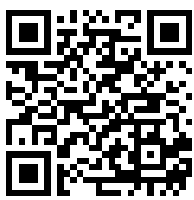

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

Lex Parliamentaria Americana.

ELEMENTS

OF THE

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES

IN THE

UNITED STATES OF AMERICA.

BY

LUTHER STEARNS CUSHING.

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TO THE HONORABLE

ROBERT CHARLES WINTHROP, LL. D.,

WHO WAS, FOR MANY YEARS,

SPEAKER OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS;

AND WHO, AFTERWARDS, AS SPEAKER OF THE HOUSE OF REPRESENTATIVES OF THE

UNITED STATES, FOR THE THIRTIETH CONGRESS,

PERFORMED THE DUTIES OF THAT OFFICE WITH SINGULAR ABILITY;

THIS VOLUME

IS HUMBLY DEDICATED

AS A TESTIMONIAL OF RESPECT AND AFFECTION

BY THE

AUTHOR.

ADVERTISEMENT.

THE intelligent reader of history needs scarcely to be informed, that all the principles of civil liberty which now bear so abundant fruit, at least, in this country, first germinated in, or were introduced into, the British Parliament, especially the House of Commons; and this circumstance has furnished an almost irresistible temptation to indulge in political disquisition; but I have resolutely abstained from every thing like it in the following pages, and have confined myself to a statement of the law and practice of parliament as a matter of fact merely.

In compiling the following work, I have endeavored to present the American reader with as much of the law and practice of parliament, as could, by any possibility, be useful, either as illustration or authority, to the members who compose our legislative assemblies.

The reader of the following pages, who is acquainted with the science of parliamentary law, only as it is set forth in the brief manuals hitherto published in this country, or the small English treatises published in the seventeenth century, will, doubtless, be astonished to find it so copious; while those who are more familiar with the voluminous collections of the debates and journals of Parliament and of Congress, will be equally astonished to find that the science of parliamentary law can be compressed into so small a compass.

Sir Edward Coke, who had been speaker of the House of Com-

mons in one of Queen Elizabeth's parliaments, says, in his Fourth Institute, when discoursing of the high court of parliament, that "as every court of justice has laws and customs for its direction, some by the common law; some by the civil and canon law; some by peculiar laws and customs; so the high court of parliament subsists by its own laws and customs; that it is the law and custom of parliament, that all weighty matters therein concerning the peers of the realm or commons, ought to be determined, adjudged, and discussed, according to the course of parliament, and not by the civil law, nor yet by the common law used in the more inferior courts;" and, quoting from Fleta, a much more ancient author, he adds, in the margin, *Ista lex ab omnibus est quaerenda, a multis ignorata, a paucis cognita.* If this remark was a statement of fact, merely, it was not only true at the time it was uttered, but it is doubtless true at the present day; the law of parliament, though diligently sought by all, being still unknown to many, and known only to a few. It was, however, the enunciation of a principle, probably in relation to the matter of privilege, and was made and repeated at a time when the law and custom of parliament was what each house saw fit to make it, and when the proceedings of parliament were conducted with closed doors and in secret, and were not known, in fact, or supposed to be so, until they were officially promulgated; for which reason, the judges, Sir Edward Coke says, ought not to give any opinion of a matter of parliament.

But it is no longer true as it was in the time of Sir Edward Coke, that the law of parliament is vague and uncertain. It is now a branch of the common law and as well settled as any other; and it may be known and determined beforehand, with, at least, as much facility and certainty, as any other part of the civil or criminal law.

Of this vast and comprehensive topic, thus brought within the domain of science, it is proposed, in the following pages, to treat of that part only which belongs to the two houses of parliament, irrespective of any orders of either house, except those which embody their law and practice.

The subject of this work is what may be denominated the common parliamentary law as modified in our legislative assemblies.

The common parliamentary law of this country consists of the following elements: —

1. The law of parliament, or that which belongs to every legislative assembly of English origin, by the mere fact of its creation. The best evidence of this is to be found in the usages of the house of commons. In this country, it is common for each assembly, besides the common parliamentary law, to be governed by its own rules and orders.

2. Usages introduced by practice into this country, and which do not depend for their existence upon any rule or order. The most prominent if not the only proceeding of this kind is the motion to reconsider. This motion is usually regulated in each assembly by a special rule.

3. Proceedings, which occasionally take place in parliament, but are in frequent use in this country. An appeal from the decision of the presiding officer, on a point of order, is of this kind.

4. Modifications introduced by constitution. The most common provision of this sort is the requisition that certain questions shall be taken by the yeas and nays of the members. A very frequent provision of the same kind is, that every assembly shall be governed by its own rules and orders.

5. Proceedings, which very commonly prevail, and which depend, for their existence, upon the rules and orders of each assembly, and which would not exist unless specially provided for by rules and orders for the purpose. Thus, it is generally established, in our legislative assemblies, that certain motions shall be decided without debate; that motions may be withdrawn, modified, or divided, at the pleasure of the mover; and that amendments shall be in harmony with the proposition to be amended.

In the execution of this plan, I have consulted, — besides the works on the general subject, Hackwill, Scobell, and Elsyng, published about the middle of the seventeenth century; the work of Pettyt, published towards the close of the seventeenth century; and that of Hatsell, the first edition of which was published towards the

close of the eighteenth; and the scientific treatises of Mr. May, recently published; — the Journals of the Lords and Commons; the various works on controverted elections; and the debates in the two houses of parliament from the earliest to the latest times. Of the earlier debates, down to the year 1803, there are two principal series. The first consists of Sir Symonds D'Ewes's journals of Queen Elizabeth's parliaments; the first volume of the journals of the commons, during the parliaments of James First and Charles First; Grey's Debates, after the restoration, in ten volumes; Commons and Lords' Debates; Parliamentary Register, of which there are two series; Debates in Parliament, and the Cavendish Debates, of which three numbers only have been published.

The second series is contained in Hansard's Parliamentary History, extending from the earliest times to the year 1803. The former has been more frequently referred to, as the latter, for the most part, omits points of order. Hansard's, sometimes called Cobbet's, Parliamentary Debates, extend in three series, from about the year 1803, to the present time. The series is indicated in each case by its number. I have consulted for the American practice, the Journals and Debates in the two Houses of Congress. The Journals and Debates of the Congress of the Confederation have also been consulted for the same purpose. The Journals of the first thirteen congresses, having been reprinted, are cited by the number indicating the volume; those of the fourteenth, and succeeding congresses, are referred to by the congress and session. The references to all these works, and to several others of a legal or miscellaneous character, will be readily known, and need not be particularly described.

The only scientific treatises on parliamentary law, recently published, are those of Mr. May, whose larger work has lately reached its third edition. Whenever it is cited in the following treatise, without an indication of the edition, the second is always referred to. His smaller work, on the rules and orders of the House of Commons, is one of the best summaries that I have ever seen. Mr. Jefferson's Manual, which has been so frequently republished, has been consulted, and freely used, both as regards the parliamentary

law of England and the changes which it has undergone in this country.

I commenced accumulating materials for this work, and began the writing of it many years ago, and might have been longer in bringing it to a close; but, admonished by ill and uncertain health, that if I would make sure of benefiting my fellow-countrymen, in this respect, I must terminate the work speedily, I have made what haste I could, consistently with the leisure afforded me from other pursuits. I do not mention this in order to deprecate criticism. The book has been prepared according to its original plan, and is now presented to the public, in the style in which it was proposed. I can, however, say with Mr. Jefferson, in the preface to his Manual: — "I have begun a sketch which those who come after me will successively correct and fill up, till a code of rules shall be formed . . . the effects of which may be accuracy in business, economy of time, order, uniformity, and impartiality."

The references, which are over four thousand in number, and might have been almost indefinitely increased, are not, in all cases, available as direct authority for the positions to which they are cited. In such cases, they indicate merely where the same or a similar subject is treated of. With the exception of those to the Journals of the Lords and Commons, the references are chiefly made, not from the books themselves, but from extracts or digests made by me or under my immediate direction; it is probable, therefore, that if the passage referred to is not found at the page cited, it will be on an adjoining page.

The work is divided into nine parts, each of which is distinct by itself; and this division is not only natural and scientific in its character, but will also enable the reader, by means of the titles prefixed to the several parts, to turn to and examine any particular subject, without the labor of going over the whole.

