com. J. 645, 646; 103 Ib. 770; 108 Ib. 21; 110 Ib. 294.

[2] Bill for recruiting the land forces, 3rd April 1744; 24 Com. J. 636–639. Seamen's Additional Pay bill, 9th May 1797; 52 Ib. 555. 557, 558. Habeas Corpus Suspension (Ireland) bill, 17th February 1866; 121 Ib. 88. In this latter case, the bill was passed by both houses on a Saturday, and the Queen being at Osborne, the commission, with the bill annexed, was forwarded to her Majesty in the morning, and the agreement of both houses having been communicated later in the day by telegraph, her Majesty signed the commission and despatched it to Westminster. The messenger, however, was delayed on the railway, and the royal assent was not given until a quarter before one on Sunday morning. At the close of the Session, in 1871, the Queen being at Balmoral, the telegraph was again used for expediting the prorogation. The commission containing the titles of all the bills to which the agreement of both houses was expected, having been despatched to Scotland, such agreement was afterwards communicated by telegraph; and the commission was there duly signed by her Majesty, and returned by messenger to Westminster.

[3] Lords' S. O. No. 37.

[4] 80 Lords' J. 662.

two or more stages are occasionally passed in the same day: but never without the general assent of the house.[1]

Informalities in the agreement of both houses.

But, though a departure from the usage of Parliament, during the progress of a bill, will not vitiate a statute; informalities in the final agreement of both houses have been treated as if they would affect its validity. No decision of a court of law upon this question has ever been obtained; but doubts have arisen there, and in two recent cases Parliament has thought it advisable to correct, by law, irregularities of this description. It has already been explained, that when one house has made amendments to a bill passed by the other, it must return the bill with the amendments, for the agreement of that house which first passed it. Without such a proceeding, the assent of both houses could not be complete; for, however trivial the amendments may be, the judgment of one house only would be given upon them, and the entire bill, as amended and ready to become law, would not have received the formal concurrence of both houses. If, therefore, a bill should receive the royal assent, without the amendments made by one house having been communicated to the other and agreed to, serious doubts naturally arise concerning the effect of this omission; since the assent of the Queen, Lords, and Commons is essential to the validity of an act. 1. Will the royal assent cure all prior irregularities, in the same way as the passing of a bill in the Lords would preclude inquiry as to informalities in any previous stage? 2. Is the indorsement on the bill, recording the assent of Queen, Lords, and Commons, conclusive evidence of that fact? or, 3. May the Journals of either house be permitted to contradict it?

Pylkington's case, 33 Hen. 6.

The first case in which a difficulty arose was in the 33rd Henry VI. In the session commencing 29th April 1450, the Commons had passed a bill requiring John Pylkington to appear, on a charge of rape, "by the feast of

[1] 184 Hans. Deb., 3rd Ser., 2107.

Pentecost then next ensuing."[1] It does not appear distinctly whether the bill was even brought into the Commons before that day in the year 1450: but it certainly was not agreed to by the Lords until afterwards. By the law of Parliament then subsisting, the date of an act was reckoned from the beginning of a session; and the Lords, to avoid this construction, altered the date to "the feast of Pentecost, which will be in the year of our Lord 1451:" but did not return the bill, so amended, to the Commons. Pylkington appeared before the Exchequer Chamber, to impeach the validity of this act, "because the Lords had granted a longer day than was granted by the Commons, in which case the Commons ought to have had the bill back." Chief Justice Fortescue held the act to be valid, as it had been certified by the king's writ to have been confirmed by Parliament: but Chief Baron Illingworth and Mr. Justice Markham were of opinion, that if the amendment made the bill vary in effect from that which was sent up from the Commons, the act would be invalid. No decision is recorded in the Year Books; and the evidence respecting the dates was too imperfect to justify more than hypothetical opinions. Fortescue, C. J., concluded the case by saying,

"This is an Act of Parliament, and we will be well advised before we annul any Act made in Parliament; and, peradventure, the matter ought to wait until the next Parliament, then we can be certified by them of the certainty of the matter: but, notwithstanding, we will be advised what shall be done."

Factories Bill.

In 1829, a bill "to amend the law relating to the employment of children in factories," passed the Commons, and was agreed to by the Lords, with an amendment: but instead of being returned to the Commons, it was, by mistake, included in a commission, and received the royal assent. The amendment was afterwards agreed to by the Commons: but, in order to remove all doubts, an Act[2]

[1] Year Books, 33 Hen. VI. Parl. Rep. No. 413, of 1843.
[2] 10 Geo. IV., c. 63.

was passed to declare that the act "shall be valid and effectual to all intents and purposes, as if the amendment made by the Lords had been agreed to by the Commons, before the said Act received the royal assent."

Schoolmasters' Widows' Fund bill.

In 1843, the Schoolmasters' Widows' Fund (Scotland) bill was returned to the Commons with amendments; but, before these were agreed to, the bill was removed from the table, without authority from the house, and carried up to the Lords with other bills. The proper indorsement, viz. "*A ces amendemens les communes sont assentus*," was not upon this bill; yet the omission was not observed, and the bill received the royal assent on the 9th May. After an examination of precedents, this act was made valid by a new enactment.[1]

Imperfect indorsement.

It is a curious fact, in connection with an informality of this character, on the face of a bill, that a commission expressly recites that the bills "have been agreed to by the Lords spiritual and temporal, and the Commons, and indorsed by them as hath been accustomed." The informality in this case would therefore appear to have been greater than in that of 1829; because, in the former, the indorsements were complete, and as they are without date, it would not appear, except from the Journals, that the amendment had been agreed to after the royal assent had been given: but in the latter, the agreement of the Commons would be wanting, on the face of the record.

In case of any accidental omission in the indorsement, the bill should be returned to the house whence it was received; as, on the 8th March 1580, 23 Eliz., when a schedule was returned to the Commons and the indorsement amended there; because "*soit baillé aux seigneurs*" had been omitted, and the Lords had therefore no warrant to proceed.[2]

[1] 6 & 7 Vict., c. lxxxvi. (local and personal).

[2] D'Ewes, 303. 1 Com. J. 132. Order and Course of Passing Bills in Parliament, 4to. 1641.

Having noticed the effect of informalities in the consent of both houses to a bill, the last point that requires any observation is the consequence of a defect, or informality, in the commission, or royal assent. On the 27th January 1546, when King Henry VIII. was on his death-bed, the lord chancellor brought down a commission under the sign manual, and sealed with the great seal, addressed to himself and other lords, for giving the royal assent to the bill for the attainder of the Duke of Norfolk, which had been passed, with indecent haste, through both houses. Early the next morning the king died, and the duke was saved from the scaffold: but was imprisoned in the Tower during the whole reign of Edward VI. On the accession of Queen Mary, he took his seat in the House of Lords, was appointed to be one of the triers of petitions; and also, by patent, on the 17th August, to be lord high steward, for the trial of the Duke of Northumberland.

Informalities in royal assent.

Duke of Norfolk's attainder.

The political causes which restored him to favour, will account for the impunity he enjoyed, notwithstanding his attainder: but in the next session the Act of Attainder was declared, by statute.[1]

Declared void.

"To have been void and of none effect," because there were no words in the commission "whereby it may appere that the saide late king did himself give his royall assent to the saide bill; and for that also the saide commissȳon was not signed with his hignes hande, but with his stampe putt thereunto in the nether parte of the writing of the said commissȳon, and not in the upper parte of the said commissȳon, as his hignes was accustomed to doo; nor that it appereth of any recorde that the saide commissyoners did give his royall consent to the bill aforesaide; therefore all that was done by virtue of the said commissȳon was clerelie voyde in the lawe, and made not the same bill to take effecte, or to be an Acte of Parlyament," but it "remayneth in verie dede as no Acte of Parlyament, but as a bill onelie exhibited in the saide Parlyament, *and onelie assented unto by the saide lordes and comons*, and not by the saide late king."

The same act declared,

"That the lawe of this realme is and allwaies hath byn, that the

[1] 1 Mary, No. 27; Introduction to Statutes of Rec. Com. p. 75.

royall assent or consent of the king or kings of this realme, to any Acte of Parlyament ought to be given in his own royall presence, being personallie in the higher howse of Parlyament, or by his letters patents under his great seale, assigned with his hande, and declared and notified in his absence to the lords spiritual and temporal, and the Comons, assembled together in the higher howse, according to a statute made in the 33rd yere of the reigne of the saide late King Henry VIII."

Transposition of titles.

In 1809, the titles of two bills relating to the town of Worthing were transposed, and the royal assent signified to both, so incorrectly indorsed, without further notice. But, in 1821, the titles of two local acts had been, by a similar error, transposed in the indorsement when the bills received the royal assent. Each act, consequently, had been passed with the title belonging to the other; and the mistake was corrected by Act of Parliament.[1]

Royal assent given by mistake.

In 1844, there were two Eastern Counties Railway bills in Parliament. One had passed through all its stages, and the other was still pending in the House of Lords, when on the 10th May the royal assent was given, by mistake, to the latter, instead of to the former. On the discovery of the error, an act was passed by which it was enacted, that when the former Act *shall have received the royal assent*, it shall be as valid and effectual from the 10th May, as if it had been properly inserted in the commission, and had received the royal assent on that day; and that the other bill shall be in the same state as if its title had not been inserted in the commission, and shall not be deemed to have received the royal assent.[2]

[1] 1 & 2 Geo. IV. c. xcv. (local and personal).
[2] 7 Vict. c. xix. (local and personal).

CHAPTER XIX.

ANCIENT MODE OF PETITIONING PARLIAMENT. FORM AND CHARACTER OF MODERN PETITIONS; PRACTICE OF BOTH HOUSES IN RECEIVING THEM.

The people communicate with Parliament by petition.

THE various communications between the several branches of the legislature which have been described in the last three chapters, lead to the consideration of petitions, by which the people are brought into communication with the Parliament.

Ancient mode of petitioning.

The right of petitioning the Crown and Parliament, for redress of grievances, is acknowledged as a fundamental principle of the constitution;[1] and has been uninterruptedly exercised from very early times. Before the constitution of Parliament had assumed its present form, and while its judicial and legislative functions were ill-defined, petitions were presented to the Crown, and to the great councils of the realm, for the redress of those grievances which were beyond the jurisdiction of the common law. There are petitions in the Tower of the date of Edward I., before which time, it is conjectured that the parties aggrieved came personally before the council, or preferred their complaints in the country, before inquests composed of officers of the Crown.

From Edw. I. to Henry IV.

Assuming that the separation of the Lords and Commons had been effected in the reign of Henry III.,[2] these petitions appear to have been addressed to the Lords alone: but, taking the later period, of the 17th Edward III., for the separation of the two houses, they must have been addressed to the whole body then constituting the High

[1] "Nulli negabimus, aut differemus rectum vel justitiam."—Magna Charta of King John, c. 29. See Bill of Rights, Art. 5; 1 & 2 Will. & Mary, sess. 2, c. 2.

[2] See *supra*, p. 24.

Court of Parliament. Be this as it may, it is certain that, from the reign of Edward I., until the last year of the reign of Richard II.,[1] no petitions have been found which were addressed exclusively to the Commons.

Receivers and triers of petitions.

During this period the petitions were, with few exceptions, for the redress of private wrongs; and the mode of receiving and trying them was judicial, rather than legislative. Receivers and triers of petitions were appointed, and proclamation was made, inviting all people to resort to the receivers. These were ordinarily the clerks of the chancery, and afterwards the masters in chancery (and still later some of the judges), who, sitting in some public place accessible to the people, received their complaints, and transmitted them to the auditors or triers. The triers were committees of prelates, peers, and judges, who had power to call to their aid the lord chancellor, the lord treasurer, and the serjeants-at-law. By them the petitions were examined; and in some cases the petitioners were left to their remedy before the ordinary courts; in others, their petitions were transmitted to the chancellor, or to the judges on circuit; and if the common law offered no redress, their case was submitted to the High Court of Parliament.[2] The functions of receivers and triers of petitions have long since given way to the immediate authority of Parliament at large: but their appointment, at the opening of every Parliament, has been continued by the House of Lords without interruption. They are still constituted, as in ancient times, and their appointment and jurisdiction are expressed in Norman French.[3]

Receivers and triers still appointed.

Reign of Henry IV.

In the reign of Henry IV., petitions began to be addressed, in considerable numbers, to the House of Commons. The courts of equity had, in the meantime,

[1] 3 Rot. Parl. 448.

[2] See Elsynge, chap. 8; Coke, 4th Inst. 11.

[3] There are receivers and triers for Great Britain and Ireland; and others for Gascony and the lands and countries beyond the sea, and the Isles. No spiritual lords are now appointed triers, 73 Lords' J. 579; 80 Ib. 13; 89 Ib. 11.

relieved Parliament of much of its remedial jurisdiction; and the petitions were now more in the nature of petitions for private bills, than for equitable remedies for private wrongs. Of this character were many of the earliest petitions; and the orders of Parliament upon them can only be regarded as special statutes, of private or local application. As the limits of judicature and legislation became defined, the petitions applied more distinctly for legislative remedies, and were preferred to Parliament through the Commons:[1] but the functions of Parliament, in passing private bills, have always retained the mixed judicial and legislative character of ancient times.

Petitions to the Commons.

Origin of private bills.

Proceeding to later times, petitions continued to be received in the Lords, by triers and receivers of petitions, or by committees whose office was of a similar character; and in the Commons, they were referred to the committee of grievances, and to other committees specially appointed for the examination and report of petitions:[2] but since the Commonwealth, it appears to have been the practice of both houses to consider petitions in the first instance,[3] and only to refer the examination of them, in particular cases, to committees. In early times, all petitions prayed for the redress of some specific grievance: but after the revolution of 1688, the present practice of petitioning, in respect of general measures of public policy, was gradually introduced.[4]

Change of system.

From this summary of ancient customs, it is now time to pass to the existing practice in regard to petitions, which it will be convenient to consider under three divisions;

[1] See 1 Parl. Writs, 160; 2 Ib. 156. 3 Rot. Parl. 448. Coke, 4th Inst. 11. 21. 24. Elsynge, c. 8. Hale, Jurisd. of the Lords, chap. 6–13. Report on Petitions, 1833 ($\frac{2}{639}$); especially the learned evidence of Sir F. Palgrave.

[2] 1 Com. J. 582; 2 Ib. 49. 61; 3 Ib. 649; 4 Ib. 228; 7 Ib. 287.

[3] 11 Lords' J. 9. 57. 184; 14 Ib. 23. 12 Com. J. 83.

[4] See 13 Chas. II. c. 5; 10 Com. J. 88; 13 Ib. 287; Ib. 518 (Kentish petition, 1701); 18 Ib. 425. 429, 430, 431 (Septennial bill). 2 Hallam, Const. Hist. 435, *n.* 2 May, Const. Hist. 60. (4th ed.)

viz. 1. The form of petitions; 2. The character and substance of petitions; 3. Their presentation to Parliament.

Form of petitions.

1. Petitions to the House of Lords should be superscribed, "To the right honourable the lords spiritual and temporal in Parliament assembled;"[1] and to the House of Commons, "To the honourable the Commons (or knights, citizens, and burgesses) of the United Kingdom of Great Britain and Ireland in Parliament assembled." A general designation of the parties to the petition should follow; and if there be one petitioner only, his name after this manner: "The humble petition of [here insert the name or other designation], sheweth." The general allegations of the petition are concluded by what is called the "prayer," in which the particular object of the petitioner is expressed. To the whole petition are generally added these words of form, "And your petitioners, as in duty bound, will ever pray, &c.;" to which are appended the signatures, or marks of the parties.

Remonstrances.

Without a prayer, a document will not be taken as a petition;[2] and a paper, assuming the style of a declaration,[3] an address of thanks,[4] or a remonstrance only,[5] without a proper form of prayer, will not be received. The rule upon this subject has thus been laid down in the Commons. On the 10th August 1843, a member offered a remonstrance; when Mr. Speaker said,—

"That the custom was this, that whenever remonstrances were presented to the house, coupled with a prayer, they were received as petitions: but when they were offered without a prayer, the rule was to refuse them." He added, "That there was a standing order requiring that the prayer of every petition should be stated by the member presenting it;" from which it is obvious that a prayer is essential to constitute a petition."[6]

[1] A petition intended for the last Parliament will not be received. See Mir. of Par. 1831, vol. 3, p. 2199.

[2] 7 Com. J. 427; 98 Ib. 457.

[3] 60 Hans. Deb., 3rd Ser., 640.

[4] 64 Hans. Deb., 3rd Ser., 423.

[5] 97 Com. J. 470; 98 Ib. 461.

[6] 65 Hans. Deb., 3rd Ser., p. 1225. 1227. See also 67 Com. J. 398; 74 Ib. 391.

In other cases, remonstrances respectfully worded, and concluding with a proper form of prayer, have been received:[1] but a document, distinctly headed as a remonstrance, though concluding with a prayer, has been refused.[2]

The petition should be written upon parchment or paper, for a printed or lithographed petition will not be received by the Commons;[3] and at least one signature should be upon the same sheet or skin, upon which the petition is written.[4] It must be in the English language,[5] or accompanied with a translation, which the member who presents it states to be correct;[6] it must be free from interlineations or erasures;[7] it must be signed;[8] it must have original signatures or marks, and not copies from the original,[9] nor signatures of agents on behalf of others, except in case of incapacity by sickness;[10] and it must not have letters,[11] affidavits,[12] appendices,[13] or other documents annexed. The signatures must be written upon the petition itself, and not pasted upon, or otherwise transferred to it.[14] Petitions of corporations aggregate should be under their common seal. To these rules another may be added, that if the chairman of a public meeting signs a petition on behalf of those assembled, it is only received as the petition of the individual, and is so entered in the Minutes or Votes,[15] because

Signatures, &c.

[1] From Finsbury, June 21st, 1860; 159 Hans. Deb., 3rd Ser., 761. Coast Defence Association, July 6th, 1860; Ib. 1524.

[2] 70 Hans. Deb., 3rd Ser., 745.

[3] 48 Com. J. 738; 68 Ib. 624. 648; 72 Ib. 128. 156; 53 Hans. Deb., 3rd Ser., 158. This rule has not been adopted by the Lords.

[4] 62 Com. J. 155; 72 Ib. 128. 144; 77 Ib. 127. 66 Hans. Deb., 3rd Ser., 1032. 100 Com. J. 335; 109 Ib. 293. If petitions are presented without any signatures to the sheet on which they are written, they are not noticed in the Votes.

[5] 76 Com. J. 173.

[6] 76 Com. J. 189; 100 Ib. 560.

[7] 82 Ib. 262; 86 Ib. 748; Ib. 748.

[8] 85 Ib. 541; 91 Ib. 325.

[9] 91 Ib. 576.

[10] 9 Ib. 369. 433; 10 Ib. 285; 34 Ib. 800; 82 Ib. 118; 91 Ib. 576. See also Rep. of Pub. Petitions Committee, 26th June 1848.

[11] 81 Com. J. 82.

[12] 82 Ib. 41.

[13] 111 Ib. 102.

[14] 104 Ib. 283 (Special Rep. of Petns. Committee). See also Special Report; 105 Ib. 79.

[15] Of late years the practice of entering petitions in the Journal has been

the signature of one party for others cannot be recognised.[1]

Forgery or fraud.

Any forgery or fraud in the preparation of petitions, or in the signatures attached, or the being privy to, or cognizant of, such forgery or fraud, will be punished as a breach of privilege. By a resolution of the House of Commons, 2nd June 1774, it was declared,

"That it is highly unwarrantable, and a breach of the privilege of this house, for any person to set the name of any other person to any petition, to be presented to this house."[2]

And there have been frequent instances, in which such irregularities have been discovered and punished by both houses.[3] In some cases the house has satisfied itself by the rejection of the petition.[4]

Character and substance of petitions.

