

A T R E A T I S E
UPON THE
LAW, PRIVILEGES, PROCEEDINGS
AND USAGE
OF
P A R L I A M E N T.

By THOMAS ERSKINE MAY, Esq.
BARRISTER AT LAW;
ASSISTANT LIBRARIAN OF THE HOUSE OF COMMONS.

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TO
THE RIGHT HONOURABLE
CHARLES SHAW LEFEVRE,
SPEAKER OF THE HOUSE OF COMMONS,
&c. &c. &c.

THIS TREATISE
IS, WITH THE HIGHEST RESPECT,
INSCRIBED BY
THE AUTHOR.

P R E F A C E.

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

A theme so extensive has only been confined within the limits of a single volume, by excluding

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

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

As the last edition of Mr. Hatsell's work was published in 1818, the precedents of proceedings in the House of Commons have generally been

selected from the Journals of the last five and twenty years, except where those of an earlier date were obviously more appropriate. But as the precedents of the House of Lords had not been collected in any previous work, no limitation has been observed in their selection.

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

House of Commons,
May 2d, 1844.

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ABBREVIATIONS

USED IN THE REFERENCES.

Rot. Parl.—Rotuli Parliamentorum, or Rolls of Parliament, printed by the House of Lords.

Lords' J.—Lords' Journals.

Com. J.—Commons' Journals.

Lords' S. O. No. 1, &c.—Lords' Standing Orders, as collected and published.

Com. S. O. No. 1, &c.—The Commons' published Standing Orders relating to Private Bills. 1843.

Hats.—Hatsell's Precedents; edition of 1818.

Hans. Parl. Hist.—Hansard's Parliamentary History.

Hans. Deb.—Hansard's Parliamentary Debates.

Parl. Rep. or Sess. Paper, 1843 (180); refers to the Sessional Number by which any Parliamentary Report or Paper is distinguished.

The number preceding the reference invariably refers to the volume, and the figures which follow it denote the page, except where it is otherwise designated; as in the Standing Orders of the two Houses, which are distinguished by separate numbers.

All other works are either named at length, or the abbreviations are so partial as to require no explanation.

BOOK I.

CONSTITUTION, POWERS, AND PRIVILEGES OF PARLIAMENT.

CHAPTER I.

PRELIMINARY VIEW OF THE CONSTITUENT PARTS OF PARLIAMENT: THE CROWN, THE LORDS SPIRITUAL AND TEMPORAL, AND THE KNIGHTS, CITIZENS, AND BURGESSES; WITH INCIDENTAL REFERENCE TO THEIR ANCIENT HISTORY AND CONSTITUTION.

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

Introductory
Remarks.

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

No historical inquiry has greater attractions than that which follows the progress of the British Constitution from the earliest times, and notes its successive changes and development; but the immediate object of this work is to

display Parliament in its present form, and to describe its various operations under existing laws and custom. For this purpose, the history of the past will often be adverted to; but more for the explanation of modern usage than on account of the interest of the inquiry itself. Apart from the immediate functions of Parliament, the general constitution of the British government is not within the design of this Treatise; and however great the temptation may be to digress upon topics which are suggested by the proceedings of Parliament, such digressions will rarely be admitted. Within these bounds an outline of each of the constituent parts of Parliament, with incidental reference to their ancient history and constitution, will properly introduce the consideration of the various attributes and proceedings of the legislature.

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

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

Constituent
parts of Par-
liament.

I. The King
or Queen.

distinctly affirmed by the statute law, and recognised as an important principle of the constitution.

All the kings and queens since the Revolution have taken an oath at their coronation, by which they have "promised and sworn to govern the people of this kingdom, and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the same."¹ The Act 12 & 13 Will. 3, c. 2, affirms "that the laws of England are the birthright of the people thereof; and all the kings and queens who shall ascend the throne of this realm ought to administer the government of the same according to the said laws; and all their officers and ministers ought to serve them respectively according to the same." And the statute 6 Anne, c. 7, declares it high treason for any one to maintain and affirm by writing, printing, or preaching, "that the kings or queens of this realm, by and with the authority of Parliament, are not able to make laws and statutes of sufficient force and validity to limit and bind the Crown, and the descent, limitation, inheritance, and government thereof."

Coronation
oath.

Limitations of
prerogative.

Nor was this a modern principle of constitutional law established by the Revolution of 1688. If not admitted in its whole force so far back as the great charter of King John, it has been affirmed by Parliament in very ancient times. In the 40th Edw. 3, the pope had demanded homage of that monarch for the kingdom of England and land of Ireland, and the arrears of 1,000 marks a year that had been granted by King John to Innocent the 3d and his successors. The king laid these demands before his Parliament, and it is recorded that

"The prelates, dukes, counts, barons, and commons, thereupon, after full deliberation, answered and said with one accord, that neither the said King John, nor any other, could put himself or his kingdom, or people, in such subjection without their assent; and, as it appears by several evidences, that if this was done at all, it was done without their assent, and against his own oath on his coronation," they resolved to resist the demands of the pope with all their power.²

¹ 1 Gul. & Mar. c. 6.

² 2 Rot. Parl. 290.

From the words of this record it would appear, that whether the charter of King John submitted the royal prerogatives to Parliament or not, it was the opinion of the Parliament of Edward 3, that even King John had been bound by the same laws which subsisted in their own time.

The same principle had been laid down by the most venerable authorities of the English law, before the limits of the constitution had become defined. Bracton, a judge in the reign of Henry 3d, declared that "the king must not be subject to any man; but to God and the law, because the law makes him king."¹ At a later period, the learned Fortescue, the lord chancellor of Henry 6 in his banishment, thus explained the king's prerogative to the king's son: "A king of England cannot, at his pleasure, make any alterations in the laws of the land, for the nature of his government is not only regal but political." "He can neither make any alteration or change in the laws of the realm without the consent of the subject, nor burthen them, against their wills, with strange impositions."² Later still, during the reign of Elizabeth, who did not suffer the royal prerogative to be impaired in her time, Sir Thomas Smyth affirmed that "the most high and absolute power of the realm of England consisteth in the Parliament;"³ and then proceeded to assign to the Crown, exactly the same place in Parliament as that acknowledged, by statute, since the Revolution.

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

¹ Bracton, lib. 1, c. 8.

² De Laudibus, Leg. Ang. c. 9.

³ De re-publicâ Anglorum, book 2, c. 1, by Sir Thomas Smyth, knt.

⁴ "That the pretended power of suspending or dispensing with laws, or the execution of laws, without consent of Parliament, is illegal." "That levying money for or to the use of the Crown, by pretence of prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal."—1st, 2d, and 4th articles of the Bill of Rights.

The prerogatives of the Crown, in connexion with the legislature, are of paramount importance and dignity. The legal existence of Parliament results from the exercise of royal prerogative. As the head of the church, the Crown virtually appoints all archbishops and bishops, who form one of the three estates of the realm, and, as "lords spiritual," hold the highest rank, after princes of the blood royal, in the House of Lords. All titles of honour are the gift of the Crown, and thus the "lords temporal" also, who form the remainder of the upper house, have been created by royal prerogative, and their number may be increased at pleasure. In early times the summons of peers to attend Parliament depended entirely on the royal will; but their hereditary titles have long since been held to confer a right to sit in Parliament. To a Queen's writ, also, even the House of Commons owe their election, as the representatives of the people. To these fundamental powers are added others of scarcely less importance, which will be noticed in their proper place.

II. The Lords Spiritual and Temporal sit together and jointly constitute the House of Lords, which is the second branch of the legislature in rank and dignity. 1. The lords spiritual are the archbishops and bishops of the Protestant Established Church of England and four representative bishops of the Church of Ireland. Before the Conquest the lords spiritual held a prominent place in the great Saxon councils, which they retained in the councils of the Norman kings; but the right by which they have always held a place in Parliament, has not been agreed upon by the constitutional writers. In the Saxon times there is no doubt that they sat, as bishops, by virtue of their ecclesiastical office; but according to Selden, William the Conqueror, in the fourth year of his reign, first brought the bishops and abbots under the tenure by barony;¹ and Blackstone, adopting the same view, states that "William

II. The House of Lords.

1. Lords spiritual.

¹ Tit. of Hon. part 2, s. 20.

the Conqueror thought proper to change the spiritual tenure of frank-almoign, or free alms, under which the bishops held their lands under the Saxon government, into the feudal or Norman tenure by barony; and in right of succession to those baronies, which were unalienable from their respective dignities, the bishops and abbots were allowed their seats in the House of Lords."¹ Lord Hale was of opinion that the bishops sit by usage; and Mr. Hallam maintains that the bishops of William the Conqueror were entitled to sit in his councils by the general custom of Europe, which invited the superior ecclesiastics to such offices, and by the common law of England, which the Conquest did not overturn.² Another view of the question is, that before the dissolution of the monasteries, the mitred abbots had a seat in Parliament solely by virtue of their tenures as barons; but that the bishops sat in a double capacity, as bishops and as barons.³ Their presence in Parliament, however, has been uninterrupted, whatever changes may have been effected in the nature of their tenure.

There are two archbishops (of York and Canterbury) and twenty four bishops of the Church of England, who have seats in Parliament.⁴ To these were added four bishops of the Church of Ireland, on the union of that country with Great Britain, who sit by rotation of sessions, and represent the whole episcopal body of Ireland in Parliament.⁵ Of these four lords spiritual, an archbishop of the Church of Ireland is always one.

2. The lords temporal are divided into dukes, marquesses, earls, viscounts, and barons, whose titles are of different degrees of antiquity and honour. The title of duke, though first in rank, is by no means the most ancient in this country. It was a feudal title of high dignity

2. Lords temporal.

Dukes.

¹ 1 Comm. p. 156.

² Middle Ages, vol. iii. pp. 6, 7.

³ Hody's Treatise on Convocations, p. 126.

⁴ The Bishop of Sodor and Man has no seat in Parliament.

⁵ 39 & 40 Geo. 3, c. 67 (Act of Union, art. 4); 40 Geo. 3 (Irish), c. 29; 3 & 4 Will. 4, c. 37, s. 51, 52.

in all parts of Europe, in very early times, and among the Saxons, *duces* (or leaders) are frequently mentioned; but the title was first conferred after the Conquest by Edward 3, upon his son Edward the Black Prince, whom he created Duke of Cornwall.¹ Before that time the title had often been used as synonymous with that of count.

Marquesses were originally lords of the marches or borders, and derived their title from the offices held by them. In the German empire, the counts or *graves* of those provinces which were on the frontiers had the titles of *marchio* and *marggravius* in Latin; of *markgraf* in German, and *marchese* in Italian. In England similar offices and titles were anciently enjoyed without being attached to any distinct dignity in the peerage. The noblemen who governed the provinces on the borders of Wales and Scotland were called *marchiones*, and claimed certain privileges by virtue of their office; but the earliest creation of marquess as a title of honour, was in the ninth year of Richard 2. Robert de Vere, Earl of Oxford, was then created Marquess of Dublin, for life, and the rank assigned to him in Parliament by right of this new dignity, was immediately after the dukes, and before the earls.² In the same reign John Earl of Somerset was created Marquess of Dorset, but was deprived of the title by Henry 4. In the fourth year of the latter reign the Parliament prayed the king to restore this dignity, but the Earl begged to decline its acceptance, because the name was so strange in this kingdom.³

Marquesses.

The title of Earl in England is equivalent to that of *comes* or count in other countries of Europe. Amongst the Saxons there were *caldormen*, to whom the government of provinces was committed, but whose titles were official and not hereditary.⁴ That title was often used by writers indifferently with *comes*, on account of the simi-

Earls.

¹ Seld. Tit. of Hon. part 2, s. 9. 29, &c. ² Ib. s. 47. ³ 3 Rot. Parl. 488.

⁴ Spelman, on Feuds and Tenures, p. 13. Rep. on Dignity of the Peerage, 1820, p. 17.

larity of character and dignity denoted by those names. When the Danes had gained ascendancy in England, the ancient Danish title of *eorle*, which indicated a similar dignity, was gradually substituted for that of *ealdorman*. At the Norman Conquest the title of *eorle* or *earl* was in universal use, and was so high a dignity that in the earliest charters of William the Conqueror he styles himself in Latin, "Princeps Normannorum," and in Saxon, *Eorle* or *Earl* of Normandy.¹ After the Conquest the Norman name of count distinguished the noblemen who enjoyed this dignity; from whence the shires committed to their charge have ever since been called counties.² In the course of time the original title of *earl* was revived, but their wives and peeresses of that rank in their own right, have always retained the French name of countesses.

Viscounts.

Between the dignities of *earl* and *baron* no rank intervened, in England, until the reign of Henry 6; but in France the title of *viscount*, as subordinate to that of *count*, was very ancient. The great counts of that kingdom holding large territories in feudal sovereignty, appointed governors of parts of their possessions, who were called *viscounts*, or *vicecomites*. These, either by feudal gift, or by usurpation, often obtained an inheritance in the districts confided to them, and transmitted the lands and dignity to their posterity.³ In England, the title of *viscount* was first conferred upon John Beaumont, *Viscount Beaumont*, by Henry 6, in the eighteenth year of his reign; and a place was assigned to him in Parliament, the council, and other assemblies, above all the barons.⁴ The French origin of this dignity was exemplified immediately afterwards by the grant of the *viscounty* of *Beaumont*, in France, to the same person, by King Henry, who then styled himself king of France and England. The rank and precedence of a *viscount* were more distinctly defined by

¹ Seld. Tit. Hon. part 2, s. 2.

² 3 Rep. on Dignity of the Peerage, 86.

³ Seld. Tit. of Hon. part 2, s. 19.

⁴ Seld. Tit. of Hon. part 2, s. 30.

patent, in the 23d of Henry 6, to be above the heirs and sons of earls, and immediately after the earls themselves.

Barons are often mentioned in the councils of the Saxon Barons. kings, and in the laws of Edward the Confessor were classed with the archbishops, bishops, and earls; but the name bore different significations, and no distinct dignity was annexed to it, as in later times. After the Conquest every dignity was attached to the possession of lands, which were held immediately of the king, subject to feudal services. The lands which were granted by William the Conqueror to his followers descended to their posterity, who, by virtue of the baronies held by them, were ennobled by the dignity of baron. By the feudal system, every tenant was bound to attend the court of his immediate superior, and hence the barons, being tenants *in capite* of the king, were entitled to attend the king's court or council; but, although their presence at the king's council was part of the conditions of their tenure, they received writs of summons from the king, when their attendance was required. At length, when the lands became subdivided, and the king's tenants were consequently more numerous and poor, they were separated into greater and lesser barons; of whom the former continued to receive particular writs of summons from the king, and the latter only a general summons through the sheriffs. The feudal tenure of the baronies afterwards became unnecessary to create the dignity of a baron, and the king's writ or patent alone conferred the dignity and the seat in Parliament. The condition of the lesser barons, after their separation from their more powerful brethren, will be presently explained.

On the union of Scotland, in 1707, the Scottish peers were not admitted, as a class, to seats in the British Parliament; but they elect, for each Parliament, sixteen representatives from their own body; who must be descended from ancestors who were peers at the time of the union.

Representative
peers of Scot-
land.

And Ireland.

Under the Act for the legislative union with Ireland, which came into operation in 1801, the Irish peers elect twenty-eight representatives for life from the peerage of Ireland. The power of the queen to add to the number of Irish peers is subject to limitation: she may make promotions in the peerage at all times; but she can only create a new Irish peer whenever three of the peerages of Ireland, which were in existence, at the time of the union, have become extinct. But if it should happen that the number of Irish peers—exclusive of those holding any peerage of the United Kingdom, which entitles them to an hereditary seat in the House of Lords—should be reduced to one hundred; then one new Irish peerage may be created as often as one becomes extinct, or whenever an Irish peer becomes entitled, by descent or creation, to an hereditary seat in the Imperial Parliament; the true intent and meaning of that article of union being to keep up the Irish peerage to the number of one hundred.¹

These, then, are the component parts of the House of Lords, of whom all peers and lords of Parliament, whatever may be their title, have equal voice in Parliament; but none are permitted to sit in the house until they are twenty-one years of age.²

Lords spiritual
and temporal
form one body.

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

¹ Fourth art. of Union.

² Lords' S. O. No. 93.

hereditary peers of the realm, but the bishops are only lords of Parliament.¹ Their votes are intermixed, and the joint majority of the members of both estates determine every question; but they sit apart, on separate benches, the place assigned to the lords spiritual being the upper part of the house, on the right hand of the throne.

The House of Lords, in the aggregate, is now composed of 429 members, who are distributed in their different classes, in the following manner :

LORDS SPIRITUAL :

2 archbishops (Canterbury and York).
 24 English bishops.
 4 Irish representative bishops.

Total 30

LORDS TEMPORAL :

2 dukes of the blood royal.
 20 dukes.
 20 marquesses.
 115 earls.
 21 viscounts.
 207 barons.
 16 representative peers of Scotland.
 28 representative peers of Ireland.

Total 429

III. The last estate is that of the Commons, or knights, citizens, and burgesses. The date of their admission to a place in the legislature has been a subject of controversy among historians and constitutional writers; of whom some have traced their claims up to the Saxon period, while others deny them any share in the government until long after the Conquest. Without entering minutely upon a subject, which, although of the deepest interest, is no longer of constitutional import, a brief statement will

¹ See Lords' S. O. No. 44. "It would be resolved what privilege noblemen and peers have, betwixt which this difference is to be observed, that bishops are only lords of Parliament, but not peers, for they are not of tryal by nobility."

serve to unfold the ancient character of the House of Commons, and to render its present constitution the more intelligible.

Saxon Institutions.

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

Wittena-gemote.

That the wittena-gemote, or national council, was of an equally popular constitution with the shire-gemote is not so certain. If the smaller proprietors of land were not actually disqualified by law from taking part in the proceedings; yet their poverty and the distance of the council from their homes, must generally have prevented them from attending. It has been conjectured that they were represented by their tithing-men, and the inhabitants of towns by their chief magistrates; but notwithstanding the learning and ingenuity which have been devoted to the inquiry, no system of political representation can be traced back to that time. In the absence of any such trace, however, Mr. Sharon Turner says, that

“After many years’ consideration of the question, he is inclined to believe that the Anglo-Saxon wittena-gemote very much resembled our present Parliament in the orders and persons that

composed it; and that the members who attended as representatives were chosen by classes analogous to those who now possess the elective franchise."¹

He considers it

“Incumbent on the historical antiquary to show, not when the people acceded to the wittena-gemotes, but when, if ever, they were divested of the right of attending them,” as the German national councils, from which this Saxon institution derived its origin, were attended by all the people; and he argues that “the total absence of any document or date of the origin of the election of representatives by the freeholders of counties, is the strongest proof we can have that the custom has been immemorial, and long preceded the Norman Conquest. The facts that such representatives have been always called knights of the shire, and that milites, or an order like those afterwards termed knights, were part of the wittena-gemote, befriend this deduction.”²

That the people were frequently present at the deliberations of the wittena-gemote, and that the authority of their name was used, appears from many records; but whether as witnesses (in which capacity they are sometimes spoken of), or because their presence was necessary to give effect to laws, cannot now be established. In the reign of Ethelwolf, A. D. 855, a great council was held at Winchester, in which a tenth, from the whole nation, was given to the church by “the king, the barons, and the people in an infinite multitude;” but the nobles only signed the law.³ A “copious multitude of people, with many knights,” are also said to have attended a similar council in the fifth year of the reign of King Canute, but it does not appear that the people took any part in the proceedings, except as spectators. In Edward the Confessor’s law *De Apibus* a tenth is confirmed to the church “by the king, the barons, and the people;” but in other laws of the same king, the whole authority of the state is declared to be vested in the king, acting with the advice of his barons.

But whatever may have been the position of the people The Conquest.

¹ History of the Anglo-Saxons, vol. iii. p. 180.

² *Ib.* p. 184.

³ Ingulfus, p. 863.

in the Saxon government, the Conquest, and the strictly feudal character of the Norman institutions, must have brought them completely under the subjection of their feudal superiors. From the haughty character of the Norman barons, and the helpless condition of a conquered people, it is probable that the commonalty, as a class, were not admitted to any share in the national councils until some time after the Conquest, but were bound by the acts of their feudal lords; and that the Norman councils were formed exclusively of the spiritual lords, and of the tenants in chief of the Crown, who held by military service.¹

This inference is confirmed by the peculiar character of feudal institutions, which made the revenue of the early Norman kings independent of the people. As feudal superiors they were entitled to receive various services, rents, and fines, from their tenants, who held under them all the lands in the kingdom. These sources of revenue were augmented by pecuniary commutations of feudal services, and by customs levied upon corporate towns, in return for commercial privileges, which were, from time to time, conceded to them. Wars were the principal causes of expense, when it was natural for kings to seek the advice of the chief barons, upon whose military services they depended. Nor had they any interest in consulting the people, from whom they had no taxes to demand, and whose personal services in war were already due to their feudal lords. In the absence of any distinct evidence, it is not, therefore, probable that the Norman kings should have summoned representatives of the people until these sources of revenue had failed, and the commonalty had become more wealthy.

Knights of the
shire.

Consistently with the feudal character of the Norman councils, the first knights of the shire are supposed to have been the lesser barons, who, though still summoned

¹ Rep. Dignity of Peerage, 34.

to Parliament, gradually forbore to attend, and selected some of the richest and most influential of their body to represent them. The words of the charter of King John favour this position; for it is there promised that the greater barons shall be summoned personally by letters from the king, and all other tenants in chief under the Crown, by the sheriff and bailiffs. The summons to the lesser barons being thus only general, no peculiar obligation of personal attendance was imposed; and, as their numbers increased, and their wealth was subdivided, they were naturally reluctant to incur the charge of distant journies, and the mortification of being held in slight esteem by the greater barons. This position receives confirmation from the ancient law of Scotland,¹ in which the small barons and free tenants were classed together, and jointly required to send representatives. To the tenants in chief by knight's service were added, from time to time, the representatives of the richer cities and boroughs; and this addition to the legislature may be regarded as the origin of the commons, as a distinct estate of the realm in Parliament.

Citizens and
Burgesses.

It is not known at what time these important changes in the constitution of Parliament occurred, for no mention is made of the commons in any of the early records after the Conquest. William the First, in the fourth year of his reign, summoned, by the advice of his barons, a council of noble and wise men, learned in the law of England, and twelve were returned out of every county to show what the customs of the kingdom were;² but this assembly bore little resemblance to a legal summons of the commonalty, as an estate of the realm.

After this the laws and charters of William and his immediate successors, constantly mention councils of bishops, abbots, barons, and the chief persons of the kingdom, but are silent as to the commons. But in the

¹ 1427, c. 102.

² Hoveden, 343.

22d year of Henry 2 (A. D. 1176), Benedict Abbas relates, that about the feast of St. Paul, the king came to Northampton, and there held a great council concerning the statutes of his realm, in the presence of the bishops, earls, and barons of his dominions, and with the advice of his knights and *men*. This is the first chronicle which appears to include the commons in the national councils; but it would be too vague to elucidate the inquiry, even if its authority were of a higher order. And again, in the 15th of King John (A. D. 1213), a writ was directed to the sheriff of each county, "to send four discreet knights to confer with us concerning the affairs of our kingdom;" but it does not appear whether they were elected by the county or picked, at pleasure, by the sheriff.¹

Magna Charta
of King John.

Two years afterwards, the great charter of King John threw a light upon the constitution of Parliament which no earlier record had done; but even there the origin of the representative system is left in obscurity. It reserves to the city of London, and to all other cities, boroughs, and towns, and to the cinque ports and other ports, all their ancient liberties and free customs. But whether the summons to Parliament which is there promised was then first instituted, or whether it was an ancient privilege confirmed and guaranteed for the future, the words of the charter do not sufficiently explain. From this time, however, may be clearly traced the existence of a Parliament similar to that which has continued to our own days.

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

Notwithstanding the distinctness of this promise, the charters of Henry 3, omitted the engagement to summon the

¹ 2 Prynne's Register, 16.

tenants in chief by the sheriff and bailiffs; and it is doubtful whether they were summoned or not, in the early part of that reign. But a writ of the 38th year (A. D. 1254) is extant, which involves the principle of representation more distinctly than any previous writ or charter. It requires the sheriff of each county to cause to come before the king's council two good and discreet knights of his county, *whom the men of the county shall have chosen for this purpose*, in the stead of all and each of them, to consider, along with the knights of other counties, what aid they will grant the king."¹ This, however, was for a particular occasion only; and to appear before the council is not to vote as an estate of the realm. Nevertheless, representation of some kind then existed, and it is interesting to observe how early the people had a share in granting subsidies. Another writ in 1261 directs the sheriffs to cause knights to repair, from each county, to the king at Windsor.² At length, in the 49th Henry 3 (A. D. 1265), writs were issued to the sheriffs by Simon de Montfort, Earl of Leicester, directing them to return two knights for each county, and two citizens or burghesses for every city and borough; and from this time may be clearly dated the recognition of the commons, as an estate of the realm in Parliament. It is true that they were not afterwards summoned without intermission; but there is evidence to prove that they were repeatedly assembled by Edw. 1, especially in the 11th, the 22d and 23d years of his reign.³ Passing over less prominent records of the participation of the commons in the government, the statute of the 25th Edw. 1, "*De tallagio non concedendo*," must not be overlooked. It was there declared that

"No tallage or aid shall be taken or levied by us or our heirs in our realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burghesses, and other freemen of the land."

This statute acknowledges the right of the commons to

¹ 2 Prynne's Register, p. 23.

² *Ib.* 27.

³ See Table of Writs, Rep. Dig. Peerage, 489.

tax themselves; and a few years later a general power of legislation was also recognised as inherent in them. A statute passed in the 15th Edw. 2 (1322), which declares that

“The matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in Parliament, by the king and by the assent of the prelates, earls, and barons, and the commonalty of the realm, *according as had been before accustomed.*”

In reference to this statute Mr. Hallam justly observes, “that it not only establishes by a legislative declaration the present constitution of Parliament; but recognises it as already standing upon a custom of some length of time.”¹

So far the constituent parts of Parliament may be traced; and the three estates of the realm originally sat together in one chamber. When the lesser barons began to secede from personal attendance, as a body, and to send representatives, they continued to sit with the greater barons as before: but when they were joined by the citizens and burgesses, who, by reason of their order, had no claim to sit with the barons, it is natural that the two classes of representatives should have consulted together, although they continued to sit in the same chamber as the lords. The ancient treatise, “*De modo tenendi Parliamentum,*” if of unquestioned authority, would be conclusive of the fact that the three estates ordinarily sat together; but that when any difficult and doubtful case of peace or war arose, each estate sat separately, by direction of the king. But this work can claim no higher antiquity than the reign of Richard 2, and its authority is only useful so far as it may be evidence of tradition, believed and relied on at that period. Misled by its supposed authenticity, Sir Edward Coke and Elsynge entertained no doubt of the fact as there stated; and the former alleged that he had seen a record of the 30th Henry 1 (1130), of the degrees and seats of the lords and commons as one body; and that the separation took place at the desire of the commons.²

¹ 1 Const. Hist. p. 5.

² 13 Howell's St. Trials, 1130.

Lords and Commons originally sat in one chamber.

The union of the two Houses is sometimes deduced from the supposed absence of a speaker of the commons in early times; but Sir Edward Coke is in error when he infers that the commons had no speaker so late as the 28th of Edw. 1;¹ for in the 44th of Henry 3, Peter de Montfort signed and sealed an answer of the Parliament to Pope Alexander, after the lords, “vice totius communitatis.”² Nor can any decided opinion be formed from the fact of speakers of the commons not having been mentioned in earlier times; for if they consulted apart from the lords, a speaker would have been as necessary to preside over their deliberations, as when a more complete separation ensued.

It appears from several entries in the rolls of Parliament in the early part of the reign of Edward 3, that after the cause of summons had been declared by the king to the three estates collectively; the prelates with the clergy consulted by themselves; the earls and barons by themselves, and the commons by themselves; and that they all delivered their joint answer to the king.³

The inquiry, however, is of little moment, for whether the commons sat with the lords in a distinct part of the same chamber, or in separate houses as at present, it can scarcely be contended that, at any time after the admission of the citizens and burgesses, the commons intermixed with the lords, in their votes, as one assembly. Their chief business was the voting of subsidies, and the bishops granted one subsidy, the lords temporal another, and the commons again, a separate subsidy for themselves. The commons could not have had a voice in the grants of the other estates; and although the authority of their name was constantly used in the sanction of Acts of Parliament, they ordinarily appeared as petitioners. In that character it is not conceivable that they could have voted with the lords; and it is well known that down to the reign of

¹ 4th Inst. 2.

² Elsyng, 155.

³ Rot. Parl. 5 & 6 Edw. 3. 4 Inst. 2. Elsyng, 102.

Henry 6, no laws were actually written and enacted until after the Parliament.

When separated.

Various dates have been assigned for the formal separation of the two houses, some as early as the 49th Henry 3,¹ and others so late as the 17th Edward 3;² but as it is admitted that they often sat apart for deliberation; particular instances in which they met in different places, will not determine whether their separation, at those times, was temporary or permanent. When the commons deliberated apart, they sat in the chapter-house of the abbot of Westminster, and they continued their sittings in that place, after their final separation.³

Their practical union at present.

Whenever this separation may have been effected, it produced but little practical change in the uninterrupted custom of Parliament. The causes of summons are still declared by the Crown to the lords and commons assembled in one house; the two houses deliberate in separate chambers, but under one roof; they communicate with each other by message and conference; they agree in resolutions and in making laws, and their joint determination is submitted for the sanction of the Crown. They are separated, indeed, but in legislation they are practically one assembly, as much as if they sat in one chamber, and in the presence of each other, communicated their separate votes.

Number of the commons at different times.

To return to the commons, without reference to their political influence, or the manner of their sitting; it has been seen that knights of the shire, or representatives of counties; citizens, or representatives of cities; and burgesses, or representatives of boroughs, were distinctly summoned to attend Parliament in the 49th year of Henry 3. What the number was at that time does not appear, but it has since varied greatly at different periods. In addition to those boroughs which appear from the first to have returned burgesses to Parliament, many others

¹ Per Lord Ellenborough, in *Burdett v. Abbot*.

² 2 Carte's Hist. 451.

³ *Elsynge*, 104.

had that privilege conferred upon them by charter, or by statute in succeeding reigns; while some were discharged from what they considered a heavy burthen,—the expense of maintaining their members. In the time of Edward 3, 4*s.* a day were allowed to a knight of the shire, and 2*s.* to a citizen or burgess;¹ and this charge was, in the case of poor and small communities, too great an evil to be compensated by the possible benefit of representation. In the reign of Henry 6, there were not more than 300 members of the House of Commons. The legislature added 27 for Wales² and four for the county and city of Chester,³ in the reign of Henry 8; and four for the county and city of Durham in the reign of Charles 2;⁴ while 180 new members were added by royal charter between the reigns of Henry 8 and Charles 2.⁵

Wages of members.

Forty-five members were assigned to Scotland, as her proportion of members in the British Parliament, on the union of that kingdom with England;⁶ and 100 to Ireland at the commencement of the present century, on incorporating her parliament with that of the United Kingdom. These successive additions brought the number to 658, which, notwithstanding the alterations effected in the distribution of the elective franchise by the Reform Acts in 1832, remains the same to the present day.

Union of Scotland and Ireland.

To explain fully these alterations would far exceed the

Representatives as established by the Reform Acts.

¹ 4 Inst. 16.

² 27 Hen. 8, c. 26.

³ 34 Hen. 8, c. 13.

⁴ 25 Car. 2, c. 9.

⁵ Christian's Notes to Blackstone.

⁶ The election of representatives by the freeholders in Scotland had been recognised by the statute law so far back as the reign of James I. By Act 1425, c. 52, all freeholders are required to give personal attendance in Parliament, and not by a procurator; from which it is evident that representation was then the custom. Nor was it possible to restrain it by law, for two years afterwards it was authorised, and the constitution of the House of Commons defined. By Act 1427, c. 102, it was declared, "that the small barons and free tenants need not come to parliaments; provided that, at the head court of every sheriffdom, two or more wise men be chosen, according to the extent of the shire, who shall have power to hear, treat, and finally to determine all causes laid before Parliament; and to chuse a speaker, who shall propone all and sundry needs and causes pertaining to the commons in Parliament."

limits of an introduction, and is not within the design of this work ; but a brief outline of them cannot be altogether omitted.

For England
and Wales.

The object of the English Act, as stated in the preamble, was to correct divers abuses that had long prevailed in the choice of members ; to deprive many inconsiderable places of the right of returning members ; to grant such privilege to large, populous, and wealthy towns ; to increase the number of knights of the shire ; to extend the elective franchise to many of his majesty's subjects who have not heretofore enjoyed the same, and to diminish the expense of elections. To effect these changes, 56 boroughs in England and Wales were entirely disfranchised, and 30 others, which had previously returned two members, were entitled to send only one ; 22 new boroughs were created, each to return two ; and 20 more, to each of which one only was given. Several small boroughs in Wales were united for the purpose of contributing to return a member.

The result of these and other local arrangements, which it is not necessary to describe, is as follows :—The city of London having the privilege of returning four members ; the Universities of Oxford and Cambridge, and 133 cities and boroughs, returning each two members ; and 67 boroughs, returning each one member, jointly contribute 341 citizens and burgesses altogether for England and Wales.¹

Several of the counties were divided into electoral districts or divisions, by which the number of knights of the shire was increased.

The county of York has two members for each							
	of the three ridings	-	-	-	-	-	6
26	counties have	-	4	members	each	-	104
7	„	-	3	„	-	-	21
9	„	-	2	„	-	-	18
10	„	-	1	„	-	-	10
							159

¹ The members for the two universities are denominated "burgesses," and the representatives of the Cinque Ports are styled barons.

The number of members for Scotland was increased by For Scotland.
the Scotch Reform Act from 45 to 53; 30 of whom are
commissioners of shires, and 23 commissioners of burghs,
representing towns, burghs, or districts of small burghs.

By the Irish Reform Act the number of representatives And Ireland.
of that country in the Imperial Parliament was increased
from 100 to 105; 64 being for counties, 39 for cities and
boroughs, and two for the University of Dublin.

The following is a statement of the entire representation
of the three kingdoms now composing the House of
Commons:

ENGLAND AND WALES.

159 knights of shires.
341 citizens and burgesses.

Total - 500

SCOTLAND.

30 commissioners of shires.
23 commissioners of burghs.

Total - 53

IRELAND.

64 knights of shires.
41 citizens and burgesses.

Total - 105

Total of the United Kingdom, 658.

The classes of persons by whom these representatives Constituency
of English
counties.
are elected may be described, generally, in few words, if
the legal questions connected with the franchise, which
are both numerous and intricate, be avoided. To begin
with the English counties. Before the 8th of Henry 6
all freeholders had a right to vote (or, as is affirmed by
some, all freemen); but by a statute passed in that year
(c. 7) the right was limited to "people dwelling and resi-
dent in the same counties, whereof every one of them shall

have free land or tenement to the value of 40*s.* by the year, at the least, above all charges." By the Reform Act every person, being of full age, and not subject to any legal incapacity, who, at the time of the passing of the Act, was seised for his own life, or the life of another, or for any lives whatever, of a 40*s.* freehold; or who may be seised subsequently to the passing of the Act, provided he be in actual and *bonâ fide* occupation; or who may come into such freehold estate by marriage, marriage settlement, devise, or promotion to any benefice or office, is still entitled to vote as a freeholder; but any person not included in these classes acquiring a freehold subsequently to the Act, is only entitled when it shall be "to him of the clear yearly value of not less than 10*l.* above all rents and charges payable out of, or in respect of the same." Copyholders having an estate of 10*l.* a year; leaseholders of land of that value whose leases were originally granted for 60 years; leaseholders of 50*l.*, with 20 years' leases; and tenants at will occupying lands or tenements paying a rent of not less than 50*l.* a year, had the right of voting conferred by the Reform Act.

Of cities and boroughs.

In cities and boroughs the right of voting formerly varied, according to the ancient custom in each. With certain modifications many of these ancient rights were retained by the Reform Act, as that of freemen, and other corporate qualifications; and the occupiers of houses of the clear yearly value of 10*l.* were added to the old constituencies.

Registration.

From whatever right these various classes of persons claim to vote, either for counties or for cities and boroughs, it is necessary that they shall be registered in lists prepared by the overseers of each parish; and on certain days courts are held, by barristers appointed by the judges for that purpose, to revise these lists; when objections may be made to any name inserted by the overseers, and if held to be sufficient, the name is struck off the list. In ordinary cases the claimant will then have no right to vote

at any ensuing election until he shall have succeeded, at subsequent registrations, in establishing his claim: but on points of law there is an appeal to the Court of Common Pleas from the decisions of revising barristers;¹ and the register is corrected in accordance with the judgment of that court.

The Scotch Reform Act² reserved the rights of all persons then on the roll of freeholders of any shire, or who were entitled to be put upon it, and extended the franchise to all owners of property of the clear yearly value of 10*l.*, and to certain classes of leaseholders. In cities, towns, and burghs, the Act substituted a 10*l.* household franchise for the system of electing members by the town councils, which had previously existed. The lists of claimants are made up in shires by the schoolmasters of each parish, and in burghs by the town clerks; and the claims and objections are heard and determined by the sheriffs.

In Ireland the electors for counties, as settled by the Reform Act for that country,³ consist of 50*l.* freeholders; 20*l.* and 10*l.* freeholders and leaseholders, and rentchargers. In cities and counties of towns, in addition to the county constituencies, there are 40*s.* freeholders, 10*l.* leaseholders, and freemen. In boroughs there are freeholders, freemen, 10*l.* householders, and a few 5*l.* householders, whose rights existed before the passing of the Act. Claims and objections are determined by the assistant barristers at special sessions.

It has not been attempted to explain, in detail, all the distinctions of the elective franchise; neither is it proposed to state all the grounds upon which persons may be disqualified from voting. Aliens, persons under 21 years of age, of unsound mind, in receipt of parochial relief, or convicted of certain offences, are incapable of voting. Many officers, also, who are concerned in the collection of the revenue are disqualified.

¹ See 2 & 3 Will. 4, c. 45, and 6 & 7 Vict. c. 18.

² 2 & 3 Will. 4, c. 65.

³ 2 & 3 Will. 4, c. 88.

Property qualification of members.

To be eligible as a member for any place in England or Ireland, a person must possess the property qualification required by the Act 1 & 2 Vict. c. 48; viz., to be a knight of the shire, he must be entitled, for his own use and benefit, to real or personal property, or both together, to the amount of 600*l.* a year; and to be a citizen or burgess, he must be entitled to one-half the amount of that qualification. Before the passing of that Act, a freehold property in land to the amount of 600*l.* was requisite to qualify persons to serve as knights of shires, and 300*l.* to enable them to sit as citizens and burgesses.

Members for the Universities of Oxford and Cambridge, and Trinity College, Dublin, require no such qualification; and the eldest sons or heirs apparent of peers and lords of Parliament, or of persons qualified to be knights of the shire, are by law entitled to serve, without reference to the amount of their property. In Scotland no property qualification has ever been established.

Other qualifications and disqualifications.

To enable persons to sit in Parliament, there are other requisites besides property. Formerly it was necessary that the member chosen should himself be one of the body represented. The law, however, was constantly disregarded, and in 1774 was repealed. An alien is not eligible: the Act 12 & 13 Will. 3 declares that "no person born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen, except such as are born of English parents), shall be capable to be of the privy council or a member of either House of Parliament." The 1st Geo. 1, stat. 2, c. 4, in order to enforce more strongly the provisions of the Act of William, enacts that

Aliens.

"No person shall hereafter be naturalized, unless in the Bill exhibited for that purpose, there be a clause or particular words inserted, to declare that such person is not thereby enabled to be a member of either House of Parliament;"

but as no clause of this nature can bind any future Par-

liament, it has been customary to repeal it in particular cases by a previous Act, and then to pass the Act for naturalization without any restriction; as was done in respect to Prince Leopold in 1816, and Prince Albert in 1840.

A member must be of age: but before the 7 & 8 Will. 3, Minors. c. 25, which declared the law, it was not unusual for minors to sit and vote. On the 16th of December 1690, on the hearing of a controverted election, Mr. Trenchard was admitted by his counsel to be a minor; but, notwithstanding, upon a division he was declared to be duly elected.¹

Mental imbecility is a disqualification; and should a member, who was sane at the time of his election, afterwards become a lunatic, his seat may be avoided, as in the case of Gram-pound in 1566.² English peers are ineligible to the House of Commons, as having a seat in the upper house; and Scotch peers, as being represented there: but Irish peers, unless elected as one of the representative peers of Ireland, may sit for any place in *Great Britain*. The English, Scotch, and Irish judges (with the exception of the Master of the Rolls in England) are disqualified,³ together with the holders of various offices, Mental imbecility. Peers and judges. particularly excluded by statute. A large class of offices Offices. which incapacitate the holders for Parliament are *new offices*, or places of profit under the Crown, created since the 25th of October 1705, as defined by the 6th of Anne, c. 7.

All clergymen are now ineligible; but this was a doubtful Clergy. point until the 41st Geo. 3, c. 63, which arose out of Mr. Horne Tooke's election, declared that "no person having been ordained to the office of priest or deacon, or being a minister of the Church of Scotland, is capable of being elected;"

¹ 2 Hats, Prec. 9; 10 Com. J. 508.

² D'Ewes, 126; Rogers, 57.

³ 1 Com. J. 257; 7 Geo. 2, c. 16; 1 & 2 Geo. 4, c. 44.

and that if he should sit or vote, he is liable to forfeit 500*l.* for each day, to any one who may sue for it. The Roman-catholic clergy are also excluded by 10 Geo. 4, c. 7, s. 9.

Contractors.

Government contractors, being supposed to be liable to the influence of their employers, are disqualified from serving in Parliament. The Act 22 Geo. 3, c. 45, declares that any person who shall, directly or indirectly, himself, or by any one in trust for him, undertake any contract with a government department, shall be incapable of being elected, or of sitting or voting during the time he shall hold such contract, or any share thereof, or any benefit or emolument arising from the same: but the Act does not affect incorporated trading companies, contracting in their corporate capacity. The penalties for violations of the Act are peculiarly severe: a contractor sitting or voting is liable to forfeit 500*l.* for every day on which he may sit or vote, to any person who may sue for the same; and every person against whom this penalty shall be recovered, is incapable of holding any contract. The Act goes still further (s. 10), and even imposes a penalty of 500*l.* upon any person who admits a member of the House of Commons to a share of a contract.

Bankrupts.

By the 52 Geo. 3, c. 144, whenever a member shall be found and declared a bankrupt, he shall be for 12 months incapable of sitting and voting, unless the commission be superseded, or the creditors paid or satisfied to the full amount of their debts. At the expiration of 12 months the commissioners are required to certify the bankruptcy to the speaker, and the election of the member is void. In this Act there is no penalty for a bankrupt sitting and voting: and as no official notice of his bankruptcy is required to be given to the speaker for 12 months, it seems that he might sit with impunity in the mean time, unless petitioned against.

These are the chief but not the only grounds of disqualification for sitting in the House of Commons. Many

others will be found collected in the various works upon election law, where those also which have been touched upon, in this place, are more fully detailed.¹

To these explanations concerning the persons of whom Parliament is composed, it is not necessary to add any particulars as to the mode of election; farther than that the elections are held by the sheriffs or other returning officers, in obedience to a queen's writ out of Chancery, and are determined by the majority of registered electors.

CHAPTER II.

POWER AND JURISDICTION OF PARLIAMENT COLLECTIVELY. RIGHTS AND POWERS OF EACH OF ITS CONSTITUENT PARTS.

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

Legislative
authority of
Parliament,
collectively.

In the ordinary course of government, Parliament does not legislate directly for the colonies. For some, the queen in council legislates, while others have legislatures of their own, which propound laws for their internal government, subject to the approval of the queen in council; but these may afterwards be repealed or amended by statutes of the Imperial Parliament; for their legislatures

¹ Rogers, Shepherd, Stephens, Montagu & Neale, Wordsworth, &c.

and their laws are both subordinate to the supreme power of the mother country. For example, the constitution of Lower Canada was suspended in 1838; and a provisional government, with legislative functions and great executive powers, was established by the British Parliament. Slavery, also, was abolished by an Act of Parliament in 1833 throughout all the British possessions, whether governed by local legislatures or not; but certain measures for carrying into effect the intentions of Parliament were left for subsequent enactment by the local bodies, or by the queen in council. At another time, the house of assembly of Jamaica, the most ancient of our colonial legislatures, had neglected to pass an effectual law for the regulation of prisons, which became necessary upon the emancipation of the negroes; when Parliament immediately interposed and passed a statute¹ for that purpose. The assembly were indignant at the interference of the mother country, and neglected their functions; upon which an Act² was passed by the Imperial Parliament, that would have suspended the constitution of Jamaica unless within a given time they had resumed them. The vast territories of British India are subject to the anomalous government of the East India Company; whose power, however, is founded upon statute, and who are controlled by ministers responsible to Parliament.

The power of imposing taxes upon colonies for the support of the parent state, though not now enforced, was exercised by Parliament in the case of the provinces of North America; and, as is but too well known, was the immediate occasion of the severance of that great country from our own. But whatever may be urged against colonial taxation on grounds of justice or expediency, the legal right of Parliament to impose taxes upon all persons within the British dominions, is unquestionable.

There are some subjects upon which Parliament, in

¹ 1 & 2 Vict. c. 67.

² 2 & 3 Vict. c. 26.

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

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

It is by the act of the Crown alone that Parliament can be assembled. The only instances in which the lords and commons have met by their own authority, were, previously to the restoration of King Charles 2, and at the Revolution in 1688: but as those cases arose in times of extraordinary emergency, when the constitution was suspended, they serve only to confirm the general law and the prerogative of the Crown.

The first act of Charles the Second's reign declared the lords and commons to be the two Houses of Parliament, notwithstanding the irregular manner in which they had been assembled, and all their acts were confirmed by the succeeding Parliament summoned by the king; which however qualified the confirmation of them, by declaring that "the manner of the assembling, enforced by the difficulties and exigencies which then lay upon the nation, is not to be drawn into example." In the same manner the first act of the reign of William & Mary declared the convention of lords and commons to be the two Houses of Parliament, as if they had been summoned according to the usual form; and the succeeding Parliament recognised the legality of their acts.

Prerogatives of
the Crown in
reference to the
Parliament.
Summons.

¹ 4 Inst. 36.

Annual meeting of Parliament.

But although the queen may determine the period for calling Parliaments, her prerogative is restrained within certain limits; as she is bound by statutes¹ to issue writs within three years after the determination of a Parliament; while the practice of providing money for the public service by annual enactments, renders it compulsory upon her to meet Parliament every year.

The annual meeting of Parliament, now placed beyond the power of the Crown by a system of finance rather than by distinct enactment, has, in fact, been the law of England from very early times. By the statute 4th Edw. 3, c. 14, "it is accorded that Parliament shall be holden every year once, [and] [or] more often if need be."² And again in the 36th Edw. 3, c. 10, it was granted "for redress of divers mischiefs and grievances which daily happen [a Parliament shall be holden] or be the Parliament holden *every year*, as another time was ordained by statute."³

It is well known that by extending the words "if need be," to the whole sentence instead of to the last part only, to which they are obviously limited, the kings of England constantly disregarded these laws. It is impossible, however, for any words to be more distinct than those of the 36th Edw. 3, and it is plain from many records that they were rightly understood at the time. In the 50th Edw. 3, the commons petitioned the king to establish, by statute, that a Parliament should be held each year; to which the king replied: "In regard to a Parliament each year, there *are* statutes and ordinances made, which should be duly maintained and kept."⁴ So also to a similar petition in the 1st Richard 2, it was answered, "So far as relates to the holding of Parliament each year, let the statutes thereupon be kept and observed; and as for the place of meet-

¹ 16 Chas. 2, c. 1, and 6 Will. & Mary, c. 2.

² Record Comm. Statutes of the Realm.

³ *Ibid.*

⁴ 2 Rot. Parl. 335.

ing, the king will therein do his pleasure.”¹ And in the following year the king declared that he had summoned Parliament, because at the prayer of the lords and commons, it had been ordained and agreed that Parliament should be held each year.²

In the preamble of the Act 16 Charles 1, c. 1, it was also distinctly affirmed, that “by the laws and statutes of this realm, Parliaments ought to be holden at least once every year for the redress of grievances, but the appointment of the time and place of the holding thereof hath always belonged, as it ought, to his majesty and his royal progenitors.”³ Yet by the 16th Charles 2, a recognition of these ancient laws was withheld: for the Act of Charles 1 was repealed as “derogatory of his majesty’s just rights and prerogative;” and the statutes of Edw. 3 were incorrectly construed to signify no more than that “Parliaments are to be held very often.”

The Parliament is summoned by the queen’s writ or letter issued out of chancery, by advice of the privy council. By the 7 & 8 Will. 3, c. 25, it is required that there shall be 40 days⁴ between the teste and the return of the writ of summons; but since the union with Scotland, it has been the invariable custom to extend this period to 50 days.⁵ The writ of summons has always named the day and place of meeting, without which the requisition to meet would be imperfect and nugatory. Summons.

There is one contingency upon which the Parliament may meet without summons, under the authority of an Act of Parliament. It was provided by the 6 Anne, c. 7, that, “in case there should be no Parliament in being, Demise of the Crown.

¹ 3 Rot. Parl. 23.

² *Ib.* p. 32.

³ “Act for preventing of inconvenience happening from long intermission of Parliaments.”

⁴ Forty days were assigned for the period of the summons by the great charter of King John, in which are these words: “*Faciemus summoneri . . . ad certum diem, scilicet ad terminum quadraginta dieum ad minus, et ad certum diem.*”

⁵ See 22 Art. f Union, 5th Anne, c. 8. 2 Hats. 290.

at the time of the demise of the Crown, then the last preceding Parliament should immediately convene and sit at Westminster, as if the said Parliament had never been dissolved." By the 37 Geo. 3, c. 127, a Parliament so revived would only continue in existence for six months, if not dissolved in the meantime.

Causes of summons.

As the queen appoints the time and place of meeting, so also at the commencement of every session, she declares to both houses the cause of summons, by a speech delivered to them in the House of Lords by herself in person, or by commissioners appointed by her. Until she has done this, neither house can proceed with any business: but the causes of summons as declared from the throne, do not bind Parliament to consider them alone, nor to proceed at once to the consideration of any of them. After the speech, any business may be commenced; and both houses,¹ in order to assert their right to act without reference to any authority but their own, invariably read a bill a first time, *pro formâ*, before they take the speech into consideration. Other business may also be done at the same time. In the commons new writs are issued for places which have become vacant during a recess; returns are ordered, and even addresses are presented on matters unconnected with the speech. In 1840 a question of privilege, arising out of the action of Stockdale against the printers of the house, was entertained before any notice was taken of her majesty's speech.

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

Parliament, it has been seen, can only commence its

¹ This is done in the lords in compliance with a standing order, and in the commons, by usage.

deliberations at the time appointed by the queen ; neither can it continue them any longer than she pleases. She may prorogue Parliament by having her command signified, in her presence, by the lord chancellor or speaker of the House of Lords to both houses ; or by writ under the great seal, or by commission. The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time, except impeachments by the commons, are quashed. A bill must be renewed after a prorogation, as if it had never been introduced, though the prorogation be for no more than a day. William the 3d prorogued Parliament from the 21st of October 1689, to the 23d, in order to renew the Bill of Rights, concerning which a difference had arisen between the two houses that was fatal to its progress. As it is a rule that a bill cannot be passed in either house twice in the same session, a prorogation has been resorted to, in other cases, to enable a second bill to be brought in.¹

Prorogation
and adjourn-
ment.

When Parliament stands prorogued to a certain day, her majesty is empowered by Act 37, Geo. 3, c. 127, to issue a proclamation, giving notice of her royal intention that Parliament shall meet and be holden for the dispatch of business on any day not less than 14 days distant ; and Parliament then stands prorogued to that day, notwithstanding the previous prorogation. And by another Act,² whenever the Crown shall cause the supplementary militia to be raised and enrolled, or drawn out and embodied, when Parliament stands prorogued or adjourned for more than 14 days, the queen is required to issue a proclamation for the meeting of Parliament within 14 days.

Adjournment is solely in the power of each house respectively. It has not been uncommon, indeed, for the pleasure of the Crown to be signified in person, by message, commission, or proclamation, that both houses should

Adjournment.

¹ See Chap. X.

² 42 Geo. 3, c. 90, s. 147.

adjourn. But although no instance has occurred in which either house has refused to adjourn, the communication might be disregarded. Business has frequently been transacted after the king's desire has been made known, and the question for adjournment has afterwards been put, in the ordinary manner, and determined after debate, amendment, and division.¹

Under these circumstances it is surprising that so many instances of this practice should have occurred in modern times. Both houses adjourn at their own discretion, and daily exercise their right. Any interference on the part of the Crown is therefore impolitic, as it may chance to meet with opposition; and unnecessary, as the ministers need only assign a cause for adjournment, when each house would adjourn of its own accord. The last occasion on which the pleasure of the Crown was signified was on the 1st March 1814,² and after the lapse of 30 years, it is probable that the practice will never be resorted to again.

A power of interfering with adjournments in certain cases has been conceded to the Crown by statute. The 39 & 40 Geo. 3, c. 14, enacts that when both houses of Parliament stand adjourned for more than 14 days, the queen may issue a proclamation with the advice of the privy council, declaring that the Parliament shall meet on a day not less than 14 days from the proclamation; and the houses of Parliament then stand adjourned to the day and place declared in the proclamation; and all the orders which may have been made by either house, and appointed for the original day of meeting, or any subsequent day, stand appointed for the day named in the proclamation.

Dissolution.

The queen may also put an end to the existence of Parliament by a dissolution. She is not, however, entirely free to define the duration of a Parliament, for after seven years it ceases to exist, under the statute of George 1, commonly known as the Septennial Act. But before the Triennial Act, in the 6th of William & Mary, there was no

¹ 2 Hats. 316, 317.

² 49 Lords' J. 747. 69 Com. J. 132.

constitutional limit to the continuance of a Parliament but the will of the Crown.

Parliament is usually dissolved by proclamation, after having been prorogued to a certain day. This practice, according to Hatsell, "has probably arisen from those motives that are suggested by Charles 1, in his speech in 1628, 'that it should be a general maxim with kings themselves only to execute pleasing things, and to avoid appearing personally in matters that may seem harsh and disagreeable.'" But on the 10th June 1818, the Prince Regent dissolved Parliament in person.¹

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

The most distinguishing characteristic of the lords is their judicature, of which they exercise several kinds. They have a judicature in the trial of peers; and another in claims of peerage and offices of honour, under references from the Crown; and, since the union with Scotland, they have also had a judicature for controverted elections of the 16 representative peers of Scotland. But, in addition to these special cases, they have a general judicature as a supreme court of appeal from other courts of justice. This high judicial office has been retained by them as the ancient *consilium regis*, which, assisted by the judges, and with the assent of the king, administered justice in the early periods of English law.² In the 17th century they assumed a jurisdiction, in many points, which has since been abandoned. They claimed an original jurisdiction in civil cases, which was resisted by the commons, and has not been enforced for the last century and a half.

The Lords :
their judica-
ture.

¹ 73 Com. J. 427.

² Hale's Jurisdiction of the House of Lords, c. 14.

They claimed an original jurisdiction over crimes without impeachment by the commons, but that claim was also abandoned. Their claim to an appellat jurisdiction over causes in equity, on petition to themselves without reference from the Crown, was resisted by the commons; but since 1704 they have been left in undisputed possession of it. They have, at the present time, a jurisdiction over causes brought, on writs of error, from the courts of law, and to hear appeals from courts of equity on petition; but appeals in ecclesiastical, maritime, or prize causes, and colonial appeals, both at law and in equity, are determined not by them, but by the privy council.¹ The powers which are incident to them, as a court of record, will claim attention in other places.

A valuable part of the ancient constitution of the *consilium regis* has never been withdrawn from the lords, viz. the assistance of the judges, the master of the rolls, the attorney and solicitor-general, and the queen's learned counsel, being serjeants, who are still summoned to attend the House of Lords by writs from the Crown, and for whom places are assigned on the woolsacks.² But the opinion of the judges alone is now desired on points of law on which the lords wish to be informed.

Impeachments.

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

Impeachment by the commons is a proceeding of great importance, involving the exercise of the highest judicial powers by Parliament; and though in modern times it

¹ Hargrave's Preface to Hale's Jurisdiction of the Lords.

² 31 Hen. 8, c. 10, s. 8. Lords' S. O. Nos. 4, 5, 6. 4th Inst. 4.

has rarely been resorted to, in former periods of our history it was of frequent occurrence. The earliest instance of impeachment by the commons at the bar of the House of Lords, was in the reign of Edward 3 (1376). Before that time the lords appear to have tried both peers and commoners for great public offences, but not upon complaints addressed to them by the commons. During the next four reigns, cases of regular impeachment were frequent; but no instances occurred in the reigns of Edward 4, Henry 7, Henry 8, Edward 6, Queen Mary, or Queen Elizabeth.

“The institution had fallen into disuse,” says Mr. Hallam, “partly from the loss of that control which the commons had obtained under Richard 2, and the Lancastrian kings, and partly from the preference the Tudor princes had given to bills of attainder or of pains and penalties, when they wished to turn the arm of Parliament against an obnoxious subject.”

Prosecutions also in the Star Chamber, during that time, were perpetually resorted to by the Crown for the punishment of state offenders. In the reign of James 1, the practice of impeachment was revived, and was used with great energy by the commons, both as an instrument of popular power and for the furtherance of public justice. Between the year 1620, when Sir Giles Montessor and Lord Bacon were impeached, and the revolution in 1688, there were about 40 cases of impeachment. In the reigns of William 3, Anne, and George 1, there were 15; and in the reign of George 2 only that of Lord Lovat, in 1746, for high treason. The last memorable cases are those of Warren Hastings, in 1788, and Lord Melville, in 1805.

A description of the proceedings of both houses, in cases of impeachment, is reserved for a separate chapter in a later part of this treatise.

The most important power vested in any branch of the legislature is the right of imposing taxes upon the people, and of voting money for the exigencies of the public service. It has been already noticed that the exercise of this right

The Commons :
their right of
voting supplies.

by the commons, is practically a law for the annual meeting of Parliament for redress of grievances; and it may also be said to give to the commons the chief authority in the state. In all countries the public purse is one of the main instruments of political power; but, with the complicated relations of finance and public credit in England, the power of giving or withholding the supplies at pleasure, is one of absolute supremacy. The mode in which the commons exercise their right, and the proceedings of Parliament generally, in matters of supply, will be more conveniently explained in the second book.

Right of determining elections.

Another important power peculiar to the commons is that of determining all matters touching the election of their own members, and involving therein the rights of the electors. Upon the latter portion of their right a memorable contest arose between the lords and commons in 1704. Ashby, a burgess of Aylesbury, brought an action at common law against the returning officers of that borough, for having refused to permit him to give his vote at an election. A verdict was obtained by him, but it was moved in the Court of Queen's Bench, in arrest of judgment, "that this action did not lie;" and in opposition to the opinion of Lord Chief Justice Holt, judgment was entered for the defendant; but was afterwards reversed by the House of Lords upon a writ of error. Upon this the commons declared that "the determination of the right of election of members to serve in Parliament is the proper business of the House of Commons, which they would always be very jealous of, and this jurisdiction of theirs is uncontested; that they exercise a great power in that matter, for they oblige the officer to alter his return according to their judgment; and that they cannot judge of the right of election without determining the right of the electors; and if electors were at liberty to prosecute suits touching their right of giving voices in other courts, there might be different voices in other courts, which would make confusion, and be dis-

honourable to the House of Commons; and that therefore such an action was a breach of privilege." In addition to the ordinary exercise of their jurisdiction, the commons relied upon an Act of the 7 Will. 3, c. 7, by which it had been declared that "the last determination of the House of Commons concerning the right of elections is to be pursued." On the other hand, it was objected that "there is a great difference between the right of the electors and the right of the elected: the one is a temporary right to a place in Parliament *pro hâc vice*; the other is a freehold or a franchise. Who has a right to sit in the House of Commons may be properly cognizable there; but who has a right to choose, is a matter originally established, even before there is a Parliament. A man has a right to his freehold by the common law, and the law having annexed his right of voting to his freehold, it is of the nature of his freehold, and must depend upon it. The same law that gives him his right must defend it for him, and any other power that will pretend to take away his right of voting may as well pretend to take away the freehold upon which it depends." These extracts from the report of a lords' committee, 27th March 1704, upon the conferences and other proceedings in the case of Ashby and White, give an epitome of the main arguments upon which each party in the contest relied.¹

Encouraged by the decision of the House of Lords, five other burgesses of Aylesbury, now familiarly known as "the Aylesbury men," commenced actions against the constables of their borough, and were committed to Newgate by the House of Commons for a contempt of their jurisdiction. They endeavoured to obtain their discharge on writs of *habeas corpus*, but did not succeed. The commons declared their counsel, agents, and solicitors guilty of a breach of privilege, and committed them also. Reso-

¹ See all the proceedings collected, in App. to 3d vol. of Hatsell's Precedents. The whole of this report, together with another of the 13th March, may be read with interest.

lutions condemning these proceedings were passed by the lords ; conferences were held, and addresses presented to the queen. At length the queen came down and prorogued Parliament, and thus put an end to the contest, and to the imprisonment of the Aylesbury men and their counsel.

The question which was agitated at that time has never since arisen. The commons have continued to exercise the sole right of determining whether electors have had the right to vote, while inquiring into the conflicting claims of candidates for seats in Parliament, and specific modes for trying the right of election by the house have been prescribed by statutes, and its determination declared to be "final and conclusive in all subsequent elections, and to all intents and purposes whatsoever."¹

So complete is the jurisdiction of the commons in matters of election, that, although all writs are issued out of chancery, every vacancy after a general election is supplied by their authority. The speaker is empowered to issue warrants to the clerk of the crown to make out new writs; and when it has been determined that a return should be amended, the clerk of the crown is ordered to attend the house, and amend it accordingly. During the sitting of the house, vacancies are supplied by warrants issued by the speaker, by order of the house; and during a recess, either by prorogation or adjournment, he is empowered to issue warrants, in certain cases, without an order.²

Expulsion of
members.

But, notwithstanding their extensive jurisdiction in regard to elections, the commons have no control over the eligibility of candidates, except in the administration of the laws which define their qualifications. John Wilkes was expelled, in 1764, for being the author of a seditious libel. In the next Parliament (3d February 1769) he was again expelled for another libel; a new writ was ordered for the county of Middlesex, which he represented, and he was re-elected without a contest; upon which it was resolved, on the 17th of February, "that, having been in this session

¹ 9 Geo. 4, c. 22, s. 54; 4 & 5 Vict. c. 58, s. 78. ² 24 Geo. 3, sess. 2, c. 26.

of Parliament expelled this house, he was and is incapable of being elected a member to serve in this present Parliament." The election was declared void, but Mr. Wilkes was again elected, and his election was once more declared void, and another writ issued. A new expedient was now tried: Mr. Luttrell, then a member, accepted the Chiltern Hundreds, and stood against Mr. Wilkes at the election; and, being defeated, petitioned the house against the return of his opponent. The house resolved that, although a majority of the electors had voted for Mr. Wilkes, Mr. Luttrell ought to have been returned, and they amended the return accordingly. Against this proceeding the electors of Middlesex presented a petition, without effect, as the house declared that Mr. Luttrell was duly elected. The whole of these proceedings were, at the time, severely condemned by public opinion, and on the 3d of May 1782, the resolution of the 17th of February 1769, was ordered to be expunged from the journals, as "subversive of the rights of the whole body of electors of this kingdom."

Expulsion and perpetual disability had been part of the many punishments inflicted upon the unfortunate Hall, in 1580, and on the 27th May 1641, Mr. Taylor, a member, had been expelled, and adjudged to be for ever incapable of being a member of the house;¹ and during the Long Parliament incapacity for serving in the Parliament then assembled, was frequently part of the sentence of expulsion. But all these cases are only precedents of an excess of jurisdiction; for one House of Parliament cannot create a disability unknown to the law. On the 27th April 1641, Mr. Hollis, a member, was suspended the house during the session;² a sentence of a more modified character, and one in which the rights of electors were no more infringed, than if the house had exercised its unquestionable power of imprisonment.

¹ 2 Com. J. 158.

² 1b. 123. See also other cases, 8 Com. J. 289; 9 Ib. 105; 10 Ib. 846.

CHAPTER III.

GENERAL VIEW OF THE PRIVILEGES OF PARLIAMENT: POWER OF COMMITMENT BY BOTH HOUSES FOR BREACHES OF PRIVILEGE. CAUSES OF COMMITMENT CANNOT BE INQUIRED INTO BY COURTS OF LAW; NOR THE PRISONERS BE ADMITTED TO BAIL. ACTS CONSTRUED AS BREACHES OF PRIVILEGE. DIFFERENT PUNISHMENTS INFLICTED BY THE TWO HOUSES.

Privileges enjoyed by the law and custom of Parliament and by statute.

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

Some privileges rest solely upon the law and custom of Parliament, while others have been defined by statute. Upon these grounds alone, all privileges whatever are founded. The lords have ever enjoyed them, simply because "they have place and voice in Parliament;"¹ but a practice has obtained with the commons, that would appear to submit their privileges to the royal favour. At the commencement of every Parliament since the 6th of Henry 8, it has been the custom for the speaker,

Speaker's petition.

"In the name, and on the behalf of the commons, to lay claim, by humble petition, to their *ancient and undoubted*² rights and

¹ Hakewel, 82.

² See the memorable protestation of the commons, in answer to James I, who took offence at the words used by the speaker in praying for their privileges as "their antient and undoubted right and inheritance." 5 Par-

privileges; and especially to freedom from arrest and molestation for their persons, servants, and estates; to freedom of speech in debate; and to free access to her majesty whenever occasion may require it; and to the most favourable construction of all their proceedings."

To which the Lord Chancellor replies, that

"Her majesty most readily *confirms* all the rights and privileges which have ever been granted to or conferred upon the commons, by her majesty or any of her royal predecessors."¹

The influence of the Crown in regard to the privileges of the commons is further acknowledged by the report of the speaker to the house, "that their privileges have been confirmed in as full and ample a manner as they have been heretofore *granted* or *allowed* by her majesty or any of her royal predecessors."²

This custom probably originated in the ancient practice of confirming laws in Parliament, that were already in force, by petitions from the commons, to which the assent of the king was given with the advice and consent of the lords. In Atwyll's case, 17 Edw. 4, the petition of the commons to the king states that their "liberties and franchises your highness to your lieges, called by your authority royal to this your High Court of Parliament, for the shires, cities, burghs, and five ports of this realm, by your authority royal, at commencement of this Parliament, graciously have ratified and confirmed to us, your said commons, now assembled by your said royal commandment in this your said present Parliament."³

But whatever may have been the origin and cause of this custom, and however great the concession to the Crown may appear, the privileges of the commons are nevertheless independent of the Crown, and are enjoyed irrespectively of their petition. Some have been confirmed by statute, and are, therefore, beyond the control either of

liamentary History, 512; 2 Proceedings and Debates of the Commons, 1620-1, p. 359.

¹ 73 Lords' J. 571.

² 96 Com. J. 465.

³ 6 Rot. Parl. 191.

the Crown or of any other power but Parliament; while others, having been limited or even abolished by statute, cannot be granted by the Crown.

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

Freedom of access for the commons.

1. The first request for freedom of access to the sovereign is recorded in the 28th Henry 8; "but," says Elsynge, "it appeareth plainly they ever enjoyed this, even when the kings were absent from Parliament;" and in the "times of Richard 2, Henry 4, and downwards, the commons, with the speaker, were ever admitted to the king's presence in Parliament to deliver their answers; and oftentimes, under Richard 2, Henry 4, and Henry 6, they did propound matters to the king, which were not given them in charge to treat of."¹ The privilege of access is not enjoyed by individual members of the House of Commons, but only by the house at large, with their speaker; and the only occasion on which it is exercised is when an address is presented to her majesty by the whole house. Without this privilege it is undeniable that the queen might refuse to receive such an address presented in that manner; and that so far as the attendance of the whole house in person may give effect to an address, it is a valuable privilege. But addresses of the house may be communicated by any members who have access to her majesty as privy councillors; and thus the same constitutional effect may be produced, without the exercise of the privilege of the house.

¹ Elsynge, 175, 176.

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

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

Free access for peers.

2. That all the proceedings of the commons may receive from her majesty the most favourable construction, is conducive to that cordial co-operation of the several branches of the legislature which is essential to order and good government; but it cannot be classed among the privileges of Parliament. It is not a constitutional right, but a personal courtesy; and if not observed, the proceedings of the house are guarded against any interference, on the part of the Crown, not authorized by the laws and constitution of the country. The occasions for this courtesy are also limited; as by the law and custom of Parliament the queen cannot take notice of anything said or done in the house, but by the report of the house itself.¹

Favourable construction of the commons' proceedings.

Each house, as a constituent part of Parliament, exercises its own privileges independently of the other; but they are enjoyed, not by any separate right peculiar to each; but solely by virtue of the law and custom of Parliament. There are rights or powers peculiar to each, as explained in the last chapter; but all privileges, properly

Privileges of each house collectively.

¹ 4 Inst. 15. See also *infra*, Chapter IV. on Freedom of Speech.

so called, appertain equally to both houses. These are declared and expounded by each house; and breaches of privilege are adjudged and censured by each; but still it is the law of Parliament that is thus administered.

Law and cus-
tom of Parlia-
ment.

The law of Parliament is thus defined by two eminent authorities: "As every court of justice hath laws and customs for its direction, some the civil and canon, some the common law, others their own peculiar laws and customs, so the high court of Parliament hath also its own peculiar law, called the *lex et consuetudo Parliamenti*."¹ This law of Parliament is admitted to be part of the unwritten law of the land, and as such is only to be collected, according to the words of Sir Edward Coke, "out of the rolls of Parliament and other records, and by precedents and continued experience;" to which it is added, that "whatever matter arises concerning either house of Parliament, ought to be discussed and adjudged in that house to which it relates, and not elsewhere."²

Hence it follows that whatever the Parliament has constantly declared to be a privilege, is the only evidence of its being part of the ancient law of Parliament. "The only method," says Blackstone, "of proving that this or that maxim is a rule of the common law, is by shewing that it hath always been the custom to observe it;" and, "it is laid down as a general rule that the decisions of courts of justice are the evidence of what is common law."³ The same rule is strictly applicable to matters of privilege, and to the expounding of the unwritten law of Parliament.

New privileges
may not be
created.

But although either house may expound the law of Parliament, and vindicate its own privileges, it is agreed that no new privilege can be created. In 1704, the lords communicated a resolution to the commons at a conference, "That neither house of Parliament have power, by

¹ 4 Inst. 15; 1 Bl. Comm. 163.

² 4 Inst. 15.

³ 1 Comm. 68. 71.

any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of Parliament;”¹ which was assented to by the Commons.²

In treating of the privileges of individual members, it will be shown, that in the earlier periods of parliamentary history, the Commons did not always vindicate their privileges by their own direct authority; but resorted to the king, to special statutes, to writs of privilege, and even to the House of Lords, to assist them in protecting their members. It will be seen in what manner they gradually assumed their just position as an independent part of the legislature, and at length established the present mode of administering the law of Parliament.

Both houses now act upon precisely the same grounds in matters of privilege. They declare what cases, by the law and custom of Parliament, are breaches of privilege; and punish the offenders by censure or commitment, in the same manner as courts of justice punish for contempt.³ The modes of punishment may differ in some respects, but the principle upon which the offence is determined, and the dignity of Parliament vindicated, is the same in both Houses.

The right to commit for contempt, though universally acknowledged to belong equally to both houses, is often regarded with jealousy when exercised by the commons. This has arisen partly from the powers of judicature inherent in the lords, which have endowed that house with the character of a high court of justice; and partly from the more active political spirit of the lower house. But the acts of the House of Lords, in its legislative capacity, ought not to be confounded with its judicature; nor should the political composition of the House of Commons be a ground for limiting its authority. The particular acts of both houses should, undoubtedly, be watched with vigil-

Breach of privilege a contempt of the High Court of Parliament.

Commitment.

¹ 14 Com. J. 555.

² *Ib.* 560.

³ 8 Grey's Debates, 232.

ance when they appear to be capricious or unjust ; but it is unreasonable to cavil at privileges, in general, which have been long established by law and custom, and which are essential to the dignity and power of Parliament.

By the Lords.

The power of the House of Lords to commit for contempt was questioned in the cases of the Earl of Shaftesbury;¹ in 1675, and of Flower,² in 1779 ; but was admitted without hesitation by the Court of King's Bench.

By the Commons.

The power of commitment has always been exercised by the commons, and is thus established upon the ground and evidence of immemorial usage.³ It was admitted, most distinctly, by the lords, at the conference between the two houses, in the case of Ashby and White, in 1704,⁴ and it has been repeatedly recognized by the courts of law : viz. by 11 of the judges, in the case of the Aylesbury Men ;⁵ by the Court of King's Bench, in Murray's case ;⁶ by the Court of Common Pleas, in Crosby's case ;⁷ by the Court of Exchequer, in the case of Oliver (1771) ;⁸ by the Court of King's Bench, in Burdett's case in 1811 ;⁹ in the case of Mr. Hobhouse, in 1819 ;¹⁰ and lastly in the case of the Sheriff of Middlesex, in 1840.¹¹ The power is also virtually admitted by the statute 1 James 1, c. 13, s. 3, which provides that nothing therein shall " extend to the diminishing of any punishment to be hereafter, by censure in Parliament, inflicted upon any person," &c.

Authority of officers in executing orders of either house.

The right of commitment being thus admitted, it becomes an important question to determine, what authority

¹ 6 Howell's St. Tr. 1269, *et seq.*

² 8 Durnford & East, 314.

³ Mr. Wynn states that nearly 1,000 instances of its exercise have occurred since 1547, the period at which the Journals commence (*Argument*, p. 7); and numerous cases have occurred since the publication of Mr. Wynn's treatise.

⁴ 17 Lords' J. 714.

⁹ 14 East, 1.

⁵ 2 Lord Raym. 1105; 3 Wils. 205.

¹⁰ 2 Chit. Rep. 207; Barn. & Ald.

⁶ 1 Wils. 299 (1751).

420.

⁷ 3 Wils. 203 (1771).

¹¹ 11 Adolphus & Ellis, 273.

⁸ *Ib.*

and protection are acquired by officers of either house in executing the orders of their respective courts.

Any resistance to the serjeant-at-arms, or his officers, has always been treated as a contempt by the commons, and the parties, in numerous instances, have suffered punishment accordingly.

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

In 1681, after a dissolution of Parliament, an action was brought against Topham, the serjeant-at-arms attending the commons, for executing the orders of the house in arresting certain persons. Topham pleaded to the jurisdiction of the court, but his plea was overruled, and judgment was given against him. The house declared this to be a breach of privilege, and committed Sir F. Pemberton and Sir T. Jones, the judges, to the custody of the serjeant-at-arms. This case will be referred to again for another purpose, but here it is adduced as a precedent of the manner in which officers have been supported by the house, in the execution of its orders.

In 1771, the House of Commons had ordered a person to be taken into custody, who was arrested by a messenger by virtue of the speaker's warrant. The messenger was charged with an assault, and brought before the lord mayor and two aldermen, at the Mansion-house, who set the prisoner at liberty and committed the messenger of the house for an assault.¹ For this obstruction to the orders of the house, Mr. Alderman Oliver and the lord mayor were committed to the Tower.²

It cannot, indeed, be supposed that when the house has ordered the serjeant to execute a warrant, it will not sustain his authority, and punish those who resist him. But a question still arises concerning the authority with which

*Assistance of
the civil power.*

¹ 33 Com. J. 263;

² *Ib.* 285. 289.

he is invested by law, when executing a warrant properly made out by order of the house; and the assistance he is entitled to demand from the civil power.

The civil power has been frequently called upon by the house to assist in executing warrants.

In 1640, all mayors, justices, &c. in England and Ireland were ordered by warrant to aid in the apprehension of Sir G. Ratcliffe.¹

In a case that occurred in 1660, the serjeant was expressly empowered

*“ to break open a house in case of resistance, and to call to his assistance the sheriff of Middlesex, and all other officers, as he shall see cause; and who are required to assist him accordingly.”*²

On the 24th January, 1670, the house ordered a warrant to be issued for apprehending several persons, who had resisted the deputy-serjeant, and resolved,

*“ That the high sheriff of the county of Gloucester, and other officers concerned, are to be required by warrant from the speaker, to be aiding and assisting in the execution of such warrant.”*³

And again, on the 5th April, 1679, it was ordered,

*“ That the speaker do issue out his warrant, requiring all sheriffs, bailiffs, constables, and all other his majesty's officers and subjects, to be aiding and assisting to the serjeant-at-arms attending this house.”*⁴

Before the year 1810, however, no case arose in which the legal consequences of a speaker's warrant and the powers and duties of the serjeant-at-arms in the execution of it, were distinctly explained and recognized by a legal tribunal, as well as by the judgment of Parliament, in punishing resistance.