The author of the Lex Parliamentaria, in the conclusion of his treatise, addresses himself to the people of Great Britain, in language which is equally applicable to the people of the United States, namely: — "There is nothing that ought to be so dear to the Commons of Great Britain, as a *Free Parliament*, that is, a

House of Commons every way free and independent; . . . *free* in their persons; *free* in their estates; *free* in their elections; *free* in their returns; *free* in their assembling; *free* in their speeches, debates, and determinations; *free* to complain of offenders; *free* in their prosecutions for offences; and therein *free* from the fear or influence of others, how great soever; *free* to guard against the encroachments of arbitrary power; *free* to preserve the liberties and properties of the subject, and yet *free* to part with a share of those properties, when necessary for the service of the public."

L. S. C.

Boston, May 1, 1856.

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LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PRELIMINARY.

1. THE political science of modern times, in its analysis of the different functions of civil government, under whatever name or form they may be exercised, has arranged them all in three grand divisions, denominated the legislative, the executive, and the judicial. In all modern constitutional governments, each of these classes of functions is appropriated to a separate and distinct department, which is intended to be, and to a greater or less extent is, practically independent of either, or both of the others.[1] The most important of these departments, both because of the nature of its functions, and because it is necessarily the depositary of so much of the absolute power of the people, as they see fit to intrust to their government, and do not confer upon other departments, is the legislative.

2. The department of legislation, in the greater number of modern States, and in every one of the States composing the American Union, as well as in the government of the Union itself, consists of two separate and distinct branches, possessing independent and

[1] The separation has been deemed so essential in this country, that it has been provided for, in express terms, in the constitutions of many of the States; and several of them declare also not only that the departments shall be separate, but that no person or persons, belonging to one, shall exercise any of the powers belonging to either of the others, except in cases expressly permitted. In Maine, the constitution of which contains the latter provision, it has been held, on that ground, that the office of justice of the peace is incompatible with that of sheriff, deputy sheriff, or coroner. See *Chapman* v. *Shaw*, Greenleaf's Reports, III. 372; *Opinion of the Justices, etc.*, Same, III. 484; and *Bamford* v. *Melvin*, Same, VII. 14.

coördinate powers; both of which must concur in every act of legislation; each of which is composed of a sufficient number of members to give it the character of a deliberative assembly; and whose concurrent acts, in matters of legislation, are (with two or three exceptions) subject to a negative, either absolute or qualified, on the part of the executive power.

3. Of these two branches in the legislatures of this country, though they are in fact equal in power and dignity, the one, being a smaller and more select body, is usually regarded as the upper house, and the other, consisting of a larger and less select body of members, as the lower. The members of the former, commonly called the senate, are usually required to possess certain peculiar qualifications, as to age and residence; are chosen by more numerous constituencies, and sometimes by a comparatively select, that is, a more highly qualified body of electors; and are not unfrequently elected for longer terms of office. The members of the latter, variously known as representatives, burgesses, commons, or delegates, are chosen by smaller constituencies; sometimes, by a more popular suffrage, that is, by electors of less qualifications; and often, for shorter periods of official duty. There are States, however, in which the qualifications of the electors, the term of office, and the conditions of eligibility, are precisely the same, in reference to both branches.

4. The functions of the upper and lower houses, though absolutely the same in matters of legislation, (with certain exceptions which will be adverted to hereafter,) are, in some of the States of the Union, essentially different in certain respects, in which their powers have been specially enlarged or restricted by the fundamental law; the former, for example, sometimes exercising the functions of an executive council, as in the federal government, or of a judicial tribunal, in the last resort, as formerly in the State of New York; and the latter, (not unfrequently, however, in conjunction with the other,) sometimes electing or appointing to office, either in the first instance, or, in the case of a failure to elect, on the part of electors, whose duty it is, in the first instance, to make certain elections. There is one matter, however, within the usual and ordinary powers of the two branches, in reference to which their functions are essentially different, namely, the impeachment and trial of public officers for official misconduct, in which the offender is impeached or accused by the lower house, and tried and sentenced by the upper.

5. From a general view of some of the characteristic features

of the legislative assemblies of this country, it is manifest, that their original type is to be found in the parliament of Great Britain; upon the model of which they have all been formed, with such modifications and changes, as have been found necessary to adapt them to the various circumstances and wants of the people. The most striking of these differences are, that, in this country, both branches are elected by the people for specified terms, and that the members of the lower house (and of the other also, either wholly or in part) are apportioned among and elected by their several constituencies, upon the principle of equality;[1] whereas, in England, the house of lords is composed of members who are not elected at all, but who sit as members, during their lives, in virtue of hereditary or conferred right, as the nobility or temporal lords, or of their appointment to high dignities in the church, as the archbishops and bishops, or lords spiritual; and the members of the house of commons, though elected, are not apportioned among the several constituencies and elected upon the principle of equality of representation, but chiefly upon the principle of corporate or municipal right.

6. Besides these differences between the British parliament and the legislative assemblies of the United States, there is another of not less importance, namely, that the existence and powers of the former rest only upon custom and tradition, aided by occasional statute provisions; whereas the latter are founded in, and for a great part regulated, limited, and controlled by, written fundamental laws or constitutions.

7. There is still another difference, not inferior perhaps in importance, which is, that the British parliament can only be convened at the pleasure of the sovereign, who is invested with full power both to convene and dissolve it, and is only required by law not to suffer a longer period than three years to elapse between the dissolution of one parliament and the convening of another; while, in the several governments of the American Union, the meetings, periods of existence, and manner of dissolution, of the legislative assemblies, are all provided for and regulated by the fundamental laws.

8. The legislative department, however carefully separated and kept distinct both from the executive and judicial departments, and though exercising coördinate and independent functions, is nevertheless by its very nature, the depositary of so much of the supreme

[1] Constitution of Massachusetts, Part II. Chap. I. Sect. III.

and absolute power as the people see fit to embody in their form of government; for, whilst the functions of the executive and the judiciary are precisely marked out by fixed laws antecedently enacted, and, from the nature of those powers, do not admit of any enlargement or extension by their own act, the legislative department may control, regulate, and limit the executive and the judiciary, by general prospective provisions of law, and may also act on every emergency, not otherwise previously provided for, (whether it require executive, legislative, or judicial interference,) in virtue of the supreme legislative power with which it is intrusted.

9. In this country, there are three kinds of legislative assemblies, namely, first, those of the several States; second, that of the United States; and third, those of territories not yet formed into States. The legislatures of the States are chosen directly by the people thereof, and are the depositaries of their exclusive, original, sovereign power. They possess all the legislative authority which can be exercised within their respective jurisdictions, except so far as they are restrained therefrom by constitutional enactment, either express or implied in their own constitutions or in that of the United States. These are equal in number, of course, to the several States. The legislative assembly of the Union denominated the Congress of the United States, is one of derivative and limited powers, exercising only those functions with which it is invested, for the general welfare, and the benefit of all the States, either expressly, or by necessary implication. One of its branches, the upper, is chosen by the legislatures of the States; its existence is continued and perpetual;[1] the other branch is chosen directly by the people of the respective States.[2] The Congress of the United States also exercises exclusive legislation, in all cases whatsoever, within the District of Columbia, and over all places purchased by the government of the United States, with the consent of the States in which the same are situated, for arsenals and other public works of a like character. The only remaining class of legislative assemblies in this country consists of those of territories subject to the dominion of the United States and not yet formed into States. These are created by and depend wholly for their existence upon acts of Congress. Territorial governments, according to their importance, generally, have

[1] Appendix, I.

[2] Senators and representatives are entitled to seats, even though their election as such took place before the admission of their State into the Union, (Cong. Globe, IV. 134); and delegates are entitled to seats, as such, after the erection of the territory, for which they serve, into a State, so long, at least, as any part of their original constituency remains. (Case of *Paul Fearing*, Clarke & Hall, 127.)

a legislature consisting either of a single branch appointed by the president, or one consisting of two branches, the most numerous of which is chosen by the people. These governments are, of course, merely temporary. The distinguishing character of territorial legislatures is that all their acts are subject to the approval or disapproval of Congress. These governments differ also, in another respect, from those of the States; they are not represented at all in the senate of the United States; and in the other branch only by delegates, who have no right of voting therein.

10. The legislative assemblies of Canada, and of other colonies and provinces of Great Britain, which appear to be formed and conducted, even more closely than our own, upon the model of the British parliament, and occasional assemblies, which are not legislative in their character, though they exercise analogous functions, such as constitutional conventions and the like, are not, except so far as they are governed by the common parliamentary law, embraced within the plan of this work.