2. The language of a petition should be respectful and temperate, and free from disrespectful language to the queen,[5] or offensive imputations upon the character or conduct of Parliament,[6] or the courts of justice,[7] or other tribunal,[8] or constituted authority.[9] On the 22nd March 1822, a petition from Newcastle, imputing notorious corruption to the House of Commons, was, on a division, not received.[10] On the 2nd August 1832, a petition threatening to resist the law, was not allowed to lie upon the table.[11] In 1838, a petition containing disrespectful language towards the other house of Parliament was withdrawn.[12]

discontinued, a reference being given to the Reports of the Committee on Public Petitions.

[1] 10 Com. J. 285.

[2] 34 Ib. 800.

[3] Balinasloe petition (R. Pilkington) 1825; 80 Ib. 445. Athlone election petition (T. Flanagan); 82 Ib. 561. 582; 84 Ib. 187; 89 Ib. 92. Epworth petition, 1843; 98 Ib. 523. 528. Cheltenham petition, 2nd March 1846; Liverpool Corporation Waterworks bill; Lords' Journals and Debates, 22nd July and 13th August 1850. Aylesbury Election petition, 1851; 106 Com. J. 193. 289. Prince Azeem Jah (J. M. Mitchel and others), 1865; 120 Ib. 157. 336.

[4] Halifax petition, 5th July 1867; 122 Ib. 345. Special Report of Petitions Committee, 22nd July 1872; 27 Com. J. 370. 395.

[5] 122 Hans. Deb., 3rd Ser., 863.

[6] 82 Com. J. 589; 84 Ib. 275.

[7] 76 Ib. 105.

[8] Ib. 92; 83 Ib. 541.

[9] 78 Ib. 431; 91 Ib. 698.

[10] 6 Hans. Deb., N. S., 1231.

[11] 87 Com. J. 547.

[12] 93 Ib. 236.

In 1840, a petition from J. J. Stockdale was rejected, as containing an intentional and deliberate insult to the house.[1] On the 28th March 1848, a petition having been brought up and read, objection was taken to a paragraph praying for the abolition of the House of Lords, on the ground that it prayed for a fundamental alteration of the institutions of the country: but the objection, after debate, was not pressed, and the petition, being otherwise temperately expressed, was ordered to lie upon the table.[2] On the 3rd May 1867, a petition in favour of certain Fenian prisoners, expressed in strong but guarded language, was allowed to lie upon the table; and a motion afterwards made for discharging that order was not supported by the house.[3] A petition may not allude to debates in either house of Parliament,[4] nor to intended motions, if merely announced in debate:[5] but when notices have been formally given, and printed with the Votes, petitions referring to them are received. On the 31st March 1848, notice was taken that in a petition which had been printed with the Votes, reference was made "to what passed in a debate in this house, in violation of the rules and practice of the house;" and the orders, that such petition do lie upon the table, and be printed, were read and discharged, and the petition, as printed in the appendix to the Votes, was ordered to be cancelled.[6] A petition to the Commons, praying directly or indirectly for an advance of public money;[7] for compounding or relinquishing any debts due to, or other claims of, the Crown;[8] or for remission of duties or other charges payable by any person,[9] or for a charge upon the revenues of India,[10] will

[1] 95 Com. J. 193.

[2] 103 Ib. 384; 97 Hans. Deb., 3rd Ser., 1055.

[3] 186 Ib. 1929; 187 Ib. 1886.

[4] 77 Com. J. 150; 82 Ib. 604; 91 Ib. 616; 97 Ib. 259; 103 Ib. 633; 105 Ib. 160, 19th Feb. 1851 (Window Tax). 109 Ib. 160.

[5] 85 Ib. 107; 63 Hans. Deb., 3rd Ser., 192; 114 Ib. 820.

[6] 103 Com. J. 406.

[7] 90 Ib. 42. 487. 507; 111 Ib. 247; 119 Ib. 177.

[8] 75 Ib. 167; 81 Ib. 66; 83 Ib. 212.

[9] 81 Ib. 353; 92 Ib. 372 (Duke of Marlborough).

[10] 111 Ib. 366.

only be received if recommended by the Crown. Petitions distinctly praying for compensation, or indemnity for losses, out of the public revenues, are viewed under this category, and are constantly refused unless recommended by the Crown:[1] but petitions are received which pray that provision should be made for the compensation of petitioners, for losses contingent upon the passing of bills, pending in Parliament.[2] Sometimes such petitions are presented, with the Queen's recommendation.[3] In the Lords, a petition relating to a bill before the Commons, but which has not yet reached the house, or which has been already thrown out, will not be received.

Petition from person attainted.

On the 18th June 1849, a petition was offered from W. S. O'Brien and others, attainted of treason, praying to be heard by counsel against the Transportation for Treason (Ireland) bill. It was objected that no petition could be received from persons civilly dead: but the house, after debate, agreed, under the peculiar and exceptional circumstances of the case, to receive the petition. The petitioners' sentence of death had been commuted to transportation; they had denied the legal power of the Lord Lieutenant to transport them, and the bill against which they had petitioned was introduced in order to remove doubts upon the question which they had raised. It was, in fact, a bill to declare the legality of a sentence which they maintained to be contrary to law. Before the introduction of the bill, a petition from W. S. O'Brien, upon the subject of his sentence, had been already received by the house.[4]

Presentation of petitions.

3. Petitions are to be presented by a member of the house to which they are addressed. But petitions from the corporation of London are presented to the House of Commons, by the sheriffs, at the bar,[5] (being introduced

[1] 73 Com. J. 157; 74 Ib. 422; 87 Ib. 571; 90 Ib. 487; 104 Ib. 223, &c., &c.

[2] 90 Ib. 136; 92 Ib. 469.

[3] 93 Ib. 586.

[4] 106 Hans. Deb., 3rd Ser., p. 389.

[5] On the 17th April 1690, a question for admitting the sheriffs was negatived, on division; 5 Parl. Hist., 586.

by the serjeant, with the mace),[1] or by one sheriff only, if the other be a member of the house,[2] or unavoidably absent.[3] In 1840, both the sheriffs being in the custody of the serjeant-at-arms, petitions from the corporation of London were presented at the bar, by the lord mayor, an alderman, and several of the common council;[4] by the lord mayor, aldermen, and commons;[5] and by two aldermen, and several members of the common council.[6] Petitions from the corporation of Dublin may be presented in the same manner, by their lord mayor.[7] If the lord mayor should be a member, he must present the petition, in his place as a member, and not at the bar.[8] If the sheriffs (or lord mayor of Dublin, not being a member) had more than one petition to present they were formerly directed to withdraw when the first had been received, and were again called in to present the other:[9] but this formality is now dispensed with. The privilege of presenting petitions at the bar, by the lord mayor of Dublin, had not been enjoyed in the Parliament of Ireland, and was conceded here, for the first time, not without objection, on the 23rd February 1813. Lord Cochrane proposed to extend the same privilege to the lord provost of Edinburgh, but his amendment was lost; Mr. Tierney remarking "that the Scotch were generally thought a prudent people, and the corporation of Edinburgh would know better than to send their provost four hundred miles, to present a petition."[10] A peer or member may petition the house to which

[1] MS. Officers and Usages of the House of Commons, p. 46.

[2] 90 Com. J. 506; 103 Ib. 122. 331. 731.

[3] 75 Ib. 213; 94 Ib. 432.

[4] 95 Ib. 43. [5] Ib. 82.

[6] Ib. 198.

[7] By resolution, 23rd Feb. 1813; 68 Ib. 209; 24 Hans. Deb., 698; 124 Com. J. 85; 127 Ib. 266.

[8] On the 1st July 1850, a petition from the corporation of Dublin was presented by the lord mayor in his place as a member (wearing his robes). The officers of the corporation, in their robes, were allowed seats below the bar: but having brought the mace into the house, they were desired by the serjeant to remove it; MS. note. So again Friday, March 14th, 1851.

[9] MS. Officers and Usages of the House of Commons, p. 46.

[10] 68 Com. J. 209; 24 Hans. Deb., 698. 705.

he belongs; but if a member desire to have a petition from himself presented to the house, he should entrust it to some other member, as he will not be permitted to present it himself.[1]

Transmission by post.

To facilitate the presentation of petitions, they may be transmitted through the post-office, to members of either house, free of postage, provided they be sent without covers, or in covers open at the sides, and do not exceed 32 oz. in weight.[2]

To be read by members.

In both houses it is the duty of members to read petitions which are sent to them, before they are presented, lest any violation of the rules of the house should be apparent on the face of them; in which case it is their duty not to offer them to the house. If the speaker observes, or any member takes notice of, any irregularity, the member having charge of the petition does not bring it up, but returns it to the petitioners. If any irregularity escapes detection at this time, but is discovered when the petition is further examined, no entry of its presentation appears in the Votes. In other cases more formal notice is taken of the violation of the rules of the house, and the petitions are not received;[3] or are ordered to be withdrawn,[4] or are rejected.[5] A member who has reason to believe that the signatures to a petition are genuine, is justified in presenting it, although doubts may have been raised as to their authenticity: but in such cases the attention of the house should be directed to the circumstance.[6]

Petitions not received, withdrawn and rejected.

Presentation of petitions.

Up to this point the practice of the Lords and Commons is similar: but the forms observed in presenting petitions differ so much, that it will be necessary to describe them

[1] So ruled by Mr. Speaker, 30th August 1841 (Sir Valentine Blake); 59 Hans. Deb., 3rd Ser., 476. 30th April 1846 (Sir J. Graham), and 9th July 1850 (Mr. F. O'Connor).

[2] 3 & 4 Vict. c. 96, s. 41.

[3] 96 Com. J. 159; 104 Ib. 154; 105 Ib. 160; 109 Ib. 160; 111 Ib. 102.

[4] 93 Com. J. 236; 100 Ib. 335; 103 Ib. 633; 116 Ib. 364 (as containing libellous charges against a member of the house and other parties).

[5] 95 Ib. 193; 122 Ib. 345.

[6] 117 Hans. Deb., 3rd Ser., 399.

separately. On the 1st May 1868, it was ordered "that the name of the lord presenting a petition shall be entered thereon."[1] It was ordered by the Lords, 30th May 1685, "That any lord who presents a petition, shall open it before it be read."[2] At the same time the lord may comment upon the petition, and upon the general matters to which it refers; and there is no rule or order of the house that limits the duration of the debate on receiving a petition: but it is usual for a lord who intends to speak upon a petition, to give notice of its presentation. When the petition has been laid upon the table, an entry of that fact is made in the Lords' minutes, and appears afterwards in the Journals, with the prayer of the petition, amidst the other proceedings of the house: but the nature of its contents is rarely to be collected from the entry; and in very few cases indeed have petitions been printed at length in the Journals, unless they related to proceedings partaking of a judicial character.[3] But on the 2nd April 1868, a select committee was appointed in the House of Lords, to direct the printing, for the use of the house, of such petitions as they shall think fit,[4] and it is now contrary to the practice of the house to move that a petition be printed.

Lords.

It is to the representatives of the people that petitions are chiefly addressed, and to them they are sent in such numbers, that it is absolutely necessary to impose some restrictions upon the discussion of their merits. Formerly, the practice of presenting petitions had been generally similar to that of the House of Lords: but the number had so much increased,[5] and the other business of the

Petitions to the Commons.

[1] 100 Lords' J. 138.

[2] 14 Ib. 22.

[3] 74 Ib. 236.

[4] 100 Ib. 103.

[5] In the five years ending 1832, 23,283 public petitions were presented to the House of Commons; in the five years ending 1842, 70,072; in the five years ending 1852, 62,248; in the five years ending 1862, 63,003; in the five years ending 1867, 53,305; and in the five years ending 1872, 101,573. Since 1833, 521,129 public petitions have been presented to the house.

house was liable to so many interruptions and delays, from the debates which arose on receiving petitions, that after vain attempts to reconcile the opposing claims of petitions and of legislation, upon the time of the house,[1] the following standing orders were adopted in 1842 and 1853 :—

Petitions to be opened by members.

"That every member offering to present a petition to the house, not being a petition for a private bill, or relating to a private bill before the house, do confine himself to a statement of the parties from whom it comes, of the number of signatures attached to it, and of the material allegations contained in it, and to the reading of the prayer of such petition."

May be read by the clerk.

"That every such petition, not containing matter in breach of the privileges of this house, and which, according to the rules or usual practice of this house, can be received, be brought to the table by the direction of the speaker, who shall not allow any debate, or any member to speak upon, or in relation to, such petition, but it may be read by the clerk at the table if required."[2]

Urgent cases discussed.

"That in the case of such petition complaining of some present personal grievance, for which there may be an urgent necessity for providing an immediate remedy, the matter contained in such petition may be brought into discussion, on the presentation thereof."

Petitions referred to committee on public petitions; and in certain cases ordered to be printed.

"That all other such petitions, after they shall have been ordered to lie on the table, be referred to the committee on public petitions, without any question being put: but if any such petition relate to any matter or subject, with respect to which the member presenting it has given notice of a motion, and the said petition has not been ordered to be printed by the committee, such member may, after notice given, move that such petition be printed with the Votes."

May oppose taxes for the service of the year.

"That, subject to the above regulations, petitions against any resolution or bill imposing a tax or duty for the current service of the year, be henceforth received, and the usage under which the house has refused to entertain such petitions be discontinued."[3]

While a member may state the purport and material allegations of a petition, he is not at liberty to read the whole or greater part of the petition itself: but if he desires

[1] For the two sessions, 1833 and 1834, morning sittings from 12 to 3 were devoted to petitions and private bills, but they were not found to be effectual.

[2] On the 11th April 1845, a debate arose on the presentation of a petition from the Dublin Protestant Operative Association, but it related to matters of order, which, of course, may be debated at any time.

[3] 97 Com. J. 191. And see also 88 Ib. 10. 95; 94 Ib. 16.

that the petition should be read, the proper course is to require it to be formally read by the clerk, at the table.[1]

Cases ruled to be urgent.

On the 14th June 1844, it was ruled by Mr. Speaker, that a petition of parties complaining of their letters having been detained and opened by the Post-office, and praying for inquiry, was not of that urgency that entitled it to immediate discussion, especially as notice of its presentation had been given on the previous day, which proved that the matter was such as admitted of delay:[2] but on the 24th June 1844, a similar petition, of which no previous notice had been given, was permitted to open a debate. In the latter case, however, the complaint was, that "letters *are* secretly detained and opened;" and thus a "present personal grievance" was alleged, while in the former case a past grievance only had been complained of.[3] On the 5th July 1855, a petition complaining of the recent misconduct of the police in Hyde Park, and of injuries personally sustained by the petitioners, was held not to justify a debate, as the grievance complained of did not demand an immediate remedy.[4] Neither under cover of a motion for the adjournment of the house, will a member be permitted to bring under discussion the contents of a petition which he would be restrained by the standing order from debating:[5] but a personal explanation has been permitted without any question being before the house, upon matters affecting a member, which have been alluded to in a petition.[6]

Debates upon petitions.

It will be observed that, by the standing order, the restriction on debate does not extend to any urgent cases. Neither does it extend to a petition complaining of a matter affecting the privileges of the house, such a case being governed by the general rule, that a question of privilege

[1] 79 Hans. Deb., 3rd Ser., 496; 106 Ib. 300.

[2] 75 Ib. 894; 99 Com. J. 398.

[3] 75 Hans. Deb., 3rd Ser., 1264.

[4] 139 Ib. 453.

[5] 7th July 1856 (Attorney-general and the Bedford Charities).

[6] 48 Hans. Deb., 3rd Ser., 226; 109 Ib. 235; and 7th July 1856.

is always entitled to immediate consideration.[1] But the more usual and convenient course, when the matter does not require the immediate interposition of the authority of the house, is to order it to be taken into consideration on a future day, and to be printed for the information of the house.[2] It must always be borne in mind that the discussion of a petition is not, in itself, introductory to legislative measures; and that every resolution or bill must commence with a distinct motion, in proposing which a member is at liberty to enforce the claims of all petitioners who have submitted their cases to the house.

Petitions printed with the Votes.

A motion for printing a petition with the Votes is usually permitted to be made early in the evening, at the time of presenting public petitions. It is not a matter of right, but is open to debate and objection like any other motion.[3] On the 15th April 1845, it was objected that a motion intended to be made by a member was not such as could be properly founded upon a petition proposed to be printed; and the motion for printing it was withdrawn.[4]

Committee on public petitions.

It has been seen that, in certain cases, petitions may be printed and distributed with the Votes; and, in some few instances, petitions presented in a former session have been ordered to be so printed:[5] but the general practice is, for all public petitions to be referred to the "Committee on Public Petitions," under whose directions they are classified, analysed, and, when necessary, printed at length.[6] The reports of this committee are printed twice a week, and point out, under classified heads, not only the name of each petition, but the number of signatures, the general object

[1] 104 Com. J. 302; 105 Ib. 110; 112 Ib. 231; 113 Ib. 68; 114 Ib. 357; 146 Hans. Deb., 3rd Ser., 97: 168 Ib. 1855. Royal Atlantic Steam Company, July 19th, 1861: 164 Ib. 1178.

[2] 86 Hans. Deb., 3rd Ser., 328; Lisburn Election, 18th April 1864; 119 Com. J. 173.

[3] Southampton writ, 1st June 1842; 97 Com. J. 329. 63 Hans. Deb., 3rd Ser., 1057.

[4] 79 Hans. Deb., 3rd Ser., 686.

[5] 102 Ib. 22. 203; 112 Ib. 155; Mr. Repton's petition, 1858; 113 Ib. 331.

[6] 88 Com. J. 95.

of every petition, and the total number of petitions and signatures in reference to each subject; and whenever the peculiar arguments and facts, or general importance, of a petition require it, it is printed at full length in the Appendix, where it is accessible to the public, at the cheapest rate of purchase. In some cases petitions have been ordered to be printed with the Votes, with the signatures attached thereto,[1] and in others for the use of members only.[2] A petition has been ordered to be printed for the use of members only, with the names of the persons who had signed it.[3] Sometimes petitions which have been already printed, have been ordered to be re-printed.[4]

Time and mode of presenting petitions.

A few words may now be added in reference to the time and mode of presenting petitions in the House of Commons. It was resolved, 20th March 1833, "That every member presenting a petition to the house, do affix his name at the beginning thereof;[5] and it is always printed with the petition, in the reports of the committee. On the 9th May 1844, an instruction was given to this committee not to record any petition on which the name of the member presenting it is not written.[6] The time for receiving petitions is at the conclusion of the private business; and members having petitions entrusted to them, should write their names on a numbered list, headed "Public Petitions," at the table of the house, from which they will be called by the speaker in their order. When all the names on the list have been called, any member may afterwards present a petition, who rises in his place for that purpose when there is no business before the house:[7] but no petition is received after five o'clock. When petitions relate to any bill, or the subject-matter of any motion appointed for consideration, a member

[1] 97 Com. J. 302; 98 Ib. 396. 460. 549; 101 Ib. 142.

[2] 100 Ib. 538. 648; 101 Ib. 1021; 105 Ib. 45; 106 Ib. 209; 116 Ib. 377.

[3] 97 Ib. 57.

[4] 98 Com. J. 216; 103 Ib. 30.

[5] 98 Ib. 190; 74 Hans. Deb., 3rd Ser., 714.

[6] 99 Com. J. 284.

[7] Speaker's ruling, 19th March 1868; 190 Hans. Deb., 3rd Ser., 1893.

may present them before the debate commences, at any time during the sitting of the house. In the case of a bill, they can only be offered immediately after the order of the day has been read, and before any question has been proposed. On one occasion, however, a motion for the speaker to leave the chair, was withdrawn, in order to enable a member to present a petition, and was repeated as soon as the petition had been received.[1] When a petition has been laid upon the table, it is irregular for any member to remove it.[2]

CHAPTER XX.

ACCOUNTS, PAPERS, AND RECORDS PRESENTED TO PARLIAMENT: PRINTING AND DISTRIBUTION OF THEM: ARRANGEMENT AND STATISTICAL VALUE OF PARLIAMENTARY RETURNS.