In the case of Sir Francis Burdett, in 1810, a doubt arose relative to the power of the serjeant-at-arms to break into the dwelling-house of a person, against whom a speaker's warrant had been issued. The serjeant-at-arms

¹ 2 Com. J. 29.

² 8 Com. J. 222.

³ Ib. 193.

⁴ Ib. 586.

having, in execution of a warrant, been resisted and turned out of Sir Francis Burdett's private dwelling-house by force, required the opinion of the attorney-general,

“ whether he would be justified in breaking open the outer or any inner door of the private dwelling-house of Sir F. Burdett, or of any other person in which there is reasonable cause to suspect he is concealed, for the purpose of apprehending him ; and whether he might take to his assistance a sufficient civil or military force for that purpose, such force acting under the direction of a civil magistrate ; and whether such proceedings would be justifiable during the night as well as in the day-time.”¹

The opinion of the attorney-general is so important, as pointing out the legal authority of the serjeant, and cautioning him as to the mode of exerting it, that it may be inserted nearly at length :—

“ No instance is stated to me, and I presume that none is to be found, in which the outer door of a house has been broken open under the speaker's warrant, for the purpose of apprehending the person against whom such warrant issued, then being therein. I must, therefore, form my opinion altogether upon cases which have arisen upon the execution of writs or warrants issuing from other courts, and which seem to fall within the same principle.

“ I find it laid down in Semayne's case, 5 Co. 91, that where the king is a party, the sheriff may break open the defendant's house, either to arrest him or to do other execution of the king's process ; if otherwise, he cannot enter. So if the defendant be in the house of another man, the sheriff may do the same ; but he cannot break into the house of the defendant in the execution of any process at the suit of an individual. This distinction proceeds, as I apprehend, upon the greater importance of enforcing the process of the Crown for the public benefit, than that of individuals for the support of their private rights. Reasoning from hence, I should think that the speaker's warrant, which had issued to apprehend a man under sentence of commitment for a breach of the privileges of the House of Commons, might be executed in the same manner with criminal process in the name of the king, inasmuch as those privileges were given to the House of Commons for the benefit of the public only ; and the public are interested in the due support of them. If the act had been done, and I were asked whether it could be defended, I should say that it could ; but where it is previously known that the execution of the war-

¹ 65 Com. J. 264.

rant will be resisted by force, and if death should ensue in such a conflict, the officer who executes the warrant would stand justified, or not, as the breaking of the house may be held lawful or unlawful: I feel myself obliged to bring this under his notice, leaving him to judge for himself whether he will venture to act upon my opinion, which has no direct authority in point to support it, but rests upon reasoning from other cases, which appear to me to fall within the same principle. Should the officer resolve to break into the house, if it be found necessary, he must be careful, first, to signify the cause of his coming, and make request to open the doors, and not use any force until it appears that those within will not comply; and he should be assured that the party whom he seeks to apprehend is within the house. For the purpose of executing the warrant, he may take with him a sufficient force of such description as the nature of the case renders necessary. If he has reason to apprehend a degree of resistance, which can only be repelled by a military force, he may take such force with him; but in this case it will be prudent to take with him also a civil magistrate.

“I do not think it advisable to execute the warrant in the night.

“The officer should understand, that when Sir Francis Burdett has once been arrested, if he afterwards effects his escape or is rescued, his own house or the house of any other person into which he retreats, may be broken for the purpose of re-taking him.¹

“V. GIBBS.”

In consequence of this opinion the serjeant-at-arms forced an entrance into Sir F. Burdett's house, down the area, and conveyed his prisoner to the Tower, with the assistance of a military force. Sir F. Burdett subsequently brought actions against the speaker and the serjeant-at-arms in the King's Bench. The house directed the attorney-general to defend them. The causes were both tried, and verdicts were obtained for the defendants.

With respect to the authority of the serjeant-at-arms to break open the outer door of Sir F. Burdett's house, Lord Ellenborough said,

“Upon authorities the most unquestionable this point has been

Burdett v. Abbott.

¹ 65 Com. J. 264.

settled, that where an injury to the public has been committed, in the shape of an insult to any of the courts of justice, on which process of contempt is issued, the officer charged with the execution of such process may break open doors, if necessary, in order to execute it; and it cannot be contended that the houses of legislature are less strongly armed in point of protection and remedy against contempts towards them, than the courts of justice are."¹

Thus confirming the opinion of the attorney-general, upon which the serjeant had acted. This judgment was afterwards affirmed, on a writ of error, by the Exchequer Chamber, and ultimately by the House of Lords.

But although the serjeant-at-arms may force an entrance, he is not authorized to remain in the house if the party be from home, in order to await his return. Mr. Howard, a solicitor, brought an action of trespass against certain officers of the House of Commons, who, in executing a speaker's warrant for his apprehension, had stayed several hours in his house. The trial came on before Lord Denman, in the sittings at Westminster after Michaelmas term, 1842, when it appeared in evidence that the messengers had remained for several hours in the house awaiting the return of Howard, after they knew that he was from home.

Howard v. Gosset.

The attorney-general, who appeared for the defendants, admitted that, although they had a right to enter Howard's house, and to be in his house for a reasonable time to search for him, yet that they had no right to stay there until he returned; and Lord Denman directed the jury to say what just and reasonable compensation the officers should make for their trespass, which their warrant from the House of Commons did not authorize. A verdict was consequently given for the plaintiff on the second count, with 100*l.* damages.² The verdict proceeded entirely upon the ground of the defendants having exceeded their authority, and without any reference to the jurisdiction of the House of Commons.

¹ 14 East, 157.

² Carrington & Marshman, 382.

Causes of commitment cannot be inquired into by the courts of law.

The power of commitment, with all the authority which can be given by law, being thus established, it becomes the key-stone of parliamentary privilege. Either house may adjudge that any act is a breach of privilege and contempt; and if the warrant recite that the person to be arrested has been guilty of a breach of privilege, the courts of law cannot inquire into the grounds of the judgment; but must leave him to suffer the punishment awarded by the High Court of Parliament, by which he stands committed.

Habeas Corpus.

The Habeas Corpus Act¹ is binding upon all persons whatever who have prisoners in their custody, and it is therefore competent for the judges to have before them, persons committed by the Houses of Parliament for contempt. There have been cases, indeed, in which writs of habeas corpus have been resisted: as in 1675, when the House of Commons directed the lieutenant of the Tower to make no return to any writ of habeas corpus relating to persons imprisoned by its order;² and in 1704, when similar directions were given to the serjeant-at-arms.³ But these orders arose from the contests raging between the two houses; the first in regard to the judicature of the lords, and the second concerning the jurisdiction of the commons in matters of election; and it has since been the invariable practice for the serjeant-at-arms and others, by order of the house, to make returns to writs of habeas corpus.⁴

But although the return is made according to law, the parties who stand committed for contempt cannot be admitted to bail by the courts of law. This opinion was expressed in Sheridan's case, by many of the first lawyers in the House of Commons, shortly after the passing of the Habeas Corpus Act;⁵ and has been confirmed by numerous decisions of the courts of law; of which the following are some of the most remarkable.

¹ 31 Charles 2, c. 2.

² 9 Com. J. 356.

³ 14 Ib. 565.

⁴ 95 Com. J. 25; Hansard's Debates, 24 Jan. 1840, 51 N. S. p. 550.

⁵ A. D. 1680; 4 Hans. Parl. Hist. 1262.

In 1675 Lord Shaftesbury, who had been committed by the House of Lords for a contempt, was brought before the Court of King's Bench, but remanded. In that case Lord Chief Justice Rainsford said, "He is in execution of the judgment given by the lords for contempt; and therefore if he should be bailed, he would be delivered out of execution."¹

Earl of Shaftesbury's case.

In 1751 Mr. Murray was committed to Newgate by the commons for a contempt, and was brought up to the Court of King's Bench by a habeas corpus. The court refused to admit him to bail, Wright, J., saying, "It need not appear to us what the contempt was for; if it did appear, we could not judge thereof; the House of Commons is superior to this court in this particular. This court cannot admit to bail a person committed for a contempt in any other court in Westminster Hall."²

Murray's case.

In Crosby's case, in 1771, De Grey, C. J. said, "When the House of Commons adjudge anything to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment in consequence an execution; and no court can discharge or bail a person that is in execution by the judgment of any other court."³

Brass Crosby's case.

Again, in the case of Flower, who had been committed by the House of Lords for a libel on the Bishop of Llandaff, the prisoner applied in vain to the King's Bench to be admitted to bail; and Lord Kenyon, adopting the same view as other judges before him, said,

Flower's case.

"We were bound to 'grant this habeas corpus; but having seen the return to it, we are bound to remand the defendant to prison, because the subject belongs to 'aliud examen.'"⁴

In the case of Mr. Hobhouse, Lord Chief Justice Abbot said,

Hobhouse's case.

"The power of commitment for contempt is incident to every court of justice, and more especially it belongs to the High Court of Parliament; and therefore it is incompetent for this court to question the privileges of the House of Commons, on a commitment for an offence which they have adjudged to be a contempt of those privileges."⁵

The last case that occurred was that of the sheriff of Middlesex, in 1840, who had been committed for execut-

Sheriff of Middlesex.

¹ 6 Howell's St. Tr. 1269.

² 1 Wils. 200.

³ 3 Wils. 188.

⁴ 8 Durnford & East, 314.

⁵ 2 Chit. Rep. 207; 3 Barn. & Ald. 420.

ing a judgment of the Court of Queen's Bench against the printers of the House of Commons. In obedience to an order of the house,¹ the serjeant made a return to the writ, that he had taken and detained the sheriff by virtue of a warrant under the hand of the speaker, which warrant was as follows:—

“Whereas the House of Commons have this day resolved that W. Evans, esq. and J. Wheelton, esq. sheriff of Middlesex, having been guilty of a contempt and breach of the privileges of this house, be committed to the custody of the serjeant-at-arms attending this house; these are therefore to require you to take into your custody the bodies of the said W. Evans and J. Wheelton, and them safely to keep during the pleasure of this house; for which this shall be your sufficient warrant.”

It was argued that, under the 56 Geo. 3, c. 100, s. 3, the judges could examine into the truth of the facts set forth in the return, by affidavit or by affirmation; that the return was bad, because it did not state the facts on which the contempt arose; and that the warrant did not show a sufficient jurisdiction in those who issued it. No one appeared in support of the return, but the judges were unanimously of opinion that the return was good, and that they could not inquire into the nature of the contempt;² although it was notorious that the sheriff had been committed for executing a judgment of that court.

From these cases it may now be considered as established beyond all question, that the cause of commitments by either House of Parliament, for breaches of privilege and contempt, cannot be inquired into by courts of law, but that their “adjudication is a conviction, and their commitment, in consequence, an execution.”

But one qualification of this doctrine must not be omitted. When it appears, upon the return of the writ, simply that the party has been committed for a contempt and breach of privilege, it has been universally admitted that it is incompetent for the courts to inquire further into

¹ 95 Com. J. 25.

² 11 Adolphus & Ellis, 273.

the nature of the contempt; but if the causes were stated on the warrant, it is probable that their sufficiency would be examined. Lord Ellenborough, in his judgment in *Burdett v. Abbot*,¹ drew the distinction between such cases in the following manner:—

“If a commitment appeared to be for a contempt of the House of Commons generally, I would, neither in the case of that court nor of any other of the superior courts, inquire further: but if it did not profess to commit for a contempt, but for some matter appearing on the return, which could by no reasonable intendment be considered as a contempt of the court committing, but a ground of commitment palpably and evidently arbitrary, unjust, and contrary to every principle of positive law or natural justice; I say, that in the case of such a commitment (if it ever should occur, but which I cannot possibly anticipate as ever likely to occur,) we must look at it and act upon it as justice may require, from whatever court it may profess to have proceeded.”

And in this opinion Lord Denman appears to have acquiesced, in the case of the sheriff of Middlesex.

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

Breaches of
privilege de-
fined.

Breaches of privilege may be divided into, 1. Disobedience to general orders or rules of either house; 2. Disobedience to particular orders; 3. Indignities offered to the character or proceedings of Parliament; 4. Assaults or interference with members in discharge of their duty,

¹ 14 East, 1.

or reflections upon their character and conduct in Parliament.

Disobedience of
general orders
and rules.

1. Disobedience to any orders or rules, if made for the convenience or efficiency of the proceedings of the house, is a breach of privilege, the punishment of which would be left to the house, by those who are most jealous of parliamentary privilege. But if such orders should appear to clash with the common or statute law of the country, their validity is liable to question, as will be shown in a separate chapter¹ upon the jurisdiction of the courts in matters of privilege.

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

Publication of
debates.
Lords.

The publication of the debates of either house has been repeatedly declared to be a breach of privilege, and especially false and perverted reports of them; and no doubt can exist that if either house desire to withhold their proceedings from the public, it is within the strictest limits of their jurisdiction to do so, and to punish any violation of their orders. The lords have a standing order, of the 27th February 1698, by which it is declared,

“That it is a breach of the privilege of this house, for any person whatsoever to print, or publish in print, anything relating to the proceedings of the house without the leave of this house.”²

Cases.

In 1801, Allan Macleod, a prisoner in Newgate, convicted for a misdemeanor, was fined 100 *l.*, and committed to Newgate for six months after the expiration of his sentence, for publishing certain paragraphs purporting to be a proceeding of the house, which had been ordered to be expunged from the Journal, and the debate thereupon. He was also ordered to be kept in safe custody until he should pay the fine.³ And John Higginbottom, for vending and publishing these paragraphs, was fined 6 *s.* 8 *d.*, and committed to Newgate for six months, and until he should pay the fine.⁴ He afterwards presented a petition to be liberated, was brought to the bar, reprimanded, and discharged.⁵

¹ Chapter VI.

² Lords' S. O. No. 77.

³ 43 Lords' J. 105.

⁴ *Ib.*

⁵ *Ib.* 115. 225. 230.

In the same year, H. Brown and T. Glassington were committed to the custody of the black rod, for printing and publishing in the *Morning Herald* some paragraphs purporting to be an account of what passed in debate, but which the house declared to be a scandalous misrepresentation.¹

The commons have ordered,

Commons.

“That no news-letter writers do, in their letters or other papers that they disperse, presume to intermeddle with the debates or any other proceedings of this house.”² “That no printer or publisher of any printed newspapers do presume to insert in any such papers any debates or any other proceedings of this house, or of any committee thereof.”³ “That it is an indignity to and a breach of the privilege of this house, for any person to presume to give, in written or printed newspapers, any account or minute of the debates or other proceedings. That, upon discovery of the authors, printers, or publishers of any such newspaper, this house will proceed against the offenders with the utmost severity.”⁴

Other orders also to the same effect, though not verbally the same, have been repeated at different times.⁵ These orders have fallen into disuse; debates are daily cited in Parliament from printed reports, and galleries have been constructed for the accommodation of reporters. But if any wilful misrepresentation of the debates should arise, or if on any particular occasion it should be thought necessary to enforce the restriction, there can be no question but that the house is justified in punishing the offender, whether he be a member of the house, or a stranger admitted to its debates.⁶

In the same manner it is declared to be a breach of privilege for a member or any other person to publish the evidence taken before a select committee, until it has been reported to the house;⁷ and the publisher of a newspaper

¹ 43 Lords' J. 60.

² Orders, 11th Feb. 1695. 18th Jan. 1697. 3d Jan. 1703. 23d Jan. 1722. 12 Com. J. 48. 14 Ib. 270. 20 Ib. 99.

³ 20 Com. J. 99.

⁴ 26 Feb. 1728; 21 Com. J. 238.

⁵ 13th April 1738. 10th April 1753. 3d March 1762. 23 Com. J. 148. 26 Ib. 754. 3d March 1762.

⁶ 74 Com. J. 537. See also Chap. VII.

⁷ 92 Com. J. 282.

has been committed for this offence¹ by the House of Commons.

There are various other orders and rules connected with parliamentary proceedings; for example, to prevent the forgery of signatures to a petition;² for the protection of witnesses;³ for securing true evidence before the house or committees;⁴ for the correct publication of the votes;⁵ and for many other purposes which will appear in different parts of this work. A wilful violation of any of these orders or rules, or general misconduct in reference to the proceedings of Parliament, will be censured or punished, at the pleasure of the house whose orders are concerned.⁶

Disobedience
to particular
orders.

2. Particular orders are of various kinds: as for the attendance of persons before the house or committees;⁷ the production of papers or records;⁸ for enforcing answers to questions put by the house or by committees;⁹ and, in short, for compelling persons to do, or not to do, any acts that are within the jurisdiction of the house. If orders be made beyond its jurisdiction, the house, as already proved, may punish the parties who refuse compliance with or obstruct the execution of them;¹⁰ but the enforcement of them may become a matter liable to question before the courts of law.

Libels upon the
house.

3. Indignities offered to the character or proceedings of Parliament, by libellous reflections, have always been resented and punished as breaches of privilege. Some of the offenders have escaped with a reprimand; others have been committed to the custody of the black rod, or the serjeant-at-arms; while many have been confined in the

¹ 87 Com. J. 360.

² 34 Com. J. 800.

³ 22 Ib. 146.

⁴ Sessional orders.

⁵ Ib.

⁶ 4 Lords' J. 705. 37 Ib. 613. 38 Ib. 338. 649.

⁷ 91 Com. J. 338.

⁸ 90 Com. J. 564. 575.

⁹ 88 Com. J. 218. 90 Ib. 504.

¹⁰ See 4 Lords' J. 247, where Harwood and Drinkwater were committed to the Fleet, and pilloried for disobedience to an order for quieting the possessions of Lord Lindsey; and 6 Ib. 493.

Tower and in Newgate; and in the lords fine, imprisonment, and the pillory have been adjudged. Prosecutions at law have also been ordered against the parties.¹ The cases are so numerous that only a few of the most remarkable need be given.

The following extract from the report of a committee of Lords. the lords, 18th May 1716, will serve to show the practice of that house :

“ That where offences have been committed against the honour and dignity of the house in general, or any member thereof, the house have proceeded, both by way of fine and corporal punishment upon such offenders; but in other cases the attorney-general has been ordered to prosecute the offenders according to law; and the committee, on perusal of the several orders directing prosecutions by the attorney-general, do not find that, at any time, addresses have been made to the king for such prosecutions.”²

Very severe punishments were formerly awarded by the lords in cases of libel, as fine, imprisonment, and pillory;³ but in modern times commitment, with or without fine, has been the ordinary punishment.⁴ In 1798 Messrs. Lambert and Perry were fined 50*l.* each, and committed to Newgate for three months, for a newspaper paragraph highly reflecting on the honour of the house.⁵

In the commons, William Thrower was committed to the custody of the serjeant in 1559, for a contempt in *words* against the dignity of the house.⁶ In 1586 Mr. Arthur Hall, a member, was imprisoned, *fined*,⁷ and expelled, for having printed and published a libel containing “matter of infamy of sundry good particular members of the house, and of the whole state of the house in general, and also of the power and authority of the house.”⁸ In 1628 Henry Aley was committed to the custody of the serjeant for a libel on the last Parliament.⁹ In 1640 the Archdeacon of Bath was committed for abusing the last Parliament.¹⁰ In 1701

Precedents in
the commons.

¹ 34 Lords' J. 330. 23 Com. J. 546. 26 Ib. 9. 304. 34 Ib. 464.
44 Ib. 463.

² 20 Lords' J. 362.

³ 4 Lords' J. 615. 5 Ib. 241. 244. 20 Ib. 363. 22 Ib. 353, 354.

⁴ 22 Ib. 351. 367. 380.

⁵ 41 Ib. 506. ⁶ 1 Com. J. 60.

⁷ See *infra*, p. 73.

⁸ D'Ewes' Journal, 291-298.

⁹ 1 Com. J. 925.

¹⁰ 2 Com. J. 63.

Thomas Colepepper was committed for reflections upon the last House of Commons; and the attorney-general was directed to prosecute him.¹ The house also resolved, shortly after the last case, "that to print or publish any books or libels reflecting upon the proceedings of the House of Commons, or any member thereof, for or relating to his service therein, is a high violation of the rights and privileges of the House of Commons."² In 1805 Peter Stuart was committed for printing in his paper libellous reflections on the character and conduct of the house.³ In 1810 Sir F. Burdett, a member, was sent to the Tower for publishing "a libellous and scandalous paper reflecting upon the just rights and privileges of the house."⁴ And in 1819 Mr. Hobhouse, having acknowledged himself the author of a pamphlet, was committed to Newgate. The house had previously declared his pamphlet to be "a scandalous libel, containing matter calculated to inflame the people into acts of violence against the legislature, and against this house in particular; and that it is a high contempt of the privileges, and of the constitutional authority of this house."⁵

The power of the house to commit the authors of libels was questioned before the Court of King's Bench, in 1811, by Sir F. Burdett, but was admitted by all the judges of that court, without a single expression of doubt.⁶

On the 21st May 1790 a general resolution was passed by the commons:

"That it is against the law and usage of Parliament, and a high breach of the privilege of this house, to write or publish, or cause to be written or published, any scandalous and libellous reflection on the honour and justice of this house, in any of the impeachments or prosecutions in which it is engaged."⁷

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

In the Lords this offence has been visited with peculiar severity, of which numerous instances are to be found in the earlier volumes of their Journals;⁸ of these only a few of the most remarkable need be particularly mentioned.

On the 22d March 1623, Thomas Morley was fined 1,000*l.*, sent to

¹ 13 Com. J. 735. ² Ib. 767. ³ 65 Ib. 113. ⁴ 65 Ib. 252.

⁵ 75 Com. J. 57. Many other cases are cited in the Appendix to the Second Report on Sir F. Burdett, in 1810.

⁶ Burdett v. Abbot, 14 East, 1.

⁷ 45 Com. J. 508.

⁸ 3 Lords' J. 842. 851. 4 Ib. 131. 2. 3. 5 Ib. 24.

Assaults, in-
sults, or libels
upon members.

Lords.

the pillory, and imprisoned in the Fleet, for a libel on the lord keeper.¹ On the 9th July 1663, Alexander Fitton was fined 500*L.*, and committed to the King's Bench, for a libel on Lord Gerard of Brandon, and ordered to find sureties for his behaviour during life;² and others who had been privy to signing and publishing the libel, were imprisoned in the Fleet, and ordered to find security for their good behaviour during life. On the 18th December 1667, William Carr, for dispersing scandalous and seditious printed papers against the same nobleman, was fined 1,000*L.*, sentenced to stand thrice in the pillory, to be imprisoned in the Fleet; and the papers to be burned by the hand of the hangman.³ On the 8th March 1688-9, W. Downing was committed to the Gatehouse, and fined 100*L.*, for printing a paper reflecting on the Lord Grey of Wark.⁴

In later times parties have been attached for libels on peers, as in 1722, for printing libels concerning Lord Strafford,⁵ and Lord Kinnoul;⁶ and fined and committed, as in the case of Flower, in 1779, for a libel on the Bishop of Llandaff.⁷

In 1776, Richard Cooksey was attached for sending an insulting letter to the Earl of Coventry, and afterwards reprimanded, and ordered "to be continued in custody until he find security for his good behaviour."⁸

In the commons, on the 12th April 1733, it was resolved Commons. and declared, *nem. con.*,

"That the assaulting, insulting, or menacing any member of this house, in his coming to or going from the house, or upon the account of his behaviour in Parliament, is an high infringement of the privilege of this house, a most outrageous and dangerous violation of the rights of Parliament, and an high crime and misdemeanor."⁹ And again, on the 1st June 1780, "That it is a gross breach of the privilege of this house for any person to obstruct and insult the members of this house in the coming to or going from the house, and to endeavour to compel members by force to declare themselves in favour of or against any proposition then depending or expected to be brought before the house."¹⁰ Assaulting or obstructing members.

It need hardly be said that any person acting in opposition to these orders will be committed.

On the 22d June 1781, complaint was made that Sir J. Wrottesley had received a challenge for his conduct as a member of the

¹ 3 Lords' J. 276.² 11 Ib. 554.³ 12 Ib. 174.⁴ 14 Ib. 144.⁵ 22 Ib. 129.⁶ Ib. 149.⁷ 42 Ib. 181.⁸ 39 Ib. 314. 331.⁹ 22 Com. J. 115.¹⁰ 37 Com. J. 902.

Worcester election committee; and Swift, the person complained of, was committed to the custody of the serjeant-at-arms.¹ On the 13th April 1809, Sir Charles Hamilton complained that he had been arrested, and otherwise insulted by Daniel Butler, a sheriff's officer; and Butler was committed to Newgate for his offence.²

On the 11th July 1824, the speaker, having received information that a member had been assaulted in the lobby, ordered the serjeant-at-arms to take the person into custody, and doubts being entertained of his sanity, he was ordered to stand committed to the custody of the serjeant.³

In 1827, complaint was made of three letters which had been sent to Mr. Secretary Peel, taking notice of his speeches, and threatening to contradict them from the gallery of the house. The letters were delivered in and read, and the writer, H. C. Jennings, was ordered to attend. He acknowledged that the letters were written by him, and he was declared guilty of a breach of privilege, but was suffered to escape with a reprimand from the speaker.⁴

Libels.

Libels upon members have also been constantly punished.

In 1680, Yarrington and Groome were committed for a libel against a member.⁵ In 1689, Christopher Smelt was committed for spreading a false and scandalous report of Peter Rich, a member.⁶ In 1696, John Rye was committed for having caused a libel, reflecting on a member, to be printed and delivered at the door.⁷ In 1704, James Mellot was committed for false and scandalous reflections upon two members.⁸ In 1733, William Noble was committed for asserting that a member received a pension for his voting in Parliament.⁹ In 1774, H. S. Woodfall was committed for publishing a letter, reflecting on the character of the speaker.¹⁰ In 1821, the author of a paragraph in the John Bull newspaper, containing a false and scandalous libel on a member, was committed to Newgate.¹¹ In 1832, Messrs. Kidson & Wright, solicitors, were admonished for having addressed to

¹ 38 Com. J. 535, 537.

² 79 Com. J. 483.

³ 9 Com. J. 654, 656.

⁴ 11 Com. J. 656.

⁵ 23 Com. J. 245.

⁶ 64 Com. J. 210, 213.

⁷ 82 Com. J. 395, 399.

⁸ 10 Com. J. 244.

⁹ 14 Com. J. 565.

¹⁰ 34 Com. J. 456.

¹¹ 76 Com. J. 335.

the committee on the Sunderland Dock Bill a letter, reflecting on the conduct of members of the committee, copies of which were circulated in printed handbills.¹

Other cases, too numerous to mention, have occurred, in some of which the parties have been committed or reprimanded; and in others the house has considered that the remarks did not justify any proceedings against the authors or publishers.²

On some occasions the house has also directed prosecutions against persons who have published libels reflecting upon members, in the same manner as if the publications had affected the house collectively.³

Of a similar character with libels, is wilful misrepresentation of the proceedings of members.

On the 22d April 1699, it was resolved,

“That the publishing the names of the members of this house, and reflecting upon them, and misrepresenting their proceedings in Parliament, is a breach of the privilege of this house, and destructive of the freedom of Parliament.”⁴

When the speaker is accompanied by the mace, he has power to order persons into custody for disrespect, or other breaches of privilege committed in his presence, without any previous order of the house. Mr. Speaker Onslow ordered a man into custody who pressed upon him in Westminster Hall;⁵ and a case is mentioned by D'Ewes in which a member seized upon an unruly page and brought him to the speaker, by whom he was committed prisoner to the serjeant.⁶ In 1675, Sir Edward Seymour seized the serjeant-at-arms and delivered him into the custody of a messenger; but in that case Pemberton, the serjeant, had been ordered by the house to be taken into custody, and the speaker had issued his warrant for that purpose, to the lieutenant of the Tower.⁷

Persons committed by the speaker.

¹ 87 Com. J. 278. 294.

² See the head of COMPLAINTS, in the several Journal Indexes.

³ 13 Com. J. 230. 14 Ib. 37. ⁴ 12 Com. J. 661.

⁵ 2 Hats. 241 n. ⁶ D'Ewes, 629. ⁷ 9 Com. J. 351. 353.

Inquiry into alleged breaches of privilege.

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

Lords.

By a standing order of the lords of 11th January 1699, it is ordered,

“That in case of complaint by any lord of this house of a breach of privilege, wherein any person shall be taken into custody for the future; if the house, upon examination of the matter complained of, shall judge the same to be no breach of privilege, the lord who made the complaint shall pay the fees and expenses of the person so taken into custody; and that no person shall be taken into custody upon complaint of a breach of privilege, but upon oath made at the bar of this house.”¹

This order was explained, on the 3d June 1720, “to be understood only of breaches of privilege committed in Great Britain; but that oath made by affidavit, in writing, of a breach of privilege committed in Ireland, may be sufficient ground to take into custody the person thereby proved to have been guilty of such breach of privilege, though no oath be made thereof, at the bar of this house.”²

Commons.

In the commons it was resolved, 31st January 1694,

“That no persons shall be taken into custody, upon complaint of any breach of privilege of this house before the matter be first examined;” but it was at the same time resolved and declared, “that the said order is not to extend to any breach of privilege upon the person of any member of this house.”³

Again, on the 3d January 1701, it was resolved,

“That no person be taken into custody of the serjeant-at-arms, upon any complaint of a breach of privilege, until the matter of such complaint shall have been examined by the committee of privileges, and reported to the house, and that the same be a standing order of the house.”⁴

There is no longer a general committee of privileges, to whom all such matters are referred, although the committee of privileges is still nominally appointed.⁵ The

¹ Lords' S. O. No. 78.

² Ib. No. 110.

³ 11 Com. J. 219.

⁴ 13 Com. J. 648.

⁵ 93 Com. J. 8.

appointment, at the commencement of each session, of the committee of privileges was discontinued in 1833, but has since been revived, *pro formâ*, although no members are nominated. It is the present practice, when a complaint is made, to order the party complained of to attend the house; and on his appearance at the bar, he is examined and dealt with, according as the explanations of his conduct are satisfactory or otherwise; or as the contrition expressed by him for his offence conciliates the displeasure of the house. If there be any special circumstances arising out of a complaint of a breach of privilege, it is usual to appoint a select committee to inquire into them, and the house suspends its judgment until their report has been presented.

In order to discourage frivolous complaints, a resolution, similar to the standing order of the lords, was agreed to, on the 11th February 1768:

“That in case of any complaint of a breach of privilege hereafter to be made by any member of this house, if the house shall adjudge that there is no ground for such complaint, the house will order satisfaction to the person complained of, for his costs and expenses incurred by reason of such complaint;” and this was ordered to be made a standing order.¹

The house may punish in one session offences that have been committed in another. On the 4th and 14th April 1707, it was resolved, *nem. con.*,

“That when any person ordered to be taken into the custody of the serjeant-at-arms, shall either abscond from justice, or having been in custody shall refuse to pay the just fees, that in either of those cases the order for commitment shall be renewed at the beginning of the next session of Parliament, and that this be declared to be a standing order of the house.”²

In 1754, Mr. Murray, who had been imprisoned in Newgate until the close of the session, for a libel, was, on the next meeting of Parliament, again ordered to be committed; but he had absconded, in the meantime, to escape a second imprisonment.³

¹ 31 Com. J. 602.

² 15 Com. J. 376. 386.

³ 26 Com. J. 303.

It also appears, that a breach of privilege committed against one Parliament may be punished by another; and libels against former Parliaments have often been punished.¹ In the debate on the privilege of Sir R. Howard, in 1625, Mr. Selden said, "It is clear that breach of privilege in one Parliament may be punished in another succeeding."²

Differences in the punishment inflicted by the lords and by the commons.

In all the acts that have been noticed as breaches of privilege, both houses have agreed in their adjudication; but in several important particulars, there is a difference in their modes of punishment. The lords claim to be a court of record, and, as such, not only to imprison, but to impose fines. They also imprison for a fixed time, and order security to be given for good conduct. The commons, on the other hand, commit for no specified period, and of late years, have not imposed fines.

There can be no question but that the House of Lords, in its judicial capacity, is a court of record; but, according to Lord Kenyon, "when exercising a legislative capacity, it is not a court of record."³ However this may be, instances too numerous to mention have occurred, in which the lords have sentenced parties to pay fines:⁴ many have already been noticed in the present chapter, as well as cases in which they have ordered security to be given for good conduct, even during the whole life of the parties.⁵ The following is a standing order of the lords, of the 3d April 1624:

Fines.

"Whereas this high court of the Upper House of Parliament do often find cause in their judicature to impose fines, amongst other punishments, upon offenders, for the good example of justice, and to deter others from like offences; it is ordered and declared, that at the least once before the end of every session, the committees for the orders of the house and privileges of the lords of Parliament, do acquaint the lords with all the fines that have been laid

¹ 1 Com. J. 925. 2 Ib. 63. 13 Ib. 735.

² 1 Hats. Prec. 184.

³ Flower's case, 1779. 8 Durnford & East, 314.

⁴ 3 Lords' J. 276. 11 Ib. 554. 12 Ib. 174. 14 Ib. 144. 42 Ib. 181. 43 Ib. 60, 105.

⁵ 11 Lords' J. 554. 39 Ib. 331.

that session, that thereupon their lordships may use that power which they justly have, to take off or mitigate such fines, either wholly or in part, according to the measure of penitence or ability in the offenders, or suffer all to stand, as in equity their lordships shall think fit."¹

The lords have power to commit offenders to prison for a specified term, even beyond the duration of the session;² and if no time were mentioned, and the commitment were general, it is understood that the prisoners could not be discharged on habeas corpus even after a prorogation;³ although, in the case of Lord Shaftesbury, a doubt was expressed by one of the judges whether the imprisonment, which was for an uncertain time, would be concluded by the session; and another said, that if the session had been determined, the prisoner ought to have been discharged.⁴

Whether the House of Commons be, in law, a court of record it would be difficult to determine; for this claim was formerly maintained, but has latterly been virtually abandoned, though never distinctly renounced. In Fitzherbert's case, in 1592, the house resolved "that this house being a court of record, would take no notice of any matter of fact at all in the said case, but only of matter of record;" and the record of Fitzherbert's execution was accordingly sent to the house by the lord keeper.⁵ In the debate on Floyd's case, in 1621, Sir Edward Coke said, "no question but this is a house of record, and that it hath power of judicature in some cases;"⁶ and exclaimed, "I wish his tongue may cleave to his mouth that saith that this house is no court of record." And in the same year, the apology of the commons contains these words: "We avouch also that our house is a court of record, and ever so esteemed."

Whether House of Commons be a court of record.

¹ Lords' S. O. No. 46.

² 43 Lords' J. 105.

³ Lord Denman's judgment in *Stockdale v. Hansard*, p. 147.

⁴ Howell's St. Trials, 1296. 1 Mod. Rep. 144.

⁵ D'Ewes, 502.

⁶ 1 Com. J. 604-

In *Jones v. Randall*,¹ Lord Mansfield said the House of Commons was not a court of record.

It may be fairly argued that if the commons be not a court of record in adjudging breaches of privilege, the judicature of the lords is not sufficient alone to constitute that house a court of record in their legislative capacity; for though they have various kinds of judicature, the commons also have parallel kinds of judicature. The lords have a judicature for their privileges, and for the election of representative peers of Scotland; the commons have, in like manner, a judicature for their privileges, and in the election of members. It is true that the lords have other judicial functions which the commons do not possess; but so far as each house is acting within its own peculiar jurisdiction, the one would appear to be a court of record as well as the other: and when does the legislative character cease and the judicial character begin in either house? In their deliberations they are both legislative, but when their privileges are infringed, their judicature is called into action. If this view of the question be allowed, both houses, in matters of privilege, are equally courts of record; and the lords have no further claim to that character than the commons, except when they are sitting as a court of appeal, in trials of peers, in hearing claims of peerage, or in cases of impeachment.²

Fines,

Acting as a court of record, the commons formerly fined and imprisoned persons.

In 1575, Smalley, a member's servant, who had fraudulently procured himself to be arrested, in order to be discharged of a debt and execution, was committed to the Tower for a month, and until he should pay to W. Hewet the sum of 100*l*.³

Again, in 1580, Mr. Hall, a member, who had offended the house by a libel, was ordered to be committed to the Tower, and to remain in the said prison for *six months, and*

¹ 1 Cowp. 17. ² See also Chapters VII. & XV. ³ 1 Com. J. 112, 113.

*so much longer as until himself should willingly make retraction of the said book, to the satisfaction of the house; and it was resolved that a fine should be assessed by this house, to the queen's majesty's use, of 500 marks, and that he should be expelled.*¹

In Floyd's case, in 1621, the commons clearly exceeded their jurisdiction. That person had spoken offensive words concerning the daughter of James I, and her husband, the elector palatine. In this he may have been guilty of a libel, but certainly not of any breach of parliamentary privilege. Yet the commons, in their zeal for Protestantism, took cognizance of the offence, and sentenced Floyd to pay a fine of 1,000*l.*, to stand twice in the pillory, and to ride backward on a horse, with the horse's tail in his hand.² Upon this judgment being given, first the king, and then the lords interfered, not on account of the severity of the punishment, nor because it was thought to exceed the power of the house; but because the offence was³ altogether beyond the jurisdiction of the commons. The commons perceived their error, and left the offender to be dealt with by the lords; but at the same time they guarded their own right by an ambiguous protestation that their proceedings against Floyd "should not be drawn or used as a precedent to the enlarging or diminishing the lawful rights and privileges of either house, but that the rights and privileges of both houses should remain in the selfsame state and plight as before."³

But if the commons exceeded their jurisdiction in this case, the lords equally disregarded the limits of their own, and proceeded to still more disgraceful severities. Floyd was charged by the attorney-general before the lords, and received sentence that he should be incapable of bearing arms as a gentleman; that he should be ever held an infamous person, and his testimony not to be taken in any court or cause; that he should ride twice to the pillory

¹ 1 Com. J. 125, 126.

² Ib. 609.

³ Ib. 619.

with his face to the horse's tail, holding the tail in his hand; that he should be branded with the letter K on his forehead, be whipped at the cart's tail, be fined 5,000*l.* to the king, and be imprisoned in Newgate for life.¹

The last case that occurred was in 1666, when a fine of 1,000*l.* was imposed upon Thomas White for absconding after he had been ordered into the custody of the serjeant-at-arms.²

The modern practice of the commons is to commit persons to the custody of the serjeant-at-arms, to Newgate, or to the Tower; and to keep offenders there until they present petitions praying for their release, and expressing contrition for their offences; or until, upon motion made in the house, it is resolved that they shall be discharged. It is then usual for the parties to be brought to the bar, and after an admonition or reprimand from the speaker, to be discharged on payment of their fees. But, under peculiar circumstances, their attendance at the bar,³ and the admonition or reprimand,⁴ have been dispensed with.

Payment of fees.

It cannot fail to be remarked that this condition of the payment of fees still partakes of the character of a fine. The payment of the money forms part of the punishment, and is compulsory; nor could any limit be imposed upon the amount fixed by order of the house. Payment has been occasionally remitted under special circumstances,⁵ as, for example, on account of the poverty of the parties;⁶ and in one case, because the prisoner was labouring under mental delusion.⁷

Imprisonment by the commons concluded by prorogation.

No period of imprisonment is named by the commons, and the prisoners committed by them, if not sooner discharged by the house, are immediately released from their

¹ 3 Lords' J. 134. See also "Proceedings and Debates of the Commons," 1620, 1621 (Oxford), and 5 Parl. Hist.

² 8 Com. J. 690. ³ 75 Com. J. 467. ⁴ 86 ib. 333. 90 ib. 532.

⁵ 58 ib. 221. 80 ib. 470. 83 ib. 199. 90 ib. 532.

⁶ 74 ib. 192.

⁷ 85 ib. 465.

confinement on a prorogation, whether they have paid the fees or not. If they were held longer in custody, there is little doubt but that they would be discharged by the courts upon a writ of habeas corpus. Lord Denman, in his judgment in the case of *Stockdale v. Hansard*, said,

“However flagrant the contempt, the House of Commons can only commit till the close of the existing session. Their privilege to commit is not better known than this limitation of it. Though the party should deserve the severest penalties, yet, his offence being committed the day before the prorogation, if the house ordered his imprisonment but for a week, every court in Westminster Hall, and every judge of all the courts, would be bound to discharge him by habeas corpus.”¹

It was formerly the practice to make prisoners receive the judgment of the house kneeling at the bar, but on the 16th March 1772, it was resolved by the commons, *nem. con.*,

“That when any person shall from henceforth be brought to the bar of this house to receive any judgment of this house, or to be discharged from the custody of the serjeant-at-arms attending this house, or from any imprisonment inflicted by order of the house, such person shall receive such judgment, or the order of the house for his discharge, standing at the bar, unless it shall be otherwise directed, in the order of the house made for that purpose;” and ordered to be made a standing order.²

¹ Judgment in *Stockdale v. Hansard*, p. 142.

² 33 Com. J. 594.

CHAPTER IV.

PRIVILEGE OF FREEDOM OF SPEECH CONFIRMED BY THE
ANCIENT LAW OF PARLIAMENT AND BY STATUTE: ITS
NATURE AND LIMITS.

Necessity of
freedom of
speech.

FREEDOM of speech is a privilege essential to every free council or legislature. It is so necessary for the making of laws, that if it had never been expressly confirmed, it must still have been acknowledged as inseparable from Parliament, and inherent in its constitution. Its principle was well stated by the commons, at a conference on the 11th of December, 1667: "No man can doubt," they said, "but whatever is once enacted is lawful; but nothing can come into an Act of Parliament, but it must be first affirmed or propounded by somebody; so that if the Act can wrong nobody, no more can the first propounding. The members must be as free as the houses: an Act of Parliament cannot disturb the state; therefore the debate that tends to it cannot; for it must be propounded and debated before it can be enacted."¹

Confirmed by
law of Parlia-
ment.

But this important privilege has not been left to depend upon abstract principles, nor even upon the ancient law and custom of Parliament, but has been recognised and confirmed as part of the law of the land.

According to Elsynge, the "commons did oftentimes, under Edward 3, discuss and debate amongst themselves many things concerning the king's prerogative, and agreed upon petitions for laws to be made directly against his prerogative, as may appear by divers of the said petitions; yet they were never interrupted in their consultations, nor received check for the same, as may appear also by the answers to the said petitions."²

¹ 12 Lords' J. 166.

² Elsynge, 177.

In the 20th of Richard the 2d, however, a case Haxey's case. occurred in which this ancient privilege was first violated, but afterwards confirmed. Haxey, a member of the commons, having displeased the king, by offering a bill for reducing the excessive charge of the royal household, was condemned in Parliament as a traitor. But on the accession of Henry 4, Haxey exhibited a petition to the king in Parliament, to reverse that judgment, as being "against the law and custom which had been before in Parliament;" and the judgment was reversed and *annulled* accordingly by the king, with the advice and assent of all the lords spiritual and temporal.¹ This was unquestionably an acknowledgment of the privilege by the highest judicial authority, the king and the House of Lords; and in the same year the commons took up the case of Haxey, and in a petition to the king affirmed "that he had been condemned against the law and course of Parliament, and in annihilation of the customs of the commons;" and prayed that the judgment might be reversed, "as well for the furtherance of justice as for the salvation of the liberties of the commons."² To this the king also assented, with the advice and assent of the lords spiritual and temporal; and thus the whole legislature agreed that the judgment against Haxey, in derogation of the privileges of Parliament, "should be annulled and held to be of no force or effect."

Again, in the 4th Henry 8, 1512, Mr. Strode, a member of the House of Commons, was prosecuted in the Stannary Court, for having proposed certain bills to regulate the tinnors in Cornwall, and was fined and imprisoned in consequence. Upon which an Act was passed,³ which, after stating that Strode had agreed with others of the commons in putting forth bills "the which here in this Strode's case.

¹ 1 Hen. 4; 3 Rot. Parl. 430.

² "*Si bien en accomplissement de droit, come pur salvation des libertés de lez ditz communes.*"—3 Rot. Parl. 434.

³ 4 Hen. 8, c. 8.

High Court of Parliament, should and ought to be communed and treated of," declared the proceedings of the Stannary Court to be void, and further enacted,

"That all suits, condemnations, executions, fines, amerciaments, punishments, &c. put or had, or hereafter to be put or had, upon the said Richard (Strode), and to every other of the person or persons that now be of the present Parliament, or *that of any Parliament thereafter shall be*, for any bill, speaking, reasoning, or declaring of any matter or matters concerning the Parliament to be communed and treated of, be utterly void and of none effect."

As the proceedings that had already taken place against Strode were declared to be void, it is evident that freedom of speech was then admitted to be a privilege of Parliament, and was not, at that time, first enacted. The words of the statute also leave no doubt that it was intended to have a general operation in future, and to protect all members, of either house, from any question for their speeches or votes in Parliament.

Petition of the
commons.

Thirty years afterwards the petition of the commons to the king, at the commencement of the Parliament, appears for the first time to have included this privilege amongst those prayed for of the king. The first occasion on which such a petition is recorded, was in the 33d Henry 6, (1541), when it was made by Thomas Moyle, speaker.¹

But although the petitions for freedom of speech were not made in that manner, there is a remarkable petition of the commons, and answer of the king, in the 2d Henry 4, relating to this privilege. The commons prayed the king not to take notice of any reports that might be made to him of their proceedings; to which the king replied, that it was his wish that the commons should deliberate and treat of all matters amongst themselves, in order to bring them to the best conclusion, according to their wisdom, for the welfare and honour of himself and all his realm; and that he would hear no person, nor give him

¹ Elsynge, 176.

any credit, before such matters were brought before the king, by the advice and assent of all the commons, according to the purport of their petition.¹

But, however essential to Parliament, and however confirmed by statute and recognised by kings, it is needless to recount how frequently this privilege was formerly violated by the power of the Crown. The Act of the 4th of Henry 8th extended no further than to protect members from being questioned, in other courts, for their proceedings in Parliament; but its principle should equally have saved them from the displeasure of the Crown. The cases of Mr. Strickland, in 1571,² of Mr. Cope, Mr. Wentworth, and others, in 1586,³ and of Sir Edwyn Sandys, in 1621,⁴ will serve to remind the reader, how imperfectly members were once protected against the unconstitutional exercise of prerogative.

Violations of
the privilege.

The last occasion on which the privilege of freedom of speech was directly impeached, was in the celebrated case of Sir John Elliot, Denzil Hollis, and Benjamin Valentine, against whom a judgment was obtained in the King's Bench, in the 5th Charles 1, for their conduct in Parliament. On the 8th July, 1641, the House of Commons declared all the proceedings in the King's Bench to be against the law and privilege of Parliament.⁵ The prosecution of those members was, indeed, one of the illegal acts which hastened the fate of Charles the First; and, on the restoration of his son to the throne, it was not forgotten by the Parliament.

The judgment had been given against the privilege of Parliament, upon the false assumption that the Act of the 4th Henry 8 had been simply a private statute, for the relief of Strode, and had no general operation; and in order to condemn this construction of the plain words of the statute, the commons resolved, on the 12th November 1667, "That

¹ 3 Rot. Parl. 456.

² D'Ewes, 166. ⁴ Parl. Hist. 153.

³ D'Ewes, 410.

⁴ 1 Hats. Prec. 136, 137.

⁵ 2 Com. J. 203.

the Act of Parliament in 4th Henry 8, commonly intituled, 'An Act concerning Richard Strode,' is a *general law*, extending to indemnify all and every the members of both houses of Parliament, in all Parliaments, for and touching any bills, speaking, reasoning, or declaring of any matter or matters in and concerning the Parliament, to be communed and treated of; and is a *declaratory law of the ancient and necessary rights and privileges of Parliament.*"¹ And on a subsequent day, they also resolved, "That the judgment given, 5 Car., against Sir John Elliot, Denzil Hollis, and Benjamin Valentine, in the King's Bench, was an illegal judgment, and against the freedom and privilege of Parliament."² A conference was afterwards demanded with the lords, and their lordships agreed to the resolutions of the commons;³ and, finally, upon a writ of error, the judgment of the court of King's Bench was reversed by the House of Lords, on 15th April, 1668.⁴

Its recognition
by statute.

This would have been a sufficient recognition, by law, of the privilege of freedom of speech; but a further and last confirmation was reserved for the Revolution of 1688. By the 9th article of the Bill of Rights it was declared, "that the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament."⁵

But, although by the ancient custom of Parliament, as well as by the law, a member may not be questioned out of Parliament, he is liable to censure and punishment by the house itself of which he is a member. The cases in which members have been called to account and punished for offensive words spoken before the house, are too numerous to mention. Some have been admonished, others imprisoned,⁶ and in the commons, some have even been

¹ 9 Com. J. 19.

² 9 Com. J. 25.

³ 12 Lords' J. 166.

⁴ 12 Lords' J. 223.

⁵ 1 Will. & Mary, sess. 2, c. 2.

⁶ 4 Lords' J. 475. 5 Ib. 77. Sir R. Carne, 1680. 9 Com. J. 642. Mr. Manley, in 1696. 11 Com. J. 581.

expelled.¹ Less severity has been shown in modern times, in the censure of intemperate speeches. The members who offend against propriety are called to order, and generally satisfy the house with an explanation or apology.²

Taking care not to say anything disrespectful to the house, a member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character of individuals, and he is protected by his privilege from any action for libel; but if he should proceed to publish his speech, his printed statement will be regarded as a separate publication, unconnected with any proceedings in Parliament. This construction of the law cannot be complained of by the Houses of Parliament, as, by their rules and orders, the publication of a debate is forbidden; and it is therefore impossible to protect, by privilege, an irregular act, which is itself declared to be a breach of privilege.

Privilege does not extend to published speeches.

This view of the law has been established by two remarkable cases.

In 1795 an information was filed against Lord Abingdon for a libel. His lordship had accused his attorney of improper conduct in his profession, in a speech delivered in the House of Lords, which he afterwards had printed in several newspapers at his own expense. His lordship pleaded his own case in the Court of King's Bench, and contended that he had a right to print what he had, by the law of Parliament, a right to speak. But *Lord Kenyon* said, "That a member of Parliament had certainly a right to publish his speech, but that speech should not be made a vehicle of slander against any individual; if it was, it was a libel." The court gave judgment, that his lordship should be imprisoned for three months, pay a fine of 100*l.*, and find security for his good behaviour.³

In 1813 a much stronger case occurred.

Mr. Creevey, a member of the House of Commons, had made a charge against an individual in the house, and incorrect reports of his speech having appeared in several newspapers, Mr. C. sent

¹ Mr. Shepherd, 1 Com. J. 524.

² See Chapter IX. on Debates.

³ 1 Esp. N. P. C. 228.

a correct report to the editor of the Liverpool paper, with a request that he would publish it in his newspaper. Upon an information filed against him, the jury found the defendant guilty of libel, and the King's Bench refused an application for a new trial, Lord Ellenborough saying, "A member of that house has spoken what he thought material, and what he was at liberty to speak, in his character as a member of that house. So far he is privileged; but he has not stopped there; but, unauthorized by the house, has chosen to publish an account of that speech, in what he has pleased to call a corrected form; and in that publication has thrown out reflections injurious to the character of an individual."¹

Mr. Creevey, who had been fined 100*l.*, complained to the house of the proceedings of the King's Bench, but the house refused to admit that they were a breach of privilege.²

In the case of *Rex v. Wright*,³ Mr. Horne Tooke applied for a criminal information against a bookseller, for publishing the copy of a report made by a committee of the House of Commons, which appeared to imply a charge of high treason against Mr. Tooke, after he had been tried for that crime and acquitted. The rule, however, was discharged by the court, partly because the report did not appear to bear the meaning imputed to it, and partly because the court would not regard a proceeding of either House of Parliament as a libel.

In the event of any similar case arising, the defendant may give the report in evidence under the general issue, and prove that his own extract or abstract was published *boná fide* and without malice; and if such shall be the opinion of the jury, a verdict of Not guilty will be entered.⁴

¹ 1 M. & S. 278.

² Hansard Deb., 25th June 1813.

³ 8 Term Reports, 293.

⁴ 3 & 4 Vict. c. 9, s. 3.

CHAPTER V.

FREEDOM FROM ARREST OR MOLESTATION: ITS ANTIQUITY; LIMITS AND MODE OF ENFORCEMENT. PRIVILEGE OF NOT BEING IMPEADED IN CIVIL ACTIONS: OF NOT BEING LIABLE TO BE SUMMONED BY SUBPŒNA OR TO SERVE ON JURIES. COMMITMENT OF MEMBERS BY COURTS OF JUSTICE. PRIVILEGE OF WITNESSES AND OTHERS IN ATTENDANCE ON PARLIAMENT.

THE privilege of freedom from arrest or molestation is of great antiquity, and dates probably from the first existence of parliaments or national councils in England. Blackstone traces it as far back as the reign of Edward the Confessor, in whose laws we find this precept, “*ad synodos venientibus, sive summoniti sint, sive per se quid agendum habuerint, sit summa pax:*” and so too, in the old Gothic constitutions, “*extenditur hæc pax et securitas ad quatuordecim dies, convocato regni senatu.*”¹ In later times there are various precedents explanatory of the nature and extent of this privilege, and of the mode in which it was sustained. From these it will be seen that not only are the persons of members of both Houses of Parliament free from arrest on mesne process or in execution; but that formerly the same immunity was enjoyed in regard to their servants and their property. The privilege was strained still further, and even claimed to protect members and their servants from all civil actions or suits, during the time over which privilege was supposed to extend. The privilege of freedom from arrest has also been construed to discharge members and their servants from all liability to answer subpœnas in other courts and to serve on juries;

Antiquity of
this privilege.

¹ 1 Comm. 165. Steirnh. de Jure Goth.

and in some cases to relieve them from commitments by courts of justice.

These various immunities have undergone considerable change and restriction, and being now defined, for the most part, with tolerable certainty, they will be best understood by considering them in the following order: 1. Privilege of members and their servants from arrest and distress, and the mode of enforcing it. 2. Their protection from being impleaded in civil actions. 3. Their liability to be summoned by subpœna or to serve on juries. 4. Their privilege in regard to commitments by legal tribunals. 5. Privilege of witnesses and others in attendance on Parliament. It may, however, be stated at once, that although many cases that will be given apply equally to members and to their servants, according to the privilege in those times, the latter have, at present, no privilege whatever. These cases, though at variance with modern usage, could not be omitted consistently with a perfect view of the privilege of freedom from arrest and molestation.

Freedom from
arrest and dis-
tress of goods.

So far back as the 19th of Edward 1, in answer to a petition of the master of the Temple; for leave to distrain for the rent of a house held of him by the Bishop of St. David's, the king said, "It does not seem fit that the king should grant that they who are of his council should be distrained in time of Parliament."¹ From this precedent Sir Edward Coke infers that at that time a member of Parliament had privilege, not only for his servants, but for his horses or other goods distrainable.²

The freedom, both of the lords and commons, and their servants, from all assaults or molestation, when coming to Parliament, remaining there, and returning thence, was distinctly recognised in the case of Richard Chedder, a member, by statute 5 Henry 4, c. 6, and again by another statute of the 11th Henry 6, c. 11. In the 5th Henry 4, the commons, in a petition to the king, alleged that accord-

¹ 1 Rot. Parl. 61.

² 4th Inst. 24 E.

ing to the custom of the realm, the lords, knights, citizens, and burgesses were entitled to this privilege; and this was admitted by the king; who instead of agreeing to the proposition of the commons, that treble damages should be paid by parties violating their privilege, answered that there was already a sufficient remedy.¹ Hence this privilege appears distinctly, not to have been created, but only confirmed by statute as the ancient law and custom of Parliament and of the realm. Much later, viz. in the 17th Edward 4, the commons affirmed, in Atwyll's case, that the privilege had existed, "whereof tyme that mannys mynde is not the contrarie;"² thus placing it on the ground of prescription, and not on the authority of statutes then in force.

The only exception to the recognition of this privilege was in the extraordinary case of Thorpe, the speaker of the commons, who was imprisoned under execution from the Court of Exchequer, at the suit of the Duke of Gloucester. The judges delivered their opinion to the lords, "that if any person that is a member of this High Court of Parliament be arrested in such cases as be not for treason or felony, or surety of the peace, or for a condemnation had before the Parliament, it is used that all such persons should be released of such arrests, and make an attorney, so that they may have their freedom and liberty, freely to attend upon the Parliament." As Thorpe was in execution for a civil action, that had been brought during an adjournment, he was obviously entitled to his release, according to the opinion of the judges; yet it is entered on the rolls of Parliament, that after having "heard this answer and declaration, it was thoroughly agreed, assented, and concluded, by the lords spiritual and temporal, that the said Thomas, according to the law, should still remain in prison, the privilege of Parliament, or that the said Thomas was speaker of the Parliament, notwithstanding."³ Yet even here it is worthy of notice,

Thorpe's case.

¹ 3 Rot. Parl. 541.

² 6 Rot. Parl. 191.

³ 5 Rot. Parl. 239.

that the privilege of Parliament was admitted, but adjudged to be overruled by the law. The whole case, however, has been regarded as irregular and "begotten by the iniquity of the times."¹ Down to 1543, although the privilege had been recognized by statute, by declarations of both houses,² by the frequent assent of the king,³ and by the opinions of the judges,⁴ the commons did not deliver their members out of custody by their own authority; but when the members were in execution, in order to save the rights of the plaintiff, they obtained special statutes to authorize the Lord Chancellor to issue writs for their release;⁵ and when confined on mesne process only, they were delivered by a writ of privilege issued by the Lord Chancellor.⁶ And in the singular case of Mr. Speaker Thorpe, already mentioned, the commons even submitted the vindication of their privilege to the House of Peers, as well as to the king.⁷

Case of George Ferrers, 1543, 34 Hen. 8.

At length, with sudden energy, the commons, for the first time, vindicated the privilege of Parliament, and acted independently of any other power. George Ferrers, a member, was arrested in London, by a process out of the King's Bench, at the suit of one White, as surety for the debt of another. The house, on hearing of his arrest, ordered the serjeant to go to the Compter and demand his delivery. The serjeant was resisted by the city officers, who were protected by the sheriffs, and he was obliged to return without the prisoner. The house then rose in a body, and laid their case before the lords, "who, judging the contempt to be very great, referred the punishment

¹ 1 Com. J. 546.

² Larke's case, "Le Roi, par avis des seigneurs espirituelx et temporelx, et a les especiales requestes des communes."—4 Rot. Parl. 357. Atwyll's case, 6 Rot. Parl. 191.

³ Larke's case, 4 Rot. Parl. 357. Parr's case, 5 Rot. Parl. 111. Hyde's case, 6 Rot. Parl. 160.

⁴ Thorpe's case, 5 Rot. Parl. 240.

⁵ Cases of Larke, Clerk, and Hyde, 4 Rot. Parl. 357. 5 Ib. 374. 6 Ib. 160.

⁶ Sadcliffe's case, 1 Hats. Pree. 51. ⁷ 32 Hen. 6, 5 Rot. Parl. 239.

thereof to the House of Commons." The commons then ordered the serjeant to repair to the sheriffs, and to require the delivery of Ferrers, without any writ or warrant. The lord chancellor had offered them a writ of privilege, but they refused it, "being of a clear opinion, that all commandments and other acts proceeding from the neather house were to be done and executed by their serjeant without writ, only by shew of his mace, which was his warrant." The sheriffs, in the meantime, were alarmed, and surrendered the prisoner; but the serjeant, by order of the house, required their attendance at the bar, together with the clerks of the Compter, and White, the plaintiff; and on their appearance, they were all committed for their contempt.

The king, on hearing of these proceedings, called before him the lord chancellor, the judges, the speaker, and some of the gravest persons of the lower house, and addressed them. Having commended the wisdom of the commons in maintaining the privileges of their house, and stated that even their cooks were free from arrest, he is reported to have used these remarkable words:

"And further, we be informed by our judges, that we at no time stand so highly in our estate royal, as in the time of Parliament; wherein we as head, and you as members, are conjoined and knit together into one body politick, so as whatsoever offence or injury, during that time, is offered to the meanest member of the house, is to be judged as done against our person and the whole court of Parliament; which prerogative of the court is so great (as our learned counsel informeth us), that all acts and processes coming out of any other inferior courts, must for the time cease, and give place to the highest."

When the king had concluded his address, Sir Edward Montagu "very gravely declared his opinion, confirming by divers reasons all that the king had said, which was assented unto by all the residue, none speaking to the contrary."

As this case rests upon the authority of Hollinshed, and not upon parliamentary records, its accuracy has

sometimes been doubted: but the positions there maintained are so conformable with the law of Parliament, as since asserted; the circumstances are so minutely stated, and were of so notorious a character; that there can be little ground for distrusting the general correctness of the account. Its probability is confirmed by the fact that Ferrers was a servant of the king, and the proceedings of the commons on his behalf, were therefore the more likely to be acceptable to the king, and to be sanctioned by his councillors and the House of Lords.¹

The practice of releasing members by a writ of privilege was still continued, notwithstanding the course pursued in the case of Ferrers, but henceforward no such writ was suffered to be obtained without a warrant, previously signed by the speaker. Thirty years later, in the case of Smalley, the servant of a member who was under arrest, "was ordered to be brought hither to-morrow by the serjeant, and so set at liberty by warrant of the mace, and not by writ."² Again, in 1592, in the case of Fitzherbert, a member who had been outlawed and taken in execution, the house, after many discussions as to his title to privilege, and concerning the manner in which he should be delivered, were at length acquainted that the lord keeper thought it best, "in regard to the ancient liberties and privileges of the house, that a serjeant-at-arms be sent by order of the house for Mr. Fitzherbert, by which he may be brought hither without peril of being further arrested by the way, and the state of the matter then considered of and examined into."³ In this case, however, the house determined that the member should not have privilege; "first, because he was taken in execution before the return of the indenture of his election; secondly, because he had been outlawed at the queen's suit, and was now taken in execution for her majesty's debt; thirdly, in regard that

Smalley's case.

Fitzherbert's case.

¹ 1 Hats. 57.

² 27th Feb. 1575, 1 Com. J. 108.

³ 1 Hats. Prec. 107. D'Ewes, 482. 514.

he was so taken by the sheriff, neither sedente Parlamento, nor eundo, nor redeundo.”¹

This case was scarcely settled, when Mr. Neale, a member, complained that he had been arrested upon an execution; that he had paid the money, but out of regard to the liberties and privileges of the house, he thought it his duty to acquaint them with it. Upon which the house committed to the Tower the person at whose suit the execution was obtained, and the officer who executed it. Three days afterwards the prisoners were reprimanded and discharged.²

Neale's case.

The principal cases in the lords, up to this period, show an uncertainty in their practice similar to that of the commons; privileged persons being sometimes released immediately, and sometimes by writs of privilege. On the 1st December, 1585, they ordered to be enlarged and set at liberty James Diggs, servant to the Archbishop of Canterbury, “by virtue of the privilege of this court:”³ and again in the same year, a servant of Lord Leicester,⁴ and in 1597, the servants of Lord Chandois and the Archbishop of Canterbury.⁵ In the two last cases the officers who had arrested the prisoners were committed by the house. Later still, in November 1601, they adopted the precedent of Ferrers. William Hogan, like Ferrers, a servant of the queen, was imprisoned in execution; and the lords debated whether he should be discharged by a warrant from the lords to the lord keeper, to grant a writ in the queen's name for bringing up Hogan, or by immediate direction and order of the house, without any writ; and at length it was agreed that he should be brought up by order from the house. By virtue of their order, he was brought up and discharged on giving a bond for the payment of his debt, and the under-sheriff was committed to the Fleet for having arrested him.⁶ Yet, soon afterwards, in Vaughan's case, the lords resorted to the old method of discharging a

Cases in the Lords.

¹ D'Ewes, 518.

² *Ib.* 518, 520.

³ 2 Lords' J. 66.

⁴ 2 Lords' J. 93.

⁵ 2 Lords' J. 201, 205.

⁶ *Ib.* 230. D'Ewes, 603.

prisoner by an order to the lord keeper for a writ of privilege; after having first committed the keeper of Newgate for refusing to obey their order to bring up his prisoner.¹

These cases have been cited not only as illustrative of the ancient claims of privilege; but also as throwing light, incidentally, upon the general law and privilege of Parliament. But it is now time to pass to the modifications of the ancient privilege which have since been effected by statute; and to the modern practice of Parliament in protecting members from arrest.

Sir T. Shirley's case.

In 1603, the case of Sir Thomas Shirley occasioned a more distinct recognition of the privilege by statute and an improvement in the law. Sir Thomas had been imprisoned in the Fleet, on execution, before the meeting of Parliament, and the commons first tried to bring him into the house by habeas corpus, and then sent their serjeant to demand his release. The warden refused to give up his prisoner, and was committed to the Tower for his contempt. Many proposals were made for releasing their member, but as none were free from objection, the house endeavoured to coerce the warden, and committed him to the prison called "Little Ease," in the Tower. At length the warden, either overcome by his durance, or commanded by the king, delivered up the prisoner, and was discharged, after a reprimand.² So far the privileges of the house were satisfied, but there was still a legal difficulty to be overcome, that had been common to all cases in which members were in execution, viz. that the warden was liable to an action of escape, and the creditor had lost his right to an execution. In former cases a remedy had been provided by a special Act, and the same expedient was now adopted; but in order to provide for future cases of a similar kind, a general Act was also passed.

Statutes relating to freedom from arrest.

The Act 1 James 1, c. 13, after stating "that doubts had

¹ 2 Lords' J. 238. 240. D'Ewes, 607.

² 1 Com. J. 155 *et seq.* 5 Parl. Hist. 113, &c. 1 Hats. Prec. 157.

been made, if any person, being arrested in execution, and by privilege of Parliament set at liberty, whether the party at whose suit such execution was pursued, be for ever barred and disabled to sue forth a new writ of execution in that case;" proceeded to enact, that after such time as the privilege of that session in which privilege is granted, shall cease, parties may sue forth and execute a new writ; and that no sheriff, &c. from whose arrest or custody persons shall be delivered by privilege, shall be chargeable with any action. Lastly, the Act provided that nothing therein should "extend to the diminishing of any punishment to be hereafter by censure in Parliament inflicted upon any person who shall hereafter make or procure to be made any such arrest." Three points are here distinctly recognised; viz. 1, the privilege of freedom from arrest; 2, the right of either house of Parliament to set a privileged person at liberty; and 3, the right to punish those who make or procure arrests: while two other points were for the first time established; viz. that the officer should not be liable to an action of escape, and that the debt should not be satisfied.

But although the privilege of either house of Parliament was admitted to entitle a prisoner to his release, the manner of releasing him was still indefinite; and for some time it continued to be the practice, where privileged persons had been imprisoned in execution, to issue warrants for a writ of privilege or a writ of habeas corpus;¹ although in 1625 the commons declared, "that the house hath power, when they see cause, to send the serjeant immediately to deliver a prisoner;"² and in some cases during the 17th century peers and members arrested in execution were released without any writ of privilege or habeas corpus,³

¹ 2 Lords' J. 270. 296. 299. 302. 588. 3 Ib. 30. 1 Hats. 167, 168.

² 1 Com. J. 820.

³ Mr. Hatsell states, that "since the end of Elizabeth's reign we have not actually met with any instance where a person entitled to privilege, if in custody in execution, hath been delivered by any other mode than by virtue of a writ of privilege, or by a writ of habeas corpus."—(Vol. i. p. 167). But this

as Lord Baltinglasse in 1641,¹ Lord Rich in 1646,² and Sir Robert Holt in 1677.³

During the same period also, when the property of peers or of their servants was distrained, the lords were accustomed to interfere by their direct authority, as in 1628, in the case of a ship belonging to the Earl of Warwick;⁴ and in 1648, in regard to the tenants of Lord Montague.⁵ In cases of arrest on mesne process, the practice of releasing the prisoners directly by a warrant,⁶ or by sending the black rod or serjeant, in the name of the house, to demand them,⁷ was continually adopted.

At length, in the year 1700, an Act was passed,⁸ which, while it retained the privilege of freedom from arrest with more distinctness than the 1st James 1, made the goods of privileged persons liable to distress infinite and sequestration, between a dissolution or prorogation, and the next meeting of Parliament, and during adjournments for more than 14 days. And in suits against the king's immediate debtors, execution against members was permitted even during the sitting of Parliament, and the privilege of freedom from arrest in such suits was not reserved to servants. Again by the 2d & 3d Anne, c. 18, executions for penalties, forfeitures, &c. against privileged persons, being engaged in the revenue or any offices of trust, were not to be stayed by privilege; but freedom from arrest was still maintained for the members of both houses, in such cases, but not for their servants.

By the 10th Geo. 3, c. 50, a very important limitation of the freedom of arrest was effected. Down to that time the servants of members had been entitled to all the privi-

Servants' privilege discontinued.

statement had reference only to the period from the accession of James 1 to 1628; and, unless it be understood with this limitation, it is calculated to mislead.

¹ 4 Lords' J. 654. ² 8 Lords' J. 635. 639. ³ 9 Com. J. 411.

⁴ 3 Lords' J. 776, 777. ⁵ 10 Lords' J. 611.

⁶ Bassett's case, 1 Com. J. 807.

⁷ 4 Lords' J. 654. 8 *Ib.* 577. 601. Botcler's case. 17 Com. J. 6.

⁸ 12 & 13 Will. 3, c. 3.

leges of their masters, except as regards the limitations effected by the two last statutes ; but by the 3d section of the 10th Geo. 3, the privilege of members to be free from arrest upon all suits, authorized by the Act, was expressly reserved ; while no such reservation was introduced in reference to their servants : and thus, without any distinct abrogation of the privilege, it was in fact put an end to, as executions were not to be stayed in their favour, and their freedom from arrest was not reserved.

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

Members how
released at pre-
sent.

For the same reason, writs of privilege have been discontinued. In 1707, a few years after the passing of the 12th & 13th Will. 3, the serjeant was sent with the mace to the warden of the Fleet, who readily paid obedience to the orders of the house, and discharged Mr. Asgill, a member then in execution.² Members are now discharged directly by warrant, and the parties who cause the arrest are liable to censure or punishment, as in the case of the Baroness Le Cale in 1811.³

In 1807, Mr. Mills had been arrested on mesne process, and was afterwards elected. The house determined that he was entitled to privilege, and ordered him to be discharged out of the custody of the marshal of the King's Bench.⁴ In 1819 Mr. Christie Burton had been elected for Beverley, but being in custody on execution and also on mesne process, was unable to attend his service in Parliament. The house determined that he was entitled to privilege, and ordered him to be discharged out of the custody of the warden of the Fleet.⁵ An action was brought

¹ Colonel Pitt's case, 2 Strange, 985. K. B. Cases, temp. Hard. 28.

² 15 Com. J. 471. ³ 48 Lords' J. 60. 63. ⁴ 62 Ib. 654. ⁵ 74 Ib. 44.

against the warden by the assignees of a creditor of Mr. Burton, for his escape, who were declared guilty of a breach of privilege, and ordered to attend the house;¹ but having acknowledged their offence by petition, they were not subjected to any punishment.

Duration of
privilege.

It now only remains to inquire what is the duration of the privilege of freedom from arrest; and it is singular that this important point has never been defined. The person of a peer (by the privilege of peerage) "is for ever sacred and inviolable."² This immunity rests upon ancient custom, and is recognized by the Acts 12 & 13 Will. 3, c. 3, and 2 & 3 Anne, c. 18. Peeresses are entitled to the same privilege as peers, whether they be peeresses by birth, by creation, or by marriage;³ but if a peeress by marriage should afterwards intermarry with a commoner, she forfeits her privilege.⁴ It is also ordered and declared by the lords that privilege of Parliament shall not be allowed to minor peers, noblewomen, or widows of peers (saving their right of peerage).⁵

And by the 23d article of the Act of Union with Scotland (5 Anne, c. 8) the 16 representative peers are allowed all the privileges of the peers of the Parliament of Great Britain; and all other peers and peeresses of Scotland, though not chosen, enjoy the same privileges.⁶ In the same manner, by the Act of Union with Ireland, the peers and peeresses of Ireland are entitled to the same privileges as the peers and peeresses of Great Britain.

With regard to members of the House of Commons, "the time of privilege" has been repeatedly mentioned in statutes, but never explained.

It is stated by Blackstone, and others, and is the general opinion, that the privilege of freedom from arrest remains with a member of the House of Commons, "for 40 days

¹ 75 Com. J. 286.

² 1 Bl. Comm. 165.

³ Countess of Rutland's case, 6 Co. 52.

⁴ Co. Litt. 166. 4 Bacon's Abridg. 229. Lords' S. O. No. 76.

⁵ Lords' S. O. No. 76.

⁶ 2 Strange, 990.

after every prorogation, and 40 days before the next appointed meeting;" but the learned commentator cites the case of the Earl of Athol *v.* the Earl of Derby,¹ which hardly supports so distinct a conclusion. It appears, from the report of that case, that the lords claim privilege for 20 days only before and after each session; and the report adds, "but *it is said*, the commons never assented to this, but *claim* 40 days after and before each session." In another report of the same case, it is also said, that "they claim 40 days;"² and in another report, "that the commons claimed 40 days, which ought not to be allowed."³

But as the commons are the judges of their own privileges, some precedents are required to show that they really claim so long a duration of this immunity; and no such precedents are to be found. By the original law of Parliament, privilege extended to the protection of members and their servants, "eundo, morando et exinde redeundo:" but Parliament has never yet determined what time shall be considered convenient for this purpose; and Prynne expresses an opinion, that no such definite extent of privilege is claimable by the law of Parliament.⁴ It has, however, always been the general belief, that privilege extended to 40 days, and several Acts of the Irish Parliament have defined that time.⁵ But the following precedents by no means establish this extent of privilege to be either the law or the practice in England, and leave the matter altogether in doubt.

On the 6th December 1555, a case occurred, which has been relied upon as a declaration of Parliament concerning the duration of privilege, but to which no importance can be attached. The commons sent a message to the lords, to complain that their privilege was broken, by reason of Gabriel Pledall, a member, having been bound in a recog-

Pledall's case.

¹ 2 Levinz, 72.

² 1 Chan. Cas. 221.

³ Sid. 29.

⁴ 4 Prynne, Reg. 1216.

⁵ See 3 Edw. 4, c. 1, Ir. 6 Anne, c. 3, Ir. 1 Geo. 2, c. 8, s. 2, Ir.

nizance in the Star Chamber, to appear before the council, within 12 days after the end of the Parliament, which was about to be dissolved. A message was afterwards received for six members to confer with the lords, who went, and reported, on their return, "that the chief justices, master of the rolls, and serjeants, do clearly affirm that the recognizance is no breach of the privilege."¹ From this case Prynne infers, that the commons "have not 12, much less 20 or 40 days, after the Parliament ended:" but no such inference can be supported; for it does not appear whether the opinion related to the recognizance itself, or to the duration of the privilege after the dissolution. The case is not mentioned in the Lords' Journal; the lords were not said to have pronounced this opinion, but only the judges; and there was no acquiescence on the part of the commons, for the Parliament was dissolved two days afterwards.

Mr. Marten's case.

In the case of Mr. Marten, in 1586, who had been arrested 20 days before the meeting of Parliament, the question was put, whether the house would limit any time for privilege. The house answered a convenient time; but they determined that the 20 days were within a convenient time, and that Mr. Marten should, therefore, be discharged.²

Twenty days, therefore, have been allowed, which would exclude any inference from Pledall's case.

On the 14th December 1621, the lords resolved that their servants were free from arrest "for 20 days before and after every session; in which time the lords may conveniently go home to their houses, in the most remote parts of this kingdom."³

And again, on the 28th May 1624, they adopted a similar resolution.⁴

On the 27th January 1628, they added, that this freedom should "begin with the date of the writ of summons, in

¹ 1 Com. J. 46.

² D'Ewes, 410. 1 Hats. 100.

³ 3 Lords' J. 195.

⁴ 3 Lords' J. 417.

the beginning of every Parliament, and continue 20 days before and after every session of Parliament.”¹

A confirmation of the claim of 40 days, however, has been indirectly found in the several Acts of Parliament relating to the privilege of franking (now abolished), in which the power of franking was given to members for 40 days before any summons, and 40 days after any prorogation.