11. The laws relating to the election and constitution of these legislative bodies; the rules by which they are governed and regulated; and the forms and methods in which their proceedings are conducted, constitute a peculiar branch of jurisprudence; which, from having been first treated of with reference to the parliament of Great Britain, is denominated parliamentary law, or the law of parliament.

12. In considering the various topics embraced under the head of parliamentary law, it will be convenient to arrange them in the following order: — FIRST, *Of the Election of the Members of a Legislative Assembly;* SECOND, *Of its Constitution;* THIRD, *Of the Privileges and Incidental Powers of such a body;* FOURTH, *Of its General Powers and Functions;* FIFTH, *Of the Communications which take place between the different Branches, and between them or either of them, and the Executive, other official bodies or persons, individuals, or the public in general;* SIXTH, *Of the Forms and Methods of Proceeding;* SEVENTH, *Of Committees and their Functions;* EIGHTH, *Of the Passing of Bills;* NINTH, *Of Impeachment.*

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART FIRST.

OF THE ELECTION OF THE MEMBERS.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART FIRST.

OF THE ELECTION OF THE MEMBERS.

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13. In this part, will be considered:—*First*, Constituencies; *Second*, the Persons competent to be Electors; *Third*, the Persons competent to be Elected; *Fourth*, the Mode of Election; *Fifth*, the Return of the Persons Elected; and, *Sixth*, Controverted Returns and Elections.

CHAPTER FIRST.

OF CONSTITUENCIES.

14. The fundamental idea of a representative government is, that a large number of persons select from themselves a smaller number, or, it may be, a single person, to represent and act for them, in the performance of those functions which constitute government. It is immaterial, in this respect, whether the whole body of the electors act together in the selection, or whether they act by divisions, each of which elects its proportion of the delegated body; and, where the electors are divided into separate bodies, for this

purpose, it is immaterial whether the division is by classes, or orders, as of the different trades or professions, or by means of local and territorial boundaries; inasmuch, as in all these forms, the essential principle of representation is attained and secured. In this country, the first and the last are the only forms in use; the former, with one or two exceptions, in the election of the chief executive magistrates of the several States, and the latter in the election of the members of the legislative assemblies.

15. For the purpose, among others, of electing the members of legislative assemblies, the States are respectively divided and subdivided into counties, towns, cities, districts; each of which, for the purposes for which such division or subdivision takes place, constitutes a municipal corporation or body politic. In some of the States, the smaller divisions, towns and cities, for example, elect each of them one or more of the members of the popular branch of the legislature; in others, these smaller corporations are united, two or more of them together, into districts, for the same purpose; while, in all the States, the members of the more select or senatorial branch are elected, either by counties, each of which comprises several smaller subdivisions of cities or towns, or by districts composed of several counties.

16. These different kinds of constituencies have given rise to two different modes of proceeding in making and determining elections, and authenticating the right of membership, or, in other words, of returning the members elected. The return of a member, as the term is used in this country in a popular sense, denotes the election merely, as when it is said, that such a person is returned, that is, elected, a member; but in its proper and technical sense, it denotes the instrument by which the election is authenticated, or certified from the constituent to the representative body. Where all the electors of a constituency assemble together in one place, and give in their votes to one set of municipal officers, such officers act ministerially in receiving the votes, and also judicially in determining the result of the election; but where the electors assemble in different places, and give in their votes to as many different sets of municipal officers, the latter for the most part act merely in a ministerial capacity, in receiving the votes and transmitting certificates or records of them to a central board of officers, to whom the judicial functions of determining the election and returning the members elected are delegated.[1]

[1] *Biddle and another* v. *Wing*, Clarke & Hall, 504. Where receiving officers exercise their judgment, in receiving or rejecting votes, which are in question, it is clear, that they so far act judicially.

17. Whether, however, the electors vote by districts composed of several smaller municipal bodies, or those of the same constituency vote together, the meetings for the purpose are held in the same manner, governed by the same rules, and conducted by the same officers; the only difference being, as already observed, that, in the first case, the votes are received by one set of officers, and the election determined by another; whereas, in the second case, both these functions are performed by the same officers.

18. The constituencies above described are those into which each State and territory is divided, for the choice of the members of the local legislatures; those which relate to the election of the members of Congress, or the legislature of the Union, remain to be briefly noticed. In this respect, the Congress of the United States is peculiar; the population and territory, of which its constituencies are composed, being already represented, for the general purposes of government, in their local legislatures.

19. The number of the members of which the house of representatives is from time to time to consist, according to the constitution, being first determined by Congress, and apportioned among the several States, two methods have been practised in their election, namely, they have been chosen by general ticket, as it is called, or by the district system. According to the former, the qualified voters of each State elect, at one election, and on one ballot, the whole number of members to which such State is entitled. According to the latter method, the States are divided by their own legislatures into suitable territorial districts, each of which is entitled to elect one member. Where a State is only entitled to one member, these two systems are, in effect, the same. Sometimes, where a territorial division cannot conveniently be made, a district is double; or in other words, is large enough to be allowed to elect two members instead of one. In these districts, the election of members of Congress is conducted in the same manner, and by the same officers, as other elections.

20. The immediate constituents, that is, the elective power, of the senate of the United States, are the several States themselves, in their aggregate or municipal capacity; the constitution providing that the senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof.

21. It would seem to be clear, from this language, that the requisition of the constitution of the United States, in regard to the election of the senate, would not be complied with, unless its members were elected by the legislatures of the several States, by legis-

lative acts, that is, in the same way that laws are passed by the concurrent act of the two branches, approved by the executive. But the practice has so long prevailed, and been silently acquiesced in by the senate, of electing its members by joint ballot of the two branches of a State legislature, in which the members constitute one aggregate body, and in which the less numerous branch is dissipated and lost in the larger, that it is perhaps too late now to call in question this latter mode. Still, as it is not competent for the members of a legislative assembly to do any ordinary act of legislation, by a proceeding in joint ballot, an election, effected by the members of a legislative assembly in that manner, cannot properly be said to be a choice by the legislature.[1]

CHAPTER SECOND

OF THE PERSONS COMPETENT TO BE ELECTORS.

22. The right of suffrage is regulated in part by what may be called the common political law, but chiefly, by the constitutions and laws of the several States. The federal constitution contains no provisions of its own touching the qualifications of electors of representatives, but adopts those of the several States; declaring that the electors in each State, to offices under the constitution of the United States, shall have the qualifications requisite for electors of the most numerous branch of the legislature of such State.

[1] Chancellor Kent had already expressed his doubts on this subject: — "There were difficulties, some years ago, as to the true construction of the constitution in the choice of senators. They were to be *chosen by the legislature*, and the legislature was to prescribe the times, places, and manner, of holding elections for senators, and congress are authorized to make and alter such regulation, except as to the place. As the legislature may prescribe the *manner*, it has been considered and settled, in New York, that the legislature may prescribe that they shall be chosen by joint vote or ballot of the two houses, in case the two houses cannot separately concur in a choice, and then the weight of the senate is dissipated and lost in the more numerous vote of the assembly. This construction has become too convenient, and has been too long settled by the recognition of senators so elected, to be now disturbed; though I should think, if the question was a new one, that when the constitution directed that the senators should be chosen *by the legislature*, it meant not the members of the legislature *per capita*, but the legislatnre in the true technical sense, being the two houses acting in their separate and organized capacities, with the ordinary constitutional right of negative on each other's proceedings." Kent's Commentaries, I. 225.

23. The exercise of this right lying, as it does, at the foundation of all free institutions of government; it is provided, in express terms, in many of the State constitutions, that electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest, on the days of election, during their attendance at, going to, and returning therefrom; and that no elector shall be obliged to do duty in the militia on any day of election, except in time of war or public danger. These provisions are both found in the constitutions of Maine, Virginia, Illinois, Michigan, Iowa, and California; the former only in those of Connecticut, Pennsylvania, Delaware, Alabama, Mississippi, Tennessee, Louisiana, Kentucky, Ohio, Indiana, Missouri, Arkansas, and Texas; and in almost all the States though bribery is an offence at common law, there are constitutional provisions or laws, to secure the freedom and purity of elections.