Returns by order and by address.

PARLIAMENT, in the exercise of its various functions, is invested with the power of ordering all documents to be laid before it, which are necessary for its information. Each house enjoys this authority separately, but not in all cases independently of the Crown. Accounts and papers relating to trade, finance, and general or local matters, are ordered directly, and are returned in obedience to the order of the house whence it was issued: but returns of matters connected with the exercise of royal prerogative, are obtained by means of addresses to the Crown.

The distinction between these two classes of returns should always be borne in mind; as, on the one hand, it is irregular to order directly that which should be sought

[1] 10th April 1856, Education; 111 Com. J. 131. [2] 105 Ib. 99.

for by address; and, on the other, it is a compromise of the authority of Parliament to resort to the Crown for information, which it can obtain by its own order. The application of the principle is not always clear: but, as a general rule, it may be stated that all public departments connected with the collection or management of the revenue, or which are under the control of the Treasury, or are constituted or regulated by statute, may be reached by a direct order from either house of Parliament: but that public officers and departments, subject to her Majesty's secretaries of state, are to receive their orders from the Crown.

Thus, returns from the Commissioners of Customs and of Inland Revenue, the Post-office, the Board of Trade, and the Treasury, are obtained by order. These include every account that can be rendered of the revenue and expenditure of the country; of commerce and navigation; of salaries and pensions; of general statistics; and of facts connected with the administration of all the revenue departments. Addresses are presented for treaties with foreign powers, for despatches to and from the governors of colonies, and for returns connected with the army, the civil government, and the administration of justice. Where returns relate to the expenditure of public money upon any Crown property, they are obtained by order, and not by address.[1]

When addresses have been answered.

When an address for papers has been answered by the Crown, the parties who are to make them, appear to be within the immediate reach of an order of the house; as orders of the House of Commons for addresses have been

[1] Windsor Castle and Buckingham Palace, 19th April 1826; Greenwich Park, 3rd June 1850; Marble Arch, 18th March 1852; Richmond Park, 12th June 1854; Metropolitan Parks, 28th July 1854; St. James's Park, 21st April 1856, and 20th May 1857. In the latter case the right of the house to order such a return having been questioned, was conclusively established.

read, and certain persons who had not made the returns required, have been ordered to make them to the house forthwith.[1] In other cases, however, further addresses have been moved, praying her Majesty to give directions that papers be laid before the house forthwith.[2]

Orders discharged.

When it is discovered that an address has been ordered for papers which should properly have been presented to the house by order, it is usual, when no answer has been reported, to discharge the order for the address, and to order the papers to be laid before the house.[3] In the same manner, when a return has been ordered, for which an address ought to have been moved, the order is discharged, and an address is presented instead.[4] Where the order for a return is found not to comprise all the particulars desired, it is usual to discharge the order, and make another in a corrected form. Sometimes, however, without discharging the order, public papers or other particulars have been ordered to be added to the return.[5] And so much of an order as relates to certain portions of the return has been discharged.[6]

Returns relating to the other house.

If one house desires any return relating to the business or proceedings of the other, neither courtesy nor custom allows such a return to be ordered: but an arrangement is generally made, by which the return is moved for in the other house; and after it has been presented, a message is sent to request that it may be communicated.[7] Or a message is sent requesting that a return of certain matters may be communicated; and such return is prepared and communicated accordingly.[8] But it is not usual to send a message

[1] 90 Com. J. 413. 650; 95 Ib. 448.

[2] 95 Ib. 220; 102 Ib. 692; 120 Ib. 70.

[3] 92 Ib. 580, &c.

[4] Ib. 365; 104 Ib. 623, &c.

[5] 110 Ib. 56. 230; 116 Ib. 99; 117 Ib. 337; 121 Ib. 143.

[6] 126 Ib. 89.

[7] 111 Com. J. 250. 270. 294. In 1856 a notice had been given of a return of fees on private bills in both houses, but on an intimation from the speaker, the return was confined to the House of Commons. 111 Com. J. 120.

[8] 123 Com. J. 212; 127 Ib. 141.

for a return which has been obtained from other departments, by order or address. For such a return it is more regular to move in the usual manner.

Returns may be moved for, either by order or address, relating to any public matter, on which the house or the Crown has jurisdiction. They may be obtained from all public offices, and from corporations, bodies, or officers constituted for public purposes, by Acts of Parliament or otherwise: but not from private associations, such as Lloyd's for example,[1] nor from individuals not exercising public functions. The papers and correspondence sought from government departments should be of a public and official character, and not private or confidential. The opinions of the law officers of the Crown, given for the guidance of ministers, in any question of diplomacy or state policy, being included in the latter class, have generally been withheld from Parliament. In 1858, however, this rule was, under peculiar and exceptional circumstances, departed from, and the opinions of the law officers of the Crown, in regard to the case of the Cagliari, were laid before Parliament.[2] In 1871, in the select committee on the Thames embankment, a case submitted to the law officers being required, it was objected that the production of such a document was unusual: but as it appeared that their opinion upon the case had already been laid before the house, the objection was withdrawn, and the case was produced before the committee.[3] Subjects of returns.

But however ample the power of each house to enforce the production of papers, a sufficient cause must be shown for the exercise of that power; and if considerations of public policy can be urged against a motion for papers, it is either withdrawn, or otherwise dealt with according to the judgment of the house.

If parties neglect to make returns in reasonable time, they Returns not made.

[1] 11 Hans. Deb. 271.

[2] 149 Hans. Deb., 3rd Ser., 178.

[3] Minutes of the committee, pp. iv-vi.

are ordered to make them forthwith.[1] If they continue to withhold them, they are ordered to attend at the bar of the house;[2] and unless they satisfactorily explain the causes of their neglect, and comply with the order of the house, they will be censured or punished according to the circumstances of the case.[3] A person has been reprimanded by the Lords for having made a return to an order, which he was not required or authorised to make, and for framing it in a form calculated to mislead the house.[4]

Sometimes further particulars are ordered to be added to returns,[5] or to be separately stated:[6] or returns are ordered to be amended.[7]

Effect of a prorogation.

When Parliament is prorogued before a return is presented, the ordinary practice is to renew the order in the ensuing session, as if no order had previously been given. This practice arises from the general effect of a prorogation, in putting an end to every proceeding pending in Parliament; and unquestionably an order for returns loses its effect at a prorogation; yet returns are frequently presented by virtue of addresses in a preceding session, without any renewal of the address,[8] and occasionally in compliance with an order of a former session.[9] Orders have also been made which assume that an order has force from one session to another. For example, returns have been ordered "to be prepared in order to be laid before the house in the next session;"[10] and orders of a former session have been read, and the papers ordered to be laid before the house forthwith.[11] And the order for an address made by a former

[1] 90 Com. J. 413; 114 Ib. 371; 119 Ib. 291; 121 Ib. 143.
[2] 75 Ib. 404; 89 Ib. 386; 96 Ib. 363.
[3] 90 Ib. 575. 81 Lords' J. 134.
[4] 82 Lords' J. 89.
[5] 123 Com. J. 69; 127 Ib. 277.
[6] 127 Ib. 277.
[7] 123 Ib. 178 (by address).
[8] 98 Com. J. 428; 103 Ib. 579. 775; 104 Ib. 239. 284, &c.; 106 Ib. 5; 108 Ib. 209.
[9] 99 Ib. 301; 103 Ib. 131; 104 Ib. 35. 88. 133, &c.; 106 Ib. 24; 108 Ib. 293.
[10] 78 Com. J. 472; 80 Ib. 631.
[11] 78 Ib. 72; 114 Ib. 371.

Parliament has been read, and the house being informed that certain persons had not made the return, they were ordered forthwith to make a return to the house.[1]

Papers presented by command, and by Act.

Besides the modes of obtaining papers by order and by address, both houses of Parliament are constantly put in possession of documents by command of her Majesty, and in compliance with Acts of Parliament.

Forms observed in presenting papers.

Judgment rolls, exhibits, and certified copies of documents relating to appeals, are delivered in at the bar of the House of Lords, upon oath. Other papers and returns were formerly delivered at the bar, upon oath, in the same manner: but now they are either presented by a minister of the Crown, or are forwarded by the department to the clerk of the Parliaments, for presentation. In the Commons, when a minister of the Crown has any papers to present, he goes to the bar, and, on being called by the speaker, he brings them up;[2] and they are ordered to lie upon the table: but papers are also presented by other official persons. When such papers are brought up, they are generally ordered to lie upon the table, as a matter of course: but upon the question that they do lie upon the table, a debate has, on some rare occasions, arisen. On the 8th July 1857, Sir G. Lewis made a statement in moving, that an estimate of the cost of the Persian war, presented by him, be referred to the committee of supply.[3] On the 13th February 1862, on bringing up the revised code on education, Mr. Lowe made a statement, though not without objection.[4] On the 5th May 1865, Mr. Bruce, in bringing up the minutes of the Committee of Privy Council for Education, was proceeding to explain them (having intimated his intention on the previous day), but this course being objected to as leading to a debate, under inconvenient conditions, and in anticipation of the business appointed for the day, he postponed his

[1] 90 Com. J. 413.

[2] By usage, such papers are only to be presented by privy councillors.

[3] 146 Hans. Deb., 3rd Ser., 1132.

[4] 165 Ib. 191.

statement to another occasion.[1] Again on the 10th February 1873, Mr. Secretary Bruce, in presenting new rules for the regulation of the Royal Parks, proposed to speak upon the motion that "the rules do lie upon the table." Being interrupted he limited himself to the reading of the new rules: but a debate was raised upon the question, the regularity of which was explained from the chair.[2] In the Lords, if the paper relate to judicial proceedings, the person is called to the bar, sworn, and examined respecting it; if it be an ordinary paper, he is called in, delivers the paper at the bar, and is directed to withdraw. In the Commons, when it was the custom to present papers in this manner, the person by direction of the speaker, was introduced at the bar by the serjeant with the mace, delivered the paper to the clerk of the house, and was directed by the speaker to withdraw: but on the 7th April 1851, it was ordered, "That accounts and other papers which shall be required to be laid before this house by any Act of Parliament, or by any order of the house, may be deposited in the office of the clerk of this house, and the same shall be laid on the table, and a list of such accounts and papers read by the clerk."[3] And this more convenient practice has superseded the former mode of presenting papers from the various public offices. Sometimes a minister moves for a return from his own department, without notice, and immediately proceeds to the bar, whence, being called by the speaker, he brings up the return, in compliance with the order which has just been made.

"Dummies." Occasionally blank papers, familiarly known as "dummies," are presented, instead of the real documents. This practice is irregular, and without recognition: but is favoured by convenience, and the exigencies of public business. When resorted to with a view to expedition in printing and distribution, it may be a useful expedient: but if used as a colourable compliance with an order of the house,

[1] 178 Hans. Deb., 3rd Ser., 1535. [2] 214 Ib. 199. [3] 106 Com. J. 150.

or as a means of delay, it is obviously open to grave objections.

Papers to lie upon the table.

When accounts and papers are presented, they are ordered to lie upon the table; and, when necessary, are ordered to be printed, or are referred to committees, or abstracts are ordered to be made and printed.[1] Sometimes papers of a former session are ordered to be printed, or re-printed.

Printing committee in the Commons.

In the Commons, a select committee is appointed at the commencement of each session, "to assist Mr. Speaker in all matters which relate to the printing executed by order of the house; and for the purpose of selecting and arranging for printing, returns and papers presented in pursuance of motions made by members." To this committee all papers are referred, and it is the usual practice for the house not to order papers to be printed until they have been examined by the committee. No distinct reference or report is made: but when papers are laid upon the table, they are, from time to time, submitted to the committee or the speaker, by whom it is determined whether orders shall be made for printing them in their present form, or for preparing abstracts.

Unprinted papers.

If not considered worthy of being printed, or if the members who moved for them do not urge the printing, they are open to the inspection of members in an unprinted form; being deposited for that purpose in the library. In some cases papers of a local or private character have been ordered to be printed at the expense of the parties, if they think fit.[2] In other cases they have been ordered to be returned to a public department.[3] Sometimes part of a return only has been ordered to be printed.[4] The orders of a former session that a return do lie upon the table, and be printed, have been discharged.[5]

[1] On the 17th Nov. 1852, a report was ordered to be printed and delivered forthwith; 108 Com. J. 29.

[2] 101 Com. J. 990; 113 Ib. 42. 363; 115 Ib. 505; 116 Ib. 125.

[3] 100 Ib. 880; 125 Ib. 80.

[4] 124 Ib. 209; 125 Ib. 70.

[5] 7th February 1873.

Distribution of papers.

Lords.

Commons.

All papers printed by order of the Lords are, by courtesy, distributed gratuitously to members of the House of Commons who apply for them; and also to other persons, on application, with orders from peers: but the Commons have adopted the principle of sale, as the best mode of distribution to the public. Each member receives a copy of every paper printed by the house, but is not entitled to more, without obtaining an order from the speaker. Certain reports and papers, however, of limited interest, are not distributed to members, but may be obtained on application. The chairman of a committee, the member who has brought in a bill, and others, may obtain a greater number of copies for special purposes: but no general distribution can be obtained, except by purchase. The rule is not strictly enforced, as regards bills and estimates before the house, which may generally be obtained by members, on application at the Vote-office; but more than one copy of reports and papers is not delivered, without authority from the speaker.

Delivery to members by the Vote-office.

The Vote-office is charged with the delivery of printed papers to members of the house; and those who wish to receive them regularly should take care to leave their addresses, in order that all papers may be forwarded to them, either during the session, or in the recess. Papers in which any libellous matter is detected by the printing committee, are occasionally ordered to be printed "for the use of members only," and the distribution of these is confined to members, and delivered by the Vote-office alone. The papers ordered to be printed generally, are accessible to the public in the several "offices for the sale of parliamentary papers," established under the management of the printers of the house, and the control of the speaker. They are sold at a halfpenny per sheet, a price sufficient to raise them above the quality of waste paper; and moderate enough to secure the distribution of them to all persons who may be interested in their contents.[1]

[1] See Reports of Printed Papers Committee, 1835 (61. 392). 90 Com. J. 544.

Transmission by post.

To facilitate the distribution of parliamentary papers, they are entitled to be sent through the Post-office, to all places in the United Kingdom, at a rate of postage not exceeding 1*d.* for every four ounces in weight, whether prepaid or not, provided they be sent without a cover, or with a cover open at the sides, and without any writing or marks upon them.[1] The members of both houses are also entitled, during a session, to send, free of postage, all Acts of Parliament, bills, minutes, and votes, by writing their names upon covers provided for that purpose, in the proper offices.

Arrangement of parliamentary papers.

By these various regulations, the papers laid before Parliament are effectually published and distributed. In both houses they are systematically arranged in volumes, at the end of each session, with contents and indexes, to secure a uniform classification, and convenient reference. General indexes have also been published, by means of which the papers that have been printed during many years, may readily be discovered.[2] Each paper is distinguished by a sessional number at the foot of the page, by the date at which the order for printing is made, and by the name of the member who moved for it; except in cases where papers are presented by command of her Majesty, in a printed form.

Their statistical character.

The collected papers of the two houses contain an extraordinary amount of information, in all departments of legislative inquiry; in law, history, the privileges of Parliament, negotiations with foreign powers, and every variety of statistics. The statistical returns have been moved for at different times, for particular objects, and do not present so regular and complete a series as could be desired. Sometimes a return has been presented for several years in

[1] 3 & 4 Vict. c. 96.

[2] There are General Indexes to the Lords' Papers, from 1801 to 1859; and from 1859 to 1870; and in the Commons there are General Indexes, from 1801 to 1859; and from 1852 to 1869.

succession, when the series is interrupted, and commences again at a later period. At other times, the returns for succeeding years, though similar in object are not moved for or prepared in a uniform manner. One return, for example, is found to include the United Kingdom, while another extends to Great Britain only; one shows the gross, another the net revenue; one dates from the 1st January, another from the 5th April; one calculates the value of exports by the official rate of valuation, another by the declared or real value. By discrepancies of this nature, the statistical importance of parliamentary papers has been very much impaired.

Tables of revenue, &c.

To secure a more complete and uniform collection of statistics, the statistical department of the Board of Trade was established some years since. Accounts of the revenue, commerce, and navigation of the country are there collected from every department, and annually laid before Parliament. The tables prepared by this department have greatly improved the statistics of the last forty years; and other parliamentary papers have also been moved for, and prepared with considerable care.

Improvement of statistical returns.

The causes of imperfection in the statistical accounts have been: 1. The irregular manner in which they have been moved for, without any settled plan or principle; 2. The imperfect mode of preparing the orders; 3. The want of proper forms and instructions addressed to those who are to prepare the returns; 4. The absence of control and superintendence in editing the returns before they were printed. With a view to improve the character of parliamentary returns, a plan was proposed by the printing committee in 1841,[1] and has since been partly carried into effect; the gradual operation of which could not fail to be attended with benefit. The committee suggested:

1. "That every member be recommended, before he gives notice

[1] Parl. Paper, 1841 (181).

of a motion for a return, to consult the librarian of the House of Commons."

2. "That after the order for a return has been made by the house, the librarian do prepare, when necessary, a form, to be submitted to Mr. Speaker for his approval; and that such form shall be forwarded with the order in the usual manner."

3. "That before any return which has been presented to the house shall be ordered to be printed, it shall be inspected by the librarian, and approved by Mr. Speaker."

Orders for returns.

And these recommendations have since been repeated, by the printing committee, with a view to a reduction of the expense of printing.[1] By attending to the first of these suggestions, a member will generally obtain assistance in framing a motion for returns. Documents of a similar character can be consulted, and their merits or defects, in form and matter, will serve as guides to further investigation. The preparation of the order, also, frequently requires a practical acquaintance with the forms and character of parliamentary accounts, in order to secure the information desired.

Blank forms.

The object in preparing blank forms to accompany the orders of the house, is to ensure complete and uniform answers from the parties to whom they are addressed. An order of considerable length, and containing various queries, has often been forwarded to a great number of persons in all parts of the country. Each person is thus left to his own interpretation of the order, and is at liberty to return his answers in whatever form he pleases. When all the answers are afterwards collected, they are found to be so different both in form and matter, that they are almost useless for purposes of comparison, and cannot be reduced, with the greatest pains, into a consistent and uniform return. A blank form, with columns properly headed, interprets the order, and obtains the answers in such a shape, that, if properly given, they are ready for printing; and if not, any imperfection can be readily detected.

[1] Report, 17 March 1857 (122).

Abstracts.

When this precaution has been neglected, an attempt is still made by means of abstracts, to improve the form in which returns are originally presented. They are compressed into the best form of which they will admit, and when practicable, general results are deduced from them, in illustration of the purposes of the order.

CHAPTER XXI.

PROGRESSIVE INFLUENCE OF THE COMMONS IN GRANTING SUPPLIES, AND IMPOSING BURTHENS UPON THE PEOPLE. EXCLUSION OF THE LORDS FROM THE RIGHT OF AMENDING MONEY BILLS. CONSTITUTIONAL FUNCTIONS OF THE CROWN AND OF THE COMMONS, IN MATTERS OF SUPPLY. MODERN RULES AND PRACTICE IN VOTING MONEY, AND IMPOSING PECUNIARY BURTHENS. COMMITTEES OF SUPPLY AND WAYS AND MEANS.

Feudal origin of parlimentary taxation.

In England, as in many other countries of Europe, the origin of taxation may be referred to the feudal aids and services, due from the tenants of the Crown to their feudal superior. Before the growth of commerce, the royal revenue could only be derived from land; and after the Conquest the entire soil of England was placed under the feudal sovereignty of the Conqueror. The greater portion was held by military service, and the councils of William being composed of the tenant-in-chief of the Crown,[1] granted and confirmed, as a Parliament, the aids and services to which the king, as their feudal superior, was entitled. This connexion between feudal rights and legislative taxation is singularly illustrated by the charter of William the Conqueror,[2] which declared that all freehold tenants by military

[1] See *supra*, p. 17.