It has been determined by the courts of law, that the privilege, even after a dissolution, is still enjoyed for a convenient and reasonable time for returning home.² What this convenient time may be has never been determined; but the general claim of exemption from arrest, *eundo et redeundo*, extends as well to dissolutions as to prorogations, as no distinction is made between them.

These cases apply to arrests made after the privilege has accrued; but the effect of the election of a person already in execution, still remains to be considered. In Thorpe’s case the judges excepted from privilege the case of “a condemnation had before the Parliament;” but their opinion has not been sustained by the judgment of Parliament. Unless a member has incurred some legal disability, or has subjected himself to processes more stringent than those which result from civil actions, it has been held that his service in Parliament is paramount to all other claims. Thus in 1677, Sir Robert Holt was discharged, although he had been “taken in execution out of privilege of Parliament;”³ and, not to mention intermediate cases, or any which are of doubtful authority,⁴ Mr. Christie Burton obtained his release in 1819, although he had been in the custody of the warden of the Fleet before his election.⁵

After dissolution.

Members in execution before their election.

¹ 4 Lords’ J. 13. 1 Hats. 41 n.

² Colonel Pitt’s case, 1 Strange, 985. *Barnardo v. Mordaunt*, 1 Lord Ken. 125.

³ 9 Com. J. 411.

⁴ See Report of Precedents, 10 Com. J. 401. 2 Hats. 37.

⁵ 74 Com. J. 44. 75 lb. 230.

Not to be im-
pleaded.

Case of Bogo
de Clare.

2. The earliest case in which the privilege of not being impleaded appears to be recorded, is that of Bogo de Clare, in the 18th Edw. 1. A complaint was made that the prior of the Holy Trinity in London, by procurement of Bogo de Clare, had cited the Earl of Cornwall, in Westminster Hall, in Parliament time, to appear before the Lord Archbishop of Canterbury. Both of them were sent for, to answer before the king, and having appeared, and submitted themselves to the king, were sent to the Tower. Bogo de Clare afterwards came and paid a fine of two thousand marks to the king. This case has been cited by Sir E. Coke, Elsynge, and others, but has latterly been held to have applied to service of a citation in a privileged place, and not to be a claim of Parliamentary privilege;¹ although the words "in Parliament time," would suggest an opposite conclusion.

Cases of Walsh
and Cosyn.

In the 8th Edw. 2, writs of supersedeas were issued to the justices of assize, to prevent actions from being maintained against members in their absence,² by reason of their inability to defend their rights while in attendance upon the Parliament. This privilege appears to have fallen into disuse, for in the 12th Edw. 4, it was disallowed in the case of Walsh, a servant of the Earl of Essex. That person pleaded a king's writ, in which his right not to be impleaded was affirmed; but the lords, with the advice of the judges, determined, that there "was no custom, but that members and their servants might be impleaded;" and they disallowed the writ, and ordered Walsh to plead.³ In the same year a similiar decision was given in the case of Cosyn. Yet, while this was held to be the law in England, the privilege thus dis-

¹ *Burdett v. Abbot.*

² 1 Hats. Prec. 7, 8. "Ne per eorum *absentiam*, dum sic in dicto Parlamento steterint, *exheredacionem* aliquam sustineant, aliquialiter vel incurrant." And again, "presertim eum absentes jura sua defendere nequeant ut presentes."

³ 1 Hats. Prec. 41, 42.

allowed had been confirmed not long before, by a statute in the Parliament of Ireland.¹ A few years later, the commons, in Atwyll's case, claimed it as a prescriptive privilege, that they "should not be impleaded in any action personal," and their claim seems to have been admitted both by the king and by the House of Lords.²

One of the most marked cases in later times, in which the privilege was enforced, was on the 21st February 1588; when the House of Commons, being informed that several members had writs of *nisi prius* brought against them, "to be tried at the assizes, a motion was made "that writs of *supersedeas* might be awarded in these cases, in respect of the privilege of this house, due and appertaining to the members of the same." Upon which it was resolved, "that those of this house which shall have occasion to require such benefit of privilege in that behalf, may repair unto Mr. Speaker, to declare unto him the state of their cases; and that he, upon his discretion, if the case shall so require, may direct the warrant of this house to the lord chancellor of England, for the awarding of such writs accordingly."³

At the beginning of the reign of James 1, another practice was adopted, and instead of resorting to writs of *supersedeas*, the speaker was ordered to stay suits by a letter to the judges;⁴ and sometimes by a warrant to the party also;⁵ and the parties and their attornies who commenced the actions were brought, by the serjeant, to the bar of the house.⁶ Applications for the stay of suits, at length, became so frequent and troublesome, that it was ordered, "where any member of the house hath cause of privilege, to stay any trial, a letter shall issue, under the speaker's hand, for stay thereof, without further motion in the house."⁷ This power of staying suits appears to have been

¹ 3 Edw. 4, c. 1.

² Atwyll's case, 17 Edw. 4. 6 Rot. Parl. 191.

³ D'Ewes, 436.

⁴ 1 Com. J. 286. 381. 421, &c.

⁵ 1 Com. J. 804.

⁶ *Ib.* 304.

⁷ 1620. 1 Com. J. 525.

generally acquiesced in by the courts; but in the case of Hodges and Moore, in 1626, the court of King's Bench refused to obey the speaker's letter, and was about to return a sharp answer, when the Parliament was dissolved.¹

Limitations of
the privilege by
statute.

The privilege insisted upon in this manner, continued until the end of the seventeenth century, when it underwent a considerable limitation by statute. The 12th & 13th Will. 3 enacted, that any persons might commence and prosecute actions against any peer, or member of Parliament, or their servants, or others entitled to privilege, in the courts at Westminster, and the duchy court of Lancaster, immediately after a dissolution or prorogation, until the next meeting of Parliament, and during any adjournment for more than 14 days; and that during such times, the courts might give judgment and award execution. Processes and bills against members were authorized, during the same intervals, to be had or exhibited, and to be enforced by distress infinite or sequestration; and actions, &c. against the king's immediate debtors were not to be stayed, at any time, by privilege of Parliament. The privilege was thus limited in its operation; but it was still acknowledged, especially by the third section, which provided, that where actions were stayed by privilege, the plaintiffs should be at liberty to proceed to judgment and execution upon the rising of Parliament.

Soon afterwards, it was enacted, by the 2d & 3d Anne, c. 18, that no action, suit, process, proceeding, judgment, or execution, against privileged persons, employed in the revenue, or any office of public trust, for any forfeiture, penalty, &c., should be stayed or delayed by or under colour or pretence of privilege of Parliament. The Act of Will. 3 had extended only to the principal courts of law and equity; but by the 11th Geo. 2, c. 24, all actions in relation to real and personal property, were authorized to be

¹ Prynne's 4th Register, p. 810. 1 Com. J. 861. 1 Hats. Prec. 184, 185.

commenced and prosecuted in the recess and during adjournments of more than 14 days, in any court of record, &c.

Still more important limitations of the privilege were effected by the Act 10 Geo. 3, c. 50. The preamble of that Act states,

that the previous laws were insufficient to obviate the inconveniences arising from the delay of suits by reason of privilege of Parliament; and it is therefore enacted, that "any person may at any time commence and prosecute any action or suit in any court of record, or court of equity, or of admiralty; and in all causes, matrimonial and testamentary, against any peer or lord of Parliament of Great Britain,¹ or against any of the knights, citizens, or burgesses, &c. for the time being, or against any of their menial, or any other servants, or any other person entitled to the privilege of Parliament; and no such action, suit, or any other process or proceeding thereupon, shall at any time be impeached, stayed, or delayed, by or under any colour or pretence of any privilege of Parliament.

"Sect. 2. But nothing in this Act shall extend to subject the person of any of the knights, citizens, and burgesses for the time being, to be arrested or imprisoned upon any such suit or proceeding."

Stringent modes of enforcing the processes of the courts were also enacted, and still further facilities were given to plaintiffs by the 45th Geo. 3, c. 124, and the 47th Geo. 3, sess. 2, c. 40; by which members of Parliament may be coerced by every legal device, except the attachment of their bodies.

3. The claim to resist subpœnas was founded upon the same principle as other personal privileges, viz., the paramount right of Parliament to the attendance and service of its members. Yet it does not appear to have been maintained in early times. In 1554, a complaint was made by the lords that Mr. Beamond, a member of the commons, had caused a subpœna to be served upon the Earl of Huntingdon; to which the commons returned an answer, "that

Subpœnas and juries.

¹ The 4th article of the Act of Union extends all privileges of English peers to the peers of Ireland.

they take this writ to be no breach of privilege.”¹ Yet, in 1557, on a complaint being made that Mr. Eyms, a member of the commons, had been served with a subpœna, two members were sent to the chancellor, to require that the process might be revoked.² And again, in the case of Richard Cook, in 1584, three members were sent to the Court of Chancery, to signify to the chancellor and master of the rolls that, by the ancient liberties of this house, the members of the same are privileged from being served with subpœnas, “and to desire that they will allow the like privileges for other members of this house, to be signified to them in writing under Mr. Speaker’s hand.” But the chancellor replied, that “he thought the house had no such liberty of privilege for subpœnas.” A committee was then appointed to search for precedents, but made no report.³ Immediately afterwards, the house punished a person who had served a member with a subpœna.⁴ Various other cases subsequently occurred in which the parties who had served subpœnas upon members of both houses were committed, or otherwise punished for their contempt.⁵ But, of late years, so far from withholding the attendance of members as witnesses in courts of justice, the commons have frequently granted leave of absence to their members on the express ground that they have been summoned as witnesses,⁶ and have even admitted the same excuse for defaulters at calls of the house.⁷ But although this claim of privilege is not now enforced as regards other courts, one house will not permit its members to be summoned by the other without a message desiring his attendance, nor without the consent of the member whose attendance is required. And it may be doubtful whether the house would not protect a member served with a subpœna from the

¹ 1 Com. J. 34.

² *Ib.* p. 48.

³ D’Ewes, 347. 1 Hats. Prec. 96, 97.

⁴ *Ib.*

⁵ 1 Hats. Prec. 169, 175. 3 Lords’ J. 630.

⁶ 56 Com. J. 122. 68 *Ib.* 218, 243, 292. 71 *Ib.* 110. 82 *Ib.* 306, 379.

See also Lords’ Debates, 1st March 1844, Earl of Devon.

⁷ 48 *Ib.* 318.

legal consequences of non-attendance in a court of justice, if permission had not been previously granted by the house for his attendance.¹

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

Members summoned as jurors.

The first complaint of a member being summoned on a jury appears to have been made on the 22d November 1597, in the case of Sir J. Tracy. In that case the serjeant was immediately sent with the mace to call Sir J. Tracy to his attendance in the house, who shortly returned accordingly.² Another case occurred in 1607, in which it was ordered that two members, retained as jurors by the sheriff, should be spared their attendance, and the serjeant-at-arms was sent with his mace to deliver the pleasure of the house to the secondary of the King's Bench, the court then sitting.³ On the 15th May 1628, it was determined that Sir W. Alford should have privilege not to serve; and a letter was ordered "to be written by Mr. Speaker to the judges, that he be not amerced for his not appearance."⁴ The last occasion on which a complaint was made of a member having been summoned as a jurymen was in 1826, when the house agreed that he should have privilege; and, upon the report of the committee of privileges, resolved, *nem. con.*, that it is "amongst the most ancient and undoubted privileges of Parliament, that no member shall be withdrawn from his attendance on his duty in Parliament to attend on any other court."⁵ To this it may be added, that in the last clause of the Act of 1825, for consolidating the laws relative to jurors and juries,⁶ there is an express

¹ 78 Com. J. 132.

² D'Ewes, 560. 1 Hats. 112.

³ 1 Com. J. 369.

⁴ *Ib.* 898.

⁵ 81 Com. J. 82, 87.

⁶ 6 Geo. 4, c. 59.

reservation that nothing shall "abridge or affect any privilege of Parliament."

Criminal commitments.

4. The privilege of freedom from arrest has always been limited to civil causes, and has not been allowed to interfere with the administration of criminal justice. In Larke's case,¹ in 1429, the privilege was claimed, "except for treason, felony, or breach of the peace;" and in Thorpe's case,² the judges made exceptions to such cases as be "for treason, or felony, or surety of the peace." The privilege was thus explained by a resolution of the lords, April 18th, 1626: "That the privilege of this house is, that no peer of Parliament, sitting the Parliament, is to be imprisoned or restrained, without sentence or order of the house, unless it be for treason or felony, or for refusing to give surety of the peace;"³ and, again, by a resolution of the commons, 20th May 1675, "that by the laws and usage of Parliament, privilege of Parliament belongs to every member of the House of Commons, in all cases except treason, felony, and breach of the peace."

It was stated by the commons, at a conference on the 17th August 1641:

"1. That no privilege is allowable in ease of peace betwixt private men, much more in ease of the peace of the kingdom. 2. That privilege cannot be pleaded against an indictment for any thing done out of Parliament, because all indictments are 'contra pacem domini regis.' 3. Privilege of Parliament is granted in regard of the service of the commonwealth, and is not to be used to the danger of the commonwealth. 4. That all privilege of Parliament is in the power of Parliament, and is a restraint to the proceedings of other inferior courts, but is no restraint to the proceedings of Parliament, and, therefore, seeing it may, without injustice, be denied, this being the case of the commonwealth, they conceive it ought not to be granted."⁴

On the 14th April 1697, it was resolved, "that no member of this house hath any privilege in case of breach of the peace, or forcible entries, or forcible detainers."⁵

¹ 4 Rot. Parl. 357.

² 5 Rot. Parl. 239.

³ 3 Lords' J. 562.

⁴ 2 Com. J. 261. 4 Lords' J. 309.

⁵ 11 Com. J. 784.

On the 1st December 1763, it was resolved, by both houses, "that privilege of Parliament does not extend to the case of writing and publishing seditious libels, nor ought to be allowed to obstruct the ordinary course of laws in the speedy and effectual prosecution of so heinous and dangerous an offence."¹

"Since that time," said the committee of privileges, in 1831, "it has been considered as established generally, that privilege is not claimable for any indictable offence."²

These being the general declarations of the law of Parliament, one case will be sufficient to show how little protection is practically afforded by privilege, in criminal offences. In 1815, Lord Cochrane, a member, having been indicted and convicted of a conspiracy, was committed by the Court of King's Bench to the King's Bench Prison. Lord Cochrane escaped, and was arrested by the marshal, whilst he was sitting on the privy councillors' bench, in the House of Commons, on the right hand of the chair, at which time there was no member present, prayers not having been read. The case was referred to the committee of privileges, who reported that it was "entirely of a novel nature, and that the privileges of Parliament did not appear to have been violated, so as to call for the interposition of the house by any proceedings against the marshal of the King's Bench."³

Thus the house will not allow even the sanctuary of its walls to protect a member from the process of criminal law. But in all cases in which members are arrested on criminal charges, the house must be informed of the cause for which they are detained from their service in Parliament.

Causes of commitment to be communicated.

The various Acts which have suspended for a time the Habeas Corpus Act, have contained provisions to the effect that no member of Parliament shall be imprisoned, during the sitting of Parliament, until the matter of which he

¹ 29 Com. J. 689.

² 1831 (114).

³ See Sess. Papers, 1814-15 (239).

stands suspected, shall be *first* communicated to the house of which he shall be a member, and the consent of the said house obtained for his commitment.¹

But in cases not affected by these Acts, it has been usual to communicate the cause of commitment, after the arrest, as in the case of Lord George Gordon, for high treason;² and whenever members have been in custody in order to be tried by naval or military courts martial.³

Commitment of
members for
contempt.

Another description of offence, partaking of a criminal character, is a contempt of a court of justice; and it was for some time doubtful how far privilege would extend to the protection of a member committed for a contempt. On the 30th June 1572, a complaint was made to the lords by Henry Lord Cromwell, that his person had been attached by the sheriff of Norfolk, by a writ of attachment from the Court of Chancery, for not obeying an injunction of that court, "contrary to the ancient privileges and immunities, time out of mind, unto the lords of Parliament and peers of this realm, in such cases used and allowed." The lords, after examining this case in the presence of the judges and others of the queen's learned counsel, agreed that the "attachment did not appear to be warranted by the common law or custom of the realm, or by any statute-law, or by precedents of the Court of Chancery," and they ordered Lord Cromwell to be discharged of the attachment. They were, however, very cautious in giving a general opinion, and declared that if at any future time cause should be shown that by the queen's prerogative, or by common law or custom, or by any statute or precedents, the persons of lords of Parliament are attachable, the order in this case should not affect their decision in judging according to the cause shown.⁴ Prynne, in reference to

¹ See 17 Geo. 2, c. 6. 45 Geo. 3, c. 4, s. 2. 57 Geo. 3, c. 3, s. 4. 57 Geo. 3, c. 55, s. 4. 3 Geo. 4, c. 2, s. 4.

² 37 Com. J. 903.

³ 37 Ib. 57. 39 Ib. 479. 51 Ib. 139. 557. 58 Ib. 597. 67 Ib. 246, &c.

⁴ 1 Lords' J. 727.

this case, lays it down that the persons of peers would only be attachable in cases of breach of the peace and contempts with force, when there would be a fine to the king.¹

This precedent was adopted and confirmed by the lords on the 10th February 1628. It had been referred to the committee of privileges to inquire "whether a serjeant-at-arms may arrest the person of a peer (out of privilege of Parliament) upon a contempt of a decree in the Chancery." The committee reported that no case of attachment had occurred before that of Lord Cromwell, and that "the lords of Parliament ought to enjoy their ancient and due privileges, and their persons to be free from such attachments, with the same proviso as in the case of Lord Cromwell;" to which the lords generally assented.²

In 1605, in the case of Mr. Brereton, who had been committed by the Court of King's Bench for a contempt, the commons brought up their member by a writ of habeas corpus, and received him in the house.³ The case of Sir W. Bampffield, in 1614, throws very little light upon the matter, as after he had been brought in by writ of habeas corpus, the speaker desired to know the pleasure of the house, but no resolution or order appears to have been afterwards agreed to.⁴ On the 8th February 1620 a complaint was made, in the commons, that two of the members' pages had been punished for misbehaviour in the Court of King's Bench. It was stated, however, that the judges had sent one of the offenders to be punished by the house, and would send the other when he could be found; "and yet, but for respect for this house, they would have indicted them for stroke in face of the court; and many for less offences have lost their hands."⁵

On the 9th February 1625 the Lord Vaux claimed his privilege for stay of the proceedings of an information against him in the Star Chamber; and it was granted;⁶

¹ 4th Reg. 792.

² 4 Lords' J. 27.

³ 1 Com. J. 269.

⁴ 1 Com. J. 466.

⁵ 1 Com. J. 513.

⁶ 3 Lords' J. 496.

and shortly afterwards, in the case of the Earl of Arundel, the lords' committee maintained that "though a lord, at the suit of the king, be sued in the Star Chamber *for a contempt*, yet the suit is to be stayed by privilege of Parliament in parliament time." But on the 8th June 1757, it was "ordered and declared by the lords, that no peer or lord of Parliament hath privilege of peerage, or of Parliament, against being compelled, by process of the courts of Westminster Hall, to pay obedience to a writ of habeas corpus directed to him;" and that this be a standing order.¹ And it was decided, in the case of Earl Ferrers, that an attachment may be granted if a peer refuses obedience to the writ.²

In more recent cases members committed by courts for contempt have failed in obtaining their release by virtue of privilege.

Mr. Long Wellesley.

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

"It is no violation of the privileges of Parliament, if the members of Parliament have violated the rights and privileges of this court, which is of as high a dominion, and as undisputed a jurisdiction, as the High Court of Parliament itself; it is no breach of, but a compliance with, their privileges, that a member of either house of Parliament, breaking the rules of this court, and breaking the law of the land by a contempt committed against this court, should stand committed for that contempt."

Mr. Wellesley applied to the House of Commons, and claimed his privilege. His case was referred to the committee of privileges, who reported, "That his claim to be discharged from imprisonment, by reason of privilege of Parliament, ought not to be admitted."³

¹ 29 Lords' J. 181.

² 1 Burr. 631.

³ 86 Com. J. 701.

Mr. Lechmere
Charlton.

The last case was that of Mr. Lechmere Charlton, in 1837. That member had been committed by the lord chancellor, for a contempt in writing a letter to one of the masters in chancery, "containing matter scandalous with respect to him, and an attempt improperly to influence his decision." Mr. Charlton complained to the speaker of his commitment, and his letters were referred to a committee of privileges. As the lord chancellor's order did not set forth the obnoxious letter, the committee directed it to be produced, as they considered,

"That although the lord chancellor had the power to declare what he deemed to be a contempt of the High Court of Chancery, it was necessary that the House of Commons, as the sole and exclusive judge of its own privileges, should be informed of the particulars of the contempt before they could decide whether the contempt was of such a character as would justify the imprisonment of a member."

After inquiring fully into the nature of the contempt, the committee reported, that Mr. Charlton's claim to be discharged from imprisonment ought not to be admitted.¹

Before these last cases, the ordinary process for contempts against persons having privilege of Parliament or of peerage, had not been that of attachment of the person, but that of sequestration of the whole property, as in the case of the Countess of Shaftesbury.² In 1829, an order for the commitment of Lord Roscommon, for contempt, had been made by the lord chancellor, but was never executed, nor even taken out of the registrar's office. Nor must it be omitted that, so late as 1832, an Act was passed,³ by which contempts of the ecclesiastical courts, "in face of the court, or any other contempt towards such court, or the process thereof, are directed to be signified to the lord chancellor, who is to issue a writ *de contumace capiendo*, for taking into custody persons charged with

¹ Parl. Rep. 1837, No. 45.² 2 Peere Williams, 110.³ 2 & 3 Will. 4, c. 93.

such contempt," in case such person "shall not be a peer, lord of Parliament, or member of the House of Commons." It must not, therefore, be understood, that either house has waived its right to interfere when members are committed for contempt. Each case is open to consideration, when it arises; and although reluctance would undoubtedly be felt in obstructing the censure of other courts, privilege would still be allowed, if the circumstances of the case appeared to justify it.

Privilege of witnesses and others.

As yet the personal privilege of members, and the ancient privilege of their servants, have alone been noticed. These were founded upon the necessity of enabling members freely to attend to their duties in Parliament. Upon the same ground, a similar privilege of freedom from arrest and molestation is attached to all witnesses summoned to attend before either house of Parliament, or parliamentary committees, and to others in personal attendance upon the business of Parliament, in coming, staying, and returning. A few precedents will serve to explain the nature and extent of this privilege.

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

In 1640, Sir Pierce Crosbie, sworn as a witness in Lord Strafford's cause, being threatened with arrests, was allowed privilege, "to protect him during the time that this house examine him;"¹ and many similar protections have been granted in later times.²

In 1641, it was ordered that Sir T. Lake, who had a cause depending, should "have liberty to pass in and out unto the house, and to his counsel, solicitor, and attorney, for and during so long time only as his cause shall be before their lordships in agitation;"³ and similar orders have been made in the case of several other parties,

¹ 4 Lords' J. 143, 144.

² 25 Ib. 625. 27 Ib. 19.

³ 4 Lords' J. 262.

who have had causes depending,¹ or bills before the house.²

On the 12th May 1624, the master and others of the felt-makers were ordered, by the commons, to be enlarged from the custody of the warden of the Fleet, for the prosecution of a bill then depending, "till the same be determined by both houses."³ On the 24th May 1626, it was ordered, "that J. Bryers shall be sent for to testify, and to have privilege for coming, staying, and returning."⁴ In the same manner, privilege was extended to persons who had bills depending, on the 22d and 29th January 1628, on the 3d May 1701, and the 11th May 1758.⁵ On the 23d January 1640, certain persons having petitions before the grand committee on Irish affairs, were ordered "to have liberty to come and go freely to prosecute their petition, without molestation, arrest, or restraint; and that there be a stay of committing any waste upon the lands mentioned in the petitions, during the dependency of the business here."⁶ Numerous instances have occurred, in which witnesses, who have been arrested in their way to or from Parliament, or during their attendance there, have been discharged out of custody;⁷ and the same protection is extended, not only to parties, but to their counsel and agents, in prosecuting any business in Parliament. On the 2d May 1678, Mr. J. Gardener, solicitor in the cause concerning Lyndsey Level, who had been arrested as he was coming to attend on the house, was discharged from his arrest.⁸ On the 9th April 1742, complaint was made, that Mr. Gilbert Douglas, a solicitor for several bills depending in the

¹ 4 Lords' J. 263. 289. 330. 477. 5 Ib. 476.

² 5 Ib. 563. 574. 653. 680. 27 Ib. 538. 28 Ib. 512.

³ 1 Com. J. 702.

⁴ Ib. 863.

⁵ Ib. 921. 924. 13 Ib. 512. 28 Ib. 244. ⁶ 2 Ib. 72.

⁷ 8 Ib. 525. 9 Ib. 20. 366. 472. 12 Ib. 364. 610. 66 Ib. 226. 232. 90 Ib. 521.

⁸ 9 Ib. 472.

House of Commons, had been arrested as he was attending the house; and he was immediately ordered to be discharged from his arrest.¹

In the same way, solicitors for bills depending in the house, were discharged from arrest, on the 30th April 1753; on the 12th February, and 22d March, 1756.³

On the 29th March 1756, Mr. Aubrey, who had an estate bill depending in the House of Commons, presented a petition, in which he stated that he apprehended an arrest, and it was ordered, "that the protection of the house be allowed to him during the dependence of his bill in this house."⁴ The last case that need be mentioned is that of Mr. Petrie, in 1793. That gentleman was a petitioner in a controverted election, and claimed to sit for the borough of Cricklade. He had received the usual notice to attend, by himself, his counsel, or agents, and had attended the sittings of the election committee as a party in the cause; and although he had a professional agent, he had himself assisted his counsel, and furnished them with instructions before the committee. He was arrested before the committee had closed their inquiries; and on the 20th March the house, after receiving a report of precedents, ordered, *nem. con.*, that he should be discharged out of the custody of the sheriff of Middlesex.⁵

¹ 24 Com. J. 170.

² 26 Ib. 797.

³ 27 Ib. 447. 537.

⁴ 27 Ib. 548.

⁵ 48 Ib. 426.

CHAPTER VI.

JURISDICTION OF COURTS OF LAW IN MATTERS OF
PRIVILEGE.

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

Difficulty of the question.

It has been shown already, that each house of Parliament claims to be the sole and exclusive judge of its own privileges, and that the courts have repeatedly acknowledged the right of both houses to declare what is a breach of privilege, and to commit the parties offending, as for a contempt. But, although the courts will neither interfere with Parliament in its punishment of offenders, nor assume the general right of declaring and limiting the privileges of Parliament, they are bound to administer the law of the land, and to adjudicate when breaches of that law are complained of. The jurisdiction of Parliament and the jurisdiction of the courts are thus liable to be brought into conflict. The House of Lords, or the House of Commons, may declare a particular act to have been justified by their order, and to be in accordance with the law of Parliament; while the courts may acknowledge no right to exist in one house, to supersede by its sole authority

Principles stated.

the laws which have been made by the assent, or which exist with the acquiescence, of all the branches of the legislature. It is true, that, in a general sense, the law of Parliament is the law of the land; but if one law should appear to clash with the other, how are they to be reconciled? Is the declaration of one component part of Parliament to be conclusive as to the law; or are the legality of the declaration, and the jurisdiction of the house, to be measured by the general law of the land? In these questions are comprised all the difficulties attendant upon the clashing jurisdictions of Parliament and of the courts of law.

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

The claim of each house of Parliament to be the sole and exclusive judge of its own privileges has always been asserted in Parliament upon the principles and with the limitations which were stated in the third chapter of this book, and is the basis of the law of Parliament.¹ This claim has been questioned in the courts of law; but before the particular cases are cited, it will be advisable to take a general view of the legal authorities which are favourable or adverse to the claim, in its fullest extent, as asserted by Parliament.

¹ See p. 48.

The earliest authority on which reliance is usually placed, in support of the claim, is the well-known answer of the judges in Thorpe's case.

Authorities in favour of the exclusive jurisdiction of Parliament.

In the 31st Henry 6, on the lords putting a case to the judges, whether Thomas Thorpe, the speaker of the commons, then imprisoned upon judgment in the Court of Exchequer, at the suit of the Duke of York, "should be delivered from prison by virtue of the privilege of Parliament or not," the Chief Justice Fortescue, in the name of all the justices, answered,

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

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

The principle of this answer was adopted and confirmed by Sir Edward Coke, who lays it down that "whatever matter arises concerning either house of Parlia-

¹ 5 Rot. Parl. 210.

ment, ought to be discussed and adjudged in that house to which it relates, and not elsewhere;"¹ and again, that judges ought not to give any opinion of a matter of privilege, because it is not to be decided by the common laws, but *secundum leges et consuetudinem Parliamenti*; and so the judges in divers Parliaments, have confessed."²

These general declarations were explained and qualified by Lord Clarendon, who thus defined the jurisdiction of the commons :

"They are the only judges of their own privileges; that is upon the breach of those privileges which the law hath declared to be their own, and what punishment is to be inflicted upon such breach. But there can be no privilege of which the law doth not take notice, and which is not pleadable by and at law."³

In the case of *Barnardiston v. Soames*, in 1674, Lord Chief Justice North said,

"I can see no other way to avoid consequences derogatory to the honour of the Parliament but to reject the action, and all others that shall relate either to the proceedings or privilege of Parliament, as our predecessors have done. For if we should admit general remedies in matters relating to the Parliament, we must set bounds how far they shall go, which is a dangerous province: for if we err, privilege of Parliament will be invaded, which we ought not in any way to endamage."⁴ But in the same argument he alleged "that actions may be brought for giving Parliament protections wrongfully; actions may be brought against the clerk of the Parliament, serjeant-at-arms, and speaker, for aught I know, for executing their offices amiss, with averments of malice and damage; and then must judges and juries determine what they ought to do by their officers. This is in effect prescribing rules to the Parliament for them to act by."⁵

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

"This court may judge of privilege, but not contrary to the judgment of the House of Commons." Again, "This court judges

¹ 4th Inst. 15.

² *Ib.*

³ Clarendon's Hist. of the Rebellion, vol. ii. book 4, p. 195, 8vo. edit. Oxf.

⁴ 6 Howell's St. Tr. 1110.

⁵ *Ib.*

of privilege only incidentally; for when an action is brought in this court, it must be given one way or other." "The Court of Parliament is a superior court; and though the King's Bench have a power to prevent excesses of jurisdiction in courts, yet they cannot prevent such excesses in Parliament, because that is a superior court, and a prohibition was never moved for to the Parliament."¹

In several other cases which related solely to commitments by either house of Parliament, very decided opinions have been expressed by the judges in favour of privilege and adverse to the jurisdiction of the courts of-law; but most of these may be taken to apply more especially to the undoubted right of commitment for contempt, rather than to general matters of law in which privilege may be concerned.

In the case of Brass Crosby, Mr. Justice Blackstone went so far as to affirm that "it is our duty to presume the orders of that house (of commons), and *their execution*, to be according to law;" and in *R. v. Wright*, Lord Kenyon said, "This is a proceeding by one branch of the legislature, and therefore we cannot inquire into it;" but he added, "I do not say that cases may not be put in which we would inquire whether the House of Commons were justified in any particular measure."

It is laid down by Hawkins that

"There can be no doubt but that the highest regard is to be paid to all the proceedings of either of those houses; and that wherever the contrary does not plainly and expressly appear, it shall be presumed that they act within their jurisdiction, and agreeably to the usages of Parliament, and the rules of law and justice."²

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

"All matters moved concerning the peers and commons in Parliament, ought to be determined according to the usage and customs of Parliament, and not by the law of any inferior court."³

These authorities are sufficient, for the present purpose, to show the general confirmation by judges of the exclusive

¹ 2 Lord Raym. 1105.

² Pleas of the Crown, c. 15, s. 73.

³ Digest, "Parliament" (G. 1.)

Authorities in support of the jurisdiction of courts in matters of privilege.

jurisdiction of Parliament in matters of privilege: but even here the parliamentary claim is occasionally modified and limited, as in the opinions of Lord Clarendon, Chief Justice North, and Lord Kenyon. In other cases the jurisdiction of courts of law has been more extensively urged, and the privileges of Parliament proportionately limited. In *Benyon v. Evelyn*, the lord chief justice, Sir Orlando Bridgman, came to the conclusion,

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

On another occasion Lord Chief Justice Willes said,

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

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

“That, in his opinion, declarations of the law by either House of Parliament were always attended with bad effects: he had constantly opposed them whenever he had an opportunity; and, in his judicial capacity, thought himself bound never to pay the least regard to them;” “but he made a wide distinction between general declarations of law, and the particular decision which might be made by either house, in their judicial capacity, on a case coming regularly before them, and properly the subject of their jurisdiction.”³

At another time the same great authority expressly declared that “a resolution of the House of Commons, ordering a judgment to be given in a particular manner, would not be binding in the courts of Westminster Hall.”⁴ And in *Burdett v. Abbot*, Lord Ellenborough said, “the question

¹ *Benyon v. Evelyn*, *Bridgman*, 324. ² *Wynne v. Middleton*, 1 *Wils.* 128.

³ 16 *Hansard*, *Parl. Hist.* 653.

⁴ 24 *Ib.* 517.

in all cases would be, whether the House of Commons were a court of competent jurisdiction for the purpose of issuing a warrant to do the act.”¹

Passing now to the most recent judicial opinions, the case of *Stockdale v. Hansard* presents itself. An outline of all the proceedings upon this case (the most important since that of *Ashby and White*), will be presently attempted, but, for the present, the expositions of the judges, in reference to the general jurisdiction of the courts, will be necessary to close this summary of authorities.

In giving judgment in that case on the 31st May 1839, Lord Denman used these words: *Stockdale v. Hansard.*

“But having convinced myself that the mere order of the house will not justify an act otherwise illegal, and that the simple declaration that that order is made in exercise of a privilege, does not prove the privilege; it is no longer optional with me to decline or accept the office of deciding whether this privilege exist in law. If it does, the defendant’s prayer must be granted, and judgment awarded in his favour: or, if it does not, the plaintiff, under whatever disadvantage he may appear before us, has a right to obtain at our hands, as an English subject, the establishment of his lawful rights, and the means of enforcing them.”²

In the same trial Mr. Justice Littledale argued,

“It is said the House of Commons is the sole judge of its own privileges; and so I admit, as far as proceedings in the house, and some other things, are concerned; but I do not think it follows that they have a power to declare what their privileges are, so as to preclude inquiry whether what they declare are part of their privileges. The attorney-general admits that they are not entitled to create new privileges; but they declare this (the publication of papers) to be their privilege. But how are we to know that this is part of their privileges without inquiring into it, when no such privilege was ever declared before? We must therefore be enabled to determine whether it be part of their privileges or not.”³

To this argument, however, it is an obvious answer that assuming the house to be the judge of its own privileges, it is its province to determine whether a privilege be new

¹ 14 East, 128.

² Proceedings, printed by the commons, 1839 (283), p. 155.

³ *Ib.* pp. 161, 162.

or not, from an examination of the Journals and other authorities. The learned judge said further,

“I think that the mere statement that the act complained of was done by the authority of the House of Commons is not of itself, without more, sufficient to call at once for the judgment of the court for the defendant.”¹

Mr. Justice Patteson thus expressed his opinion :

“If the orders (of the House of Commons) be illegal, and not merely erroneous, upon no principle known to the laws of this country can those who carry them into effect justify under them. A servant cannot shelter himself under the illegal orders of his master, nor could an officer under the illegal orders of a magistrate, until the legislature interposed and enabled him to do so. The mere circumstance, therefore, that the act complained of was done under the order and authority of the House of Commons, cannot of itself excuse the act, if it be in its nature illegal; and it is necessary, in answer to an action for the commission of such illegal act, to show, not only the authority under which it was done, but the power and right of the House of Commons to give such authority.”²

And upon the question of jurisdiction he laid it down,

“That every court in which an action is brought upon a subject matter generally, and *primâ facie* within its jurisdiction, and in which by the course of the proceedings in that action the powers and privileges and jurisdiction of another court come into question, must of necessity determine as to the extent of those powers, privileges, and jurisdiction; and the decisions of that court, whose powers, privileges, and jurisdiction are so brought into question as to their extent, are authorities; and, if I may so say, evidences in law upon the subject, but not conclusive.”³

In conclusion, Mr. Justice Coleridge thus summed up his view of the duties of a court of law :

“The cause is before us; we are sworn to decide it according to our notions of the law. We do not bring it here; and being here, a necessity is laid upon us to deliver judgment; that judgment we can receive at the dictation of no power; we may decide the cause erroneously, but we cannot be guilty of any contempt in deciding it according to our consciences.”⁴

With these conflicting opinions as to the limits of parliamentary privilege, and the jurisdiction of courts of

Judgments adverse to claims of privilege.

¹ Proceedings, printed by the commons, 1839 (283), p. 162.

² *Ib.* p. 169.

³ *Ib.* p. 174.

⁴ *Ib.* p. 188.

law, if either House of Parliament insist upon precluding other courts from inquiring into matters which are held to be within its own jurisdiction, the proper mode of effecting that object, is the next point to be determined. If the courts were willing to adopt the resolutions of the house as their guide, the course would be clear. The authority and adjudication of the house would be pleaded, and the courts, acting ministerially, would at once give effect to them. But if the courts regard a question of privilege as any other point of law, and assume to define the jurisdiction of the house; in what manner, and at what point, can their adverse judgments be prevented, overruled, or resisted? The several modes that have been attempted will appear from the following cases; but it must be premised that when a privilege of the commons is disputed, that house labours under a peculiar embarrassment. If the courts admit the privilege, their decisions are liable to be reversed by the House of Lords; and thus, contrary to the law of Parliament, one house would be constituted a judge of the privileges claimed by the other. And if the privilege be denied by the courts, the house has no other remedy, in the ordinary course of law, but an appeal to the House of Lords. It is difficult to determine which alternative is the least satisfactory—the denial of a privilege by the lords on a writ of error, or an application to them for redress, when the authority of the house has been discredited by an inferior tribunal. With these perplexities before them, it is not surprising that the commons should frequently have viewed all legal proceedings in derogation of their authority, as a breach of privilege and contempt. They have restrained suitors and their counsel by prohibition and punishment, they have imprisoned the judges, they have coerced the sheriff; but still the law has taken its course.

Having opened the principles of the controversy respecting parliamentary jurisdiction, it is time to proceed with

a narrative of the most important cases in which the privileges of Parliament have been called in question.

Case of Sir W.
Williams.

Sir William Williams, speaker of the House of Commons in the reigns of Charles 2 and James 2, had printed and published, by order of the house, a paper well known in the histories of that time, as Dangerfield's Narrative. This paper contained reflections upon the Duke of York, afterwards James 2, and an information for libel was filed against the speaker, by the attorney-general, in 1684. He pleaded to the jurisdiction of the court, that as the paper had been signed by him, as speaker, by order of the House of Commons, the Court of King's Bench had no jurisdiction over the matter. On demurrer, this plea was overruled, and a plea in bar was afterwards pleaded but withdrawn; upon which, in the 2d year of James 2, judgment went by default, and the speaker was fined 10,000*l.* Two thousand pounds of this fine were remitted by the king, but the rest he was obliged to pay. The commons were indignant at this contempt of their authority, and declared the judgment to be an illegal judgment, and against the freedom of Parliament. Three bills were brought in, in 1689, in 1690, and in 1695, to reverse this judgment; but they all miscarried, chiefly, it is understood, because it was proposed to indemnify the speaker out of the estate of Sir Robert Sawyer, who had filed the information.¹

Jay v. Topham.

The next important case is that of Jay *v.* Topham. After a dissolution of Parliament, an action was brought against John Topham, esq., serjeant-at-arms, for executing the orders of the house in arresting certain persons. Mr. Topham pleaded to the jurisdiction of the court the said orders; but his *plea* was overruled, and judgment given against him. The house declared this to be a

¹ 2 Shower, 471. 13 Howell's St. Tr. 1370. Wynn's Argument. 10 Com. J. 177. 205.

breach of privilege, and committed Sir F. Pemberton and Sir T. Jones, the judges, to the custody of the serjeant-at-arms.¹

It has been generally acknowledged, that these proceedings against the judges were liable to great objection; for they had not disputed the authority of the House of Commons, but only refused to admit the plea of the defendant to the jurisdiction of the court. Lord Ellenborough said, that it was surprising “how a judge should have been questioned, and committed to prison by the House of Commons, for having given a judgment, which no other judge who ever sat in his place could have differed from.”

The remarkable cases of Ashby and White, and the Aylesbury men, in 1704, are next worthy of a passing notice. They have been already alluded to in the second chapter, with reference to the right of determining elections;² but they must again be brought forward, to point out the course adopted by the commons to stay actions derogatory to their privileges. Enraged by a judgment of the House of Lords, which held, that electors had a right to bring actions against returning officers touching their right of voting, the commons declared that such an action was a breach of privilege; and, “That whoever shall presume to commence any action, and all attorneys, solicitors, counsellors, and serjeants-at-law, soliciting, prosecuting, or pleading in any case, are guilty of a high breach of the privileges of this house.” In spite of this declaration, five burgesses of Aylesbury, commonly known as “the Aylesbury men,” commenced actions against the constables of their borough, for not allowing their votes. The House of Commons obtained copies of the declarations, and resolved, that the parties were “guilty of commencing and prosecuting actions,” “contrary to the declaration, in high contempt of the jurisdiction, and in breach

Ashby and
White, &c.

¹ 10 Com. J. 227.

² See p. 40.

of the known privileges of this house.”¹ For which offence, the parties and their attorney were committed to Newgate.² Thence they endeavoured to obtain their release by writs of habeas corpus, but without success; and the counsel who had pleaded for the prisoners, on the return of the writs, were committed to the custody of the serjeant-at-arms.³ The lords took part with the Aylesbury men against the commons; and after a noisy session, occupied with addresses, conferences, and resolutions upon privilege, the queen prorogued the Parliament.

On this occasion, the commons endeavoured to stop the actions at their commencement, and thus to prevent the courts from giving any judgment. But although this course of proceeding may chance to be effectual, an action cannot be legally obstructed, if the parties be determined to proceed with it. Their counsel may be prevented from pleading, but others would be immediately instructed to appear before the court; and it must not be forgotten, that during a recess, neither house could interfere with the parties or their counsel, and that judgment might be obtained and executed before the meeting of Parliament. This mode of preventing actions, however, is so natural, that it has since been resorted to; but the principle has not been uniformly asserted, and it is difficult to determine whether commencing such actions, in future, will be regarded as a breach of privilege or not.

When Sir Francis Burdett brought actions against the speaker and the serjeant-at-arms, in 1810, for taking him to the Tower in obedience to the orders of the House of Commons, they were directed to plead, and the attorney-general received instructions to defend them.⁴ A committee at the same time reported a resolution “that the bringing these actions for acts done in obedience to the orders of the house is a breach of privilege,” but it was not adopted by the house. The actions proceeded in the regular course,

¹ 14 Com. J. 444.

² Ib. 445.

³ Ib. 552.

⁴ 65 Ib. 355.

and the Court of King's Bench sustained and vindicated the authority of the house. The judgment of that court was afterwards affirmed, on a writ of error, by the Exchequer Chamber, and ultimately by the House of Lords.

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

Messrs. Hansard, the printers of the House of Commons, had printed, by order of that house, the reports of the inspectors of prisons, in one of which a book published by Stockdale was described in a manner which he conceived to be libellous. He brought an action against Messrs. Hansard during a recess, who pleaded the general issue, and proved the order of the house to print the report. But although this order was held to be no defence to the action, Stockdale had a verdict against him upon a plea of justification, as the jury considered the description of the work in question to be accurate. On that occasion Lord Chief Justice Denman, who tried the cause, made a declaration adverse to the privileges of the house, which Messrs. Hansard had set up as part of their defence. In his direction to the jury, his lordship said "that the fact of the House of Commons having directed Messrs. Hansard to publish all their parliamentary reports is no justification for them, or for any bookseller who publishes a parliamentary report containing a libel against any man." In consequence of these proceedings, a committee was appointed, on the meeting of Parliament in 1837, to examine precedents, and to ascertain the law and practice of Parliament in reference to the publication of papers printed by order of the house.

Stockdale v.
Hansard.

The result of these inquiries was the passing of the following resolutions by the house:—

“That the power of publishing such of its reports, votes, and proceedings as it shall deem necessary or conducive to the public interests, is an essential incident to the constitutional functions of Parliament, more especially of this house, as the representative portion of it.

“That by the law and privilege of Parliament, this house has the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges; and that the institution or prosecution of any action, suit, or other proceeding, for the purpose of bringing them into discussion or decision before any court or tribunal elsewhere than in Parliament, is a high breach of privilege, and renders all parties concerned therein amenable to its just displeasure, and to the punishment consequent thereon.

“That for any court or tribunal to assume to decide upon matters of privilege inconsistent with the determination of either house of Parliament, is contrary to the law of Parliament, and is a breach and contempt of the privileges of Parliament.”

Nothing could have been more comprehensive than these resolutions; they asserted the privilege, and denounced the parties, the counsel, and the courts who should presume to question it; yet Stockdale immediately commenced another action, and the house, instead of acting upon its resolutions, directed Messrs. Hansard to plead, and the attorney-general to defend them.

In the former case Messrs. Hansard had obtained judgment upon a plea which would have availed them equally if they had printed the report upon their own account, like any other bookseller; but in the second action the privileges and order of the house were alone relied upon in their defence, and the Court of Queen's Bench unanimously decided against them.

Still the House of Commons was reluctant to act upon its own resolutions, and instead of punishing the plaintiff and his legal advisers, “under the special circumstances of the case,” it ordered the damages and costs to be paid. The resolutions, however, were not rescinded, and it was then

determined that, in case of future actions, Messrs. Hansard should not plead at all, and that the parties should suffer for their contempt of the resolutions and authority of the house. Another action was brought by the same person, and for the same publication. Messrs. Hansard did not plead, the judgment went against them by default, and the damages were assessed by a jury in the Sheriff's Court at 600*l.* The sheriffs of Middlesex levied for that amount, but having been served with copies of the resolutions of the house, they were anxious to delay paying the money to Stockdale as long as possible, in order to avoid its threatened displeasure.

At the opening of the session of Parliament in 1840 the money was still in their hands. The House of Commons at once entered on the consideration of these proceedings, which had been carried on in spite of its resolutions, and in the first place committed Stockdale to the custody of the serjeant-at-arms. The sheriffs were desired to refund the money, and, on their refusal, were also committed. Mr. Howard, the solicitor of Mr. Stockdale, was suffered to escape with a reprimand. The sheriffs retained possession of the money until an attachment was issued from the Queen's Bench,¹ when they paid it over to Stockdale. Stockdale, while in prison, commenced a fourth action by the same solicitor, and with him was committed to Newgate for the offence; and Messrs. Hansard were again ordered not to plead. Once more judgment was entered up against them, and a writ of inquiry of damages issued.

Mr. France, the under-sheriff, upon whom the execution of this writ devolved, having been served with the resolutions of the commons, expressed by petition his anxiety to pay obedience to them, and sought the protection of the house. He then obtained leave to show cause before the Court of Queen's Bench, on the fourth day of Easter term, why the writ of inquiry should not be executed.

¹ 11 Adolphus & Ellis, 253.

Meanwhile the imprisonment of the plaintiff and his attorney did not prevent the prosecution of further actions. Mr. Howard's son, and his clerk, Mr. Pearce, having been concerned in conducting such actions, were committed for the contempt; and Messrs. Hansard, as before, were instructed not to plead. At length, as there appeared to be no probability of these vexatious actions being discontinued, a bill was introduced into the commons, by which proceedings, criminal or civil, against persons for publication of papers printed by order of either house of Parliament, are to be stayed by the courts, upon delivery of a certificate and affidavit that such publication is by order of either house of Parliament. This bill was agreed to by the lords, and received the royal assent.¹ It has removed one ground for disputing the authority of Parliament, but has left the general question of privilege and jurisdiction in the same uncertain state as before.

Publication of papers.

Howard v. Gosset and others.

In executing the speaker's warrant for taking Mr. Howard into custody, the officers employed by the serjeant-at-arms for that purpose had remained some time in his house during his absence, for which he brought an action of trespass against them. As it was possible that they might have exceeded their authority, and as the right of the house to commit was not directly brought into question, the defendants were, in this case, permitted to appear and defend the action;² although a clause for staying further proceedings in the action was contained in the bill which was pending, at that time, in the House of Lords, where it was afterwards omitted.

This action, after some delay, proceeded to trial. On the 15th June 1842, the serjeant-at-arms informed the house that he had received a subpœna to attend the trial on the part of the defendants; and leave was given to him to attend and give evidence. At the same time the clerk of the journals who had received a subpœna, had leave to

¹ 3 & 4 Vict. c. 9.

² 95 Com. J. 236. Hans. Deb. 31 Mar. 1840.

attend and give evidence, and to produce the Journal of the house.¹ The cause was tried before Lord Denman, in the sittings after Michaelmas term, 1842, when Parliament was not sitting, and a verdict was given for the plaintiff, with 100*l.* damages.² This verdict, however, did not proceed upon any question of the jurisdiction of the house; but simply on the ground that the officers had exceeded their authority, by remaining in the plaintiff's house, after they were aware of his absence from home. The attorney-general, who appeared in their defence, admitted that they were not justified in their conduct; and the case can scarcely be cited as one of privilege.

But other actions have since been commenced by Mr. Howard against Sir William Gosset and W. Bellamy, a messenger of the house, for taking him into custody, and conveying him to Newgate, in obedience to orders of the house and the speaker's warrants.³ The house has given them leave to appear and defend the actions, and has directed the attorney-general to defend its officers;⁴ but the actions have not yet come on for trial.

The present position of privilege is, in the highest degree, unsatisfactory. Assertions of privilege are made in Parliament and denied in the courts; the officers who execute the orders of Parliament are liable to vexatious actions, and if verdicts are obtained against them, the damages and costs are paid by the Treasury. The parties who bring such actions, instead of being prevented from proceeding with them by some legal process acknowledged by the courts, can only be coerced by an unpopular exercise of privilege, which does not stay the actions. If Parliament were to act strictly upon its own declarations, it would be forced to commit not only the parties, but their counsel and their attorneys, the judges, and the sheriffs; and so great would be the injustice of punishing the public

Present position of privilege.

¹ 97 Com. J. 378.

² 11 Adolphus & Ellis, 273.

³ 98 Com. J. 59.

⁴ 98 Com. J. 118. Hans. Deb. 15 March 1843.

officers of justice for administering the law according to their consciences and oaths, that Parliament would shrink from so violent an exertion of privilege. And again, the intermediate course adopted in the case of *Stockdale v. Hansard*, of coercing the sheriff for executing the judgment of the court, and allowing the judges who gave the obnoxious judgment to pass without censure, is inconsistent in principle, and betrays hesitation on the part of the house—distrust of its own authority, or fear of public opinion.

A remedy has already been applied to actions connected with the printing of parliamentary papers; and a well-considered statute, founded upon the same principle, is the only mode by which collisions between Parliament and the courts of law can be prevented for the future. The proper time for proposing such a measure is when no contest is pending; and when its provisions may be calmly examined, without reference to a particular privilege, or a particular judgment of the courts. It is not expected or desired that Parliament should surrender any privilege that is essential to its dignity, and to the proper exercise of its authority; but the privileges of both houses should be secured by a legislative definition; and a mode of enforcing them should be adopted which would be binding upon the courts.

B O O K II.

PRACTICE AND PROCEEDINGS IN PARLIAMENT.

CHAPTER VII.

INTRODUCTORY REMARKS. MEETING OF A NEW PARLIAMENT. ELECTION AND ROYAL APPROBATION OF THE SPEAKER OF THE COMMONS. OATHS. QUEEN'S SPEECH AND ADDRESSES IN ANSWER. PLACES OF PEERS AND MEMBERS OF THE HOUSE OF COMMONS. ATTENDANCE ON THE SERVICE OF PARLIAMENT. OFFICE OF SPEAKER IN BOTH HOUSES. PRINCIPAL OFFICERS. JOURNALS. ADMISSION OF STRANGERS. PROROGATION.

THE proceedings of Parliament are regulated chiefly by ancient usage, or by the settled practice of modern times, apart from distinct orders and rules: but usage has frequently been declared and explained by both houses, and new rules have been established by positive orders and resolutions. Ancient usage, when not otherwise declared, is collected from the Journals, from history and early treatises, and from the continued experience of practised members. Modern practice is often undefined in any written form; it is not recorded in the Journals; it is not to be traced in the published debates; nor is it known in any certain manner but by personal experience, and by the daily practice of Parliament in the conduct of its various descriptions of business.

Introductory remarks.

Ancient usage.

Modern practice.

Numerous orders and resolutions for regulating the

proceedings of Parliament are to be found in the Journals of both houses, which may be divided into, 1, standing orders; 2, sessional orders; and 3, orders or resolutions undetermined in regard to their permanence.

Standing orders.

1. Both houses have agreed, at various times, to standing orders, for the permanent guidance and order of their proceedings; which, if not vacated or rescinded, endure from one Parliament to another, and are of equal force in all. They occasionally fall into desuetude, and are regarded as practically obsolete; but, by the law and custom of Parliament, they are binding upon the proceedings of the house by which they were agreed to, as continual bye-laws, until their operation is concluded by another vote of the house upon the same matter.

In the House of Lords particular attention is paid to the making and recording of standing orders. No motion may be granted for making a standing order, or for dispensing with one the same day it is made, nor before the house has been summoned to consider it;¹ and every standing order, when agreed to, is added to the "Roll of Standing Orders," which is carefully preserved and published from time to time. In the House of Commons no such care is taken; for when an order or resolution has been agreed to be made a standing order, it appears in that form in the Journals; but there is no authorized collection of the standing orders, except in relation to private bills.

Sessional orders.

2. At the commencement of each session both houses agree to certain orders and resolutions, which, from being constantly renewed from year to year, are evidently not intended to endure beyond the existing session. They are few in number, and have but a partial effect upon the business of Parliament.

Orders and resolutions.

3. The operation of orders or resolutions of either house, of which the duration is undetermined, is not settled upon any certain principle. By the custom of Parliament they

¹ Lords' S. O. No. 101.

would be concluded by a prorogation; but many of them are practically observed and held good in succeeding sessions, and by different Parliaments, without any formal renewal or repetition. In such cases, it is presumed that the house regards its former orders as declaratory of its practice; and that without relying upon their absolute validity, it agrees to adhere to their observance as part of the settled practice of Parliament.

In addition to these several descriptions of internal authority, by which the proceedings of both houses are regulated, they are governed, in some few particulars; by statutes and by royal prerogative.

Statutes and prerogative.

The proceedings of each house separately, or in connexion one with the other, and their joint or separate communications with the Crown (whether determined by usage, by orders of either house, by law, or by prerogative), will be followed in the order which appears the best adapted for rendering them intelligible, without repetition, and apart from any presumption of previous knowledge. For which purpose, it is proposed, in this chapter, to present an outline of the general forms of procedure, in reference to the meeting, sittings, adjournment, and prorogation of Parliament; and, in future chapters, to proceed to the explanation of the various modes of conducting parliamentary business, with as close an attention to methodical arrangement as the diversity of the subjects will allow. Where the practice of the two houses differs, the variation will appear in the description of each separate proceeding; but wherever there is no difference, one account of a rule or form of proceeding, without more particular explanation, must be understood as applicable equally to both houses of Parliament.

Plan of the second Book.

On the day appointed by royal proclamation for the first meeting of a new Parliament for despatch of business, the members of both houses assemble in their respec-

Meeting of a new Parliament.

tive chambers. In the House of Lords, the lord chancellor acquaints the house,

“that her Majesty not thinking it fit to be personally present here this day, had been pleased to cause a commission to be issued under the great seal, in order to the opening and holding of this Parliament.”

The lords commissioners, being in their robes, and seated on a form between the throne and the woolsack, then command the gentleman usher of the black rod to let the commons know “the lords commissioners desire their immediate attendance in this house to hear the commission read.”

Meanwhile, the clerk of the Crown in Chancery has delivered to the clerk of the House of Commons a book, containing the names of the members returned to serve in the Parliament; after which, on receiving the message from the black rod, the commons go up to the House of Peers. The lord chancellor then addresses the members of both houses, and acquaints them that her Majesty has been pleased

“to cause letters patent to be issued, under her great seal, constituting us, and other lords therein mentioned, her commissioners, to do all things in her Majesty’s name, on her part necessary to be performed in this Parliament,” &c.

These letters patent are next read at length by the clerk; after which the lord chancellor again addresses both houses, and acquaints them

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

The commons immediately withdraw, and return to their own house, while the House of Lords is adjourned during pleasure, to unrobe. On that house being resumed, the

prayers, with which the business of each day is commenced, are read for the first time, by a bishop, or if no bishop be present, by any peer in holy orders.¹ The lord chancellor then takes the oaths, and takes and subscribes the oath of abjuration. The certificate of the clerk of the Crown of the return of the 16 representative peers of Scotland is next read, after which the lords who are present take the oaths required by law,² and subscribe the roll of the lords spiritual and temporal.

At this time, also, peers are introduced who have received writs of summons, or who have been newly created by letters patent, and they present their writs or patents to the lord chancellor kneeling on one knee.³ They are introduced in their robes, between two other peers of their own dignity, also in their robes, and are preceded by the garter king of arms (or the gentleman usher of the black rod, York herald, or the yeoman usher Clarenceux king-at-arms, officiating for him), the earl marshal, and the lord great chamberlain, and they are then conducted to their seats, according to their dignity.

Introduction of
peers.

When a new representative peer of Ireland has been elected, the clerk of the Crown in Ireland attends with the writs and returns with his certificate annexed, which certificate is read and entered on the Journal.⁴

A bishop is introduced by two other bishops, and conducted to his seat amongst the spiritual lords; but without the formalities observed in the case of the temporal peers. The representative bishops of Ireland are not introduced by other bishops, but take the oaths, subscribe the roll, and proceed to their seats without any particular ceremony.

And bishops.

With regard to peers by descent, or by special limitation in remainder, there are the following standing orders :

¹ 73 Lords' J. 558.

² These are the oath of fidelity, the oath of supremacy, the oath of abjuration, or the oath to be taken by Roman-catholics under 10 Geo. 4, c. 7: which are inserted at length in the Appendix.

³ 73 Lords' J. 569.

⁴ Ib. 575.

Peers by descent.

"That all peers of this realm by descent, being of the age of one and twenty years, have right to come and sit in the house of peers without any introduction.

"That no such peers ought to pay any fee or fees to any herald upon their first coming into the House of Peers.

"That no such peers may or shall be introduced into the House of Peers by any herald, or with any ceremony, though they shall desire the same.¹

By special limitations in remainder.

"That every peer of this realm claiming by virtue of a special limitation in remainder, and not claiming by descent, shall be introduced."²

Election of a speaker.

The commons, in the meantime, proceed to the election of their speaker. A member, addressing himself to the clerk,³ (who, standing up, points to him, and then sits down), proposes to the house some other member then present, and moves that he "do take the chair of this house as speaker," which motion is seconded by another member. If no other member be proposed as speaker, the motion is ordinarily supported by an influential member (generally the leader of the House of Commons),⁴ and the member proposed is called by the house to the chair; upon which he stands up in his place and expresses his sense of the honour proposed to be conferred upon him, and submits himself to the house; the house again unanimously call him to the chair, when his proposer and seconder take him out of his place and conduct him to the chair. But if another member be proposed, a similar motion is made and seconded in regard to him, and both the candidates address themselves to the house. A debate ensues in relation to both the members, in which the clerk continues to act the part of speaker, standing up and pointing to the members as they rise to speak, and then sitting down. When this debate is closed, the clerk puts the question that the member first proposed "do take the chair of this house as speaker," and if the house divide, he directs one party to go to the right and the other to the left, and appoints a teller for each. If the majority be in favour of the mem-

¹ Lords' S. O. No. 88. ² Ib. No. 89. ³ See p. 157. ⁴ 96 Com. J. 463.

ber first proposed, he is at once conducted to the chair; but if otherwise, a similar question is put in relation to the other, which being resolved in the affirmative, that member is conducted to the chair by his proposer and seconder.

The speaker elect, on being conducted to the chair, stands on the upper step and "expresses his grateful thanks"¹ or "humble acknowledgments:"² or "true sense of the high honour the house had been pleased to confer upon him;"³ and then takes his seat. The mace, which up to this time has been under the table, is now laid upon the table, where it is always placed during the sitting of the house, with the speaker in the chair. Mr. Speaker elect is then congratulated by some member, and the house adjourns.

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

Royal appro-
bation of the
speaker elect.

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

In reply, the lord chancellor assures him of her Majesty's sense of his sufficiency, and "that her Majesty most fully approves and confirms him as the speaker."⁴

When the speaker has been approved, he lays claim, on behalf of the commons, "by humble petition to her Majesty, to all their ancient and undoubted rights and

¹ 90 Com. J. 5.

² 96 Ib. 465.

³ 94 Ib. 274.

⁴ 73 Lords' J. 571. The forms now observed have been stated; but before they were adopted it was customary for the speaker elect to declare that he felt the difficulties of his high and arduous office, and that, "if it should be her Majesty's pleasure to disapprove of this choice, her Majesty's faithful commons will at once select some other member of their house better qualified to fill the station than himself."

privileges," which being confirmed, the speaker, with the commons, retires from the bar of the House of Lords.

Speaker elected
for the whole
Parliament.

The speaker thus elected and approved continues in that office during the whole Parliament, unless in the meantime he resigns or is removed by death. In the event of a vacancy during the session, similar forms are observed in the election and approval of a speaker; except that instead of her Majesty's desire being signified by the lord chancellor in the House of Lords, a minister in the commons acquaints the house that her Majesty "gives leave to the house to proceed forthwith to the choice of a new speaker;"¹ and when the speaker has been chosen, the same minister assures the house that it is her Majesty's pleasure that the house should present their speaker to-morrow (at an hour stated) in the House of Peers for her Majesty's royal approbation. On the following day the royal approbation is given with the same forms as at the meeting of a new Parliament, except that the claim of privileges is omitted.²

Exceptions to
these forms.

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

1. Previous to the Restoration in 1660 Sir Harbottle Grimston was called to the chair without any authority from Charles 2, who had not yet been formally recognized by the Convention Parliament.³ 2. On the meeting of the Convention Parliament on the 22d January 1688, James 2 had fled, and the Prince of Orange had not been declared king; when the commons chose a speaker by their own authority.⁴ 3. Mr. Speaker Cornwall died on the 2d January 1789, at which time George 3 was mentally incapable of attending to any public duties; and on the 5th the house proceeded to the choice of another speaker, who immediately took his seat and performed all the duties of his office.⁵

¹ 44 Com. J. 274.

² 71 Lords' J. 208.

³ 8 Com. J. 1.

⁴ 10 Com. J. 9.

⁵ 44 Com. J. 45.

The only instance of the royal approbation being refused was in the case of Sir Edward Seymour in 1678. Sir John Topham, indeed, had been chosen speaker in 1450, but his excuse being admitted by the king, another was chosen by the commons in his place; and Sir Edward Seymour, who knew that it had been determined to take advantage of his excuse, purposely avoided making any, so as not to give the king an opportunity of treating him in the same manner as his predecessor had been treated in a former reign.

Royal approbation refused.

The speaker, on returning from the lords, reports to the house his approval by her Majesty, and her confirmation of their privileges, and “repeats his most respectful acknowledgments to the house for the high honour they have done him.” He then puts the house in mind that the first thing to be done is to take and subscribe the oaths required by law; and himself first, alone, standing upon the upper step of the chair, takes the oaths of allegiance and supremacy, and takes and subscribes the oath of abjuration, and delivers to the clerk of the house an account of his qualification; in which ceremonies he is followed by the other members who are present. The house adjourns at four o’clock, for a reason that will be presently explained, and meets early on the following day, when the daily prayers are read for the first time, by Mr. Speaker’s chaplain. The members continue to take the oaths on that and the succeeding day, after which the greater part are sworn, and qualified to sit and vote.

Oaths, &c. in the commons.

But, before any further proceedings of the session are described, it may be well to advert more particularly to the laws and practice relating to oaths, and the qualification and identity of members.

If members refuse to take the oaths, they are disqualified from sitting, and new writs are issued in their room. Soon after the Revolution of 1688, Sir H. Mounson and Lord Fanshaw refused to take the oaths, and were discharged from

Refusal to take oaths.

being members of the house ;¹ and, on the 9th of January following, Mr. Cholmly, who said he could not yet take the oaths, was committed to the Tower for his contempt.² But the most remarkable precedent is that of Mr. O'Connell, who was returned for the county of Clare, in May, 1829. On the oaths being tendered to him by the clerk, he refused to take the oath of supremacy, and claimed to take the oath in the Roman-catholic Relief Act, which had not yet come into operation. Mr. O'Connell was afterwards heard upon his claim ; but the house resolved that he was not entitled to sit or vote, unless he took the oath of supremacy. Mr. O'Connell persisted in his refusal to take that oath, and a new writ was issued for the county of Clare.³

Declarations by
Quakers, &c.

Quakers, Moravians, Separatists, and others, who have a conscientious objection to an oath, are permitted to make affirmations to the same effect. In 1833, Mr. Pease, a Quaker, was admitted to sit and vote upon these conditions ;⁴ and, since that time, several other members, of different religious denominations, have made affirmations instead of oaths.⁵

Omission to
take the oaths.
Penalties.

By the 30th Charles 2, stat. 2, and the 13th William 3, c. 6, severe penalties and disabilities are incurred by any member of either house, who shall sit and vote without having taken the oaths ; but when they neglect to take them from haste, accident, or inadvertence, it is usual to pass Acts of indemnity, to relieve them from the consequences of their neglect.⁶ In the commons, however, it is necessary to move a new writ, immediately the omission is discovered, as the member is disabled from sitting and voting.⁷

Time of taking
the oaths.

The time for taking the oaths by both houses was limited, by the above Acts, to the hours between nine and

¹ 10 Com. J. 131. ² Ib. 328. ³ 84 Ib. 303. 311. 314. 325.

⁴ 88 Ib. 41. See also report on his case, 1833 (G).

⁵ 90 Ib. 5. 92 Ib. 490. 495. Notes, 1843, p. 1441.

⁶ 45 Geo. 3, c. 5. 56 Geo. 3, c. 48, &c. (private).

⁷ 60 Com. J. 148. 67 Ib. 286. 69 Ib. 144. 71 Ib. 42. 85 Ib. 353.

four; but by an Act 6 & 7 Vict., c. 6, the lords are now enabled to take the oaths until five o'clock in the afternoon. The same Acts order the oaths to be taken, in both houses, at the table in the middle of the house, with the house sitting, and the speaker "in his place," or "in the chair." This provision causes the ordinary meeting of the House of Commons to be fixed for a quarter before four o'clock in the afternoon; and the appearance of a member to be sworn, before four o'clock, immediately supersedes any other business.¹

Every member of the House of Commons (not being the eldest son of a peer, or otherwise exempted from the provisions of the Qualification Act), when he takes the oath, delivers in, at the same time, a declaration of his property qualification,² without which he may not sit or vote; and if he makes a false declaration, he is guilty of a misdemeanor.³ He also subscribes the Return Book, in the custody of the clerk of the house.

Declaration of qualification.

Members returned after the general election, take the oaths in the same manner, before four o'clock; and by an ancient order and custom, and also by a resolution of the 23d February 1688, "they are introduced to the table between two members, making their obeisances as they go up, that they may be the better known to the house;"⁴ but this practice is not observed in regard to members who come in upon petition,⁵ for they are supposed to have been returned at the general election.

New members sworn after general election.

Another difference of form is to be remarked, in reference to new members and to members seated on petition, when coming to be sworn. The former not being on the original roll of returns, must bring with them a certificate of their return from the clerk of the Crown; but the latter having become members by the adjudication of an election

¹ 2 Hats. 90.

² See *supra*, p. 26, and Appendix. The proper forms are to be obtained at the "Public Business Office".

³ 1 & 2 Vict. c. 48, s. 6-8.

⁴ 10 Com. J. 34.

⁵ 2 Hats. 85 n.

committee, the deputy-clerk of the Crown amends the return by order of the house, and their names are consequently upon the roll as if they had been originally returned.

Demise of the Crown.

In the event of the demise of the Crown, all the members of both houses again take the oaths.¹

Queen's speech.

To proceed with the business of the session. When the greater part of the members of both houses are sworn, the causes of summons are declared by her Majesty in person, or by commission. This proceeding is, in fact, the true commencement of the session; and in every session but the first of a Parliament, as there is no election of a speaker, nor any general swearing of members, the session is opened at once by the Queen's speech, without any preliminary proceedings in either house.

The Queen present.

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

¹ 6 Anne, c. 7.

into her hands by the lord chancellor, kneeling upon one knee.

When her Majesty is not personally present, the causes of summons are declared by the lords commissioners. The gentleman usher of the black rod is sent, in the same manner, to the commons, and acquaints the speaker that the lords commissioners *desire* the immediate attendance of this honourable house in the House of Peers, to hear the commission read: and when Mr. Speaker and the house have reached the bar of the House of Peers, the lord chancellor reads the royal speech to both houses. By commission.

When the speech has been delivered, either by her Majesty in person, or by commission, the House of Lords is adjourned during pleasure, and the commons separate for an hour or two, without any formal adjournment; and if any members desire to be sworn on that day, it is usual for the house to reassemble before four o'clock.

When the houses are resumed in the afternoon, the main business is for the lord chancellor in the lords, and the speaker in the commons, to report her Majesty's speech. In the former house the speech is read at length by the clerk, and in the latter by the speaker, who states that for greater accuracy he had obtained a copy. But before this is done it is the practice in both houses to read some bill a first time *pro formâ*, in order to assert their right of deliberating without reference to the immediate causes of summons. Report of
Queen's speech.

This practice in the lords is enjoined by a standing order.¹ In the commons the same form is observed by ancient custom only. There is an entry on the Journal of the 22d March 1603,

“That the first day of every sitting, in every Parliament, some one bill, and no more, receiveth a first reading for form's sake.”²

And this practice has continued till the present time. By the lords' standing order it would appear necessary that Bill read *pro formâ*.

¹ Lords' S. O. No. 8.

² 1 Com. J. 150 See also *supra*, p. 34.

this form should be observed immediately after the oaths have been taken ; but in the commons the bill is only required to be read before the report of the Queen's speech, and other business is constantly entered upon before the reading of the bill, as the issue of new writs, the consideration of matters of privilege,¹ the presentation of papers, and the usual sessional orders and resolutions.²

Address.

When the royal speech has been read, an address in answer to it is moved in both houses. Two members in each house are selected by the Administration for moving and seconding the address, and they appear in their places in court dresses for that purpose. The address is an answer, paragraph by paragraph, to the Queen's speech. Amendments may be made to any part of it, and when the question for an address, whether amended or not, has been agreed to, a select committee is appointed "to prepare" or "draw up" an address. When the report is received from this committee, amendments may still be made to the address before it is agreed to : and after it has been finally agreed to, it is ordered to be presented to her Majesty. When the speech has been delivered by the Queen in person, the address is presented by the whole house ; but when it has been read by the lords commissioners, the address of the upper house is presented "by the lords with white staves ;"³ and the address of the commons by "such members of the house as are of her Majesty's most honourable privy council." When the address is to be presented by the whole house, the "lords with white staves" in the one house, and the privy councillors in the other, are ordered to know her Majesty's pleasure when she will be attended with the address. Each house meets when it is understood that this ceremony will take place, and after her Majesty's pleasure has been reported,⁴ proceeds separately to the palace. The proceedings upon

¹ 95 Com. J. 3.

² 96 Ib. 467.

³ Of the royal household.

⁴ 74 Lords' J. 10. 96 Com. J. 11.

addresses need not be pursued any further, as they will be described more fully in a separate chapter¹; but a recent precedent is deserving of notice.

On the 3d February 1844 the House of Commons met for the purpose of presenting the address in answer to the Queen's speech, but Sir Robert Peel stated, "that when the house yesterday had agreed to the address, and had resolved that it should be presented to her Majesty by the whole house, he had announced, for the convenience of members, that her Majesty would probably appoint to be attended this day at two o'clock; that her Majesty was most desirous to be attended by her faithful commons, but that it was his painful duty to communicate to the house, that intelligence had been received of the death of his royal highness the Duke of Saxe Cobourg-Gotha, the father of the illustrious prince the consort of her Majesty, which, although not strictly official, left little doubt of the melancholy event; that, under those circumstances, he would propose that the resolution for presenting the address to her Majesty by the whole house, should be rescinded, and that the address should be presented by such members of the house as are of her Majesty's most honourable privy council;" which was done accordingly.

In the upper house

"The lords are to sit in the same order as is prescribed by the Act of Parliament, except that the lord chancellor sitteth on the wool sack as speaker to the house."²

Places in the
House of Lords.

But this order is not observed with any strictness. The bishops always sit together in the upper part of the house, on the right hand of the throne; but the lords temporal are too much distributed by their offices, by political divisions, and by the part they take in debate, to be able to sit according to their rank and precedence. The members of the administration sit on the front bench on the right hand of the woosack, adjoining the bishops; and the peers who usually vote with them, occupy the other benches on that side of the house. The peers in opposition are ranged on the opposite side of the house; while many who desire to maintain a political neutrality, sit upon the cross benches which are placed between the table and the bar. Yet the standing order is occasionally enforced.

¹ Chapter XVI.

² Lords' S. O. No. 1, 31 Hen. 8, c. 10.

On the 20th January 1740, the Roll of Standing Orders was read, and the lords present took their due places;¹ and again on the 1st February 1771.²

On the 10th February 1740, "it was insisted that the lords should take their due places, and the Act 31 Hen. 8, 'for placing of the lords,' being read, it was moved that the house be called over, but this motion was negatived;"³ and on the 4th December 1741, "it was insisted on that the lords should take their due places."⁴

On the 22d January 1740, it was agreed by the house that the end of the lowest cross bench, next the bishops' bench, is the place of the junior baron.⁵

Places in the
commons.

In the commons no places are particularly allotted to members; but it is the custom for the front bench on the right hand of the chair to be appropriated for the members of the Administration, which is called the treasury or privy councillor's bench. The front bench on the opposite side is also usually reserved for the leading members of the opposition, who have served in high offices of state; but other members occasionally sit there, especially when they have any motion to offer to the house. And on the opening of a new Parliament, the members for the city of London claim the privilege of sitting on the treasury or privy councillors' bench. It is understood that members who have received the thanks of the house in their places, are entitled, by courtesy, to keep the same places during the Parliament;⁶ and it is not uncommon for old members who are constantly in the habit of attending in one place, to be allowed to occupy it without disturbance.

All other members who enjoy no place by courtesy, upon any of these grounds, can only secure a place for the debate by being present at prayers. On the back of each seat there is a bronze plate, and in this a member may put a card⁷ with his name, if he be at prayers; but by a standing order of the 6th April 1835, "No member's

¹ 25 Lords' J. 572.

² 33 Ib. 47.

³ 25 Ib. 593.

⁴ 26 Ib. 9.

⁵ 25 Ib. 575.

⁶ 2 Hats. Prec. 94.

⁷ Cards, with the words "at prayers" printed on them, are always put upon the table for the convenience of members.

name may be affixed to any seat in the house before the hour of prayers.”¹

Places secured at prayers, may be kept the whole evening, unless there be a division, or unless the members attend the speaker to the House of Lords, when there is a commission for giving the royal assent to bills. Disputes sometimes arise when members leave their seats for a short time, and on returning, find them occupied by others. On the 14th April 1842, Mr. Speaker thus explained the rule of the house upon this point:—

“A member having been present at prayers, and having put a card at the back of his seat, is entitled to it for the whole night, unless a division should intervene. But should a member who had not been present at prayers, leave his seat, there is no rule of the house which gives him a claim to return to it; but by courtesy it is usual to permit a member to secure it, in his absence, by a book, glove, or hat.”

Every member of the Parliament is under a constitutional obligation to attend the service of the house to which he belongs. A member of the upper house has the privilege of serving by proxy, by virtue of a royal license which authorizes him to be personally absent, and to appoint another lord of Parliament as his proxy.² But in the House of Commons the personal service of every member is required. By an Act, 6 Henry 8, c. 16, it was declared that no member should absent himself “without the license of the speaker and commons, which license was ordered to be entered of record in the book of the clerk of the Parliament, appointed for the Commons’ House.” The penalty upon a member for absence was the forfeiture of his wages; and although that penalty is no longer applicable, the legislative declaration of the duty of a member remains upon the statute-book.

Service of Parliament.

On ordinary occasions, however, the attendance of members upon their service in Parliament is not enforced by any regulation; but when any special business is about to

Attendance of members.