24. By the common political law of England and of this country, when not otherwise specified in a particular State, by its constitution or laws, certain descriptions of persons are deemed to be excluded from exercising the right of political suffrage, even though not prohibited therefrom by any express constitutional or legal provision. The persons thus excluded are minors, idiots and lunatics, women, and aliens. With these exceptions, all persons, possessing the qualifications required, and not subject to any of the disabilities specified, by the constitution or laws of the States, in which they live, may vote at all elections therein. In considering the subject of the right of suffrage, therefore, it will be convenient, first, to notice briefly the general exceptions alluded to; second, to enumerate the qualifications required, and, third, the disabilities pronounced, by the constitution and laws of the several States. It must be recollected, however, that the persons enumerated above, as excluded from exercising the right of suffrage by the common political law, if mentioned in the constitution or laws of a State, are, of course, governed exclusively by the provisions thereof, irrespective of the common political law.

SECTION I. OF PERSONS EXCLUDED BY THE COMMON POLITICAL LAW FROM THE RIGHT OF SUFFRAGE.

25. Infants, or persons under the age of legal majority, are excluded from voting, on the same general ground, on which they are prohibited from doing any other legal act, namely, their presumed want of capacity. The age of twenty-one is the period of

majority for males, throughout the United States; and that age is completed according to the common law, on the beginning of the day preceding the day of the anniversary of the person's birth.[1]

26. In the constitutions of many of the States, the age necessary to qualify one to be an elector is mentioned; in some, the language is "twenty-one years of age" or "twenty-one years of age and[2] upwards;" in others, it is, "above the age of twenty-one years." The intention is perhaps the same in both cases; but, according to a strict legal construction, the latter phraseology would exclude the day of arrival at full age, and so prevent one from voting, until the next day after; whereas the former would allow him to vote on that day.

27. Idiots and lunatics are also excluded from voting for the same general reason, — their want of capacity, — which disqualifies them from the doing of other legal acts: the former being perpetually disabled, and the latter temporarily so, while in the state of insanity.[3] In regard to lunatics, whether their malady is periodical or constant in its nature, there seems no reason to doubt, that their right to vote, like their capacity to do other legal acts, will depend upon their mental condition at the time of the election; and, if, at that time, their condition of mind is such, that a will or deed then made would be valid, or an agreement then entered into binding in law, their votes ought to be received. Drunkenness is regarded as a temporary insanity.[4]

28. Several of the State constitutions contain express provisions relating to this subject. By those of Delaware, Ohio, and New Jersey, it is provided, that "no idiot or insane person shall enjoy the right of an elector;" the constitution of Virginia declares, that, "the right of suffrage shall not be exercised by any person of unsound mind;" and by those of Rhode Island, Maryland, and Wisconsin, "lunatics and persons *non compotes mentis* are excluded from the right of suffrage." In cases of constitutional or legal prohibition to exercise the right of suffrage by these persons, it is presumed, that the principle stated in the preceding paragraph is equally applicable.

29. The rule of exclusion from the right of suffrage, on the

[1] Kent's Commentaries, II. 232; Rogers on Elections, 86.

[2] The word "or" is sometimes used instead of "and." The difference is not material.

[3] *Okehampton*, Fraser, I. 162, 164; *Bridgewater*, Peckwell, I. 109; *Bedford*, Perry & Knapp, I. 129.

[4] *Wigan*, Falconer & Fitzherbert, 695; *Monmouth*, Knapp & Ambler, 413.

ground of want of capacity, refers only to defects of mind, and not to those which are merely physical, or of the bodily organs and senses; consequently, no mere bodily defect, as of one or more of the senses, or physical infirmity, as from sickness or other cause, is sufficient to preclude one from the right of suffrage, though it may prevent him from exercising that right; and it has accordingly been held, that a deaf and dumb person,[1] if possessed of such a measure of intelligence, as to understand the nature of the right to vote, and to be competent to take the oath required by law, (if any), is entitled to his right of suffrage, and may give his vote, either orally or by ballot, through the instrumentality of some person, who is accustomed to interpret his signs.[2]

30. If the exclusion of females from the right of suffrage was limited to married women, whose "legal existence and authority are, in a degree, lost or suspended, during the continuance of the matrimonial union," [3] as a consequence of the principle of the common law, by which husband and wife are regarded as one person, the reason of the exclusion would probably be found in a supposed subjection to the authority of their husbands; but, as unmarried women of full age, and competent to perform other legal acts, are equally excluded from voting, the reason must be more comprehensive than any supposed marital restraint. The ground assigned by the philosophic historian Guizot, — that women, being destined by the law of their sex for a state of existence purely domestic, are therefore incapable of deciding upon those interests, which are involved in questions of political suffrage, — probably embodies the sense of mankind on this subject.[4]

31. In the constitutions of all the States, except that of Georgia, women are impliedly excluded from the right of suffrage by the use of descriptive words, in the affirmative, which restrict it to persons of the male sex; but, in none of them, are women expressly excluded by negative words. By the constitution of Georgia, "citizens and inhabitants," possessing the other requisite qualifications, are entitled to vote.[5] The disability of women to vote, it must be recol-

[1] The constitutions of Virginia and Kentucky provide, that in all elections, the votes shall be given openly, and not by ballot, but that dumb persons, entitled to suffrage, may vote by ballot.

[2] Rogers on Elections, 87, 88; *Letcher* v. *Moore*, Clarke & Hall, 757.

[3] Kent's Commentaries, II. 129.

[4] See the remarks of Guizot quoted at length, in Lieber's Political Ethics, Part II. Book IV. Chap. I. 269, 270.

[5] But though women cannot vote, instances have occurred in England, in which they have taken a part in elections, and have actually, in person, or by attorney, made or joined in making the return. The return from Gattou, in 1628, was made by Mrs. Capley, *et omnes inhabitantes*, (Carew, I. 245). In the 14th of

lected, applies only to municipal proceedings; in moneyed and other corporations not municipal, in which they are shareholders, women vote like any other proprietors.

32. The only remaining description of persons, who are excluded from the right of suffrage, is that of aliens; who, being persons born without the territorial boundaries of the United States, and therefore presumed to be the subjects or citizens of some other government, are not supposed to possess such a knowledge of our institutions, or to be so exclusively attached to them, as to render it safe or proper that they should be intrusted with any portion of the political power; and this principle is so essential and fundamental, that no constitutional or legal provision is necessary to exclude aliens from voting; but they are considered as so excluded, by the common political law already alluded to, unless the right of suffrage is expressly conferred upon them by the constitution or laws of the State in which they live.[1] When aliens become naturalized, they acquire, with some exceptions, all the political rights, which belong to natural born citizens. In several of the State constitutions, citizenship is inserted expressly, as a descriptive qualification; in others it is only inferrible from the use of equivalent terms.

SECTION II. OF THE CONSTITUTIONAL QUALIFICATIONS REQUISITE FOR THE EXERCISE OF THE RIGHT OF SUFFRAGE.

33. In the constitutions of the several States, there are numerous and various qualifications expressly prescribed; the possession of one or more of which is made essential to entitle a person to be an elector. The following is an enumeration of the qualifications thus prescribed, namely: 1st, citizenship; 2d, freedom; 3d, residence for a certain specified period; 4th, possession of a certain amount or description of property; 5th, payment of a tax; 6th, taking a prescribed oath; 7th, settlement within the State; 8th, performance

Elizabeth, the return from Aylesbury was made by Dame Dorothy Packington, describing herself as widow, late wife, of Sir John Packington, knight, lord and owner of the town of Aylesbury; declaring that she had chosen, named, and appointed Thomas Litchfield and George Barden, Esquires, to be her burgesses of her said town of Aylesbury; and, notifying and approving to be her own act whatsoever the said burgesses should do in the service of the queen in parliament, as fully and wholly as if she might be present there in person. (Male, 242, note.) No case of this kind has probably occurred since the revolution; and the only way in which women have interfered in elections in modern times has been by bringing their personal influence into the canvass. By the old constitution of New Jersey, adopted in 1776, "all inhabitants," possessed of certain qualifications therein required as to property, were allowed to exercise the right of suffrage. Under this constitution, it is said, that women were formerly accustomed to vote.

[1] Mass. Reports, VII. 523; Cushing, Story & Josselyn's Reports, 119.

of military duty; 9th, labor on the highways; 10th, to be a housekeeper, or head of a family; 11th, to be quiet and peaceable; and 12th, to be of a good moral character. It is proposed to notice, very briefly, some of the most important of these various qualifications, indicating, at the same time, the States in whose constitutions they are respectively found.

1. *Citizenship.*

34. In all the constitutions, citizenship is required as a qualification for the exercise of the right of suffrage; in some generally; in others, that of the particular State; and in others again, citizenship of the United States. But these terms are immaterial, inasmuch, as by the constitution of the United States, congress is authorized to establish a uniform rule of naturalization; and the citizens of each State are entitled to all the privileges of citizens in the several States. The constitutions of Indiana, Wisconsin, and Michigan, dispense with this requisition in part, in favor of persons of foreign birth, who have declared their intention to become citizens of the United States, conformably to the laws thereof.