[2] Fœdera, 1. (Record comm. ed.)

service,[1] should "hold their lands and possessions free from all unjust exactions, and from all tallage,[2] so that nothing be exacted or taken from them except their free service, which had been given and conceded to him for ever, of hereditary right, by the common council of his realm." In the words of this charter, two remarkable points may be observed; first, that the claims of the Crown upon those classes who formed its councils were confined to feudal aids and services; and, secondly, that even these had been freely given by the common council of the realm, or Parliament.

At the same time, the Crown was entitled to other sources of revenue from classes who did not hold lands by military service, and who had no place in the national councils, either personally or by representation: but the various claims of the Crown gradually became less determined, and required repeated assessments: for which purpose the council or Parliament was convened; and by the Great Charter of King John, the archbishops, bishops, abbots, earls, greater barons, and all other tenants-in-chief of the Crown were to be summoned, with forty days' notice, to assess aids and scutages,[3] which the king bound himself not to impose otherwise than by the common council of his realm. The strictly feudal nature of these impositions was exemplified by the reservations which were made in favour of the king's right to aids for the ransom of his person, on making his eldest son a knight, and on the marriage of his eldest daughter: but the practice first noticed in this charter, of summoning the tenants-in-chief of the Crown through the sheriffs, and bailiffs, led to the principle of representation, as was shown in the first chapter of this work,[4] and had an important influence upon the revenue of future kings.

[1] "Liberi homines." See explanations of this term, Rep. on Dignity of the Peerage, p. 31.

[2] Tallage was raised upon the demesne lands of the Crown, upon the burghs and towns of the realm, and upon escheats and wardships. 1 Madox, Hist. of the Exchequer, 694.

[3] For a full explanation of the nature of these feudal sources of revenue, see Madox, chapters 15 and 16. See also *supra*, p. 18.

[4] *Supra*, p. 18 *et seq.*

Growth of the Commons' right of supply.

After the property in land had undergone many changes and subdivisions, and the commonalty had grown in numbers and wealth, the taxation became less feudal in its character. On the one hand, the tenants of the Crown had contrived to defraud their superior of many of his lawful dues; and, on the other, the kings had been improvident; and while their feudal revenues were diminished in amount, and confused in title, their necessities were continually increasing. The Commons, in the meantime, had assumed their place as an estate of the realm in Parliament, and represented wealthy communities. These changes are marked by the well-known statute, *De tallagio non concedendo,* in the 25th Edward I., by which it was declared, "That no tallage or aid shall be taken or levied without the goodwill and assent of the archbishops, bishops, earls, barons, *knights, burgesses, and other freemen of the land.*" The popular voice being thus admitted in matters of taxation, the laity were henceforth taxed by the votes of their representatives in Parliament. The lords spiritual and the lords temporal voted separate subsidies for themselves; and from the reign of Edward I. the clergy, as a body, granted subsidies, either as a national council of the clergy, in connection with the Parliament, or, at a later period, in convocation, until the surrender or disuse of their right in the reign of Charles II.[1]

[1] Edward I. inserted in every bishop's writ of summons a clause (called the præmunientes clause), commanding him to bring the dean or prior and chapter of his cathedral church, the archdeacons, and the clergy of his diocese, to Parliament; thus making the bishop, as it were, an ecclesiastical sheriff, to whom the king's general precept was directed. To this mandate the archbishop objected, as he assumed to himself the sole right of assembling the clergy; but a compromise was effected by the continuance of the præmunientes clause, whereby the clergy were summoned to Parliament, while the archbishops summoned the clergy of their respective provinces, to assemble at the same time as the Parliament. Hence the origin of convocations, and of their time of meeting. See the Parliamentary Original and Rights of the Lower House of Convocation, by Bishop Atterbury, p. 7, 4to. 1702. They are still summoned to meet at the same time as the Parliament, but from 1717 until within

Commons' right to originate grants.

At length, when the Commons had increased in political influence, and the subsidies voted by them had become the principal source of national revenue, they gradually assumed their present position in regard to taxation and supply, and included the Lords as well as themselves in their grants. So far back as 1407, it was stated by King Henry IV., in the ordinance called "The Indempnity of the Lords and Commons," that grants were "granted by the Commons, and assented to by the Lords." That this was not a new concession to the Commons is evident from the words that follow, viz. "That the reports of all grants agreed to by the Lords and Commons, should be made in manner and form as hath hitherto been accustomed; that is to say, by the mouth of the speaker of the House of Commons for the time being."[1]

Taxes by prerogative.

Concurrently with parliamentary taxation, other imposts were formerly levied by royal prerogative without the consent of Parliament, but none of these survived the Revolution of 1688.[2] Since that time the public revenue of the Crown has been dependent upon Parliament, and is derived either from annual grants for specific public services, or from payments already secured and appropriated by acts of Parliament, and which are commonly known as charges upon the consolidated fund.

Recognition of the exclusive right of the Commons.

In modern times, her Majesty's speech at the commencement of each session recognises the peculiar privilege of the Commons to grant all supplies: the preamble of every Act of Supply distinctly confirms it; and the form in which the royal assent is given, is a further confirmation of their right.

Legal effect of grants.

A grant from the Commons is not effectual, in law, without the ultimate assent of the Queen and of the House

the last few years, were not permitted to transact any business. But see Debates, 1852-53, on the Proceedings of Convocation; 123 Hans. Deb., 3rd Ser., 247. 277; 124 Ib. 978.

[1] 3 Rot. Parl. 611.

[2] Bill of Rights, Art. 4.

of Lords. It is the practice, however, to allow the issue of public money, the application of which has been sanctioned by the House of Commons, before it has been appropriated to specific services, by the Appropriation Act, which is reserved until the end of the session. This power is necessary for the public service, and faith is reposed in the authority of Parliament being ultimately obtained; but it is liable to be viewed with jealousy, if the ministers have not the confidence of Parliament.[1]

Effect given to grants of the Commons before the Appropriation Act.

In order to make the grants of the Commons available, and to anticipate the legal sanction of an Appropriation Act, the Exchequer and Audit Departments Act, 1866, provides for the issue of monies, from time to time, to meet the grants of the Commons; and clauses are inserted in the acts passed at an early period of every session, for the application of money out of the consolidated fund, which

[1] This was shown on a remarkable occasion, not by those branches of the legislature whose authority would be most slighted by an appropriation of money without their assent: but by the Commons themselves, who protested against the principle of giving too much validity to their own votes. In 1784, when Mr. Pitt was in a minority in the House of Commons, and it was well known that he was only waiting for the supplies in order to dissolve the Parliament, the house resolved, "That for any person or persons in his Majesty's Treasury, or in the Exchequer, or in the Bank of England, or for any person or persons whatsoever employed in the payment of public money, to pay, or direct or cause to be paid, any sum or sums of money, for or towards the support of services voted in the present session of Parliament, after the Parliament shall have been prorogued or dissolved, if it shall be prorogued or dissolved before any Act of Parliament shall have passed appropriating the supplies to such services, will be a high crime and misdemeanour, a daring breach of a public trust, derogatory to the fundamental privileges of Parliament, and subversive of the constitution of this country." 39 Com. J. 858. These supplies were re-voted in the next session, and included in the Appropriation Act, 24 Geo. III., sess. ii., c. 44.

On the death of George III., in 1820, the Commons, in anticipation of a dissolution, voted certain temporary supplies which were not appropriated by Act of Parliament, in that session. Objections were raised to these votes in the House of Lords, as infringing upon the right of that house to assent to the grant of supplies, and they agreed to a resolution "that this house, from the state of public business, acquiesce in these resolutions, although no act may be passed to give them effect." 41 Hans. Deb. 1631-1635.

authorise the bank to advance, on the application of the treasury, the sums required for the public service in respect of any services voted by the Commons in the same session.[1] This convenient arrangement has now taken the place of that formerly adopted for applying to those services the sums raised by exchequer bills.[2] By these enactments, immediate effect is given to the votes of the Commons: but there is still an irregularity in proroguing or dissolving Parliament before an Appropriation Act has been passed: since, by such an event, all the votes of the Commons are rendered void, and the sums require to be voted again in the next session, before a legal appropriation can be effected.[3]

Duties altered after votes of the Commons.

In the imposition and alteration of taxes, the effect given to a vote of the Commons, in anticipation of the passing of a statute, is more remarkable than in the voting of supplies. It has been customary for the government to levy the new duties, instead of the duties authorised by law, immediately the resolutions for that purpose have been reported from a committee, and agreed to by the house;[4] or from the date expressed in such resolution,[5] although legal effect cannot

[1] 24 & 25 Vict. c. 39, ss. 13–15; 30 Vict. c. 7.

[2] See 21 Vict. c. 6; 30 Vict. c. 4; and see *infra*, p. 597.

[3] Parliament was dissolved in April 1831, before any Appropriation Act had been passed. The new Parliament met on the 14th June, and all the grants were re-voted in the committee of supply. Before the dissolution of 1841, the supplies for six months were regularly appropriated; and prior to the dissolutions of 1857 and 1859, votes were taken on account, and appropriated.

[4] Customs Duties, 1842; Indian Corn, 1846; Sugar Duties, 1845 and 1848. In the latter instance the committee had resolved that the new duties should commence on the 5th July: but as the resolution was not reported until the 11th, it was amended on the report by substituting 10th July. Alterations were afterwards made in the scale of duties sanctioned by that resolution. Scotch and Irish Spirits, and Malt, 8th May 1854. Molasses having been omitted from the resolution of the 8th, it was proposed, on the 10th, to supply the omission by a retrospective resolution, dating the increase of duty from the 9th May: but this course being objected to was not pressed, although the revenue officers had received instructions to collect the increased duty. 132 Hans. Deb., 3rd Series, 1486; 133 Ib. 119.

[5] Excise Duty on Spirits, and Customs Duties, 19th April 1858; 113

be given to them by statute, for some weeks, and may ultimately be withheld by Parliament. It is obvious that this custom is not strictly legal: but the ultimate decision of Parliament is anticipated by the executive government, upon its own responsibility. If the house have resolved that a duty shall be reduced on and after a particular day, a treasury order is issued, by which the officers for the collection of the revenue are directed to collect the reduced duty, from the time stated in the resolution: but before they permit the articles to be entered for consumption, they take a bond from the owners or importers, by which the latter bind themselves to pay the higher rate of duty, in case Parliament should not, eventually, sanction the reduction.[1] If, on the other hand, a duty has been increased by a resolution of the house, the revenue officers demand the increased duty, by virtue of a treasury order, and will not permit the articles to be entered for consumption until it has been paid, or security given for its payment. For these official acts there is no legal authority at the time: but when the Act is subsequently passed, it alters the duty from the day named in the resolution of the Commons, however long a time may have since elapsed; and thus the duties which have been already collected since that day, become, *ex post facto*, the duties authorised by law.[2]

Exclusion of the Lords from altering supply bills.

The legal right of the Commons to originate grants cannot be more distinctly recognised than by these various proceedings; and to this right alone their claim appears to have been confined for nearly 300 years. The Lords were not originally precluded from amending bills of supply; for there are numerous cases, in the Journals, in which Lords' amendments to such bills were agreed to: but in 1671, the Commons advanced their claim somewhat further, by re-

Com. J. 125. Chicory, 15th April 1861; 116 Com. J. 144. Tea and Sugar Duties, 24th April 1863. Sugar Duties, 15th April 1864; 119 Com. J. 170.

[1] 84 Hans. Deb., 3rd Series, 783.

[2] 90 Ib. 1314 (Sugar Duties).

solving, *nem. con.*, "That in all aids given to the king by the Commons, the rate or tax ought not to be altered;"[1] and in 1678, their claim was urged so far as to exclude the Lords from all power of amending bills of supply. On the 3rd of July, in that year, they resolved,—

"That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants: which ought not to be changed or altered by the House of Lords."[2]

It is upon this latter resolution that all proceedings between the two houses in matters of supply are now founded. The principle is acquiesced in by the Lords, and, except in cases where it is difficult to determine whether a matter be strictly one of supply or not, no serious difference can well arise. The Lords rarely attempt to make any but verbal alterations, in which the sense or intention is not affected; and even in regard to these, when the Commons have accepted them, they have made special entries in their Journal, recording the character and object of the amendments, and their reasons for agreeing to them.[3] So strictly is the principle observed in all matters affecting the public revenues, that where certain payments have been directed, by a bill, to be made into and out of the consolidated fund, the Commons have refused to permit the Lords to insert a clause, providing that such payments should be made under the same regulations as were applicable by law to other similar payments.[4]

Rates and charges not to be altered by the Lords.

In bills not confined to matters of aid or taxation, but in which pecuniary burthens are imposed upon the people, the Lords may make any amendments, provided they do not alter the intention of the Commons with regard to the

[1] 9 Com. J. 235.
[2] Ib. 509.
[3] 75 Ib. 251. 471; 81 Ib. 388; 92 Ib. 659; 122 Ib. 456.
[4] Naval Prize Balance bill, 1850; 105 Com. J. 518.

amount of the rate or charge, whether by increase or reduction; its duration, its mode of assessment, levy, collection, appropriation, or management; or the persons who shall pay, receive, manage, or control it;[1] or the limits within which it is proposed to be levied. As illustrative of the strictness of this exclusion, it may be mentioned that the Lords have not been permitted to make provision for the payment of salaries or compensation to officers of the Court of Chancery, out of the Suitors' Fund;[2] nor to amend a clause prescribing the order in which charges on the revenues of a colony should be paid.[3] But all bills of this class must originate in the Commons; as that house will not agree to any provisions which impose a charge of any description upon the people, if sent down from the Lords, but will order the bills containing them to be laid aside.[4] Neither will they permit the Lords to insert any provisions of that nature in bills sent up from the Commons: but will disagree to the amendments, and insist in their disagreement,[5] or, according to more recent usage, will lay the bills aside at once.[6] In cases where amendments have affected charges upon the people incidentally only, and have not been made with that object, they have been agreed to.[7] So also where a whole clause, or series of clauses, has been

[1] Baths and Washhouses bill, 1846; 101 Com. J. 1234.

[2] 53 Geo. III. c. 24. Administration of Justice bill, 1841. Master in Chancery bill, 1847; a clause to this effect was struck out on third reading, in the Lords.

[3] Canada Government bill, 1840; amendment withdrawn on third reading in the Lords.

[4] See special entry, 24th July 1661, on laying aside the Westminster Paving bill; 8 Com. J. 311. Deodands Abolition bill, 1846; 101 Com. J. 724. 1234. Railway Audit bill, 1850; 105 Ib. 458. Metropolis Local Management bill, 1855; 110 Ib. 458. Parochial Schoolmasters (Scotland) bill. 1857; 112 Ib. 404.

[5] Forfeited Estates (Ireland) bill, 1700; 13 Com. J. 318; 3 Hatsell, *App.* No. 12; 105 Com. J. 518.

[6] See *supra*, pp. 466. 525.

[7] 3 Hatsell, 155. Prisoners' Removal bill, 1849, in which the Lords made the bill perpetual, instead of being in force for three years. In the Industrial Schools bill, 1861, the Lords struck out a limitation of the act, and thereby extended the charge: but the Commons agreed to the amendment.

omitted by the Lords, which, though relating to a charge, and not admitting of amendment, yet concerned a subject separable from the general objects of the bill.[1] On the 30th July 1867, it was very clearly put, by Earl Grey and Viscount Eversley, that the right of the Lords to omit a clause which they were unable to amend, relating to a separate subject, was equivalent to their right to reject a bill which they could not amend without an infraction of the privileges of the Commons.[2]

Expedients to enable Lords to originate bills.

It is sometimes convenient that a bill, intended to contain provisions of this character, should be first introduced into the House of Lords; in which case, the bill is presented and printed, with all the necessary provisions for giving full effect to its object, and is considered and discussed in the House of Lords in that form. But on the third reading, any provisions which infringe upon the privileges of the Commons are struck out, and the bill having been drawn so as to be intelligible after their omission, is sent to the Commons without them. These provisions, however, are printed by the Commons in red ink, with a note that they "are proposed to be inserted in committee." According to the usual rule, they are supposed to be in blank: they form

[1] Coroners bill, 1844. District Lunatic Asylums (Irelend) bill, 1846. Courts of Common Law bill, 1853 (stamp duty in schedule). Turnpike Trusts Arrangements bill, 1856 (clauses relating to insolvent trusts). Poor Relief (Ireland) bill, 1860. Prisons (Scotland) bill, 1861 (schedule). —In this case the bill constituted prison boards, having taxing powers, and in the schedule appointed the numbers of each board, and the districts by which they were to be returned. The Lords desired to alter the constitution of the Edinburgh and Forfar boards, but being unable to make such amendments, they wholly omitted Edinburgh and Forfar from the schedule, and the Commons made amendments which met the views of the Lords. Metropolis Local Management Act Amendment bill, 1862 (clause altering qualification of vestrymen). Corrupt Practices at Elections bill, 1863 (clause 11, charging costs of commissions upon local rates). Drainage (Ireland) bill, 1863, Part I., omitted, which comprised many provisions which the Lords could not have amended. Inclosure (No. 2) bill, 1867. The Lords omitted Elsdon, Rochester, Northumberland.

[2] Parliamentary Representation bill (cl. 7); 189 Hans. Deb., 3rd Ser., 411.

no part of the bill received formally from the House of Lords, and no privilege is violated: but the Commons are thus put in possession of a bill containing every provision which will be necessary for giving it full effect; and in committee the words printed in red ink, if approved of, are inserted.[1]

In 1846, the Lords extended the Contagious Diseases bill to Scotland and Ireland, but as there were rating clauses, they inserted a clause, providing that such rating powers should not be so extended. To this clause the Commons disagreed, the Lords did not insist upon their amendment, and thus the whole bill was extended to Scotland and Ireland. In 1854, an ingenious expedient was resorted to, in order to enable the Lords to commence the bill for the continuance of the Crime and Outrage (Ireland) Act. As some of the sections of that act authorised charges upon the county cess and the consolidated fund, the bill as passed by the Lords continued the act with the exception of these sections; and this exception was omitted by the Commons, and thus the entire act was continued.

Monies to be provided by Parliament.

For some years, the Commons accepted provisions in bills from the Lords, creating charges,—not directly imposed by the bill,—but to be defrayed out of monies to be provided by Parliament: but exception being taken to such a provision in the Divorce Court bill, on the 23rd August 1860, the speaker stated that the practice appeared to him to be open to serious objections; and that he had already intimated that any such provisions would hereafter be objected to by himself, on behalf of the house. Such intimation, he added, had already been attended to in other cases by the Lords. Under these circumstances the privilege was not insisted upon: but all such provisions have since been

[1] Good examples of this practice are afforded by the Burial Grounds bill, in 1853; the Police (Scotland) bill, in 1857; the Probates, &c., Act Amendment bill, in 1858; the Cayman Islands Government bill, 1863; British North America bill, 1867; and Supreme Court of Judicature bill, 1873.

printed in red ink, before the bills are sent to the Commons.[1]

When any amendments of the Lords, though not strictly regular, do not appear materially to infringe the privileges of the Commons, it has been usual to agree to them with special entries in the Journal; as, that "they were only for the purpose of making the dates uniform in the bill;"[2] that "they only filled up blanks which had not been filled, with the sums which were agreed to by the house, on the report of a clause;"[3] that "they were for the purpose of rectifying clerical errors;"[4] or were merely verbal;[5] "were in furtherance of the intention of the House of Commons;"[6] "were to make the schedule agree with the bill;"[7] "to render one clause consistent with another;"[8] "were rendered necessary by several acts recently passed;"[9] or, "were in furtherance of the practice of Parliament."[10] In 1857, an amendment to the Valuation of Lands (Scotland) bill was agreed to, "it appearing that the same relates to the evidence admissible in certain cases, and does not alter or otherwise affect any valuation or assessment."[11] Lords' amendments when agreed to.