¹ 90 Com. J. 202. See also 22 Ib. 406. 414. ² See Chapter XII.

Lords summoned.

he undertaken, means are taken to secure their presence. In the upper house, the most common mode of obtaining a larger attendance than usual, is to order the lords to be summoned; upon which a notice is sent to each lord to acquaint him "that all the lords are summoned to attend the service of the house" on a particular day. No notice is taken of the absence of lords who do not appear, but the name of every lord who is present during the sitting of the house, is taken down each day by the clerk of the house and entered on the Journals.

Call of the House of Lords.

When any urgent business is deemed to require the attendance of the lords, it has been usual to order the house to be called over; and this order has sometimes been enforced by fines and imprisonment upon absent lords.¹ The most important occasion on which the house was called over in modern times, was in 1820, when the bill for the degradation of Queen Caroline was pending. The house then resolved,

"That no lord do absent himself on pain of incurring a fine of 100*l.* for each day's absence, pending the three first days of such proceedings, and of 50*l.* for each subsequent day's absence from the same; and in default of payment, of being taken into custody. That no excuses be admitted, save disability from age, being 70 and upwards, or from sickness, or of being abroad, or out of Great Britain on public service, or on account of the death of a parent, wife, or child. That every peer absenting himself from age or sickness do address a letter to the lord chancellor, stating, upon his honour, that he is so disabled; and that the lord chancellor do write a letter to the several peers and prelates with these resolutions,"²

The lords were accordingly called over by the clerk on

¹ All the cases in which this order has been enforced, and the various modes of enforcement, are collected in the 53d volume of the Lords' Journals, (p. 356, *et seq.*) There is an order on the Roll of Standing Orders (No. 27), which may be regarded as obsolete, viz., "It is to be observed, that the first or second day the house be called, and notice to be taken of such lords as either have not sent their proxies, or are excused by his Majesty for some time."

² 53 Lords' J. 364.

each day during the pendency of that bill, beginning, according to ancient custom, with the junior baron.

When the House of Commons is ordered to be called over, it is usual to name a day which will enable the members to attend from all parts of the country; but the interval between the order and the call has varied from one day¹ to six weeks.² If it be really intended to enforce the call, not less than a week or ten days should intervene between the order and the day named for the call. The order for the house to be called over is always accompanied by a resolution, "that such members as shall not then attend, be sent for, in custody of the serjeant-at-arms." On the day appointed for the call, the order of the day is read, and proceeded in, or discharged at the pleasure of the House. If proceeded in, the names are called over from the Return Book, according to the counties, which are arranged alphabetically. The members for a county are called first, and then the members for every city or borough within that county. The counties in England and Wales are called first, and those of Scotland and Ireland in their order. This point is mentioned, because it makes a material difference in the time at which a member is required to be in his place.

The names of members who do not answer when called are taken down by the clerk of the house, and are afterwards called over again. If they appear in their places at this time, or in the course of the evening, it is usual to excuse them for their previous default;³ but if they do not appear, and no excuse is offered for them, they are ordered to attend on a future day.⁴ It is also customary to excuse them if they attend on that day, or if a reasonable excuse be then offered; as, that they were detained by their own illness,⁵ or by the illness or death of near relations;⁶ by public service,⁷ or by being abroad.⁸ If a member should

Call of the
House of Com-
mons.

¹ 87 Com. J. 311.

² 77 Ib. 101.

³ 80 Ib. 147.

⁴ 84 Ib. 106.

⁵ 80 Ib. 130.

⁶ 80 Ib. 130.

⁷ 80 Ib. 130.

⁸ 91 Ib. 278.

not attend, and no excuse is offered, he is liable to be committed to the custody of the serjeant-at-arms, and to the payment of the fees incident to that commitment.¹ But, instead of committing the defaulters, the house sometimes names another day for their attendance,² or orders their names to be taken down.³

Leave of absence.

On the 3d March, 1801, when a call of the house was deferred for a fortnight, it was ordered, "that no member do presume to go out of town without leave of the house."⁴ And, in the absence of any specific orders to that effect, members are presumed to be in attendance upon their service in Parliament. When they desire to remain in the country, they should apply to the house for "leave of absence," for which sufficient reasons must be given; as, that they are about to attend the assizes,⁵ or to go circuits,⁶ or that they desire to be absent on account of urgent public or private business,⁷ the illness or death of near relations,⁸ or their own ill-health.⁹ Upon these and other grounds, leave of absence is generally given, but has been occasionally refused.¹⁰

Time of meeting.

The lords usually meet, for despatch of legislative business, at five o'clock in the afternoon, and the commons at a quarter before four.

Obstructions in the streets, &c.

To facilitate the attendance of members without interruption, both houses order, at the commencement of each session,

"That the commissioners of the police of the metropolis do take care that, during the session of Parliament, the passages through the streets leading to this house be kept free and open, and that no obstruction be permitted to hinder the passage of the lords (or members) to and from this house; and that no disorder be allowed in Westminster Hall, or in the passages leading to this house, during the sitting of Parliament; and that there be no annoyance therein or thereabouts; and that the gentleman usher of the black rod (or the serjeant-at-arms) attending this house do communicate this order to the commissioners aforesaid."

¹ 80 Com. J. 150. 153. 157.

² 91 Ib. 278.

³ 90 Ib. 132.

⁴ 56 Ib. 103.

⁵ 90 Ib. 129.

⁶ 91 Ib. 89.

⁷ 86 Ib. 130.

⁸ 89 Ib. 190.

⁹ 92 Ib. 314.

¹⁰ 75 Ib. 338. 82 Ib. 376. 86 Ib. 863.

The upper house may proceed with business if only three lords be present; but the commons require as many as 40, including the speaker, to enable them to sit. This rule, however, is only one of usage, and might be altered at pleasure. In 1833, it was determined that the house should sit from twelve o'clock till three, for private business and petitions; when it was resolved, that in the morning sittings, the house should transact business with only 20 members.¹ Immediately after prayers each day, the speaker counts the house, and, if 40 members be not present, he waits until four o'clock, when he again counts; and, if the proper number have not arrived before he has ceased counting, he adjourns the house, without a question first put, until the following day. If the house met at an earlier hour, the speaker, without a prior resolution of the house, could not adjourn the house for want of 40 members, but business would be suspended until the proper number were present; and at four o'clock he would adjourn the house. The only exception to this rule is when a message is received from the Queen or the lords commissioners, for the attendance of the commons in the House of Lords. This proceeding often occurs in the course of a session, for the purpose of giving the royal assent to bills, from time to time.

Number present.

Commission.

After the house has been made, if notice be taken by a member that 40 members are not present, the speaker immediately tells the house; and, when it is before four o'clock, business is suspended until the proper number come into their places; but if after four o'clock, the speaker at once adjourns the house until the following day.² When it appears, on the report of a division, after four o'clock, that 40 members are not present, the house is adjourned

¹ 88 Com. J. 95.

² The importance attached to the hour of four is said to arise from the provisions of the Acts which require the oaths to be taken between the hours of nine in the morning and four in the afternoon. 2 Hats. 90.

immediately; but when the house is in committee, and 40 members are discovered to be wanting, either upon a division, or upon notice being taken of the fact, the chairman reports the circumstance; when the speaker again tells the house, and, if 40 members be not then present, he adjourns the house forthwith. When these accidents happen on Saturday, the speaker adjourns the house until Monday.¹ Saturday not being an ordinary day of meeting, it is usual, at an early hour on Friday, to resolve that the house, on rising, do adjourn till Monday next, lest the speaker should be obliged, by the want of members, to adjourn the house till Saturday. Except from these causes, the house can only be adjourned by Mr. Speaker, upon question put and resolved in the affirmative.²

Adjournment.

Speaker of the House of Lords.

The duties of the lord speaker of the upper house, and of the speaker of the commons, will appear in the various proceedings of both houses, as they are explained in different parts of this work;³ but a general view of the office is necessary, in this place, for understanding the forms of parliamentary procedure.

By a standing order of the lords it is declared to be the duty of the lord chancellor, or the lord keeper of the great seal of England, ordinarily to attend as speaker; but if he be absent, or if there be none authorized under the great seal to supply that place in the House of Peers, the lords may choose their own speaker during that vacancy.⁴ It is singular that the president of this deliberative body is not necessarily a member. It has frequently happened that the lord keeper has officiated, for years, as speaker, without having been raised to the peerage; and on the 22d November 1830, Mr. Brougham sat on the woolsack as speaker, being at that time lord chancellor, although his patent of creation as a peer had not yet been made out.⁵ The woolsack, indeed, is not strictly within the house, for the

¹ 78 Com. J. 8. ² S. O. 9 Com. J. 560.

³ See *Index*, tit. "SPEAKER."

⁴ Lords' S. O. No. 3.

⁵ 63 Lords' J. 114.

lords may not speak from that part of the chamber, and if there on a division, their votes are not reckoned.

When the great seal is in commission, it is usual for the Crown to appoint the chief justice of the Court of Queen's Bench, or Common Pleas, or the chief baron of the Exchequer, to be lord speaker; and at all times there are deputy speakers appointed by commission to officiate as speaker, during the absence of the lord chancellor or lord keeper. When the lord chancellor and all the deputy speakers are absent at the same time, the lords elect a speaker *pro tempore*; but he gives place immediately to any of the lords commissioners, on their arrival in the house; who, in their turn, give place to each other according to their precedence, and all at last to the lord chancellor.

Great seal in commission.

Deputy speakers.

Speaker *pro tempore*.

The duties of the office are thus generally defined by the standing orders:—

Duties of speaker in the lords.

“The lord chancellor, when he speaks to the house, is always to speak uncovered, and is not to adjourn the house, or to do anything else as mouth of the house, without the consent of the lords first had, except the ordinary thing about bills, which are of course, wherein the lords may likewise overrule; as, for preferring one bill before another, and such like; and in case of difference among the lords, it is to be put to the question; and if the lord chancellor will speak to anything particularly, he is to go to his own place as a peer.”¹

The position of the speaker of the House of Lords is somewhat anomalous; for though he is the president of a deliberative assembly, he is invested with no more authority than any other member; and if not himself a member, his office is limited to the putting of questions, and other formal proceedings. Upon points of order, the speaker, if a peer, may address the house; but as his opinion is liable to be questioned, like that of any other peer, he does not often exercise his right.

¹ Lords' S. O. No. 2. But if lord chancellor, he goes, by virtue of his office, to the left of the chamber above all dukes not being of the blood royal. 31 Hen. 8, c. 10, s. 4.

Speaker of the commons.

The duties of the speaker of the House of Commons are as various as they are important. He presides over the deliberations of the house, and enforces the observance of all rules for preserving order in its proceedings; he puts all questions, and declares the determination of the house. As "mouth of the house," he communicates its resolutions to others, conveys its thanks, and expresses its censure, its reprimands, or its admonitions. He issues warrants to execute the orders of the house for the commitment of offenders, for the issue of writs, for the attendance of witnesses, for the bringing up prisoners in custody, and, in short, for giving effect to all orders which require the sanction of a legal form. He is, in fact, the representative of the house itself, in its powers, its proceedings, and its dignity. When he enters or leaves the house, the mace is borne before him by the serjeant-at-arms; when he is in the chair, it is laid upon the table; and at all other times, when the mace is not in the house, it is with the speaker, and accompanies him upon all state occasions.

His rank.

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

When absent.

In the absence of the speaker, there is no provision for supplying his place by a deputy speaker or speaker *pro tempore*, as in the upper house; and when he is unavoidably absent, no business can be done, but the clerk acquaints the house with the cause of his absence, and puts the question for adjournment.¹ It seems that some doubts were formerly entertained whether the house could be adjourned in this manner, otherwise than from day to day, but many precedents show that there is no limitation as to the period of adjournment in such cases.²

When the speaker has been so ill as to be unable to at-

¹ 83 Com. J. 547.

² 25 Ib. 532. 39 Ib. 841. 44 Ib. 45.

tend for a considerable time, it has been necessary to elect another speaker, with the usual formalities of the permission of the Crown, and the royal approval. On the recovery of the speaker, the latter resigns or falls sick, and the former is re-elected, with a repetition of the same ceremonies.¹

The difference in the constitution of the office of speaker in the two houses has an important influence upon the power of each house in regard to its own sittings. In the upper house the speaker may leave the woolsack, but his place is immediately supplied by another speaker, and the proceedings of the house are not suspended. Thus, on the 22d April 1831, when the king was approaching to prorogue Parliament, the lord chancellor suddenly left the woolsack to attend his Majesty, upon which Lord Shaftesbury was appointed speaker, *pro tempore*, and the debate, which had been interrupted for a time, proceeded until his Majesty entered the house.² But in the commons no business can be transacted unless the speaker be in the chair, and the only question that can be put in his absence is for the adjournment of the house.

Office of speaker in the two houses.

This general description of the office of speaker in both houses leads to a brief notice of the principal officers whose duties are immediately connected with the proceedings of Parliament.

The assistants of the House of Lords are the judges of the Courts of Queen's Bench and Common Pleas, and such barons of the exchequer as are of the degree of the coif, the master of the rolls, the attorney and solicitor-general, and the queen's serjeants. They are summoned by writs under the great seal, to be "personally present in Parliament, with us and with others of our council to treat and give advice."³ They were present in the ancient *consilium regis*, either as members of that high court, or

Assistants of the lords.

¹ 9 Com. J. 463. 476. 11 Ib. 271, 272.

² 63 Lords' J. 511. Hans. Debates.

³ Macq. 36 n.

as assistants, and their presence has been uninterrupted until this day. Their attendance was formerly enforced on all occasions, but they are now summoned by a special order when their advice is required. Their place is on the woolsacks, and they

“are not to be covered until the lords give them leave, which they ordinarily signify by the lord chancellor; and they being then appointed to attend the house, are not to speak or deliver any opinion until it be required, and they be admitted so to do by the major part of the house, in case of difference.”¹

Attendants.

The masters in ordinary in chancery also attend in the House of Lords as attendants, and are usually employed in carrying bills and messages to the House of Commons.² They are not summoned by writ, but two of them attend each day, by rotation.³ Like the assistants, they also sit upon the woolsacks, but are never covered.⁴

Chief officers of the lords.

The chief officers of the upper house are the clerk of the Parliaments (whose office is executed by the first and second clerks assistant), the gentleman and yeoman usher of the black rod, and the serjeant-at-arms. The clerks assistant and the reading clerk attend at the table, and take minutes of all the proceedings, orders, and judgments of the house; these are published daily as the “Minutes of the Proceedings,” and they are printed, in a corrected and enlarged form, as the Lords’ Journals, after being examined “by the sub-committees for privileges and perusal of the Journal Book.”⁵

Lords’ Minutes and Journals.

The gentleman usher of the black rod is appointed by letters patent from the Crown, and he, or his deputy, the yeoman usher, is sent to desire the attendance of the commons in the House of Peers when the royal assent is

¹ Lords’ S. O. No. 4.

² See Chapters XVI. and XVIII.

³ Macq. 66.

⁴ Lords’ S. O. No. 5.

⁵ “23d May 1678. Ordered that, for the future, the said lords’ sub-committees are hereby empowered to meet after every session for examining of so much of the Journal Book as shall be left unexamined at the time of the ending of such session, without any further order.” Lords’ S. O. No. 91.

given to bills by the Queen or the lords commissioners, and on other occasions. He executes orders for the commitment of parties guilty of breaches of privilege and contempt, and assists at the introduction of peers, and other ceremonies.

The serjeant-at-arms is also appointed by the Crown. He attends the lord chancellor with the mace, and executes the orders of the house for the apprehension of delinquents, and all warrants of attachment.

The chief officers of the House of Commons are, the clerk of the house, the first and second clerks assistant, and the serjeant-at-arms. The clerk of the house is appointed by the Crown for life, by letters patent, in which he is styled under clerk of the Parliaments, to attend upon the commons.¹ The clerks assistant are appointed by him, and sit at the table of the house, on his left hand. He is sworn before the lord chancellor, on entering upon his office, "to make true entries, remembrances, and journals of the things done and passed in the House of Commons;" he signs all orders of the house, endorses the bills, and reads whatever is required to be read in the house. He is also responsible for the due conduct of all matters connected with the business of the house, in the several official departments under his control.

Chief officers of the commons.

Clerk of the house.

The short entries of the proceedings of the house, which are made by the clerks at the table, are printed and distributed every day, and are entitled, the "Votes and Proceedings." From these the Journal is afterwards prepared, in which the entries are made at greater length, and with the forms more distinctly pointed out. These records are confined to the votes and proceedings of the house, without any reference to the debates. The earlier volumes of the Journals contain short notes of speeches, which the clerk had made, without the authority of the house;² but

Votes and Proceedings, and Journals.

¹ 2 Hats. 255.

² 1 Com. J. 885. 2 Ib. 12. 42. For a history of the early Journals, see 24 Com. J. 262.

all the later volumes record nothing but the *res gesta*. It was formerly the practice for a committee "to survey the Clerk's Book every Saturday,"¹ and to be entrusted with a certain discretion in revising the entries:² but now the votes are prepared on the responsibility of the clerk; and after "being first perused by Mr. Speaker,"³ are printed for the use of members, and for general circulation. But no person may print them, who is not authorized by the speaker.

Journals of the
two houses.

A few words may here be interposed in regard to the legal character of the Journals of the two houses. The Journals of the House of Lords have always been held to be records accessible to every one. They were formerly "recorded every day on rolls of parchment," and in 1621 it was ordered that the Journals of the House of Commons "shall be reviewed and recorded on rolls of parchment." But this practice has long since been discontinued by the lords, and does not appear to have been adopted by the commons.⁴ All persons may have access to the commons' Journals, in the same manner as to the Journals of the other house.

The Journals of the House of Commons, however, are not regarded as records,⁵ although their claim to that character is upheld by weighty considerations. Sir Edward Coke speaks of "the book of the clerk of the House of Commons, which is a record, as it is affirmed by Act of Parliament, in anno 6 Henry 8, c. 16."⁶

This is the statute already alluded to, which prohibits the departure of any member of the House of Commons

¹ 1 Com. J. 673.

² *Ib.* 676, 683. 2 *Ib.* 42.

³ Sess. order.

⁴ 2 Oxford Debates, 92. 1 Com. J. 606. 3 Hats. Prec. 37.

⁵ James v. Randall, Corp. 17. Per Lord Mansfield: "Formerly a doubt was entertained whether the minutes of the House of Commons were admissible, because it is not a court of record: but the Journals of the House of Lords have always been admitted, even in criminal cases." 1 Starkie on Ev. 129. 2 Phill. and Amos, 301.

⁶ 4th Inst. 23.

“except he have license,” &c. : “and the same license be entered of record in the book of the clerk of the Parliament appointed or to be appointed for the commons’ house.” This entry was obviously intended to be a legal record, to be given in evidence in any claim for wages : from the payment of which the counties, cities, and boroughs were discharged in case of the unauthorized departure of their members. The Clerk’s Book and the Journals were unquestionably the same, and the latter are still prepared from the former. A license was granted by a vote of the house, and necessarily formed part of its ordinary proceedings, which were entered at the same time and by the same person, in the Clerk’s Book ; and the words of the statute raise no inference that the entry of a license was distinguishable, in law, from the other entries in the same book. This statute was urged by the commons in 1606, at a conference with the lords, as evidence in support of their claim to be a court of record, to which the lords took no distinct objection, though they answered that “in all points they were not satisfied.”¹

The only point of importance in reference to the question, is that of the legal effect of the Journals as evidence in a court of law, and no difference is then perceptible in respect to the Journals of either house. An unstamped copy of the minutes of the reversal of a judgment in the House of Lords, as entered in the Journals, is evidence of the reversal, like the record of a judgment in another court.² The Journals of that house would also be evidence of a proceeding in Parliament having taken place, as that an address had been presented to the king, and his answer ;³ and in certain cases they might be admitted as evidence of other facts, as in the cause just cited, that there had been differences between the king of England and the king of Spain. But, undoubtedly, a resolution of the House of

Given in evidence.

¹ 1 Com. J. 349.

² Jones v. Randall, Cowp. 17.

³ Francklin’s case, 17 Howell’s St. Tr. 635, 636.

Lords, affirming a particular fact, would not be admitted as evidence of the fact itself, although the Journals would be evidence of such a resolution having been agreed to.

In the same manner, a copy of the Journals of the House of Commons is constantly admitted as evidence of a proceeding in that house;¹ but a resolution would not be evidence of a fact. Thus, upon the indictment of Titus Oates for perjury, a resolution of the House of Commons, alleging the existence of a Popish plot, was rejected as evidence of that fact;² and although that trial must be held of doubtful authority, and the reasons assigned for the rejection of the evidence were not sound, yet upon general principles the determination of this matter was right. As evidence, therefore, the Journals of the two houses stand upon the same grounds; they are good evidence of proceedings in Parliament, but are not conclusive of facts alleged by either house, unless they be within their immediate jurisdiction. Thus a resolution might be agreed to by either house, that certain parties had been guilty of bribery; but in a prosecution for that offence, such a resolution would not be admitted as evidence of the fact, although in both cases it may have been founded upon evidence taken upon oath. But the reversal of a judgment by the lords, and the proceedings of the commons upon a controverted election, would be equally proved by their respective Journals. In the same manner, a resolution of either house as entered in the Journals, that a party had been guilty of a breach of privilege, would be conclusive evidence of the fact that the party had been adjudged by the house to be guilty of such offence. And, indeed, upon all other points, except, perhaps, when the House of Lords is sitting in its judicial capacity, the Journals of the two houses cannot be viewed as differing in character. Every vote of either house upon

¹ Doug. 593. Cowp. 17. Str. 126. See also *Bruyeres v. Halcomb*, 5 Nev. & M. (K. B.) 149. 3 Ad. & Ell. 381.

² *R. v. Oates*, 10 Howell's St. Tr. 1165-1167.

a bill is of equal force: in legislation their jurisdiction is identically the same; they are equally constituent parts of the High Court of Parliament, and whatever is done in either house is, in law, a proceeding in Parliament, and an act of that high court at large. There are bills also of a strictly judicial character, in which the commons have equal voice with the lords. Acts of attainder, of pains and penalties, of grace or pardon, and of divorce *à vinculo matrimonii*, require the sanction of the commons to become law. The endorsement of these bills by the clerk of the house is evidence of their agreement, by whom an entry is made at the same time in the Journal Book, to record the same proceeding. To use the words of Sir Edward Coke, “the lords in their house have power of judicature, and the commons in their house have power of judicature, and both houses together have power of judicature.”¹ Their legislative and judicial functions are sometimes merged; at one sitting they constantly exercise both functions separately, and their proceedings upon both are entered by their sworn officers in the same form and in the same page of one book. If the judicature of the lords be held to constitute them a court of record, and their Journals a public record; the judicature of the commons in Parliament, it may be argued, would constitute them equally a court of record, and would also give to their Journals the same character as a public record.

When the Journals of the House of Lords are required as evidence, a party may have a copy of the extract, authenticated by the signature of the assistant clerk of the Parliaments, which it may be as well that he should be able to prove on oath, by having been personally present when the copy was signed by that officer; and in some cases the lords have allowed an officer of their house to attend a trial with the original Journal.² In the commons it is usual for an officer of the house to attend with the printed Journal,

How authenticated.

¹ 4th Inst. 23.

² Lords' Minutes, 13th & 15th February 1844.

when a cause is tried in London; but when it is tried at the assizes, or at a distance, a party may either obtain from the Journal Office a copy of the extract required, without the signature of any officer, and swear himself that it is a true copy; or, with the permission of the speaker or the house, he may secure the attendance of an officer with the printed Journal; or with extracts which he certifies to be true copies; or, if necessary, with the original manuscript Journal Book.¹

This notice with regard to the Journals has necessarily interrupted the account of the chief officers of the House of Commons, to which it is now time to return.

Serjeant-at-arms.

The serjeant-at-arms is the last officer immediately connected with the proceedings of the house, to whom reference need be made. He is appointed by the Crown, under a warrant from the lord chamberlain, and by patent under the great seal, "to attend upon her Majesty's person when there is no Parliament; and, at the time of every Parliament, to attend upon the speaker of the House of Commons."² But after his appointment he is the servant of the house, and may be removed for misconduct. On the 2d June, 1675, the house committed Sir James Norfolk to the Tower, for "betraying his trust," and addressed the Crown to appoint another serjeant-at-arms "in his stead."³ His duties are, to attend the speaker with the mace on entering and leaving the house, or going to the House of Lords, or attending her Majesty with addresses; to keep clear the gangway at the bar and below it; to take strangers into custody who are irregularly admitted into the house; to give orders to the doorkeepers and other officers under him, for the locking of all doors upon a division; to introduce peers or judges attending within the bar, and messengers from the lords; to attend the sheriffs of London at the bar, on presenting petitions; to bring to the bar,

¹ 13th March 1844.

² Officers and usages of the house, MS. 1805.

³ 9 Com. J. 351.

with the mace, prisoners to be reprimanded by the house, or persons in custody to be examined as witnesses. For the better execution of these duties he has a chair close to the bar of the house, and is assisted by a deputy serjeant. Out of the house he is entrusted with the execution of all warrants for the commitment of persons ordered into custody by the house; and for removing them to the Tower or Newgate, or retaining them in his own custody. He maintains order in the lobby and passages of the house, and gives notice to all committees when the house is going to prayers. He has the appointment and supervision of various officers in his department; and, as housekeeper of the house, has charge of all its committee rooms and other buildings, during the sitting of Parliament.

By the ancient custom of Parliament, and by orders of both houses, strangers are not to be admitted while the houses are sitting. Admission of strangers.

It is ordered by the lords, Lords.

“That for the future no person shall be in any part of the house during the sitting of the house, except lords of Parliament and peers of the United Kingdom, not being members of the House of Commons, and heirs apparent of such peers or of peeresses of the United Kingdom in their own right, and such other persons as attend this house as assistants.”¹

This order, however, can only be taken to apply to such parts of the house as are used for the lords, in their sittings; as strangers are regularly admitted below the bar, and in the galleries.

By a sessional order of the commons, the serjeant-at-arms is directed, Commons.

“From time to time to take into his custody any stranger or strangers that he shall see, or be informed of to be, in the house or gallery, while the house, or any committee of the whole house, is sitting; and that no person, so taken into custody, be discharged out of custody without the special order of the house;” and it is also ordered, “That no member of this house do presume to bring any stranger or strangers into the house or gallery thereof, while the house is sitting.”

¹ Lords' S. O. No. 130.

But these orders have latterly been interpreted to apply to such parts of the house only as are appropriated for the exclusive use of members; and galleries and certain places below the bar are set apart for strangers. The exclusion of strangers, however, can at any time be enforced without an order of the house; for, on a member taking notice of their presence, the speaker is obliged to order them to withdraw without putting a question; and, upon divisions of the house, the speaker orders them to withdraw immediately, and the messengers under the orders of the serjeant see that they are excluded. They are present upon sufferance, and upon no other ground has their presence ever been recognized.

The only other matters connected with the meeting and sitting of the two houses, which will not be more particularly described elsewhere, are the forms observed on the prorogation of Parliament. Some of these, also, will be adverted to again; but a general description of the ceremony of prorogation will bring this chapter to a close.

Parliament
prorogued be-
fore its first
meeting.

If, after a dissolution, Parliament be prorogued to any further day than was appointed for its meeting by the writ of summons, it is done by writ directed to both the houses. On the day first appointed for the meeting of Parliament, the commons proceed directly to the door of the House of Lords, without going into their own house, or expecting any message from the lords. They are admitted by the usher of the black rod to the bar, and stand there uncovered, while the lords remain sitting and covered. The lord chancellor then declares that a writ has been issued under the great seal for proroguing the Parliament; "which he doth standing up uncovered, in respect he speaks to the lords as well as to the commons:" and, after the writ is read, the Parliament stands prorogued by virtue of the writ, without further formality.¹

After its first
meeting.

But the form is different in the prorogation of Parlia-

¹ Lords' S. O. No. 7. 59 Lords' J. 3. 82 Com. J. 4.

ment after its first meeting. If her Majesty attend in person to prorogue Parliament at the end of the session, the same ceremonies are observed as at the opening of Parliament: the attendance of the commons in the House of Peers is commanded; and, on their arrival at the bar, the speaker addresses her Majesty, on presenting the supply bills,¹ and adverts to the most important measures that have occupied the attention of Parliament during the session. The royal assent is then given to the bills which are awaiting that sanction,² and her Majesty reads her speech to both Houses of Parliament; after which, the lord chancellor, having received directions from her Majesty for that purpose, addresses both houses in this manner,—“ My lords and gentlemen, it is her Majesty’s royal will and pleasure that this Parliament be prorogued to” a certain day, “ to be then here holden; and this Parliament is accordingly prorogued,” &c. When her Majesty is not present at the end of the session, Parliament is prorogued by a commission under the great seal, directed to certain peers, who, by virtue of their commission, prorogue the Parliament. The attendance of the commons is desired in the House of Peers; and, on their coming, with their speaker, the lord chancellor states to both houses, that her Majesty, not thinking fit to be personally present, has caused a commission to be issued under the great seal, for giving the royal assent to bills. The commission is then read, and the speaker, *without any speech*, delivers the money bills to the clerk assistant of the House of Lords, who comes to the bar to receive them. The royal assent is signified to the bills in the usual manner; after which the lord chancellor, in pursuance of her Majesty’s commands, reads the royal speech to both houses. The commission for proroguing the Parliament is next read by the clerk, and the lord chancellor, by virtue of that commission, prorogues the Parliament accordingly. On further

¹ See chapter XXI., Supply.

² See chapter XVIII.

prorogations the Queen never attends personally ; and, the speaker being in the country, the commons are represented at the bar of the House of Lords by their clerk assistant, or second clerk assistant ; the commission is read, and the lord chancellor prorogues the Parliament in the usual manner.

CHAPTER VIII.

MOTIONS AND QUESTIONS. NOTICES OF MOTIONS. QUESTIONS MOVED AND SECONDED. MOTIONS WITHDRAWN. QUESTIONS SUPERSEDED BY ADJOURNMENT ; OR BY READING THE ORDERS OF THE DAY. PREVIOUS QUESTIONS. NEW QUESTIONS SUBSTITUTED BY AMENDMENT. COMPLICATED QUESTIONS. QUESTIONS PUT.

Questions a part of every proceeding.

EVERY matter is determined in both houses, upon questions put by the speaker, and resolved in the affirmative or negative, as the case may be. As a question must thus form part of every proceeding, it is of the first importance that good rules should prevail for stating the question clearly, and for enabling the house to decide upon it. However simple such rules may be, the complexity of many questions, and the variety of opinions entertained by members, must often make it difficult to apply them. Very few general rules have been entered on the Journals of either house ; but the practice of Parliament has established certain forms of procedure, which numerous precedents rarely fail to make intelligible.

Notice of motion.

Any member may propose a question, which is called "moving the house," or, more commonly, "making a motion." But in order to give the house due notice of his intention, he is required to state the form of his motion on a previous day, and to have it entered in the

House of Lords.

Order Book or Notice Paper. In the House of Lords,

the pressure of business is not so great as to require any strict rules in regard to notices; but in order to apportion the public business according to the convenience of the house, it is usual for the House of Commons to set apart certain days for considering the "orders of the day," (or matters which the house have already agreed to consider on a particular day,) and to reserve other days for original motions. For several years it has been the practice to agree to the following sessional resolution, viz.:

House of Commons.

"That in the present session of Parliament, all orders of the day set down in the Order Book for Mondays, Wednesdays, and Fridays, shall be disposed of before the house will proceed upon any motions of which notices shall be entered in the Order Book."

Subject to this regulation, it was formerly the practice to allow members to give notices for any day, however distant; but by another sessional resolution, it is now provided,

"That no notice shall hereafter be given beyond the period which shall include the four days next following on which notices are entitled to precedence, due allowance being made for any intervening adjournment of the house, and the period being in that case so far extended as to include four notice days falling during the sitting of the house."

The Order Book cannot, therefore, be occupied in advance for a longer period than a fortnight, when the house is sitting without interruption. On Monday, a member may give notice for the Thursday week following, and on Tuesday for that day fortnight. Notices may be also given for the other days on which orders of the day are allowed precedence; but as the orders usually occupy the greater part of the night, notices of importance are rarely given for such days.

The restriction of notices to two days in the week, naturally occasions an anxiety on the part of members to secure for themselves a hearing on other days, and to avail themselves of any rules of the house which may offer a facility for that purpose. But in order to prevent an

irregular practice of moving amendments embodying the substance of distinct motions, on reading orders of the day, the following resolution is now agreed to at the beginning of each session :—

“ That upon days appropriated to orders, and a question being put from the chair, that any order of the day be read, no amendment shall be proposed, except that the other orders of the day, or that any order set down for the same day, be now read ; but that this regulation shall not apply to the case of a committee of supply, or of a committee of ways and means.”¹

Notices, how given.

When a member desires to give notice of a motion, he should first examine the Order Book, or the printed lists of notices and orders of the day for the ensuing week, which are printed with the Votes every Saturday morning. When he has fixed upon the most convenient day, he should be present at the meeting of the house ; and immediately after prayers, when the house has been made, he may enter his name on the Notice Paper, which is placed upon the table. Each name upon this paper is numbered ; and when the speaker calls on the notices, at about half-past four o'clock, the clerk puts the numbers into a glass, and draws them out one by one. As each number is drawn, the name of the member to which it is attached in the Notice Paper is called. Each member, in his turn, then rises and reads the notice he is desirous of giving, and afterwards takes it to the table, and delivers it, fairly written out, and with the day named, to the second clerk assistant, who enters it in the Order Book ; but only one notice may be given by a member until the other names upon the list have been called over. It is not necessary that the notice should comprise all the words of the intended motion ; but if the subject only be stated in the first instance, the question, precisely as it is intended

¹ The principle of this resolution is, in some measure, capable of evasion, when the order of the day is for a committee of the whole house, as an amendment to the question “ that the speaker do now leave the chair,” is not specially excluded by it ; but in that case the amendment must be relevant to the matter which the house, by their order, have determined to entertain.

to be proposed, should be given in the day before that on which it stands in the Order Book, so that it shall be printed at length in the Votes of the following morning. Should a member desire to change the day, after he has given his notice, he must repeat it for a more distant day, since it has been declared irregular to fix an earlier day than that originally proposed in the house.¹ One member may give notice for another not present at the time, by putting his name upon the list, and answering for him when his name is called at the ballot.²

No positive limit has been laid down as to the time which must elapse between the notice and the motion; but the interval is generally extended in proportion to the importance of the subject. Notices of motions for leave to bring in bills of trifling interest, or for other matters to which no opposition is threatened, are constantly given the night before that on which they are intended to be submitted to the house; and there is a separate notice paper for unopposed returns, for which no ballot is taken, and motions entered upon it may be brought forward whenever a convenient opportunity arises. For the purpose of gaining precedence, the more usual mode and time for giving notices, are those already described; yet it is competent for a member to give a notice at a later hour, provided he does not interrupt the course of business, as set down in the Order Book.

An unopposed motion can be brought on by consent of the house, without any previous notice; but if any member should object, it cannot be pressed. Questions of privilege, also, and other matters suddenly arising, may be considered without previous notice; and the former take precedence, not only of other motions, but of all orders of the day. It is usual to give precedence, as a matter of courtesy, to a motion for a vote of thanks; but care should be taken as

Motions without notice.

Questions of privilege, &c.

¹ Mirror of Parliament, 1835, p. 275.

² Hausard's Debates, 27 April 1843.

to the proper time for claiming priority, lest all the motions should become entitled to the same privilege. On the 12th February 1844, the orders of the day had precedence; and after the speaker had put the question for reading the first order of the day, and the house had agreed to it, Sir Robert Peel rose to move the thanks of the house to Sir Charles Napier, on account of the military operations in Sinde. It was then necessary to read each order of the day in succession, and defer it; and after the vote of thanks had been agreed to, the notices of motions following that of Sir Robert Peel were called on in preference to the orders of the day, which had been deferred expressly for the vote of thanks. This could not be avoided, as all the orders of the day had been disposed of, and the notices of motion called on, which it was necessary to go through before the house could revert to the orders of the day. This consequence would have been avoided, if Sir R. Peel had risen before any order of the day had been read.

Leave to make motions.

Entries are occasionally found in the Journals of leave being given to make a motion.¹ In these cases, it appears, that all the orders of the day had been previously disposed of; and that the house allowed members to bring on motions which they had not entitled themselves to make, according to the ordinary regulations. But as unopposed motions only can be made without previous notice, they are now offered with the general assent of the house, and without any formal leave being given.

As motions for which notices have been given need not be made when the time arrives, the Order Book is sometimes used for the expression of opinions not intended to be ultimately proposed for adoption. This is a deviation from the true object of the Order Book; but it is not a practical evil of much importance, nor is there, perhaps, any remedy for it: but in resorting to this practice, members must be careful, lest they give offence to the house by

Notices expunged.

¹ 75 Com. J. 155, 156. 85 Ib. 107. 86 Ib. 857.

unbecoming expressions; for the notice may, for such a cause, be expunged from the Notice Paper.¹

When a member is at liberty to make a motion, he may speak in its favour, before he actually proposes it; but a speech is only allowed upon the understanding, 1st, that he speaks to the question; and, 2dly, that he concludes by proposing his motion formally. In the upper house, any lord may submit a motion for the decision of their lordships without a seconder; but in the commons, after the motion has been made, it must be seconded by another member; otherwise it is immediately dropped, and all further debate should be discontinued, as no question is before the house.² When a motion is not seconded, no entry appears in the Votes, as the house is not put in possession of it, and *res gestæ* only are entered.

Questions moved and seconded.

Motions not seconded.

In the lords, when a motion has been made, a question is proposed "that that motion be agreed to;" but in the commons, when the motion has been seconded, it merges in the question, which is then proposed by the speaker to the house, and read by him; after which the house are said to be in possession of the question, and must dispose of it in one way or another, before they can proceed with any other business. At this stage of the proceeding the debate upon the question arises in both houses. If the entire question be objected to, it is opposed in debate; but no amendment or form of motion is necessary for its negation; for when the debate is at an end, the speaker puts the question, and it is resolved simply in the affirmative or negative. The precise mode in which the determination of the house is expressed and collected, will be explained hereafter.³

Proposed by the speaker.

When debate arises.

It may happen, however, that it is desired by members to avoid any distinct expression of opinion; in which case it is competent for the majority of the house to evade the question in various ways; but the member who proposed

Motions by leave withdrawn.

¹ 90 Com. J. 435.

² But see Debates, 8th February 1844.

³ See *infra*, p. 178, and chapter XII.

it, can only withdraw it by leave of the house, granted without any negative voice.

Questions superseded.

The modes of evading or superseding a question are, 1, by adjournment of the house; 2, by motion "that the orders of the day be read;" 3, by moving the previous question; and 4, by amendment.

By adjournment.

1. In the midst of the debate upon a question, any member may move "that this house do *now* adjourn," not by way of amendment to the original question, but as a distinct question, which interrupts and supersedes that already under consideration. If this second question be resolved in the affirmative, the original question is superseded; the house must immediately adjourn, and all the business for that day is at an end. The motion for adjournment, in order to supersede a question, must be simply that the house do *now* adjourn; it is not allowable to move that the house do adjourn to any future time specified; nor to move an amendment to that effect, to the question of adjournment.¹ The house may also be suddenly adjourned by notice being taken that 40 members are not present, and an adjournment caused in that manner, has the effect of superseding a question in the same way as a formal question to adjourn, when put and carried. In either case the original question is so entirely superseded, that if it has not yet been proposed to the house by the speaker, it is not even entered in the Votes, as the house was not fully in possession of the question before the adjournment.

Motions for adjourning the house and the debate.

If a motion for adjournment be negatived, it may not be proposed again without some intermediate proceeding; and, in order to avoid any infringement of this rule, it is a common practice for those who desire to avoid a decision upon the original question, on that day, to move alternately that "this house do *now* adjourn," and "that the debate be *now* adjourned." The latter motion, if carried, only defers the decision of the house, while the

¹ 2 Hats. 115.

former, as already explained, supersedes the question altogether: yet members who only desire to enforce the continuance of the debate on another day, often vote for an adjournment of the house, which, if carried, would supersede the question which they are prepared to support. This distinction should always be borne in mind, lest a result should follow that is widely different from that anticipated. Suppose a question to be opposed by a majority, and that the minority are anxious for an adjournment of the debate; but that on the failure of a question proposed by them to that effect, they vote for an adjournment of the house: the majority have only to vote with them and carry the adjournment, when the obnoxious question is disposed of at once, and its supporters have themselves contributed to its defeat.

2. On a day upon which motions have precedence, a motion, "that the orders of the day be now read," is also permitted to interrupt the debate upon a question; and, if put by the speaker and carried in the affirmative, the house must proceed with the orders of the day immediately, and the original question is thus superseded. A motion for reading a particular order of the day, however, will not be permitted to interrupt a debate; and, when the house are actually engaged upon one of the orders of the day, a motion for reading the orders of the day is not admissible, as the house are already doing that which the motion, if carried, would oblige them to do.

By reading the orders of the day.

3. The previous question is an ingenious method of avoiding a vote upon any question that has been proposed but its technical name does little to elucidate its operation. When there is no debate, or after a debate is closed, the speaker puts the question, as a matter of course, without any direction from the house; but, by a motion for the previous question, this act of the speaker may be intercepted and forbidden. The words of this motion are, "that this question be *now* put;" and those who wish to avoid the

Previous question.

question, vote *against* the previous (or second) question, which, if resolved in the negative, prevents the speaker from putting the main question as usual. It may, however, be brought forward again on another day, as the negation of the previous question only binds the speaker not to put the main question at that time. If the previous question be put, and resolved in the affirmative, no words can be added to or taken from the main question by amendment; nor is any further debate allowed, or motion for adjournment, before the question is put, as the house have resolved that the question be *now* put, and it must accordingly be put at once to the vote.¹ In reference to this proceeding, it may be remarked, that according to the strict rule of debate, each member should speak directly to the question before the house; and, supposing this to be observed, the debate upon the previous question would be limited to the propriety of putting the question *now*, or at a future time; but, practically, the main question is discussed throughout. If the rule were not evaded in this manner, the main question would be altogether excluded from discussion, merely because another question had been interposed; although, by affirming the previous question, the house would have agreed that the main question was a proper one to have been offered for their decision.

The last two questions, viz. for reading the orders of the day, and the previous question, may both be superseded by a motion for adjournment; for the latter may be made at any time (except, as already stated, when the previous question has been resolved in the affirmative,) and must always be determined before other business can be proceeded with. The debate upon the previous question may also be adjourned; as there is no rule or practice which assigns a limit to a debate, even when the nature of the question would seem to require a present determination. But when a motion has been made for reading the orders of the day, in

¹ 2 Hats. 122 n. Lex Parl. 292.

order to supersede a question, the house will not afterwards entertain a motion for the previous question ; as the former motion was itself in the nature of a previous question.

4. The general practice in regard to amendments will be explained in the next chapter ; but here such amendments only need be mentioned as are intended to evade an expression of opinion upon the main question, by entirely altering its meaning and object. This may be effected by moving the omission of all the words of the question, after the word “that” at the beginning, and by the substitution of other words of a different import. If this amendment be agreed to by the house, it is clear that no opinion is expressed directly upon the main question, because it is determined that the original words “shall not stand part of the question ;” and the sense of the house is afterwards taken directly upon the substituted words, or practically upon a new question. There are many precedents of this mode of dealing with a question ;¹ but the best known in parliamentary history are those relating to Mr. Pitt’s administration, and the peace of Amiens, in 1802. On the 7th May, 1802, a motion was made in the commons for an address, “expressing the thanks of this house to his Majesty for having been pleased to remove the Right Hon. W. Pitt from his councils ;” upon which an amendment was proposed and carried, which left out all the words after the first, and substituted others in direct opposition to them.² Not only was the sense of the original question entirely altered by this amendment, but a new question was substituted, in which the whole policy of Mr. Pitt was commended. Immediately afterwards an address was moved in both Houses of Parliament, condemning the treaty of Amiens, in a long statement of facts and arguments. In each house an amendment was moved and carried, by which all the declamation in the proposed

By amend-
ments.

¹ 24 Com. J 650. 30 Ib. 70. 52 Ib. 203.

² 57 Ib. 419. 36 Hansard’s Parliamentary Hist. pp. 598-654.

address was omitted, and a new address resolved upon, by which Parliament was made to justify the treaty.¹

This practice has often been objected to as unfair, and never with greater force than on these occasions. It is natural for one party, commencing an attack upon another, to be discomfited by its recoil upon themselves, and to express their vexation at such a result; but the weaker party must always anticipate defeat in one form or another. If no amendment be moved, the majority can negative the question itself, and affirm another in opposition to the opinions of the minority. On the very occasion already mentioned, of the 7th May, 1802, after the address of thanks for the removal of Mr. Pitt, had been defeated by an amendment, a distinct question was proposed and carried by the victorious party, "That the Right Hon. W. Pitt has rendered great and important services to his country, and especially deserves the gratitude of this house." Thus, if no amendment had been moved, the position of Mr. Pitt's opponents would have been but little improved, as the majority could have affirmed or denied whatever they pleased. It is in debate alone that a minority can hope to compete with a majority: the forms of the house can ultimately assist neither party; but, so far as they offer any intermediate advantage, the minority have the greatest protection in forms, while the majority are met by obstructions to the exercise of their will.

These are the four modes by which a question may be intentionally avoided or superseded; but a question is also liable to casual interruption and postponement from other causes; as, by a matter of privilege, words of heat between members in debate, a question of order, a message from the other house or a motion for reading an Act of Parliament or other public document. These may obstruct and delay the decision of a question, but do not alter its position before the house; for, directly they are disposed of, the

¹ 57 Com. J. 450. 43 Lords' J. 603. 36 Hansard's Parl. Hist. p. 686.

debate is resumed at the point at which it was interrupted. In the House of Commons, another interruption was sometimes caused by moving that candles be brought in ; but, by a standing order of the 6th February, 1717, it was ordered,

“ That when the house, or any committee of the whole house, shall be sitting, and daylight be shut in, the serjeant-at-arms attending this house do take care that candles be brought in without any particular order for that purpose.”¹

If a question be complicated, the house may order it to be divided, so that each part may be determined separately.² Complicated questions.
A right has been claimed, in both houses, for an individual member to insist upon the division of a complicated question ; but it has not been recognized, nor can it be reasonable to allow it, because, 1st, the house might not think the question complicated ; and, 2dly, the member objecting to its complexity, may move its separation by amendments. But, as the house can order a question to be divided, it may be moved for that purpose, and it is difficult to state an objection to such a proceeding, although the ordinary practice has been to resort to amendments, instead of attempting the dissection of a question in another form. On the 29th January, 1722, a protest was entered on the Journals of the lords, in which it was alleged “ to be contrary to the nature and course of proceedings in Parliament, that a complicated question, consisting of matters of a different consideration, should be put, especially if objected to, that lords may not be deprived of the liberty of giving their judgments on the said different matters, as they think fit.”³

When all preliminary debates and objections to a question are disposed of, the question must next be put, which is done in the following manner. The speaker, if necessary, takes a written or printed copy of the question, and Question put.

¹ 18 Com. J. 718.

² 2 Ib. 43. 32 Ib. 710.

³ 22 Lords' J. 73. See also 24 Ib. 466, 467. 4 Timberland's Debates of the Lords, 392. 32 Com. J. 710.

states or reads it to the house, at length, beginning with "The question is, that." This form of putting the question is always observed, and precedes every vote of the house, however insignificant.

In the lords, when the question has been put, the speaker says, "As many as are of that opinion say 'content,'" and "as many as are of a contrary opinion say 'not content;'" and the respective parties exclaim "content" or "not content," according to their opinions. In the commons, the speaker takes the sense of the house by desiring that "as many as are of that opinion say 'aye,'" and "as many as are of the contrary opinion say 'no.'" On account of these forms, the two parties are distinguished in the lords as "contents" and "not contents," and in the commons as the "ayes" and "noes."¹ When each party have exclaimed according to their opinion, the speaker endeavours to judge, from the loudness and general character of the opposing exclamations, which party have the majority. As his judgment is not final, he expresses his opinion thus: "I think the ('contents' or 'ayes' have it;)" or, "I think the ('not contents' or 'noes' have it." If the house acquiesce in this decision, the question is said to be "resolved in the affirmative" or "negative," according to the supposed majority on either side; but if the party thus declared to be the minority, dispute the fact, they say "no; the 'contents' (or 'not contents') the 'ayes' (or 'noes') have it:" and the actual numbers must be counted, by means of what is called a division.²

Questions
again stated.

The question is stated distinctly by the speaker; but, in case it should not be heard, it will be stated again.

¹ The form of putting the question and taking the vote was very similar in the Roman senate. The consul who presided there was accustomed to say, "Qui hæc sentitis in hanc partem; qui alia omnia, in eam partem, ite, quâ sentitis."—Plinii Epistolæ, lib. viii. ep. 14.

² See Chapter XII.

On the 15th April 1825, notice was taken that several members had not heard the question put, and the speaker desired any such members to signify the same; which being done, the question was again stated to them, and they declared themselves with the noes.¹

It must be well understood by members that their opinion is to be collected from their voices in the house, and not by a division; and if their voices and their votes should be at variance, the former will be held more binding than the latter.

Voices on the question.

On the report of the Holyrood Park Bill, August 10th, 1843, a member called out with the noes, "the noes have it," and thus forced that party to a division, although he was about to vote with the "ayes;" and went out into the lobby with them. On his return, and before the numbers were declared by the tellers, Mr. Brotherton addressed the speaker, sitting and covered (the doors being closed), and claimed that the member's vote should be reckoned with the noes. The speaker put it to the member, whether he had said, "the noes have it;" to which he replied that he had, but without any intention of voting with the noes. The speaker, however, would not admit of his excuse; but ordered that his vote should be counted with the "noes," as he had declared himself with them in the house.²

¹ 80 Com. J. 307.

² There is no entry of this proceeding in the Votes; but Mr. Brotherton, at the time, kindly supplied this precedent.

CHAPTER IX.

AMENDMENTS TO QUESTIONS; AND AMENDMENTS TO PROPOSED AMENDMENTS.

Object and principle of an amendment.

THE object of an amendment is 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 must either affirm a whole question, to parts of which they entertain objections, or negative a whole question, to parts of which they assent. 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. The confusion which must arise from any irregularity in the mode of putting amendments, is often exemplified at public meetings where fixed principles and rules are not observed; and it would be well for persons in the habit of presiding at meetings of any description, to make themselves familiar with the rules of Parliament, in regard to questions and amendments; which 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 proper time for moving an amend-

ment is after a question has been proposed by the speaker, and before it has been put. The order and form in which the points arising out of amendments are determined, are as follow :

1. When the proposed amendment is, to leave out certain words, the speaker first states the question, but instead of putting it, he adds "Since which it has been proposed, by way of amendment, to leave out the words," 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 addition of other words.

To leave out words.

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 negating 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.

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

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; and if negatived, the question is put as it originally stood.

To insert or add 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 proposed to be amended; but each separate amendment must be offered in the order in which, if agreed to, it would stand in the amended question.¹ 2. When the house have agreed that certain words shall stand part of a question, it is irregular to propose any amendment to those words; as the decision of the house has already been pronounced in their favour. But this rule would not exclude an addition to the words, if proposed at the proper time. 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 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. 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. This can be done when the original amendment proposed is, to leave out² or to insert or add certain words; or when certain words have been left out of a question, and it is then proposed to insert or add other words instead thereof. In such cases an amendment may be proposed to the proposed amendment, and the questions put by the speaker thereupon, deal with the first amendment as if it were a distinct question, and with the second as if it were an ordinary amendment.

Amendments to amendments.

¹ 2 Hats. 123.

² See Case of Duke of York, 64 Com. J. 131.

A short example will make this complicated proceeding more intelligible. To avoid a difficult illustration, (of which there are many in the Journals,¹) let the simple question be, "That this bill be *now* read a second time;" and let an amendment be proposed, by leaving out the word "now," and adding "this day six months;" 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 thereto, by leaving out "months," and adding "weeks," or by leaving out "six months," and adding "week," "fortnight," &c., or by leaving out "six," and inserting "two," "three," or "four." The question will then be put, "That the words proposed to be left out 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 "week" or "fortnight," &c. be added; and if that be agreed to, the first amendment, so amended, is put, viz. that the words "this day week" 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 week."

It must be observed, that no motion to amend a proposed amendment can be entertained, until the amendment has, for the time, assumed the place of the original question, and become, as it were, a substantive question itself; otherwise 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

¹ See Com. Gen. Journ. Indexes, 1774-1837, tit. *Amendments*.

confusion arises from moving an amendment to it, before its ultimate adoption is proposed.¹

Amendments
moved before
previous ques-
tion.

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

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

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.

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. 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.¹ 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.

After previous question proposed.

In the commons, every amendment must be proposed and seconded in the same manner as an original motion; and if no seconder can be found, the amendment is not proposed by the speaker, but drops, as a matter of course, and no entry appears of it in the Votes.²

¹ 36 Com. J. 825.

² 8th February 1844 (Mr. Roebuck).

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. 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 or the tricks 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 vote may therefore be rescinded,¹ notwithstanding a rule *urged* (April 2d, 1604,) "That a question being once made, and carried in the affirmative or negative, cannot be questioned again, but must stand as a judgment of the house."² 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

Votes re-
scinded.

¹ 89 Com. J. 59.

² 1 Ib. 162.

in a bill thereupon is afterwards negatived, as in the proposed reduction of the malt duty, in 1833.¹

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.

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. 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 is often used to evade the orders of the house.

Evasions of the rule.

It will now be necessary to anticipate, in some measure, the proceedings upon bills, which are reserved for future explanation;³ 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.

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

Rule as applied to bills.

¹ 88 Com. J. 317. 329.

² Mirror of Parl. 1840, p. 4387.

³ Chapter XVIII.

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."¹ The same clauses or amendments may be decided in one manner by the committee, in a second by the house on the report, and in a third on the third reading; and yet the inconsistency of the several decisions will not be manifest when the bill has passed. One precedent only need be mentioned:

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;² on the third reading an amendment 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.³

Bills once
passed or re-
jected.

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, 23d 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,

¹ 2 Hats. 135.

² 91 Com. J. 762.

³ *Ib.* 817.

⁴ 2 Lords' J. 435.

ought not, by the known and constant methods of proceedings, 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, also, it was agreed for a rule, 1st June, 1610, that “no bill of the same substance be brought in the same session.”³

A common practice, however, has since grown up, with the sanction of both houses, by which these rules are partially disregarded. When a bill has passed the commons, and the further consideration of the amendments made by the committee, is deferred by the lords for a period beyond the probable duration of the session, it is usual, if the lords’ amendments are acceptable, for the commons to appoint a committee to inspect the lords’ Journals; and, on their report, to order another bill to be brought in. This bill often has precisely the same title, but its provisions are so far altered as to conform to the amendments made in the lords. With these alterations it is returned to the lords, received by them without any objection, and passed as if it were an original bill. Such a bill is not identically the same as that which preceded it; but it is impossible to deny that it is “of the same argument and matter,” and “of the same substance.” This proceeding is very frequently resorted to, when the lords’ committees find it necessary to insert clauses imposing rates, tolls, or other charges, upon the people.⁴ The House of Lords cannot agree to such clauses 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

Lords’ Journals
inspected.

¹ 15 Lords’ J. 90. ² Ib. ³ 1 Com. J. 434. ⁴ See further Chapter XXI.

clauses to which, in themselves, they do not object, avoid any clashing of privileges, and the bill is ultimately agreed upon 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.¹

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.

Prorogation, to renew bills.

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 actually prorogued for a week, in order to admit the revival of a bill which had been rejected by the lords.

The rule in regard to bills already passed has been construed with equal strictness; 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

¹ 91 Com. J. 777. 810.

established rules of Parliament make it impracticable” otherwise to prepare the bills.¹

In order to avoid the embarrassment arising from the irregularity of dealing with a statute passed in the same session, it has, for some 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.” The omission of such a clause in any bill would now imply that it might not be amended during the session, and would be even a stronger objection to such a course than the rules and precedents of Parliament alone, which have not been invariably observed.²

Clauses in Acts.

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.

IN the House of Lords, a peer addresses his speech “to the rest of the lords in general.”³ 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. In both houses, proper respect is paid to the assembly, by every member who speaks rising in his place, and standing uncovered. The only exception to this 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.⁴ In the commons, also, during a division,

Manner of speaking.

¹ 19 Com. J. 639.

² 18 Ib. 121. 334.

³ Lords' S. O. No. 14.

⁴ Lord Wynford, 64 Lords' J. 167. Mr. Wynn, 9th March 1843. 67 Hans. Deb. N. S. 658.

with closed doors, it is the practice for members to speak sitting and covered.

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 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.²

Who may speak.

In the lords.

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 to speak; and if each be supported by a party, there is no alternative but a division. Thus, on the 3d February, 1775, the Earl of

¹ Lords' S. O. No. 5.

² 2 Hats. 102 n.

Dartmouth and the Marquis of Rockingham both rising to speak, it was resolved, upon question, that the former "shall now be heard."¹

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." But this mode of proceeding is very rarely adopted, and should be avoided, except in extreme cases. 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 priority than the house itself, and the decision should be left with him. In the commons, not less than 20 members have been known to rise at once, and order can only be maintained by acquiescence in the call of the speaker.

In the commons.

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,

When two members rise.

¹ 34 Lords' J. 306.

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." This question arose between Pitt and Fox on the 20th February 1784, and more recently between Sir R. Peel and Sir F. Burdett.¹ The priority of one might be determined in another way in a debate upon a bill, 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 but it is doubtful whether this rule would not now be treated as obsolete.

Must speak to
the question.

When a member is in possession of the house (as it is 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,³ 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. The relevancy of an argument is not always perceptible, 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.

¹ 86 Com. J. 517.

² 1 Com. J. 282.

³ 59 Hans. Deb. N. S. 507.

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.

When no question is before the house.

1. By the practice of both houses, questions are frequently put to ministers of the Crown 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 motion; but such questions should be limited, as far as possible, to matters immediately connected with the business of Parliament, and should be put in a manner which does not involve argument or inference. 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.

Questions to other members.

2. In regard to the explanation of personal matters, the house is usually indulgent. General arguments ought not to be used by the member who is permitted to speak, without any question being before the house; 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.

Personal explanation.

It is a rule strictly 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; 2dly, in certain cases, to reply at the end of a debate; and 3dly, in committee.

To speak once only.

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

To explain.

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."¹

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, he is called to order by the house or by the speaker, and is desired by the latter to confine himself to simple explanation.

Reply.

2. A reply is only allowed by courtesy to the member who has proposed a distinct 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 house; nor to the mover of any amendment. 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. In some cases, however, the indulgence of the house is extended so far as to allow a reply on questions which do not come within the ordinary rules of courtesy.²

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.³

New question.

The adjournment of a debate does not enable a member to speak again upon a question, when the discussion is

¹ 3 Lords' J. 590.

² See Debates, 1st March 1844 (Mr. T. Duncombe's amendment).

³ Chapter XIII.

renewed on another day, however distant; but directly a new question has been proposed, as "that this house do now adjourn," "that the debate be adjourned," "the previous question,"¹ 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.

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. He may move, also, that the words of a member, which he conceives to be disorderly, may be taken down; which the house will direct to be done where it appears necessary,² provided the objection be taken immediately.

Order in debate.

Words taken down.

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.

¹ 65 Hansard's Debates, N. S. 826

² 66 Com. J. 391. 68 Ib. 322. See also *infra*, p. 206.

Rules for mem-
bers speaking.

I. (1). A member, while speaking to a question, may not allude to debates upon a question already decided by the house in the same session ; (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. 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."¹ But he may not read any portion of a speech made in the same session from a printed newspaper. This rule, indeed, applies to all debates whatsoever ; but of late years it has been relaxed by general acquiescence, in favour of speeches delivered in former sessions.

Reflecting upon
votes of the
house.

(2). The objections to the practice of referring to past

¹ 59 Hans. Deb. N. S. p. 486. See also 65 Hans. Deb. 26th July 1842, N. S. p. 642.

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.¹ 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.

(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 re-primation 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 concerning him by Mr. Tate, a member of the commons, "their lordships were of opinion that this house could not take any cognizance 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."² 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. 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.

Allusions to debates in the other house.

¹ 2 Hatsell, 234 *n.*

² 4 Lords' J. 582.

Queen's name
used in debate.

(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

The irregular use of the Queen's name to influence a decision of the house is unconstitutional in principle, and inconsistent with the independence of Parliament. Where the Crown has a distinct interest in a measure, there is an authorized mode of communicating her Majesty's recommendation or consent, through one of her ministers;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

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 1, 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.”⁵

On the 17th December 1783, the commons resolved,

“That it is now necessary to declare, that to report any opinion or pretended opinion of his majesty, upon any bill or other proceeding depending in either house of Parliament, with a view to

¹ 1 Com. J. 51. 18 Ib. 49. D'Ewes, 41-244. ² See Chapter XVII.

³ 1 Com. J. 697.

⁴ 2 Ib. 27.

⁵ 2 Ib. 344.

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

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 council 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.²

On the 9th May 1843 Sir Robert Peel said, "On the part of Her Majesty I am authorized to repeat the declaration made by King William," in a speech from the throne, in reference to the legislative union between Great Britain and Ireland. On the 19th, Mr. Blewitt objected to these expressions; but the speaker, after noticing the irregularity of adverting to former debates, expressed his own opinion, "That there was nothing inconsistent with the practice of the house in using the name of the sovereign in the manner in which the right hon. baronet had used it. It was quite true that it would be highly out of order to use the name of the sovereign in that house so as to endeavour to influence its decision, or that of any of its members, upon any question under its consideration; but he apprehended that no expression which had fallen from the right hon. gentleman could be supposed to bear such a construction." And Lord John Russell explained, that "the declaration of the sovereign was made by the right hon. baronet's advice, because any personal act or declaration of the sovereign ought not to be introduced into that place;" to which Sir R. Peel added, "that he had merely confirmed, on the part of Her Majesty, by the advice of the government, the declaration made by the former sovereign."³

¹ 39 Com. J. 842.

² 7 Chandler's Debates, 61. 64.

³ 69 Hans. Deb. N. S. 24. 574.

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 punished by a reprimand, or by commitment.¹ It is most important that the use of such words should be immediately reprov'd, 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 behaving 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

Exception
taken to words.

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.

² Lords' J. 713. See also 4 Lords' J. 582. 2 Hatsell, 73.

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

On the 14th December 1641, exception was taken to words used by Lord Pierpoint; he was commanded to withdraw, and committed to the custody of the gentleman usher.²

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.³

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 personal allusion in debate, it is a rule that no member shall refer to another in debate by name. In the upper house, every lord is alluded to by the rank he enjoys; as "the noble marquis," 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 the colonies," the "honourable or right honourable gentleman the member for York," or the "honourable and learned member who has just sat down." The use of temperate and decorous language is never more desirable than when a member is canvassing the opinions and

Personal allusions.

Against members.

¹ 32 Lords' J. 476.

² 4 Ib. 475.

³ 5 Ib. 77.

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; misrepresenting the language of another, or accusing him, in his turn, of misrepresentation; charging him with falsehood or deceit; or contemptuous and insulting language of any kind; all these are unparliamentary, and call for prompt interference.

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.”¹

On the 10th December 1766, notice was taken of some words that had passed between the Duke of Richmond and the Earl of Chatham; upon which they were required by the house to declare, upon their honour, “that they would not pursue any further resentment.”²

The lords are also prompt in their interference to prevent quarrels in debate between their members, 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

¹ Lords’ S. O. No. 16.

² 31 Lords’ J. 448.

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."¹

Sometimes the lords have extended this principle to the prevention of quarrels 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.² Challenge.

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.³ 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, and given assurance that they will not engage in hostile proceedings.⁴ Words of heat.

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.⁵

¹ Lords' S. O. No. 16. ² 36 Lords' J. 191. ³ 78 Com. J. 224. 96 Ib. 40.

⁴ 89 Com. J. 9. 11. 91 Ib. 434, 485. 92 Ib. 270. ⁵ 91 Ib. 464. 468.

Whichever of these rules may be violated by a member, notice should be immediately taken of the words objected to, in order that they may be taken down correctly. 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;"¹ and the same principle would seem to apply, if the member had been permitted to continue his speech, for any length of time, without interruption.

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.²

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."³

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. 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.

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."⁴

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.⁵

Crossing before members speaking.

(3). In the lords it has been seen that care should be taken in the manner of crossing the house, and it is

¹ 2 Hats. 269 n. See also 69 Hans. Deb. N. S. 566.

² Another rule, "that no member do take tobacco," is unworthy of a place in the text. See 11 Com. J. 137.

³ Lords' S. O. No. 13. ⁴ Lords' S. O. No. 11. ⁵ See 8 Com. J. 264.

especially irregular to pass in front of a peer who is addressing their lordships. In the commons, members are not to cross between the chair and a member who is speaking, nor between the chair and the table, nor between the chair and the mace, when the mace is taken off the table by the serjeant. When they cross the house or otherwise leave their places, they should make obeisance to the chair.

Lords.

Commons.

(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 regarded as irregular to read newspapers; any books and letters may be referred to by members preparing to speak, but ought not to be read for amusement, nor for business unconnected with the debate.

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

Silence.

“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.”

Commons.

(6). They should not disturb a member who is speaking by hissing or other interruption. The following is the declaration of this rule by the House of Commons, 22d 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, 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.

Without any such noises, however, there are words of interruption which, if used in moderation, are not unparliamentary: but when frequent and loud, they 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 the speaker; it is not uttered till the end of a sentence, and offers no interruption to the speech. But the same words may be spoken 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 persisted in, would be obliged to name the disorderly members, and leave them to be censured by the house.

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

"Hear, hear."

Interruptions
in committee.

1 11 C. J. 66. See also 1 Ib. 152.

greater 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, without 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

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 of an opposite party, and that an irregular argument is liable to ensue, in which each speaker imputes disorder to the last, and recrimination takes the place of orderly debate. There is no impartial authority to whom an appeal can be made, and the debate upon order generally ends with satisfaction to neither party, and without any decision upon the matter to which exception had been taken.

Authority of
speaker.

Lords.

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,

Commons.

¹ 65 Com. J. 134.

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; and then, 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.

Speaker always to be heard.

Whenever the speaker rises to speak in the course of a debate, he should be heard in silence, and the member who was speaking 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;"² but this is an imperfect explanation of the present practice, for the rising of the speaker is the signal for 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 Lord Coningsby, in 1720;³ of Sir F. Burdett in 1810;⁴ of Sir T. Troubridge,

¹ 1 Com. J. 187.

² *Ib.* 244.

³ 21 Lords' J. 450.

⁴ 65 Com. J. 224.

in 1833;¹ and of Mr. O'Connell, in 1836;² 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;³ and of Lord Brudenell, in 1836.⁴ 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 1641,⁵ and Lord Herbert of Cherbury, in 1642,⁶ were commanded to withdraw; and in the commons, in 1715, it was ordered upon question and division, "that Sir W. Wyndham do now withdraw."⁷

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. It was explained in the chapter upon questions,⁸ 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 the form of the question. At present the words are "that the debate be *now* adjourned;" which being negatived, may, of course, be proposed again, at a later period, to which the prior decision of the house cannot be construed to apply; but if a question were proposed, "that the debate be adjourned from this day's sitting,"⁹ and negatived, it is presumed that the same motion could not be repeated at any period of the evening, however late.

Adjournment
of debates.

¹ 88 Com. J. 470. ² 91 Ib. 42. ³ 63 Ib. 149. ⁴ 91 Ib. 319.

⁵ 4 Lords' J. 476. ⁶ 5 Lords' J. 77. ⁷ 18 Com. J. 49. ⁸ *Supra*, p. 172.

⁹ This might be made to include the sitting after 12 o'clock at night; although, after that hour, the change of day is recognized in all the proceedings.

CHAPTER XII.

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

Members not
present, when
question put.

IN the lords, every lord who desires to vote, and holds proxies for other lords, 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."¹ 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 house by the serjeant, and his name was not reckoned by the tellers for the noes, with whom he had voted.²

On the 3d 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.³

¹ 76 Com. J. 172.

² 79 Ib. 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.

³ 74 Com. J. 393.

On the 2d June 1825, the yeas 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.¹

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.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. 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.

Before a division can take place, the house must be cleared of strangers in the galleries, below the bar, and in the lobby. This occupies a considerable time when there are many strangers, but scarcely a minute when the galleries are not full. When it is known that a division is about to ensue, the speaker, directly the debate is closed, gives the order that "strangers must withdraw," and at the same instant the doorkeepers shout "Clear the gallery!" and 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 while the messengers are engaged

House cleared
of strangers.

¹ 80 Com. J. 483.

² 91 Ib. 475.

in excluding strangers, they have time to reach their places. Directly the strangers have withdrawn, the usher of the black rod in the lords, and the serjeant-at-arms in the commons, and the doorkeepers and messengers under their orders, close and lock all the doors leading into the house and the adjoining lobbies simultaneously. Those members who arrive after the doors are shut, cannot gain admittance, and those who are within the house must remain there; but in the upper house, lords who desire to avoid voting may withdraw to the wooolsacks, where they are not strictly within the house, and are not therefore counted in the division. By shutting all the doors at once, care is taken, in the commons, to prevent members from gaining the lobby, and yet being shut out of the house; but it may occasionally happen that a member with difficulty squeezes himself through the outer door of the lobby, and the next instant the serjeant shuts the door of the house. The member would then find himself enclosed between the two locked doors, and unable to vote; in which case the doorkeeper will open the outer door of the lobby, and permit him to withdraw.

When all the doors are thus closed, the speaker puts the question, and the contents and not-contents, or the ayes and noes respectively, declare themselves. When a division is not expected, the speaker is obliged to put the question twice, because when his decision has been disputed after the first putting of the question, the strangers must withdraw before the question can be decided by a division; 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 put a second time, and it is therefore the practice to put the question after the doors are closed, whether it has been already put or not, in order that the whole house may have notice of a division, and be able to decide upon the question when put by the speaker.

Question some-
times twice put.

A division is effected in the lords by the not-contents remaining within the bar, and the contents going below the bar.¹ A teller is appointed for each party, by whom they are respectively counted. When all the lords then present have been told, they resume their places, and the clerk at the table calls over the names of those lords who hold proxies, who, rising uncovered in their places,² declare whether those for whom they are proxies are "content" or "not content." The lord chancellor or speaker gives his voice like the other lords on being required by the tellers, but he does not leave the woosack to vote. The total number of lords present and of the proxies are then declared, and the question is decided by the joint majority of both classes of votes.

Division in the lords.

In case of an equality of voices and proxies combined, 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 Journals "Then, according to the ancient rule in the like cases, '*semper præsumitur pro negante,*' &c."³ 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;"⁴ and consequently if the numbers be equal, the judgment of the court below is affirmed.

When voices equal in the lords.

The following are standing orders in regard to voting, when no formal division takes place:—

"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."⁵

Manner of voting in the house.

"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."⁶

Lords to keep their places upon voting.

The practice in the commons, until 1836, was to send one party forth into the lobby, the other remaining in the

In the commons.

¹ Lords' S. O. No. 22.

² *Ib.*

³ 14 Lords' J. 167, 168.

⁴ *Ib.* No. 56.

⁵ *Ib.* No. 20.

⁶ *Ib.* No. 21.

Tellers.

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 end 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 one lobby, and the noes into the other, and then appoints two tellers for each party; of whom one for the ayes and another for the noes are associated, to check each other in the telling. If two cannot be found, 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.¹ In another case, 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;² and several cases, of the same kind, have occurred more recently.³

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 would be worthy of consideration whether a rule could not be established, by which no division should be allowed, unless 10 members declared themselves with the minority, besides the tellers. An unnecessary division is a great evil; it occupies much time, and causes considerable inconvenience to the members; and the more unequal the parties, the longer is the time consumed in the division, and the more irksome the process of dividing to the majority. The speaker can rarely doubt which party is the minority, when the voices on one side are so

¹ 84 Com. J. 379. ² 90 Ib. 550. ³ 97 Ib. 183. 354. 98 Ib. 605.

few as to sound less in number than 10 ; and if that party nevertheless, disputed his decision, he might desire them to stand up, before the division, and no time would be lost in counting them. Occasions for enforcing this rule would not occur very often ; but, whenever the speaker had reason to believe, or any member took notice, that the ayes or the noes were less than 12, including the tellers, it would be a fair and simple mode of avoiding a division.¹

Such a restriction upon the right of dividing, would most facilitate the progress of public business, in cases where a very small party oppose themselves to a bill, or insist upon an adjournment. Frequent divisions must then arise, in which hundreds, perhaps, retire into one lobby, and units into the other ; and, time being thus lost, the weaker party succeed at last, by reason of the unwieldy force of the majority.

When there are two tellers for each party, the division proceeds, and the house is cleared.

Form of
division in the
Commons.

Two clerks are then stationed at 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 the tellers count the number.

When both parties have returned into the house, the tellers on either side come up to the table and report the numbers ; and, if they agree, 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 appears to be no alternative but a second division.²

¹ A practice analogous to that proposed, is already sanctioned in regard to divisions in committees of the whole house. See p. 219.

² 33 Com. J. 212.

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

Precedents.

On the 14th June 1821, for instance, the speaker declared himself with the yeas, 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."¹

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."² The speaker acted upon the same principle on the third reading of a bill, 23d June 1837;³ and a similar course has generally been taken at other stages in the progress of bills.⁴ A case, however, occurred on the 2d April 1821, in which 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.⁵

The principle by which the speaker is usually guided in giving his casting voice, 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

¹ 76 Com. J. 439.

² 83 Ib. 292.

³ 92 Ib. 496.

⁴ 95 Ib. 536. 96 Ib. 344. 98 Ib. 163.

⁵ 76 Ib. 229.

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

After the division, the sheets of pasteboard on which the 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 very little delay is occasioned by the process.

Publication of
division lists.

In committees of the whole house, it is the rule, that divisions are to be taken by the members of each party crossing over to the opposite side of the house, unless five members require that the names shall be noted in the usual manner; but the custom of publishing the names has become so popular and general, that no practical difference exists in the mode of taking divisions in committee. If less than five members should happen to object to a question, and were not assisted by any of the opposite party, they could not have their names recorded; but an inconsiderable minority are generally the most anxious for the publication of their votes; and if more than five in number, they could insist upon it.

Divisions in
committee.

In the lords, it has been seen, that not only those peers who are present may vote in a division, but, on certain questions, absent peers are entitled to vote by proxy, and their votes are numbered with the rest; the joint majority of votes and proxies being decisive of the question. The following rules and restrictions are incident to the right of voting by proxy:—

Proxies.

“No lord of this house shall be capable of receiving above two proxies, nor more to be numbered in any cause voted. All proxies from a spiritual lord shall be made to a spiritual lord, and from a temporal lord to a temporal lord.”²

No lord to have
above two.

¹ 81 Com. J. 387. ² Lords' S. O. No. 79. See also 51 Lords' J. 192.

- Proxies vacated upon lords' return. "If a peer having leave of the king to be absent from Parliament,¹ gives his proxy and afterwards sits again in the house, his coming and sitting again in Parliament doth determine that proxy."²
- New proxies. "If a peer having leave to be absent, makes his proxy and returns, he cannot make a new proxy without new leave."³
- Proxies not to be used in judicial cases. "That proxies may be used in preliminaries to private causes, but not in giving judgment."⁴
- Though by bill. "That no proxy for the future shall be made use of in any judicial cause in this house, although the proceedings be by way of bill."⁵
- Lords to vote for their proxies if they vote on the question. "That a lord having a proxy and voting on the question, ought to give a vote for that proxy in case proxies be called for."⁶
- Proxies, when to be entered. "That the proxy of no lord shall be entered the same day on which he has been present in the house, and that no proxy entered in the book after three of the clock, shall be made use of the same day in any question, and that the clerks give an account thereof to the house."⁷
- In committee. It is also a rule that no proxy can be used in a committee of the whole house.
- Peers and their proxies need not vote alike. The most usual practice is for lords to hold the proxies of other lords of the same political opinions, and for the votes of both to be declared for the same side of a question. This is the true intent of a proxy; but it occasionally happens, that a lord has been privately requested by another lord, whose proxy he holds, to vote for him on the opposite side; in which case, it is understood to be regular to admit their conflicting votes in that manner. But it is said, that this variation from the ordinary rule is permitted upon the supposition, that between the time of voting and of declaring the vote of the proxy, a lord may be supposed to have altered his own opinion; for the form of the proxy would appear to delegate to the lord

¹ See Report of Precedents, when King George 3 was incapacitated from granting such leave. 48 Lords' J. 21. 48.