2. *Freedom.*

35. In the constitutions of Vermont and Connecticut, the word "freeman" occurs, as descriptive of a qualification to vote; in these cases, the term refers only to a person who is a member or "free" of the State, regarded as a municipal corporation. In the constitutions of other States, in which the word is found, it merely means one who is not a slave; in this latter sense, it is wholly superfluous.

3. *Residence.*

36. By the constitutions of all the States, residence within the State for a certain period, and, for a portion of that period, within the particular county,[1] district, city, or town, in which one proposes to vote, is prescribed as a requisite to the exercise of the right of suffrage. In describing this qualification, the terms used are different, in different constitutions; being, in some of them, "inhabitant," — in some, "resident," and, in others, "citizen," of the State or county; all of which, however, may be regarded as nearly equivalent to the legal term "domicil,"[2] or, as it is defined in the constitution of Massachusetts, the place "where one dwelleth or hath his home."[3]

[1] See *Kelly* v. *Harris*, Clarke & Hall, 260.

[2] Metcalf's Reports, I. 245.

[3] Constitution of Massachusetts, chap. I., sect. 2, article 2.

37. In the constitutions of Maine, Rhode Island, New Jersey, New York, Virginia, Indiana, Illinois, Arkansas, Texas, Iowa, Ohio, Florida, Missouri, Wisconsin, Alabama, and Delaware, it has been thought expedient to provide, that persons in the military, naval, or marine service of the United States (and in Maine the provision is extended to persons in the service of that State) shall not be considered as resident in those States, so as to entitle them to vote therein, by reason of being stationed in any garrison, barrack, or military place, within their limits.[1] But, this provision, according to the general principles of the law of domicil, must be wholly unnecessary, at least, in all cases, where such military station belongs or has been ceded to the United States, with the usual concomitants of exclusive jurisdiction.[2]

38. The constitutions of New York, Maine, and California, also provide, that the residence of a student at any seminary of learning shall not entitle him to the right of suffrage in the town where such seminary is established. The question thus settled, being one of frequent occurrence, and not without difficulty, as depending on the law of domicil; — it cannot be deemed superfluous to settle it by an express provision. The constitutions of the two last-named States make a further exception, as to residence, of persons kept at any almshouse or other asylum, at public expense, and of persons confined in any public prison.

39. The constitution of Mississippi contains a provision, (and a similar one is found in that of Texas,) that where an elector happens to be in any county, city, or town, other than that in which he resides, or to have removed thereto within four months preceding an election, he may vote therein for any public officer, for whom he might have voted, if he had remained at home, or had not removed his residence.

40. The constitution of Georgia, after providing for a residence in the county, where one claims a right to vote, dispenses with it altogether in case of invasion; in which case, it declares, that if the inhabitants of a county are driven therefrom, so as to prevent an election therein, such inhabitants being a majority of the voters of such county, may proceed to an election in the nearest county not in a state of alarm. This kind of qualification being required in almost every State, in some form or other, it will be useful to suggest some of the rules which are applicable to it.

[1] See *Biddle and another* v. *Wing*, Clarke & Hall, 504, 512.

[2] *Opinion of the Justices, &c.*, Cushing, S. and J., 416.

41. In the first place, the residence must be next preceding the election; so that, if a voter, regularly qualified in point of residence, removes from the place of his domicil, and becomes an inhabitant of some other place, and afterwards returns to the former, he will not be entitled to resume his right of suffrage there, on the strength of his previous residence; but he must again acquire the right by renewing and continuing his residence for the requisite period. By the constitution of Pennsylvania, the period of residence otherwise required is shortened, in the case of a qualified voter who removes from the State and returns.

42. Secondly, the moment a voter changes his residence, and acquires a new domicil, he loses his right to vote in the former, because he no longer resides there; but he does not acquire a right to vote in the latter, until he has resided there the requisite length of time; the popular notion that a man, having once become a voter, must always afterwards have a right to vote somewhere, and consequently, that he retains a right to vote in one place until he acquires it in another, is wholly unfounded. This principle of political common law, which is the necessary result of the law of domicil, applied to the constitutional requisition of residence, is controlled by the constitutions of Maryland, Louisiana, and Missouri, which declare, expressly, that a voter, removing from one voting district to another, shall not lose his right to vote in the former, until he has acquired a right to vote in the latter.

43. Thirdly, it is perhaps scarcely necessary to observe, that the time of residence requisite to qualify an elector will run on and be attained, notwithstanding that during the whole or a portion of the same time, he may be otherwise disqualified; as, for example, in the case of a minor, or alien, or of one disqualified by the non-payment of a tax, or the want of the requisite property qualification. It would be otherwise, of course, if residence coexistent with some other form of qualification, was required.[1]

[1] The constitution of Massachusetts prescribes that every member of the house shall, for one year, at least, next preceding his election, have been an inhabitant of the town from which he shall be chosen. In the case of *Malden*, Cushing, S. and J., 377, the sitting member, who was an alien born at the time of his election, had resided in Malden for more than a year, but had been naturalized only a few weeks. The committee on elections, on the strength of the decision of the Supreme Judicial Court of the State, in the case of *Harvard College* v. *Gore*, Pick. V. 370, 375, that the term "inhabitant" in the constitution and laws of Massachusetts implied "citizenship," reported against the validity of the election. No question, was taken on the report, except to recommit it; the house apparently agreeing to the report, but the member resigned his seat, and no discussion took place. On the contrary in the case of *Biddle* v. *Richards*, in which the election of the delegate from Michigan to the house of representatives in congress was contro-

4. *Property.*

44. In five of the States, Connecticut, New York, (as to men of color only,) Rhode Island, and North and South Carolina, is the property qualification, in its direct form, still requisite; many of those of the older States, in which it was formerly required, having since abolished it, and the newer States, (those admitted into the Union since the year 1800,) with some exceptions, never having made it a qualification.

5. *Payment of a Tax.*

45. This form of the property qualification, if it may be termed such, is retained in several of the States, namely, Massachusetts, Connecticut, New York, (as to persons of color,) Pennsylvania, Rhode Island, Delaware, North Carolina, South Carolina, and Georgia; but, in Massachusetts, persons legally exempt from taxation are placed upon the same footing with those who have paid their taxes; and in Georgia, the condition is the payment of all taxes which may have been required of the elector, or which he may have had an opportunity of paying.

6 *to* 12. *Other Qualifications.*

46. The other qualifications, which have been enumerated, do not seem to require any particular notice.[1] In Vermont and Connecticut, an oath is required; in the latter a legal settlement within the State; in Rhode Island, Florida, and Connecticut, in certain cases, the performance of military duty, or legal exemption therefrom; in Virginia an elector must formerly have been a housekeeper or head of a family;[2] and in Connecticut, of a good moral character.

SECTION III. — OF DISQUALIFICATIONS FOR THE EXERCISE OF THE RIGHT OF SUFFRAGE.

47. Besides the negative disqualifications resulting from the want of the required qualifications, certain descriptions of persons, although otherwise qualified, are expressly disqualified by the constitutions of some one or more of the States, namely: 1, paupers;

verted on the ground above mentioned, the house held that the laws of Michigan, which required residence for a year, and citizenship, as a qualification for office, were complied with by residence for a year, and citizenship at the time of the election. Clarke & Hall, 407.

[1] These provisions exist in so great number and variety, in the constitutions and laws of the several States, that a few only of the most prominent can be adverted to, in this treatise.

[2] See *Draper* v. *Johnston*, Clarke & Hall, 702.

2, persons under guardianship; 3, Indians not taxed; 4, persons excused from taxation at their own request; 5, persons convicted of certain crimes; 6, persons of color; and, 7, persons in the military, naval, or marine service of the United States. A brief notice of some of the principal of these disqualifications will suffice.

1. *Paupers.*

48. Paupers, in consequence of their dependency of situation, and want of the common necessaries of life, which render it improbable that they will exercise a free choice,[1] are expressly disqualified from voting by the constitutions of Maine, Massachusetts, New Hampshire, New Jersey, Delaware, Rhode Island, and Virginia. The term "pauper," in the precise and technical meaning, which it has acquired in this country, is understood to designate a person, who, either upon his own request, or otherwise, receives aid and assistance for himself, or his family, from the public provision made by law for the support and maintenance of the poor.[2]

49. In England, the receiving of parish relief, for the ordinary support and maintenance, either in whole or in part, of the voter or his family, within a year, previous to the election, is held to be a disqualification;[3] in this country, the situation of the voter, at the time of the election only, or at the time of taking the preliminary steps, if any are requisite, to the exercise of the right of suffrage, would probably be regarded; and it seems immaterial, whether the support is wholly or only in part derived from the public provision made for the poor; the reason of the disqualification being equally applicable in both cases.