In regard to private bills, however, the Commons agreed, in 1858, to an important relaxation of their privileges; and will accept "any clauses sent down from the House of Lords which refer to tolls and charges for services performed, and which are not in the nature of a tax."[12] Tolls and charges in private bills.

So strictly had the right of the Commons been maintained in regard to the imposition of charges upon the people, that they denied to the Lords the power of authorising the taking of fees,[13] and imposing pecuniary penalties, or of Pecuniary penalties and fees.

[1] 115 Com. J. 500; 158 Hans. Deb., 3rd Ser., 1628. 1734. Mr. Speaker's Note-book.
[2] 80 Com. J. 579.
[3] Ib. 631.
[4] 75 Ib. 251; 79 Ib. 524; 86 Ib. 684; 112 Ib. 393.
[5] 122 Ib. 426.
[6] 92 Ib. 518; 112 Ib. 389; 116 Ib. 205; 120 Ib. 449; 122 Ib. 456.
[7] 107 Ib. 236.
[8] Ib. 302; 114 Ib. 181.
[9] 92 Com. J. 659; 112 Ib. 389.
[10] 90 Ib. 375; 91 Ib. 823.
[11] 112 Ib. 418.
[12] 27th July 1858.
[13] 8th March 1692; 10 Com. J. 845.

varying the mode of suing for them, or of applying them when recovered; though such provisions were necessary to give effect to the general enactments of a bill."[1] A too strict enforcement of this rule, in regard to penalties, was found to be attended with unnecessary inconvenience; and, in 1831, the Commons judiciously relaxed it;[2] and again, in 1849, they introduced a further amendment of their rules, by the adoption of the following standing orders:

"That with respect to any bill brought to this house from the House of Lords, or returned by the House of Lords to this house, with amendments, whereby any pecuniary penalty, forfeiture, or fee, shall be authorised, imposed, appropriated, regulated, varied, or extinguished, this house will not insist on its ancient and undoubted privileges, in the following cases:

"1. When the object of such pecuniary penalty or forfeiture is to secure the execution of the Act, or the punishment or prevention of offences;

"2. Where such fees are imposed in respect of benefit taken, or service rendered, under the Act, and in order to the execution of the Act, and are not made payable into the treasury or exchequer, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same, either in respect of deficit or surplus;

"3. When such bill shall be a private bill for a local or personal Act."[3]

And, in conformity with these more recent rules, numerous provisions have been accepted from the Lords, which, under the former usage of Parliament, would have been inadmissible.[4]

Financial inquiries by the Lords.

The principle of excluding the Lords from interference has even been pressed so far by the Commons, that when the Lords have sent messages for reports and papers relative to taxation, the Commons have evaded sending them; and it has been doubted whether members should be allowed to be examined before a committee of the House of Lords upon matters involving taxation, although

[1] See *supra*, p. 466.
[2] 86 Com. J. 477.
[3] 104 Ib. 23.
[4] Court of Chancery (Duchy of Lancaster) bill, 1850. Burial Service bill, 1846 (burial fees). Sunday Trading bill, 1860; 159 Hans. Deb., 3rd Ser., 539.

in practice they have been allowed to attend.[1] But of late years, this punctilious respect for privilege has not been so jealously asserted.[2]

Tacks to bills of supply.

The constitutional power of the Commons to grant supplies, without any interference on the part of the Lords, has occasionally been abused by tacking to bills of supply enactments which, in another bill would have been rejected by the Lords: but which, being contained in a bill that their lordships had no right to amend, must either have been suffered to pass unnoticed, or have caused the rejection of a measure highly necessary for the public service. Such a proceeding invades the privileges of the Lords, no less than the interference of their lordships in matters of supply infringes the privileges of the Commons, and has been resisted by protest, by conference, and by the rejection of the bills.[3]

On the 9th December 1702, it was ordered and declared by the Lords,

"That the annexing any clause or clauses to a bill of aid or supply, the matter of which is foreign to, and different from, the matter of the said bill of aid or supply, is unparliamentary, and tends to the destruction of the constitution of this government."[4]

There have been no recent occasions on which clauses have been irregularly tacked to bills of supply, in order to extort the consent of the Lords: but, so lately as 1807, the above standing order was read in the Lords, and a bill for abolishing fees in the Irish customs, rejected on the third reading. In that case the clause had been inadvertently allowed to form part of the bill, and it is extremely doubtful whether it was a tack within the intention of the standing order; as the bill was not one of supply for the

[1] Burthens on land inquiry, 1846; Local taxation inquiry, 1850; Civil service superannuation, 1856; 111 Com. J. 380; and see 2 Lord Colchester's Diary, 152.

[2] On the 24th May 1867, the report on Metropolis local taxation was communicated to the Lords.

[3] 16 Lords' J. 369. 13 Com. J. 320.

[4] 17 Lords' J. 185. Lords' S. O. No. 36.

current year, and the clause was not irrelevant to the other enactments of the bill.[1] And in the same year the Lords rejected the Malt Duties bill, "on account of its containing multifarious matter:" upon which the Commons passed another bill, omitting some of the matters contained in the former bill.[2]

Rejection of money bills by the Lords.

The functions of the House of Lords, in matters of supply and taxation, being thus reduced to a simple assent or negative, it becomes necessary to examine how far the latter power may be exercised, without invading the privileges of the Commons. The legal right of the Lords, as a co-ordinate branch of the legislature, to withhold their assent from any bill whatever to which their concurrence is desired, is unquestionable; and, in former times, their power of rejecting a money bill had been expressly acknowledged by the Commons:[3] but the Lords had for centuries forborne to exercise this power. They had, indeed, rejected numerous bills concerning questions of public policy, in which taxation was incidentally involved:[4] but bills exclusively relating to matters of supply and ways and means they had hitherto agreed to respect. At length, however, in 1860, the Commons determined to balance the ways and means for the service of the year, by increasing the property tax and stamp duties, and repealing the duties on paper. The increased taxation had already received the assent of Parliament, when the Lords rejected the Paper Duties Repeal bill, and thus overruled the financial arrangements voted by the Commons. That house was naturally sensitive to this novel encroachment upon its peculiar privileges; but as the Lords had exercised a legal right, and their vote was irrevocable during that session, it was judiciously resolved, after full inquiry and consideration, to maintain the privileges of the house, not by vain remonstrances, but by an

[1] 46 Lords' J. 342.

[2] 62 Com. J. 61; and 46 Lords' J. 32; 8 Hans. Deb., 1st Ser., 427.

[3] 3 Hatsell, 405. 422. 423; 2 May's Const. Hist. (4th edit.), 105.

[4] See report on Tax bills, 1860.

assertion of its paramount authority in the imposition and repeal of taxes, at once dignified and practical. Accordingly, on the 6th July resolutions were agreed to, affirming,

"1st. That the right of granting aids and supplies to the Crown is in the Commons alone." 2nd. That the power of the Lords to reject bills relating to taxation "was justly regarded by this house with peculiar jealousy, as affecting the right of the Commons to grant the supplies, and to provide the ways and means for the service of the year:" and 3rd. "That to guard, for the future, against an undue exercise of that power by the Lords, and to secure to the Commons their rightful control over taxation and supply, this house has in its own hands the power so to impose and remit taxes, and to frame bills of supply, that the right of the Commons as to the matter, manner, measure, and time may be maintained inviolate."[1]

The significance of these resolutions was illustrated in the next session, when the Commons, without exceeding their own powers, were able to repel the recent encroachment of the Lords, and to vindicate their own financial ascendency. They again resolved that the paper duties should be repealed: but instead of seeking the concurrence of the Lords to a separate bill, for that purpose, they included the repeal of those duties in a general financial measure, for granting the property tax, the tea and sugar duties, and other ways and means, for the service of the year, which the Lords were constrained to accept.[2] The financial scheme was presented, for acceptance or rejection, as a whole; and, in that form, the privileges of the Commons were secure. And the budget of each year has since been comprised in a general or composite act.

Composite tax acts.

Nor was there anything novel or unprecedented in this proceeding. In 1787, Mr. Pitt's entire budget was comprised in a single bill,[3] and during the French war, great varieties of taxes were imposed, and continued in the same acts.[4] For several years after the peace, the duties on

[1] Report on Tax bills, 1860; 115 Com. J. 360; 159 Hans. Deb., 3rd Ser., 1383. 2 May's Const. Hist. (4th edit.), 108.

[2] 24 & 25 Vict. c. 20; 162 Hans. Deb., 3rd Ser., 594; 163 Ib. 69, &c.

[3] 27 Geo. III., c. 13.

[4] 35 Geo. III., c. 1; 36 Geo. III., c. 1; 39 & 40 Geo. III., c. 3; 48 Geo. III., c. 2.

malt, sugar, tobacco, foreign spirits, pensions and personal estates, were continued annually in a single act, until these duties were gradually made permanent.[1]

Constitutional principle of supply.

Let us now proceed to consider the constitutional principle by which other branches of the legislature are governed. The Crown, acting with the advice of its responsible ministers, being the executive power, is charged with the management of all the revenues of the state, and with all payments for the public service. The Crown, therefore, in the first instance, makes known to the Commons the pecuniary necessities of the government, and the Commons grant such aids or supplies as are required to satisfy these demands; and provide by taxes, and by the appropriation of other sources of the public income, the ways and means to meet the supplies which are granted by them. Thus the Crown demands money, the Commons grant it, and the Lords assent to the grant: but the Commons do not vote money unless it be required by the Crown; nor impose or augment taxes, unless they be necessary for meeting the supplies which they have voted, or are about to vote, and for supplying general deficiencies in the revenue. The Crown has no concern in the nature or distribution of the taxes: but the foundation of all parliamentary taxation is its necessity for the public service, as declared by the Crown through its constitutional advisers.

Militia estimates.

Until 1863, however, there was a remarkable exception to this constitutional rule in the case of the charge for the disembodied militia. The Commons there took the initiative: the estimate was prepared by a committee; and when its report was received, it was referred to the committee of supply, and the Queen's recommendation was signified. But inconveniences having arisen from this separation of the estimates for military expenditure, and from divided responsibility in the preparation of them, the

[1] The duty on malt was made perpetual in 1822, on tobacco in 1826, on offices and pensions in 1836, and on sugar in 1846.

house agreed, on the 9th February 1863, that this practice should be discontinued; and that, in future, the militia estimates, like all other estimates for the public service, should be prepared on the responsibility of ministers of the Crown.[1]

Recommendation of the Crown.

The principle of waiting for the suggestion and authority of the Crown for the voting of public money, is not confined to the annual grants. By a standing order, 20th March 1866,[2] "this house will receive no petition for any sum relating to public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the consolidated fund, or out of monies to be provided by Parliament, but what is recommended from the Crown." And this rule is extended, by the uniform practice of the house, to any motion which, though not directly proposing a grant, or charge upon the public revenue, involves the expenditure of public money. When a petition praying for compensation, or other pecuniary aid, is duly recommended, it is either referred to a committee of inquiry,[3] or directly to the committee of supply.[4] By a standing order of the 21st July 1856, "this house will not receive any petition, or proceed upon any motion for a charge upon the revenues of India, but what is recommended by the Crown."

Revenues of India.

Reports recommended by the Crown.

So strictly has this principle been enforced, that the house has even refused to receive a report from a select committee, suggesting an advance of money, because it had not been recommended by the Crown. On the 15th June 1837, notice was taken that a report on the petition of Messrs. Fourdrinier "contained a recommendation for public compensation for losses incurred by the patentees, and that the same has not been recommended by the

[1] 169 Hans. Deb., 3rd Ser., 198.

[2] Being an amendment of the orders of the 11th December 1706, and 25th June 1852.

[3] Captain Manby, 1823; 78 Com. J. 261. 285. Mr. McAdam, 1825; 80 Ib. 309.

[4] Mr. Burgess, 1822; 77 Ib. 448.

Crown:"[1] and the report was recommitted in order to remove this informality. Such an objection to a report was, apparently, premature, as no motion had been founded upon it, and none could have been made unless recommended by the Crown: but it proceeded upon the same principle as that observed in regard to petitions, and is a good example of the strictness with which the rule is enforced. In several similar cases, committees have escaped from an infringement of the rule, by a more guarded phraseology.

Petitions for compounding Crown debts.

On the same principle, of imposing checks upon solicitations for money, and moderating the liberality of Parliament, there is a standing order, 25th March 1715,

"That this house will not receive any petition for compounding any sum of money owing to the Crown upon any branch of the revenue, without a certificate from the proper officer or officers annexed to the said petition, stating the debt, what prosecutions have been made for the recovery of such debt, and setting forth how much the petitioner and his security are able to satisfy thereof."[2]

Motions for grants.

In addition to the necessity of a recommendation from the Crown, prior to a vote of money, the house has interposed another obstacle to hasty and inconsiderate votes, which involve any public expenditure.

By standing order, 20th March 1866,[3]

"If any motion be made in the house for any aid, grant, or charge upon the public revenue, whether payable out of the consolidated fund, or out of monies to be provided by Parliament, or for any charge upon the people, the consideration and debate thereof shall not be presently entered upon, but shall be adjourned till such further day as the house shall think fit to appoint; and then it shall be referred to a committee of the whole house, before any resolution or vote of the house do pass therein."

A similar rule was made a standing order on the 29th March 1707, viz.,

"That this house will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a committee of the whole house."[4]

[1] 92 Com. J. 478.

[2] 18 Ib. 23.

[3] Being an amendment of the resolution 18th February 1667, and the standing order, 25th June 1852.

[4] 15 Com. J. 367.

This order was renewed 14th April 1707, 7th February 1708, and 29th November 1710, and is constantly observed in the proceedings of the house.[1]

East India revenues.

The territories of the East India Company having been transferred to the Crown, by statute, in 1858; and it being proposed, in the following year, to raise a loan of 7,000,000 *l.*, chargeable upon the revenues of India, it was held, after much consideration, that the Queen's recommendation should be signified, and the bill founded upon the resolution of a committee of the whole house.[2] By the Government of India Act, 1858, the revenues of India not being applicable to expeditions beyond the frontiers, without the consent of both Houses of Parliament,[3] it was proposed, in 1867, to employ Indian troops in the Abyssinian war, and to continue the charge of their ordinary pay upon the Indian revenues. Under these circumstances, it was determined, on full consideration, that the resolution approving this charge should be voted in committee.[4]

Abstract resolutions.

But the rules applicable to grants of money, and motions for increasing the burthens upon the people, do not apply to resolutions expressive of any abstract opinion of the house upon such matters.[5] Such resolutions have been allowed upon the principle, that not being offered in a form in which a vote of the house for granting money, or imposing a burthen, can be regularly agreed to, they are barren of results, and are, therefore, to be regarded in the same light as any other abstract resolutions. But, for that

[1] 15 Com. J. 386; 16 Ib. 94. 405.

[2] 114 Ib. 55; and again in 1860; 115 Ib. 455; Military Orphan Fund, 1866; 121 Ib. 156.

[3] 21 & 22 Vict. c. 106, s. 55.

[4] 28th Nov. 1867; Votes, p. 33.

[5] Prince of Wales, 24th May 1787. National monuments and works of art, 16th April 1844. Emigration of young persons, 6th June 1848. Danish claims, 9th June 1841, 26th June 1851. Scotch inspectors and surveyors of taxes, 23rd June 1857. River Thames (amendment on going into committee of supply), 9th July 1858. National defences (Mr. Horsman), 29th July 1859. Recreation grounds, 15th May 1860. Harbours of refuge, 6th May 1862. Sailors' Homes, 24th April 1863. County Court Judges (salaries), 29th June 1869.

very reason, they are objectionable; and being also an evasion of wholesome rules, they are discouraged as much as possible.

Packet and telegraphic contracts.

As a check upon corrupt or improvident contracts, it is provided by standing orders, that in every contract for packet and telegraphic services, beyond sea, a condition should be inserted that the contract shall not be binding until it has been approved of by a resolution of the house. Every such contract is to be forthwith laid upon the table, if Parliament be sitting, or otherwise within fourteen days after it assembles, with a copy of a Treasury minute setting forth the grounds upon which the contract was authorised.[1] No such contract is to be confirmed, nor power given to the Government to enter into agreements, by which obligations at the public charge are undertaken, by any private act.[2] All such contracts are, accordingly, approved by resolutions of the house.[3]

In compliance with these several rules,—for receiving recommendations from the Crown for the grant of money, —for deferring the consideration of motions for grants of money until another day, and for referring them to a committee of the whole house,—the proceedings of Parliament, in the annual grants of money for the public service, are conducted in the following manner.

Royal speech.

On the opening of Parliament, the Queen, in her speech from the throne, addresses the Commons; demands the annual provision for the public service; and acquaints them that she has directed the estimates to be laid before them.

Committee of supply.

Directly the house has agreed to the address in answer to the Queen's speech, the committee of supply is at once

[1] On the 16th June 1873, in the case of the Cape of Good Hope and Zanzibar mail contract, notice being taken that a Treasury letter had been presented instead of a Treasury minute, the order for resuming the adjourned debate on the contract was discharged; and amended papers were presented.

[2] Standing orders, 13th July 1869.

[3] 125 Com. J. 267. 414, &c.

appointed for a future day, by virtue of a standing order of the 28th July 1870.[1] As it is the duty of this committee to consider the estimates for the current year, the next business of the house is to order the estimates for the army and navy to be laid before it, and to address her Majesty to give directions to the proper officers for that purpose.

Estimates, when presented.

In order that the house may be informed, as early as possible, of the expenditure for which it will have to provide, the following resolution was agreed to, 19th February 1821 :—

"That this house considers it essentially useful to the exact performance of its duties, as guardians of the public purse, that during the continuance of the peace, whenever Parliament shall be assembled before Christmas, the estimates for the navy, army, and ordnance departments should be presented before the 15th day of January then next following, if Parliament be then sitting; and that such estimates should be presented within ten days after the opening of the committee of supply, when Parliament shall not be assembled till after Christmas."[2]

This resolution was not made a standing order; but its directions have been uniformly observed, as far as possible, by the several departments. The estimates for civil services, commonly known as the miscellaneous estimates, and for the revenue departments, are also presented, not much later, by command of her Majesty.

Annual grants described.

Before the proceedings of the committee of supply are entered upon, it should be understood that a large proportion of the annual expenditure consists of payments out of the consolidated fund, secured by various acts of Parliament. For these charges the Commons had provided, in the first instance, before the passing of the acts by which they are secured: but such payments no longer require the annual sanction of Parliament, as permanent statutes now authorise

[1] By this standing order the former preliminaries were discontinued. See 6th edition, 551.

[2] 76 Com. J. 87.

the application of the public income to the discharge of its legal liabilities. But for the expenditure not secured by statute, the Commons provide, annually, by specific grants, which authorise the payment of distinct sums of money, for particular services, as explained by estimates laid before them, upon the responsibility of the ministers of the Crown.

Committee of supply.

When these estimates have been presented, printed, and circulated amongst the members, the sittings of the committee of supply begin. The estimates and any accounts which are necessary to guide the committee are referred; and occasionally treaties and other State papers.[1] In the case of the army and navy estimates, the member of the administration representing the department first explains to the committee such matters as may satisfy them of the general correctness and propriety of the estimates,[2] and then proceeds to propose each grant in succession; which is put from the chair in these words, "That a sum not exceeding £. —— be granted to her Majesty," for the object specified in the estimate.

Chairman of committees of supply and ways and means.

At the beginning of a new Parliament the first business of the committee of supply is to elect a chairman, who, when chosen, continues to preside over that committee for the remainder of the Parliament.[3] If any difference should arise in his election, the speaker resumes the chair, and the house determines what member shall take the chair of the committee, as in the case of other committees of the whole house.[4] This official chairman, who is designated the chairman of the committee of ways and means, also presides over the committee of ways and means, and other committees of the whole house; and executes various duties in con-

[1] 63 Com. J. 429; 68 Ib. 402; 73 Ib. 49; 74 Ib. 577.