² Lords' S. O. No. 80.

³ Ib. No. 81.

⁴ Ib. No. 82.

⁵ Ib. No. 83. This rule is extended to controverted elections of the representative peers of Scotland. 39 Lords' J. 33. 41 Ib. 24.

⁶ Ib. No. 84.

⁷ Ib. No. 85.

who holds it, the absolute right of decision for the absent lord, without any reference to the opinions of the latter, expressed after the signature of that instrument.

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 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 division 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; and it is therefore conducted privately, by individual members, or arranged by the gentlemen who are entrusted, by the two great parties, with the office of collecting their respective forces on a division.

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, "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."¹

¹ Lords' S. O. No. 114.

When a protest has been drawn up, any peer may either subscribe it without remark, if he assent to all the reasons assigned in it; or he may signify the particular reasons which have induced him to attach his signature.¹

Personal in-
terest.
Peers.

In 1796, a general resolution was proposed in the lords, "That no peers shall vote who are interested in a question;" but it was not adopted.² 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 interests by his votes in Parliament.

Commons.

In the commons, it is a distinct rule, that no member who is personally interested in a question shall be allowed to vote upon it; but this interest must be direct and peculiar, and not merely of a general or remote description.

On the 3d June 1824, a division took place on a "Bill for repealing so much of an Act 6 Geo. 1, 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 yeas, 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.³

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

In some cases, also, members who have been subscribers to undertakings, have voted in favour of bills before the house, for carrying them into effect; and when they have admitted that they were subscribers, their votes have been disallowed.⁵

¹ But the protest or reasons may be ordered to be expunged. 43 Lords' J. 82.

² 40 Lords' J. 640. 650.

³ 79 Com. J. 455.

⁴ 80 Ib. 443.

⁵ 80 Com. J. 110. 91 Ib. 271.

But it is not sufficient to be interested in a rival undertaking.

On the 22d 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.¹

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.²

Upon the same principle that every member should be free from any pecuniary interest in the votes he may give, it was resolved, on the 2d May 1695,

“That the offer of any money, or other advantage, to any member of Parliament, for the promoting of any matter whatsoever, depending or to be transacted, in Parliament, is a high crime and misdemeanor, and tends to the subversion of the English constitution.”³ Offer of money.

And, more recently, it has been declared contrary to the law and usage of Parliament, for any member to be engaged in the management of private bills for pecuniary reward.⁴

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

“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.”⁵

¹ 80 Com. J. 110.

² 80 Ib. 110. 91 Ib. 271.

³ 11 Ib. 331.

⁴ 85 Ib. 107.

⁵ 8 Ib. 646. See case of Mr. Roebuck, 97 Ib. 499.

CHAPTER XIII.

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

Mode of ap-
pointment.

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 resolve itself into a committee of the whole house;" after which a question is put by the speaker, viz.: "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 the committee commences its sitting.

Chairman of
lords' commit-
tees.

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 following resolutions of the 23d July 1800:—

"That this house will, at the commencement of every session, proceed to nominate a chairman of committees of this house.

"That such lord as shall be nominated, do take the chair in all committees of the whole house, unless where it shall have been otherwise directed by this house."¹

Chairman of
committees in
the commons.

In the commons the chair 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 puts a question, "That a particular member do take the chair of the committee;"

¹ 42 Lords' J. 636.

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.¹

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, and maintains order.

Conduct of business.

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 for that purpose.³

Matters committed.

It is an understood rule that a motion in committee need not be seconded, which is observed in practice, although it has never been distinctly declared, and its propriety is sometimes questioned. It derived confirmation from the former practice of appointing only one teller 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.

Motion not seconded in committee.

A motion for the previous question is not admitted in committee; since the committee are only authorized to consider the matters which have been referred to them by the house, and of which the consideration should be preferred to a motion which is only offered for the purpose of excluding them from a decision. Motions, however, having the same practical effect, have sometimes been allowed in committees on bills.⁴

Previous question.

¹ 9 Com. J. 386. 13 Ib. 794. 21 Ib. 255. 65 Ib. 30. 3 Grey's Debates, 301.

² Lords' S. O. Nos. 28, 29.

³ An instruction should always be moved distinctly after the order of the day has been read, and not as an amendment to the question for the speaker leaving the chair.

⁴ See Chapter XVIII., on Bills, p. 280.

Questions of
sums and dates.

On the 3d November 1675, it was declared to be an ancient order of the house, "that where there comes a question between the greater and lesser sum, or the longer or shorter time, the least sum and the longest time ought first to be put to the question."¹ This rule has more immediate reference to the committees of supply, and ways and means, but is also observed in other committees.

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*."² 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 can speak only 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 stand-
ing.

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 speak either sitting or standing." Mr. Secretary Cecil rose next, and said, "Because it is an argument of more reverence, I chuse to speak standing."³

House re-
sumed.

It was ordered and declared by the lords, 10 June 1714,

"That when the house shall be put into a committee of the whole house, the house be not resumed without the unanimous

¹ 9 Com. J. 367.

² Lords' S. O. No. 28.

³ 4 Parl. Hist. 410.

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 2d March, 1836,

Chairman
leaves the chair.
Commons.

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 that 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

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, or if the time be come for holding a conference with the lords.³

Speaker re-
sumes the chair
in certain cases.

So, also, if any sudden disorder should occur, 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

¹ Lords' S. O. No. 31.

² 91 Com. J. 104.

³ 67 Com. J. 431.

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 on 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."¹

The speaker certainly acted with judgment on that occasion, and a more recent case would seem to prove that he was 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 again resolved itself into the committee.²

Forty members
required.

A committee of the whole house, in the commons, cannot proceed with business any more than the house itself, unless 40 members be present; but it has no power of adjournment, by which the sitting of the house would be concluded. When notice, therefore, is taken that 40 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 tells the house. If 40 members be then present, the house again resolves itself into the committee; but if not, the speaker adjourns the house, without a question first put, in the same manner as when 40 members are not present during the sitting of the house.³ So, also, if it appear on a division in committee, that 40 members are not present, the chairman leaves the chair, and the speaker tells the house in the same manner.⁴

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

Lords.

¹ 3 Grey's Deb. 129. ² 65 Com. J. 134. ³ 91 Ib. 659. ⁴ 85 Ib. 60, &c.

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.” It is, therefore, the practice for members who are desirous for 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; as this motion, in committee, is analogous to that frequently made at other times, for adjourning the debate. A motion “That the chairman do now leave the chair,” would, if carried, prevent a report from being made, and would supersede the business of a committee; as an adjournment of the house supersedes a question.

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.

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.¹

Since 1832 the annual appointment of the ancient Grand Committees for Religion, for Grievances, for Courts of Justice, and for Trade, has been discontinued. They had long since fallen into disuse, and served only to mark the ample jurisdiction of the commons in Parliament.

In the House of Lords, the proceedings of committees do not appear upon the Journals; nor in the commons were they entered until, on the 23d February 1829, the speaker submitted to the house that arrangements should be made to effect that object, to which the house assented.² Since that time the proceedings in committee have been recorded, and are a valuable addition to the means of comprehending the forms of parliamentary procedure.

¹ See Chapters XVIII. and XXI.

² 84 Com. J. 78.

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 opinions, for the information of the house. Like a committee of the whole house, a select committee 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 their inquiries further than was originally intended, an instruction should be given by the house for prescribing the limits of their powers.² Inquiry by 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 and other documents are constantly referred to them for consideration.

Appointment in the lords.

In the House of Lords, there are no special rules in regard to the appointment and constitution of select committees. The house resolve, 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. 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.

¹ 91 Com. J. 422, 687.

² 75 Ib. 259. 90 Ib. 522.

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

Sittings and proceedings.

“ If they be a select committee, they usually meet in one of the rooms adjoining 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 council as are appointed ; they are not to sit there, or be 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

The House of Lords do not give select committees any special authority to send for witnesses or documentary evidence ; 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 sworn at the bar of the house, in order to be afterwards examined before the committee. 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.

Witnesses, how summoned.

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 laid down the following regulations :—

Appointment, constitution, and practice in the commons.

1. “ That no select committee shall, without previous leave obtained of the house, consist of more than 15 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.”²

Number of members.

2. “ That it be recommended to every member moving for the appointment of a select committee, to ascertain previously whether each member proposed to be named by him on such committee, will give his attendance thereupon.”

Attendance.

¹ Lords' S. O. No. 32.

² 91 Com. J. 30. 92 Ib. 8.

Notice of names. 3. "That every member intending to propose 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."¹

List of members. 4. "That lists be affixed in some conspicuous place in the committee clerks' office, and in the lobby of the house, of all members serving on each select committee."²

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."

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

Appointment of members. In compliance with the first of these resolutions, a select committee is usually confined to 15 members, but if from any special circumstances a larger number should be thought necessary, the house will allow it.³ In special cases, the house have also thought fit to appoint certain committees by ballot,⁴ or to name two members, and to appoint the rest of the committee by ballot,⁵ or to choose 21 names by ballot, and to permit each of two members nominated by the house, to strike off four from that number.⁶ Members have also been nominated to serve on a committee, to examine witnesses, without the power of voting.⁷

Members added and discharged. Members are frequently added to committees, and other members originally nominated are discharged from further attendance.

Quorum. Whatever may be the number of a committee, it is not probable that all could attend, and the house order in

¹ 93 Com. J. 221.

² 92 Ib. 91.

³ 92 Ib. 91. ⁴ 74 Ib. 64, &c.

⁵ 88 Ib. 144. 467, &c.

⁶ 88 Ib. 160. 475.

⁷ 91 Ib. 30. 92 Ib. 8.

⁸ 88 Ib. 144. 467, &c.

⁹ 91 Ib. 42.

each case what number shall be a quorum. If no quorum were named, it would be necessary for all the members of the committee 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, and occasionally seven, 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.¹

A committee cannot proceed to business without a quorum, but must wait until the proper number of members have come into the room. If the number should afterwards be reduced below the quorum, business is not interrupted, unless a member take notice that the proper number are not present. No question, however, can be decided by vote without a quorum, as the irregularity would then be obvious, and would appear on the minutes. On these points the practice is similar to that observed in the house in regard to the presence of 40 members.

As the object of select committees is usually to take Evidence. evidence, the House of Commons, when necessary, give them "leave 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 wanted 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

¹ 90 Com. J. 457. 504.

² See *infra*, p. 238.

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.

All lords may
come, but not
vote.

All the lords are entitled to attend the select committees of that house, subject to the following regulations :—

“ 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

Presence of
members.

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 does not appear that the committee, in case of their refusal, would have any power to order them to withdraw.

Precedents.
Charges against
the Duke of
Buckingham.

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

¹ Lords' S. O. No. 33.

member of the house shall be present at the debate, disposition, or penning of the business by the select committee; but only to be present at the examination, and that without interposition."¹

An opinion somewhat more definite may be collected from the proceedings of the India Judicature Committee, in 1782 :—

East India judi-
cature.

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."

Mr. Barwell.

The inference from this order must be, that the committee would not otherwise have been authorized to exclude a member of the house.²

When committees were appointed to examine the physicians of King George 3, 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."³

King's physi-
cians.

On the 29th June 1842 the committee on election proceedings 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.⁴

Election pro-
ceedings com-
mittee.

Until some more positive rule shall be laid down upon this matter, the result of all these precedents appears to

General results.

¹ 1 Com. J. 849.

² 38 Ib. 870.

³ 66 Ib. 6. 67 Ib. 17.

⁴ 97 Ib. 438.

be, 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 deliberations, and there is reason to apprehend opposition, they should apply to the house for orders similar to those already noticed.

Secret committees.

But secret committees are sometimes appointed,¹ whose inquiries are conducted throughout with closed doors; and it is the invariable practice for all members, not on the committee, to be excluded from the room.

When members attend the sittings of a committee, they assume a privilege similar to that exercised in the house, and sit or stand with their hats on.

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 præsumitur pro negante.*" In the commons, the practice is similar to that observed in divisions of the house itself.

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

Adjournment of committees.

A select committee may adjourn its sittings from time to time, and occasionally a power is also given by the house to adjourn from place to place.³ But without special

¹ 53 Lords' J. 115. 92 Com. J. 26, &c.

² 91 Com. J. 214. This misconception of the usage of Parliament may have arisen from the peculiar practice of election committees, as regulated by Act of Parliament; and perhaps, also, from the custom observed in lords' committees.

³ 89 Com. J. 419, &c.

leave no committee of the commons may sit during the sitting of the house, nor after any adjournment for a longer period than till the next day. By a sessional order of the commons, it is ordered,

“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 in a morning, after such notice, be declared to be null and void.” Prayers.

In order to avoid any interruption to urgent business before committees, leave is frequently obtained, on the meeting of the house, for a committee to sit till five o'clock; and on Friday night leave is given, when necessary, to a committee to sit on Saturday, notwithstanding the adjournment of the house.

The evidence of the witnesses examined before a select committee is taken down in short-hand, and, in the commons, printed daily for the use of the members of the committee. 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 corrected copy should be returned without delay to the committee clerk. 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, Printed minutes of evidence.

“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.”¹

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

¹ 92 Com. J. 282.

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.¹

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, are thought necessary, the house will grant leave, on the application of the chairman, for the committee to "report from time to time," or to "report minutes of evidence" only, from time to time.²

CHAPTER XV.

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

How sum-
moned by the
lords.

ALL witnesses who are summoned to give evidence before the House of Lords, or any of the lords' committees, 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 assistant 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. 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.³ If, after such service of the order, the witness should not attend, he is ordered to be taken into custody;⁴

¹ 87 Com. J. 360.

² 74 Lords' J. 80, &c. 92 Com. J. 18. 167, &c.

³ 66 Lords' J. 295. 358.

⁴ 66 Lord's J. 400.

but the execution of this order is sometimes stayed for a certain time.¹ 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.²

When the evidence of peers, peeresses, or lords of Parliament is required, the lord chancellor is ordered to write letters to them, desiring their attendance to be examined as witnesses.³

Peers, &c. how summoned.

When the attendance of a witness is desired, to be examined at the bar by the House of Commons, or a committee of the whole house, he is simply ordered to attend at a stated time;⁴ 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, the speaker is ordered to issue his warrant, which is personally served upon the keeper by a messenger of the house, and by which he is directed to bring the witness in his custody to be examined.⁵ If the order for the attendance of a witness be disobeyed, or if parties abscond, in order to avoid being served with a speaker's warrant, they are ordered to be taken into the custody of the serjeant-at-arms.⁶ Any person, also, who aids or abets a witness in keeping out of the way, is liable to a similar punishment.⁷ When the serjeant has succeeded in apprehending such persons, they are generally sent to Newgate for their offence.⁸

Witnesses summoned by the commons.

All witnesses intended to be examined before an election committee, are summoned, before the appointment of the committee, by a speaker's warrant, on the application of the parties, without any special order of the house in

By election committees.

¹ 75 Lords' J. 358.

² Ib. 441, 442.

³ Ib. 144.

⁴ 78 Com. J. 240. 91 Ib. 338.

⁵ 82 Com. J. 464. 86 Ib. 795.

⁶ 4 90 Ib. 330.

⁷ 90 Ib. 330.

⁸ 90 Ib. 343, 344.

each case, but under a general order, given when the petition is presented, "that Mr. Speaker do issue his warrant for such persons, papers, and records as shall be thought necessary by the several parties, on the hearing of the matter of the said petition." Disobedience to a speaker's warrant, issued by virtue of this general order, has always been punished in the same manner as disobedience to a special order of the house.¹ After the appointment of an election committee, the witnesses are summoned by orders signed by the chairman.²

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. If, in the meantime, he should appear before the committee, it is usual to discharge the order for his attendance;³ 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 can only be enforced by an order of the house.⁴

Witnesses absconding.

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.⁵

Attendance of members, how required.

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.⁶ 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

82 Com. J. 351. ² 4 & 5 Vict. c. 58, s. 74. ³ 91 Com. J. 352.

⁴ 98 Ib. 152, 153, 174, 279, 288.

⁵ 75 Ib. 419. 82 Ib. 345.

⁶ 61 Ib. 386. 64 Ib. 17. 65 Ib. 21. 30, &c.

been thus laid down by two resolutions of the commons, of the 16th March 1688 :

“ That if any member of the house refuse, upon being sent to, to come to give evidence or information as a witness to a committee, the committee ought to acquaint the house therewith, and not summon such member to attend the committee.”

“ That if any information come before any committee that chargeth any member of the house, the committee ought only to direct that the house be acquainted with the matter of such information, without proceeding further thereupon.”¹

There has been no instance of a member persisting in a refusal to give evidence before a committee, but members have been ordered by the house to attend select committees.²

In 1731, Sir Archibald Grant, a member, was committed to the custody of the serjeant-at-arms, “ in order to his forthcoming to abide the orders of the house,” and was afterwards ordered to be brought before a committee, from time to time, in the custody of the serjeant.

On the 28th June 1842 a committee reported that a member had declined complying with their request for his attendance.⁴ A motion was made for ordering him to attend the committee, and give evidence ; but the member having at last expressed his willingness to attend, the motion was withdrawn.⁵

If the attendance of a peer should be desired, to give evidence before the house, or any committee of the House of Commons, a message is sent “ to the lords to request that their lordships will give leave to the peer in question to attend, in order to his being examined.” 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.⁶ Exactly the same form is observed by

Attendance of members of the other house.

¹ 10 Com. J. 51. ² 19 Ib. 403. ³ 21 Ib. 851, 852. ⁴ 97 Ib. 438.

⁵ 97 Ib. 438. 453. 458. See also Report of Precedents, ib. 449.

⁶ The jealousy of the House of Lords of the attendance of its members in the House of Commons, is shown by the following standing orders ; 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

the lords when they desire the attendance of a member of the House of Commons. 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 are not usual in the case of private bills.¹

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.²

Peers, not being
lords of parlia-
ment.

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 are at issue.

On the 3d May 1779, the Earl of Balcarras, of the peerage of Scotland, was ordered to attend the house.³ On the 5th June 1806, the House of Commons ordered the attendance of Lord Teignmouth,⁴ of the peerage of Ireland, and he 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

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. 51.

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 council 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 council 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. 50.

¹ 3 Hats. 21.

² 83 Com. J. 278. 91 Ib. 75.

³ 37 Com. J. 366.

⁴ 61 Ib. 374.

is entitled to any of the privileges thereupon depending." The House of 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

These being the various modes of securing the attendance of witnesses to give evidence before either house of Par-

Mode of examination.

liament, the mode of examination is next to be considered. In the House of Lords, every witness is sworn at the bar, whether he is about to be examined by the house, by a committee of the whole house, or by a select committee. When examined at the bar, if counsel be engaged in an inquiry, 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.³

Lords.

In select committees, witnesses are placed in a witness-box 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, renders a witness liable to the penalties of wilful and corrupt perjury; but prevarication, or other misconduct of a witness, is punished as a contempt.

Oaths.

¹ 45 Lords' J. 812.

² See 2 Hats. App. 9.

³ 25 Lords' J. 303. See also *ib.* 100, where the judges of the Court of Justiciary in Scotland had chairs set for them at the bar, to be examined.

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 is 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 Commonwealth,¹ has never yet asserted it.

Expedients of
the commons.

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.

1. They selected some of their own members, who were justices of the peace for Middlesex, to administer oaths in their magisterial capacity, a practice manifestly irregular, if not illegal, since justices may only administer oaths in investigating matters within their own jurisdiction, as limited by law.

2. They called to their assistance one of the judges.

3. They sought to aid their own inquiries by examinations on oath at the bar of the House of Lords, and before joint committees of both houses; in neither of which expedients were they supported by the lords.

All these methods of obtaining the sanction of an oath

¹ See 6 Com. J. 214. 7 Ib. 287.

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;¹ and the same practice was resorted to in other cases.²

To examine in the most solemn manner.

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.³ Between this time and 1757, several similar instances occurred;⁴ but from that year the most important inquiries have been conducted, without any attempt to revive so anomalous and questionable a practice.

As the penalties of perjury do not attach to false testimony before the House of Commons, the only mode by which it can be discouraged, is by treating it as a breach of privilege. To give notice of this fact, and to secure respect to the authority of the house in its inquiries, two resolutions are made 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 have rarely failed to act up to the spirit of

¹ 18 Com. 353.

² 18 Ib. 596. 19 Ib. 301.

³ 19 Ib. 403.

⁴ 21 Ib. 851, 852. 2 Hats. 151-157.

these resolutions in strictness and severity, and the Journals are full of 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.¹

Election committees.

Evidence is taken before election committees under the sanction of an oath, by Act of Parliament; and false evidence is not only liable to punishment as a breach of privilege,² but also to the penalties of perjury.

Protection to witnesses.

But, while the house punishes misconduct with severity, it is careful to protect witnesses from the effects of their evidence given by order of the house.

Short-hand writers.

On the 26th May 1818, the speaker called the attention of the house to the case of the *King v. Merceron*, in which the short-hand writer of the house was examined without previous leave, and it was resolved, *nem. con.*,

“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.”³

These resolutions state distinctly that no officer of the house, or short-hand writer, shall attend without the special leave of the house; but during the recess it has been the constant practice for the speaker to grant such leave, on the application of the parties to a suit.

Examined at the bar.

When a witness is examined by the House of Commons, or by a committee of the whole house, he attends at the bar, which is then kept down. If the witness be not in custody, the mace remains upon the table; when

¹ See the headings, “Complaints,” “House,” “Elections,” and “Witnesses,” in the three last General Journal Indexes.

² See Chapter XXII. on Elections.

³ 73 Com. J. 389.

according to the strict rule of the house, the speaker should put all the questions to the witness, and members should only suggest to him the questions which they desire to be put; but, for the sake of avoiding the repetition of each question, members are usually permitted to address their questions directly to the witness. 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.¹ 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.² If a question be objected to, or if any difference should arise in regard to the examination of a witness, he is ordered to withdraw, before a motion is made, or the matter is considered.

Members of the house are always examined in their places; and peers, lords of Parliament, the judges, and the lord mayor of London, have chairs placed for them within the bar, and are introduced by the serjeant-at-arms. Peers sit down covered, but rise and answer all questions uncovered. The judges and the lord mayor are told by the speaker that there are chairs to repose themselves upon; which is understood, however, to signify that they may only rest with their hands upon the chair backs.³

When a peer is examined before a select committee, it is the practice to offer him a chair at the table, next to the chairman; where he may sit and answer his questions covered.

When a witness is summoned at the instance of a party,

Members,
Lords of Parlia-
ment, &c.

Expenses of
witnesses.

¹ See 2 Hats. 140.

² *Ib.* 142 and *n.*

³ 2 Hats. 149; where all these forms are minutely described.

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 assistant 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 ; 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.¹ Every witness should report himself to the committee clerk on his arrival in London, or he will not be allowed his expenses for residence, prior to the day of making such report.

The lords have sometimes 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.²

¹ See Report, 1840, No. 555.

² 62 Lords' J. 910.

CHAPTER XVI.

COMMUNICATIONS BETWEEN THE LORDS AND COMMONS.
MESSAGES AND CONFERENCES; JOINT COMMITTEES, AND
COMMITTEES COMMUNICATING WITH EACH OTHER.

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.

Different
modes of com-
munication.

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 communicating various matters of an ordinary description; and it is always the commencement of the more important modes of intercourse, by means of conference and joint committees. The main difference between the modes of sending messages by either house is, that the lords ordinarily send messages by the masters in chancery, their attendants; and on special occasions by their assistants, the judges: while the commons always send a deputation of their own members. The practice is thus defined by a standing order of the House of Lords:—

Messages.

From the lords
to the com-
mons.

“ Here it is to be noted, that we never send to the lower house by any members of our own, but either by some of the learned council, masters of the chancery, or such like which attend us, and in weighty causes some of the judges; but the lower house never send unto us any but of their own body.”¹

¹ Lords' S. O. No. 36.

By the judges.

The weighty matters here spoken of are generally bills relating to the Crown or royal family, which are sent to the commons by two judges;¹ but when the judges are on circuit, or for other causes are not in attendance, such bills have been sent by one judge and one master in chancery.²

By masters in chancery and others.

It has often happened, that two masters in chancery have not been in attendance when the lords have desired to send a message; in which case, they have sent one master in chancery and the clerk assistant of the Parliaments. But whenever this deviation from the ordinary practice occurs, the lords acquaint the commons that, from the absence of one of their usual messengers, and from the urgency of the case, or in consideration of the late period of the session, they had been induced to send the message by the clerk assistant, and by one of their usual messengers.³ On other occasions no master in chancery has been in attendance; when the lords have sent messages by their clerk assistant, and additional clerk assistant or reading-clerk, with similar explanations of the cause of sending the messages in an unusual manner.⁴ But whenever the commons receive a message brought by any officers not being assistants or attendants of the House of Lords, they always agree to a resolution, "That this house doth acquiesce in the reasons assigned by the lords," &c., "trusting that the same will not be drawn into precedent for the future."

Messages from the commons to the lords.

The commons send messages to the lords by one of their own members (generally the chairman of the committee of ways and means, or a member who has had charge of a bill,) who is 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,

¹ 80 Com. J. 573. 86 Ib. 514. 805.

² 86 Ib. 713.

³ 88 Ib. 727. 90 Ib. 650.

⁴ 72 Ib. 5. 85 Ib. 652.

adopted as the number for carrying a message to the House of Lords.¹

The form of receiving the messengers from the commons, by the House of Lords, is thus laid down in the standing orders of the latter house :—

Messengers from the commons, how received.

“For our meeting with any of the lower house, it is either upon occasion of messages, which they send up to us, or upon conference when they come up unto us; the manner is thus: After we have notice given us by our usher that they have sent unto us, they attend till we have put that business to some end, wherein we are, and then we (sitting all covered) send for them in, who stand all at the lowest end of the room, and then the lord chancellor (with such as please) riseth and goeth down to the middle of the bar; then the chief of the committee in the midst, and the rest about him, come up to the bar with three courtesies, and deliver the message to him, who, after he hath received it, retires to his former place, and the house being cleared and settled, he reports it to the lords, who do help his memory if anything be mistaken; and after the lords have taken resolution (if the business require any answer), they are either called for in, and approaching to the bar, with three courtesies (as before), and the house sitting in order, and covered (as before), the lord chancellor sitting upon the woollsaek covered, doth give them their answer in the name of the house; or else, if the resolution be not so speedy, we send them word by the usher, that they shall not need stay for the answer, but we will send it by some express messengers of our own.”²

The messengers from the lords proceed to the House of Commons, and if that house be then engaged in business which will not admit of immediate interruption, the messengers take a seat below the bar until they can be received. It is usual, however, to admit them when the member then addressing the house has resumed his seat. For this purpose the serjeant-at-arms goes up to the table, making three obeisances, and acquaints the speaker that there is “a message from the lords;” after which he retires to the bar. The speaker then acquaints the house that there is a message from the lords, and puts a question, that the messengers be now called in; which being agreed to, as a matter of course, he directs the serjeant

Messengers from the lords, how received.

¹ See also Chapter XVIII. on Bills, p. 287.

² Lords' S. O. No. 35.

to call in the messengers. The serjeant again advances to the table, and takes the mace, with which he introduces the messengers, and walks up to the table of the house on their right hand. They all make three obeisances in coming up the house, and, on reaching the table, one of the masters reads the message; and, when there are bills, delivers them to the clerk of the house. The serjeant retires with them to the bar (all making obeisances), and then returns and replaces the mace upon the table.

Answers to messages.

When answers are required to be made to messages, they are returned either by the same messengers, who are again called in for that purpose; or the messengers are acquainted that the house will send an answer by messengers of their own.

Business interrupted.

The business of the house by which a message is sent is not interrupted while their messengers are proceeding to the other house: but the house by which a message is received, usually take an early opportunity of discontinuing the business under discussion, so as not to detain the messengers.

General character of a conference.

2. A conference is a mode of communicating important matters from one house of Parliament to the other, more formal and ceremonious than a message, and 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.¹ 2. Concerning the privileges of Parliament.² 3. In relation to the course

¹ 88 Com. J. 488.

² 9 Ib. 344.

of proceeding in Parliament.¹ 4. To require statements of facts on which bills have been passed by the other house.² 5. Concerning matters affecting the public peace or security.³ 6. To offer reasons for disagreeing to amendments made by one house, to bills passed by the other.

On all these and other similar matters it is regular to demand a conference; but as the object of communications of this nature is, to maintain a good understanding 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."⁴ The convenience and propriety of this rule is so obvious that it has now, for a long course of years, been invariably observed, not only with regard to bills, but 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.

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 pro-

When to be demanded.

Purpose to be stated.

¹ 89 Com. J. 220. 90 Ib. 656.

³ 19 Ib. 630.

² 87 Ib. 421.

⁴ 1 Ib. 114.

perly be declined. 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;”¹ “upon a subject of the highest importance to the prosperity of the British possessions in India;”² “upon a matter deeply connected with the interests of his Majesty’s West India colonies;”³ 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.”⁴ 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.

The occasions upon which conferences are most frequently demanded are to offer reasons for disagreeing to amendments to bills; when the course of proceeding is as follows. When any amendment made by the other house is disagreed to, a committee is appointed to draw up reasons for such disagreement, to be offered at the conference; and when the reasons prepared by the committee are reported to the house and agreed to, a message is sent to desire the conference. 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; 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.

Time and place of meeting.

Managers appointed.

Each house appoints managers to represent it at the conference, and it is an understood rule that the number on the part of the commons shall be double that on the part of the lords; although it is not the modern practice

¹ 85 Com. J. 473. (Sir J. Barrington).

² 88 Ib. 488. (E. I. C. Charter).

³ 81 Ib. 116. (Slaves).

⁴ 89 Ib. 232. (Union with Ireland).

to make any mention of this circumstance when conferences are agreed to. The managers for the house which desires the conference are the members of the committee who drew up the reasons, to whom others are generally 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.

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 a paper 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.

Duty of managers.

In order to make the subsequent proceedings upon a bill¹ perfectly intelligible, 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 be still dissatisfied with these reasons, and persist in their disagreement to the lords' amendments, they are precluded, by the usage of Parliament, from desiring a third conference;

Conferences in regard to bills.

¹ See also Chapter XVIII.

and unless they let the bill drop, lay it aside, or defer the consideration of the reasons and amendments, they must desire a free conference.

Free confer-
ence.

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 hopeless;¹ 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.

Forms of hold-
ing.

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 managers leave their places, and repair to the chamber in which they are to meet. 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 commons enter the room uncovered, and remain standing the whole time. The lord who receives or delivers the paper on which the resolutions or reasons are written, 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.²

¹ See the proceedings between the two houses on the municipal corporations bill in 1836, in the Journals of the Lords and Commons.

² 4 Hats. 28 n.

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,¹ 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.”²

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.”³

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.”⁴

No stranger to be at a conference or committee.

3. There have been several instances of the appointment of joint committees of the two houses ; but during the last century and a half no such committee has been appointed. 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 evidence was taken upon oath, 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 outvoting the lords, and their right to meet their lordships without

Joint committees of lords and commons,

¹ After the fire, in 1834, the Painted Chamber was fitted up as the temporary House of Lords.

² Lords' S. O. No. 37.

³ *Ib.* No. 38.

⁴ *Ib.* No. 39.

the respectful ceremonies observed at a conference, naturally rendered a joint committee distasteful to the House of Lords, by whom no power or facilities were gained in return.

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 22d 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 lords and commons communicating with each other.³

¹ 49 Com. J. 619.

² *Ib.* 620.

³ 66 Com. J. 287, 291.

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.

THE Queen is always supposed to be present in the High Court of Parliament, by the same constitutional principle which recognizes 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. Charles the 2d, and his immediate successors, were accustomed to be present during the debates of the House of Lords; but this questionable practice, which might be used to overawe that assembly, and influence their debates, has wisely been discontinued since the accession of George I.² 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.³

Queen present
in Parliament.

The various constitutional forms by which the Crown communicates with Parliament, and by which Parliament communicates with the Crown, will now be noticed in

¹ See Hale, Jurisd. of Lords, c. 1. Fortescue, c. 8 (by Amos), with note B.; and 2 Inst. 186.

² Clitty on Prerogatives, 74.

³ 63 Lords' J. 885.

succession, according to their relative importance and solemnity.

Communica-
tions from the
Crown, in per-
son or by com-
mission.

The most important modes by which the Crown communicates with the Parliament, are exemplified on those occasions when her Majesty is present in person or by commission in the House of Lords, to open or prorogue Parliament; and when a royal speech is delivered to both houses. In giving the royal assent to bills in person or by commission, the communication of the Crown with the Parliament is of an equally solemn character.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. 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, which is afterwards read again by the clerk.⁴ 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 he takes to the table and presents to the house. 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;⁵ the prerogatives or

¹ See next Chapter, p. 291.

² 86 Com. J. 488.

³ 66 Lords' J. 958. 89 Com. J. 575.

⁴ 66 Lords' J. 958.

⁵ 40 Lords' J. 186. 44 Ib. 74. 82 Com. J. 111.

property of the Crown;¹ provision for the royal family;² and various matters in which the Executive seeks for pecuniary aid from Parliament.³ They may be regarded, in short, as additions to the royal speech, at the commencement of the session, submitting other matters to the deliberation of Parliament, besides the causes of summons previously declared.

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;⁴ 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.⁵

Should be communicated to both houses.

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.⁶

On matters of supply.

The lords have taken exceptions to any message for supplies being sent exclusively to the commons,⁷ and for upwards of a century it has been the custom, with few

¹ 85 Com. J. 466. 89 Ib. 189. 579.

² 43 Lords' J. 566. 86 Com. J. 719.

³ 42 Lords' J. 361. 82 Com. J. 529.

⁴ 2 Hats. 366 n.

⁵ 66 Lords' J. 958. 89 Com. J. 575.

⁶ 73 Lords' J. 28. 96 Com. J. 29. (Lord Keane.)

⁷ 25th June 1713. 28th February 1739. 2 Hats. 366 n.

exceptions,¹ to send such messages to both houses; which is consistent with their constitutional relations, in matters of supply.²

Verbal mes-
sages.

Another form of communication from the Crown to either house of Parliament, is in the nature of a verbal message, delivered, by command, by a minister of the Crown to the house of which he is a member. This communication is used whenever a member of either house is arrested for any crime by order of the Crown; and when 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.³ 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 im-
prisoned.

Military courts
martial.

In the same manner, when members have been placed under arrest, in order to be tried by military courts martial, the secretary-at-war, or some other minister of the Crown, being a member, informs the house that he had been commanded to acquaint them of the arrest of their member, and its cause.⁴

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

¹ A recent 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.

² See *Lords' and Commons' Gen. Journ. Indexes*, tit. "Messages."

³ 37 Com. J. 903.

⁴ 58 Com. J. 597. 59 Ib. 33. 70 Ib. 70.

members into custody; and copies of the warrants are, at the same time, laid before the house.¹

The other modes of communicating with Parliament are by the royal "pleasure," "recommendation," or "consent," being signified.

The Queen's pleasure is signified at the commencement of each Parliament, by the lord chancellor, that the commons should elect a speaker; and when a vacancy in the office of speaker occurs in the middle of a Parliament, a communication of the same nature is made by a minister in the house.² 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.³ 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.

Queen's pleasure signified.

The royal recommendation is signified to the commons by a minister, on motions for receiving petitions; for the introduction of bills, or on the offer of other motions involving any 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;⁴ or which would have the effect of releasing or compounding any sum of money owing to the Crown.⁵ The royal consent is given to motions for bills, or amendments to bills, or to bills in any of their stages, which concern the royal prerogatives, the hereditary revenues, or personal property or interests of the Crown or duchy of Cornwall.⁶ The mode of communicating the recommendation and consent is the same;

Royal recommendation or consent.

¹ 62 Com. J. 145. 64 Ib. 214. 67 Ib. 246. ² See *supra*, p. 138.

³ 86 Com. J. 460. ⁴ See Chapter XXI. on Supply.

⁵ 75 Com. J. 152. 167. 89 Ib. 52. See also *infra*, p. 325, 326.

⁶ 77 Com. J. 408. 86 Ib. 485. 550. 91 Ib. 548.

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.

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.¹

Constitutional character of these communications.

These several forms of communication are recognized as constitutional declarations of the Crown, suggested by the advice of its responsible ministers, by whom they are announced to Parliament, in compliance with established usage. They cannot be misconstrued into any interference with the proceedings of Parliament, as some of them are rendered necessary by resolutions of the House of Commons, and others are consistent with the strictest limits of royal prerogative, and the unquestionable rights and interests of the Crown.

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,² and the royal assent to bills will be treated of hereafter.³ 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," 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.⁴

Exceptions in the commons.

In the commons, however, it is not always necessary to

¹ 88 Com. J. 381. 90 Ib. 447. 91 Ib. 427. ² *Supra*, pp. 142. 144. 164.

³ *Infra*, p. 291.

⁴ See *supra*, p. 144.

reply to these messages 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;¹ 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 all written messages by address, which relate to important public events,² or matters connected with the prerogatives, interests, or property of the Crown;³ or which call for general legislative measures;⁴ 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,⁵ when the message is again read and referred, and provision is made accordingly.

When the house are informed, by command of the Crown, of the arrest of a member to be tried by a military court martial, they immediately resolve upon an address of thanks to her Majesty, "for her tender regard to the privileges of this house."⁶ 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.⁷ 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 resolved upon in answer to this indirect form of message.

The royal pleasure is always signified upon matters which need no address, but with the purport of which immediate compliance is given; and the recommendation and consent of the Crown, as already explained, are only

To verbal messages.

On royal pleasure, &c. being signified.

¹ 63 Lords' J. 392.

² 82 Com. J. 114.

³ 85 Ib. 466. 89 Ib. 578.

⁴ 85 Com. J. 214.

⁵ 86 Ib. 488. 491.

⁶ 70 Ib. 70.

⁷ 37 Ib. 903.

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 alone that the resolutions of Parliament can be conveyed directly 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 importance¹ 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 then filled up, and a message is returned, acquainting the house with their concurrence, and that the blank has been filled up. Such addresses are presented either by both houses in a body,² or by two peers and four members of the House of Commons,³ and they have been presented also by committees of both houses;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 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 no formal address is prepared, and the resolution for the address is alone presented. They are ordered to be presented by the whole house;⁵ by the lords with white staves or privy coun-

¹ 87 Com. J. 421. 89 Ib. 235.

² 87 Ib. 424.

³ 85 Ib. 652.

⁴ 1 Ib. 877.

⁵ 92 Ib. 492.

cillors ;¹ and, in some peculiar cases, by members specially nominated.²

The subjects upon which addresses are presented are too varied to admit of enumeration. They have comprised every matter of foreign³ or domestic policy;⁴ the administration of justice;⁵ the confidence of Parliament in the ministers of the Crown;⁶ the expression of congratulation or condolence;⁷ 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.⁸

Their subjects.

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 is 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.

Mode of presenting.

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 speaker⁹ advance side by side, followed by the members of the two houses, and are conducted towards the throne by the lord chamberlain. The lord chancellor reads the address, to which her Majesty returns an answer, and both houses retire from the royal presence.

Joint addresses.

¹ 92 Lords' J. 19.

² 67 Com. J. 391.

³ 78 Com. J. 278. 82 Ib. 118. 88 Ib. 471. ⁴ 89 Ib. 235.

⁵ 85 Ib. 472. ⁶ 87 Ib. 325. ⁷ 85 Ib. 591. 92 Ib. 493.

⁸ 12 Lords' J. 72. 81. 88. 8 Com. J. 670. 1 Grey's Debates, 5.

⁹ The speaker is always on the left hand of the chancellor.

Separate addresses.

When addresses are presented separately, by either house, the forms observed are similar to those described, except that addresses of the commons are then read by their speaker. The houses proceed by the same routes to the palace, and are admitted with similar ceremonies. In presenting the address, the mover and seconder are always on the left hand of the speaker.

Dress of peers and members.

It is customary for all the lords, without exception, who attend her Majesty, to be attired in court dresses; but several members of the commons always assert their privilege of freedom of access to the throne, by accompanying the speaker in their ordinary attire.¹

Answers to addresses.

When addresses have been presented by the whole house, the lord chancellor in one house, and the speaker in the other, reports the answer of her Majesty; but when they have been presented by certain members only, the answer is reported by one of those who have had the honour of attending her Majesty, or by one of the royal household.

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,² or other auspicious events;³ or to condole with them on family bereavements.⁴ Certain members are always nominated by the house to attend those illustrious personages with the messages; one of whom afterwards acquaints the house with the answers which were returned.⁵

Communications from the royal family.

Communications are also made to either house by members of the royal family, which are either delivered by members in their places,⁶ or are conveyed to the house by letters addressed to the speaker.⁷

¹ They are not permitted to enter the royal presence with sticks or umbrellas.

² 72 Lords' J. 53. 73 Com. J. 424. 95 Ib. 88.

³ 40 Lords' J. 584. 74 Ib. 6. ⁴ 53 Lords' J. 307. 75 Com. J. 480.

⁵ 53 Lords' J. 369. 72 Ib. 53. 95 Com. J. 95. ⁶ 58 Com. J. 211. 75 Ib. 288.

⁷ 64 Com. J. 86. 68 Ib. 253. 69 Ib. 324. 433.

CHAPTER XVIII.

PROCEEDINGS OF PARLIAMENT IN PASSING PUBLIC BILLS :
THEIR SEVERAL STAGES IN BOTH HOUSES. ROYAL
ASSENT.

It has been explained 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 by agreeing to a series of resolutions, proposed without concert or combination, if 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 a full concurrence of the legislature, and matters were often found in the Statute Rolls that the Parliament had not petitioned for or assented to. These usurpations of legislative power were met with remonstrances in particular instances,² and at length, in the 2 Hen. 5, 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

General nature
of a bill.

Ancient mode
of enacting
laws.

¹ Rot. Parl. *passim*.

² 3 Rot. Parl. 102, 5 Ric. 2, No. 23. 3 Rot. Parl. 141, (6 Ric. 2, No. XXX.) Ruffhead's Statutes, Preface.

they had ever been “as well assenters as petitioners.”¹ 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.”

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 portions 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 in the reign of Henry 6, bills began to be introduced 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 6, and Edward 4, 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 6.

Similarity of
practice in both
houses.

Before the present method of passing bills in Parliament is entered upon, it may be premised, that the practice of the lords and commons is so similar in regard to the several stages of bills, and the proceedings connected with them, that, except where variations are distinctly pointed out, 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 commons to grant supplies,

¹ 4 Rot. Parl. 22, No. X.

² Ruffhead's Statutes, Preface. Cotton's Abridgment.

and to impose and appropriate all charges upon the people, renders it necessary to introduce by far the greater proportion of bills into that house. On the other hand, the lords claim that bills for the restitution of honours and in blood should commence with them. A bill for a general pardon is an exception to the usual mode of passing bills; it begins with the Crown, and is read once only in each house, after which it receives the royal assent in the ordinary form.

General pardon.

Bills are divided into the two classes, of public and private bills; of which the former are introduced directly by members of the house, while the latter are founded upon the petitions of parties interested. As the distinct 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 entangled 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 and private bills.

In the House of Lords, any peer is at liberty to present a bill and to have it laid upon the table; but in the commons, a member must obtain permission from 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 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 laboured exposition of its character and objects; but where the proposed bill is not of an important character, debate should be avoided in this stage, unless it is expected that the motion will be negatived, and

Public bills presented in the lords.

Ordered in the commons.

that no future occasion will arise for discussion. If the motion be agreed to, the bill is ordered to be prepared and brought in by the mover and seconder, to whom other members are occasionally added.¹ 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.²

Preliminaries.

Bills are not always introduced in this manner by members, upon motion; but proceedings preparatory to the bringing in of bills first occupy the attention of the house. Sometimes a resolution is made by the house, and a bill immediately ordered, as in the Bribery and Treating Bill, in 1831;³ at other times, resolutions of the house in a former session are read, and bills ordered thereupon.⁴ It is very common, also, to read parts of speeches from the throne, Queen's messages, Acts of Parliament, entries in the Journal, or other documents in possession of the house, before the motion is made for leave to bring in a bill.⁵ But the most frequent preliminary to the introduction of bills is the report of resolutions from a committee of the whole house. The chairman is sometimes instructed by the committee to move for leave to bring in a bill or bills upon their resolutions, and sometimes the resolutions are simply reported, and after being agreed to by the house, a bill is ordered thereupon.

Bills originating in committee.

Many classes of bills must 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 November 1703, and the 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.”

¹ 91 Com. J. 613, 632, &c.

² 91 Ib. 716.

³ 86 Ib. 821.

⁴ 82 Ib. 442.

⁵ See Gen. Journ. Index, tit. “Bills” (1820-1837), p. 296.

By another standing order of the 29th March 1707, it was resolved,

“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.”¹ Public money.

By a resolution, 18th February 1667,

“If any motion be made in the house for any public aid, or charge upon the people, the consideration and debate thereof ought not presently to be entered upon; but adjourned till such further day as the house shall think fit to appoint; and then it ought to be referred to the committee of the whole house; and their opinions to be reported thereupon, before any resolution or vote of the house do pass therein.”² Charge upon the subject.

The standing order concerning religion is construed as applying to religion itself, and not to the temporalities of the church. Thus, the Roman-catholic Relief Bill, in 1829, was brought in upon a resolution of a committee;³ but 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, and the bills for carrying into effect the recommendations of the ecclesiastical commissioners, in regard to the revenues of the Church of England, have all been introduced upon motion, without any previous resolution of a committee.⁵ Construction of rules; as to religion.

The standing order regarding trade is held to apply not only to trade generally, but to any particular trade, if affected by a bill.⁶ On this account, bills to regulate the sale of beer 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,⁷ and in subsequent sessions was brought in upon resolution from a committee. Yet bills relating to the Trade.

¹ 15 Com. J. 367. 16 Ib. 405. ² 9 Ib. 52. ³ 84 Ib. 116.

⁴ 88 Ib. 35. ⁵ 91 Ib. 17. 93 Ib. 377. 94 Ib. 29, &c.

⁶ Mirror of Parl. 1840, pp. 1108, 1109. ⁷ 95 Com. J. 176.

copyright of books¹ have been suffered to proceed without a previous committee, although they may be regarded as affecting the trade of booksellers. 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.²

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 authorize the application of money to particular purposes; and, in order to accomplish this without any violation of the standing order, the money clause is only inserted in the bill in italics, and a committee of the whole house is appointed to consider of authorizing the advance of money; and on their report being made and agreed to by the house, an instruction is given to the committee on the bill to make provision accordingly. 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.

Tax upon the people.

The house are as strict in proceedings for levying a tax, as they are in granting money, and it is the practice, without any exception, for all bills that directly impose a charge upon the people, to originate in a committee of the whole house; but this rule has not been held to apply to bills authorizing the levy of rates for local purposes, by local officers or bodies representing the rate-payers.³ In 1833, notice was taken that the Church Temporalities Bill (which proposed to levy "an annual tax" instead of first fruits) should have originated in a committee. Before the house decided upon this point, a select committee was appointed to examine precedents, who reported,

¹ 97 Com. J. 83.

² Mirror of Parl. 1840, p. 1110.

³ Metropolis Police Bill, 84 Com. J. 233. Highway Rates Bill, 94 Ib. 363. Poor Relief (Ireland) Bill, 93 Ib. 90. Prisons (Scotland) Bill, 94 Ib. 22.

“That the general spirit of the standing orders and resolutions of the house requires that every proposition to impose a burthen or charge on any class or portion of the people, should receive its first discussion in a committee of the whole house. The only exception from this rule is with regard to tolls, rates, or duties, proposed to be levied on the subject in particular places for any local work; and in such cases it is directed, that no bill be ordered to be brought in till the petition for it has been referred to a committee, and they have examined the matter thereof, and reported the same to the house.”¹ They concluded, by stating it to be their opinion “that (as it is desirable in all cases where money is levied, or a tax imposed on any class or portion of the people, that the greatest possible protection should be afforded to the subject) the taxation proposed by this bill should be sanctioned by a committee of the whole house, previous to its introduction in the shape of a bill.”²

The order for reading the bill a second time was accordingly discharged, and the bill withdrawn.

In preparing bills, care must be taken that they do not contain provisions not authorized by the order of leave, 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. A clause, for instance, relating to the qualification of members, was held to be unauthorized in a bill for regulating the expenses at elections.³ 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.

Unless a bill be founded upon the resolution of a committee of the whole house for a charge upon the people, it may be presented on the same day, and during the same sitting, as that in which it was ordered; but some other votes are generally allowed to be passed before it is

¹ But the rule only applied to private bills, and it is now applicable to all classes of private bills, whether tolls be levied or not.

² Parl. Paper, No. 86 of 1833.

³ 80 *Conn. J.* 329. 82 *Ib.* 325. 339. 84 *Ib.* 261. 92 *Ib.* 254. 411.

offered. A member who is about to present a bill, should take his draft of it to the Public Business 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 11th December 1692, it is desired, "that every member presenting any bill to this house, do go from his place down to the bar of the house, and bring the same up from thence to the table;"¹ and in accordance with this rule, the member appears at the bar, when 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 title aloud; when the bill is said to have been "received by the house." After a bill has been received in either house, a question is put, "That this bill be now read the first time," which is rarely objected to, either in the lords or commons, although it may be opposed like any other question.²

First reading.

Second reading.

The question next put 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.

Reading bills.

It need scarcely be said that the bill is not actually read at length; but it was formerly the practice for the clerk, on the first reading, to read to the house, first, the title and then the bill itself; after which the speaker read the title, and opened to the house the substance of the bill, either from memory, or by reading his breviat, which

¹ 10 Com. J. 740.

² Lords' S. O. No. 23. 17 Com. J. 9. 88 Ib. 614.

was filed to the bill; and sometimes he even read the bill itself.¹ So tedious a practice is rendered unnecessary by the circulation of printed copies of the bill; but it suggests the expediency of preparing a breviate or analysis, to be prefixed to every public bill. A similar practice has been adopted in regard to private bills,² and the greater importance of public measures would seem to point out the propriety of facilitating the examination of their provisions. A practice analogous to this prevailed during the greater part of the 17th century. On the 2d May 1651, it was ordered,

Breviates of bills.

“That no Act ought to be presented to this house without a brief thereof be given to Mr. Speaker; and that Mr. Speaker ought not to open any bill, nor to command the same to be read, unless a brief thereof be first delivered unto him; and that the said order be, from henceforth, duly and exactly observed accordingly.”³ And this had been the practice at that time for many years, for on the 3d March 1606, it was “ordered, on Mr. Speaker’s motion, that every committee, when they proceed to the amendment of any bill committed to them, should also amend the brief annexed, and make it agree with the bill.”⁴

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. This is regarded as the most important stage through which the bill must 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 bill⁵ moves, “That the bill be now read a second time;” and usually takes this opportunity for enlarging upon its merits, unless it has been agreed to defer the discussion of the principle until a later stage of the bill. The opponents of the bill may simply vote against this

Second reading.

¹ Order and Course of Passing Bills in Parliament, 4to, 1641.

² See Book III.

³ 6 Com. J. 570.

⁴ 1 Com. J. 347.

⁵ As the house have 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. The same rule applies to other similar stages.

question, and so defeat the second reading on *that* day;¹ but this course is rarely adopted, because it must still be decided on what other day it shall be read a second time, or whether it shall be read at all. The ordinary practice, therefore, is to move an amendment to the question, by leaving out the word "now," and adding "three months," "six months," or any other term beyond the probable duration of the session. The postponement of a bill, in this manner, is regarded as the most courteous method of dismissing the bill from any further consideration, and is resorted to in every other stage of the proceedings, except on questions for the ingrossment or passing of the bill.²

Bills rejected.

Instances of rejecting bills altogether were formerly not uncommon; but are now comparatively rare: only two cases appear on the Journals of the commons for upwards of half a century;³ but in the lords the practice has been more general.⁴ In more ancient times, bills were treated with even greater ignominy. On the 23d January, in the 5th Elizabeth, a bill was rejected and ordered to be torn;⁵ 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."⁶ There is no restriction in regard to the time at which motions for rejecting bills shall 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 was 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

¹ 88 Com. J. 399.

² Another reason for using this form of amendment is, that the house have already ordered that the bill shall be read a second time, and the amendment only names a more distant day.

³ 37 Com. J. 444. 80 Ib. 425. ⁴ See Gen. Indexes to Lords' J. tit. "Bills."

⁵ 1 Com. J. 63.

⁶ 1 Com. J. 560.

more usually heard, whenever the house have agreed that a public bill is of so peculiar a character as to justify the hearing of parties whose public or private interests are directly affected by it ;¹ notwithstanding the general principle that a public bill is of national interest, and should be canvassed in Parliament upon the grounds of public expediency. But counsel have also been heard at various other stages of bills.²

When a bill has been read a second time, a question is put, that “this bill be committed,” which is rarely opposed,³ and on being 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 committee on a future day, beyond the probable duration of the session. When the order of the day is read in the commons, for the house to resolve itself into a committee on the bill, the speaker puts a question, “That I do now leave the chair,” to which the proper amendment is, to leave out all the words after “that,” in order to add “this house will on this day ‘three months,’ or ‘six months,’ resolve itself into a committee,” &c. 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.” 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.⁴

Committees on bills.

Lords.

Commons.

Proceedings in committee.

The chairman, on taking the chair, puts a question, “That

¹ 88 Com. J. 501. 90 Ib. 587.

² See Com. Gen. Journ. Indexes, tit. “Counsel.”

³ Lords’ S. O. No. 10.

⁴ See *supra*, p. 226.

this bill be read a first time;" which being agreed to, he puts another, viz. that it "be read a second time, paragraph by paragraph." When that also is affirmed, the preamble is ordered to be postponed, and the chairman proceeds to call out each clause in succession, together with the short marginal note, stating the nature of each clause. If no amendment be offered to any part of a clause, he puts the question, "That this clause stand part of the bill," and proceeds to the next; but when an amendment is proposed, he states the line in which the alteration is to be made, and puts the question in the ordinary form. Members who are desirous of offering amendments in committee, should watch carefully the progress of the bill, and propose them at the proper time; for if the committee have passed on to another clause, or even amended a later line in the clause than that proposed to be amended, amendments cannot be made in an earlier part of the bill. When a clause has been amended, the question put from the chair is, "That this clause as amended stand part of the bill."

Amendments,
when to be
offered.

Blanks filled
up.

The blanks are filled up as they occur; and if it be proposed to fill them up with different words, 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, unless the later motion be for a smaller sum, or a longer time; in which cases, it should be put first.¹ This rule, indeed, is more peculiarly applicable to the committees of supply and ways and means; but is generally observed in committees upon bills, and other committees of the whole house.

What amend-
ments admissi-
ble.

Every description of amendment may be made in committee; whole clauses and schedules are added, or omitted, or substituted one for another, provided that, in the commons, they be within the title; and verbal alterations are

¹ 88 Com. J. 617.

made in every part, whether in the preamble, the clauses, or the schedules. But in the commons, the title of the bill may not be amended, as that is reserved for the house, after all the amendments have been made to the bill in its several stages; nor should any amendment be admitted which is in the nature of a previous question.¹ If it be convenient, clauses may be postponed and considered afterwards out of their order, but must not have been previously amended. The committee may also 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.² Instructions are sometimes given by the house to committees on bills, in compliance with which they receive clauses, or make provision in the bills committed to them, which they could not otherwise have considered, as being extraneous to the titles. In compliance with instructions, also, they may make two bills into one, or divide one bill into two or more; or examine witnesses and hear counsel.³ When all the clauses and schedules have been agreed to, the preamble, which had been postponed, is considered, and, if necessary, is amended so as to conform to amendments made in the bill; and the chairman puts the question, "That this be the preamble of the bill," which he reads to the committee.

Instructions.

If the committee cannot go through the whole bill at one sitting in the lords, the chairman leaves the chair, and moves that the house be put into committee on a future day; and in the commons, the committee instruct the chairman to report progress, and ask leave to sit again. When the bill has been thoroughly considered, the chairman puts a question, "That I do report this bill with the amendments to the house;" which being agreed

Report of progress.

Report of the bill.

¹ But see proceedings in committee on Reform Bill. 87 Com. J. 133. 141. 165. 173, questions and amendments concerning Amersham, Helleston, Gateshead and South Shields.

² 89 Com. J. 409. 87 Ib. 80. 86 Ib. 728.

³ See Com. Gen. Journ. Index (1820-1837), p. 603.

to, he leaves the chair, 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." The report itself may either be received then or on a future day. If there be no amendment it is the custom to receive it at once; but if there be amendments, or if objection be made to its being then received, it is more frequently ordered to be received on some other day. In the lords 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."¹

Proceedings on
report.

In the commons, when a report is to be received, the member appears with it at the bar, and on being called upon by the speaker, states that he has a report. If it be without amendments, it is brought up without any question; if with amendments, a question, "That it be brought up," is formally put. After this, another question, "That the report be now read," is supposed to be put; but is, in modern practice, omitted.

When the report is received, there are various courses which may be followed in the further progress of the bill. 1. The report may be read, and, in the commons, a lord's bill, without amendment, may be read a third time, immediately, as it is already ingrossed;² but in the lords, no bill may be read a third time the same day on which it is reported from the committee, unless the standing orders be suspended for that purpose.³ 2. In either house, the report of a bill not ingrossed is read, and being without amendments, the bill is ordered to be ingrossed

¹ Lords' S. O. No. 26. ² 89 Com. J. 123. ³ Lords' S. O. No. 11.

and read a third time on another day. 3. If with amendments, the report is read, and the amendments being read a second time, and agreed to or disagreed to by the house, the bill may be ordered to be ingrossed and read a third time on another day. 4. The report may be read, and ordered to be taken into further consideration on a future day. 5. The report may be read and the bill recommitted to a committee of the whole house, or to a select committee.

At this stage also it is customary to reprint the bill, if several amendments have been made,¹ for no verbal notice 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. Bills reprinted.

When the consideration of the report is deferred, the proceedings on the day for which it is set down, are similar to those on the report, when it is considered and agreed to at once. On either occasion, the house may not only agree or disagree to the amendments of the committee, but may make fresh amendments and add new clauses, whether they be within the title or not;² but the practice of adding clauses is inconvenient, and should be avoided as far as possible. The amendments of the committee are considered first; clauses may then be offered; after which amendments may be made to other parts of the bill. When a member offers a clause on the report, he must move, 1st, "That it be brought up;" 2d, "That it be read a first time;" 3d, "That it be read a second time;" 4th, "That it be made part of the bill." The questions put upon each of these motions may be opposed, and are often negatived. Amendments also may be proposed to clauses offered in this manner, and if agreed to by the house, the last question put by the speaker is, "That this clause, as amended, be made part of the bill." Clauses containing Clauses added,
and amend-
ments made.

¹ 90 Com. J. 337.

² Votes, 1844, p. 203.

rates, penalties, or other blanks, must also pass through a committee before they are added to the bill.

Bills recom-
mitted.

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. On amendments being proposed on the report or further consideration of report, the bill may be recommitted with respect to those amendments only.¹ 3. On clauses being offered, the bill may be recommitted with respect to these clauses.² 4. The bill may be recommitted, and an instruction given to the committee, to make some particular or additional provision.³

Again recom-
mitted.

A bill may be recommitted as often as the house think fit. It is not uncommon for bills to be again recommitted once or twice,⁴ 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.⁵ The proceedings on the report of a recommitted bill are similar to those already explained; the report may be received at once, and the amendments agreed to, or the further consideration of it may be deferred.

Ingrossing.

The form in which a bill must appear in either house, after the report, is that of an ingrossment on parchment. In that form it ultimately receives the royal assent, and becomes the record or roll of the statute. When a bill originates in the lords, it is ingrossed after the report, and is sent to the commons in that form; and when it begins in the commons, the time for ingrossing the bill before it is sent up to the lords, is also after the report. The practice of ingrossing bills is adhered to in order to secure uniformity and permanence in the record; but opinions are divided in regard to the continuance of this mode of writing. On the 13th February 1836, the commons communicated to the lords, at a conference, a resolution, "That it is the

¹ 83 Com. J. 533.

² 92 Ib. 415.

³ 89 Ib. 127.

⁴ 83 Ib. 354. 89 Ib. 286.

⁵ 65 Ib. 384. 396. 420.

69 Ib. 420. 444. 460.

opinion of this house, that it is expedient to discontinue the present mode of ingrossing Acts of Parliament in black letter, and to substitute a plain round-hand instead thereof." To this resolution the lords did not agree, but after referring the matter to a committee, they communicated to the commons several reasons for withholding their concurrence.¹ Amongst other reasons in favour of ingrossment, it was stated that,

"The object is rather to preserve an uniform, durable, and correct record of the Acts of the legislature, which shall be legible at a distant period, with ordinary care, than merely to afford facility for reading the record expeditiously." And that "the mode in which the ink is transferred to, and the characters impressed upon, the parchment by the ingrossing hand, gives a permanence and an uniformity which cannot be obtained by the ordinary mode of writing." "That the adoption of the plain round-hand would afford a greater facility of falsifying an Act of Parliament or other record, by interpolation, or otherwise, than the use of the ingrossing hand." "But as the difficulty of reading the ingrossing hand is principally found in the proper names of places and persons, they think that this part of the difficulty would be removed by directing that the proper names of persons and places should in future be written in round-hand."

In the lords, the ingrossment of all bills is confided to the "clerk of ingrossments;" and in the commons, all bills which have not already been ingrossed in the lords are ingrossed after the report, in the "Ingrossing Office," and examined in the Public Bill Office, the officers of which are immediately responsible for their correctness.²

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 on report, or further consideration of report. Amendments may still be made by the house to any part of the bill; but it is advisable to resort to this practice as rarely as possible, on account of the trouble of amending the ingrossment; and also, because the proper time for offering amendments is in committee, when the speaker is not in the chair. Third reading. Clauses

¹ 91 Com. J. 447.

² No. 413, of 1843, Mr. Ley's Ev. Q. 35.

and schedules may be added at this stage, but they cannot be offered unless they are ingrossed on parchment. The proper time for proposing a clause is after the bill has been read the third time. An ordinary clause, offered at this stage, is read three times; but if it have any blanks, it must be read twice, and committed to a committee of the whole house, and reported; after which it is read a third time, and agreed to be made part of the bill by way of rider.

Time of proposing new clauses.

A caution may here be useful to members, in reference to the manner of proposing clauses, that whether they be offered on the report, the further consideration of report, or on the third reading, they should be offered before any amendments are made to the bill. This rule is observed, because the addition of a new clause may render it necessary to introduce amendments in other parts of the bill; and all the clauses should, therefore, be under consideration before amendments are admitted.

Bill passed.

Occasionally, a bill is read a third time, and "further proceedings thereon" are adjourned to a future day; but the general practice is to follow up the third reading immediately 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; but it is not usual to divide upon it.¹

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 is not amended during the progress of the bill, unless the house agree to divide one bill into two, or combine two into one; and 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 the title conformable with amendments which may have

¹ 80 Com. J. 617. 89 Ib. 497.

been made to the bill since its first introduction. It may be as well to recal to mind in this place, that, by a standing order of the commons, 17th November 1797, it is required,

“That the precise duration of every new temporary law should be expressed in the title of the bill, and also in a distinct clause at the end of the bill, and nowhere else.”¹

The next step is to communicate the bill to the other house. The lords usually send down their bills to the commons by two masters in chancery; but if they concern the Crown or royal family, they should be sent by two of the judges.² This cannot always be done, as the judges may be on circuit, or otherwise unable to attend; in which case one judge and a master in chancery, or two masters in chancery only are sent.³ It happens, occasionally, that one master in chancery only is present, or that none are in attendance; and then the lords send down the bills that are waiting by one master in chancery, and the clerk assistant of the Parliaments, or by the clerk assistant and additional clerk assistant. Whenever this variation from the ordinary form of message is resorted to by the lords, their lordships direct their messengers to inform the House of Commons that, from the absence of their usual messengers (and sometimes, also, in consideration of the late period of the session), they had been induced to send the message in this unusual way. The commons acquiesce in the reasons assigned, “trusting that the same will not be drawn into precedent for the future.”⁴ 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, the lords send a message “to acquaint them, that the lords have agreed to the said bill without any amendment;” or, “that the lords have agreed to the same with some amendments, to which their lordships desire their concurrence.”⁵

Communicated
from lords to
commons.

¹ 53 Com. J. 84.

² 82 Ib. 370.

³ 86 Ib. 713. 69 Ib. 516.

⁴ 88 Ib. 727. See also *supra*, p. 250.

⁵ 74 Lords' J. 382.

Bills sent by
mistake.

If a bill or clause be carried to the other house by mistake, a message is sent to have the bill returned, or the clause expunged.¹

From commons
to lords.

The commons send up bills to the lords by a member (generally the chairman of the committee of ways and means, or the member who has had charge of the bill), who, as in other messages, is accompanied to the bar of the House of Lords by not less than seven others. It is a rule with the lords not to receive a message unless eight members attend with it; and when a bill is popular, it is carried up by a considerable number.² The member who has charge of the bill delivers it to the lord speaker of the House of Lords, who comes to the bar to receive it. The form of message, *mutatis mutandis*, is similar to that used by the House of Lords.

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 forthwith 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

¹ 75 Com. J. 447. 78 Ib. 317. 80 Ib. 512. 91 Ib. 639. 758. 92 Ib. 572. 609.

² 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 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 exceptions 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.

which the other house agrees.¹ 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. But it is a rule, that neither house may, at this time, leave out or otherwise amend anything which they have already passed themselves; unless such amendment be immediately consequent upon amendments of the other house, which have been agreed to, and absolutely necessary for carrying them into effect. These several agreements and amendments are communicated by one house to the other with appropriate messages. Where the privileges of the commons seem to be affected by an amendment, it is, nevertheless, agreed to, in some cases, with a special entry in the Journal of the cause of such agreement; but the more usual course is to disagree to an amendment of that character.²

Consequential amendments.

When it is determined to disagree to amendments made by the other house, one of three courses may be adopted: 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 conference may be desired with the other house. The two first modes of proceeding are only resorted to when the ultimate agreement of the two houses is hopeless; the latter is preferred whenever there is a reasonable prospect of mutual agreement and compromise. 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

When amendments disagreed to.

Conferences.

¹ 90 Com. J. 575.

² See Com. Gen. J. Index (1820-1837), p. 289. ³ *Supra*, p. 254, &c.

⁴ All the minute details of practice may be traced by referring to the head "Conference," in the three last Commons' General Journal Indexes; but more particularly by following the proceedings upon the 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.

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 conference is desired by the house which disagrees to the amendment, to acquaint the other with the reasons for such disagreement; in order, to use the words of Hatsell,

“That after considering those reasons, the house may be induced, either not to insist upon their amendments, or may, in their turn, assign such arguments for having made them, as may prevail upon the other house to agree to them. If the house which amend the bill are not satisfied and convinced by the reasons urged for disagreeing to the amendments, but persevere in insisting upon their amendments, the form is to desire another conference; at which, in their turn, they state their arguments in favour of the amendments, and the reasons why they cannot depart from them; and if after such second conference the other house resolve to insist upon disagreeing to the amendments, they ought then to demand a ‘free conference,’ at which the arguments on both sides may be more amply and freely discussed. If this measure should prove ineffectual, and if, after several free conferences, neither house can be induced to depart from the point they originally insisted upon, nothing further can be done, and the bill must be lost.

Free conference.

An interesting occasion, on which all these proceedings were successively adopted, occurred not long since; a free conference had not been held since 1702, until a contest arose in 1836 upon amendments made by the lords to a bill for amending the Act for regulating Municipal Corporations.

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.”¹ 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

¹ 1 Com J. 114.

reasons and amendments, to the house with whom the conference was desired.

The official record of the assent of one house to bills passed, or amendments made by the other, is by indorsement of the ingrossed bill in old Norman French. Thus when a bill is passed by the commons, the clerk of the house¹ 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 assistant of the Parliaments, "*A cette bille avesque des amendemens les seigneurs sont assentus.*" When it is sent back with these amendments agreed to, the clerk of the House of Commons writes, "*A ces amendemens les communes sont assentus.*"

Indorsements
of bills.

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:"² and from that sanction they cannot legally be withheld.³ For this purpose they remain in the custody of the clerk of the enrolments, in the House of Lords, except money bills, which are returned to the commons before the royal assent is given; and when several have accumulated there, 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 enrolments then prepares two copies of the titles of all the bills, each title being upon a separate piece of paper. One of these copies is for the clerk of the Crown to insert in the commission, and the other for her Majesty's inspection, before she signs the commission. When the Queen comes in person to give her royal assent, the clerk assistant 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.⁴

Royal assent.

¹ In his absence the clerk assistant is authorized to indorse bills.

² Jurisd. of Lords, c. 2. ³ See 2 Hats. 339. 13 Lords' J. 756.

⁴ Mr. Birch's Ev. No. 413, of 1843.

By commission.

Origin of giving
royal assent 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 assent appears to have been given by commission, was in the 33d of Henry 8; although proceedings very similar had occurred in the 23d 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 com-
mission.

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. Towards the latter end of the reign of George 4 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

¹ 33 Hen. 8, c. 21. Stat. of the Realm, vol. i. p. lxxiii.

² 1 Lords’ J. 198.

³ Stat. of the Realm, vol. i. p. lxxiv.

his Majesty's command given by word of mouth, his Majesty's royal signature, by means of a stamp to be prepared for that purpose;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

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 woosack 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. A bill of supply is carried up and presented by the speaker, and receives the royal assent before all other bills. The assent is pronounced in the words, "*La reyne remercie ses bons sujets, 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 désirée;*" upon a petition demanding a right, whether public or private, "*Soit droit fait comme il est désirée.*" In an act of grace or pardon which has the royal assent before it is agreed to by the two houses, the clerk says, "*Les prelates, seigneurs, et communes, en ce present parlement assemblées, au nom de tous vos autres sujets, remercient tres humblement vostre majestè, et prient a Dieu vous donner en santé bonne vie et longue.*" The form of words used to express a denial of the royal assent would be "*La reyne s'avisera.*" The necessity of refusing the royal assent is removed by the strict observance of the constitutional principle, that the

Form of royal assent by commission.

Royal assent refused.

¹ 11 Geo. 4, c. 23.

² 62 Lords' J. 732.

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.

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 used in Parliament.

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 the bills for settling the civil lists, have generally been assented to by the Queen in person, immediately after they have passed both houses.¹ When her Majesty gives her royal assent to bills in person, the clerk of the Crown reads the titles, and the clerk of the Parliaments makes an obeisance to the throne, and then signifies her Majesty's assent in the manner already described. A gentle inclination, indicative of assent, is given

¹ See Civil List Bills. 75 Com. J. 258. 86 Ib. 517. On the 2d 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 archbishop's bench and the bishops' door, and after the royal assent was pronounced, her majesty stood up, and made three curtesies, one to the king, one to the lords, and one to the commons.—63 Lords' J. 885, and Index to that volume, p. 1157.

by her Majesty, who has, however, already given her commands to the clerk assistant, as shown above.¹

When Acts are thus passed, the original ingrossment rolls are preserved in the House of Lords, and all public and local and personal Acts, and nearly all private Acts, are printed by the Queen's printer, and printed copies are referred to as evidence in courts of law. The original rolls may also be seen, when necessary, and copies taken, on the payment of certain fees.

Ingrossment rolls.

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 all the proceedings subsequent to that which was informal; 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.

Forms not binding in the progress of bills.

In the ordinary progress of a bill, a day or days are allowed to intervene between each stage subsequent to the first reading; yet when any pressing emergency arises, bills are frequently passed through all the stages in the same day, and even by both houses.² This unusual expedition is commonly called "a suspension of the standing orders," and in the lords is at variance with a distinct order, which prohibits the passing of more than one stage in a day;³ but there are no orders to be found on the Journals of the commons which forbid the passing of bills in this manner; and it is nothing more than an occasional departure

Bills passed with unusual expedition.

¹ See p. 291.

² 58 Com. J. 645, 646.

³ Lords' S. O. No. 26.

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 a month.

Informalities
in the agree-
ment 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, serious doubts naturally arise, concerning the effect of this omission; since the assent of the Queen, lords, and commons is essential to the validity of an Act. 1. Will the royal assent cure all prior irregularities, in the same way as the passing of a bill in the lords would preclude inquiry as to informalities in any previous

stage? 2. Is the indorsement on the bill, recording the assent of Queen, lords, and commons, conclusive evidence of that fact? or, 3. May the Journals of either house be permitted to contradict it?

The first case in which a difficulty arose, was in the 33d Henry 6. In the session commencing 29th April 1550, the commons had passed a bill requiring John Pylkington to appear, on a charge of rape, "by the feast of 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 1550; 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 Book; and the evidence respecting the dates was too imperfect to justify more than hypothetical opinions. Fortescue 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."

Pylkington's
case, 33 Hen. 6.

¹ Year Books, 33 Hen. 6. Parl. Rep. No. 413, of 1843.

Factories Bill.

The second case of this kind occurred in 1829, when "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, 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 Act¹ 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.

The third and most recent case arose in 1843, when 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.²

Imperfect indorsement.

It is a curious fact, in connexion 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 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

¹ 10 Geo. 4, c. 63.² 6 & 7 Vict. c. lxxvi. (local and personal).

received; as, on the 8th March, 23 Eliz. 1580, 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.¹

Having noticed the effect of informalities in the consent of both houses to a bill, the last point that requires observation is the consequence of a defect in the legal form of commission or royal assent, of which there is a singular precedent. On the 27th January 1546, when King Henry 8 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 6. 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,²

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 commissyon was not signed with his hignes hande, but with his stampe putt thereunto in the nether parte of the writing of the said commissyon, and not in the upper part of the said commissyon, 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 commissyon was clerelie voyde in the

¹ D'Ewes, 303. Order and Course of Passing Bills in Parliament, 4to. 1641.

² 1 Mary, No. 27; Introduction to Statutes of Rec. Com. p. 75.

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 coñons, and not by the saide late king."

The same Act declared,

"That the lawe of this realme is and allwaies hath byn, that the royall assent or consent of the king or kings of this realme to any Acte of Parlyament ought to be given in his own royall presence, being personallie in the higher howse of Parlyament, or by his letters patents under his great seale, assigned with his haunde, and declared and notified in his absence to the lords spiritual and temporal, and the coñons, assembled together in the higher house, according to a statute made in the 33d yere of the reigne of the saide late King Henry VIII."

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 last three chapters having dwelt upon the various communications between the several branches of the legislature, lead to the consideration of petitions; by which the people are brought into communication with the Parliament. The right of petitioning the Crown and Parliament for redress of grievances is acknowledged as a fundamental principle of the constitution;¹ and has been uninterruptedly exercised from very early times.

Ancient mode of petitioning.

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 great councils of the realm, for the redress of those grievances which were beyond the jurisdiction of the common law. There

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.

are petitions in the Tower of the date of Edward 1, 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. 1
to Hen. 4.

Assuming that the separation of the lords and commons had been effected in the reign of Henry 3,¹ these petitions appear to have been addressed to the lords alone; but, taking the later period, of the 17th Edward 3, for the separation of the two houses, they must have been addressed to the whole body then constituting the High Court of Parliament. Be this as it may, it is certain that, from the reign of Edward 1, until the last year of the reign of Richard 2,² no petitions have been found which were addressed exclusively to the commons.

During this period the petitions were, with few exceptions, for the redress of private wrongs; and the mode of receiving and trying them was judicial rather than legislative. Receivers 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 judges on circuit; and if the common law offered no redress, their case was submitted to the High Court of Parliament. 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

Receivers and
triers of peti-
tions.

Receivers and
triers still ap-
pointed.

¹ See *supra*, p. 20.

² 3 Rot. Parl. 448.

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.¹

Reign of Hen.4.

In the reign of Henry 4, petitions began to be addressed, in considerable numbers, to the House of Commons. The courts of equity had, in the meantime, 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; but the functions of Parliament, in passing private bills, have always retained the mixed judicial and legislative character of ancient times.²

Petitions to the commons.

Origin of private bills.

Change of system.

Proceeding to later times, petitions continued to be received in the lords by triers and receivers of petitions, or by committees whose office was similar; 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;³ but since the Commonwealth, it appears to have been the practice of both houses to consider petitions in the first instance,⁴ and only to refer the examination of them, in particular cases, to committees.

¹ 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.

² 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. Com. Parl. Report, 1833 ($\frac{2}{639}$); especially the learned evidence of Sir F. Palgrave.

³ 1 Com. J. 582. 2 Ib. 49. 61. 3 Ib. 649. 4 Ib. 228. 7 Ib. 287.

⁴ 11 Lords' J. 9. 57. 184. 14 Ib. 23. 12 Com. J. 83.

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; viz.