5. *Persons convicted of certain Crimes.*

50. Convictions of certain crimes furnishes so obvious a ground of disqualification, both as a punishment for crime, and as conducing to the purity of elections, that it is expressly inserted as such, for the crimes therein respectively enumerated, in the constitutions of Rhode Island, Connecticut, New Jersey, Delaware, Virginia, Maryland, Louisiana, Wisconsin, and California. In the constitutions of New Jersey and Delaware, it is further provided, and in those of New York, Florida, Tennessee, and Indiana, it is declared, that laws may be passed disqualifying persons convicted

[1] Male on Elections, 290.

[2] *Sturbridge* v. *Holland*, Pickering's Reports, II. 459.

[3] Male on Elections, 290.

of crimes, from exercising the right of suffrage. This disqualification, like other consequences of conviction, would probably be held to be removed by the exercise of the ordinary pardoning power; but the disqualification is to continue, by the constitution of Rhode Island, until the party is expressly restored to his right of suffrage by an act of the general assembly; by that of New Jersey unless he is pardoned and restored by law to the right of suffrage, and by that of Wisconsin restored to civil rights.

51. The conviction mentioned in the preceding paragraph must undoubtedly have taken place before the tribunals of the State, in which the convict claims a right to vote, according to the laws of such State; but by the constitution of Missouri the disqualification is also extended to persons convicted of any felonious or infamous crime in any foreign country or any State in the Union, or who are become fugitives from justice, on account of the commission of such crime; provided it be not one of a political nature, or one which would not be considered felonious or infamous in Missouri.

52. In England, it seems, that conviction of any crime denominated a felony disqualifies, by the common law of parliament;[1] but, in this country, where the word felony has a much greater extent and variety of meaning, such a conviction would not probably be held a disqualification, unless expressly so provided by constitution or law;[2] still, in the case of conviction for any offence, which subjects the offender to confinement as a punishment, he would, of course, in the mean time, while such imprisonment lasted, be precluded from exercising the right of suffrage as effectually as if he was thereby disqualified.

6. *Persons of color.*

53. The constitutions of Connecticut, New Jersey, Delaware, Maryland, Pennsylvania, Virginia, South Carolina, Tennessee, Indiana, Louisiana, Mississippi, Illinois, Missouri, Ohio, Florida, Kentucky, Michigan, Arkansas, Iowa, Wisconsin, California, and Alabama, among the terms which they respectively use to describe the qualifications of electors, employ the word "white;" while the constitutions of New York, North Carolina, Indiana, Texas, and Tennessee, contain provisions, by which persons of color are variously disqualified, in express terms. In order to present the subject

[1] *Sudbury*, Phillips, 181, 189.

[2] This is the case by the constitution of Delaware.

under a single point of view, these provisions may all be enumerated under the head of disqualifications. In the first-mentioned States, therefore, persons who are not white; — in New York, men of color, except under certain conditions: — in North Carolina, negroes, mulattoes, and persons of mixed blood (that is, descended from negro ancestors, to the fourth generation inclusive, though one ancestor of each generation may have been a white person); — in Indiana, negroes, and mulattoes; in Texas, Africans and the descendants of Africans; — and, in Tennessee, persons, who, by reason of their color or descent, are not competent witnesses in a court of justice against a white man; — are disqualified from being electors. In other States, in some of which Indians[1] are in whole or partly disqualified, color affords no ground of disqualification.

2, 3, 4, 7. *Other Disqualifications.*

54. In Maine, Rhode Island, and Massachusetts, persons under guardianship for whatever cause; — in Maine and Texas, Indians not taxed; — in New Hampshire, persons excused from taxation at their own request; — in Rhode Island, members of the Narraganset tribe of Indians; — and, in New Jersey, Delaware, Virginia, Florida, Louisiana, Indiana, Illinois, Arkansas, Texas, Iowa, Missouri, and Alabama, persons (sometimes the restriction applies only to those under the rank of officers) in the naval or military service of the United States; — are disqualified from being electors.[2]

CHAPTER THIRD.

OF THE PERSONS COMPETENT TO BE ELECTED.

55. Eligibility to the legislative assemblies of the States or of the Union depends almost entirely upon constitutional provision; it being a general principle, that no further conditions of eligibility can be required by law than are specified in the constitution under which it is made, but for the reasons already suggested in regard to

[1] See *Biddle and another* v. *Wing*, Clarke & Hall, 504, 411.

[2] It is not improbable, that some of the disqualifications enumerated in the constitutions of the several States may have escaped notice; but those above given, which are among the most prominent, are, it is believed, sufficient for the purposes of this work.

the competency of electors, it will be convenient to consider the subject of eligibility to office, first, under the head of qualifications and disqualifications by the common political law, second, under the head of the qualifications required, and, third, under that of the disqualifications specified, by the several State constitutions.

SECTION I. — OF QUALIFICATIONS AND DISQUALIFICATIONS BY THE COMMON POLITICAL LAW.

56. The same descriptions of persons, namely, minors,[1] idiots and lunatics,[2] women,[3] and aliens,[4] who have already been mentioned as excluded from the right of suffrage, by the common political law, are also prohibited, and for the same reasons, from being elected to any political office whatever. Such persons, consequently, cannot be members of a legislative assembly, even in those States where the constitution is silent with reference to their eligibility.

57. It may also be laid down as a general principle, founded in the nature of representative government, which supposes the electors except in particular instances to elect from among themselves, that no person can be elected to any office, who is not himself possessed of the requisite qualifications for an elector; and, consequently, that whatever other and different qualifications or disqualifications may be specified, every person, who is voted for as a member of a legislative assembly, must at all events possess the qualifications and be free from the disqualifications which attach to the character of an elector.[5] In the States of Connecticut, New Jersey, Wisconsin, Louisiana, Ohio, California, and Rhode Island, the electors and elected are expressly put upon the same footing as to qualifications. In almost all the constitutions, the qualifications of members of the legislature are particularly specified. Where these qualifications are of the same nature with those required of an elector, either wholly or in part, the latter are of course superseded to the same extent; as, for example, where residence is required as a qualification both to elect and be elected, but different periods of time are prescribed in the two cases.

58. In England, minors have frequently been chosen and returned members of the house of commons, and their election as frequently

[1] *Flintshire*, Peckwell, I. 528. See ante, § 25, 26.

[2] Ante, § 27, 28.

[3] Ante, § 29, 30, 31.

[4] Ante, § 32.

[5] See the constitutions of Vermont and Massachusetts; — Amer. Const. 71, 78, 87.

declared void. Party or caprice, however, sometimes adopted a different doctrine, and allowed them to sit; till at length, the question was settled by a statute passed in the 7 and 8 of William III., by which minors under the age of twenty-one were declared ineligible and their election void. Notwithstanding this statute, however, minors have been since occasionally returned as members of the house of commons, and have been permitted to sit without complaint. The great orator and statesman, Charles James Fox, was, it is said, under age when he first became a member of the house of commons; but though he participated in the debates, he is said not to have voted, until after he had attained the legal age. Other instances of minors sitting as members have doubtless occurred, both in England and in this country.