[2] In some cases this practice has led to inconvenient discursiveness in debate; See 145 Hans. Deb., 3rd Ser., 1689.

[3] His salary has been voted since 1800, at first by address, and afterwards in the annual estimates. He had previously been paid out of the Civil List; 55 Com. J. 790; 8 Hans. Deb. 231. See also Report on the Office of Speaker, 1853.

[4] See *supra*, p. 380.

nexion with private bills, which will be described in the proper place,[1]

Committee of ways and means.

When the first report of the committee of supply has been received by the house, and agreed to, a day is appointed for the house to resolve itself into a committee "to consider of ways and means for raising the supply granted to her Majesty;" or, as it is briefly denominated, "the committee of ways and means." The house will not appoint this committee, until it has voted a sum of money, as the foundation of its future proceedings; nor is the committee subsequently permitted to vote ways and means, in excess of the expenditure voted by the committee of supply. Thus, on the 16th March 1858, when the committee of ways and means stood the first order of the day, and it was proposed to vote amounts equal to the supplies granted on a previous day, as well as to other votes agreed to in the committee of supply, and about to be reported, the order of the day was postponed until after the report of supply, which was the next order; and when the resolutions of the committee of supply had been agreed to, the ways and means were voted to the extent of all the supplies previously granted. But in 1845, and again in 1855, at the end of the session, a deviation from this rule was permitted, and a vote of ways and means taken, in excess of the supplies reported from the committee of supply. The last vote in the committee of ways and means, at the end of the session, is for a sum out of the consolidated fund which balances the several sums previously voted in the committee of supply.

Mutiny bills.

When the committee of supply has determined the number of men who shall be maintained, during the year, for the army and for the sea service respectively, and these resolutions have been agreed to by the house, the Mutiny bill, and the Marine Mutiny bill, are immediately ordered to be brought in.[2] The former provides for the discipline

[1] See Book III., Chapter XXVI.

[2] In 1832 an act was passed continuing the Mutiny Act, which expired on the 31st March, to the 25th

of the troops, and the latter for the regulation and discipline of the royal marines while on shore, and subjects them to martial law. The discipline of the seamen, and of the royal marines while afloat, is secured by permanent statutes.[1] By passing the annual Mutiny Acts in this manner, the Commons have reserved to themselves the power of determining, not only the number of men and the sums which shall be appropriated, in each year, to their support: but whether there shall be any standing army at all. Without their annual sanction the maintenance of a standing army, in time of peace, would be illegal; and the army and marines on shore would be released from all martial discipline and subordination.[2] This usage affords an additional security for the annual meeting of Parliament, which is otherwise ensured by the system of providing money for the public service, by annual grants.[3]

Sit on Monday, Wednesday, and Friday.

By a custom nearly as ancient as the committees of supply and ways and means themselves,[4] these committees have been appointed to sit every Monday, Wednesday, and Friday; and until recently were not permitted to sit on any other days: but in 1852, they were also allowed to be appointed for any other day on which orders of the day had precedence;[5] and, by a standing order of the 3rd May 1861, they may now be appointed for any day on which the house meets for the despatch of business. But, though the standing order directs that these committees shall be appointed to sit on certain days, they can only be so appointed by the order of the house itself; and if the house

April; and according to the present practice the Mutiny Act continues in force, in Great Britain until the 25th April, and until later periods elsewhere, according to the remoteness of the places in which the troops are quartered. 21 Vict. c. 9, s. 107, &c.

[1] 22 Geo. II. c. 33. 29 Geo. II. c. 27. 19 Geo. III. c. 17. 10 & 11 Vict. c. 59. 62. 20 Vict. c. 1.

[2] See preamble to annual Mutiny Act.

[3] See *supra*, p. 56.

[4] See 11 Com. J. 98. 501 (16th February 1693, &c.)

[5] Standing orders, 25th June 1852, and 19th July 1854.

be counted out, or the question for Mr. Speaker leaving the chair be superseded by adjournment, an order is made at the next sitting of the house, for the re-appointment of the committee;[1] and until such an order has been made, the committees will not stand among the orders of the day. On Friday, the 17th May 1861, the house having been counted out on the order of the day for committee of supply, the order for the committee to sit again on the next meeting of the house, on Thursday the 23rd May, could not be made: but, as the sitting of the committee was urgently desired on that day, Lord Palmerston gave notice that he would move at half-past four, that the house will immediately resolve itself into the committee of supply, by which expedient the difficulty of the case was overcome.[2]

Amendments on going into committee.

The ancient constitutional doctrine that the redress of grievances is to be considered, before the granting of supplies, is now represented by the practice of permitting every description of amendment to be moved on the question for the speaker leaving the chair, before going into the committee of supply, or ways and means. Upon other orders of the day, such amendments must be relevant: but here they are permitted to relate to every question upon which any member may desire to offer a motion. But in 1872, and again on the 26th February 1873, it was resolved,

"That whenever notice has been given that estimates will be moved in committee of supply, and the committee stands as the first order of the day upon any day except Thursday and Friday, on which government orders have precedence, the speaker shall, when the order for the committee has been read, forthwith leave the chair without putting any question, and the house shall thereupon resolve itself into such committee, unless on first going into committee on the army, navy, or civil service estimates respectively, an amendment be moved relating to the division of estimates proposed to be considered on that day."

Since 1861, the practice of moving amendments on going

[1] 125 Com. J. 284.

[2] Above the orders of the days, and between lines, "Supply Committee" was also printed in italics.

into committee of supply has received further sanction and encouragement by a standing order which requires,

"That while the committees of supply and ways and means are open, the first order of the day on Friday shall be either supply or ways and means; and that on that order being read, the question shall be proposed, 'That Mr. Speaker do now leave the chair.'"[1]

Friday has, in effect, become a notice day: but the motions assume the form of amendments, or discussion, on going into committee of supply. Where there are several notices of amendments on going into committee, it should be borne in mind, that while the speaker endeavours to facilitate their being moved, as far as possible, in their order, he cannot call upon any member for that purpose until he rises to speak.[2] When the first amendment is negatived, by the house affirming that the words proposed to be left out shall stand part of the question, no other amendment can be moved: but if amendments are by leave of the house withdrawn, other amendments can be offered. On the 16th June 1865, on the first amendment, the question "that the words proposed to be left out stand part of the question" was negatived: but the question for adding the words of the amendment was also negatived. Two other amendments were then proposed for adding words to the original question, now reduced to the word "that," but withdrawn; and a third was put and negatived; when at length words were added for the postponement of the committee to another day.[3] On the 11th August 1871, the question "that the words proposed to be left out stand part of the question," having been negatived, and also the question for adding the words of the proposed amendment, other words were added to the original question, by which the house agreed to resolve itself immediately into com-

[1] Standing order, 3rd May 1861. This order does not apply to morning sittings, which are specially appointed for particular business, independently of the evening sittings; Mr. Speaker's note-book, June 1863; 171 Hans. Deb., 3rd Ser., 707.

[2] 174 Hans. Deb., 3rd Ser., 1960.

[3] Votes, p. 585; 180 Hans. Deb., 3rd Ser., 369–427.

mittee of supply.[1] It is also a common practice, without moving any amendment, to call the attention of the house to particular subjects, on the question for the speaker leaving the chair, the rules of relevancy in debate, as well as in amendments, being wholly ignored on these occasions: with these exceptions, that a member may not discuss any previous or intended votes of the committee of supply, or items in the estimates,[2] nor any resolution to be proposed in the committee of ways and means;[3] nor any other order of the day, or motion of which a notice has been given.[4] A member who has spoken to one amendment, may speak again after another amendment has been proposed: but if he has spoken in a debate raised upon any subject, where no amendment has been moved, he cannot speak again while the main question is still before the house: but he may speak if an amendment be afterwards proposed.[5] An amendment, if carried, supersedes the question for the speaker now leaving the chair, but not the order of the day, which has been read. The committee cannot be suffered to drop; and a time must therefore be appointed for its sitting. Generally another day is appointed; but when it is still desired to proceed, on the same night, with the order of the day, the house agrees to a resolution that it

[1] 126 Com. J. 416.

[2] 2nd June 1856 (Mr. Blackburn), not reported. On the 25th July 1861, Mr. Hope rose to move as an amendment to the question for Mr. Speaker to leave the chair, an address praying that a sum already voted for the Royal Military College at Sandhurst should not be expended until the house had had time to consider the plan of certain proposed buildings: but the speaker ruled that such an amendment was out of order, and could not be put from the chair, as the vote to which it referred had already been agreed to in committee of supply, and by the house, and could not be reopened in that form; 164 Hans. Deb., 3rd Ser., 1498; Mr. Speaker's note-book. See also 24th Feb. 1862; 165 Hans. Deb., 3rd Ser., 639; Dockyard Commission, 22nd Feb. 1864; 173 Hans. Deb., 3rd Ser., 903; Greenwich Hospital, 5th Aug. 1867; 189 Ib. 857.

[3] On the 21st April 1864, Mr. Sheridan's amendment on fire insurances was framed so as to avoid this irregularity; 174 Hans. Deb., 3rd Ser., 1439.

[4] 142 Hans. Deb., 3rd Ser., 1026; 146 Ib. 1699; and see *supra*, p. 318.

[5] 175 Hans. Deb., 3rd Ser., 770.

will immediately resolve itself into the committee. The question for the speaker now leaving the chair is then proposed a second time;[1] and though amendments may again be moved or discussions raised,[2] the house is generally allowed, at length, to proceed with the business appointed for the day, without further obstruction. Sometimes the house has divided upon the question for the speaker to leave the chair, without any amendment having been proposed.[3]

Functions of these committees distinguished.

As the committee of supply and ways and means continue to sit during the session, are presided over by the same chairman, are both concerned in providing money for the public service, and are governed by the same rules and usage, it will be necessary to distinguish their peculiar functions, before a more detailed account is given of the forms of procedure which apply equally to both. The general resemblance between these committees has sometimes caused a confusion in regard to the proper functions of each: but the terms of their appointment define at once their distinctive duties. The committee of supply considers what specific grants of money shall be voted, as supplies demanded by the Crown, for the service of the current year, and explained by the estimates and accounts prepared by the executive government, and referred by the house to the committee. The committee of ways and means determines in what manner the necessary funds shall be raised, to meet the grants which are voted by the committee of supply, and which are otherwise required for the public service. The former committee controls the public expenditure; the latter provides the public income: the one authorises the payment of money; the other sanctions the

[1] 8th April 1850, Assistant Surgeons, Navy; 105 Com. J. 198. 7th April 1856, Billeting soldiers; 111 Ib. 124. 21st June 1858, Paper duty; 113 Ib. 243. 13th July 1858, Forms of prayer; 113 Ib. 306. Flogging in the army, 15th March 1867; 122 Ib. 106. 125 Ib. 336. 126 Ib. 417.

[2] 174 Hans. Deb., 3rd Ser., 1960. 205 Ib. 1515. 206 Ib. 322.

[3] 7th March 1783; 24th May 1860.

imposition of taxes, and the application of public revenues, not otherwise applicable to the service of the year.

Functions of the committee of supply.

Their separate duties may be further explained by enumerating, more particularly, the specific matters considered by each. The committee of supply votes every sum which is granted annually for the public service—the army, the navy, and the several civil and revenue departments. But the fact already explained should be constantly borne in mind, that in addition to these particular services, which are voted in detail, there are permanent charges upon the public revenue, secured by acts of Parliament, which the treasury are bound to defray, as directed by law. In this class are included the interest of the national funded debt, the civil list of her Majesty, the annuities of the royal family, and the salaries and pensions of the judges and some other public officers. These are annual charges upon the consolidated fund: but the specific appropriation of the respective sums, necessary to defray those charges, having been permanently authorised by statutes, is independent of annual grants, and is beyond the control of the committee of supply.

Consolidated fund.

Functions of the committee of ways and means.

Parliament has already empowered the treasury to apply the consolidated fund to the payment of these statutory charges, when they become due: but this fund cannot be applied generally, to meet the supplies voted for the service of the year, without the annual authority of Parliament. For this purpose the committee of ways and means votes general grants from time to time out of the consolidated fund, "towards making good the supply granted to her Majesty;" and bills are founded upon these resolutions of the committee, by which authority is given to issue the necessary amounts from the consolidated fund, for the service of the year.

Exchequer bills.

It was formerly one of the functions of the committee of ways and means to vote the sums to be annually raised by exchequer bills: but by 24 & 25 Vict. c. 5, the treasury is

empowered to issue new exchequer bills to replace former exchequer bills to an amount not exceeding 13,230,000 *l.*; the monies raised by such bills being carried to the consolidated fund, and the principal and interest being paid out of that fund. But if a larger amount of exchequer bills should be required, in any year, it would be voted in committee of ways and means. The issue of exchequer bonds is still authorised by resolutions of the committee of ways and means; and the sums necessary to pay off those becoming due are voted in committee of supply.

Annual budget.

One of the most important occasions for which the committee of ways and means is required to sit, is for receiving the financial statement for the year, from the chancellor of the exchequer.[1] When some progress has been made in voting the estimates for the army and navy, and other public services, and the minister has had sufficient time to calculate the probable income and expenditure for the financial year, commencing on the 1st April, he is prepared to determine what taxes should be repealed, reduced, continued, or augmented, or what new taxes must be imposed. As it is the province of the committee of ways and means to originate all taxes for the service of the year, it is in that committee that the chancellor of the exchequer usually developes his views of the resources of the country, communicates his calculations of the probable income and expenditure, and declares whether the burthens upon the people are to be increased or diminished. This statement, familiarly known as "the budget," is regarded with greater interest, perhaps, than any other speech throughout the session. The chancellor of the exchequer concludes by proposing resolutions for the adoption of the committee; which, when afterwards reported to the house, form the groundwork of bills for accomplishing the financial objects proposed by the minister. Financial statements, however,

[1] Or sometimes the first lord of the treasury, if a member of the House of Commons.

have not invariably been made in the committee of ways and means. On the 3rd December 1852,[1] and again on the 13th February 1857,[2] the chancellor of the exchequer made his statement in committee of supply, before the usual votes for the service of the year had been taken; and in 1823, the budget was brought forward in the committee on the Exchequer Bills bill.[3] In 1860, it was introduced in a committee on the Customs Acts.[4] In 1845 and 1848 also, the budgets, though brought forward in committee of ways and means, were presented in anticipation of the customary votes in the committee of supply.[5]

Charges of collection.

It may here be observed that, until 1854, the charges of collecting the revenue were deducted by each department, from the gross sums collected; and thus neither the whole produce of the taxes, nor the cost of collecting them, was within the immediate control of Parliament. On the 30th May 1848, the house resolved, "That this house cannot be the effectual guardian of the revenues of the state, unless the whole amount of the taxes, and of various other sources of income received for the public account, be either paid in or accounted for to the exchequer,"[6] but it was not until 1854 that an act was passed, by which the whole of this expenditure was brought under the supervision of the House of Commons; and estimates were voted for the revenue departments.[7] At the same time several charges were transferred from the consolidated fund to the annual estimates.

Proceedings in committee.

The rules of proceeding in the committees of supply and ways and means are precisely similar to those observed in other committees of the whole house. It has been stated in other places,[8] as an ancient order of the house, "That where there comes a question between the greater and

Greater or lesser sum.

[1] 123 Hans. Deb., 3rd Ser., 836.
[2] 144 Ib. 631.
[3] 9 Ib., N. S., 1413.
[4] 156 Ib., 3rd Ser., 812.
[5] 77 Hans. Deb., 3rd Ser., 455; 96 Ib. 900. 987.
[6] 103 Com. J. 580.
[7] 109 Ib. 467.
[8] See *supra*, pp. 385. 503.

lesser sum, or the longer and shorter time, the least sum and longest time ought first to be put to the question."[1] This rule is applicable to other committees where taxes are granted, or money voted, but is more frequently brought into operation in these committees, where such questions form the only subjects of discussion.[2] The object of this rule is said to be, "that the charge may be made as easy upon the people as possible;" but how that desirable result can be secured by putting one question before the other, is not very apparent; for if the majority were in favour of the smaller sum, they would negative the greater when proposed. If the smaller sum be resolved in the affirmative, the point is settled at once, and no question is put upon the greater. A direct negative of the larger sum is, in this manner, avoided; and it has been urged as one of the merits of the rule, that the discourtesy of refusing to grant a sum demanded by the Crown, is mitigated by this course of proceeding. This rule is carried into effect not by way of amendment, but by proposing a distinct resolution embracing the smaller sum, but otherwise in the same terms as the original resolution.[3]

This rule, however, is only applicable where the greater and lesser sums are both before the committee at the same time. It cannot exclude the subsequent proposal of other sums, greater or less than those previously proposed. Thus, in the committee of supply, on the 31st March 1848, after a reduction of the proposed number of men for the land

[1] See debate in 1675, where Mr. Sawyer denied the existence of any such ancient order, having searched the Journals. Sir T. Meres, an old Parliament man of 80, said it had always been the rule; and after discussion it was agreed to be an ancient order; 3 Grey's Deb. 381–388.

[2] 88 Com. J. 325. The principle of this rule was not adhered to, 6th May 1853, in putting the question for levying the property tax in the United Kingdom; 108 Com. J. 467. The proceedings in committee of ways and means, 6th March 1857, on the tea and sugar duties, afford a good illustration of the application of this rule; 112 Com. J. 86. Also on the income tax, 21st July 1859 and 23rd March 1860.

[3] 114 Com. J. 291; 115 Ib. 153.

forces had been negatived, another reduction was proposed and negatived.[1] Again on the 14th and 31st March, and the 7th April 1856, after reductions of the sum originally proposed had been negatived, still further reductions were proposed, and voted upon.[2] It may happen indeed, that the vote cannot be actually first taken upon the smallest sum proposed; as where one proposal is to diminish a vote, and another is to refuse it altogether. Practically, the latter is for the smaller sum of the two; but being merely a negation of the vote originally proposed, the former proposal, if not withdrawn, must be first put to the vote.[3]

New rules of proceeding in committee of supply.

The proceedings of the committee of supply, when governed entirely by this rule, were exposed to the objection that where a vote comprised separate items, and a smaller sum than that first proposed was agreed to, all further reductions, on account of other items, were excluded.[4] Again, every item comprised in a vote was open to discussion, at the same time, which often occasioned confusion, if not absurdity.[5] A further objection to the customary forms was, that there was no record in the Journal, of the items in respect of which any reduction of the vote was proposed.[6] In 1857, a committee was appointed to consider these forms of proceedings,[7] whose report led, on the 9th December 1857, to the adoption of the following resolutions by the house :—

"That when a motion is made, in committee of supply, to omit or reduce any item of a vote, a question shall be proposed from the chair for omitting or reducing such item accordingly; and members shall speak to such question only, until it has been disposed of."

"That when several motions are offered, they shall be taken in the order in which the items to which they relate appear in the printed estimates."

"That after a question has been proposed from the chair for omitting

[1] 103 Com. J. 405.

[2] 111 Ib. 101. 106. 124.

[3] See proceedings, 6th June 1856, St. James's Park; Lord R. Grosvenor, Mr. Tite, and Sir Joseph Paxton; 142 Hans. Deb., 3rd Ser., 1134.

[4] 145 Hans. Deb., 3rd Ser., 1729.

[5] 146 Ib. 58–68.

[6] See 145 Hans. Deb., 3rd Ser., 2047 *et seq.*

[7] 1857 (261), Sess. 2.

or reducing any item, no motion shall be made, or debate allowed upon any preceding item."[1]

And on the 28th April 1868 it was resolved,—

"That when it has been proposed to omit or reduce items in a vote, the question shall be afterwards put upon the original vote, or upon the reduced vote, as the case may be."