1. The form of petitions; 2. The character and substance of petitions; 3. Their presentation to Parliament.

1. Petitions to the House of Lords should be super-
scribed, "To the right honourable the lords spiritual and temporal in Parliament assembled;" 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;" to which are appended the signatures or marks of the parties.

Form of petitions.

Without a prayer, a document can hardly be taken as a petition; and a paper, assuming the style of a remonstrance, will not be received. The rule upon this subject has thus been laid down, in the commons:—

Remonstrances.

On the 10th August 1843, a member offered a remonstrance. 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;"¹ from which it is obvious that a prayer is essential to constitute a petition.

The petition should be written upon parchment or paper, for a printed or lithographed petition will not be received;²

Signatures, &c.

¹ 65 Hans. Deb. N. S. p. 1225. 1227. See also 67 Com. J. 398; 74 Ib. 391; and *infra*, p. 307.

² 72 Com. J. 128. 156.

and at least one signature should be upon the same sheet or skin upon which the petition is written.¹ It must be in the English language,² or accompanied with a translation which the member who presents it states to be correct;³ it must be free from interlineations or erasures;⁴ it must be signed;⁵ it must have original signatures or marks, and not copies from the original,⁶ nor signatures of agents on behalf of others;⁷ and it must not have letters,⁸ nor affidavits,⁹ or other documents annexed. 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 on the Journals, because the signature of one party for others cannot be recognized.¹⁰

It may be a useful caution to state that any forgery or fraud in the preparation of petitions, or in the signatures attached, will be punished as a breach of privilege. By a resolution of the House of Commons, 2d 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.”¹¹

And there have been frequent instances in which such irregularities have been discovered and punished.¹²

2. The language of a petition should be respectful and temperate, and free from offensive imputations upon the character or conduct of Parliament,¹³ or the courts of justice,¹⁴ or other tribunal¹⁵ or constituted authority.¹⁶ It may not allude to debates in either house of Parliament,¹⁷

¹ 72 Com. J. 128. 144. 77 Ib. 127.

² 76 Ib. 173.

³ 76 Ib. 189.

⁴ 82 Ib. 262. 86 Ib. 748.

⁵ 85 Ib. 541. 91 Ib. 325.

⁶ 91 Ib. 576.

⁷ 82 Ib. 118.

⁸ 81 Ib. 82.

⁹ 82 Ib. 41.

¹⁰ 10 Ib. 285.

¹¹ 34 Ib. 800.

¹² 80 Ib. 445.

82 Ib. 561. 582.

84 Ib. 187.

89 Ib. 92.

¹³ 82 Ib. 589.

84 Ib. 275.

¹⁴ 76 Ib. 105.

¹⁵ 76 Ib. 92.

¹⁶ 78 Ib. 431.

91 Ib. 698.

¹⁷ 77 Ib. 150.

82 Ib. 604.

91 Ib. 616.

nor to intended motions.¹ A petition to the commons, praying directly or indirectly for an advance of public money;² for compounding any debts due to the Crown;³ or for remission of duties payable by any person,⁴ will only be received if recommended by the Crown. Petitions distinctly praying for compensation for losses are viewed under this category and are constantly refused;⁵ but in many instances petitions have been received which prayed that provision should be made for the compensation of petitioners, for losses contingent upon the passing of bills pending in Parliament.⁶ Nor will the commons receive petitions complaining of elections, or returns which are in the nature of election petitions under the Act, but in respect to which the proper forms have not been observed.⁷

3. All petitions must be presented by a member of the house to which they are addressed; except petitions from the Corporation of London, which are presented to the House of Commons by the sheriffs, at the bar, or by one sheriff only, if the other be a member of the house or unavoidably absent:⁸ or petitions from the Corporation of Dublin, which may be presented in the same manner by their lord mayor.⁹ 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.¹⁰

In both houses it is the duty of members to read petitions which are sent to them, before they are offered to the house, and to see that no flagrant violation of any of these rules is apparent on the face of them. Up to this point the practice of the lords and commons is similar; but the forms observed in presenting petitions differ so

Presentation of petitions.

Transmission by post.

To be read by members.

¹ 85 Com. J. 107.

² 90 Ib. 42. 487. 507. 92 Ib. 74.

³ 75 Ib. 167. See also p. 263, 325, 326. ⁴ 81 Ib. 353.

⁵ 87 Ib. 571. 90 Ib. 487, &c. &c. ⁶ 90 Ib. 136. 92 Ib. 469.

⁷ 82 Ib. 317. 436. 86 Ib. 195. 786. See also Chapter XXII.

⁸ 92 Ib. 120. 90 Ib. 506. 75 Ib. 213. ⁹ 68 Ib. 209. 212. 219.

¹⁰ 3 & 4 Vict. c. 96, s. 41.

Lords.

much, that it will be necessary to describe them separately. It was ordered by the lords, 30th May 1685, "That any lord who presents a petition, shall open it before it be read."¹ 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. 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.² If no debate, therefore, arises on the presentation of a petition, there remains no public record of its substance, nor statement of the parties by whom it was signed. The Journals are not published for many months after each session, and are accessible to a very small number of persons. But few petitions are addressed to the House of Lords; and while, on the one hand, no inconvenience arises from the license of debate on presenting them, so on the other hand, the necessity for any general system of classification and publicity is little felt.

Petitions to the commons.

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. Until very recently, the practice of presenting petitions had been generally similar to that of the House of Lords; but the number had so much increased,³ and the business of the 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

¹ 14 Lords' J. 22.² 74 Ib. 236.³ In the five years ending 1831, 24,492 public petitions were presented to the House of Commons; and in the five years ending 1843, 94,292.

petitions and of legislation, to the time of the house,¹ the following standing orders have been adopted :—

1. "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."

Petitions to be opened by members.

2. "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."

May be read by the clerk.

3. "That if such petition relate to any matter or subject which the member presenting it is desirous of bringing before the house, and if such member shall state it to be his intention to make a motion thereupon, such member may give notice that he will make a motion on some subsequent day, 'that the petition be printed with the Votes.'"

In some cases printed with the Votes.

4. "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."

Urgent cases discussed.

5. "That all other 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."

All petitions referred to a committee for classification.

6. "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."²

May oppose taxes for the service of the year.

An attentive perusal of these orders will show that the restriction on debate does not extend to any urgent cases; and it must always be borne in mind that the discussion of a petition is not, in itself, introductory to legislative measures; but 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.

Debates upon petitions.

¹ For the two sessions, 1833 and 1834, morning sittings from 12 till 3 were devoted to petitions and private bills, but they were not found to be effectual.

² 97 Com. J. 791. And see also 88 Ib. 10. 95. 94 Ib. 16.

Printing petitions.

It has been seen that, in certain cases, petitions may be printed and distributed with the Votes; but the general practice is, for all public petitions to be referred to the "Committee on Public Petitions," by whom they are classified, analysed, and, when necessary, printed at length.¹ 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 of each 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, when it is accessible to the public at the cheapest rate of purchase.

Time and mode of presenting petitions.

A few words may now be offered 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;"² and it is always printed with the petition, in the reports of the committee. The time for receiving petitions is at the conclusion of the private business, and members who are desirous of obtaining precedence in presenting the petitions entrusted to them, should attend at the table of the house at half-past three; or, when the house meets at an unusual hour, at a quarter of an hour before the time appointed for Mr. Speaker taking the chair.³ The members then present ballot for precedence, and their names are entered on a list, and are afterwards called by the speaker in their order. When petitions relate to any motion or bill set down for consideration, a member may present them before the debate commences, at any time during the sitting of the house. In the case of a bill, they should be offered immediately after the order of the day has been read.

Ballot.

¹ 88 Com. J. 95.

² *Ib.* 190.

³ 91 *Ib.* 26.

CHAPTER XX.

ACCOUNTS, PAPERS, AND RECORDS PRESENTED TO PARLIAMENT: PRINTING AND DISTRIBUTION OF THEM: ARRANGEMENT AND STATISTICAL VALUE OF PARLIAMENTARY RETURNS.

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. The ordinary accounts 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.

Returns by order and by address.

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 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, 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 Customs, the Excise, the Stamps and Taxes, the Post-office, the Board of Trade, or the Trea-

sury, 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; while addresses must be presented for treaties with foreign powers, for despatches to and from the governors of colonies, and for returns connected with the civil government, and the administration of justice.

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 read, and certain persons who had not made the return required, have been ordered to make the returns to the house forthwith.¹

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.² 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 presented instead.³

Returns to be made forthwith.

If parties neglect to make returns in reasonable time, they are ordered to make them forthwith; and if they continue to withhold them, they are ordered to attend the house, and censured or punished according to the circumstances of the case.

Effect of a prorogation.

When Parliament is prorogued before a return is presented, the most common 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

¹ 90 Com. J. 413. 650.

² 92 Ib. 580.

³ Ib. 365.

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;¹ and orders are occasionally 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;"² and orders of a former session have been read, and the papers ordered to be laid before the house.³ On one occasion, the order for an address made by a former Parliament was 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.⁴

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.

Papers presented by command, and by Act.

When accounts and papers are presented, they are ordered to lie upon the table; and, when necessary, are printed or referred to committees, or abstracts are ordered to be made and printed. 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 not the practice for the house to order any paper to be printed, until it has been examined by them. 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.

Papers presented.

Printing committee in the commons.

¹ 98 Com. J. 428.

² 78 Ib. 472. 80 Ib. 631.

³ 78 Ib. 72.

⁴ 90 Ib. 413.

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. The papers of past sessions are deposited in the custody of the clerk of the Journals, and those of the current session are placed in the library, for the convenience of members, and returned, at the end of the session, to the clerk of the Journals.

Distribution of
papers.
Lords.

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. 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.

Commons.

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

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.² 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 Vote-office, and in the office for the sale of parliamentary papers in the House of Commons.

Transmission
by post.

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.³ Each paper is distinguished by a sessional number at the foot of the page, and by the date at which the order for printing is made, except in cases where papers are presented by command of her Majesty, in a printed form.

Arrangement of
parliamentary
papers.

The collected papers of the two houses contain an extraordinary amount of information in all departments

Their statistical
character.

¹ See Reports of Printed Papers Committee, 1835 (61. 392).

² 3 & 4 Viet. c. 96.

³ There is a General Index to the Lords' Papers from 1801 to 1839; and to the Commons' Papers there is one from 1801 to 1832 inclusive; and another from 1832 to 1838.

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 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 only to Great Britain; 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 10 years; and, in the commons, other parliamentary papers have recently 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 are 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 cannot fail to be attended with benefit. The committee suggested:

1. "That every member be recommended, before he gives notice 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."

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.

Orders for returns.

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, is often forwarded to a great number of persons in all parts of the country. Each person is 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.

Blank forms.

¹ Parl. Paper, 1841 (181).

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
parliamentary
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 tenants-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

¹ See *supra*, p. 14.

² 1 *Fœdera*, 1. (Record Comm. ed.)

by military service¹ 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; the 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

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. 16.

bailiffs, led to the principle of representation, as was shown in the first chapter of this work,¹ and had an important influence upon the revenue of future kings.

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 much 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 1, 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; but the lords spiritual and the lords temporal voted separate subsidies for themselves; and from the reign of Edward 1, the clergy, as a body, granted subsidies in convocation, until the surrender of their right in the reign of Charles 2.²

¹ *Supra*, p. 15.

² In 1295 Edward 1, being in great need of money, summoned deputies from the inferior clergy for the first time, to vote him subsidies from their own body. The clergy, however, would not obey the king's writ of summons, lest they should appear to acknowledge the temporal power; and, in order to overcome this objection, the king issued his writ to the Archbishop of Canterbury, who, as their spiritual superior, summoned the clergy to meet in convocation. From this time the clergy continued to vote subsidies in convocation, until they voluntarily surrendered their right to the House of Commons in the reign of Charles 2, in return for the remission of two subsidies already granted, and for the right of voting at elections.

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 4, 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

Commons' right to originate grants.

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 and since that time the revenue of the Crown has been entirely dependent upon annual grants for specific public services.

Taxes by prerogative.

In modern times, her Majesty's speech at the commencement of each session recognizes 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.

Recognition of the exclusive right of the commons.

But a grant from the commons is not effectual, in law, without the final assent of the Queen and of the House of Lords; although it is the practice to allow the issue of public money, the general application of which has been sanctioned by Parliament, 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

Legal effect of grants.

¹ 3 Rot. Parl. 611.

² Bill of Rights, Art 4.

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, clauses are inserted in the Acts passed at an earlier period of the session, for the application of money out of the Consolidated Fund, and for raising money by exchequer bills, for the service of the current year; which authorize the Treasury "to issue and apply, from time to time, all such sums of money as shall be raised by exchequer bills, to such services as shall then have been voted by the commons in this present session of Parliament."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

Exclusion of the lords from altering supply bills.

The legal right of the commons to originate grants cannot be more distinctly recognized than by these various

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.

² See 6 Vict. c. 5, s. 7, &c.

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.

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 resolving, *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 3d 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 difference can well arise. The lords never attempt to make any but verbal alterations, in which the sense or intention is not affected; and even in regard to these, the commons make a special entry in their Journal, and record the character and object of the amendments, and their reasons for agreeing to them.³

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 in any point connected with the amount of the rate or charge; its duration, its

Rates and charges not to be altered by the lords.

¹ 9 Com. J. 235.

² Ib. 509.

³ 75 Ib. 251. 471. 81 Ib. 388. 92 Ib. 659.

mode of levy, application, or management; or the limits within which it is proposed to be levied. But all bills of this class must originate in the commons; as they will not agree to any provisions which impose a charge upon the people, if sent down from the lords, but will order the bills containing them to be laid aside. 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, or lay the bills aside at once.

Lords' amend-
ments, when
agreed to.

When the amendments of the lords, though not strictly regular, do not appear to infringe the privileges of the commons, it is 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;"¹ 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;"² that "they were for the purpose of rectifying clerical errors;"³ that "they were in furtherance of the intention of the House of Commons;"⁴ that "they were rendered necessary by several Acts recently passed;"⁵ or, that "they were in furtherance of the practice of Parliament."⁶

Pecuniary pe-
nalties.

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 imposing pecuniary penalties, or of varying the mode of suing for them, or of applying them when recovered; though such provisions might give effect to the general enactments of a bill. A too strict enforcement of this rule was found to be attended with unnecessary inconvenience; and, in 1831, the commons judiciously relaxed it by the following resolution:

¹ 80 Com. J. 579.

² Ib. 631.

³ 75 Ib. 251. 79 Ib. 524. 86 Ib. 684.

⁴ 92 Ib. 518.

⁵ 92 Ib. 659.

⁶ 90 Ib. 375. 91 Ib. 823.

“ That (if) in any bill which having passed the House of Lords, shall be sent down to this house for their concurrence, or in any bill which having passed this house shall be returned by the lords with amendments, it shall appear that any pecuniary penalty or forfeiture is thereby imposed, varied, or taken away, the speaker shall, before the second reading of any such bill or amendments, report to the house his opinion whether the object thereof be to impose, vary, or take away any pecuniary charge or burthen on the subject, or whether the same relates only to the punishment or the prevention of offences; and the house shall thereupon determine whether it may be expedient, in such particular case, to insist upon the exercise of their privilege to originate all such provisions respecting pecuniary penalties or forfeitures.”¹

In compliance with this rule, the speaker has called attention to clauses or amendments coming from the lords, with pecuniary penalties, and stated his opinion that they came within the intention of that resolution of the house; upon which they have been agreed to by the house without further difficulty.²

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 be rejected by the lords; but which, being joined to a bill that their lordships have no right to amend, must either be suffered to pass unnoticed, or cause the rejection of a measure highly necessary for the public service. Such a proceeding is as great an infringement of the privileges of the lords, as the interference of their lordships in matters of supply is of the privileges of the commons, and has been resisted by protest, by conference, and by the rejection of the bills.³

Tacks to bills
of supply.

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

¹ 86 Com. J. 477.

² 89 Ib. 233. 90 Ib. 383. 438.

³ 16 Lords' J. 369. 13 Com. J. 320.

⁴ 17 Lords' J. 185. Lords' S. O. No. 25.

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 current year, and the clause was not irrelevant to the other enactments of the bill.¹

Constitutional
principle of
supply.

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 the constitutional principle by which the 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, or 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 and its constitutional advisers.

¹ 46 Lords' J. 342.

The principle of waiting for the suggestion and authority of the Crown for the voting of public money is extended further than to the annual grants. Thus, by a standing order, 11th December 1706, it was declared, "That this house will receive no petition for any sum of money relating to public service, but what is recommended from the Crown."¹ And this rule is extended, by the uniform practice of the house, to all direct motions for grants, and to any motion which indirectly involves the expenditure of public money.

Recommendation of the Crown.

So strictly is this principle enforced, that the house will not even receive a report from a select committee, suggesting an advance of money, without being recommended by the Crown.

Reports 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 Crown":² 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.

On the same principle of discouraging solicitations for money, and moderating the liberality of Parliament, there is a standing order of the house,

Petitions for compounding Crown debts.

"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."³

¹ 15 Com. J. 211.

² 92 Ib. 478.

³ 18 Ib. 23.

Motions for
grants.

In addition to the necessity of a recommendation from the Crown, prior to a vote of money, the house have interposed another obstacle to hasty and inconsiderate votes, which involve any public expenditure.

On the 18th February 1667 it was resolved, "That if any motion be made in the house for any public aid or charge upon the people, the consideration and debate thereof ought not presently to be entered upon, but adjourned till such further day as the house shall think fit to appoint; and then it ought to be referred to the committee of the whole house, and their opinions to be reported thereupon, before any resolution or vote of the house do pass therein."¹

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."²

This order was renewed 14th April 1707, 7th February 1708, and 29th November 1710, and is constantly observed in the proceedings of the house in matters of supply.

In compliance with all these rules for receiving recommendations from the Crown for the grant of money; for deferring the consideration of motions for supply 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.

Supply
granted.

Directly the house have agreed to the address in answer to the Queen's speech, they order the speech to be taken into consideration on another day. When that day arrives, they proceed to take the speech into consideration, and it is again read by Mr. Speaker. A motion is then made

¹ 9 Com. J. 52.

² 15 Ib. 367.

that a supply be granted to her Majesty, and the house resolve that, on a future day, they will resolve themselves into a committee, to consider of that motion. On the day appointed, the committee sit, the royal speech is referred to them, and they agree to a resolution, "that a supply be granted to her Majesty"; which, being afterwards reported, is agreed to by the house, *nemine contradicente*.

The general question in favour of a supply being thus determined, the house appoint another day, on which they will resolve themselves into a committee "to consider of the supply granted to her Majesty," or, as it is commonly called, "the committee of supply." 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 those estimates to be laid before them, and to address her Majesty to give directions to the proper officers for that purpose.

Committee of supply.

In order that the house may be informed, as early as possible, of the expenditure for which they will have to provide, the following resolution was agreed to, 19th February 1821, and has ever since been complied with:—

Estimates, when presented.

"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."¹

The estimates for civil services are usually presented somewhat later in the session.

Before the proceedings of the committee of supply are entered upon, it should be understood that about three-fifths of the whole annual expenditure are payments out of the consolidated fund, secured by various Acts of Parliament. For these the commons had of course provided, in

Annual grants described.

¹ 76 Com. J. 87.

the first instance: but as permanent statutes now authorize the application of the public income to the discharge of its legal liabilities, such payments do not require the annual sanction of Parliament. But for the remaining two-fifths of the expenditure the commons provide, annually, by specific grants, which authorize 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 accounts which are necessary to guide the committee are referred, and the member of the Administration representing the department for which the supplies are required, first explains to the committee such matters as may satisfy them of the correctness and propriety of the estimates, 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. If any difference should arise in his election, the speaker resumes the chair, and it is determined by the house what member shall take the chair of the committee, in the manner already explained in reference to other committees of the whole house.¹ This official chairman also presides over the committee of ways and means, and other committees of the whole house; and executes various duties in connexion with private bills, which will be described in the proper place.²

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

¹ See p. 244.

² See Book III., Chapter XXVI.

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."

As the committees of supply and of 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 explain at once their distinctive duties. The committee of supply consider what specific grants of money shall be voted as supplies demanded by the Crown, for the service of the current year; as 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 determine in what manner the necessary funds shall be raised to meet the grants which are voted by the committee of supply, and which are required for the public service. The former committee controls the public expenditure; the latter provides the public income: the one authorizes the payment of money; the other sanctions the imposition of taxes and the application of public revenues not otherwise applicable to the service of the year.

Their separate duties may be further explained by enumerating more particularly the matters considered by each. The committee of supply vote every sum required for the public service; for the army, the navy, the ordnance, and the several civil departments; but the powers of this committee will not be understood, unless the fact already explained be constantly borne in mind, that in addition to these particular services, which are voted in detail, there

Functions of these committees distinguished.

Functions of the committee of supply.

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 other public officers. These are annual charges upon the revenue, and the appropriation of the respective sums having been permanently authorized by statutes, is independent of annual grants, and is altogether beyond the control of the committee of supply.

The treasury are already able to apply the consolidated fund to these statutable charges; but they cannot apply any portion of it to meet the annual supplies without distinct authority from Parliament. For this purpose the committee of ways and means vote 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 the treasury receive authority to issue the necessary amounts from the consolidated fund, for the service of the year.

The financial arrangements of this country require considerable sums of money to be raised by exchequer bills, in anticipation of the annual revenue, and the committee of ways and means authorize them to be issued; while the committee of supply, from time to time, grant sums of money to pay off and discharge them. The precise distinction between the functions of the two committees cannot be better exemplified than in the proceedings of each in reference to exchequer bills. It is within the province of the committee of ways and means, as providing the revenue, to determine what sums shall be raised by exchequer bills; it is the business of the committee of supply, as authorizing expenditure, to vote all sums which are required to pay off and discharge those bills when they become due.

Consolidated fund.

Functions of the committee of ways and means.

Exchequer bills.

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 that minister has had sufficient time to calculate the probable income and expenditure for the financial year, commencing on the 5th 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 develops 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 is familiarly known as "the budget," and 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.

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 stated² in other places, as an ancient order of the house, "That where there comes a question between the greater or lesser sum, or the longer and shorter time, the least sum and the longest time ought first to be put to the question." This rule is applicable to all committees where such questions arise, but is more frequently brought into operation in these committees, where money forms the only subject of discussion.³ The object of this rule is said to be, "that the

Proceedings in committee.

¹ Or sometimes the first lord of the treasury, if a member of the House of Commons.

² See pp. 224, 280.

³ 88 Com. J. 325.

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. The practice, however, is convenient, since it is not usual to dispose of the two propositions in committee by way of question and amendment. If the smaller sum be resolved in the affirmative, the point is settled at once, and no question is put upon the greater; if in the negative, the greater sum is generally agreed to without further opposition. A direct negative of the larger sum is, in this manner, avoided, when the majority of the committee are adverse to it; 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.

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. The present system of grants does not 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 being favourable to the people, the question for that time is first put from the chair.

The resolutions of the committees of supply and ways and means are reported on a day appointed by the house, but never on the day on which they are agreed to by the committee. When the report is received, the resolutions are agreed to by the house, or may be disagreed to, amended, postponed, or recommitted. If agreed to, bills are ordered to carry them into effect, whenever it is necessary. This is always the course pursued upon resolutions from the committee of ways and means; but the greater part of the resolutions of the committee of supply are re-

served for the Appropriation Act, at the end of the session. If a resolution be amended by the house on the report, the amendment can only effect a diminution of the proposed burthen, and not an increase. If the latter be desired, the proper course is to recommit the resolution, as an addition to the public burthens can only be made in committee, consistently with the rules of the house.

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 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 recommitted.¹

Propositions
for reducing
charges upon
the people.

When the supplies for the service of the year have all been granted, the committee of supply discontinue their sittings, but the financial arrangements are still to be completed by votes in the committee of ways and means. That committee authorize the application of money from the consolidated fund, the surplus of ways and means, and sums in the exchequer, to meet the several grants and services of the year; and a bill is ordered, to carry their resolutions into effect. This is known originally as the Consolidated Fund Bill, but after it has been committed, an instruction is given by the house to the committee, to receive a clause of appropriation, and it is then called in the Votes the "Consolidated Fund (Appropriation) Bill," but more ge-

Appropriation
Act.

¹ See *supra*, p. 283.

nerally the Appropriation Bill. It enumerates every grant that has been made during the whole session, and authorizes the several sums, as voted by the committee of supply, to be issued and applied to each separate service. It also enacts, "That the said aids and supplies shall not be issued or applied to any use, intent or purpose, other than those before mentioned; or for other payments directed to be satisfied by any Acts of Parliament, &c."¹

When the Appropriation Bill has passed both houses, it is returned into the charge of the commons until that house are 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 assistant 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 of 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."

Although every grant of money must be considered in a committee of the whole house, it is not usual to vote such grants in the committee of supply, as do not form part of the supplies for the current year. Any issue of money out of the consolidated fund for salaries created by a bill, or other charge of whatever character, after the Queen's recommendation has been signified, is authorized 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, by instruction, in a bill already before the house.

Grants voted otherwise than in committee of supply.

¹ 6 & 7 Vict. c. 99, s. 23.

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."¹ According to the strict rules of the house, this proceeding ought only 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.

Addresses for public money.

On the 22d February 1821, a resolution was agreed to,

"That this house will not proceed upon any motion for an address to the Crown, praying that any money may be issued, or that any expense may be incurred, but in a committee of the whole house, and that the same be declared a standing order of the house."²

In compliance with this standing order, and with the resolution of the 18th February 1667, 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, 2dly, To propose that address, in committee, on the day appointed by the house.³

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;

Taxes imposed otherwise than in committee of ways and means.

¹ 83 Com. J. 716, &c.

² 76 Com. J. 101.

³ Mirror of Parl. 1840, pp. 3244. 4179.

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. The annual sugar duties, and all other taxes which are to take effect immediately, in order to supply deficiencies in the 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. Every tax, indeed, whenever it may have been imposed, and however permanent its character, 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,¹ have been proposed in committees of the whole house; 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.² This practice, though not without exceptions, has been sufficiently general to support a conclusion as a general rule, that, whenever the form of a motion points to taxation as a source of revenue, it ought properly to be offered in the committee of ways and means.

¹ 97 Com. J. 264. 92 Ib. 499, 500.

² 95 Ib. 351. 451.

CHAPTER XXII.

ISSUE OF WRITS, AND TRIAL OF CONTROVERTED ELECTIONS BY THE HOUSE OF COMMONS.

THE law of elections, as declared by various statutes, 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 the trial of election petitions, 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.

Purport of this chapter.

Whenever vacancies occur in the House of Commons, from any legal cause, after the original issue of writs by the Crown at a general election, all subsequent writs are issued out of chancery, by order of the House of Commons, and by warrant from the speaker. The most frequent causes of vacancy are the death of members, their elevation to the peerage, the acceptance of offices under the Crown, and the determinations of election committees that elections or returns are void, upon any of the grounds which, by law, avoid them.

Issue of writs.

When the house is sitting, and the death of a member, or his elevation to the peerage, is known, a writ is moved by any member, and, on being seconded by another, Mr. Speaker is ordered by the house to issue a new writ for the place represented by the member whose seat is thus vacated. If any doubt should arise concerning the fact of the vacancy, the order would be deferred until the house should be in possession of more certain information; and

Vacancies during a session.

¹ See Hans. Deb. 11 March 1835, and 19 April 1844. ² Hats. 65 *n.* 393-397.

Supersedeas of writs.

if, after the issue of a writ, it should be discovered that the house had acted upon false intelligence, the speaker would be ordered to issue a supersedeas of the writ.

Thus, on the 29th April 1765, a new writ was ordered for Devizes, in the room of Mr. Willey, deceased. On the 30th it was doubted whether he was dead, and the messenger of the great seal was ordered to forbear delivering the writ until further directions. Mr. Willey proved to be alive, and on the 6th May a supersedeas of the writ was ordered to be made out.¹

During the recess.

When the house is not sitting, and vacancies occur, by death, or elevation to the peerage, the law provides for the issue of writs, without the immediate authority of the house, in order that a representative may be chosen without loss of time, by the place which is deprived of its member. By the 24 Geo. 3, sess. 2, c. 26, on the receipt of a certificate,² under the hands of two members, that any member is dead, or has been called up to the House of Peers, the speaker is required to give notice forthwith in the London Gazette (which is to be acknowledged by the publisher), and after 14 days from the insertion of such notice, to issue his warrant to the clerk of the Crown to make out a new writ.

Speaker issues warrants.

But the speaker may not issue his warrant during the recess; 1, unless the return of the late member has been brought into the office of the clerk of the Crown 15 days before the end of the last sitting of the house; nor, 2, unless the application is made so long before the next meeting of the house, for despatch of business, as that the writ may be issued before the day of meeting;³ nor, 3, may he issue a warrant in respect of any seat that has been vacated by a member against whose election or return a petition was depending at the last prorogation or adjournment.

¹ See 2 Hats. 80 n. And 64 Com. J. 48. 81 Ib. 223. 86 Ib. 134. 182.

² See the form of the certificate in the Appendix.

³ That is to say, 14 days must elapse after the insertion of the notice, and then the writ can only be issued before the meeting of the house.

At the beginning of each Parliament the speaker is required to appoint a certain number of members, not exceeding seven, and not less than three in number, to execute these duties in case of his own death, the vacation of his seat, or his absence from the realm. This appointment stands good for the entire Parliament, unless the number should be reduced to less than three; in which case the speaker is required to make a new appointment in the same manner as before.

Speaker's appointment of members.

This appointment is ordered to be entered in the Journals, and published in the London Gazette; and the instrument is to be preserved by the clerk of the house, and a duplicate by the clerk of the Crown.

By the 52 Geo. 3, c. 144, s. 3, similar powers are given to the speaker, and to the members appointed by him, for issuing warrants, in the event of a seat having become vacant by the bankruptcy of a member.

Bankruptcy.

By the 26th sect. of the Act 6 Anne, c. 7, if any member

Offices under the Crown.

“Shall accept of any office of profit from the Crown during such time as he shall continue a member, his election shall be and is hereby declared to be void, and a new writ shall issue for a new election, as if such person, so accepting, was naturally dead; provided, nevertheless, that such person shall be capable of being again elected,” &c.

By virtue of this provision, whenever a member accepts office under the Crown, a new writ is ordered; but as the secretaries of the treasury, the under secretaries of state, and the secretaries to the admiralty and to the board of control, do not hold office by appointment from the Crown, their seats are not vacated; nor would the acceptance of any other offices, of which the appointment does not vest directly in the Crown,¹ vacate a seat. By the 41 Geo. 3, c. 52, s. 9, it is declared that offices accepted immediately or directly from the Crown of the United Kingdom, or by the appointment and nomination, or by any other appointment, subject to the approbation of the lord lieutenant

Or lord lieutenant.

¹ 2 Hats. 44.

of Ireland, shall vacate seats in Parliament.¹ But by the 6 Anne, c. 7, s. 28, the receipt of a new or other commission by a member who is in the army or navy, is excepted from the operation of the Act, and does not vacate his seat; and the same exception has been extended, by construction, to officers in the marines;² and to the office of master-general or lieutenant-general in the ordnance, accepted by an officer in the army.³

Chiltern Hundreds.

It is a settled principle of Parliamentary law, that a member, after he is duly chosen, cannot relinquish his seat;⁴ and, in order to evade this restriction, a member who wishes to retire, accepts office under the Crown, which legally vacates his seat, and obliges the house to order a new writ. The offices usually selected for this purpose are those of steward or bailiff of her Majesty's three Chiltern Hundreds of Stoke, Desborough, and Bonenham, or of the manors of East Hendred and Northstead, which, in ordinary cases,⁵ are given by the treasury to any member who applies for them, and are resigned again as soon as their purpose is effected.

Want of qualification admitted.

A singular method of vacating a seat was that of Mr. Southey, in 1826, who had been elected for Downton, during his absence on the Continent. His return was not questioned, but he addressed a letter to the speaker, in which he stated that he had not the qualification of estate required by law.⁶ The house waited until after the expiration of the time limited for presenting election petitions, and then issued a new writ for the borough.⁷

Members vacating to be re-elected.

A member sitting for one place may not be elected for another, but must vacate his seat by accepting the Chiltern Hundreds, or some other office under the Crown, in order to become a candidate.

¹ The various offices which have been held to vacate seats, may be collected from the several General Journal Indexes, tit. "Elections;" and from Rogers on Elections, p. 59.

² 2 Hats. 45 n.

³ 22 June 1742.

⁴ 2 Com. J. 201.

⁵ See letter of Mr. Goulburn to Viscount Chelsea, Parl. Paper 1842 (544).

⁶ 82 Com. J. 28.

⁷ 82 Com. J. 108.

At one time it was doubted whether a candidate claiming a seat in Parliament by petition, was eligible for another place before the determination of his claim; but it was resolved, on the 16th April 1728, "that a person petitioning, and thereby claiming a seat for one place, is capable of being elected and returned, pending such petition."¹ In case the petitioner should, after his election, establish his claim to the disputed seat, he would have to make his election for which he would serve, in the same manner as if he had been returned for both places at a general election.

Petitioning candidates eligible.

The next occasion for issuing new writs is to give effect to the determination of an election committee; and this leads to the examination of the mode by which controverted elections are tried and determined by the House of Commons, according to law.

Trial of controverted elections.

Before the year 1770 controverted elections were tried and determined by the whole House of Commons, as mere party questions, upon which the strength of contending factions might be tested. Thus in 1741 Sir Robert Walpole, after repeated attacks upon his government, resigned at last, after an adverse vote upon the Chippenham election petition.

Formerly by votes of the house.

"Instead of trusting to the merits of their respective causes," said Mr. Grenville, in proposing the measure which has since borne his name, "the principal dependence of both parties is their private interest among us; and it is scandalously notorious that we are as earnestly canvassed to attend in favour of the opposite sides as if we were wholly self-elective, and not bound to act by the principles of justice, but by the discretionary impulse of our own inclinations; nay, it is well known that in every contested election, many members of this house, who are ultimately to judge in a kind of judicial capacity between the competitors, enlist themselves as parties in the contention, and take upon themselves the partial management of the very business upon which they should determine with the strictest impartiality."

Grenville Act.

In order to prevent so notorious a perversion of justice,

¹ 21 Com. J. 136.

the house consented to submit the exercise of its privilege to a tribunal constituted by law; which, though composed of its own members, should be appointed so as to secure impartiality, and the administration of justice according to the laws of the land, and under the sanction of oaths. The object was praiseworthy, but the means adopted, compromised the privileges, and fettered the discretion of the commons; enacted many things by law, which would have been equally effectual, if directed by the authority of the house; and failed in securing that justice and impartiality which had been the price of these sacrifices. The principle of the Grenville Act, and of others which were passed at different times since 1770, was to select committees for the trial of election petitions by lot. By the last of these,¹ thirty-three names were balloted from the members present at the time, and each of the parties to the election was entitled to strike off eleven names, and thus reduce the number of the committee to eleven. Whichever party attended on the day appointed for a ballot in the greatest force, was likely to have a preponderance in the committee; and the expedient of chance did not therefore operate as a sufficient check to party spirit in the appointment of election committees. Partiality and incompetence were very generally complained of in the constitution of committees appointed in this manner; and in 1839 an Act was passed establishing a new system, upon different principles, increasing the responsibility of individual members, and leaving but little to the operation of chance.

This principle has since been maintained, but the Act of 1839 was repealed in 1841 by a temporary Act,² which has since been continued from year to year, and under which the proceedings on the trial of controverted elections are now conducted. Without entering minutely into every detail, which will be best explained by the Act

¹ 9 Geo. 4, c. 22.

² 4 & 5 Vict. c. 58.

Principle of
ballot.

Superseded.

itself, or by general treatises upon the law of elections, a distinct view may be given of the resolutions, rules, and forms of the house, and of the provisions of the law.

At the commencement of each session the house order,

Petitions, when to be presented.

“That all persons who will question any returns of members to serve in Parliament, for any county, city, borough, or place in the United Kingdom, do question the same within 14 days next, and so within 14 days next after any new return shall be brought in.”

“That all persons who shall question any return of members to serve in the present Parliament, upon any allegation of bribery and corruption, and who shall in their petition specifically allege any payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such election, in pursuance or in furtherance of such bribery or corruption, may question the same at any time within 28 days after the date of such payment; or if this house be not sitting at the expiration of the said 28 days, then within 14 days after the day when the house shall next meet.”

In regard to members whose seats may be affected by petitions, the following order is made, which divides itself into three parts, viz.—

“1. That all members who are returned for two or more places in any part of the United Kingdom do make their election for which of the places they will serve, within one week from and after the expiration of the 14 days before limited for presenting petitions, provided there be no question upon the return for that place; 2. And if anything shall come in question touching the return or election of any member, he is to withdraw during the time the matter is in debate; and, 3. That all members returned upon double returns do withdraw till their returns are determined.”

1. The first part of the order regulates the manner of choosing for which place a member will sit, when he has been returned for more than one. When the time limited for presenting petitions against his return has expired, and no petition has been presented, he is required to make his election within a week, in order that his constituents may no longer be deprived of a representative. When a petition has been presented against his return for one place only, he cannot elect to serve for either; he cannot aban-

Members returned for two places.

don the seat petitioned against, which may be proved to belong of right to another, and thus render void an election which may turn out to have been good in favour of some other candidate; neither can he abandon the other seat; because if it should be proved that he is only entitled to sit for one, he has no election to make, and cannot give up a seat without having incurred some legal disqualification, such as the acceptance of office or bankruptcy. Upon this principle, on the 24th May 1842, Mr. O'Connell, who had been chosen for the counties of Cork and Meath, elected to sit for the former, directly after the report of the election committee.¹

Members to
withdraw.

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

Double returns.

3. When there is a double return, neither of the members can vote until the right to the seat has been determined; because both are of course precluded from voting where one only ought to vote; and neither of them has a better claim than the other.

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

Interference of
peers.

“That no peer of this realm, except such peers of Ireland as shall for the time being be actually elected, and shall not have declined to serve, for any county, city, or borough of Great Britain, hath any right to give his vote in the election of any member to serve in Parliament.”

“That it is a high infringement of the liberties and privileges of the commons of the United Kingdom for any lord of Parliament, or other peer or prelate, not being a peer of Ireland at the time elected, and not having declined to serve for any county, city, or borough of Great Britain, to concern himself in the election of members to serve for the commons in Parliament, except only any peer of Ireland, at such elections in Great Britain respectively, where such peer shall appear as a candidate, or by

¹ 97 Com. J. 302.

² See *supra*, p. 210. 223.

himself, or any others, be proposed to be elected; or for any lord lieutenant or governor of any county to avail himself of any authority derived from his commission, to influence the election of any member to serve for the commons in Parliament."

"That if it shall appear that any person hath been elected or returned a member of this house, or endeavoured so to be, by bribery, or any other corrupt practices, this house will proceed with the utmost severity against all such persons as shall have been wilfully concerned in such bribery or other corrupt practices." Bribery.

Under the Act for the trial of controverted elections, the House of Commons act as a court administering the statute law. Little discretion is left to them beyond that of interpreting the Act, and executing its provisions. Every enactment is positive and compulsory; the house, the committees, the speaker, the members, are all directed to execute particular parts of the Act; and, in short, it is not possible to conceive a legislative body more strictly bound by a public law, over which it has no control, and in administering which it has so little discretion. The proceedings of the house, therefore, can only be described by following the several provisions of the law. Administration
of the election
law.

An election can only be questioned by petition presented to the House of Commons, within the time limited by their sessional orders. All petitions are treated as election petitions, which complain—1. Of an undue election or return; 2. That no return has been made to a writ issued for an election on or before the day on which the writ is made returnable; 3. Or, if the writ be issued during any session or prorogation of Parliament, that no return has been made to the same within 52 days after the date of the writ; 4. That a return is not according to the requisition of the writ; 5. Of the special matters contained in the return. Petition.

Every election petition must be subscribed by some person (1), claiming therein to have had a right to vote at the election to which the same shall relate; (2), or to have had a right to be returned or elected; (3), or

alleging himself to have been a candidate at the election. If not subscribed in this manner, it cannot be received by the house as an election petition.

This definition of the characteristics of an election petition is of great importance; because the Act has given no power to the house to apply its provisions to petitions which contain general complaints against an election. The house, indeed, may appoint committees to inquire into the matters alleged in such petitions; but unless they complain of general bribery, for which special provision is made by statute,¹ the inquiries can only be conducted according to the rules of that house, and without any sanction or powers from the law. The witnesses cannot be examined upon oath, nor can the election or return be legally affected by any decision of the house.

Recognizances.

Before any election petition is presented to the house, the person subscribing it, or some one of them, if more than one, must enter personally into a recognizance for 1,000*l.*, with one, two, three, or four sufficient sureties, for an additional sum of 1,000*l.* (in sums of not less than 250*l.* each), for the payment of all costs and expenses arising out of the trial of the petition. An officer called the examiner of election recognizances, appointed by the speaker, examines into the sufficiency of the sureties. The recognizances may either be entered into before him, or before a justice of the peace, and afterwards delivered to him; and an option is allowed to petitioners to pay 1,000*l.* into the Bank of England, instead of finding sureties for that amount, or to find sureties for part of that sum, and to pay the remainder into the bank.

Certificate indorsed on petition.

No petition can be received, except it be indorsed by a certificate from the examiner, that the recognizance has been entered into, or that the money has been paid into the bank.

Names of sureties.

On or before the day on which the petition is presented,

¹ 5 & 6 Vict. c. 102, s. 4.

the names and usual places of residence of the sureties are entered in a book kept in the office of the examiner of recognizances; and the book, with the recognizances, affidavits, and bank receipt, are open to the inspection of all parties concerned.

Any sitting member petitioned against, or any electors petitioning to be admitted as parties to defend the return, may object to the sureties; provided the ground of objection be stated in writing, and delivered to the examiner within 10 days after the presentation of the petition, if the surety objected to reside in England; or within 14 days, if the surety reside in Scotland or Ireland. When a statement of objections is received by the examiner, he is required to put up an acknowledgment thereof in some conspicuous part of his office, and to appoint a day for hearing such objections, not less than three nor more than five days from that on which he received the statement. Meanwhile, the petitioners or their agents, where sureties are objected to, may examine and take copies of the objections.

Objections to sureties.

When to be made.

At the time appointed, the examiner of recognizances inquires into the alleged insufficiency of the sureties, on the grounds stated in the notice of objection, but not on any other ground. He is authorized to examine witnesses upon oath, and to receive in evidence affidavits sworn before himself, a master in chancery, or a justice of the peace. He may adjourn the inquiry from day to day, until he has decided upon the validity of the objections; he may award costs to be paid by either party; and his decision is final and conclusive against all parties.

Objections heard and decided.

In case a surety should die, and his death should be stated as a ground of objection, before the end of the time allowed for objecting, the petitioner may pay into the Bank of England, on the account of the examiner of recognizances, the sum for which the deceased surety was bound; and upon the delivery of the bank receipt within three days after the objection, the sureties will be deemed

Death of sureties.

unobjectionable, if no ground of objection be stated against the other sureties, within the limited time.

Sureties reported.

When the examiner has decided, upon the objections, that any sureties are objectionable, he reports that decision to the speaker immediately; but when he has decided that the sureties are unobjectionable, and the time for receiving objections has expired, or when the time for receiving objections has expired, and none have been delivered, he reports to the speaker that the sureties are unobjectionable. The speaker acquaints the house, when he has received reports from the examiner, as to the sufficiency of the sureties; and a list of all the petitions, of which the sureties are reported unobjectionable, is also kept in the office of the examiner, arranged in the order in which they are reported.

Petitions withdrawn.

It is competent to a petitioner to withdraw his petition at any time after its presentation, upon giving notice in writing under his own hand, or that of his agent, to the speaker, and to the sitting member or his agent, that it is not intended to proceed with the petition; but the petitioner is, nevertheless, liable to the payment of the taxed costs and expenses incurred by the sitting member.

Proceedings when the seat becomes vacant, or the sitting member declines to defend his return.

If, before the appointment of an election committee to try a petition, the seat of the member petitioned against should become vacant, or if the sitting member should decline to defend his return, by a declaration in writing, subscribed by him, and delivered to the speaker within 14 days after the presentation of the petition, notice is immediately sent by the speaker to the sheriff or returning officer, who is to affix a copy of such notice at the door of the county or town hall. The notice is also inserted, by order of the speaker, in one of the next two London Gazettes.

Voters may become a party to oppose the petition.

Within 14 days after the presentation of the petition, or within 21 days after the insertion in the Gazette of a notice that the seat is vacant, or that the member will not

defend his return, persons claiming to have had a right to vote at the election may petition the house, praying to be admitted as a party or parties to defend the return, or to oppose the prayer of the election petition; and they are admitted to defend the seat accordingly. If the time limited for receiving such petitions should expire during a prorogation or adjournment, the petition will be received on the second day on which the house shall afterwards meet.

Whenever the member whose return is complained of has given notice of his intention not to defend his seat, he may not appear or act in any proceedings as a party against the petition; and he may not sit in the House of Commons, nor vote on any question, until the petition has been decided in his favour.

Member not defending his return, may not sit or vote.

Having thus briefly stated the rules appointed by the house and by law, in regard to the petition, the recognizances and sureties, and the several parties to a controverted election; it is now proposed to describe the mode of appointing the tribunal to try the case.

At the beginning of every session, on or before the expiration of the time limited for receiving election petitions, the speaker appoints, by warrant, six members of the house as "The General Committee of Elections." The members appointed must be willing to serve, their seats must be unquestioned by petition, and they must not themselves be petitioners against any election. The speaker's warrant is laid upon the table of the house, and if not disapproved of by the house, in the course of the three next sitting days, it takes effect absolutely, as the appointment of the committee.

General committee of elections appointed.

If the house should disapprove the warrant, the speaker is required, within three days, to lay upon the table a new warrant. The disapproval of the warrant may either be general, in respect to the constitution of the whole committee, or specially relating to particular members named in the warrant; and the speaker, in his new warrant, may

Appointment disapproved.

name again or not, as he pleases, those members who have not been specially disapproved.

Members appointed for the session.

After the appointment of the general committee, every member retains his appointment until the end of the session, unless, in the meanwhile, he ceases to be a member of the house, resigns his appointment, or is reported to be disabled, by continued sickness, from attending the committee. In case of a vacancy, the speaker makes it known to the house immediately, and all the proceedings of the committee are suspended until the vacancy is supplied. This is done by the speaker's warrant, which is subject to disapproval in the same manner as the original appointment.

Vacancies.

Dissolution of committee.

The committee is liable to be dissolved at any time, from the following causes: 1. The house may resolve that the committee shall be dissolved, without any special cause of incompetency; 2. On the report of the committee, that they are unable to proceed in the discharge of their duties by reason of the absence of more than two of their members; 3. On their report that they are unable to proceed on account of irreconcilable disagreement of opinion.

Reappointment.

When from any of these causes the committee has been dissolved, the speaker reappoints the committee by warrant; and may reappoint any of the former members or not, as he pleases. The reappointment may be disapproved by the house, in the same manner as the original appointment.

Election petitions referred to general committee of elections.

To this committee, all election petitions are referred, and it is their duty to choose a committee for the trial of each petition in the manner appointed by the Act, which will presently be pointed out. The speaker communicates to the committee all reports concerning the sureties, all notices of deaths or vacancies, and declarations of sitting members that they do not intend to defend their seats; and whenever a petition is withdrawn, or the sureties are

reported to be objectionable, the order for referring the petition to the general committee is discharged by the house. When a member declines to defend his seat and notice of that fact has been given in the Gazette, the committee suspend their proceedings upon the petition against him, for 21 days; unless a petition of persons claiming to defend the seat, be referred to them at an earlier period.

When more than one petition relating to the same election has been referred to the general committee, they suspend their proceedings upon all of them, until the report of the examiner of recognizances has been received upon each. Upon the receipt of the last of these reports the petitions are placed at the bottom of the list of election petitions waiting for trial; and are bracketted together, and afterwards treated as one petition.

Where more than one petition.

The speaker appoints the time and place of the first meeting of the general committee; and before any member of the committee is qualified to serve upon it, he must have been sworn at the table of the house, "truly and faithfully to perform the duties belonging to a member of the said committee, without fear or favour, to the best of his judgment and ability."

First meeting and swearing of general committee.

No business can be transacted by the general committee unless four of the members be present; and no appointment of an election committee can be made by them, unless at least four out of the six agree in the appointment. Subject to these limitations, and to the several provisions of the Act, the general committee are empowered to make regulations for the order and manner of conducting the business allotted to them. The minutes of their proceedings are kept by the committee clerk in attendance upon them, in whatever form they may direct, and are to be laid before the house from time to time.

Quorum of general committee.

Before the general committee proceed to choose committees for the trial of election petitions, a list is prepared

Members excused from serving on

election committees,
being above
sixty.

of all members who are liable to serve. Every member who is upwards of 60 years old, is wholly excused from serving; but he must make his claim on that ground, either in his place, or in writing under his hand, to be delivered to the clerk at the table. He is required to make his claim on or before the last day allowed for questioning returns; or upon reading over the names of other members who have been excused; or afterwards, if he shall then become entitled to make that claim. But no member can be excused, unless he has made his claim before he is chosen to serve upon an election committee.

List of excused
members read.

On the next meeting of the house after the last day allowed for questioning returns, the clerk of the house is required to read over all the names of the members excused on account of age. At this time other excuses may be made, and allowed by the house. The substance of the allegations is taken down by the clerk, and the ground of excuse, and the opinion of the house, are entered on the Journals. Excuses of the high officers of state, that they could not attend election committees without material inconvenience to the public service, are generally made and admitted. The chairman of ways and means has also been excused, on the ground that the house had devolved upon him the duty of sitting as chairman of all committees upon unopposed private bills, and that he would be unable to perform that duty, if selected to serve on an election committee.¹ All these excuses are only temporary, and are invariably limited by the house to the time during which the parties may hold their offices: they may be made at any time after the reading of the names of excused members; but in no case after a member has been chosen to serve upon an election committee.

Members temporarily
excused.

General excuses
or exemptions.

Besides these excuses allowed in each case by the house, there are two other general grounds of excuse, which do not require a particular order: 1. Every member who has

¹ 97 Com. J. 48.

obtained leave of absence from the house, is excused from serving upon any election committee appointed, until his leave of absence has expired; but no member can obtain leave after his appointment, in order to escape from serving. 2. Every member who has served upon one election committee, and who, within seven days after its report, notifies to the clerk of the general committee his claim to be excused from serving again, is excused during the remainder of the session. But if the general committee report to the house that the number of members who have not served is insufficient for the appointment of other committees, the house may resolve that all excuses on the ground of previous service shall be discontinued; and no member is entitled to claim exemption upon this ground, who, on account of inability or accident, has been excused from attending an election committee throughout its proceedings.

In addition to these several grounds of excuse there are certain circumstances which disqualify members from serving, so long as the disqualification exists. Every member is disqualified,—1, whose return has not been brought in for a time exceeding that allowed for questioning the return of members, viz. 14 days; or, 2, who is a petitioner complaining of an undue election or return; or, 3, against whose return a petition is then depending; or, 4, who has served upon an election committee whose final report has been made within seven days.

When all the usual excuses have been made, as above described, the clerk is required to prepare an alphabetical list of all the members of the house, omitting the names of those who have claimed to be wholly excused from serving, on the ground of age. In this list, he distinguishes the name of every member who is for a time excused or disqualified; and notes the cause and duration of each excuse and disqualification. The list is printed and distributed with the Votes, and the names of all the members

Temporary dis-
qualifications.

List of mem-
bers printed
with the Votes.

omitted are printed and distributed in the same manner. Within three days after its distribution the list may be further corrected by leave of the speaker, if it should appear that any name has been improperly left in or struck out, or that there is any other error.

Correction of list.

Chairmen's panel.

The list of members, when thus finally corrected, is referred to the general committee of elections. Their first duty is to select six, eight, ten, or twelve members to serve as chairmen of election committees, who are called "the chairmen's panel," and whose names are reported to the house. These members, unless sooner discharged by the house, are liable to serve as chairmen of election committees for the remainder of the session, whenever appointed to that office; but they are exempted from serving on election committees in any other capacity than that of chairman; and when they have served once through the whole sittings of an election committee, they may be excused from further service.

Vacancies in chairmen's panel.

Whenever a member of the chairmen's panel ceases to be a member of the house, or is discharged from further service, the general committee immediately appoint another in his place; and if the number originally appointed should, at any time, appear too small for the number of committees about to sit, the general committee may select two, four, or six, additional members; but in no case may the chairmen's panel consist of more than 18 members, without the special leave of the house.

Regulations of chairmen's panel.

The members of the chairmen's panel make regulations amongst themselves for the appointment of chairmen, and for the equal distribution of their duties to all. The time and manner of appointing chairmen will be more particularly explained when the proceedings in the nomination of the committees have been described.¹

List divided into five panels.

When the general committee have selected the chairmen's panel, they divide all the members remaining upon

¹ See *infra*, p. 359.

the list into five panels, in whatever manner may appear convenient; but each panel is required to contain, as nearly as possible, the same number of members. These panels are reported to the house, and the clerk decides by lot, at the table, the order in which they shall stand, and distinguishes each by a number. They are then returned to the general committee, and the committees are chosen from each panel, in succession, according to its number.

The general committee correct the panels, from time to time, by striking out the names of persons who have ceased to be members, or who have been excused from serving; and by adding new members. They continue to distinguish the names of members who are, for a time, excused or disqualified; and whenever they think fit, they report the corrected panels to the house, which are printed and distributed with the Votes, as before. When leave of absence has been granted to a member, the general committee may transfer his name from one panel to another subsequent in rotation, and from which a committee will be chosen at a later period. By this arrangement, if election committees have been chosen from a member's panel, during his absence, he may find his name transferred to another on his return, and will be liable to serve as if he had been originally placed upon a later panel.

Correction of panels.

Members absent on leave transferred to other panels.

The general committee determine how many election committees shall be chosen in each week, and the days on which they will meet to choose them; but they are bound to follow the order in which the petitions stand upon the list. Notice of the time and place at which every election committee will be chosen, is published with the Votes 14 days before the committee is to be chosen; and when the conduct of the returning officer is complained of, a like notice is sent to him. Every notice directs all parties interested to attend the general committee, by themselves, their counsel or agents, at the time appointed for

General committee to determine when committees shall be chosen.

Notices.

choosing the election committee. Notice is also published with the Votes of the petitions appointed for each week, and of the panel from which each committee will be chosen.

When seat is vacant or not defended.

When notice has appeared in the Gazette that a member petitioned against is dead, has vacated his seat, or declines to defend his return, and some party has been admitted to defend his return; or when the conduct of the returning officer is complained of; the committee may not meet to appoint a committee before 14 days have elapsed since the last petition to be allowed to defend the return was referred to them. If no parties have claimed to defend the return, and if the conduct of the returning officer is not complained of, they may appoint the committee at any time after the expiration of the time allowed for parties to come in to defend the return; but not less than one day's notice, of the time and place appointed for choosing the committee, must be given in the Votes.

When time of choosing committees is altered.

After the general committee have appointed a time for choosing an election committee, they may change it whenever they think fit; but they must give notice in the Votes of the change, and must report it immediately to the house, with their reasons for the alteration.

Lists of voters objected to.

Six days before the time appointed for choosing the committee, the parties complaining of, or defending the election, are required to deliver to the clerk of the general committee, lists of the voters intended to be objected to, with the several heads of objection to each. They must be delivered not later than six o'clock on the sixth day before the choosing of the committee; and are afterwards open to the inspection all parties concerned.

Election committee chosen.

At the time appointed, the general committee choose six members from the panel standing next in the order of service. Besides the excuses or general disqualifications for service already noticed, there are special grounds of disqualification which may prevent members from being

chosen for particular committees. No member may be chosen,—1, who has voted at the election; or, 2, who is the party on whose behalf the seat is claimed; or, 3, who is related to the sitting member or party on whose behalf the seat is claimed, by kindred or affinity in the first or second degree according to the canon law. Each panel serves for a week, beginning with that first drawn, and not reckoning those weeks in which no election committee is appointed to be chosen.

From what panel.

Unless four members, at least, of the general committee agree in the choice of an election committee, they must adjourn the choosing of that and every other committee remaining to be chosen on that day; and must meet on the following day, and from day to day, until they agree; and the parties are to be directed to attend on each day. If they do not agree at last, their disagreement being irreconcilable, will be reported to the house, and the general committee will be dissolved. If the committee disagree in the choice of one committee, they may not proceed upon another; but they are bound to choose every committee according to its order on the list, or to adjourn.

Disagreement in the choice of a committee.

As soon as the general committee have chosen an election committee, the parties in attendance are called in, and the names of the committee are read over to them; the parties then withdraw, and the committee proceed with the choice of other committees appointed to be chosen on that day. Within half an hour, or after other parties have withdrawn, the parties who have been consulting upon the names of the selected members, are again called in, in the same order in which they were directed to withdraw. The petitioners first, and afterwards the sitting members, or parties defending the return, their counsel, or agents, may then object to all or any of the members chosen, as being disqualified or excused from serving on that committee, for any of the reasons allowed by the Act, but not for any other reason.

Parties to hear names, and object to disqualified members.

Disqualifica-
tion allowed.

If, at least, four members of the general committee be satisfied, on hearing the objections, that any member whom they have chosen is disqualified or excused, the parties are again directed to withdraw, and the committee proceed to the choice of another committee, from the same panel. Objections may be taken to the second, or any subsequent committee, so often as the disqualification of a member has been proved. But the general committee may include in the second, or following committees, any of the members first chosen who were not agreed to be disqualified; and no party may object to a member included in a subsequent committee who was not objected to when on the committee first chosen.

Members cho-
sen served with
notice.

When six members have been chosen, against whom no objection has been sustained, the clerk of the general committee gives notice, in writing, to each of the members, that he has been appointed to serve upon the election committee. This notice points out every general and special ground of disqualification and excuse from serving, and names the time and place at which the general committee will meet on the following day. In addition to this personal notice, the time and place of meeting are published in the Votes.

Members may
prove disquali-
fication.

At the time thus appointed, any member who has been chosen may attend, and allege his disqualification. If he can prove to the satisfaction of, at least, four members of the general committee that, for any of the proper reasons, he is disqualified, or excused from serving on the committee to which he has been named; or if he can prove any circumstances, having regard, not to his own convenience, but solely to the impartial character of the tribunal, which render him ineligible; the general committee proceed to choose another committee, in the same manner as if the member had been objected to by the parties. If no member appear within an hour, or if, on appearing, he fail to prove his disqualification or excuse, no further objection

can be made, but the six members are finally appointed, and only wait for the addition of a chairman to complete their constitution.

The six members being thus finally chosen, the chairmen's panel notify to the general committee of elections the name of one of their own body who has been selected by them as the chairman. The general committee add this name to the other six, and communicate it to the parties interested, who may attend for that purpose. The parties are entitled to object to the chairman, as being disqualified or excused, upon the same grounds as are permitted in the case of any other member, and if the objection be substantiated to the satisfaction of, at least, four of the general committee, the parties are directed to withdraw, and the name is sent back to the chairmen's panel; another chairman is then appointed by them, who is liable to objections in the same manner as the first. When no objection has been made or substantiated, the chairman is added to the committee, who are then finally constituted.

Chairmen's panel appoint a chairman.

At the next meeting of the house, the seven members are required to attend in their places, and the general committee report their names, together with all the petitions relating to the election, and the lists of voters. The members chosen may not leave the house before the time for the meeting of the committee has been fixed, and before they leave it, they must be sworn at the table by the clerk or clerk assistant, "well and truly to try the matter of the petitions referred to them, and a true judgment to give, according to the evidence."

Election committee reported;

and members sworn.

If any member should not attend within an hour after the meeting of the house, or should leave it before the committee is sworn (unless the committee be discharged, or the swearing adjourned), he is ordered into the custody of the serjeant-at-arms for his neglect of duty, and will be otherwise punished or censured, at the discretion of the

Members not present.

house, unless it shall appear, by facts specially stated, and verified upon oath, that he was, by a sudden accident, or by necessity, prevented from attending the house. If the absent member should not be brought into the house within three hours after its meeting, and if no sufficient cause can be shown for dispensing with his attendance, the swearing of the committee is adjourned until the next meeting of the house, when all the members of the committee must again be in attendance.

Swearing adjourned.

Committee discharged in certain cases.

If, on the day to which the swearing is adjourned, all the members do not attend and take the oath, or if sufficient cause be shown on the day first appointed for the swearing, why the attendance of a member should be dispensed with, the committee is discharged. The general committee are then obliged to meet on the following day and choose a new committee from the same panel, and notice of their meeting is published in the Votes.

Meeting of committee fixed by the house.

When all the members have been sworn, the house refers the petitions and lists of voters to the committee, and orders them to meet at a certain time, within 24 hours of their being sworn. Eleven o'clock on the following morning is the hour generally appointed, and they meet at that time in one of the committee rooms of the house.

General caution to members.

Before the proceedings of an election committee are entered upon, it may prove useful to call the particular attention of members to the necessity of making themselves acquainted with the practice of the house in appointing such committees, and with their own position and liabilities. If they neglect to attend at the proper time (as they too often do), they subject themselves to annoyance and expense, and may cause serious pecuniary damage to the parties. By a little attention to the course of proceedings, a member may always avoid being taken by surprise. He should first examine the panels which are printed and distributed with the Votes, and by observing the number of that in which his own name is inserted, he may judge

how soon it is possible that he may be chosen. He must bear in mind that a new panel is in the order of service for every week in which election committees are appointed; and if his absence should be unavoidable during the week in which committees will be chosen from his panel, he should apply to the house for leave of absence: He is acquainted also, every Saturday¹ morning, by a conspicuous notice in the Votes, what election committees will be chosen during the ensuing week, from what panel, and on what days; and if he be on that panel, he should be in readiness, in case he should be appointed on any one of the committees, and receive notice to attend and be sworn.

On the meeting of an election committee, the chairman appointed by the chairmen's panel, takes the chair at once, without any question; but if he should die, or be unable to attend, the remaining members of the committee elect one of themselves to be chairman; and in case of an equality of voices, the member whose name stands first in the list of the committee, as reported to the house, is entitled to a second or casting vote.

Chairman of
the committee.

Every election committee must sit from day to day (with the exception of Sunday, Christmas-day, and Good Friday), and may not adjourn for a longer time than 24 hours, without obtaining leave from the house, upon motion, and assigning a special reason for a longer adjournment. If the house should be sitting at the time to which a committee has been adjourned, the business of the house will be stayed until a notice has been made for a further adjournment, for any time which may be fixed by the house. When the house has been adjourned for more than 24 hours, and a committee have occasion to

Committees to
sit daily.

¹ When the house sits on Saturday, this notice may not appear until Monday morning, as the orders of the day, notices, and other business for the ensuing week, are not then printed with the Votes delivered on Saturday morning, but are deferred till no further change can be made in them.

apply or report to the house, they may adjourn to the day appointed for the next meeting of the house.

Committee-
man not to ab-
sent himself.

No member of an election committee may absent himself without leave obtained from the house, or an excuse allowed by the house at its next sitting. If the excuse offered be on account of sickness, it must be verified upon the oath of his medical attendant; and if any other special cause be assigned, it must also be verified upon oath. Whenever a member has leave to absent himself, or his excuse is allowed, he is discharged from further attendance, and is not entitled to sit and vote again in the committee.

Committee not
to sit till all
meet.

If, on the meeting of the committee, all the members who are not excused should not be present, the committee cannot proceed to any business, but must wait for an hour; and if within that time the whole number have not arrived, the committee must adjourn, and the chairman is required to report the cause of the adjournment to the house. A member absenting himself without leave or excuse is directed to attend the house at its next sitting; and unless he can show by facts, verified upon oath, that his attendance had been prevented by accident or sudden necessity, he will be ordered into custody, or otherwise punished or censured at the discretion of the house.

Committees
reduced in
number: when
dissolved.

In case the number of members able to attend an election committee should be reduced to less than six, and should continue so reduced for three sitting days, the committee will be dissolved, their proceedings become void, and another committee will be appointed. But when a committee have sat for 14 days, they may proceed to business with five members; and when they have sat for 21 days, or have issued a commission to take evidence in Ireland,¹ they may continue to transact business with four members only; and if all the parties consent, the committee may proceed with any number of members, without reference to the time during which they have sat.

¹ See *infra*, p. 370.

Every election committee is attended by a short-hand writer, appointed by the clerk of the house, and sworn by the chairman to take down the evidence faithfully and truly, and to write it down in words at length, for the use of the committee.

Committees
attended by
short-hand
writers.

It will have been remarked, that all the election proceedings in the house are distinguished by the administration of oaths; and the evidence taken before election committees is marked by the same solemnity. Every election committee has power to send for persons, papers, and records; and the witnesses are examined upon oath, which the clerk of the committee is empowered to administer. Parties who have subscribed the petition may be examined, unless they appear to be interested witnesses. If any persons summoned by the committee, or by a speaker's warrant, disobey the summons; or if witnesses give false evidence, prevaricate, or misbehave themselves before the committee in giving, or refusing to give evidence, the chairman, by direction of the committee, reports the circumstance to the house.¹ Thus far the practice, in dealing with ill-conducted witnesses, is the same as in other committees, where censure and punishment are reserved for the house to inflict; but in election committees, the chairman is, in the meantime, authorized to commit a witness to the custody of the serjeant-at-arms, by a warrant under his hand, for any time not exceeding 24 hours, if the house be sitting; and if not, then for a time not exceeding 24 hours after the hour to which the house is adjourned. By this power, the escape of a witness may be prevented, and he is kept in safe custody until the house can censure or punish him for his offence.

Witnesses
examined upon
oath.

A further difference exists, in the case of elections, in the mode of punishing false testimony given before the house or committees. In ordinary inquiries, as it has been

False evidence
to be perjury.

¹ See the several proceedings in regard to witnesses before an election committee, in the case of the Ipswich election in 1835.

shown elsewhere, the house can only regard false evidence as a breach of privilege and contempt;¹ but the Election Act, which confers upon it the power of administering oaths, attaches to false evidence the penalties of wilful and corrupt perjury. The power of the house to punish is not, however, superseded by the Act; and it may, therefore, imprison witnesses, as in any other case, upon its own authority; and if it appear that a conviction at law can also be obtained, it is competent for the house to direct the attorney-general to prosecute the offending witnesses for perjury.²

Lists of objections.

As a general rule, the committee may admit any evidence which is offered, and which appears to them to be legally admissible; but in regard to the validity of votes, they are precluded by the Act from taking evidence upon any vote not previously contained in the lists of voters objected to, or upon any head of objection that had not been specified in the lists.

Majority decide.

Every question is determined in the committee by a majority of voices; and whenever the voices are equal, the chairman has a second or casting vote. Here the practice differs from that of other committees. The chairman does not wait to give his vote until the numbers are equal, but votes, in the first instance, like any other member; and if the numbers, including his own vote, be equal, he decides the question by a second vote, in his capacity of chairman. Every member is obliged to vote upon each question, whenever a division arises; and the names of the members who vote in the affirmative or negative upon every question, are entered upon the minutes, and afterwards reported to the house.

Deliberate with closed doors.

Whenever the committee are about to deliberate upon any question, in the course of their proceedings, as soon as they have heard the evidence and counsel on both sides, they may order the room to be cleared; and this practice

¹ See *supra*, p. 245.

² 75 Com. J. 332.

is always observed, except where minor points arise, which may be settled without debate or division, by a brief conference between the members.

It is a general rule that all witnesses who are to be examined before a committee are excluded from the room while other witnesses are under examination, and, if, when called on, they prove to have been present, their evidence is not admitted. Agents and barristers are exceptions to this rule; and in special cases others have been allowed to be examined although they have been present.¹ In order to give due notice of this rule to all the parties concerned, a paper is affixed to the door of every committee room, stating that "no witnesses are admitted;" but a more distinct explanation of the consequences might advantageously be given in a printed form, and in more conspicuous characters.

Witnesses
excluded.

The counsel who opens a case before a committee, should include in his statement the leading matters intended to be proved; or he may be afterwards precluded from adducing evidence in support of charges not previously alluded to. This rule is enforced with more or less strictness according to the view taken by the committee of the sufficiency of the general statement to embrace particular facts. The ordinary rules are observed in regard to the speeches and replies of counsel, and the examination, cross-examination, and re-examination of witnesses; and the committee determine every disputed point.

Counsel.

When the case, on behalf of all parties, is concluded, the room is cleared and the committee deliberate upon their final determination of the merits of the election. They are required to decide distinctly,—1. Whether the petitioners or the sitting members, or either of them, be duly returned or elected; or, 2. Whether the election be void; or, 3. Whether a new writ ought to issue. Their determination upon these points is final between the parties:

Decision of
committee.

¹ 2 Rogers, 98. Barron and Austin, 586.

and the house, on being informed of it, carries it into execution.

Special reports.

If the committee come to any resolution other than this determination, they may report it to the house; but in that case it is not final; and the house may confirm or disagree with their resolution, or make whatever orders it thinks fit. The most frequent subject of a special report is the bribery proved to have been committed at the election. And here may be exemplified the distinction between those parts of the report which are final and those which are treated only as matters of opinion. An act of bribery disqualifies a man from sitting in the House of Commons during the whole Parliament, and if proved before a committee, is sufficient to enable them to determine that his election was void. That determination alone is reported to the house in the first instance, and is final; but the committee add to their report a special resolution concerning the bribery.

Special reports
on bribery.
Agency.

It was formerly at the discretion of a committee to report acts of bribery to the house, but a more distinct and stringent law has altered both the mode of inquiry and the character of the report, when bribery is alleged to have influenced an election. The obvious course in proving bribery not committed personally by the sitting member or candidate, is to establish the agency of parties who are alleged to have committed bribery on his behalf; and accordingly, until the agency was proved, it was usual for the committee to refuse to enter into general evidence of bribery; because if bribery were proved against persons not authorized by the candidate or sitting member to commit it, the merits of the election would not be affected. On this account notorious acts of bribery often failed in being proved, and of course the committee could not make a special report upon matters not established by the evidence. In order to expose acts of bribery more effectually, this practice has been materially altered.

By the Act 4 & 5 Vict. c. 57, it is enacted,

Bribery.

“That whenever a charge of bribery shall have been brought before any election committee of the House of Commons, the committee shall receive evidence upon the whole matter whereon it is alleged that bribery has been committed; neither shall it be necessary to prove agency, in the first instance, before giving evidence of those facts whereby the charge of bribery is to be sustained: and the committee, in their report, shall separately and distinctly report upon the fact or facts of bribery which shall have been proved before them, and also whether or not it shall have been proved that such bribery was committed with the knowledge and consent of any sitting member or candidate at the election.”

Proof of agency.

By this mode of inquiry, the discovery of acts of bribery is, undoubtedly, much facilitated; and in the course of the evidence, proofs or implications of agency may be elicited, which might not have arisen if the evidence had been confined, in the first instance, to the strict proof of agency. Since the passing of this Act the seats of several members have been avoided by the acts of their agents; and committees have reported that sitting members have been, by or *through their agents*, guilty of bribery; and, at the same time, that there was no evidence to show that any acts of bribery were committed with their knowledge and consent.¹ Such determinations have been founded upon the principle that, so far as his seat in Parliament is concerned, a proof of general agency for the management of an election, is sufficient to make the principal civilly responsible for every unauthorized and illegal act committed by his agent, by which his own return had been secured; but as this is not explained on the face of the reports, they appear to involve a contradiction, and to be at variance with the terms of the Bribery Act.²

Results of this Act.

¹ 97 Com. J. 260. 279. 551. Barron and Austin, 401. 453. 584. 609.

² The words of the Act, 49 Geo. 3, c. 118, are, “and every such person so returned and so having given, or so having promised to give, or *knowing of and consenting to* such gifts or promises, upon any such engagement, contract, or agreement, shall be . . . disabled and incapacitated to serve in that Parliament, for that county, &c., and deemed and taken to be no member of Parliament, and as if he had never been returned or elected.”

Writs suspended.

When general and notorious bribery and corruption have been proved to prevail in parliamentary boroughs, the house have frequently suspended the issue of writs, with a view to further inquiry, and the ultimate disfranchisement of the corrupt constituency, by Act of Parliament.¹

Election committees re-assembled to inquire into bribery.

And by the 5 & 6 Vict. c. 102, if an election committee recommend further inquiry regarding bribery, the speaker is required to nominate an agent to prosecute the investigation; and the committee are to re-assemble within 14 days, and to inquire and report specially concerning the bribery, and the parties implicated. The committee, when re-assembled, possess all their original powers of inquiry.

Charges of bribery abandoned.

And by the same Act if charges of bribery be withdrawn, the committee are empowered to inquire into and report the causes of their abandonment. Special powers are also given to the house, in certain cases, to appoint election committees upon petitions complaining of bribery; and when election petitions have been withdrawn. But no such committee, whether re-assembled or appointed to investigate the matter of a petition presented after the time limited for receiving election petitions, can affect the seat of any member, or the issue or restraining the issue of any writ.

Appointment of committees in other cases.

Unlike the other proceedings of Parliament, the inquiries of election committees are not determined by a prorogation. When an election petition is presented to the house before a prorogation, and a committee has not been appointed to try it, the general committee of elections in the ensuing session, within two days of their first meeting, appoint a day for choosing a committee, if, in the meantime, the sureties have been reported unobjectionable. And when Parliament is prorogued after the appointment of an election committee, and before they have reported their determination, the committee are not dissolved, but only adjourn until 12 o'clock on the day following the

Committee not dissolved by prorogation.

¹ Liverpool, 86 Com. J. 458. 493. Warwick, 88 Com. J. 611. 89 ib. 9, 579. Carrickfergus, 88 Com. J. 531. 599. Hertford, 88 Com. J. 578. 649; Stafford, 90 ib. 262, &c. Sudbury, 97 ib. 188. 467, &c. Ipswich, ib. 221. 554.

meeting of Parliament for despatch of business. In the ensuing session they resume their sittings, as if there had been no prorogation: their former proceedings are valid, and they continue subject to the ordinary rules of election committees.

Whenever an election committee report that a petition appeared to them frivolous or vexatious, the party or parties who opposed it are entitled to recover from any of the persons who signed the petition, the full costs and expenses incurred in the opposition. In the same manner, parties opposing a petition frivolously or vexatiously, are liable to the payment of costs to the petitioners. When no party appears to defend an election or return, and the committee report it to have been vexatious or corrupt, the sitting member (unless he has given notice of his intention not to defend it), or the parties admitted to defend the return (if any), are liable to the costs incurred in prosecuting the petition.

Costs, when incurred by petitioners;

by parties opposing petitions,

or not appearing.

When any ground of objection is stated to a voter, in the list of votes intended to be objected to, and the objection is reported by the committee to have been frivolous or vexatious, the opposite party may recover costs from the party by whom, or on whose behalf, the objection was made. And if either party should make, before an election committee, any specific allegation with regard to the conduct of the other party or his agents, and should either bring no evidence in support of it, or such evidence that the committee consider the allegation to have been made without any reasonable or probable ground, the committee may order the party who made it to pay all the costs and expenses incurred by the other party, by reason of the unfounded allegation.

Costs upon frivolous objections,

and unfounded allegations.

All costs and expenses, whether incurred in prosecuting, or opposing, or preparing to oppose, election petitions, or payable to witnesses summoned before committees, are taxed in the following manner:—Within three months

Costs, how ascertained.

after the conclusion of the proceedings, application may be made to the speaker to ascertain the costs and expenses incurred; and he directs them to be taxed by the examiner of recognizances. The examiner taxes them, and reports to the speaker the amount due, the names of the parties liable to pay and entitled to receive them; and the speaker, on being applied to, delivers to the parties a certificate of the costs, which is conclusive evidence of the title of the parties to recover their claims.

Recovery of costs.

The recovery of the costs, if not paid on demand, is by an action of debt; in which a declaration, together with the speaker's certificate and an affidavit of demand, entitles the plaintiff to sign judgment as for want of plea by *nil dicit*, and take out execution for the sum and for the costs of the action. The plaintiff may sue any one of the parties who are jointly liable; and he, in his turn, may sue the others for their proportions.

Recognizances, when estreated.

The recognizances may be estreated if, 1. The petitioners neglect or refuse to pay a witness for seven days after any sum has been certified by the speaker to be due to him; or, 2. If, for six months after the speaker's certificate, they neglect or refuse to pay any party opposing the petition the sum certified to be due to him: but the neglect or refusal to pay must be proved to the satisfaction of the speaker within one year after this certificate is granted, by affidavit before a master in chancery. In case of such default, the speaker certifies the recognizance into the Court of Exchequer, which has the same effect as if the recognizance were estreated from a court of law.

Commission to examine witnesses in Ireland.