59. In England, also, there have been conflicting resolutions of the commons, in regard to the eligibility of persons in holy orders; but for the most part, such persons have been declared incapable of sitting. The question was very fully considered in 1801, in the case of John Horne Tooke, who having been returned a member was objected to, as being in priest's orders. A committee was thereupon appointed to examine the journals and records, for precedents; and, upon their report, and a motion made, that the reverend John Horne Tooke, "being at the time of his election in priest's orders, was and is incapable of sitting" as a member, the motion was negatived. An act of parliament was thereupon passed, in order to remove all doubts, by which it was declared, that no person, having been ordained a priest or deacon, or being a minister of the Church of Scotland, shall be capable of being elected a member of the house of commons. The reason for passing this statute can scarcely have been any supposed incompetency of persons in holy orders, for the performance of legislative duties; seeing that the higher dignitaries of the church have an equal place among the hereditary legislators of the land; but is rather to be found, in the fact, that a proper attendance upon their parliamentary duties would necessarily interfere with and prevent the discharge of those higher duties which belong to the solemn trust reposed in them for the cure of souls. In this country there are several of the States, as for example, Maryland, North Carolina, South Carolina, Kentucky, Missouri, and Texas, in which ministers of religion are excluded from the legislative function; and, unless expressly excluded, such persons are clearly eligible, and have frequently been returned as members, and have sat as such, both in the legislative assemblies of the States and in congress. In Massachusetts, it.

was attempted, in the year 1788, but without success, to set aside the election of a minister of the gospel, as a member of the house of representatives, on the ground, that those who impose taxes upon the people ought to be those only who pay a proportion of those taxes, which ministers of the gospel were not then obliged to do.[1]

60. Idiots and madmen, according to the English authorities, are clearly ineligible, as having no judgment, and are therefore incapable of executing the trust of a member;[2] but lunatics, that is, persons whose insanity is subject to periodical intermissions, are eligible during their lucid intervals.[3] Deaf and dumb persons are also said to be ineligible;[4] but this must be considered as doubtful, since the great improvements which have been made in modern times in the education of the deaf and dumb. Persons who are totally blind are not, for that reason, ineligible; and many such persons have sat in parliament, as well as in the legislative assemblies of this country.

SECTION II. OF QUALIFICATIONS EXPRESSLY REQUIRED.

61. The following are the various qualifications prescribed by the constitutions of the several States and of the United States, the possession of one or more of which is necessary to qualify a person for election as a member of a legislative assembly, namely: 1st, citizenship for a certain period;[5] 2d, arrival at a certain age; 3d, residence within the State for a certain period, and, for a part thereof, within a particular district;[6] 4th, the possession of a freehold, or other specified property of a certain value; and, 5th, payment of a tax. As these qualifications have already been considered, in reference to electors, it will only be necessary to call attention to one or two particulars, having reference to their application to the competency of persons to be elected.

62. In England, residence within the constituency to be represented has not been for a long period deemed necessary to qualify one for election to the house of commons; though an ancient statute (1 Henry V., c. 1; 23 Henry VI., c. 15,) which was not repealed until the 14 George III., c. 58, (1774,) required, that none but residents in the counties, cities, and boroughs where they are

[1] *Gray*, Cushing, S. & J., 28.
[2] Whitelocke, I. 461.
[3] Hale on Parliaments, 116; *Grampound*, 29 Oct. 1566; D'Ewes, 126; Rogers on Elections, 48; Male on Elections, 34.
[4] Male on Elections, 34.
[5] See *Ramsay* v. *Smith*, Clarke & Hall, 23; *Case of Albert Gallatin*, Same, 851.
[6] See *Case of Phillip B. Key*, Clarke & Hall, 224; and *Case of John Bayley*, Same, 411.

chosen, should be elected; but this law had been long disregarded, and says Whitelocke, "by time and connivance to contrary practice, is become as if it had not been made."

63. This dispensation with the requisition of residence enables constituencies to select their members from any part of the kingdom; in consequence of which, it frequently happens, that the same person is elected and returned for two or even more different places. When this occurs, the member makes his election, soon after the house assembles, for which of these places he will serve; and a new election takes place for the other. But a member can only be thus chosen for two or more places on the occasion of a general election, when all the elections are going on at the same time and none of the persons elected are as yet returned; for as soon as a member is returned, he is considered as the representative of the whole people, as well as of the particular constituency by which he is returned; and, hence, when a special election takes place to fill a vacancy, although the constituency may elect its member without regard to residence, yet a person already returned is not eligible.

64. The constitution of the United States requires that representatives and senators should reside within the State for which they are chosen; and the constitutions of the several States, except South Carolina, that members of the legislature should reside within the district or place, which they are chosen to represent. In South Carolina it is only necessary that members should reside within the State. This is the only State, it is believed, in which the members of its legislative assemblies are not required to reside within the constituencies for which they are elected.[1]

65. The constitution of the United States having prescribed the qualifications required of representatives in congress, the principal of which is inhabitancy within the State in which they shall respectively be chosen; leaving it to the States only to prescribe the time, place, and manner of holding the election; it is a general principle, that neither congress nor the States can impose any additional qualifications. It has therefore been held, in the first place, that it is not competent for congress to prescribe any further qualifications, or to pass any law which shall operate as such. Upon this ground, it has been decided by the house of representa-

[1] In the convention, which was called in 1853, to revise the constitution of Massachusetts, and which depended entirely upon a law of the previous year for its existence, many of the most distinguished of its members were elected by and sat for constituencies, in which they did not reside.

tives in congress, that a clause in the apportionment law of June 25, 1842, which required that each State should first be districted for the purpose, and that elections should take place in the districts, respectively, was void, and that elections by general ticket therein were valid.[1]

66. It has been decided also, upon the same principle, that it is not competent for any State to add to or alter them;[2] and, therefore, where a law of the State of Maryland, by which it was provided, that two representatives should be chosen from a particular district, required also that one of them should reside in one part of the district, and the other in another part, the requisition as to residence was held void by the house of representatives.[3]

67. The qualifications of an elector are, in general, referrible to the time when the lists of votes are prepared, or when the right of suffrage is to be exercised. Those of a member, which are expressed in a great variety of forms, sometimes relate to the time of election; sometimes to that of exercising the functions of membership; and are sometimes required by reason of their nature, or of some express provision, to continue during the whole period of membership.

68. Where the language used is, that "no person shall be a representative or senator," as in the constitutions of the United States, Maine, and many others, "shall be entitled to a seat," or "shall be a member unless, &c.," as in the constitution of Missouri; — in these cases, the point of time, to which the qualifications thus alluded to are to be referred, is that of being qualified and assuming the functions of a member.

69. The following phrases, namely: — "any person may be elected," as in the constitution of Virginia; — "no person shall be capable of being elected," as in those of New Hampshire and Vermont; — "when elected," as in the constitution of the United States; — "at the time of his election," as in that of Kentucky; — "no person shall be eligible to a seat in the house unless, &c.," as in that of South Carolina; refer the time of the qualification, in connection with which they are used, to the day of the election.

70. Where the qualification of a particular age is described by the terms — "attained to the age of," as in the constitutions of the United States, Virginia, Mississippi, and Alabama; — "arrived at the age of," as in that of Maine; — "not of the age of," as in that

[1] See Cong. Globe, XV. 30; Same, XIII. 173, 276.

[2] The law of Massachusetts requires that members of congress shall be inhabitants of the districts for which they are respectively elected; and this requisition has hitherto been complied with.

[3] *Barney* v. *Mc Creery*, Clarke & Hall, 167.

of New Hampshire; — "shall not have attained the age of," as in those of Georgia, Kentucky, Tennessee, Louisiana, Illinois, Missouri, Delaware; the qualification is completed on the day of attaining the age prescribed; but, where the expression is, "above the age of," as in the constitution of Maryland, the qualification is not complete, until the day of attaining the given age has expired.

71. Where citizenship, residence, possession of property, or any other qualification is required for a certain number of years, "preceding," or "next preceding," or "above [so many] years next preceding," or "previous to" the election or some other event, the day of that event is to be excluded.

72. The term "usually," in the phrase "shall have usually resided," seems to be wholly unnecessary; the qualifying force of it being included in the idea of residence.

73. In several of the constitutions a clause is inserted, that residence shall not be effected by an absence from the State, on business of the State, or of the United States; (the constitution of Mississippi adds, or on a visit or necessary private business;) but this exception can hardly have been provided for any other reason than out of abundant caution; as, by the law of nations, persons temporarily absent from the place of their residence, on public (or even private) business, do not thereby incur the loss or even suspension of their domicil.[1]

74. In reference to electors, it seems to be immaterial, if they are duly qualified on the day on which they give their suffrage, whether they continue to be so afterwards or not. In reference to persons elected members of a legislative assembly, to remain in office for a certain time, there seems to be as much reason for requiring that they should continue to be duly qualified during the whole of the term, as that they should have possessed the requisite qualifications at the time of their election. But, unless there is an express provision to that effect, it does not seem to be necessary that the qualifications of members should continue.[2]

75. The property qualification, though generally given up as to electors, still exists in some of the States, as to the persons to be elected. In Massachusetts, until a recent amendment of the constitution, every member of either branch was required to possess a certain amount of estate. But this qualification was practically of

[1] *Case of John Bailey*, Clarke & Hall, 44; *Case of John Forsyth*, Clarke & Hall, 497.