"That after a question has been proposed from the chair for a reduction of the whole vote, no motion shall be made for omitting or reducing any item."[2]

These new rules have entirely altered the practice of the committee of supply in dealing with the votes proposed. The question upon the whole vote is first proposed from the chair; and if a motion be made to omit or reduce any item comprised in that vote, a question is put, that the item objected to "be omitted from the proposed vote," or "be reduced by the sum of £. —— " as the case may be.[3] But where a general reduction of the amount of the vote is proposed, comprising many items, the old form of putting the question upon the smaller sum is reverted to,[4] as the rules apply to distinct items only. On the 17th June 1863, the estimate for the purchase of land at South Kensington comprised three items; but the Government, in committee, moved the first item as a separate vote, which was agreed to; and the two other items as another vote, which was negatived. Exceptions were taken to the regularity of this proceeding: but they were overruled.

Longer or shorter time.

The questions of the longer or shorter time had reference to the ancient mode of granting subsidies, which were rendered a lighter burthen on the subject, by being extended over a longer period; and the present system of grants does not, therefore, admit of the application of this part of the rule. But its principle is still regarded in the committee of ways and means, whenever the time at which a tax shall commence, is under discussion; for the most distant time

[1] 113 Com. J. 42; a fourth resolution was rescinded on the 28th April 1868.

[2] 123 Ib. 145.

[3] Ib. 306.

[4] 9th and 12th July 1858; 113 Com. J. 294. 298; 19th April 1860; 115 Ib. 191; 9th May 1862 (Science and Art Department), 117 Ib. 190.

being favourable to the people, the question for that time is first put from the chair.

These rules not observed in proceedings of the house.

In the proceedings of the house on the report from a committee, amendments are proposed in the ordinary form;[1] neither the greater or lesser sum, nor the longer or shorter time, being ever regarded, in questions proposed in the house itself.[2] The rule, indeed, is incompatible with the form of putting a question upon an amendment. If it be proposed to amend a question, by inserting a smaller sum, the house must decide whether the words of the question,—being the larger sum,—shall stand part of the question. Thus, on the report of the resolution, 25th May 1857, for granting an annuity of £.8,000 to the Princess Royal, an amendment for reducing that amount to £.6,000, was put in the usual manner.[3] Again, on the 30th March 1860, on the consideration of the Income Tax bill, as amended, an amendment was proposed to leave out "ten-pence" in order to insert "nine-pence." The question was put that "ten-pence" stand part of the bill.[4] On the 24th March 1871, it was proposed to reduce the number of men for the army, as voted by the committee, and the question was put that the larger number stand part of the resolution.[5]

Questions and amendments in committees of supply and ways and means.

In committee of supply it is irregular to propose any motion or amendment not relating to a grant under consideration; as the committee may grant or refuse a supply, or may reduce the amount proposed, but have no other function.[6] On the 18th May 1863, exception was taken to the

[1] 3 Hatsell, 184, *n.*

[2] Establishment of Prince and Princess of Wales, 15th March 1795; 50 Com. J. 538; New Houses of Parliament, 10th June 1850; General Register House, Edinburgh, 16th July 1858; Harbours of Refuge, 8th June 1863. On the 18th July 1870, several resolutions of the committee of supply were so amended. Income Tax, 4th May 1871.

[3] 112 Com. J. 174.

[4] 115 Ib. 173.

[5] 126 Ib. 107.

[6] But on the 4th August 1843, an amendment was proposed, but not made, to the terms of a resolution, for granting compensation to the owners of opium in China, by leaving out the words "made good," and inserting "enable her Majesty to make compensation." 98 Com. J. 542.

form of a vote proposed, on account, for the packet service, which provided that no part of the sum voted was to be applicable to payments to Mr. Churchward, for the conveyance of mails, subsequent to the 20th June 1863.[1] It was argued that the latter part of the resolution expressed an opinion concerning a particular contract, beyond the proper functions of the committee of supply: but as it was strictly relevant to the vote for the packet service, and merely defined and limited the purposes for which such vote was designed, it was held, first by the chairman, and after full discussion by the house itself, to be regular. Again, on the 31st May 1867, on a vote for erecting a building for the University of London, a proviso was added, by amendment, "that no part of such sum shall be applied to the erection of any building according to either of the designs now exhibited."[2]

Grants cannot be increased.

A grant recommended by a message from the Crown, or proposed in the annual estimates, presented by command of her Majesty, cannot be increased. On the 8th December 1857, in committee on the Queen's message for granting £.1,000 a year to Sir Henry Havelock, for the term of his natural life, a member desired to propose that the pension should be continued to his son: but the chairman intimated that he should not be able to put any such amendment, without the recommendation of the Crown.[3] Nor can any item comprised in a vote be increased.[4] In 1858, the new ministry having proposed reductions in the army and navy estimates prepared by their predecessors, a question arose whether, in committee of supply, the votes proposed by them might not be increased to the amount of the original estimates. To obviate these doubts, revised army estimates were prepared, and the order for referring the original army estimates to the committee was discharged: but as regards

[1] Votes and Debates, 18th and 28th May 1863.
[2] 122 Com. J. 266.
[3] 148 Hans. Deb., 3rd Ser., 392.
[4] General officers of marines, 29th Feb. 1864; 173 Hans. Deb., 3rd Ser., 1282.

the navy estimates, no such precaution was taken. Again, on the 9th March 1863, it was held that it was not competent for a member to move an addition to the number of men proposed to be voted in the army estimates, though it was alleged that provision was actually made in the estimates for that larger number.

Proposal of a new tax, except by a minister.

As a proposed grant cannot be increased, in committee of supply, nor a new grant made, unless recommended by the Crown, so also it appears that a new tax cannot be imposed except with the indirect sanction of the Crown. On the 14th March 1844, Mr. Howard Elphinstone proposed a committee of the whole house to consider the Stamp Acts, with the view of imposing the same amount of probate duty on real estate as was paid on personal property. An objection being taken to this proceeding, the speaker said that the duty must be considered as imposed for the service of the year, and should therefore be voted in the committee of ways and means: but it ought not to be proposed, unless it could be shown that the public service required it. After some discussion, the motion was withdrawn. On the 6th August 1859, Mr. Selwyn having given notice of a resolution for imposing certain stamp duties, of which the chancellor of the exchequer approved, the latter agreed to propose it himself, in committee of ways and means. In April 1862, the chancellor of the exchequer having given notice of resolutions in committee of ways and means, requiring licences to be taken out by brewers, Mr. Bass gave notice of an amendment extending such licences to other manufacturers, iron masters, and coal owners: but this amendment being held to be inadmissible, was not moved.[1] On the 17th February 1845, however, Mr. Roebuck moved an amendment, in committee of ways and means, for extending the income tax to Ireland,[2] —an exceptional course not supported by precedent, and

[1] Notices of motions, 10th April 1862, p. 407.

[2] 77 Hans. Deb., 3rd Ser., 637. 751.

opposed to the principles upon which grants are made to the Crown. But this objection does not apply to an amendment by which it is sought to substitute another tax, of equivalent amount, for that proposed by ministers, the necessity of new taxation to a given extent being declared on behalf of the Crown. Upon these grounds, on the 10th December 1852, an amendment to substitute probate and legacy duty on real property, for an inhabited house duty, was held to be regular.[1]

Amendments in committee of ways and means.

A motion or amendment, in committee of ways and means, must relate to the tax proposed: but as the functions of that committee are of a more extended character, the rule cannot be so strictly enforced as in the committee of supply. On the 25th April 1853, the new property tax was proposed for seven years. An amendment was moved to leave out the words "towards raising the supply granted to her Majesty, there shall be raised annually during the terms hereinafter limited, the several rates and duties following," &c., in order to insert the words, "The continuance of the income tax for seven years, and its extension to classes heretofore exempt from its operation, without any mitigation of the inequalities of its assessment, are alike unjust and impolitic."[2] Considerable doubts were entertained whether such an amendment was regular, it being the province of the committee to consider the ways and means, for the service of the year, and not to discuss general principles: but it was held that as the amendment was strictly relevant to the proposed duty, it could not be excluded.[3]

[1] Mr. W. Williams, 108 Com. J. 187. See Debate, 16th Dec. 1852, on the form of putting the question on the inhabited house duty, where nothing but a preamble of the resolution had been originally proposed from the chair.

[2] 108 Com. J. 431.

[3] 126 Hans. Deb., 3rd Ser., 453. In April 1871, Mr. Disraeli gave notice that on the 27th, in committee of ways and means he would move a resolution, "that the financial proposals of Her Majesty's Government are unsatisfactory, and ought to be re-considered by the Government." The resolution was intended to be moved, not as an amendment to any resolution about to be proposed in consequence of changes in the budget, but as a

Reduction of duties in committee of ways and means.

It is the function of the committee of ways and means to impose rather than to repeal taxes; and as bills for the latter purpose do not require any previous vote in committee, proposals of that nature seldom originate in committee of ways and means, unless they are connected with other alterations of duties. Yet, as all the financial arrangements of the year are properly within the cognizance of that committee, the reduction or repeal of taxes may be proposed there, with as much regularity as their imposition or increase; the one being, in fact, an equivalent for the other, in the general balance of ways and means.[1] And this course has accordingly been followed whenever it has been deemed suitable to the occasion.[2]

Relevancy in debate.

In committee of supply, it is usual for the minister in charge of the army or navy estimates to make a general statement concerning the services for the year, upon the first vote; and he is followed by other members in a general discussion of the estimates: but after the first vote has been agreed to, the debate must be confined to the particular vote before the committee. A general discussion upon the first vote is not applicable to the civil service estimates; and when Mr. Wilson, in 1857, endeavoured to introduce the practice, it found no favour with the committee.[3]

A member cannot refer to any vote to which the committee have agreed,[4] nor to a vote not yet submitted to it;

substantive resolution. It was not moved: but it was pronounced, by all the authorities, to be irregular. Even if it had been moved as an amendment, it would not have been relevant to any resolution; and standing apart, as a distinct resolution, it could not have been moved until after the budget resolutions had been agreed to, or negatived; and in either case the resolution would have been inapplicable.

[1] 3 Hatsell, 290.

[2] 6th March 1695, duties on coals, culm, and shipping repealed; 10th May 1766, duties on cotton-wool, &c. repealed; 15th May 1777, duties on silver plate repealed; 4th Dec. 1798, additional house and window duty repealed, and income tax imposed; 14th July 1807, Irish beer duties repealed. Paper duties repealed, 7th May 1861; 116 Com. J. 195.

[3] Hans. Deb., 12th June 1857.

[4] 175 Ib., 3rd Ser., 1674.

nor, under the new rules, when it has been proposed to omit or reduce any item, can he refer to any other item in the same vote.[1] Still less can a member, upon a vote in committee of supply, bring into discussion the merits of a bill then pending in the house.[2] On the 16th April 1860, a general discussion on the navy having taken place before the speaker left the chair, Lord Clarence Paget, the secretary to the Admiralty, reserved his explanations until the house was in committee: but when he was proceeding to refer to matters not comprised in the vote under consideration, he was stopped and pronounced by the chairman to be out of order.[3]

A vote in committee cannot be postponed.

A motion for postponing a vote in committee of supply cannot be entertained. There is no time, indeed, to which it can be postponed. Each vote is a distinct motion, which may be agreed to, reduced, negatived, superseded, or, by leave, withdrawn: but cannot be otherwise disposed of.[4] Sometimes the committee report resolutions, which they have agreed to: but not having completed the consideration of another resolution, also report progress.[5]

Votes on account.

The entire sums proposed to be granted, for particular services, are not always voted at the same time, but a certain sum is occasionally voted on account of such grants. Thus, for example, in 1841, one half only of the estimates, as presented to the house, was voted, in anticipation of a speedy dissolution, and appropriated; and the remaining half was voted by the new Parliament. In 1848, money was voted on account of the several grants, as two committees were sitting at the time, upon the public expenditure. In 1850, money was voted on account of several grants, before Easter, and the remainder was voted after Easter; and in 1857, in anticipation of a dissolution, votes were

[1] 177 Hans. Deb., 3rd Ser., 1990.
[2] 6th June 1856, Sir J. Tyrrell, Agricultural Statistics.
[3] 157 Hans. Deb., 3rd Ser., 1851.
[4] 175 Hans. Deb., 3rd Ser., 35. 77.
[5] 100 Com. J. 86; 117 Ib. 187; 122 Ib. 429.

taken on account, for four months. The several votes for the army and navy were separately agreed to: but general votes only were taken for the civil service, and revenue estimates,[1] though in the Appropriation Act, the several items were enumerated in the usual form.[2] The remaining estimates, for the service of the year, were voted by the new Parliament. In 1858, in order to accelerate the usual financial arrangements, and the passing of the Mutiny bill, after the change of ministry, votes were taken on account of the army and navy estimates.[3] Again, in April 1859, votes on account were taken upon all the heads of expenditure, in order to provide for the public service, until after an approaching dissolution; and the votes were completed by the new Parliament.[4] At other times, when the exigencies of the public service have required votes on account, in anticipation of particular grants, or classes of service, estimates of the amount required for such purposes have been presented, and the necessary grants agreed to.[5] And this course has now become necessary every session, in consequence of increased strictness in the audit of public accounts.

Where votes on account exceed the amount required.

In 1856, several of the army and navy estimates were voted on account, or for periods of four months, in anticipatson of peace; and on the conclusion of peace it became necessary to revise the estimates for the year. After consulting precedents in 1814,[6] statements were presented, by command, showing the amounts of the original army and

[1] 112 Com. J. 94. 98. 103. In 1868, general votes, on account, were taken for the army and navy services.

[2] The same course had been adopted in 1841.

[3] 113 Com. J. 78; 149 Hans. Deb., 3rd Ser., 110.

[4] 114 Com. J. 158. 162.

[5] Army, 29th March, and Civil services, 25th May 1860; 115 Com. J. 170. 273. Army, 5th April, and Civil services, 6th May and 25th June 1861; 116 Com. J. 110. 190. 301. Civil services, 27th March, and Packet service, 18th May 1863. Civil services, 18th March 1867. In 1848, votes were taken on account of army and navy services, before the number of men was voted. In 1867 and 1868, the same course was followed for navy services.

[6] 69 Com. J. 18. 450.

navy estimates, and of the reduced estimates,[1] and were referred to the committee of supply. In one case, the previous vote being in excess of the amount required, the proper amount was voted *de novo*, and the previous resolution rescinded, before the new resolution was agreed to by the house.[2]

Votes of credit and special supplies.

Where a vote of credit on account of war expenditure, or other special grant not comprised in the estimates, is desired, a message is generally sent by the Crown, under the sign manual, to both houses. In the Commons this message is referred to the committee of supply, where the requisite amount is granted; and a corresponding sum is voted by the committee of ways and means,[3] unless there be a surplus revenue available, in which case the grant may be provided for out of general votes in that committee, as was done in 1854.[4] Sometimes a vote of credit is given, without a message from the Crown. Thus, in 1851 and 1852, votes of credit on account of the Kafir war, were granted without a message from the Crown, an estimate only being presented;[5] and the same course was adopted in 1856, on a vote of credit for defraying expenses occasioned by the late war;[6] again in 1860 and 1861, in respect of operations in China;[7] on the 25th November 1867, on account of the expedition to Abyssinia; and lastly, on the 1st August 1870, on the breaking out of the war between France and Prussia. In this latter case, however, the Government having determined that it would be necessary to increase the army to the extent of 20,000 men, thought it right to propose a distinct vote for that number of men, as well as a general vote of credit for 2,000,000. The latter vote was comprised in the schedule to the Appropriation Act with a statement, that it included "the cost of a

[1] 111 Com. J. 172.
[2] Transport service, Ib. 268.
[3] 82 Ib. 542.
[4] 109 Ib. 472.
[5] 106 Com. J. 181. 303; 107 Ib. 73. 152.
[6] 111 Ib. 269; 115 Ib. 142.
[7] 115 Ib. 382; 116 Ib. 403.

further number of land forces of 20,000 men during the war in Europe."

Report of supply and ways and means.

The resolutions of the committees of supply and ways and means are reported on a day appointed by the house: but not on the same day as that on which they are agreed to by the committee. This is a rule which may only be relaxed in cases of extraordinary urgency. On the 8th May 1797, during the mutiny of the fleet, the committee of supply voted an increase of pay to the seamen and marines; and the report was at once ordered to be received, and was agreed to on the same day. And on the 24th, an increase of pay was voted to the land forces in the same manner.[1] On the 10th May 1860, the house ordered a resolution on wine licences, agreed to by the committee of ways and means, to be reported forthwith, in order to enable them to proceed with the committee on the Refreshment and Wine Licences bill, which was the next order of the day. On the following day this proceeding was animadverted upon in debate;[2] and on the 14th May, notice being taken that the committee of ways and means had agreed to a resolution which, contrary to the rules and practice of this house, was, without urgent occasion, ordered to be reported forthwith, and was thereupon reported and agreed to by the house; it was ordered that the said proceedings be null and void, and that the resolution of the committee of ways and means be reported *to-morrow*.[3] When the report is received, the resolutions are read a first time, without a question, and a second time upon question put from the chair; and are agreed to by the house; or may be disagreed to,[4] amended,[5] postponed,[6] or re-committed.[7] Any amendment, relevant to

[1] 52 Com. J. 552. 605; 33 Parl. Hist. 477.

[2] 158 Hans. Deb., 3rd Ser., 1161; 11 May 1860 (motion for adjournment).

[3] 115 Com. J. 240; 158 Hans. Deb., 3rd Ser., 1167.

[4] 63 Com J. 89; 71 Ib. 290.

[5] 95 Ib. 574; 101 Ib. 1152; 102 Ib. 481; 103 Ib. 790; 125 Ib. 157.

[6] 76 Ib. 288; 87 Ib. 519; 90 Ib. 461; 119 Ib. 324.

[7] 77 Ib. 314; 113 Ib. 211.

the subject-matter, may be proposed to the question for reading resolutions a second time,[1] or general observations may be made at this period:[2] but after they have been read a second time, an amendment to a resolution of the committee of supply, must relate to the amount or destination of the vote agreed to by the committee.[3] Any debate, at this time, should be relevant to the particular resolution;[4] nor under cover of a motion for adjournment can occasion be found for renewing the discussion of any prior resolution already agreed to.[5] In some cases, it has been sought by amendments to attach conditions to grants reported from the committee. On the 20th December 1796, it was proposed to add to a resolution for making advances to the Emperor, the words "whenever the engagements respecting the late convention shall have been fulfilled on the part of his majesty."[6] And on the 1st July 1823, a resolution to defray expenses of buildings at the British Museum was amended, upon a division, by the addition of words requiring the preparation of plans and estimates before any buildings should be undertaken.[7] There are examples in the Journals of amendments being proposed to the question for agreeing to resolutions of the committee of supply:[8] but according to later practice, such amendments have been confined to the question for reading resolutions a second time. If it be proposed to amend a resolution on the report, the amendment can only

Charge not to be increased on report.

[1] 91 Com. J. 272; 5th August 1839, Miscellaneous charges (Scotland). 26th April 1847, Education. 25th July 1854, Vote of Credit, Lord Dudley Stuart's amendment for an address praying that Parliament might not be prorogued until the house had received more full information as to our foreign relations, and prospects in the war; 135 Hans. Deb., 3rd Ser., 709. 7th April 1851, Property Tax. 10th March 1857, Expenditure of the State, 112 Com. J. 94. American Prize Courts, 1863; 118 Ib. 322.

[2] 174 Hans. Deb., 3rd Ser., 1551.

[3] 10th June 1850, New Houses of Parliament; 112 Com. J. 227; 113 Ib. 306; 114 Ib. 92; 118 Ib. 239.

[4] 174 Hans. Deb., 3rd Ser., 1551.

[5] Quebec Defences, 27th March 1865; 178 Hans. Deb., 3rd Ser., 360.

[6] 52 Com. J. 220.

[7] 78 Ib. 443.