In order to avoid the inconvenience and expense of examining witnesses from Ireland, a committee, appointed for the trial of a petition complaining of an election in Ireland, are empowered, on the application of any of the parties, to appoint a commission.¹ This application may be made at any time during the proceedings, but notice

¹ 42 Geo. 3, c. 106. 47 Geo. 3, sess. 1, c. 14, s. 5. 60 Geo. 3, c. 7.

must be served on the opposite party as soon as the petition is presented. If the committee do not think it necessary to appoint a commission, they proceed as in other cases.

At the commencement of every session, the clerk of the Crown is required to send to the speaker a list of barristers of six years' standing, who have consented to act as commissioners, and from this list the commissioners are selected in the following manner. On the next sitting of the committee, after an order has been made for the appointment of commissioners, each party delivers the names of three of the qualified barristers; and from the list of all the proposed names, each party, beginning with the petitioners, strikes off the name of one barrister, until the number has been reduced to two.

Commissioners,
how appointed.

The 47 Geo. 3, stat. 1, c. 14, s. 2, declares that no person shall be a commissioner who has voted at the election in question, or who has, or claims to have, any right to vote, without the consent of the parties; and (s. 3) that any objection to the appointment of a commissioner shall be made at the time of his appointment, or otherwise shall be of no effect.

Immediately after the appointment of these two commissioners, a third is appointed to act as chairman. If all the parties agree in the appointment of one of the barristers on the list, he is appointed the chairman; but if they cannot agree, the committee nominate as chairman a barrister on the list who has not been struck off by either of the parties.¹

Chairman
appointed.

If all the parties agree to nominate three barristers and deliver the names to the chairman, signed by the parties, they are appointed commissioners, without the above formalities, and they choose one of themselves to be their chairman.

When parties
agree.

But where there are more than two parties upon distinct interests, and there appears to be no collusion

Where more
than two par-
ties.

¹ 42 Geo. 3, c. 106, s. 8, 9.

between them, none of the parties are permitted to deliver a list, but the committee appoint the commissioners and nominate which of the three shall act as chairman.

Warrant to
commissioners.

When the commissioners are appointed, the chairman of the committee issues a warrant commanding them to repair, on a certain day, to the place to which the petition relates; and addresses to their chairman a copy of the petition, and of the lists and disputed votes, and statements of the several parties, together with the order of the committee, specially assigning and limiting the facts and allegations concerning which they are to examine evidence, and all documents which the committee may think proper to refer.

Committee
report and
adjourn.

The committee report these proceedings to the house, and ask permission to adjourn until they are re-assembled by the speaker's warrant. They are also to state that they have gone through all the other parts of the petition, except those which have been specially referred to the commissioners.

Powers and
duties of com-
missioners.

The commissioners have the same powers as an election committee to send for persons, papers, and records, and to examine witnesses upon oath; but they may not suffer counsel to plead before them. Within 10 days after the evidence is closed, or with all convenient despatch, assigning reasons for the delay, the commissioners are required to cause two copies of the minutes of proceedings and evidence to be made out, and to transmit one to the clerk of the Crown in Ireland, and the other to the speaker, who communicates it to the house.¹

Proceedings
transmitted.

If the commissioners object to any evidence offered before them, they are to state in writing the grounds of their objection, and the party tendering the evidence may require the commissioners to examine it. Evidence taken in this manner is transmitted separately, with the other proceedings, in the nature of a bill of exceptions to evi-

Evidence ob-
jected to by
commissioners
transmitted
separately.

¹ 60 Geo. 3, c. 7.

dence; and if the committee should report that its production was frivolous or vexatious, the party who produced it is liable to costs.

Within two days after the receipt of the copy of the proceedings, the speaker is required to insert in the London Gazette a warrant directing the committee, to meet again within a month; or if Parliament should not be sitting, within a month after the commencement of the next session, or of the meeting of the house after an adjournment.¹

Committee
re-assembled.

The committee when re-assembled may receive no further evidence respecting any matter already examined by the commissioners, but determine from the written minutes. They may hear counsel, however, as to the effect of the evidence; and if the evidence appear incomplete, they may, at any time before their report, direct a warrant for re-assembling the commissioners. By the 47 Geo. 3, c. 14, s. 5, the committee are also empowered to send for any papers produced before the commissioners, without re-assembling them; but they may not enter into any point that was not in issue before the commissioners.

Use of evidence
taken in Ire-
land.

If the commissioners have found it impracticable to transmit the evidence taken before them, within 10 days, and have given their reasons for the delay, as required by the 60 Geo. 3, the committee are directed to investigate the reasons, and to report their opinion respecting them to the house.

Causes of delay
in transmitting
evidence.

¹ 42 Geo. 3, c. 26. 60 Geo. 3, c. 7.

CHAPTER XXIII.

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

Rarity of impeachments in modern times.

IMPEACHMENT by the commons, for high crimes and misdemeanors beyond the reach of the law, or which no other authority in the state will prosecute, is a safeguard of public liberty well worthy of a free country, and of so noble an institution as a free Parliament. But, happily, in modern times, this extraordinary judicature is rarely called into activity.¹ The times in which its exercise was needed were those in which the people were jealous of the Crown; when the Parliament had less control over prerogative; when courts of justice were impure; and when, instead of vindicating the law, the Crown and its officers resisted its execution, and screened political offenders from justice. But the limitations of prerogative—the immediate responsibility of the ministers of the Crown to Parliament—the vigilance and activity of that body in scrutinizing the actions of public men—the settled administration of the law, and the direct influence of Parliament over courts of justice—which are, at the same time, independent of the Crown²—have prevented the consummation of those crimes

¹ For the number of impeachments at different times, see *supra*, p. 39.

² By the Act 13 Will. 3, c. 2, s. 3, the commissions of judges are made *quandiu se bene gesserint*; their salaries are ascertained and established; but it may be lawful to remove them upon the address of both houses of Parliament.

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

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

Grounds of impeachment.

It was always allowed, that a peer might be impeached for any crime, whether it were cognizable by the ordinary tribunals or not; but it was formerly doubted, upon the authority of the case of Simon de Beresford, in the 4th Edward 3,¹ whether a commoner could be impeached for any capital offence.

Peers and commoners.

On the 26th March 1681, Edward Fitzharris was impeached of high treason; but the House of Lords, on being informed by the attorney-general that he had been instructed to indict Fitzharris at common law, resolved that they would not proceed with the impeachment.² The grounds of their decision were not stated; but from the protest entered on their Journals, from the resolution of the commons, and from the debates in both houses, it may be collected that the fact of his being a commoner had been mainly relied on.³ The commons protested against the resolution of the lords, as “a denial of justice, and a violation of the constitution of Parliaments;” and declared it to be their “undoubted right to impeach any peer or commoner for treason or any other crime or misdemeanor:” but the impeachment was at an end, and the trial at common law proceeded. On his prosecution

Case of Fitzharris.

¹ See 2 Rot. Parl. 53, 54; 4 Edw. 3, Nos. 2 and 6.

² 13 Lords' J. 755.

³ 8 Howell St. Tr. 231-230; 2 Burnet's Own Times, 280; 4 Hans. Parl. Hist. 1333.

by indictment, Fitzharris pleaded in abatement that an impeachment was then pending against him for the same offence, but his plea was overruled by the Court of King's Bench.¹

Case of Sir A. Blair, and others.

The authority of this case, however, is of little value: an impeachment for high treason was depending at the very time against Chief Justice Scroggs,² a commoner; and when, on the 26th June 1689, Sir Adam Blair, and four other commoners, were impeached of high treason, the Lords, after receiving a report of precedents, and negating a motion for requiring the opinion of the judges, resolved that the impeachment should proceed.³

Commencement of proceedings.

It rests, therefore, with the House of Commons to determine when an impeachment should be instituted. A member, in his place, first charges the accused of high treason, or of certain high crimes and misdemeanors, and after supporting his charge with proofs, moves that he be impeached. If the house deem the grounds of accusation sufficient, and agree to the motion, the member is ordered to go to the lords, "and at their bar, in the name of the House of Commons, and of all the commons of the United Kingdom, to impeach the accused; and to acquaint them that this house will, in due time, exhibit particular articles against him, and make good the same." The member, accompanied by several others, proceeds to the bar of the House of Lords, and impeaches the accused accordingly.⁴

Articles of impeachment.

In the case of Warren Hastings, articles of impeachment had been prepared before his formal impeachment at the bar of the House of Lords; but the usual course has been to prepare them afterwards. A committee is appointed to draw up the articles, and on their report, the articles are discussed, and, when agreed to, are ingrossed and delivered to the lords, with a saving clause, to provide that the commons shall be at liberty to exhibit further

¹ 8 Howell's St. Tr. 326.

² 13 Lords' J. 752.

³ 14 Lords' J. 260.

⁴ 45 Lords' J. 350.

articles from time to time.¹ The accused sends answers to each article, which, together with all writings delivered in by him, are communicated to the commons by the lords;² and to these replications are returned if necessary.³

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

Accused taken into custody.

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

Managers appointed.

Witnesses summoned.

The trial has usually been held in Westminster Hall, which has been fitted up for that purpose. In the case of peers impeached of high treason, the House of Lords is presided over by the lord high steward, who is appointed by the Crown, on the address of their lordships; but, at other times, by the lord chancellor or lord speaker of the House of Lords. The commons attend the trial, as a committee of the whole house,¹¹ when the managers make their charges, and adduce evidence in support of them; but they are bound to confine themselves to charges contained in the articles of impeachment. Mr. Warren Hastings complained, by petition to the House of Commons, that matters of accusation had been added to those

The trial.

Charges to be confined to the articles.

¹ 60 Com. J. 482, 483.

² 20 Lords' J. 297. 18 Com. J. 391.

³ 61 Ib. 164.

⁴ 20 Lords' J. 112. 27 Ib. 19.

⁵ 42 Com. J. 793.

⁶ 42 Com. J. 796.

⁷ 37 Lords' J. 724.

⁸ 61 Com. J. 169.

⁹ 61 Ib. 224.

¹⁰ 20 Geo. 2, c. 30. 45 Lords' J. 439.

¹¹ 45 Lords' J. 519.

originally laid to his charge, and the house resolved that certain words ought not to have been spoken by Mr. Burke.¹ When the case has been completed by the managers, they are answered by the counsel for the accused, by whom witnesses are also examined, if necessary; and, in conclusion, the managers have a right of reply.

Lords determine if the accused be guilty.

When the case is thus concluded, the lords proceed to determine whether the accused be guilty of the crimes with which he has been charged. The lord high steward puts to each peer, beginning with the junior baron, the question upon the first article, whether the accused be guilty of the crimes charged therein. The peers in succession rise in their places when the question is put, and standing uncovered, and laying their right hands upon their breasts, answer, "guilty," or "not guilty," as the case may be, "upon my honour." Each article is proceeded with separately in the same manner, the lord high steward giving his own opinion the last.² The numbers are then cast up, and being ascertained, are declared by the lord high steward to the lords, and the accused is acquainted with the result.³

Commons demand judgment.

If the accused be declared not guilty, the impeachment is dismissed; but if guilty, it is for the commons, in the first place, to demand judgment of the lords against him; without which they would protest against any judgment being pronounced. On the 17th March 1715, the commons resolved, *nem. con.*, in the impeachment of the Earl of Winton,

"That the managers for the commons be empowered, in case the House of Lords shall proceed to judgment before the same is demanded by the commons, to insist upon it, that it is not parliamentary for their lordships to give judgment, until the same be first demanded by this house."⁴

¹ 44 Com. J. 298. 320.

² Printed Trial of Lord Melville, p. 402.

³ Trial of Lord Melville, p. 413.

⁴ 18 Com. J. 405.

And a similar resolution was agreed to on the impeachment of Lord Lovat, in 1746.¹

When judgment is to be given, the lords send a message to acquaint the commons that their lordships are ready to proceed further upon the impeachment; the managers attend; and the accused, being called to the bar, is then permitted to offer matters in arrest of judgment.² Judgment is afterwards demanded by the speaker, in the name of the commons, and pronounced by the lord high steward, the lord chancellor, or speaker of the House of Lords.³ The judgment.

The necessity of demanding judgment gives to the commons the power of pardoning the accused, after he has been found guilty by the lords; and in this manner an attempt was made, in 1725, to save the Earl of Macclesfield from the consequences of an impeachment, after he had been found guilty by the unanimous judgment of the House of Lords.⁴

So important is an impeachment by the commons, that not only does it continue from session to session, in spite of prorogations, by which all other parliamentary proceedings are determined; but it survives even a dissolution, by which the very existence of a Parliament is concluded.⁵ But as the preliminary proceedings of the House of Commons would require to be revived in another session, Acts were passed in 1786 and in 1805, to provide that the proceedings depending in the House of Commons upon the articles of charge against Warren Hastings and Lord Melville, should not be discontinued by any prorogation or dissolution of Parliament.⁶ Proceedings not concluded by prorogation or dissolution.

In the case of the Earl of Danby, in 1679, the com- Pardon not pleadable.

¹ 25 Com. J. 320.

² 22 Lords' J. 556. 27 lb. 78.

³ 22 Lords' J. 560.

⁴ 22 Lords' J. 554, 555. 20 Com. J. 541 (27 May 1725). 6 Howell's St. Tr. 762.

⁵ 39 Lords' J. 191, and see Report of Precedents, ib. 125. 46 Com. J. 136.

⁶ 26 Geo. 3, c. 96. 45 Geo. 3, c. 125.

mons protested against a royal pardon being pleaded in bar of an impeachment, by which an offender could be screened from the inquiry and justice of Parliament by the intervention of prerogative. Directly after the Revolution, the commons asserted the same principle, and within a few years it was declared by the Act of Settlement,¹ "That no pardon under the great seal of England shall be pleadable to an impeachment by the commons in Parliament."

But may be given afterwards.

But, although the royal prerogative of pardon is not suffered to obstruct the course of justice, and to interfere with the exercise of parliamentary judicature; yet the prerogative itself is unimpaired in regard to all convictions whatever; and therefore, after the judgment of the lords has been pronounced, the Crown may reprieve or pardon the offender. This right was exercised in the case of three of the Scottish lords, who had been concerned in the rebellion of 1715, and who were reprieved by the Crown, and at length received the royal pardon.

Concerning the trial of peers, very few words will be necessary.

Crimes for which peers are tried by their peers.

At common law, the only crimes for which a peer is to be tried by his peers, are treason, felony, misprision of treason, and misprision of felony; and the statutes which give such trial have reference to the same offences, either at common law or created by statute. For misdemeanors, and in cases of *præmunire*, it has been held that peers are to be tried in the same way as commoners, by a jury.²

During the sitting of Parliament, they are tried by the House of Peers; or, more properly, before the court of our lady the Queen in Parliament,³ presided over by the lord high steward appointed by commission under the great seal;⁴ but at other times, they may be tried before the court of the lord high steward.⁵

¹ 12 & 13 Will. 3, c. 2.

² *Rex v. Lord Vaux*, 1 Bulstr. 197.

³ *Poster's Crown Law*, 141.

⁴ See published Trial of the Earl of Cardigan.

⁵ See 4 Bl. Comm. 260.

On the 14th January 1689, it was resolved by the lords, "That it is the ancient right of the peers of England to be tryed only in full Parliament for any capital offences:"¹ but on the 17th, it was declared that this order should not "be understood or construed to extend to any appeal of murther or other felonye, to be brought against any peer or peers."²

Trial of peers to be in full Parliament.

Declaration concerning appeals of murther, &c.

By the Act 7 Will. 3, c. 3, it is declared, "That upon the trial of any peer or peeress for high treason or misprision, all the *peers* who have a right to sit and vote in Parliament, shall be duly summoned 20 days at least before every such trial; and that every peer so summoned and appearing *shall vote in the trial.*" The words of this enactment would appear to exclude the bishops from the right of being summoned; for though they were anciently called peers, it is affirmed, by a standing order of the lords, "That bishops are only lords of Parliament, but not peers, for they are not of tryal by nobility;"³ and by the canons of the church⁴ they would be restrained from voting in cases of blood, as required by the Act. But by the Constitutions of Clarendon,⁵ it was declared, "That bishops, like other peers (or barons), ought to take part in trials in the king's court or council with the peers, until it comes to a question of the loss of life or limb;" and in the impeachment of the Earl of Danby, it was expressly laid down by the lords, "That the lords spiritual have a right to stay and sit in court in capital cases, till the court proceed to the vote of guilty or not guilty."⁶ And, although the Act of Will. 3 expressly excepts impeachments and other proceedings in Parliament from its provisions, in practice the bishops have always been summoned, and

All peers to be summoned.

¹ Lords' S. O. No. 52.

² *Ib.* No. 53.

³ *Ib.* No. 44.

⁴ Gibson, Codex, 124, 125. These canons, however, would scarcely appear to be binding, if they were not constantly observed.

⁵ 11 Hen. 2, A. D. 1164. 1 Wilkins, Concilia, 435.

⁶ 13 Lords' J. 571.

have attended such trials in Parliament; but are never summoned to the court of the lord high steward.¹

Spiritual lords withdraw.

The bishops, therefore, are present during the trial of peers in Parliament, but ask leave to be absent from the judgment; which being agreed to, they withdraw, in compliance with the canons of the Church, but enter a protestation, "saving to themselves and their successors all such rights in judicature as they have by law, and by right ought to have."²

Bills of attainder and of pains and penalties.

The proceedings of Parliament in passing bills of attainder, and of pains and penalties, do not vary from those adopted in regard to other bills. They may be introduced into either house; they pass through the same stages; and when agreed to by both houses, they receive the royal assent in the usual form. But the parties who are subjected to these proceedings are admitted to defend themselves by counsel and witnesses before both houses; and the solemnity of the proceedings would cause measures to be taken to enforce the attendance of members upon their service in Parliament.³

The highest form of parliamentary judicature.

In evil times, this summary power of Parliament to punish criminals by statute has been perverted and abused; and in the best of times it should be regarded with jealousy; but whenever a fitting occasion arises for its exercise, it is, undoubtedly, the highest form of parliamentary judicature. In impeachments the commons are but accusers, and advocates; while the lords alone are judges of the crime. On the other hand, in passing bills, the commons commit themselves by no accusation, nor are their powers directed against the offender; but they are judges of equal jurisdiction and with the same responsibility as the lords; and the accused can only be condemned by the unanimous judgment of the Crown, the lords, and the commons.

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

² 27 Lords' J. 76. 73 Lords' J. 43.

³ See 53 Lords' J. 356. 364.

BOOK III.

THE MANNER OF PASSING PRIVATE BILLS.

CHAPTER XXIV.

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

EVERY bill for the particular interest or benefit of any person or persons, is treated, in Parliament, as a private bill. Whether it be for the interest of an individual, a public company or corporation, a parish, a city, a county, or other locality;¹ it is equally distinguished from a measure of national import, in which the whole community are interested. This distinction is the better defined by the solicitation of the parties themselves for bills in which their interests are concerned; as, by the standing orders of both houses, all private bills are required to be brought in upon petition;² and the payment of fees is an indispensable condition to their progress.

De finition of
private bills.

In treating of petitions, the origin of private bills has been already glanced at;³ but it may be referred to again, in illustration of the distinctive character of such bills, and of the proceedings of Parliament in passing them. The separation of legislative and judicial functions is a refinement in the principles of political government and jurisprudence, which can only be the result of civilization. In

Origin of pri-
vate bills.

¹ See *infra*, p. 408, and 2 Hats. 281-288. A bill for the benefit of three counties has been held to be a private bill.

² But see exceptions, *infra*, p. 462.

³ *Supra*, p. 302.

the early constitution of Parliament these functions were confounded; and special laws for the benefit of private parties, and judicial decrees for the redress of private wrongs, being founded alike upon petitions, were not distinguished in principle or in form. When petitions sought obviously for remedies which the common law afforded, the parties were referred to the ordinary tribunals; but in other cases the Parliament exercised a remedial jurisdiction. Other remedies, of a more judicial character, and founded upon more settled principles, were at length supplied by the courts of equity; and from the reign of Henry 4, the petitions addressed to Parliament prayed, more distinctly, for peculiar powers beside the general law of the land, and for the special benefit of the petitioners. Whenever these were granted, the orders of Parliament, in whatever form they may have been expressed, were in the nature of private acts; and after the mode of legislating by bill and statute had grown up in the reign of Henry 6,¹ these special enactments were embodied in the form of distinct statutes.²

Peculiarity of proceedings on private bills.

Passing now to existing practice, the proceedings of Parliament in passing private bills are still marked by much peculiarity. A bill for the particular benefit of certain persons may be injurious to others; and to discriminate between the conflicting interests of different parties, involves the exercise of judicial inquiry and determination. This circumstance causes important distinctions in the mode of passing public and private bills; and in the principles by which Parliament is guided.

Legislative functions of Parliament in passing public bills.

In passing public bills, Parliament acts strictly in its legislative capacity; it originates the measures which appear for the public good; it conducts inquiries, when necessary, for its own information, and enacts laws according to its own wisdom and judgment. The forms in

¹ See *supra*, p. 270.

² See Statutes of the Realm, by Record Commission, 9 Hen. 6.

which its deliberations are conducted are established for its own convenience; and all its proceedings are independent of individual parties; who may petition, indeed, and are sometimes heard by counsel; but who have no direct participation in the conduct of the business, nor immediate influence upon the judgment of Parliament.

In passing private bills, the Parliament still exercises its legislative functions; but its proceedings partake also of a judicial character. The persons whose private interests are to be promoted appear as suitors; while those who apprehend injury are admitted as adverse parties in the suit. All the formalities of a court of justice are maintained; various conditions are required to be observed, and their observance to be strictly proved; and if the parties do not sustain the bill in its progress, by following every regulation and form prescribed, it is not forwarded by the house, in which it is pending; and if they abandon it, and no other parties undertake its support,¹ the bill is lost, however sensible the house may be of its value. The analogy which all these circumstances bear to the proceedings of a court of justice is further supported, by the payment of fees, which is required of every party supporting or opposing a private bill, or desiring or opposing any particular provision.

This union of the judicial and legislative functions is not confined to the forms of procedure, but is an important principle in the inquiries and decision of Parliament upon the merits of private bills. As a court, it inquires and adjudicates upon the interests of private parties; as a legislature, it is watchful over the interests of the public. The promoters of a bill may prove, beyond a doubt, that their own interest will be advanced by its success, and no one may complain of injury, or urge any specific objection;

Its functions partly judicial in passing private bills.

Principles by which Parliament is guided.

¹ The Manchester and Salford Improvement Bill in 1828 was abandoned, in committee, by its original promoters; when its opponents, having succeeded in introducing certain amendments, undertook to solicit its further progress.

yet, if Parliament apprehend that it will be hurtful to the community, it is rejected as if it were a public measure, or qualified by restrictive enactments, not solicited by the parties. In order to increase the vigilance of Parliament, in protecting the public interests, the chairman of the lords' committees in the one house, and the chairman of ways and means in the other, are entrusted with the peculiar care of unopposed bills; while the agency of the Board of Trade is also brought in aid of the legislature.¹

Private bills pass through the same stages.

In pointing out this peculiarity in private bills, it must, however, be understood, that while they are examined and contested out of the houses of Parliament like private suits, and are subject to notices, forms, and intervals, unusual in other bills; yet in every separate stage, when they come before either house, they are treated precisely as if they were public bills. They are read as many times, the questions put concerning them differ in no respect whatever; and the same rules of debate and procedure are maintained throughout.

Proposed plan of describing the progress of private bills.

In order to explain clearly all the forms and proceedings to be observed in passing private bills, it is proposed to state them, as nearly as possible, in the order in which they successively arise. It will be necessary, for this purpose, to begin with the House of Commons; because, by the privileges of that house, every bill which involves any pecuniary charge or burthen on the people, by way of tax, rate, toll, fine, or forfeiture, ought to be first brought into that house.² It follows, from this rule, that by far the greater number of private bills are, from their character, necessarily passed first by the commons. Some others, also, which might originate in either house, are generally first solicited in the commons. It will be convenient, therefore, in the first place, to pursue this description of bills in their progress through the commons, and

¹ See *infra*, pp. 406. 408. 414. 430. 435. 439.

² See *supra*, pp. 189. 271. 273. 321.

afterwards, to follow them in their passage through the lords. Those private bills which usually originate in the lords, as naturalization, name, estate, and divorce bills, will, for the same reasons, be more conveniently followed from the lords to the commons. Compliance with the several standing orders is so strictly enforced by both houses, that a general description of them would be of little use; and it is therefore proposed to cite them at length in some cases, and, in all others, to state accurately their effect.

CHAPTER XXV.

CONDITIONS TO BE OBSERVED BY PARTIES BEFORE PRIVATE BILLS ARE INTRODUCED INTO PARLIAMENT: NOTICES AND DEPOSIT OF PLANS, &c.: ESTIMATES AND SUBSCRIPTION CONTRACTS.

IN order to give due notice to the public generally, and to all parties who may be interested in private bills of a local or general character and operation, Parliament has ordered certain public and personal notices to be given of intended applications for leave to introduce such bills; and has rendered compulsory the compliance with other preliminary conditions, which must be separately proved in either house. The standing orders of the lords and commons in reference to these preliminaries are now so much assimilated, that it will be most convenient to bring them together in this chapter; by which much needless repetition will be avoided; the slight variations which still exist in the standing orders of the two houses will be

Preliminary conditions required by both houses.

more distinctly pointed out, and the attention of parties directed to them at the proper time.

Notices.

The bills concerning which notices are required, have been divided into the three following classes by the standing orders of both houses.

1st Class.—Burial ground, making, maintaining, or altering.

- Church or chapel, building, enlarging, repairing, or maintaining.
- City or town, paving, lighting, watching, cleansing, or improving.
- Crown, church, or corporation property, or property held in trust for public or charitable purposes.
- Fishery, making, maintaining, or improving.
- Land, inclosing, draining, or improving.
- Market, or market-place.
- Local court, constituting.
- Market, or market-place, erecting, improving, repairing, maintaining, or regulating.
- Poor, maintaining, or employing.
- Poor rate.
- Stipendiary magistrate, or any public officer, payment of, if not out of county rate.

2d Class.—Making, maintaining, varying, extending, or enlarging any

- | | | |
|-----------|-------------|----------------|
| Aqueduct. | Ferry. | Reservoir. |
| Archway. | Harbour. | Tunnel. |
| Bridge. | Navigation. | Turnpike road. |
| Canal. | Pier. | Waterwork. |
| Cut. | Port. | |
| Dock. | Railway. | |

3d Class.—Continuing or amending an Act passed for any of the purposes included in this or the two preceding classes, where no further work than such as was authorized by a former Act is proposed to be made.

- Company, incorporating or giving powers to.
- County rate.
- County or shire hall, court house.
- Gaol or house of correction.
- Letters patent, confirming, prolonging, or transferring the term of.
- Powers to sue and be sued, conferring.
- Stipendiary magistrate, or any public officer, payment of, if out of county rate.

In reference to all these bills, the standing orders of both houses require,

Notices, how and when published.

“That notices be published in three successive weeks in the months of October and November, or either of them, immediately preceding the session of Parliament in which application for the bill shall be made, in the London, Edinburgh, or Dublin Gazette,

as the case may be, and in some one and the same newspaper of the county in which the city, town, or lands to which such bill relates shall be situate; or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto; or if such bill do not relate to any particular city, town, or lands, in the London, Edinburgh, or Dublin Gazette only, as the case may be." The commons also order, "That all notices required to be inserted in the London, Edinburgh, or Dublin Gazette, be delivered at the office of the gazette in which the insertion is required to be made, during the usual office hours, at least two clear days previous to the publication of the gazette, and that the receipt of the printer for such notice shall be proof of its due delivery."

Receipt of
printer.

It is also ordered by both houses,

"That if it be the intention of the parties applying for leave to bring in a bill, to obtain powers for the compulsory purchase of lands or houses, or to levy any tolls, rates, or duties, or to alter any existing tolls, rates, or duties, or to confer, vary, or extinguish any exemptions from payment of tolls, rates, or duties, or any other rights or privileges, the notices shall specify such intention."

Intention to
take lands or
levy or alter
tolls to be
stated.

"That on or before the 31st day of December immediately preceding the application for a bill by which any lands or houses are intended to be taken, or an extension of the time granted by any former Act for that purpose is sought, application in writing¹ be made to the owners or reputed owners, lessees or reputed lessees, and occupiers, either by delivering the same personally, or by leaving the same at their usual place of abode, or in their absence from the United Kingdom, with their agents respectively, of which application having been duly made, the production of a written acknowledgment by the party applied to of the receipt of such application, shall be sufficient evidence, in the absence of other proof, of the same having been duly delivered or left as aforesaid; and that separate lists be made of the names of such owners, lessees, and occupiers, distinguishing which of them have assented, dissented, or are neuter in respect thereto."

Application to
owners, &c.

In addition to these notices applicable to bills of all the classes, there are other orders specially relating to bills of each separate class, and to particular bills included in each class.²

¹ For bills of the second class the form of application is given in the Appendix to the Standing Orders.

² See also *infra*, pp. 403, 437, 438, 441, 442.

1. *Orders specially relating to Bills of the First Class.*

It is ordered by both houses,

Notices on
church doors.

“That notices shall be affixed to the outer doors of the churches of every parish to which they specially relate, for three successive Sundays in the months of October and November, or either of them.”

It is also required by the commons,

Crown, church,
and corporation
property.

Notice to
owners, &c.

“That in cases of intended application to Parliament for bills relating to Crown, church, or corporation property, or property held in trust for public or charitable purposes, notice in writing of such intention be given to the owners or reputed owners of such property, and to the lessees or reputed lessees of such property, holding leases granted for a life or lives, or for any term of 21 years or upwards; such notice to be given previous to the presentation of the petition for leave to bring in the bill, or, in the case of a bill brought from the House of Lords, previous to the first reading thereof.”

Burial grounds.

In bills relating to burial grounds, it is ordered by both houses,

Notices on
church doors.

“That notices be affixed to the outer doors of the churches of every parish adjoining that in which a burial ground is proposed to be made, for three successive Sundays in the months of October and November, or either of them.”

Notice to
owners and oc-
cupiers of
houses.

“That on or before the 31st day of December immediately preceding the application for any bill for making a burial ground, notice be given to the owner and occupier of every dwelling-house situated within 300 yards of the boundary of the proposed burial ground.”

Limits of
burial grounds
to be specified.

The standing orders of the lords also require that all such notices respecting burial grounds shall set forth and specify the limits within which any such cemetery or burial ground is intended to be erected.¹ The lords further apply to bills for burial grounds, the same orders in regard to estimates and subscription contracts, which are applicable to bills of the second class, by the standing orders of both houses, and which will be presently stated.²

¹ Lords' S. O. No. 222.

² See *infra*, p. 393.

2. *Orders specially relating to Bills of the Second Class.*

Both houses require,

“That in cases of bills included in the second class, all notices shall contain the names of the parishes, townships, townlands, and extra-parochial places from, in, through, or into which the work is intended to be made, maintained, varied, extended, or enlarged, and shall state the time and place of deposit of the plans, sections, and books of reference respectively, with the clerks of the peace, parish clerks, schoolmasters, town clerks and postmasters, as the case may be.”¹

Notices to contain names of parishes, &c.

It is further required by the lords that all notices with respect to the second class of bills, shall also be given at the general quarter session of the peace for the county, riding, or division in or through which the work shall be made, &c., at Michaelmas or Epiphany preceding the session of Parliament in which application is intended to be made, by affixing notice on the door of the session house. In bills relating to Scotland, instead of affixing these notices on the door of the session house, they are to be written or printed on paper and affixed to the church door of the parish or parishes through which the work is intended to be made, &c., for two Sundays in each of the months of October and November preceding the introduction of the bill.²

Notice on doors of session house.

In Scotland on doors of parish churches.

Besides these notices relating to bills of the second class, plans of the intended works are ordered to be deposited in particular places. By the standing orders of both houses it is required,

“That a plan and duplicate, on a scale of not less than four inches to a mile, be deposited for public inspection at the office of the clerk of the peace for every county, riding, or division in England or Ireland, or in the office of the principal sheriff clerk of every county in Scotland, in or through which the work is proposed to be made, maintained, varied, extended, or enlarged, on or before the 30th day of November immediately preceding the

Plans, &c. with clerk of the peace.

¹ Com. S. O. No. 22. Lords' S. O. No. 223.

² Lords' S. O. No. 223.

session of Parliament in which application for the bill shall be made; which plans shall describe the line or situation of the whole of the work, and the lands in or through which it is to be made, maintained, varied, extended, or enlarged, or through which every communication to or from the work shall be made, together with a book of reference containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of such lands respectively; and in the case of bills relating to turnpike roads, cuts, canals, reservoirs, aqueducts, and railways, a section and duplicate thereof, as hereinafter described, shall likewise be deposited with such plan and duplicate."

Book of reference.

Lands within deviation to be on plan.

Buildings, &c. on enlarged scale.

"That where it is the intention of the parties to apply for powers to make any lateral deviation from the line of the proposed work, the limits of such deviation shall be defined upon the plan, and all lands included within such limits shall be marked thereon; and that in all cases, excepting where the whole of such plan shall be upon a scale of not less than a quarter of an inch to every 100 feet, an additional plan of any building, yard, courtyard, or land within the curtilage of any building, or of any ground cultivated as a garden, either on the original line, or included within the limits of the said deviation, shall be laid down on the said plan or on the additional plan deposited therewith, upon a scale of not less than a quarter of an inch to every 100 feet."

Section.

"That the section be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every 100 feet, and shall show the surface of the ground marked on the plan, and the intended level of the proposed work, and a datum horizontal line, which shall be the same throughout the whole length of the work, or any branch thereof respectively, and shall be referred to some fixed point stated in writing on the section, near either of the termini."

The form in which the plans and sections are to be prepared, is shown by explanatory figures and drawings in the standing orders published by both houses of Parliament.

It is also ordered,

Clerks of peace to indorse a memorial on plans, &c.

"That the clerks of the peace or sheriff clerks, or their respective deputies, do make a memorial in writing upon the plans, sections, and books of reference so deposited with them, denoting the time at which the same were lodged in their respective offices, and do at all reasonable hours of the day permit any person to view and examine one of the same, and to make copies or extracts therefrom; and that one of the two plans and sections so deposited, be sealed up, and retained in the possession of the clerk of

the peace or sheriff clerk until called for by order of one of the two houses of Parliament."¹

"That on or before the 31st day of December, a copy of so much of the said plans and sections as relates to each parish in or through which the work is intended to be made, maintained, varied, extended, or enlarged, together with a book of reference thereto, be deposited with the parish clerk of each such parish in England, the schoolmaster of each such parish in Scotland (or in royal burghs with the town-clerk), and the postmaster of the post-town in or nearest to such parish in Ireland."²

In addition to the deposit of these plans, sections, books of reference, &c., with clerks of the peace, &c., the lords require that copies of their standing orders concerning such deposit shall be delivered to every clerk of the peace, sheriff clerk, parish clerk, schoolmaster, postmaster, or other person, at the same time with the plan or other writing deposited with him.³

It is necessary, that on or before the 31st day of December, a copy of the said plans, sections, and books of reference be deposited in the office of the clerk of the Parliaments, in the House of Lords, and in the Private Bill Office of the House of Commons.

Both houses order,

"That an estimate of the expense be made, and signed by the person making the same, and that a subscription be entered into under a contract, made as hereinafter described, to three-fourths the amount of the estimate."

"That in cases where the work is to be made by means of funds, or out of money to be raised upon the credit of present surplus revenue, under the control of directors, trustees, or commissioners, as the case may be, of any existing public work, a declaration stating those facts, and setting forth the nature of such control, and the nature and amount of such funds or surplus revenue, and given under the common seal of the company, or under the hand of some authorized officer of such directors, trustees, or commissioners, may be substituted in lieu of the subscription contract, and in addition to the estimate of the expense."

"That in cases where the work is to be made out of money to be raised upon the security of the rates, duties, or revenue to be created by or to arise under any bill, under which no private or personal pecuniary profit or advantage is to be derived, a declara-

Plan and section with parish clerk, &c.

Lords' standing orders deposited with plans.

Time for deposit in houses of Parliament.

Estimate and subscription contract.

When declaration may be substituted for subscription contract.

When declaration and estimate of amount of rates may be substituted for subscription contract.

¹ See Act 1 Vict. c. 83.

² See *ib*.

³ Lords' S. O. No. 223 (12).

tion stating those facts, and setting forth the means by which funds are to be obtained for executing the work, and signed by the party or agent soliciting the bill, together with an estimate of the probable amount of such rates, duties, or revenue, signed by the person making the same, may be substituted in lieu of the subscription contract, and in addition to the estimate of the expense."

Contract to contain christian and surnames of parties.

"That every subscription contract contain the christian and surnames, description, and place of abode of every subscriber; his signature to the amount of his subscription, with the amount which he has paid up; and the name of the party witnessing such signature, and the date of the same respectively."

In the commons it is ordered,

One-tenth part of amount subscribed to be deposited, and three-fourths in number of subscribers to pay up their deposit.

"That previous to the presentation of a petition for a bill, a sum equal to one-tenth part of the amount subscribed shall be deposited with the Court of Chancery in England, if the work is intended to be done in England, or with the Court of Chancery in England or the Court of Exchequer in Scotland, if such work is intended to be done in Scotland, and with the Court of Chancery in Ireland, if such work is intended to be done in Ireland; and that not less than three-fourths in number of the subscribers shall pay up their shares of such deposit."

The standing orders of the lords require only a twentieth part of the subscription to be deposited in this manner, and allow the deposit to be made at any time prior to the proof of compliance before the standing orders' committee.

Contract not valid unless entered into subsequent to close of previous session.

"That no subscription contract shall be valid unless it be entered into subsequent to the close of the session of Parliament previous to that in which application is made for leave to bring in the bill to which it relates, and unless the parties subscribing to it bind themselves, their heirs, executors, and administrators, for the payment of the money so subscribed."

Copies of subscription contract, or of declaration, &c. to be printed, and delivered in Vote Office, and Parliament Office.

It is further required, that previous to the presentation of a petition for a bill in the House of Commons, and before the second reading of the bill in the lords, copies of the subscription contract, with the names of the subscribers arranged in alphabetical order, and the amount of the deposit respectively paid up by each such subscriber; or where a declaration and estimate of the probable amount of rates and duties are substituted in lieu of a subscription contract, copies of such declaration or of such declaration and estimate be printed at the expense of the promoters of the bill, and be delivered in the lords at the office of the clerk of the Parliaments, and in the commons at the Vote Office, for the use of the members.

“That previous to the presentation of a petition for a bill whereby any part of a work authorized by any former Act is intended to be relinquished, notice in writing of such bill be given to the owners or reputed owners and occupiers of the lands in which the part of the said work intended to be thereby relinquished is situate.”

Notice to owners, &c. when the bill is to abridge any public work.

It is ordered by both houses,

CUTS, CANALS, &c.

“That in all cases where it is proposed to divert into any intended cut, canal, reservoir, aqueduct, or navigation, or into any intended variation, extension, or enlargement thereof respectively, any water from any existing cut, canal, reservoir, aqueduct, or navigation, whether directly or derivatively, and whether under any agreement with the proprietors thereof or otherwise, the notices shall contain the name of every such existing cut, canal, reservoir, aqueduct, or navigation, the waters supplying which, by virtue of any Act of Parliament, will either directly or derivatively flow or proceed into any such intended cut, canal, reservoir, aqueduct, or navigation, or into any intended variation, extension, or enlargement thereof.”¹

Diverting water from an existing cut, &c. into an intended cut.

“That in all cases where it is proposed to make, vary, extend, or enlarge any cut, canal, reservoir, aqueduct, or navigation, the plan shall describe the brooks and streams to be directly diverted into such intended cut, canal, reservoir, aqueduct, or navigation, or into any variation, extension, or enlargement thereof respectively, for supplying the same with water; it shall also exhibit the height of the several embankments, and the depth of the several cuttings respectively, on a scale specified thereon; and in cases of bills for improving the navigation of any river, there shall be a section which shall specify the levels of both banks of such river; and where any alteration is intended to be made therein, it shall describe the same by feet and inches.”²

Plan to describe brooks, &c. to be diverted.

“That in all cases where it is proposed to make, vary, extend, or enlarge any railway, the plan shall exhibit thereon the height of the several embankments, and the depth of the several cuttings respectively, on a scale specified thereon.”

RAILWAYS.
Plan of railway to show embankments and cuttings.

“That in every section of a railway, the line marked thereon shall correspond with the upper surface of the rails.”

Line of railway on section to correspond with upper surface of rails.

“That a vertical measure from the datum line to the line of the railway shall be marked in feet and inches at each change of the gradient or inclination, and that the proportion or rate of inclination between each such change shall also be marked.”

Vertical measures to be marked at change of gradient.

¹ Lords' S. O. No. 225. Com. S. O. No. 37.

² Ibid.

Height of railway, over or under surface, to be marked at every crossing of a road, &c.

“That the height of the railway over or under the surface of every turnpike road, public carriage road, navigable river, canal, or railway, or junction with a railway, shall be marked in figures at every crossing thereof; and if there shall be no such crossing in every half mile, then the height over or under the surface of the ground shall be marked once in that space; and if any alteration in the present level or rate of inclination of any turnpike road, carriage road, or railway be intended, then the same shall be stated on the said section.”

Tunnelling and archway to be marked.

“That where tunnelling as a substitute for open cutting, or arching as a substitute for solid embankment, be intended, the same shall be marked both on the plan and section.”¹

3. *Orders specially relating to Bills of the Third Class.*

The standing orders of the commons require,

Documents to be deposited in Private Bill Office.

“That as respects all bills of the third class, for the incorporation of joint stock companies, or proposed companies for carrying on any trade or business, or for conferring upon such companies the power of suing and being sued, there be deposited in the Private Bill Office, previous to the presentation of the petition for the bill, a copy of the deed or agreement of partnership (if any) under which the company or proposed company is acting, or of the subscription contract (if any), together with a declaration in writing, stating the following matters:

“1. The present and proposed amount of the capital of the company.

“2. The number of shares, and the amount of each share.

“3. The number of shares subscribed for.

“4. The amount of subscriptions paid up.

“5. The names, residences, and descriptions of the shareholders or subscribers (so far as the same can be made out), and of the actual or provisional directors, treasurers, secretaries, or other officer, if any.

“And such documents shall be verified by the signature of some authorized officer of the company or proposed company (if any), and by some responsible party promoting the bill.”

Letters patent. Name of invention to be prefixed in capitals to notice.

And, “That in cases of bills for confirming or prolonging the terms of letters patent, each notice shall have prefixed to it in capital letters the name by which the invention is usually distinguished, and shall contain a distinct description of the invention for which such letters patent have been obtained, and also an account of the term of their duration.”

¹ All the proper figures are given in the Appendix to the Standing Orders published by both houses.

CHAPTER XXVI.

COURSE OF PROCEEDINGS UPON PRIVATE BILLS INTRODUCED INTO THE HOUSE OF COMMONS; WITH THE RULES, ORDERS, AND PRACTICE APPLICABLE TO EACH STAGE OF SUCH BILLS IN SUCCESSION, AND TO PARTICULAR CLASSES OF BILLS.

ALL these preliminary conditions, as required by the standing orders of both houses, having been explained, it will now be supposed that all the bills contained in the three classes enumerated in the last chapter,¹ are first solicited in the House of Commons; where their progress may be followed, step by step, precisely in the order in which particular rules must be observed by the parties, or enforced by the house or its officers.

The three classes of private bills passing through the commons.

But this statement of the various forms of procedure in passing private bills, must be introduced by a few observations explanatory of the general conduct of private business in the House of Commons.

1. Every private bill or petition is solicited by an agent, upon whom various duties and responsibilities are imposed by the orders of the house. The rules laid down by the speaker, by authority of the house, in 1837, are to the following effect:

Parliamentary agents.

1. "Every agent conducting proceedings in Parliament before the House of Commons, shall be personally responsible to the house and to the speaker for the observance of the rules, orders, and practice of Parliament, and rules prescribed by the speaker, and also for the payment of all fees and charges."

Personally responsible.

2. "No person shall be allowed to act as an agent until he has subscribed a declaration before one of the clerks in the Private Bill Office, engaging to observe and obey all the rules of the house,

Declaration and registry.

¹ *Supra*, p. 388.

and to pay all fees and charges when demanded. [He shall also enter into a recognizance (if hereafter required) in 500*l.*, conditioned to observe this declaration.]¹ He shall then be registered in a book to be kept in the Private Bill Office, and shall be entitled to act as a parliamentary agent, without the payment of any fee upon the declaration, bond, or registry."

Form.

3. "The declaration, &c. shall be in such form as the speaker may from time to time direct."

Appearance to be entered upon bills.

4. "No notice shall be received in the Private Bill Office, for any proceeding upon a petition for a bill, or upon a bill brought from the lords (after such bill has been read a first time), until an appearance to act as the parliamentary agent upon the same shall have been entered in the Private Bill Office; in which appearance shall also be specified the name of the solicitor (if any) for such petition or bill."

Appearance on petitions against bills.

5. "That before any party shall be allowed to appear or be heard upon any petition against a bill, an appearance to act as the agent upon the same shall be entered in the Private Bill Office; in which appearance shall also be specified the name of the solicitor and of the counsel who appear in support of any such petition (if any be then engaged), and a certificate of such appearance shall be delivered to the parliamentary agent, to be produced to the committee clerk."

A fresh appearance on change of agent.

6. "In case the agent for any petition or bill shall be displaced by the solicitor, or shall decline to act, his responsibility shall cease upon a notice being given in the Private Bill Office; and a fresh appearance shall be entered upon such petition or bill."

Speaker may prohibit an agent from practising.

7. "Any agent who shall wilfully act in violation of the rules and practice of Parliament, or any rules to be prescribed by the speaker, or who shall wilfully misconduct himself in prosecuting any proceedings before Parliament, shall be liable to an absolute or temporary prohibition to practise as a parliamentary agent, at the pleasure of the speaker; provided that upon the application of such agent, the speaker shall state in writing the grounds for such prohibition."²

Registry of agents.

The name, description, and place of residence of the parliamentary agent in town, and of the agent in the country (if any) soliciting a bill, are entered in the "private bill register," in the Private Bill Office, which is open to public inspection.³

¹ But this recognizance has not been required.

² Parl. Paper, No. 88, of 1837.

³ Com. S. O. No. 126.

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

Members may not be agents.

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

And in compliance with the recommendation of a select committee on House of Commons offices in 1835, no officer or clerk belonging to the establishment is allowed to transact private business before the house, for his emolument or advantage, either directly or indirectly.²

Nor officers of the house.

II. It has been stated elsewhere,³ that the public business for each day is set down in the Order Book, either as notices of motions or orders of the day; but the notices in relation to private business are not given by a member, nor entered in the Order Book; but are required to be delivered at the Private Bill Office, at specified times, by the agents soliciting the bills. These notices will each be described in their proper places; but one rule applies to all of them alike: they must be delivered before six o'clock in the evening of any day on which the house is sitting, and before two o'clock on any day when the house is not sitting; and after the house has adjourned, no notice may be given for the first day on which it shall sit again.⁴

Notices of private business, how given,

All notices are open to inspection in the Private Bill Office; but for the sake of greater publicity and convenience, they are also printed in the Votes; and members and parties interested are thus as well acquainted with the private business set down for each sitting, as with the public notices and orders of the day. Notices given on Saturday are published and regularly delivered to members on Monday morning.

and published.

¹ 85 Com. J. 107.

² Parl. Rep. No. 606, of 1835, p. 17.

³ *Supra*, pp. 168. 169. 277.

⁴ Com. S. O. No. 147.

Time for private business.

III. The time set apart for the consideration of all matters relating to private bills, is between four and five in the afternoon, immediately after the meeting of the house; but private petitions are often received late at night, when the other business is concluded. There is a "private business list" on the table of the house every afternoon, a quarter of an hour before the time appointed for Mr. Speaker to take the chair; upon which members should have their names entered, if they have charge of any private petition or bill; and their names will be called by Mr. Speaker, in the order in which they appear on the list.

Conduct of bills by members.

Every form and proceeding out of the house in conducting a bill is managed by a parliamentary agent, or by officers of the house; but within the house no order can be obtained, but by a motion made by a member, and a question proposed and put in the usual manner from the chair. One or two members are generally requested by their constituents, or by the parties, to undertake the charge of a bill; they receive notice from the agents when they will be required to make particular motions; and they attend in their places, at the proper time, for that purpose.

"Private bill register."

IV. Every vote of the house upon a private bill is entered on the "Votes and Proceedings," and Journals, and there is also kept in the Private Bill Office a register, in which are recorded all the proceedings, from the petition to the passing of the bill. The entries in this register "specify briefly each day's proceeding in the house, or in any committee to which the bill or petition may be referred; the day and hour on which the committee is appointed to sit; the day and hour to which such committee may be adjourned, and the name of the committee clerk."¹ This book is open to public inspection daily, between the hours of eleven and six. As every proceeding is entered under name of the particular bill to which it refers, it can be

¹ Com. S. O. No. 126.

immediately referred to, and the exact state of the bill discovered at a glance.

After these explanations, the proceedings in the house may be described without interruption, precisely in the order in which they usually occur.

When all the preliminary conditions have been-fulfilled, the application for the bill is made by a petition to the house, which must be signed by the parties, or some of them, who are suitors for the bill; and the receipt of all documents required by the standing orders to be deposited in the Private Bill Office, ought to be acknowledged by one of the clerks in that office, upon the petition, before it is presented;¹ and the agent should not neglect to take the petition and obtain the proper form of receipt, before he gives it to a member to present. The standing orders of the commons require that a printed copy of the proposed bill shall be annexed to the petition,² and deposited in the Private Bill Office on the day on which the petition is presented; and that the bill shall there be open to the inspection of all parties.³

Petition for bill.

Bill annexed.

All petitions for private bills are ordered to be presented within 21 days after the first Friday in every session of Parliament;⁴ and no petition will be received after that time, except by special leave of the house. In order to obtain this permission, a petition must be presented, praying for leave to present a petition for the bill, and stating peculiar circumstances, which account for the delay, and justify the application for a departure from the standing orders. This petition is referred by the house to the committee on standing orders; and if their report be favourable to the application, leave is given to present the petition.

Time limited for presenting.

Petitions for leave to present petitions.

There is an express standing order, that no private bill shall be brought in otherwise than upon petition;⁵ and

Bills to be brought in upon petition.

¹ Com. S. O. No. 127.

² Ib. No. 101.

³ Ib. No. 128.

⁴ Ib. No. 102.

⁵ Ib. No. 101.

bills which have proceeded as public bills, have sometimes been withdrawn, on notice being taken that they were private bills, and ought to have been brought in on petition.¹ But bills of a private nature have occasionally been brought in without the form of a petition; their further progress, however, is subject to all the regulations prescribed for the conduct of private bills; to the proof of notices and other precedent conditions; and to the payment of fees. They are generally bills for carrying out public works in which the Government is concerned; as, for example, the Lagan Navigation Bills, in 1841 and 1842; and the Knightsbridge and Kensington Openings Bill, in 1842.

Additional provision.

If, after a petition has been presented, additional provision should be desired to be made in the bill, a petition for that purpose should be presented, with the proposed clauses annexed, in the same manner as the bill was attached to the original petition.²

Committee on petitions for bills.

All petitions for private bills, and for additional provision, are referred by the house to the select committee on petitions for private bills, which is appointed at the commencement of each session. It consists of 42 members, five of whom are a quorum in opposed cases, and three in unopposed cases. To facilitate its proceedings, it may divide itself into sub-committees, each consisting of not less than seven members; by one of which, every petition for a bill is undertaken, instead of by the whole committee.

When sub-committee may meet. Notices.

Before a sub-committee can consider a petition for a bill, the agent for the bill must give 10 clear days' notice, in writing, in the Private Bill Office, of the meeting of the sub-committee, and one clear day's notice in the case of a petition for additional provision; and these notices must be given after the presentation of the petition. In Scotch or Irish petitions, a sub-committee may not sit until 15 clear days after the petition has been presented. If the

¹ 80 Com. J. 488, 490, 491.

² Com. S. O. No. 103.

first meeting be postponed, one clear day's notice, in writing, of the postponement, must be given in the Private Bill Office, by the agent for the bill.¹

It is the duty of these sub-committees to require proof of compliance with the standing orders, which are to be observed before application is made for a bill. If parties opposing a bill present a petition to the house three clear days before the first meeting of the sub-committee, complaining that the standing orders have not been complied with, the petition is referred to the committee, and the parties are at liberty to appear and be heard, by themselves, their agents, and witnesses, provided the matter complained of be specifically stated in their petition.² But it has been ruled, that the word "agents" signifies parliamentary agents, who have complied with the conditions imposed by the house: and a solicitor who has not entered an appearance, will not be entitled to be heard by the committee.³

Their duties.

Petitions complaining of non-compliance with standing orders.

In bills relating to England, the having duly affixed to the church doors the requisite notices, may be proved by the production of affidavits sworn before any justices in petty sessions for the division within which the churches are situated.⁴ The signatures of the justices must be proved, and it must be shown that they are justices for the division. In the case of bills concerning Scotland compliance with the standing orders may be proved by affidavits sworn before any sheriff-depute or his substitute, whose certificate

Proof of notices, &c. England.

Scotland.

¹ "But notice of the meeting of a sub-committee on any petition or bill is not to be taken at the Private Bill Office, before the petition or bill has been referred to the committee on petitions for private bills, as shall appear by an entry in the Votes and Proceedings, or by a certificate from one of the clerks employed in making up the Votes and Proceedings, if it be desired to give such notice on the day when such petition or bill has been so referred." (By order of the clerk of the house.)

² Com. S. O. No. 9.

³ Case of Sir R. Harland, 1844. See his petition, Votes, p. 267, and Hans. Debates, March 5th.

⁴ Com. S. O. No. 10.

Ireland.

is admitted as evidence of proof having been made.¹ But if the committee should not be satisfied with this proof alone, they may require further evidence. When bills relate to Ireland, compliance may be proved by affidavits sworn before any judge or assistant barrister in that country, unless the committee require further evidence.²

Report on
petition.

When the sub-committee have satisfied themselves that the standing orders have been complied with, or that compliance has failed in being proved, or that there are no standing orders applicable to the bill, they report to the house their decision, with the facts upon which it is founded, and any special circumstances connected with the case.³ If the standing orders have been complied with, leave is given to bring in the bill, and two or three members, to whose charge it has been entrusted, are ordered to prepare and bring it in; but if not, the report of the sub-committee is referred to the "select committee on standing orders."

Standing
orders com-
mittee.

This committee is appointed at the commencement of every session, and consists of eleven members, including the chairmen of the committee,⁴ and of the sub-committees on petitions for private bills, of whom five are a quorum. It is their office to determine and report to the house whether the standing orders, which appear by the report of the sub-committee not to have been complied with, ought or ought not to be dispensed with; and whether, in their opinion, the parties should be permitted to proceed with their bill, or any part of it; and if so, under what conditions (if any):⁵ as, for example, after affixing notices, publishing advertisements, or lodging plans, when such conditions seem to be proper.

Report.
Leave to pro-
ceed.

If the standing orders committee report that indulgence should be granted to the promoters of the bill, they are

¹ Com. S. O. No. 11.² *Ib.* No. 12.³ *Ib.* No. 13.⁴ The chairman of the committee on petitions is also chairman of one of the sub-committees.⁵ Com. S. O. No. 46.

allowed to proceed either at once, or after complying with the necessary conditions, according to the report of the committee. To give effect to this permission, the proper form to be observed, is for a member to move that the report be read, and then that leave be given to bring in the bill; and the compliance with the orders for giving notices, &c. must afterwards be proved before the committee on the bill. If, on the contrary, the committee report that the standing orders ought not to be dispensed with, their decision is generally fatal to the bill, although no reasons are ever assigned for their determination. It is true, that their report is not conclusive, and cannot preclude the house from giving a more favourable consideration to the case: but although there are a few precedents, in which, under peculiar circumstances, parties have still been permitted to proceed,¹ attempts are rarely made to disturb the decision of the committee.² But in order to leave the question open, the house agree only to those reports from the standing orders committee which are favourable to the progress of bills, and pass no opinion upon the unfavourable reports, which are merely ordered to lie upon the table.

Standing orders
not to be dis-
pensed with.

If the promoters of the bill still entertain hopes that the house may be induced to relax the standing orders, or if there be special circumstances, such as the consent of all parties, or the urgent necessity of the bill being passed in the present session, they should present a petition to the house, praying for leave to bring in a bill, and stating fully the grounds of their application. The case is thus brought under the immediate consideration of the house; but it must be of a very peculiar nature to obtain indulgence, as the house place confidence in the standing orders committee, and entrust them with full discretion to suggest the enforcement or relaxation of the standing orders; and the parties have already stated their case before that committee.

Petitions for
leave to pro-
ceed.

¹ 87 Com. J. 163. 88 Ib. 184. 89 Ib. 122. ² Atmospheric Railway Bill, 1844.

Bill presented.

When leave has been obtained to bring in a private bill, it may be presented on the next or any following day; or on the same day in urgent cases.¹ It must be printed on paper of a folio size (as determined by the speaker), with a cover of parchment attached to it, upon which the title is written. The short title of the bill, as first entered in the Votes, is given in accordance with its subject matter, and distinguishes the bill in all future proceedings.² It may not be changed either by the parties or by committees, unless by special order of the house.

Rates and tolls,
in *italics*.

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

First reading.

The bill may be read a first time immediately after it is presented; but this cannot be done unless printed copies of the bill have previously been delivered to the doorkeepers in the lobby of the house, for the use of members.³ This order is easily complied with, as the bill must be presented in a printed form. The only exception to the rule requiring the delivery of printed copies before the first reading, is in the case of name and naturalization bills, which are generally sent from the lords.

Copies of bill
delivered to
doorkeepers.

To Public Bill
Office.

Eight copies, also, must be delivered at the Public Bill Office, when the bill is presented to the house; and afterwards, a copy of an amended breviat of every private bill.⁴

And to Private
Bill Office.

It must likewise be borne in mind, that one copy of every private bill, and two copies of the printed breviat, and two copies of the amended breviat and amended bill,

¹ Votes 1844, p. 463, 464.

² Com. S. O. N 107.

³ *Ib.*, No. 109.

⁴ By speaker's order.

are to be sent to the Private Bill Office, for the use of the Board of Trade.¹

Care must also be taken to advance the bill through its preparatory stages; for a day is named by the house, at the beginning of the session, after which no private bill may be read a first time. This day is generally about seven weeks from the first day of the session.

Time limited
for first read-
ing.

Between the first and second reading an interval of three clear days must elapse, and the agent for the bill is required to give three clear days notice in writing, at the Private Bill Office, of the day proposed for the second reading. Meanwhile the bill is in the custody of the Private Bill Office, where it is examined, as to its conformity with the rules and standing orders of the house. If not in due form, the examining clerk specifies on the bill the nature of the irregularities wherever they occur. If the bill be improperly drawn, or at variance with the standing orders, or the order of leave; the order for the first reading is discharged, the bill is withdrawn, and leave is given to present another.²

Proceedings
before second
reading.

Bill examined
in Private Bill
Office.

Withdrawn if
informal.

The House of Commons will not allow peers to be concerned in the levy of any charge upon the people; and if they be named in a private bill, for that purpose, their names are struck out. In particular cases such names have escaped detection; but by the present practice,

Peers' names.

“The clerks in the Private Bill Office are particularly directed to take care, that in the examination of all private bills, levying any rates, tolls, or duties on the subject, peers of Parliament, peers of Scotland, or peers of Ireland, are not to be inserted therein, either as trustees, commissioners, or proprietors of any company.”³

No private bill may be read a second time until after the expiration of two calendar months from the day on

Interval between notices
and second
reading.

¹ By speaker's order.

² 77 Com. J. 116. 79 Ib. 229. 82 Ib. 325. 348. 90 Ib. 411. 92 Ib. 254. 425. Votes 1844, p. 640.

By speaker's order, 24 March 1840.

- which the last notice was given in the newspaper.¹ Another requirement must also have been complied with. A
- Breviates.** A brief of every private bill is prepared under the direction of the speaker, by Mr. Speaker's counsel, containing a statement of the object of the bill and a summary of its proposed enactments; and it is to point out any variation from the general law which may be effected by the bill.² This brief must have been laid upon the table, and printed three clear days before the second reading.³ There
- Exceptions.** is an exception to these rules in the case of divorce, name, naturalization, and estate bills, brought from the lords, and not relating to Crown, church, or corporation property, or property held in trust for public or charitable purposes.
- Payment of fees.** It is also an order of the house, "That no private bill or clause for the particular interest or benefit of any person or persons, county or counties, corporation or corporations, or body or bodies of people, be read a second time, unless fees be paid for the same."⁴
- Second reading.** The second reading is like the same stage in other bills, and in agreeing to it the house affirm the general principle and expediency of the measure. It is the first occasion on which it is brought before the house otherwise than *pro formá*, or in connexion with the standing orders; and if the bill be opposed, upon its principle, it is the proper time for attempting its defeat. If the second reading be deferred for three or six months, or the bill rejected, no new bill for the same object, can be offered until the next session.⁵
- Commitment.** When a private bill has been read a second time, it is immediately committed, and referred to the "committee of selection." This committee is appointed, like the other standing committees connected with private bills, at the commencement of every session, and consists of the chairman of the standing orders committee, and the chairmen
- Committee of selection.**

¹ Com. S. O. No. 112.² *Ib.* No. 113.³ *Ib.* No. 114.⁴ *Ib.* No. 115.⁵ See *supra*, p. 186.

of the committee and of the sub-committees on petitions for private bills, three of whom are a quorum.

To the committee of selection the house delegate the power of appointing committees on private bills, subject to particular rules. In the first place, different regulations apply to opposed and to unopposed bills. The former are referred by the committee of selection to the chairman of the committee of ways and means, together with the members who had been ordered to prepare and bring in the bills; or in the case of lords' bills, together with two members named by the committee of selection. The latter are appointed in a manner that will be presently described; but it must here be explained, that every bill is considered as unopposed, where no petition has been presented in which the petitioners pray to be heard by themselves, their counsel, or agents; unless the chairman of ways and means has reported to the house that a bill referred to him should be treated as an opposed bill. And although a longer time is allowed¹ by the standing orders, the opponents of a bill should present their petition as soon after the second reading as possible, in order that the bill may be referred to the proper tribunal for hearing their case.

Unopposed bills.

Opposed bills.

Petitions against.

The appointment of committees on opposed bills is conducted in this manner: "Lists for committees on private bills," are prepared by the speaker, by which the members for counties, cities, and boroughs are classified, according to the local position of the places which they represent. For example, the committee list for the county of Bedford is composed of the members for that county, and for the adjacent counties of Buckingham, Herts, Northampton, Notts, Cambridge, and Huntingdon; and for the towns of Bedford and Huntingdon. Upon this principle of division, each county has a list assigned to it, consisting generally of about 20 members, whose constituents are supposed to have a local interest in all bills relating to that particular

Speaker's lists for committees.

¹ See *infra*, p. 413.

county. Wales is, in the same manner, divided into two lists, the one for North and the other for South Wales. Scotland is likewise divided into two lists; and Ireland into four, being one for each province. These lists are published by the house for the information of all parties concerned.

Selected members.

The committee of selection refer every opposed bill (except bills for competing lines of railway, which will be presently noticed) to the speaker's list of that county or division of a county to which the bill specially relates, and to such number of members, not locally interested in the bill, as the circumstances of the case shall in their judgment require.¹ The committee are also to direct in each case, what number of the members, selected and added to the speaker's list by them, shall be a quorum of such members.²

Members added by the house.

When the name of any member has been added, he is served by the committee clerk with notice of his nomination as soon as possible, and of the time at which the committee on the bill is appointed to meet. In special cases other members have also been added by the house, to those nominated by the committee of selection.³ Where a bill, from its character, cannot be referred to any list, it is referred by the committee of selection to certain members specially nominated.⁴

First meeting of committee on bill, appointed.

The committee of selection appoint the time for the first meeting of the committee on the bill; but seven clear days are required by the standing orders to intervene between the second reading and its first sitting.⁵ In special cases, however, the house sometimes give leave to a committee to sit and proceed on an earlier day than that authorized by the standing orders.⁶ If no such permission be granted, the agent for the bill must give seven clear days' notice

Notices.

¹ Com. S. O. No. 50.

² *Ib.* No. 51.

³ Edinburgh and Glasgow Railway, 17th March 1842; 97 *Com. J.* 125. North British Railway, 1844; *Votes*, p. 419. *Ib.* 756. 771.

⁴ Townshend Peckage Bill, 1843.

⁵ *Com. S. O.* Nos. 117. 134.

⁶ 91 *Com. J.* 718. 779, &c.

in writing of its first meeting, in the Private Bill Office; or all proceedings of the committee will be void. When the agent gives this notice, he must at the same time deposit in the Private Bill Office a filled-up bill signed by himself, as proposed to be submitted to the committee: and all parties are entitled to obtain a copy of the filled-up bill, upon payment of the charges for making out the amendments.¹

If it should be advisable to postpone the first meeting of the committee, after a day has been appointed, the agent must give one clear day's notice of the postponement in writing, countersigned by a committee clerk, and deliver it in the Private Bill Office.² But the agent cannot effect this postponement without the sanction of the committee of selection.³

Postponement
of first meeting.

The appointment, constitution, and proceedings of committees on private bills are regulated with a view to secure impartiality and due attention to the interests of all parties. The members on the speaker's list represent the interests of their constituents, and are acknowledged to have a local interest; but the members selected by the committee of selection are unconnected with the places to which the bills relate, and are intended to counteract any bias which may be supposed to exist on the part of those locally interested.

Committees on
opposed bills.

Before any member is entitled to attend and vote in the committee, he is obliged to sign a declaration. If on the speaker's list, he declares that he "will never vote on any question which may arise, without having duly heard and attended to the evidence relating thereto." If a selected member, he makes the same declaration in regard to his attendance, and also declares "that his constituents have no local interest, and that he has no personal interest in the bill."⁴ The proper form of declaration is to be obtained

Attendance of
members.
Declaration.

¹ Com. S O. No. 136.

² *Ib.* No. 137.

³ *Ib.* No. 56.

⁴ *Ib.* No. 58. Should he afterwards discover that he is interested, he may be discharged.

from the committee clerk attending the committee, either in the committee clerks' office or in the committee-room, before the first sitting of the committee. When signed by the member, it must be returned to the clerk before the door is locked, for the appointment of the chairman. If this be neglected, or if a member having properly signed and delivered his declaration, should not be present at the appointment of the chairman, he cannot afterwards attend and vote in the committee.¹

When to be signed.

Quorum.

Five members are the quorum of every committee on an opposed private bill, including the quorum of selected members as determined in each case by the committee of selection: and without this number no committee may proceed to business, or continue their inquiry or deliberations. Not only must there always be a quorum of the whole committee, but there must be present also the quorum of selected members. Thus if more than five members were present altogether, but only one selected member when three were the quorum, the proceedings of the committee would be suspended.

Proceedings commenced.

At the expiration of 10 minutes after the time appointed for the first meeting of the committee, if the proper quorum be present, the clerk directs the messenger in attendance on the committee, to clear the room of strangers, and to lock the door of the committee room; and the members then present proceed to appoint the chairman, who must be *one of the selected members*.²

Chairman appointed.

His duties.

In addition to the ordinary duties of a chairman in presiding over a committee, he is specially directed by the standing orders to observe that there is always present a quorum of selected members; and to suspend the proceedings of the committee, when the proper number are not in attendance. If, on the expiration of an hour from

¹ In the Greenock Harbour Committee, 1843, two members having gained admittance after the door had been locked, but before the appointment of the chairman, were held to be disqualified.

² Cem. S. O. No. 62.

the time fixed for the meeting of the committee, or from the time at which he has suspended their proceedings, a quorum should not be present; he is obliged to adjourn the committee, and to report the circumstances to the house. The adjournment may not exceed two clear days, or until the next meeting of the house.¹

If, after the formation of the committee, a quorum of members required by the standing orders, cannot attend, by reason of illness, deaths, or appointments to election committees, the chairman reports the circumstances to the house. It is usual in such cases for the house to give leave to the committee to sit and proceed, with a smaller general quorum, or a smaller quorum of selected members, as the case may be.²

Absence of members.

These regulations apply to committees on all opposed private bills, except for competing lines of railway. The latter are now³ specially constituted, and consist of five members only, nominated by the committee of selection; who sign a declaration that their constituents have no local interest, and that they themselves have no personal interest in the bills; and that they will not vote on any question, without having duly heard and attended to the evidence. Of these five members, three are a quorum.

Committees on bills for competing lines of railway.

It is usual for the house to refer to the committee all petitions, in which the petitioners pray to be heard against a private bill. An order is given at the same time, "That the petitioners be heard by themselves, their counsel, or agents, if they think fit; and that counsel be heard in favour of the bill, against the said petitions." A petition against the bill generally, and not praying to be heard against certain parts of it, will not be referred, as it is regarded in the light of an ordinary petition concerning a bill before the house, and not requiring special consideration. Sometimes conditional instructions are given

Petitions against bills.

¹ Com. S. O. No. 64.

² 97 Com. J. 237. 332. 340. 98 Ib. 347. 405, &c.

³ Session 1844.

to committees to hear parties, in case certain clauses should be proposed.¹

When to be presented.

Every petition against a bill must be presented to the house three clear days before the day appointed for the first meeting of the committee, unless the petitioners complain of any matter which has arisen during the progress of the bill before the committee.² The petitioners cannot be heard by the committee, if their petition should appear to have been presented after the time specified in the standing orders, without a special instruction from the house.³

Complaining of non-compliance with the standing orders.

The house will not receive any petition complaining solely of a non-compliance with the standing orders, after the second reading of a bill, unless in the case of those standing orders which must necessarily be taken into consideration by the committee on the bill.⁴

Grounds of objection to be specified.

No petition, though presented at the proper time, and referred to the committee, will be taken into consideration by them, unless it distinctly specifies the grounds on which the petitioners object to any provisions of the bill. The petitioners are only admitted to be heard upon the grounds stated by them in their petition; and if the committee consider that these grounds are not specified with sufficient accuracy, they may direct a more specific statement, in writing, to be prepared for them, but limited to those grounds of objection alone which had been inaccurately specified.⁵

Committees on unopposed bills.

Special orders and rules.

The constitution of committees on unopposed bills has already been described; but a short reference to their functions will be convenient in this place, to avoid any interruption in stating such orders of the house as apply equally to both classes of committees. The chairman of ways and means, and one of the two other members of the committee, are a quorum; and if they do not think

¹ Votes, 1844, p. 443.

² Com. S. O. No. 67.

³ 98 Com. J. 254.

⁴ Com. S. O. No. 111.

⁵ *Ib.* No. 66.

that the bill referred to them should be treated as an opposed bill, they proceed to consider all the provisions of the bill, and to take care that they are conformable to the standing orders. The chief responsibility is imposed upon the chairman, who, being an officer of the house as well as a member, is entrusted with the special duty of examining every unopposed private bill. A filled-up copy of the bill, signed by the agent, as proposed to be submitted to the committee, is ordered to be laid before him, when notice is given of the meeting of the committee; and similar copies must be laid before each of the other members, by the agent for the bill, three days at least before their first meeting.

Filled-up bill to be delivered.

As there are no opponents of the bill before the committee, the promoters have only to satisfy the chairman and the other members, of the propriety of the several provisions; that all the clauses required by the standing orders are inserted in the bill; and that such standing orders as must be proved before the committee, have been complied with. But if extensive alterations are proposed to be made in the original bill annexed to the petition, it is liable to be withdrawn by order of the house, on the report of the chairman.¹ If it should appear that the bill, from its character or other circumstances, ought to be treated as an opposed bill by a more public tribunal, the committee report their opinion to the house, and the bill is referred to the committee of selection, who appoint a committee from the speaker's list and selected members.

Duties of the committee.

There are various orders of the house which are binding upon all committees on private bills, and others which relate only to particular classes or descriptions of bills; and it is proposed to state these in their order; and afterwards to describe the ordinary forms observed in the hearing of parties or their counsel, the settlement of the clauses, and the making of amendments.

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

¹ 98 Com. J. 120.

Names of members entered on minutes.

The names of the members attending a committee are directed to be entered by the clerk on the minutes; and when a division takes place, the clerk notes down the name of every member, distinguishing on which side of the question he has voted. The minutes of the proceedings and the lists of divisions are afterwards to be given in to the house, together with the report.¹

What standing orders to be inquired into.

The committee are precluded from examining into the compliance with such standing orders as are directed to be proved before the committee on petitions for private bills, unless they have received an instruction from the house to that effect.² Such an order is only given when the house, on the report of the standing orders committee, allow parties to proceed with their bill, on complying with certain standing orders which they had previously neglected. It is then more convenient for the committee on the bill to inquire whether the orders of the house have been complied with, than to refer that matter to the committee on petitions.

Proof of orders and consents.

Scotland.

In the case of private bills relating to Scotland, the compliance with any standing orders necessary to be shown, or "the consents of parties concerned in interest," may be proved by affidavits sworn before a sheriff depute, or his substitute, unless the committee require the production of further evidence.³ In bills relating to Ireland, the same matters, with a similar qualification, may be proved by affidavits sworn before a judge, or assistant barrister.⁴ The certificate of these officers will always satisfy the committee, unless it should be so informal, on the face of it, as not to establish all the facts required to be proved.

Ireland.

Consents.

In all other bills, not relating to Scotland or Ireland, the consents of parties interested may be proved by the production of certificates, in writing, of such parties, whose signature may be proved by one or more witnesses,

¹ Com. S. O. No. 71.

² *Ib.* No. 72.

³ *Ib.* No. 73.

⁴ *Ib.* No. 74.

unless the committee shall require further evidence on that point.¹

The committee are bound to see that the provisions required by the following standing orders shall be included in the bill committed to them, whenever they are applicable; viz.:

1. "That in all bills presented to the house for carrying on any work by means of a company, commissioners, or trustees, provision be made for compelling persons who have subscribed any money towards carrying any such work into execution, to make payment of the sums severally subscribed by them."²

Clause compelling payment of subscriptions.

2. "That in all bills whereby any parties are authorized to levy fees, tolls, or other rate or charge, clauses be inserted providing for the following objects, except in so far as any of such objects shall have been provided for in some general Act applicable to the subject-matter of the bill: viz. 1. Security to be taken from the treasurer, collector, or receiver; 2. Accounts to be kept; 3. And to be audited; 4. Accounts, vouchers, &c. to be produced to auditors; 5. Remuneration to auditors to be defrayed out of the funds levied under the bill; 6. Account, in abstract, of receipts and expenditure, to be annually transmitted to clerk of peace, or sheriff clerk, on or before the 31st of January."³

Provision to be made in bills by which tolls, &c. may be levied.

3. "That where the level of any road shall be altered in making *any public work*, the ascent of any turnpike road shall not be more than one foot in 30 feet; and of any other public carriage road, not more than one foot in 20 feet; and that a good and sufficient fence, of four feet high at the least, shall be made on each side of every bridge which shall be erected."⁴

Level of roads.

Fence to bridges.

In addition to these orders, which apply to private bills generally, there are others, relating only to bills of a particular description; and certain well-considered clauses, known as "model clauses,"⁵ if not included in the original bill, are inserted by the committee, unless sufficient cause be shown for their omission.

Model clauses.

The following provisions must be enforced, and rules observed by every committee on a railway bill:

Railway bills.

1. "No company shall be authorized to raise, by loan or mortgage, a larger sum than one-third of their capital; and until 50 per cent. on the whole of the capital shall have been paid up, it shall

Restrictions as to mortgage.

¹ Com. S. O. No. 75. ² Ib. No. 76. ³ Ib. No. 77. ⁴ Ib. No. 78.

⁵ These are in the hands of all parliamentary agents.

not be in the power of the company to raise any money by loan or mortgage."

Level of roads.
Fence to
bridges.

2. That the level and ascent of roads, and the fences to bridges, shall be such as stated above in reference to all other public works.

Railways not to
cross turnpike
roads, &c. on
same level.

3. "That no railway whereon carriages are propelled by steam, shall be made across any turnpike road or other public carriage-way on the level, unless the committee on the bill report that such a restriction ought not to be enforced, with the reasons and facts upon which their opinion is founded."

Three clauses are required to be inserted in every railway bill, to the following effect: ¹

Railway not to
be proceeded
with till after
deposit of
amended plans.