[8] 11th March 1844, Widows' Pensions. 14th June 1849, Militia, &c., Canada.

effect a diminution of the proposed burthen, and not an increase.[1] If the latter be desired, the proper course is to re-commit the resolution; as an addition to the public burthens can only be made in committee. When a vote is re-committed, and increased in the committee, the committee report that, in addition to the sum already granted, a further sum be granted for the particular purpose there stated.[2] Sometimes an amendment has been moved to a proposed amendment, upon a resolution reported from the committee of supply, by leaving out all the words of the first amendment, except "pounds," and inserting another amount.[3]

Amendments to proposed amendments of resolutions.

When the resolutions of the committee of ways and means are agreed to, bills are ordered to carry them into effect, whenever it is necessary. After a bill founded upon such resolutions has been ordered, but not presented, instructions are often given to the gentlemen appointed to prepare it, to make provision pursuant to other resolutions of the committee, since agreed to:[4] or, if after the bill has been read a second time, further resolutions from the committee, relating to other duties, are agreed to, an instruction is given to the committee on the bill, to make provision accordingly.[5] The resolutions of the committee of supply are reserved until all the supplies for the service of the year have been granted, when they are embraced in the Appropriation Act,

Bills founded on resolutions.

[1] See Amendment proposed by Mr. Grenville, 27th January 1767; 31 Com. J. 76; 3 Hatsell, 179. On the 18th July 1870, the Secretary to the Treasury, having overlooked an intermediate vote on account, had taken sums in excess of the estimates for the year. As this error was to be corrected by a reduction of the amounts voted in the several resolutions, it was readily effected on the report.

[2] 113 Com. J. 320.

[3] 76 Ib. 487. On the 18th June 1857, a similar case arose, but the amendment not being proposed in proper form, was not put from the chair; 145 Hans. Deb., 3rd Ser., 2074.

[4] 123 Com. J. 157. 167; 124 Ib. 132; 125 Ib. 158.

[5] Fisheries bill, 1775; Assessed Taxes bill and Customs bill, 1798; Goods, Wares, &c. bill, 1806; Stamp Duties bill, 1845; 100 Com. J. 743. Customs bill 1845; Excise Duties bill, 1854 (Two Instructions); Stamp Duties bill, 1859; Customs and Inland Revenue bill, 1871, but this bill was withdrawn, on account of an irregularity, upon its introduction. Hans. Deb., 9th and 11th May 1871.

at the end of the session; and it is irregular to introduce any clause of appropriation into a bill passing through Parliament at an earlier period.[1]

Propositions for reducing charges upon the people.

It must always be borne in mind, that the house can entertain any motion for diminishing a tax or charge upon the people; and bills are frequently brought in for that purpose, without the formality of a committee. Obstacles are opposed to the imposition of burthens, but not to their removal or alleviation; and this distinction has an influence upon many proceedings not immediately connected with supply. For instance, the blanks left in a bill for salaries, tolls, rates, penalties, &c. are filled up in committee: but on the report, the house may reduce their amount. If, however, it be desired to increase them, the bill should be recommitted for that purpose. So, also, if a clause proposed to be added to a bill enact a penalty, which the house, on the report of the clause, desire to increase, the clause ought to be re-committed.[2] Any bounties, drawbacks, or allowances, involving payments out of the revenue, have usually been proposed in committee: but if an allowance be merely in the form of a deduction from the amount of a proposed duty, it may be entertained by the house, or by the committee on the bill, without any preliminary vote in committee.[3] In 1865, it being proposed to reduce the existing drawback on the export of sugar, it was agreed, on consideration, that the proposal should originate in committee, as it was equivalent to an increase of charge upon all importers of sugar who desired to export it.[4]

Drawbacks and allowances.

Questions of amount of duties on report.

Doubts have been sometimes entertained whether, on the report of resolutions from a committee, by which duties are reduced, it be regular to propose any amendment by which such reductions would be negatived, or the amount of reduction diminished. It has been contended that such an

[1] 57 Hans. Deb., 3rd Ser., 458.
[2] See *supra*, p. 470.
[3] Paper Duty Repeal bill, 1860, cl. 2.
[4] Votes, 26th May 1865.

amendment would, in effect, increase a charge upon the people, which can be done in committee only: but it is clear that if the amendment were made, it would merely leave unchanged the duty existing by law, or would reduce it; and that the charge upon the people would not be increased. It would, indeed, be an anomalous form to report such resolutions to the house at all, unless the house could disagree to or amend them, and there are numerous cases in which amendments of this character have been proposed, without objection, on the report.[1]

When committee on bill may increase a charge.

In the same manner it is competent for the committee on a bill for reducing taxes, to raise a tax beyond the amount proposed by the bill, and previously agreed upon by a committee and by the house, provided the amount be not raised higher than the existing tax authorised by law. On the 19th March 1845, resolutions were reported from a committee on the Customs Acts, by which the import duties on glass were reduced, and certain lower rates of duty imposed from and after the expiration of excise duties on British glass (also proposed to be reduced in that session), and until the 10th October 1846, after which further reductions were to take effect. An instruction was given to the gentlemen already appointed to bring in a Customs Duties bill, to make provision therein pursuant to these resolutions. In the committee on the bill it was proposed to postpone the period at which such reductions of duty were to take place:[2] but it was questioned by some whether such an amendment was admissible, as it would have the effect of continuing a charge upon the people for a longer time than the committee had voted and the house had agreed to. It was decided, however (privately), by Mr. Speaker, after full consideration, that an amendment of that nature was perfectly regular.[3]

[1] Customs Acts Report, 15th, 16th, and 17th March 1846; 101 Com. J. 323. 335. 349.

[2] Votes, 1845, p. 503.

[3] The same principle was afterwards acted upon in the Sugar Duties bill, 1848.

A bill for the reduction of taxes, as already stated, need not originate in a committee: but as Customs Duties bills affect trade, they have been, on that account, founded upon resolutions of committees, even when all the duties affected by them have been reduced.[1] So long, therefore, as an existing tax is not increased, any modification of the proposed reduction may be introduced in the committee on the bill; being regarded as a question, not for increasing the charge upon the people, but for determining to what extent such charge shall be reduced. A committee on a bill may not repeal an exemption, and so increase a duty, until it has been previously voted in a committee, and agreed to by the house.[2]

Distinction in the case of a new tax.

But a clear distinction must always be observed between the case of a tax for the service of the year, and a proposed diminution of a tax or charge already existing. If a new tax were imposed, or a temporary tax continued for the service of the year, in the committee of ways and means, or other committee, and agreed to by the house, the committee on the bill would unquestionably have no right to increase it: but where a permanent tax is merely proposed to be diminished, a proposition in committee on the bill to modify that diminution does not increase the charge upon the people. There can be no doubt that a committee is entitled to leave out of a bill portions of the resolutions upon which the bill is founded; and such an omission may leave a duty unchanged, and thus raise it above the amount previously agreed to by the committee of the whole house, and by the house itself. And it would seem difficult to maintain a distinction, in principle, between such a case as this, and an amendment which merely modifies the resolutions. It must be admitted, however, that the rule is not devoid of diffi-

[1] See proceedings in Committee on Customs, &c. Acts, 1st July 1853, by which the advertisement duty, proposed to be lowered from 1*s.* 6*d.* to 6*d.* was finally reduced to 0; 108 Com. J. 640, and Debates.

[2] Stamp Duties bill, 1854; 109 Com. J. 330.

culties (more especially when the treasury have already given effect to the resolutions of the house), and, though supported by precedent, it has not been uniformly approved by parliamentary authorities.

When a bill is to reduce duties, but some are increased.

So strictly is the rule enforced, which requires every new duty to be voted in committee, that even where the object of a bill is to reduce duties, and the aggregate amount of duties will, in fact, be reduced, yet if any new duty, however small, be imposed, or any existing duty be increased in the proposed scale of duties, such new or increased duty must be voted in a committee, either before or after the introduction of the bill.

Appropriation Act.

When the supplies for the service of the year have all been granted, the committee of supply discontinues its sittings: but care must be taken not to close the committee until all the necessary votes have been taken; for, if designedly closed, it can only be regularly re-opened by a demand for further supplies from the Crown, by message, or the communication of additional estimates.[1] When the committee of supply is closed, the financial arrangements are still to be completed, by votes in the committee of ways and means. That committee authorises the application of money from the consolidated fund, and the surplus of ways and means, to meet the several grants and services of the year; and a bill is ordered, to carry its resolutions into effect. This is known as the Consolidated Fund bill, or more generally as the Appropriation bill. It had been customary to give an instruction to the committee on this bill to receive a clause of appropriation: but in 1854, this form was discontinued;[2] and according to the present practice, a bill is at once ordered to apply a sum out of the consolidated fund, and to appropriate the supplies granted during the session.[3]

[1] 3 Hatsell, 168 *et seq.*; and Com. J., 6th March 1706; 20th July 1715; 16th June 1721; 18th April 1748; 31st July 1807.

[2] 109 Com. J. 479. A day was saved by this arrangement.

[3] 110 Ib. 443; 112 Ib. 403, &c.

The bill enumerates every grant that has been made during the whole session, and authorises the several sums, as voted by the committee of supply, to be issued and applied to each separate service.

Expenditure not to exceed grants.

On the 30th March 1849, the House of Commons agreed to a resolution concurring in the opinion expressed by the lords of Her Majesty's treasury, that "when a certain amount of expenditure for a particular service has been determined upon by Parliament, it is the bounden duty of the department which has that service under its charge and control, to take care that the expenditure does not exceed the amount placed at its disposal for that purpose."[1] By a clause in the annual Appropriation Act, however, where delay would be detrimental to the public service, the treasury may authorise the application of the surpluses upon some votes to the deficiencies upon others, in the grants for the army and navy, provided the total grant to each department be not exceeded; and a statement is required to be laid before the House of Commons, showing all the cases in which such authority has been given, with copies of the representations made upon the subject.[2] And every diversion of the original votes is subsequently sanctioned by a resolution of a committee of the whole house, and by a clause of the Appropriation Act. The control of Parliament over the expenditure of the annual grants is further aided by the machinery of the Exchequer and Audit Departments Act, 1866, and by the standing committee of public accounts. Increased strictness has also been lately enforced in regard to the public accounts; and where grants are not expended within the financial year they are re-voted, in whole or in part, as the case may be, in the estimates of the following year.[3] And by a standing order of the 3rd April 1862, amended 28th March 1870, a standing "committee of public accounts," consisting of eleven members, is nominated

Committee of public accounts.

[1] 104 Com. J. 190.

[2] 25 & 26 Vict. c. 71, s. 26.

[3] See Reports of Select Committee on Public Accounts, 1861 and 1862.

at the commencement of every session, "for the examination of the accounts, showing the appropriation of the sums granted by Parliament, to meet the public expenditure."

Debates on Appropriation bill.

It has been ruled that debates and amendments upon the different stages of the Appropriation bill are to be governed by the same rules as those applicable to other bills; and must, therefore, be relevant to the bill, or some part of it,[1] instead of being allowed the same latitude as that practised on going into the committees of supply and ways and means: but as the grants comprised in the bill are of great variety, a wide range of discussion is sometimes founded upon it, without exceeding the limits of relevancy.[2]

Royal assent to Appropriation Act.

When the Appropriation bill has passed both houses, and is about to receive the royal assent, it is returned into the charge of the Commons, until that house is summoned to attend her Majesty, or the lords commissioners, in the House of Peers, for the prorogation of Parliament; when it is carried by the speaker to the bar of the House of Peers, and there received by the clerk of the Parliaments, for the royal assent. When her Majesty is present in person, the speaker prefaces the delivery of the money bills with a short speech, concerning the principal measures which have received the assent of Parliament during the session, in which he does not omit to mention the supplies granted by the Commons. The money bills then receive the royal assent before any of the other bills awaiting the same ceremony, and the words in which it is pronounced acknowledge the free gift of the Commons: "*La reyne remercie ses bons sujets, accepte leur benevolence, et ainsi le veult.*"

[1] On the 26th June 1865, a member was restrained from speaking upon the tenure of land in Ireland, upon the third reading of the Appropriation bill. 180 Hans. Deb., 3rd Ser., 836.

[2] 143 Hans. Deb., 3rd Ser., 558. 641. 12th April 1859 (Admiralty Board); 153 Ib. 1626. 23rd July 1863 (Foreign Relations). 21st July 1864 (Balance of Power). 26th June 1865 (Irish Constabulary). 14th August 1867 (Turkey and Greece). 5th August 1870 (Fortifications, and State of the Navy). 8th August 1872 (Kew Gardens).

Grants voted otherwise than in committee or supply.

Although every grant of money must be considered in a committee of the whole house, it is not usual to vote, in the committee of supply, such grants as do not form part of the supplies for the service of the current year. Any issue of money out of the consolidated fund for any extraordinary purpose,[1] for salaries created by a bill, or for any other charges of whatever character, not being for the service of the year, after the Queen's recommendation has been signified, is authorised by a committee of the whole house, to whom the matter is specially referred; and on their report a bill is ordered, or a clause is inserted in a bill already before the house. As an example of this distinction, the proceedings upon the Queen's message in 1857, relating to the approaching marriage of the Princess Royal, may be referred to. The marriage portion, which was paid out of the revenues of the year, was voted in the committee of supply: but the annuity out of the consolidated fund, in a committee of the whole house.[2] In adopting this course, former precedents,[3] as well as the proper rules of the house, were consulted; and in later cases, the same course has been followed.[4]

Addresses for public money.

Another mode of originating a grant of money without the intervention of the committee of supply, is by an address to the Crown for the issue of a sum of money for particular purposes, with an assurance "that this house will make good the same."[5] According to the strict rules

[1] West India relief, 1832; 87 Com. J. 452. Slavery 20,000,000 *l.* grant, 1833; 88 Ib. 482. Sardinia and Turkish Loans, 1855 and 1856; 110 Ib. 142. 406; 111 Ib. 273. Fortifications and Works, 1860, 1862, 1863, and 1867; 115 Ib. 403, &c.

[2] 112 Ib. 170. 175.

[3] 3 Hatsell, 172, and *n.*; 67 Com. J. 377. 380; 69 Ib. 254 (Duke of Wellington). Princess Royal, 1797; 52 Com. J. 533. 544. Princess Charlotte, 1816; 71 Com. J. 220. On the 20th May 1791, an annuity was granted to the Duke of Clarence in the committee of supply, which was not a regular proceeding.

[4] Princess Alice, Prince and Princess of Wales, Princess Helena, and Princess Louise.

[5] 83 Com. J. 716, &c. 21st May 1811, the Commons addressed the Prince Regent to pay Mr. Palmer's arrears of per-centage, amounting to 54,000 *l.* The Lords took notice of this vote, for payment of a debt

of the house, this proceeding ought only to be resorted to when the committee of supply is closed, at the end of the session; for otherwise the more regular and constitutional practice is to vote the sum in that committee: but as this form of motion makes the royal recommendation unnecessary, it is often resorted to by members who desire grants which are not approved by the ministers of the Crown.

By standing order, 22nd February 1821, "This house will not proceed upon any motion for an address to the Crown, praying that any money may be issued, or that any expense may be incurred, but in a committee of the whole house."[1] In compliance with this order, and with the resolution of the 18th February 1667, now made a standing order, that the consideration and debate of motions for any public aid or charge should not be presently entered upon, the proper form to observe in proposing an address involving any outlay is to move, 1st, "That this house will on a future day resolve itself into a committee of the whole house, to consider of an address, &c. &c.;" and if that be carried, 2ndly, To move that address, in committee, on the day appointed by the house.[2] In this form addresses have been moved for public monuments to deceased statesmen.[3] If a motion for an address for public money were submitted to the house in any other manner, it would be irregular for the speaker to propose the question to the house.[4] So strictly, indeed, has this rule been enforced, that it has been

which they had denied to be due. The Prince Regent returned an answer declining to issue the money, being the first instance of the kind. A motion by Mr. Whitbread to censure ministers for this answer was negatived. 66 Com. J. 383; 20 Hans. Deb., 1st Ser., 343; Lord Colchester's Diary, ii. 332, 333. See also Ib. 152–156.

[1] 76 Com. J. 101.

[2] Mirror of Parl. 1840, pp. 3244. 4179 (Church Extension). 98 Com. J. 415, &c.

[3] Sir R. Peel, 1850; 105 Com. J. 512. Viscount Palmerston, 1866; 121 Ib. 100. Addresses for monuments to Lord Chatham in 1778, and Mr. Pitt in 1806, were voted without a committee, being before the date of the standing order.

[4] 98 Com. J. 321 (Danish claims).

held to apply to an address to the Crown, to offer a reward for the apprehension of a witness who had absconded.[1] In 1870, an address to the Crown for the issue of gun metal for a statue to Viscount Gough having been carried as an amendment, on going into committee of supply, the order for the address was afterwards discharged, and another address was agreed to with all the proper formalities.[2]

Taxes imposed otherwise than in committee of ways and means.

As grants of money may be sanctioned by these methods, otherwise than in committee of supply; so all taxes are not necessarily imposed in the committee of ways and means. The original intention of this committee was to vote all ways and means for the service of the year; and when taxes were ordinarily appropriated to specific services, its province was sufficiently defined: but since the practice has arisen of carrying the produce of all taxes to one general consolidated fund, the office of the committee of ways and means is not capable of so distinct a definition. All annual or temporary duties, and other taxes which are to take effect immediately, for purposes of revenue, are obviously subjects proper for the consideration of this committee: but the same rule is not always applicable to taxes of a more permanent and general nature.

Sugar duties.

The best illustration of this distinction will be found in the course adopted by the house, in reference to the sugar duties, which, until 1846, being annual duties, had always been voted in the committee of ways and means. In that year they were revised in that committee: but were then made permanent, instead of annual duties, in order to adjust gradually the discriminating duties upon foreign and colonial sugars. In 1848, a further revision of the duties was proposed in a committee of the whole house, and not in the committee of ways and means, as on former occasions; and it was stated in debate, that this course was adopted, after full consideration, because the duties were now per-

[1] St. Alban's case, 1851; 106 Com. J. 189. [2] 125 Com. J. 355. 362.

manent.[1] Every tax, indeed, whether it be permanent or not, is practically for the service of the current year, so long as it continues to be levied: but it may be desirable to alter it for purposes unconnected with the actual condition of the revenue. This distinction is generally observed, and it is the prevailing custom to confine the deliberations of the committee of ways and means to such taxes as are more distinctly applicable to the immediate exigencies of the public income; and to consider, in other committees of the whole house, all fiscal regulations, and alterations of permanent duties, not having directly for their object the increase of revenue. Thus general alterations of the duties of customs, excise, stamps, and taxes, have been proposed in committees of the whole house;[2] but additions to these duties, for the express purpose of supplying deficiencies in the annual revenue, have been considered in the committee of ways and means.[3] This practice, though not without exceptions,[4] has been sufficiently observed to establish a general rule, that, whenever the form of a motion points to taxation as an immediate source of revenue, it ought properly to be offered in the committee of ways and means.

Annual and permanent taxes.

On the 16th May 1861, objection was raised that some of the resolutions of the committee of ways and means, on which the Customs and Inland Revenue bill was founded, ought not to have originated in that committee, as extending beyond the current financial year: but the speaker over-ruled the objection, as the resolutions, though em-

[1] Question of Mr. M. Gibson, and Lord J. Russell's answer, 30th June 1838 (not reported in Hansard).

[2] 92 Com. J. 499, 500; 97 Ib. 264.

[3] 95 Ib. 351. 415. Property tax and inhabited house duty, 1852–53; 108 Com. J. 187. But in 1784, the House duty had been increased in a committee on the Smuggling Acts; 40 Ib. 58. 245; 24 Hans. Parl. Hist. 1008.

[4] In 1853, an increase of the Scotch and Irish spirit duties was proposed in a committee on Customs, &c. Acts, to avoid delay, which would have caused a loss of revenue; 108 Com. J. 428.

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.