4. That the company shall not proceed in the execution of the works until they have deposited with the clerks of the peace of the several counties in England and Ireland, and in the office of the principal sheriff clerk in every county in Scotland, in or through which the railway is to be made, a plan and section of all alterations of the original plan and section, approved of by Parliament, on the same scale and containing the same particulars as the original plan and section. Extracts from these plans and sections are to be made, relating to each parish where alterations have been authorized, and deposited with the parish clerks in England, the parochial schoolmasters in Scotland (or in royal burghs with the town clerk), and in Ireland with the post-masters of the post-towns in or nearest to the parish. And all persons are to have liberty to inspect and make extracts or copies of these several plans, &c. on paying 1s. for the inspection, and 6d. for every copy or extract of 100 words.

Limiting de-
viations.

5. A clause limiting deviations from the common datum line described on the section approved by Parliament, to any extent exceeding five feet (or in passing through towns, two feet), without the consent of owners, lessees, and occupiers of land; and prescribing the terms and conditions under which other variations from the plan may be made or authorized.

Limiting alter-
ation of curves.

6. A clause to the effect that the radius of a curve may not be reduced at all, unless it exceeds one mile; nor reduced so as to become less than a mile; nor diminished more than a quarter of a mile except where it exceeds two miles, nor more than half a mile except where it exceeds three miles.

These several provisions must be inserted in every railway bill, and it is right for the promoters to take care that they are not omitted in the original draft. But if they

¹ These clauses are inserted at full length in the Standing Orders, No. 88, and may be seen in every recent Railway Act.

have been omitted, the committee will order the insertion of them in their proper places.

In inquiring into the merits of a railway bill, the committee are not left entirely to their own discretion, but the most important matters are distinctly pointed out to them for examination. Whether the bill be opposed or not, the parties must be prepared with evidence to satisfy the committee upon each of the following points, which by the standing orders are required to be specially reported to the house :

1. "The proposed capital of the company formed for the execution of the project, and the amount of any loans which they may be empowered to raise by the bill." 2. "The amount of shares subscribed for, and the deposits paid thereon." 3. "The names and places of residence of the directors or provisional committee, with the amount of shares taken by each." 4. "The number of shareholders who may be considered as having a local interest in the line, and the amount of capital subscribed for by them." 5. "The number of other parties, and the capital taken by them." 6. "The number of shareholders subscribing for 2,000 *l.* and upwards, with their names and residences, and the amount for which they have subscribed."

7. "The sufficiency or insufficiency, for agricultural, commercial, manufacturing, or other purposes, of the present means of conveyance and of communication between the proposed termini, stating the present amount of traffic by land or water, the average charges made for passengers and goods, and time occupied." 8. "The number of passengers, and the weight and description of the goods expected upon the proposed railway." 9. "The amount of income expected to arise from the conveyance of passengers and goods, and in what proportion; stating also generally the description of goods from which the largest revenue is anticipated." 10. "Whether the proposed railway be a complete and integral line between the termini specified, or a part of a more extended plan now in contemplation, and likely to be hereafter submitted to Parliament; and to what extent the calculations of remuneration depend on such contemplated extension of the line."

11. "Whether any, and what, competing lines of railway there are existing, and whether any, and what, are in progress or contemplation; and to state, so far as circumstances will permit, in what respects the proposed line is superior or inferior to the other lines: but that no line of railway be deemed a competing line in contemplation, unless the plan, section, and book of reference for

Special modes of inquiry, and report on railway bills.

Special reports on railway bills.

Capital.

Shares, &c.

Names, &c. of directors.

Local shareholders.

Other parties, &c.

Subscribers for 2,000 *l.* and upwards.

Present means of conveyance.

Passengers, &c. expected.

Income expected.

Whether railway be a complete line, or part of a more extended plan.

Competing lines.

the same shall have been deposited with the clerks of the peace and in the Private Bill Office respectively, as required by the standing orders."¹

Assistant engines.

12. "What planes on the railway are proposed to be worked by assistant engines, either stationary or locomotive, with the respective lengths and inclinations of such planes." 13. "Any peculiar engineering difficulties in the proposed line, and the manner in which it is intended they should be overcome."

Engineering difficulties.

Ventilation of tunnels.

14. "The length, breadth, and height, and means of ventilation, of any proposed tunnels; and whether the strata through which they are to pass are favourable or otherwise."

Gradients and curves.

15. Whether, in the lines proposed, the gradients and curves are generally favourable or otherwise, and the steepest gradient, exclusive of the inclined planes above referred to, and the smallest radius of a curve."

Length of line.

16. "The length of the main line of the proposed railway, and of its branches respectively."

Passing high-ways on a level.

17. "Whether it be intended that the railway should pass on a level any turn-pike road or highway; and if so, to call the particular attention of the house to that circumstance."

Estimates.

18. "The amount of the estimates of the cost or other expenses to be incurred up to the time of the completion of the railway; and whether they appear to be supported by evidence, and to be fully adequate for the purpose."

Annual expenses.

19. "The estimated charge of the annual expenses of the railway when completed, and how far the calculations on which the charge is estimated have been sufficiently proved."

Revenue in reference to annual charge.

20. "Whether the calculations proved in evidence before the committee have satisfactorily established that the revenue is likely to be sufficient to support the annual charges of the maintenance of the railway, and still allow profit to the projectors."

Assents.

21. "The number of assents, dissents, and neuters upon the line; and the length and amount of property belonging to each class traversed by the said railway, distinguishing owners from occupiers: and in the case of any bill to vary the original line, the above particulars with reference to such parties only as may be affected by the proposed deviation."

Engineers examined.

22. "The name of each engineer examined in support of the bill, and of any examined in opposition to it."

Petitions in opposition.

23. "The main allegations of every petition which may have been referred to the committee, in opposition to the preamble of the bill, or to any of its clauses; and whether the allegations have been considered by the committee, and if not considered, the cause of their not having been so."

¹ This standing order, as shown above, p. 413, has been, to a certain extent, superseded by the special appointment of committees on competing lines.

“ And the committee shall also report generally as to the fitness, in an engineering point of view, of the projected line of railway, and any circumstances which, in the opinion of the committee, it is desirable the house should be informed of.”

Fitness in an engineering point of view, and any other circumstances.

The committee on a bill for confirming letters patent are to see, in compliance with the standing orders, “ that there be a true copy of the letters patent annexed to the bill.”¹ This copy should be attached to the bill when first brought into the house; and if its omission were noticed in the house at any time before the bill was in committee, the bill might be ordered to be withdrawn.

Letters patent bills.

The following standing orders relate specially to bills for the inclosure and drainage of lands; and the compliance with them is to be examined and enforced by the committee on the bill:—

Inclosure and drainage bills.

“ The committee, on a bill for inclosing lands, may admit proof of the notices required by the standing orders, and of the allegations in the preamble of such bill, by affidavit taken and authenticated according to the form prescribed in the schedule to the General Inclosure Act,² unless such committee shall otherwise order.”³

Inclosure bills. Notices and allegations.

“ That the committee shall in the first place require the agent for the bill to deliver in to the committee a printed copy of the bill, signed by the lord of the manor (in cases where the lord of the manor has any interest as such in the lands to be inclosed), and by such owners of property within the parish to which the bill relates as shall have assented thereto; but that the parties, if they shall think fit, be permitted to deliver in different copies of the bill, separately signed by the several parties hereinbefore mentioned, instead of one copy signed by all of them collectively; together with a list of all the owners of property within such parish, showing the value, according to the poor rate or land tax assessment, of each owner's property therein, and distinguishing which of them have assented, dissented, or are neuter in respect thereto.”⁴

Consent bill and statement of property to be delivered in.

But on a report from the committee that the lord of the manor had declined to sign the bill, but did not oppose it, and desired to remain neuter, this part of the order has been dispensed with.⁵

¹ Com. S. O. No. 89. ² 41 Geo. 3, c. 109. ³ Com. S. O. No. 90.

⁴ Ib. No. 91. ⁵ Thetford Inclosure, 1 April 1844; Votes, p. 549.

Drainage bills. A similar standing order is applicable to drainage bills ; but it extends to occupiers as well as owners, and omits the part relating to the lord of the manor.¹

Inclosure bills. It is ordered,

Clause for leaving open space for exercise and recreation. "That in every bill for inclosing lands, provision be made for leaving an open space in the most appropriate situation, sufficient for purposes of exercise and recreation of the neighbouring population ; and that in any case where the information required by the standing order is not given, and the required provisions are not made in the bill, the committee do report specially to the house the reasons for not complying with such order."²

Consent bill to contain names of commissioners, and compensations for manorial rights, tithes, and enfranchisements. "That in every bill for inclosing lands, the names of the commissioners proposed to be appointed, and the compensation intended for the lord of the manor and the owners of tithes, in lieu of their respective rights, and also the compensation intended to be made for the enfranchisement of copyholds, where any bargains or agreements have been made for such compensations, be inserted in the copy of the bill presented to the house ; and that all copies of such bills which shall be sent to any of the persons interested in the said manor, tithes, land, or commons, for their consent, do contain the names of such proposed commissioners, and also the compensations so bargained or agreed for."³

Disqualification of certain persons as commissioners, surveyors, &c. "That no person shall be named in any bill for inclosing lands as a commissioner, umpire, surveyor, or valuer, who shall be interested in the inclosure to be made by virtue of such bill ; or the agent ordinarily entrusted with the care, superintendance, or management of the estate of any person so interested."⁴

Clauses for settling pay of commissioners, and passing their accounts. And in every bill for inclosing, draining, or improving lands, clauses are required to be inserted for settling pay of commissioners, and passing their accounts, upon principles laid down in the standing orders."⁵

Turnpike Roads (Ireland). The committee on a turnpike road bill relating to Ireland are to observe the following standing order :

Clause for qualification of commissioners. "That in every bill for making a turnpike road in Ireland, or for the continuing or amending any Act passed for that purpose, or for the increase or alteration of the existing tolls, rates, or duties upon any such road, or for widening or diverting any such road, a clause be inserted to prevent any person who shall be nominated a commissioner from acting or voting in the business of the said turnpike, unless he shall be possessed of an estate in land, or of a personal estate, to such certain value as shall be spe-

¹ Com. S. O. No. 92.

² Ib. No. 93.

³ Ib. No. 94.

⁴ Ib. No. 95.

⁵ Ib. No. 96.

cified in such bills; and that such qualification be extended to the heirs apparent of persons possessed of an estate in land to a certain value to be specified.”¹

Having given at length the orders which are to be observed by committees, in reference to the proof of compliance with the standing orders, and the peculiar provisions required to be inserted in particular bills, the general proceedings of committees upon private bills may be briefly explained; which are partly regulated by the usage of Parliament, and partly by standing orders of the house. The ordinary proceedings of a committee on a private bill are the same as those of other select committees, and are fully explained elsewhere.² The chairman puts every question, which is determined by a majority of the committee, and when the numbers are equal, by the casting vote of the chairman, who never votes on any other occasion. When counsel are addressing the committee, or while witnesses are under examination, the committee-room is an open court; but when the committee are about to deliberate, all the counsel, agents, witnesses, and strangers are ordered to withdraw, and the committee sit with closed doors. When they have decided any question, the doors are again opened, and the chairman acquaints the parties with the determination of the committee, if it concern them.

General proceedings of committees on private bills.

Room, when open.

Cleared.

The first proceeding of a committee on an opposed bill, after the appointment of the chairman, is to call in all the parties. The counsel in support of the bill appear before the committee; the petitions against the bill are read by the committee clerk, and the counsel or agents in support of each present themselves. It may here be observed that by a standing order, 3d January 1701, it was ordered, “That it be an instruction to the committee of privileges and elections, that they do admit only two counsel of a side in any cause before them.”³ This order has been understood to

Parties appear before the committee.

¹ Com. S. O. No. 97. ² See *supra*, p. 230, *et seq.* ³ 13 Com. J. 648

apply to all committees; ¹ but by its words it would appear to be limited to a committee which is no longer in existence; and in practice it is certainly not observed.² If no parties, counsel, or agents appear when a petition is read, the opposition on the part of the petitioners is held to be abandoned: and unless they state their intention to oppose the bill, before the case is opened, they are not afterwards entitled to be heard, without special leave from the committee.

Case opened.

Proof of preamble.

When the parties are before the committee, the senior counsel for the bill opens the case for the promoters; the character of which will depend upon the parts of the bill to which objections are urged by the opponents. Unlike the practice in regard to public bills, the preamble of a private bill is first considered; and if the preamble be opposed, the counsel addresses the committee more particularly upon the general expediency of the bill, and then calls witnesses to prove every matter which will establish the truth of the allegations contained in the preamble. In a railway bill, this is the proper occasion for producing evidence to satisfy the committee upon all the points which, by the standing orders, they are obliged to report to the house.³ The witnesses may be cross-examined by the counsel who appear in support of petitions against the preamble, but not by the counsel of parties who object only to certain provisions in the bill. After the cross-examination, each witness may be re-examined by the counsel in support of the bill. When all the witnesses in support of the preamble have been examined, one of the counsel for the bill sums up the case for the promoters.

Parties heard against preamble.

The committee, who have all the petitions before them, determine in each case whether counsel are entitled to be heard against the preamble. Objection is often taken by the promoters of the bill to counsel being heard against

¹ Hansard's Debates, 62 N. S. p. 311.

² See Supp. to Votes, 1843, p. 77. 140.

See *supra*, p. 419.

the preamble, on account of the peculiar and limited interests of the parties, or the words of the petition itself. It is always advisable for parties who object to the entire bill, to state specially in their petition that they desire to be heard against the preamble; but these words alone will not entitle them to be heard, if the committee determine that they have no interest, or *locus standi* before the committee;¹ or that the petition is informal.² The counsel who objects to a party being heard, is entitled to support his objection by a speech, and is answered by the counsel claiming to be heard, to whom he may reply. Sometimes the committee decide without having heard counsel, and are afterwards induced to hear them upon that decision, with a view to its reconsideration.³ When counsel are allowed to be heard against the preamble, one of them opens the case of the petitioners; witnesses may be called and examined, in support of the petition, cross-examined by the counsel for the bill, and re-examined by the counsel for the petitioners. The evidence against the preamble is then summed up by the counsel for the petitioners, and the senior counsel for the bill replies on the whole case. If the petitioners do not examine witnesses, the counsel for the bill has no right to a reply, unless new matter (as, for example, Acts of Parliament, or precedents,) have been introduced by the opposing counsel; to which, however, his observations in reply must be confined.

When the arguments and evidence upon the preamble have been heard, the room is cleared, and a question is put, "That the preamble has been proved," and affirmed or denied by the committee. If affirmed, the committee call in the parties, and go through the bill clause by clause, and fill up the blanks; and when petitions have been pre-

Question upon
preamble.

¹ See Supp. to Votes, 1843, p. 131.

² See *supra*, pp. 303, 304. In the Glasgow Gas Bill, 1843, objection was taken to a petition, that its seal was not the corporate seal of a company; and all the evidence in support of the petition was ordered to be expunged.

³ See Supp. to Votes, 1843, p. 131.

sented against a clause, or proposing amendments, the parties are heard in support of their objections or amendments as they arise: but clauses may be postponed and considered at a later period in the proceedings, if the committee think fit. When all the clauses of the bill have been agreed upon, new clauses may be offered either by members of the committee or by the parties; but it must be borne in mind, that the committee may not admit clauses or amendments which are not within the order of leave; or which are not authorized by a previous compliance with the standing orders.

Preamble not proved.

If the proof of the preamble be negatived, the committee report at once to the house, "That the preamble has not been proved to their satisfaction." This is the only report required to be made; and although the house had affirmed the principle of the bill on the second reading, no reasons are given by the committee for thus practically reversing the judgment of the house. The want of such information is obvious; and in 1836 the committee on the Durham (South West) Railway Bill, were ordered to re-assemble, "for the purpose of reporting specially the preamble, and the evidence and reasons, in detail, on which they came to the resolution that the preamble had not been proved:"¹ and it is suggested that, without any instruction, every committee should be required to state the grounds of their decision to the house, when they report that the preamble has not been proved.

Alterations in preamble.

This principle has recently been adopted in reference to alterations in the preamble, which may be made by a committee, subject to the following limitations:

1. That nothing in any degree inconsistent with the notices given in compliance with the standing orders of the house applicable to the bill should be introduced.
2. That every alteration so made in a preamble should be specially noticed in the report of the bill to the house.
3. That, together with the notice in the report of any alteration

¹ 91 Com. J. 396.

so made in the preamble, the ground of making it should be stated.¹

There are particular duties of the chairman and of the committee on a private bill, in recording the proceedings of the committee, and reporting them to the house, which remain to be noticed. These are distinctly explained in the standing orders, and are as follow :

“ That every plan, and book of reference thereto, which shall be produced in evidence before the committee upon any private bill (whether the same shall have been previously lodged in the Private Bill Office or not), shall be signed by the chairman of such committee, with his name at length ; and he shall also mark with the initials of his name every alteration of such plan and book of reference which shall be agreed upon by the said committee ; and every such plan and book of reference shall thereafter be deposited in the Private Bill Office.”²

Plan, &c. to be signed by chairman.

“ That the chairman of the committee do sign, with his name at length, a printed copy of the bill (to be called the committee bill), on which the amendments are to be fairly written ; and also sign, with the initials of his name, the several clauses added in the committee.”³

Committee bill and clauses to be signed by chairman.

“ That the chairman of the committee upon every private bill shall report to the house that the allegations of the bill have been examined, and whether the parties concerned have given their consent (where such consent is required by the standing orders) to the satisfaction of the committee.”⁴

Chairman to report on allegations of bill, &c.

“ That every committee to whom any private bill shall have been referred, shall report the bill to the house, whether such committee shall or shall not have agreed to the preamble, or gone through the several clauses, or any of them ; and when any alteration shall have been made in the preamble of the bill, such alteration, together with the ground of making it, shall be specially stated in the report.”⁵

Committee to report bill in all cases.

“ That the minutes of the committee on every private bill be brought up and laid on the table of the house, with the report of the bill.”⁶

Minutes of committee.

If matters should arise in the committee apart from the consideration of the bill referred to them, which they desire to report to the house ; the chairman should move that leave be given to the committee to make a special report.

Special reports.

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

² Com. S. O. No. 79.

³ Ib. No. 80.

⁴ Ib. No. 81.

⁵ Ib. No. 82.

⁶ Ib. No. 83.

Brighton rail-
way competing
lines.

The house may also instruct the committee to make a special report. A case of a very unusual character occurred in 1837, which deserves particular notice. The bills for making four distinct lines of railway to Brighton had been referred to the same committee: when an unprecedented contest arose among the promoters of the rival lines, and at length it was apprehended that the preamble of each bill would be negatived, in succession, by the combination of three out of the four parties against each of the lines in which the three were not interested, and on which the committee would have to determine separately. This result was prevented by an instruction to the committee "to make a special report of the engineering particulars of each of the lines, to enable the house to determine which to send back for the purpose of having the landowners heard and the clauses settled."¹ This special report was made accordingly; but the house being unable to decide upon the merits of the competing lines, agreed to address the Crown to refer the several statements of engineering particulars to a military engineer.² On the report of the engineer appointed, in answer to this address, the house instructed the committee to hear the case of the landowners upon the direct line.³

Witnesses, how
to be sum-
moned.

In reference to special reports, it may here be repeated,⁴ that committees upon private bills have no power of sending for persons, papers, and records. The parties are generally able to secure the attendance of their witnesses, without applying to the committee; but when they desire to compel the attendance of an adverse or unwilling witness, they should apply to the committee, who, when satisfied that due diligence has been used, and that the witness is material to the inquiry, direct a special report to be made to the house; upon which an order is made by the house to oblige the witness to attend and give evidence before the committee.⁵

¹ 92 Com. J. 356.

² Ib. 417.

³ Ib. 519.

See *supra*, p. 240.

⁴ 98 Com. J. 152, 153, 174, 279, 288.

Besides making the prescribed form of report, or special reports in particular cases, the committee may have leave given to report the minutes of evidence taken before them; which may be ordered to be printed, at the expense of the parties,¹ if they think fit; and even, in special cases, at the expense of the house.²

Evidence reported.

A time is limited by the house, at the commencement of every session, after which no report will be received from committees on private bills. Occasionally this time is extended to all committees, and sometimes to particular committees only. When the time for reporting has nearly expired, and the inquiries of a committee will probably continue for some days longer, the chairman should be instructed to move in the house, "That leave be given to the committee to report on or before a certain day." An application of this kind is rarely refused, provided the bill be actually in committee prior to the last day allowed for the report; and the time is sometimes further extended on renewing the application; but cases have occurred in which any extension of time has appeared insufficient to enable the committee to close their inquiries and report the bill, with a chance of its passing during the current session. On one occasion, a report was made, that from the protracted examination of witnesses, the promoters desired leave to withdraw their bill, and that the committee had instructed the chairman to move for leave to lay the minutes of evidence on the table of the house.³ In another case, the committee reported "That it would be impossible for the bill to pass during the present session, and that it would be unjust and nugatory to request any further extension of time for making their report."⁴

Time limited for reports.

Extended.

It is the duty of every committee to report to the house the bill that has been committed to them, and not by long

All bills to be reported.

¹ 81 Com. J. 343. 91 Ib. 338. 98 Ib. 324.

² Clarence Railway, 1843. Supp. to Votes, 5th May, p. 83.

³ 79 Com. J. 445.

⁴ 80 Ib. 573.

adjournments, or by an informal discontinuance of their sittings, to withhold from the house the result of their proceedings. If any attempt of this nature be made to defeat a bill, the house will interfere to prevent it. Thus, in 1825, the committee on a private bill having adjourned for a month, was "ordered to meet tomorrow and proceed on the bill;"¹ and again, on the 23d March 1836, the house being informed that a committee had adjourned till the 16th May, ordered them "to meet tomorrow and proceed on the bill."²

Adjournment
of committees.

Whenever a committee adjourns, the committee clerk is required to give notice in writing to the clerks in the Private Bill Office, of the day and hour to which the committee is adjourned.³

Committees
revived.

If a committee adjourn, without naming another day for resuming their sittings; or if any informality in the notices prevent the committee from sitting; or if, from the absence of a quorum, the committee be unable to proceed to business, or to adjourn to a future day; they have no power of re-assembling without an order from the house; and the committee is said to be revived, when this intervention of the house is resorted to. The form in which the order is usually made is, "That the committee be revived, and that leave be given to sit and proceed on a certain day." To avoid an irregularity in the adjournment, care should be taken to appoint a day, before the proceedings of the committee are interrupted by the serjeant-at-arms giving notice that the speaker is at prayers.

Report.

When the report has been made out by the committee, the committee clerk delivers in to the Private Bill Office a printed copy of the bill, with the written amendments made by the committee; and with every clause added by the committee regularly marked in those parts of the bill in which they are to be inserted.⁴ In strict conformity with this authenticated copy, the bill, as amended by the

Amended bill to
be printed;

¹ 80 Com. J. 474. ² 91 Ib. 195. ³ Com. S. O. No. 138. ⁴ Ib. 140.

committee, is required by the standing orders to be printed at the expense of the parties, unless the committee report that the amendments are merely verbal or literal. When printed, they must be delivered to the doorkeepers, three and delivered. clear days at least before the consideration of the report;¹ but it may not be delivered before the report of the bill has been made to the house; and agents, when they give notice at the Private Bill Office of the day for the consideration of the report, must produce a certificate from the doorkeeper, of the delivery of the amended printed bill on the proper day.²

The report of the bill, when first made to the house by the chairman, is ordered to lie upon the table, and its consideration is not entered upon until a future day.³ In the meantime, a breviate of the amendments made by the committee is prepared by Mr. Speaker's counsel, and, when printed, is submitted to the chairman of the committee of ways and means, and also laid upon the table of the house, at least the day previous to the consideration of the report.⁴ Breviates of amended bills.

One clear day's notice in writing must also be given by the agent for the bill to the clerks in the Private Bill Office of the day proposed for the report, and also for the further consideration of the report when laid upon the table.⁵ Notice of report, and further consideration of report.

When it is intended to bring up any clause, or to propose any amendment on the report, the consideration of the report, or the third reading, notice must be given in the Private Bill Office on the previous day. On the consideration of the report, the house may agree or disagree to the amendments of the committee, and may introduce new clauses or amendments; but this latter power is restricted in the case of private bills, by the standing orders. The proper tribunal for considering each provision is the committee on the bill, before whom all parties interested Consideration of report, and third reading; clauses and amendments;

¹ Com. S. O. No. 120.

² Order of the clerk of the house, 30th March 1844.

³ Com. S. O. No. 118.

⁴ *Ib.* No. 119.

⁵ *Ib.* No. 139.

referred to
standing orders
committee.

may appear, and to whom is delegated the special duty of settling all the clauses and amendments. The house are, therefore, anxious to discourage the proposal of clauses or amendments after the sittings of the committee are concluded, and will admit no alterations in the bill as agreed upon by the committee, without due inquiry. For which purpose, every clause or amendment proposed to the house, either at this stage or on the third reading, is referred to the committee on standing orders; and no further proceeding on the bill is entertained until their report has been received. The committee on standing orders are to report "whether such clause or amendment be of such a nature as not to be adopted by the house without the recommitment of the bill; or of such a nature as to justify the house in entertaining it, without recurring to that proceeding; or of such a nature as not, in either case, to be adopted by the house."¹

Recommit-
ment.

When bills are recommitted, they are referred to the former committee; and no member can then sit, unless he shall have been duly qualified to serve upon the original committee on the bill. The committee cannot sit, unless the agent has given three clear days notice, in writing, at the Private Bill Office, of the day and hour appointed for their meeting;² and at the time of giving such notice, a filled-up copy of the bill, as proposed to be submitted to the committee on recommitment, is to be deposited in the Private Bill Office.³ Unless the bill be recommitted by the house, with express reference to particular provisions, the whole bill is open to reconsideration in committee.

After the third reading, it is too late to recommit a bill; and the only report made by the standing orders committee is, whether the clause or amendment ought to be adopted by the house at that stage.⁴ When a new clause is proposed, it must be printed; "and when any clause is proposed to be amended, it must be printed *in extenso*, with

¹ Com. S. O. No. 48. ² *Ib.* No. 135. ³ *Ib.* No. 136. ⁴ *Ib.* No. 49.

every addition or substitution in different type, and the omissions therefrom included in brackets.”¹

In order to afford an opportunity for the proper discussion of the reports on railway bills included in the second class of bills,² the house considers the reports of such bills every Tuesday afternoon, on the meeting of the house.

Railway bills reports.

When amendments are made by the house on the report or third reading, they are entered by one of the clerks in the Private Bill Office, upon the printed copy of the bill, as amended by the committee. That copy is signed by the clerk, as amended, and preserved in the office.³

Entry of amendments on report or third reading.

When the report has been agreed to by the house, a private bill is ordered to be ingrossed, like any other bill; and the house will not read it a third time, until a certificate is indorsed upon the paper bill, and signed by one or more of the examiners of ingrossments, declaring that the ingrossment has been examined, and agrees with the bill as amended in committee, and on consideration of the report.⁴

Ingrossment.

One clear day's notice, in writing, must be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the third reading; and this notice may not be given until after the bill has been reported, or the report considered.⁵

Notice of third reading.

On the third reading, clauses may be offered, and amendments proposed, subject to the rules already stated in regard to the report or further consideration of report. In other respects, this stage is the same as in public bills; the house finally approves of the entire bill, with all the alterations made since the second reading, and preparatory to its being passed and sent up to the House of Lords.

Third reading.

Every stage of a private bill, in its passage through the commons, has now been described, and the several standing orders and proceedings applicable to each. In con-

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

¹ Com. S. O. No. 121, 122.

² See p. 388.

³ Com. S. O. No. 143.

⁴ Ib. No. 145.

⁵ Ib. No. 142.

clusion, it may be added—1. “That no private bill may pass through two stages on one and the same day;”¹ and, 2. “That (except in cases of urgent and pressing necessity) no motion may be made to dispense with any sessional or standing order of the house, without due notice thereof.”²

When standing orders to be dispensed with.

CHAPTER XXVII.

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

Private bills originating in the commons.

SOME few of the private bills included in the first and third classes, already enumerated,³ may occasionally originate in the lords, because rates, tolls, or penalties, are not essential to their operation; but all bills in the second class must be brought in to the commons on petition, and the others are, with very rare exceptions, also commenced in the same house. The private bills which are first brought into the lords are estate, naturalization, name and divorce bills, and such as relate to the peerage. In tracing the progress of private bills through this house, it will be convenient to assume that all the three classes of bills have been sent up from the commons, and that the last bills only are brought in upon petition. As the progress of the former has been already followed through the commons, it is now proposed, in the first place, to pursue them through their various stages in the lords.

The three classes of bills.

Estate bills referred to the judges.

Whenever a private bill, in the nature of an estate bill, is brought up from the commons, it is read a first time;

¹ Com. S. O. No. 124.

² *Ib.* No. 125.

³ *Supra*, p. 388.

and a copy of the bill, signed by the clerk, is referred to two of the judges in rotation, not being lords of Parliament, who are to report their opinion, whether, presuming the allegations of the preamble to be satisfactorily established, it is reasonable that the bill do pass; and whether the provisions are proper for carrying its purposes into effect, and what alterations or amendments are necessary. In the event of their approving the bill, they are to sign the same.¹ But except in special cases, no other commons' bills are referred to the judges.

A "committee for standing orders" is appointed at the commencement of every session, which combines the functions of the committees on petitions for bills and on standing orders, in the commons. It consists of forty lords, besides the chairman of the lords committees, who is always chairman of the standing order committee; and three lords, including the chairman, are a quorum.²

Committee for standing orders.

Before the second reading of any bill relating to railways included in the second class, and previously to the sitting of the committee on any opposed bill in any of the three classes, the bill is referred to the standing order committee, for the proof of compliance with the standing orders;³ and three clear days notice must be given of the meeting of the committee.

Private bills referred to them.

Any parties are "at liberty to appear and to be heard by themselves, their agents, and witnesses, upon any petition which may be referred to this committee, complaining of non-compliance with the standing orders, provided the matter complained of be specifically stated in such petition, and that it be presented on or before the second day after the introduction of the bill into the house."

Notice of meeting.

Petitions complaining of non-compliance with standing orders.

It is ordered,

"That such committee shall report whether the standing orders have been complied with; and if it shall appear to the committee that they have not been complied with, they shall state the facts

What matters to be reported.

¹ Lords' S. O. No. 99.

² Ib. No. 219.

³ Ibid.

upon which their decision is founded, and any special circumstances connected with the case, and also their opinion as to the propriety of dispensing with any of the standing orders in such case."¹

What bills referred.

If bills be unopposed, they are not referred to the standing order committee, but compliance with the standing orders is proved before the committee on the bill. Railway bills included in the second class, however, form an exception to this rule, and whether opposed or not, are referred to the standing order committee.

What standing orders proved.

The several standing orders required by both houses to be complied with, before application is made to Parliament for a bill, have already been enumerated, and distinguished according to each class or description of bill.² These it will be unnecessary to repeat or refer to, as the slight variations between the orders of the two houses were there pointed out; but there are other orders peculiar to the House of Lords, compliance with which must be proved at the same time, before the standing order committee or the committee on the bill. They relate to particular classes or descriptions of bills, and shall be stated as they respectively apply to each.

Standing orders peculiar to the lords.

1. It is ordered,

When new works are applied for.

"That no bill to empower any company already constituted by Act of Parliament to execute any work other than that for which it was originally established, shall be allowed to proceed, unless the committee on standing orders, when such bill shall be referred to that committee, or unless the committee on the bill, when the compliance with the standing orders is to be proved before such committee, shall have specially reported :"³

Special meeting of proprietors to be proved.

1st. "That a draft of the proposed bill was submitted to a meeting of the proprietors of such company, at a meeting held specially for that purpose." 2d. "That such meeting was called by advertisement, inserted, in four consecutive weeks, in the newspapers of the county or counties wherein such new works were proposed to be executed; or if there are no newspapers published in such county or counties, then in that of the nearest county

¹ Lords' S. O. No. 219 (6).

² Chapter. XXV.

³ Lords' S. O. No. 220 (5).

wherein a newspaper is published." 3d. "That such meeting was held at a period not earlier than seven days after the last insertion of such advertisement." 4th. "That at such meeting the draft of the proposed bill was submitted to the proprietors then present, and was approved of by at least three-fifths of such proprietors."

It is further ordered,

"That in case any proprietor of such company who, by himself or any person authorized to act for him in that behalf, shall have dissented at the meeting called in pursuance of the aforesaid standing order, to empower any company already constituted by Act of Parliament to execute any work other than that for which it was originally established, such proprietor shall be permitted, on petitioning the house, to be heard by the committee on standing orders on the compliance with the standing orders, by himself, his agents and witnesses, or by the committee on the proposed bill, by himself, his counsel or agents, and witnesses."

Proprietor dissenting may petition to be heard.

2. It is an order of the lords,¹

"That when any alteration shall have been made, or shall be desired by the parties to be made, *after the introduction of the bill into Parliament*, in a work included in the second class of bills, a plan and section of such alteration, on the same scale, and containing the same particulars as the original plan and section, together with a book of reference thereto, shall be deposited with the clerk of the peace in England, and in the office of the sheriff clerk in Scotland, in every county in which such alteration is proposed to be made; and a copy of such plan and section, so far as relates to each parish, together with a book of reference, shall be deposited, in England with the parish clerk, and in Scotland with the schoolmaster, or in royal burghs with the town clerk, and in Ireland with the postmaster of the post-town in or nearest to each parish in which such alteration is intended to be made, *one month previously to the introduction of the bill for making such work, into this house*. And the intention to make such alteration shall be published in the London, Edinburgh, or Dublin Gazette, as the case may be, and some one and the same newspaper of the county in which such alteration is situate, or if there be no such paper, then in the newspaper of some adjoining county, *for three successive weeks previously to the introduction of the bill into this house*. And personal application, with a notice in writing, shall be made to the owners or reputed owners, and lessees, or in their absence from the United Kingdom, to their agents, and to the occupiers of lands through which the alteration is intended to be

Alterations of plans, sections, &c.,

to be deposited; with whom;

when.

Notices to be given of alterations;

when.

Personal application to owners, &c.,

¹ Lords' S. O. No. 223 (9).

and consents. made; and the consent of such owners or reputed owners, or lessees, and occupiers, to the making of such alteration, shall be proved to the satisfaction of the committee before whom the compliance with the standing orders shall be proved."

3. It is also ordered, in reference to alterations of plans,

Deposit of plans of alterations in the House of Lords.

"That previous to any bill for making any work, included in the second class, being brought to this house from the commons, in which any alteration has been made in its progress through Parliament, a map or plan, and section of such work, showing any variation, extension, or enlargement which is intended to be made in consequence of such alteration, shall be deposited in the office of the clerk of the Parliaments; and that such map or plan, and section, shall be on the same scale, and contain the same particulars as the original map or plan, and section of the said work."¹

Maps, &c. annexed to bills of the second class.

4. "That previous to the second reading in this house of any bill of the second class, the map or plan of the work, as intended to be made by the said bill, shall be engraved or printed, upon the scale of an inch at least to a mile, and annexed to the printed copies of the bill, and shall be laid upon the table of this house."²

These are the several standing orders of the lords, peculiar to that house, which must be proved before the standing order committee, when a bill is opposed, and when unopposed, before the committee on the bill. Others will presently be added, in describing the further stages of bills.

Private bills of every description are subject to the following standing order:

Private bills to be printed before second reading, and delivered to parties before meeting of committee.

"That for the future no private bill shall be read in this house a second time until printed copies thereof be left with the clerk of the Parliaments, for the perusal of the lords; and that one of the said copies shall be delivered to every person that shall be concerned in the said bill, before the meeting of the committee upon such bill; and in case of infancy, to be delivered to the guardian or next relation of full age, not concerned in interest or in the passing of the said bill."³

Not to be read before the hearing of causes.

By another standing order, when any cause shall be appointed to be heard in this house, no private bill whatsoever shall be read that day before the hearing of the cause.⁴

¹ Lords' S. O. No. 223 (10).

² Ib. (11).

³ Ib. No. 96.

⁴ Ibid.

The second reading, as in the commons, affirms the principle of the bill, and is immediately followed by the commitment. Unopposed private bills are referred to "all the lords present this day," who are presided over by the chairman of the lords' committees, whose duties in reference to private bills are similar to those of the chairman of ways and means in the house of commons. These open committees are attended by any of the lords who had been present; but the business is practically transacted by the chairman of committees, and the responsibility is vested in him by the house. He is assisted in his duties by a counsel attached to his office, who examines the provisions of every private bill, and points out any variance with the standing orders, or the general laws of the country. He prepares the same information, in fact, for the chairman of committees in the lords, that the briefs of private bills are intended to furnish to the House of Commons.

Second reading and commitment.

Unopposed bills referred to open committees.

Counsel to chairman of committees.

The chairman of committees may, in any case, report his opinion to the house, that an unopposed bill ought to be proceeded with as an opposed bill; in which case it will be referred to another committee, as if it had been treated as an opposed bill in the first instance.¹

Unopposed bills when treated as opposed.

Every opposed private bill is referred to a select committee of five lords, who choose their own chairman. Every lord appointed on the committee is ordered to attend during the whole continuance of the inquiry; and no lord who is not one of the five, is permitted to take any part in the proceedings. Lords are exempted from serving on the committee on any bill in which they are interested, and may be excused from serving for any special reasons, to be approved of in each case by the house.

Committees on opposed bills.

These committees are appointed in a manner very similar to that adopted in the commons, by a committee resembling the committee of selection. A committee is named by the house every session, consisting of the chairman of com-

Committee of selection.

¹ Lords' S. O. No. 219.

mittees and four other lords, who select and propose to the house the names of the five lords who are to form a select committee for the consideration of each opposed private bill: but the committee may not be named to the house on the same day on which the bill is read a second time.

Sittings of committees on bills.

The house appoint the time for the first meeting of the committee, and the attendance of the lords is very strictly enforced. It is ordered,

“That the committee shall meet not later than eleven o'clock every morning, and sit till four, and shall not adjourn at an earlier hour without specially reporting the cause of such adjournment to the house at its next meeting; nor adjourn over any days except Saturday and Sunday, Christmas Day, and Good Friday, without leave of the house.”

“If any member is prevented from continuing his attendance, the committee shall adjourn, and report the cause of such member absenting himself to the house at its next meeting, and shall not resume its sittings without leave of the house.”

Proceedings of committees on bills.

The committee on the bill, whether opposed or not, perform the same duties as in the commons. They examine the provisions of the bill, make amendments, add clauses, and, in particular cases, inquire into the compliance with standing orders. No committee, however, on a railway bill of the second class, or on an opposed bill in any of the three classes, may examine into the compliance with such standing orders as are required to be proved before the standing order committee.¹

Witnesses on oath.

The proceedings of a lords' committee differ in no material point from those of a committee in the commons, except that witnesses are examined upon oath, previously administered at the bar of the house. When petitions against the bill are referred, the parties are heard by themselves, their counsel, agents, and witnesses, in the same manner, and subject to the same rules, as in the commons. Some are heard upon the preamble, and others against

Petitioners heard.

¹ Lords' S. O. No. 219 (8).

particular clauses, or in support of new clauses or amendments: but the committee require both parties to state all the amendments which they intend to propose, before the room is cleared for the purpose of deliberating upon the preamble. The bill is gone through, clause by clause, and after all amendments have been made, it is reported, with the amendments, to the house.

The proceedings of lords' committees upon private bills differ also, in some cases, from a committee in the commons, in regard to particular matters, which, by special standing orders, are required to be proved or enforced there, either in relation to all bills, or to bills of particular classes or descriptions. These orders may now be enumerated.

Special standing orders to be proved or enforced.

The first relates to the payment of the purchase-money of lands, &c. into the bank, and applies to bills of all the three classes in which powers are given for the purchase or exchange of lands, where sums are to be laid out in the purchase of lands. It is ordered, that in all such bills provision shall be made for the payment of the purchase-money into the Bank of England, or into one of the banks of Scotland established by Act or royal charter, or into the Bank of Ireland; with special conditions particularly laid down in the standing orders.¹ And certain powers, in reference to the purchase-money so deposited, are required to be given to commissioners in inclosure or drainage bills, when they find any difficulty in obtaining a purchase in land of equal value, or when the purchase is otherwise disadvantageous.²

Payment of purchase-money into the bank, &c.

Inclosure and drainage bills.

In all bills, the committees on which are to receive proof of consents, it is ordered,

“That no notice shall be taken by the committee of the consent of any person, except trustees for a charity, to any private bill, unless such person appear before such committee, or proof be made to such committee, by two credible witnesses, that such person is not able to attend, and doth consent to the said bill.”³

Consents to private bills to be personal, or an affidavit of disability made.

¹ Lords' S. O. No. 227.

² Ib. No. 228.

³ Ib. No. 94 A.

How consent of trustees for charitable purposes to be signified.

“That the consent of all trustees for charitable purposes may be given to any private bill by which the estate, revenues, management, or regulation of the charity may be affected, by each of such trustees signifying his assent to such bill by signing a printed copy of the said bill, in the presence of one credible witness, who shall attest such signature.”¹

Letters patent bills, special orders.

Compliance with the following standing orders specially relating to bills for extending the terms of letters patent, is to be proved before the committee on the bill:—

1. “That no bill for extending the term of any letters patent for any invention or discovery granted under the great seal of England, Scotland, or Ireland, shall be read a third time in this house unless it shall appear that the letters patent, the term of which it is intended by such bill to extend, will expire within two years from the commencement of the session of Parliament in which the application for such bill shall be made.”

2. “That no such bill shall be read a third time unless it shall appear that the application to Parliament for extending the term of the letters patent is made by the person, or by the representatives of the person, who himself originally discovered the invention for which such letters patent were granted by his majesty; and that the knowledge of such invention was not acquired by such person as aforesaid, by purchase or otherwise, from the inventor or owner of the same, or by information that such invention was known and pursued in any foreign country.”²

The following order respecting a cemetery or burial ground is to be proved before the committee on the bill:—

Cemetery or burial ground.

“That no bill for erecting or making any cemetery or burial ground shall be read a third time unless the committee on such bill shall report that such bill contains a provision whereby the company, or persons or person intended to be authorized by such bill to make or erect such cemetery or burial ground, are restricted from erecting or making the same, or any part thereof, within 300 yards of any house of the annual value of 50*l.*, or having a plantation or ornamental garden or pleasure ground occupied therewith, except with the consent of the owner, lessee, and occupier thereof, in writing.”³

Levels of roads.

With regard to bills of the second class, except bills for turnpike roads, the committee on the bill are to require, 1, That distinct provision is to be made as to the level of roads, when altered by making any work, and the height

¹ Lords' S. O. No. 94 B.

² *Ib.* No. 229.

³ *Ib.* No. 230.

of the fences ; and, 2, That unless the work be completed within a limited time, the powers of the Act are to cease, except in regard to so much of the work as shall have been completed.¹

Time limited for completing works.

But the first of these orders being also enforced by the commons, a provision is made in that house to effect the proposed object, if omitted in the original bill:² and a clause embodying the purport of the second, is always inserted in bills of the second class, when first introduced into the commons.

The committee on every opposed *railway bill* are ordered to report specially the various particulars³ which are inquired into by the committee in the house of commons, and which have already been enumerated.⁴ In cases where there is no opposition, or no parties appear in support of an opposing petition, or where the opposition is withdrawn, it is at the discretion of the committee to determine how far it may be necessary to inquire into these particulars.⁵ Unless a committee, in virtue of this permission, report that they have not inquired into the several facts required to be proved, the house will not proceed with the further consideration of the report, until it has received from the committee specific replies in answer to each of the questions.⁶

Railway bills.
Special reports.

In addition to the general inquiries thus conducted by the committee on a railway bill, they are ordered to observe that particular provisions be inserted, 1, For restricting loans or mortgages; 2, For maintaining the levels of roads; 3, For restraining the crossing of roads on a level. These are all similar to those required by the standing orders of the commons, and must therefore be included in the bills when they are first received by the lords. 4, That the powers of making works shall cease, unless completed

Provisions required to be inserted.

¹ Lords, S. O. No. 231 (1) (2).

² See *supra*, p. 417.

³ Lords' S. O. No. 232 (1).

⁴ *Supra*, p. 419.

⁵ Lords' S. O. No. 232 (3).

⁶ *Ib.*, 232 (2).

within a certain time. This provision has already been noticed in reference to bills of the second class generally; and it is always contained in the original bill, as brought up to the lords. 5, The lords also order three clauses to be inserted in every railway bill, precisely the same as those already noticed as required by the standing orders of the commons;¹ viz., for the deposit of amended plans; for limiting deviations from the datum line in the section; and for restraining diminutions of curves. Unless these several provisions are included in the bill when it leaves the committee, the lords will not read it a third time.

It is further ordered,

Amended railway bills to be reprinted.

“That all private bills relating to railways which shall have been opposed, and in which any amendments shall have been made in the committee, shall be reprinted as amended, previously to the third reading, unless the chairman of the committee shall certify that the reprinting of such bill is unnecessary.”²

¹ *Supra*, p. 418.

² Lords' S. O. No. 47.

CHAPTER XXVIII.

RULES, ORDERS, AND COURSE OF PROCEEDINGS IN THE LORDS UPON PRIVATE BILLS BROUGHT INTO THAT HOUSE UPON PETITION; AND PROCEEDINGS OF THE COMMONS UPON PRIVATE BILLS BROUGHT FROM THE LORDS. LOCAL AND PERSONAL, AND PRIVATE ACTS OF PARLIAMENT.

HAVING traced the progress of private bills received or returned from the commons, through every stage to the report inclusive, it is time to advert to the proceedings peculiar to those bills which are first brought into the lords; as, after the report, the proceedings upon both classes of bills are nearly the same.

Private bills originating in the lords.

On the same principle as that observed in the commons, it is ordered,

Petitions for bills.

“That for the future no private bill shall be brought into this house until the house be informed of the matters therein contained, by petition to this house for leave to bring in such bill;”¹ and, “that all parties concerned in the consequences of any private bill shall sign the petition that desires leave to bring such private bill into this house.”²

To this rule, however, there is a remarkable exception. Bills for reversing attainders; for the restoration of honours and lands; and for restitution in blood, are first signed by the Sovereign, and are presented by a lord to the House of Peers, by command of the Crown; after which they pass through the ordinary stages in both houses, and receive the royal assent in the usual form.

Bills for restitution of honours and in blood.

The lords having power to consult the judges in matters of law, order,

“That when a petition for a private bill shall be offered to this house, it shall be referred to two of the judges, who, after perusing the bill, without requiring any proof of the allegations therein contained, are to report to the house their opinion thereon, under their hands; and whether, presuming the allegations contained in

Petitions for estate bills referred to two of the judges.

¹ Lords' S. O. No. 95.

² *Ib.* No. 98.

³ 56 Lords' J. 260. 425; and Report of Precedents, *ib.* 286.

the preamble to be proved to the satisfaction of the lords spiritual and temporal in Parliament assembled, it is reasonable that such bill do pass into a law, and whether the provisions thereof are proper for carrying its purposes into effect, and what alterations or amendments, if any, are necessary in the same: and in the event of their approving the said bill, they are to sign the same.”¹

But this order is only applicable to estate bills.

At the commencement of every session, an order is made that no petitions for private bills shall be received after a certain day; nor any report from the judges thereon, after another day more distant; but this order, like the preceding, refers to estate bills alone; and all further proceedings upon such bills are suspended until the report of the judges is received, as it is ordered,

Judges' report.

“That no private bill, the petition for which shall be referred to two of her Majesty's judges, shall be read a first time until a copy of the said petition, and of the report of the judges thereupon, shall be delivered, by the party or parties concerned, to the lord appointed by this house to take the chair of all committees.”²

When this has been done, the bills may proceed through their several stages. But before the proceedings of the house are entered upon, it will be necessary to cite several special standing orders relating to particular bills.

ESTATE BILLS.
Petitions for
Scotch estate
bills.

In the case of private bills concerning estates in land or heritable subjects in Scotland, it is ordered, that when the petition is offered to the house,

“It shall be referred to two of the judges of the Court of Session, who are forthwith to summon all parties before them who may be concerned in the bill; and after hearing all the parties, and perusing the bill, are to report to the house the state of the case, and their opinion thereupon, under their hands, and are to sign the bill.”³

The same method is ordered to be adopted before the second reading of Scotch estate bills sent up from the commons; but in practice, nearly all bills of this nature are first solicited in the lords, whose proceedings are greatly facilitated by their power of delegating inquiries to the judges. It is further ordered,

¹ Lords' S. O. No. 99.

² *Ib.* No. 175.

³ *Ib.* No. 131.

“That all persons concerned in the consequences of such private bills, and who reside in Scotland, may give their consent to the passing of such bills before two of the judges of the Court of Session, to whom such bills shall be referred; and the certificate of the said judges, by which it shall appear that on a day and at a place to be therein expressed, such persons did appear personally before them, and being aware of the interest they may have in such bill, did give their consent themselves, and for those for whom, according to the law of Scotland, they may be entitled to consent, and did accept the trust proposed to be vested in them by the said bill, and did in their presence sign a bill (which bill, together with the said certificate, must be produced), shall be held as sufficient evidence of the consent of such persons before any committee of this house to whom the consideration of such bill may be referred.”¹

Consents to Scotch estate bills.

“That it be a general instruction to the judges who shall meet to take the consent of heirs of entail concerned in the consequences of private bills relating to estates in Scotland, that they take no notice of the consent of any person to the passing of such bill, unless such person appear before them, or that it may be made manifest to them, by an instrument under the hand of a notary public, duly executed according to the forms required by the law of Scotland, that he or she is not able to attend, and doth consent to the said bill.”²

Consent of heirs of entail.

“That it shall be sufficient to have the consent of the persons concerned in the consequences of Scotch estate bills, in the following proportions; viz.

Proportion of consents necessary.

“Four-fifths of the ten next in succession to the person or persons applying for such private bill; provided it is satisfactorily proved to the committee that those of this the first ten whose consent has not been obtained are absent abroad, or cannot be found in the kingdom of Great Britain.

“Two-thirds of the twenty next in succession after the said ten.

“One-half of the twenty next in succession after the said twenty; and one-third of all the other persons concerned in the said bill; without prejudice, nevertheless, as heretofore, to every person concerned, to petition against the said bill, and to be heard for his interest therein.”³

In reference to estate bills generally, there are several orders in force respecting consents—1. Where a petitioner is tenant for life, and another tenant in tail;⁴ 2. Where women have an interest;⁵ 3. Where children have an interest;⁶

Estate bills, generally.

¹ Lords' S. O. No. 132.

² Ib. No. 133.

³ Ib. No. 197.

⁴ Ib. No. 145.

⁵ Ib. No. 146.

⁶ Ib. No. 147.

4. Trustees to consent in person in certain cases;¹ 5. That the appointment of new trustees is to be with the approbation of the Court of Chancery;² 6. Notice to be given to mortgagees when the petition for the bill is presented;³ 7. That bills for exchanging or selling settled estates are to have schedules of their value annexed.⁴

Concerning bills for selling lands and purchasing others in Scotland.

In bills for selling lands, and purchasing or settling others in Scotland, the committee on the bill are to take care that the values be fully made out, and to provide other securities for the fulfilment of the agreement; which are particularly described in the standing orders.⁵

The standing orders in relation to Irish estate bills are very similar to those concerning estates in Scotland; but the circumstances of the two countries differ so far as to make it necessary to cite part of the orders at length.

Mode of referring petitions for private bills relative to estates in Ireland.

“When a petition for a private bill concerning estates in land situated in Ireland, shall be offered to this house, it shall be referred, if the parties desire it, to two judges of the Court of King’s Bench, Common Pleas, or Exchequer, in Ireland, who are forthwith to summon all parties before them who may be concerned in the bill, and after hearing all the parties and perusing the bill, are to report to the house the state of the case, and their opinion thereupon, under their hands, and are to sign the said bill: the same method is to be observed as to private bills concerning estates in land in Ireland, brought from the House of Commons, before the second reading of such bills.”⁶

Consents to Irish estate bills.

“All persons concerned in the consequences of such private bills, and who reside in Ireland, may give their consent to the passing of such bills before the two judges to whom such bills shall be referred; and the certificate of the said judges, containing the particulars required to be stated by the judges of the Court of Session, in regard to Scotch bills,⁷ shall be evidence of such consent.”⁸

And the same instruction is given to the judges as in the case of Scotland, to require the personal presence of persons consenting, except in certain cases.⁹

¹ Lords’ S. O. No. 148.

² *Ib.* No. 149.

³ *Ib.* No. 150.

⁴ *Ib.* No. 151. All these orders are printed at length in the published collection of the standing orders of the lords relative to private bills, p. 9, 10.

⁵ Lords’ S. O. No. 153.

⁶ *Ib.* No. 156.

⁷ See p. 446.

⁸ Lords’ S. O. No. 157.

⁹ Lords’ S. O. No. 158.

In regard to bills for selling lands, and purchasing or settling others in Ireland, an order, similar to that in relation to Scotch bills, *mutatis mutandis*, is binding upon the committee upon the bill.¹

In regard to divorce bills, there are the following standing orders :—

DIVORCE
BILLS.

“ That no petition for any bill of divorce shall be presented to this house unless an official copy of the proceedings, and of a definitive sentence of divorce *a mensâ et thoro*, in the ecclesiastical court, at the suit of the party desirous to present such petition, shall be delivered upon oath at the bar of this house at the same time.”²

Petition for divorce bill to be presented with copy of the proceedings, &c. in the ecclesiastical court.

“ That no bill grounded on a petition to this house to dissolve a marriage for the cause of adultery, and to enable the petitioner to marry again, shall be received by this house unless a provision be inserted in such bill that it shall not be lawful for the person whose marriage with the petitioner shall be dissolved to intermarry with any offending party on account of whose adultery with such person it shall be therein enacted that such marriage shall be so dissolved ; provided, that if at the time of exhibiting the said bill such offending party or parties shall be dead, such provision as aforesaid shall not be inserted in the said bill.”³

No divorce bill to be received without a clause prohibiting the offending parties from marrying.

But this clause is usually struck out in committee, except in very peculiar cases.

But struck out in committee.

“ That when any petition for any bill of divorce shall have been presented to this house in any case in which any trial at nisi prius shall have been had, or any writ of inquiry executed within the United Kingdom, wherein the petitioner shall have been party, the judge or under-sheriff before whom such trial shall have been had, or such writ of inquiry executed, do transmit to the clerk assistant, to be laid upon the table of this house, a report of the proceedings upon such trial or writ of inquiry ; and that no such bill of divorce be read a second time until such report shall have been so laid upon the table of this house.”⁴

Proceedings on trials.

“ That upon the second reading of any bill of divorce, the petitioner praying for the same do attend this house, in order to his being examined at the bar, if the house shall think fit, whether there has or has not been any collusion, directly or indirectly, on his part, relative to any act of adultery that may have been committed by his wife, or whether there be any collusion, directly or

Petitioner to attend on the second reading, to be examined as to collusion.

¹ Lords' S. O. No. 159.

² Ib. No. 141.

³ Ib. No. 176.

⁴ Ib. No. 214.

indirectly, between him and his wife, or any other person or persons, touching the said bill of divorce, or touching any proceedings or sentence of divorce had in the ecclesiastical court at his suit, or touching any action at law which may have been brought by such petitioner against any person for criminal conversation with the petitioner's wife; and also whether, at the time of the adultery of which such petitioner complains, his wife was, by deed, or otherwise by his consent, living separate and apart from him, and released by him, as far as in him lies, from her conjugal duty, or whether she was at the time of such adultery cohabiting with him, and under the protection and authority of him as her husband."¹

NATURALIZATION BILLS.

No bill to be read a second time without a certificate.

It is ordered,

"That no bill for naturalizing any person born in any foreign territory shall be read a second time until the petitioner shall produce a certificate from one of his majesty's principal secretaries of state respecting his conduct."²

BILLS FOR REGULATION OF TRADE.

Respecting bills for the regulation of trade, &c.

It is ordered,

"That no bill regulating the conduct of any trade, altering the laws of apprenticeship in relation to any particular business, affixing marks to designate the quality of any manufacture, prohibiting the manufacture of any species of commodity, or extending the term of any patent, shall be read a second time in this house until a select committee shall have inquired into the expediency or in expediency of the proposed regulations, and shall have reported upon the expediency or in expediency of this house proceeding to take the bill into further consideration."³

It is ordered,

Respecting joint stock company bills.

"That with the exception of bills for making or improving any turnpike road, navigation, aqueduct, cut or canal, tunnel or archway, bridge, ferry, dock, pier, port or harbour, wharf, stairs, or landing-place, and of bills for lighting, paving, or watching any one town, parish, or district, or for therein erecting or improving any market place or market house, or for the cultivation and improvement of waste lands, or for establishing any cemetery, all bills brought into this house enacting and declaring that certain persons shall form a body politic and corporate, who shall only be bound to the extent of their respective shares, or granting to the same the privilege of a perpetual succession and a common seal, or the right of suing and being sued, pleading and being impleaded, at law or in equity, or of prosecuting any person who shall commit any felony, misdemeanor, or other offence; or any bill conveying

¹ Lords' S. O. No. 142.

² *Ib.* No. 171.

³ *Ib.* No. 198.

to any number of persons, who are not bound conjointly and severally to the extent of their respective fortunes, one or more of the aforesaid privileges; such bill, after being read a first time, shall be referred to a select committee; and that no such bill shall be read a second time till the committee to which it is referred have reported that it has to them been proved, in a satisfactory manner, that three-fourths of the capital intended to form the joint stock of such company is deposited in the Bank of England, or vested in Exchequer bills, or in the public funds, in the name of trustees, to be transferred to such company when they are by law constituted a body politic and corporate, or have by law acquired any of the aforesaid privileges.”¹

“That when any bill shall be brought into this house granting and enacting, in favour of any body politic and corporate, previously constituted such by royal charter, and who are not bound conjointly and severally to the extent of their respective fortunes, further privileges, such bill, if not intended to effect the objects specially excepted in the former motion, after being read a first time, shall be referred to a select committee; and that no such bill shall be read a second time till the committee to which it is referred have reported that it has to them been proved, in a satisfactory manner, that three-fourths of the capital intended to form the joint stock of such company has been paid up by the individual proprietors.”²

When the reports from the judges upon petitions for estate bills have been delivered to the chairman of committees, the bills may be presented and read a first time. If, however, a report of the judges should be adverse to an entire bill, it would not be offered to the house at all; and if the report should object to particular provisions or suggest others, the bill would be altered accordingly, before its presentation.

When judges' report received on estate bills.

No particular interval is enforced between the first and second readings, and if printed copies of the bill have been delivered, and the bill be unopposed, it may be read a second time on any future day. If it be opposed upon its principle, this is the proper stage for taking the decision of the house upon it.

Second reading of bills.

It is not usual for petitions to be presented, praying to

¹ Lords' S. O. No. 210.

² Ib. No. 211.

be heard against any private bills on the second reading, except divorce and peerage bills; and in those cases, whether there are opposing petitions or not, counsel are heard and witnesses examined at the bar in support of the bill on the second reading.

Divorce bills.

Notice of the second reading of a divorce bill, with an attested copy of the bill, signed by the clerk assistant, is required to be served upon the wife, or the husband if the bill be prosecuted by the wife; which service must be proved on the second reading; but if the party cannot be found, or is in a distant part of the world, service will be allowed upon his or her agent, upon a petition from the agent of the promoter of the bill, stating the facts, and after the proof thereof on oath at the bar.

In divorce bills, the proceedings of the ecclesiastical court, the sentence of divorce, and the proceedings in trials at nisi prius, are before the house, but are not admitted as evidence to establish the fact of adultery. Of that, their lordships must be satisfied by other testimony offered at the bar; and if that should fail, even when the application is unopposed, the bill will not be read a second time. And, as shown above, the petitioner is required to be in attendance to be examined as to collusion if the house think fit, unless a special order has been obtained to dispense with his attendance.

Depositions in India.

The only occasion upon which the lords will receive evidence in support of a divorce bill, taken before other courts, is when the adultery is alleged to have been committed in India; in which case depositions taken before the judges in India are admitted as evidence. By the Act 1 Geo. 4, c. 101, when any person petitioning either house of Parliament for a divorce bill, states that the witnesses necessary to substantiate the allegations of the bill are resident in India, the speaker of such house may issue his warrant or warrants to the judges of the supreme courts of Calcutta, Madras, or Ceylon, or the recorder of Bombay

for the examination of witnesses; and the evidence taken before them, accompanied by a declaration that the examinations have been fairly conducted, is admissible in either House of Parliament. The proceedings upon a divorce bill, when a warrant has been issued under this Act, are not discontinued by any prorogation or dissolution of Parliament, until the examination shall have been returned; but "such proceedings may be resumed and proceeded upon in a subsequent session, or in a subsequent Parliament, in either House of Parliament, in like manner and to all intents and purposes, as they might have been in the course of one and the same session."¹

When a petitioner prays that evidence may be taken in India, by virtue of this Act, it is referred to a committee upon whose report the orders are made for issuing the necessary warrants, and the bill is then read a first time. No further proceeding can then take place, until the depositions have been returned from India; and as they are not received in time to proceed while Parliament is sitting, the bill is not read a second time until the following session. If the proceedings of ecclesiastical and other courts have been laid before the house, upon a divorce bill, in the preceding session, the agent may petition the house to dispense with a second copy.

Warrant for taking depositions, how obtained.

All the ordinary private bills for estates, naturalization, names, and other matters, are referred to an open committee, being, as already explained, the lords then present;² who inquire whether all the standing orders have been complied with, and take care that the proper provisions are inserted. The committee on an estate bill may not sit until 10 days after the second reading.³ It is a standing order of the house,

Commitment.

"That the lord who shall be in the chair of a committee to whom any private bill shall be committed, shall state to the house, when the report of such committee is made, how far the orders of

¹ 1 Geo. 4, c. 101, s. 4.

² *Supra*, p. 438.

³ Lords' S. O. No. 94.

the house, in relation to such private bill, have or have not been duly complied with.”¹

Divorce bills to a committee of the whole house.

Unlike other private bills, divorce bills instead of being committed to an open committee, or to a selected committee, are committed, like public bills, to a committee of the whole house.

Report of bills.

All bills are reported with or without amendments, as the case may be; and after the report, bills originating in the lords are ordered to be ingrossed before the third reading; but commons' bills, being already ingrossed, only remain to be read a third time.

Third reading and passing.

The last stages of all private bills are the third reading and passing. If they have originated in the lords, they are sent down to the commons; if they have been received from the commons, they are either agreed to without any amendments or returned with amendments.

Proceedings on lords' amendments.

The proceedings between the two houses in regard to amendments to private bills, differ in no respect from those already described, with reference to bills of a public nature.² But when the amendments made by the lords to a bill are to be taken into consideration by the commons, notice must be given in the Private Bill Office on the previous day;³ which notice, however, may not be given until the bill has been received from the lords.⁴

The lords' amendments when agreed to, are required to be entered, by the Private Bill Office, upon the printed copy of the bill, as amended in the committee, and there preserved.

Lords' private bills in the commons.

The bills sent down to the commons pass through the same stages, and are subject to the same rules as other private bills, except that name and naturalization bills need not be printed;⁵ and that no breviates are prepared of divorce, name, or naturalization bills, nor of estate bills, unless they relate to Crown, church, or corporation pro-

¹ Lords' S. O. No. 152.

² *Supra*, p. 288.

³ Com. S. O. No. 146.

⁴ Speaker's order, 10 May 1843.

⁵ *Ib.* No. 109.

erty, or property held in trust for public or charitable purposes.¹

The bills when received from the lords are read a first time and, unless they be name or naturalization bills, are referred to the committee on petitions for private bills. After their report that the standing orders have been complied with, or that no standing orders are applicable, the bills are read a second time; but three clear days must elapse between the first and second readings, and three clear days' notice of the second reading must have been given. They are then committed to the chairman of ways and means and two other members.

The manner of dealing with divorce bills is peculiar, and differs from the mode of proceeding upon other bills.

At the commencement of each session a committee is appointed, consisting of not more than 15 members, of whom seven are a quorum, and is denominated "The Select Committee on Divorce Bills." To this committee all divorce bills are committed after the second reading. An instruction is given to the committee "that they do hear counsel, and examine witnesses for the bill; and also that they do hear counsel, and examine witnesses against the bill, if the parties concerned think fit to be heard by counsel, or produce witnesses." At the same time, a message is sent to the lords, to request their lordships to communicate a copy of the minutes of evidence taken before them upon the bill, or for the depositions transmitted from India. When these are communicated, they are referred to the committee on the bill. It must be noticed that from the words of the instruction, the promoter is bound to examine witnesses, or otherwise to substantiate the allegations of the bill, and that the last part of the instruction only is permissive, in regard to parties opposing the bill. Besides this general instruction, the committee are desired by the standing order,

Divorce bills in
the commons.

¹ Com. S. O. No. 113.

What evidence to be given in divorce cases.

“ To require evidence to be given before them that an action for damages has been brought in one of her Majesty’s courts of record at Westminster, or in one of her Majesty’s courts of record in Dublin, or in one of her Majesty’s supreme courts of judicature of the presidencies of Calcutta, Madras, Bombay, or the island of Ceylon respectively, against the persons supposed to have been guilty of adultery, and judgment for the plaintiff had thereupon; or sufficient cause to be shown, to the satisfaction of the said committee, why such action was not brought, or such judgment was not obtained.”¹

It is also ordered,

When petitioner for bill to attend committee.

“ That the committee shall, in all cases in which the petitioner for the bill has attended the House of Lords upon the second reading of the bill, require him to attend before them to answer any questions they may think fit that he should answer;”² and,

Committee to report bill in all cases.

“ That the committee shall report every such bill to the house, whether such committee shall or shall not have agreed to the preamble, or gone through the several clauses, or any of them.”

The party opposing a divorce bill may appear before the committee without presenting a petition to the house against the bill; and the promoter of the bill must serve him or her with the orders of the house, and a copy of the bill. In case he should not be able to do this, his agent should present a petition, stating the circumstances, and praying that service upon the agent of the party may be good service. On the appearance of the opponent’s agent, and his consent to accept the service of the orders, and a copy of the bill for his client, the house make the necessary order in answer to the petition. In compliance with the instruction and standing orders of the house, the committee make the necessary inquiries, and report,

“ That they have examined the allegations of the bill as to the marriage of the parties, the adultery charged as the ground for dissolving the marriage, the verdict at law, and the sentence of divorce in the ecclesiastical court; and upon evidence satisfactory to the committee, found the same and other allegations to be true.”

Lords’ bills subject to the same intervals and stages.

Nothing need be added concerning the progress of lords private bills through the commons. They are subject to the same rules, and, with the exception of the ingrossment,

¹ Com. S. O. No. 98.

I No. 99.

pass through the same stages, and with the same intervals and notices, as those which have already been detailed, in reference to private bills originating in the commons; but if received at the close of a session, more indulgence is usually shown in dispensing with the orders of the house, and in permitting them to pass with less delays.

All private bills, during their progress in the commons, are known by the general denomination of private bills; but in the lords the term "private" is applied *technically* to estate bills only, all other bills being distinguished as "local" or "personal," although in the standing orders no such distinction is expressed. After they have received the royal assent, private bills are divided into three classes: 1. Local and personal, declared public; 2. Private, printed by the Queen's printers; and 3. Private, not printed.

Divisions of private bills.

1. Every local and personal Act contains a clause, declaring that it "shall be a public Act, and shall be judicially taken notice of as such," and receives the royal assent as a public Act. The practice of declaring particular Acts of a private nature to be "public Acts," commenced in the reign of William and Mary, and was soon extended to nearly all private Acts by which felonies were created, penalties inflicted, or tolls imposed.¹ Such Acts were printed with the other statutes of the year,² and were not distinguishable from public Acts, except by the character of their enactments; but since 1798 they have been printed in a separate collection, and are known as local and personal Acts. With the exception of inclosure, or inclosure and drainage Acts, all the three classes of bills so often referred to, are included in this category, and contain the public clause.

Local and personal Acts.

2. From 1798 to 1815, the private Acts, not declared public, were not printed by the Queen's printers, and could only be given in evidence by obtaining authenticated copies from the statute rolls in the Parliament Office; but

Private Acts printed.

¹ Preface to Spiller's Index to the Statutes.

² In the black letter edition of the Public General Acts.

since 1815 the greater part of the private Acts have been printed by the Queen's printers, and contain a clause declaring that a copy so printed "shall be admitted as evidence thereof by all judges, justices and others." These consist, almost exclusively, of inclosure, or inclosure and drainage and estate Acts.

Private Acts
not printed.

3. The last class of Acts are those which still remain unprinted: they consist of name, naturalization, divorce, and other strictly personal Acts, of which a list is always printed by the Queen's printers, after the titles of the other private Acts.

Legal distinc-
tions.

The main distinction in law between these classes of Acts is, that a local and personal Act, declared public, may be used for all purposes, as a public general statute. It may be given in evidence upon the general issue, and must be judicially noticed, without being formally set forth. Nor is it necessary to show that it was printed by the Queen's printers, as the words of the public clause do not require it, and the printed copy of a public Act is supposed to be used merely for the purpose of refreshing the memory of the judge, who has already been acquainted with its enactments. A private Act, on the contrary, whether printed or not, must be specially pleaded, and given in evidence like any other record; but the copy printed by the Queen's printers in the one case, is received as an examined copy of the record; while in the other, an authenticated copy must be produced from the statute rolls in the Parliament Office.¹

¹ 2 Phillipps & Amos, 611.

CHAPTER XXIX.

FEES PAYABLE BY THE PARTIES PROMOTING OR OPPOSING PRIVATE BILLS. COSTS OF PARLIAMENTARY AGENTS AND OTHERS.

THE fees which are chargeable upon the various stages of private bills, and are payable by the several parties promoting or opposing such bills, or obtaining the introduction of clauses for their particular benefit, have been settled in both houses. The tables of fees are well known to parliamentary agents; they are published in the standing orders of the commons, and in the House of Lords they are readily accessible to parties interested.

Fees payable on private bills.

In both houses there are officers whose special duty it is to take care that the fees are properly paid by the agents, who are responsible for the payment of them.¹ In the House of Commons the whole of these are collected and carried to a fee fund, whence the salaries and expenses of the establishment are partly defrayed; the balance being supplied from the consolidated fund.² In the House of Lords a considerable portion of the fees is appropriated in the same manner, to a general fee fund; but a part is still reserved for the particular use of officers, whose emoluments are derived from that source.

How collected,

and applied.

By two Acts of Parliament,³ a system has been established for taxing the costs and expenses of parliamentary agents and others, in soliciting private bills in both houses. In the House of Commons, if the suitors for a bill complain of the costs charged by a parliamentary agent, or solicitor, or others engaged in soliciting private bills, or in complying with the standing orders of the commons; or if the

Taxation of costs.

Commons.

¹ See *supra*, p. 397.

² 52 Geo. 3, c. 11.

³ 6 Geo. 4, c. 123 (commons); 7 & 8 Geo. 4, c. 64 (lords).

latter complain of the nonpayment of costs, the speaker is authorized and required, on the application of the parties, to direct the costs to be taxed, so far as they relate to the House of Commons. The speaker may appoint any persons to tax the costs, who are authorized to receive fees for that duty. On their report, the speaker is required to give a certificate, signed by himself, expressing the amount of the costs and expenses allowed, which is conclusive evidence of all the demands certified. If parties refuse to pay the amount certified, the speaker's certificate has the force of a warrant to confess judgment, and the court in which an action may be commenced is required to order judgment to be entered up accordingly.

Lords.

In the House of Lords, if any petitioners *for or against* a private bill, or their agents, apply to the clerk, or clerk assistant of the Parliaments, complaining of the amount of the costs, charges, and expenses charged by a parliamentary agent, or if the latter complain that he is aggrieved by nonpayment of the costs, the clerk is required to appoint persons to tax the costs, so far as they relate to the House of Lords. These persons are entitled to fees, as in the House of Commons, and on their report the clerk gives a certificate, which has the effect of a warrant to confess judgment, in the same manner as the speaker's certificate in regard to the costs incurred in the House of Commons.

The taxators appointed by the clerk of the Parliaments have power to administer oaths, and to require the production of proper vouchers for all monies charged as having been paid by a parliamentary agent. And the clerk is further required to prepare a list or scale of charges proper to be paid to parliamentary agents soliciting or opposing bills in the House of Lords, which is to be binding upon all parties concerned.

APPENDIX.

I. OATHS TAKEN BY MEMBERS OF BOTH HOUSES OF PARLIAMENT.

THE OATH OF FIDELITY.

I, *A. B.* do sincerely promise and swear, that I will be faithful, and bear true allegiance, to Her Majesty Queen Victoria. So help me God.

THE OATH OF SUPREMACY.

I, *A. B.* do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the Pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever.

And I do declare, that no foreign prince, person, prelate, state, or potentate, hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm. So help me God.

THE OATH OF ABJURATION.

I, *A. B.* do truly and sincerely acknowledge, profess, testify, and declare, in my conscience, before God and the world, that our sovereign lady Queen Victoria is lawful and rightful Queen of this realm, and all other her Majesty's dominions and countries thereunto belonging.

And I do solemnly and sincerely declare, that I do believe in my conscience, that not any of the descendants of the person who pretended to be Prince of Wales during the life of the late King James the Second, and since his decease pretended to be, and took upon himself the style and title of King of England, by the name of James the Third, or of Scotland, by the name of James the

Eighth, or the style and title of King of Great Britain, hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging; and I do renounce, refuse, and abjure any allegiance or obedience to any of them.

And I do swear, that I will bear faith and true allegiance to her Majesty Queen Victoria, and her will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever, which shall be made against her person, crown, or dignity.

And I will do my utmost endeavour to disclose and make known to her Majesty, and her successors, all treasons and traitorous conspiracies which I shall know to be against her or any of them.

And I do faithfully promise, to the utmost of my power, to support, maintain, and defend the succession of the crown against the descendants of the said James, and against all other persons whatsoever; which succession, by an Act intituled, "An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject," is and stands limited to the Princess Sophia, Electoress and Duchess Dowager of Hanover, and the heirs of her body, being Protestants.

And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a Christian. So help me God.

THE OATH TO BE TAKEN BY ROMAN CATHOLICS.

I, *A. B.* do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, and will defend her to the utmost of my power against all conspiracies and attempts whatever, which shall be made against her person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies which may be formed against her or them; and I do faithfully promise to maintain, support, and defend, to the utmost of my power, the succession of the crown, which succession, by an Act, intituled, "An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject," is and stands limited to the Princess Sophia, Electress of Hanover, and the heirs of her body, being Protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the crown of this realm: and I do further declare, that it is not an article of my faith, and that I do renounce, reject, and

abjure the opinion, that princes excommunicated or deprived by the Pope, or any other authority of the see of Rome, may be deposed or murdered by their subjects, or by any person whatsoever; and I do declare, that I do not believe that the Pope of Rome, or any other foreign prince, prelate, person, state, or potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this realm. I do swear, that I will defend to the utmost of my power the settlement of property within this realm as established by the laws; and I do hereby disclaim, disavow, and solemnly abjure any intention to subvert the present Church Establishment as settled by law within this realm; and I do solemnly swear, that I never will exercise any privilege to which I am or may become entitled, to disturb or weaken the Protestant religion or Protestant government in the United Kingdom; and I do solemnly, in the presence of God, profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatsoever. So help me God.

2. THE DECLARATION OF QUALIFICATION, BY MEMBERS OF THE HOUSE OF COMMONS.

I, *A. B.* do solemnly and sincerely declare, that I am, to the best of my knowledge and belief, duly qualified to be elected a member of the House of Commons, according to the true intent and meaning of the Act passed in the second year of the reign of Queen Victoria, intituled, "An Act to amend the Laws relating to the Qualification of Members to serve in Parliament;" and that my qualification to be so elected is as set forth in the paper signed by me, and now delivered to the clerk of the House of Commons.

3. FORM OF CERTIFICATE TO AUTHORIZE THE SPEAKER TO ISSUE A WARRANT FOR A NEW WRIT DURING A RECESS.

SCHEDULE of 24 Geo. 3, sess. 2, c. 26.

WE whose names are underwritten, being two members of the House of Commons, do hereby certify, that *M. P.*, late a member of the said house, serving as one of the knights of the shire for the county of _____ [or as the case may be] died upon the day of _____ [or, is become a peer of Great Britain, and that

a writ of summons hath been issued under the great seal of Great Britain to summon him to Parliament] [as the case may be], and we give you this notice, to the intent that you may issue your warrant to the clerk of the Crown, to make out a new writ for the election of a knight to serve in Parliament for the said county of [or as the case may be] in the room of the said *M. P.*

Given under our hands this day of

To the Speaker of the House of Commons.

Note.—That in case there shall be no speaker of the House of Commons, or of his absence out of the realm, such certificate may be addressed to any one of the persons appointed according to the directions of this Act.

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