[2] Story on the Constitution, III. 95. In Maine, Massachusetts, Pennsylvania (as to senators) and New Hampshire, it is expressly provided, that the qualification of residence, — and in North Carolina, that of property, — shall continue during the term.

little effect, in consequence of the difficulty of proof; it being held, that the burden of proof was in all cases upon those who questioned the member's qualification, and that no member ought to be called upon, in the first instance, to prove himself a qualified member, according to the constitution.[1] In England, where a property qualification is required of members of parliament, the difficulty of proof is obviated, by making it the duty of every member, when he takes the oath, to deliver in at the same time, a declaration accompanied by a specification of his qualification as to property. Without such declaration, no member is at liberty to sit or vote; and a false declaration is punishable as a misdemeanor.

SECTION III. — OF DISQUALIFICATIONS EXPRESSLY DECLARED.

76. Besides the negative disqualifications resulting from the want of the requisite qualifications, the several constitutions enumerate many others of a positive character; but as they are altogether too numerous to be examined in detail, it will be most convenient to consider them in two classes; first, those which result from the holding of an office, or from an employment or profession, the functions of which are deemed incompatible with the duties of a member; and, second, those which are of a personal nature, and peculiar to the individual.

77. The offices and employments, the possession or exercise of which disqualifies one from being chosen or acting as a member of a legislative assembly, are particularly enumerated in the several constitutions. In the constitution of the United States the only provision of this kind is, that no person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not when elected be an inhabitant of that State in which he shall be chosen. The State constitutions enumerate, sometimes in much detail, three classes of official persons whom they interdict, in some form or other, from legislative functions, namely, all persons exercising or possessing offices under the authority of the United States, and all persons connected with the executive or judicial department of the government of each particular State. In England, persons connected with the administration of the executive branch of the government always have seats in one or the other of the houses of

[1] *Pembroke*, Cushing, S. & J., 22, note.

parliament; in this country, such persons are carefully excluded from legislative functions. This difference between the constitution of parliament and that of the legislative assemblies of this country has led to important differences in the parliamentary practice of the two countries, to which allusion will be made in another place.

1. *Disqualifying Offices or Employments.*

78. Disqualifications of this kind result from the holding of certain offices, or from the exercising of certain employments, commissions, and professions, the functions of which are deemed incompatible with the proper discharge of the duties of a member, but of which one may divest himself at pleasure, and which are therefore relative rather than absolute. In general, as these disqualifications are not derived from the personal character of the individual, or inflicted by way of punishment, they do not render him ineligible, that is, incapable to be elected, but prevent him from assuming the functions of a member until they are removed.[1] But this depends upon the language used in reference to each particular disqualification, and the time to which it relates. Thus, where it is said, that no person, holding a particular office, &c., "shall have a seat;" — "shall be a member;" — "shall at the same time have a seat;" — "shall hold a seat;" — "shall be capable of having a seat;" — "shall be capable of being a member;" — "shall be capable of holding any office;" — "shall act as a member;" the disqualification relates to the time of assuming the functions of a member;[2] but where the following terms are used, namely, — "shall be incapable of being elected;" — "shall be eligible to a seat;" — "shall be eligible as a candidate for;" — "shall be ineligible;" the disqualification relates to the time of the election.

79. The offices, which are most usually declared in express terms to be incompatible with the functions of legislation, are those of a judicial character. It may perhaps be doubted, whether such a declaration is necessary. The separation of the several departments of government from one another is in this country so fundamental and essential, that a judge, at least, of any of the higher courts, would hardly be considered eligible to the legislature, although not expressly excluded. In England, the judges of the higher courts are excluded from being members of the house of commons, on

[1] Paynter's Practice at Elections, 55; Douglass, I. 143; Douglass, II. 450.

[2] See *Hammond* v. *Herrick*, Clarke & Hall, 297; *Case of Elias Earle*, Same, 314; *Case of George Mumford*, Same, 316; *Sullivan*, Cushing, S. & J., 39.

account of their being required to attend as assistants in the house of lords ; and for the further reason, that their judicial functions are considered as incompatible with the character of representatives of the people. They are not, however, expressly excluded by any statute, and the exclusion does not apply to all persons who exercise judicial functions.

2. *Personal Disqualifications.*

80. This description of disqualifications results either from the doing of some act of a criminal nature, as, in Tennessee, duelling and bribery, and, in Mississippi, denying the being of a God, or a future state of rewards and punishments, or from the conviction of some crime or offence, which, by the constitution alone, or the constitution and laws[1] of a State, is declared to be a ground of exclusion from a seat in the legislature. In some of the States, it is the commission of the crime which disqualifies; in others and the greater part, a conviction is also necessary. The offence, which, more commonly than any other, is made a disqualification, is that of bribery in obtaining an office or appointment.

81. It seems to be immaterial, in regard to personal disqualifications, whether the time to which they refer is that of the election, or that of assuming the functions of a member; inasmuch, as they are not in the power of the party himself, and cannot be put off at pleasure. Where they are inflicted as a punishment, the exclusion is either perpetual or for a time limited.[2] In the latter case, the disability is, of course, removed by the expiration of the time; in both cases, it may, in general, be entirely abrogated by a pardon.

82. Expulsion, from a former or from the same legislative assembly, cannot be regarded as a personal disqualification, unless specially provided by law.[3]

83. In concluding the subject of disqualifications, it is proper to remark, that no person is excluded from being elected, by reason of his not being, at the time of the election, in a situation to assume or perform the functions of a member; thus, one who is temporarily absent from the country, or is sick, or imprisoned,

[1] In some of the States, authority is expressly given by the constitution to the legislative power, to inflict disqualification as a punishment for certain crimes.

[2] In most of the States, a conviction of bribery, in obtaining an office or appointment, is a perpetual, but, in others, only a temporary, disqualification. Where disqualification follows a conviction on impeachment, it may be either for a time or perpetual.

[3] See *Wilkes's Case*, Male on Elections, 46; Rogers on Elections, 75.

either for debt, or as a punishment, may nevertheless be elected, and may take upon himself the functions of a member, when he returns, or recovers, or is discharged from his confinement. One who is imprisoned for debt, either on mesne process, or in execution, may not only be elected but will be entitled to be discharged from his imprisonment for the purpose of attending his duty as a member.[1]

84. It seems necessary also to remark, that a member may be expelled, or discharged from sitting, as such, which is the same thing in milder terms, for many causes, for which the election could not be declared void.[2]

CHAPTER FOURTH.

OF THE MODE OF ELECTION.

85. The convening of a parliament in Great Britain is a branch of the royal prerogative, to be exercised by the sovereign, at his pleasure; the only restriction put upon it by law being, that no parliament can last for a longer period than seven years, and that the sovereign cannot allow a greater period than three years to elapse between the dissolution or expiration of one parliament and the calling of another; and, when the calling of a parliament is determined upon by the king in council, a royal proclamation is issued, directing the lord chancellor to summon the peers, and to send out writs for the election of members of the house of commons.[3] The writs being sent out accordingly to the sheriffs of the several counties, those officers issue precepts to the proper officers of the cities and boroughs, within their several counties, for the election of members therein, and proceed themselves to call county meetings for the election of members for their several counties. The legislative assemblies of the colonies and provinces belonging to the British Empire are convened in the same manner by their local governors.

86. In this country, the place of royal prerogative is supplied, so

[1] This subject will be considered at length, under the head of privilege.

[2] This subject will be again adverted to in treating of the expulsion of a member as a punishment.

[3] Appendix, II.

far as analogous powers exist in our governments, by written constitutions which generally prescribe the time for the election, as well as for the meeting, of the legislative assemblies. The election of the members being also provided for and regulated by the constitutions and laws, the municipal officers appointed for the purpose take the proper measures for effecting the election, in the manner required by law, without any previous command or warrant from any other authority, but merely in the regular discharge of their official duties.

87. The duties of these officers consist in preparing beforehand, (where required by law,) the lists or registers of the qualified voters, — in notifying the times and places for the meetings of the electors, — in receiving, counting, and declaring the votes, — in deciding whether any and who among the persons voted for are elected, — and in returning or certifying the election of the members chosen.[1] In some of the States and in reference to certain elections, these duties are all performed by the same set of officers; in others, they are distributed among several.[2]

88. It would not be practicable, within the limits of this work, to present a complete view of the election laws even of a single State; nor does the subject require more than a statement of some of the leading principles, which are or may be common to all systems. It will be sufficient, therefore, to consider briefly: 1st, the right to vote; 2d, the different modes of voting; and 3d, the principle upon which the result of an election is to be determined.

SECTION I. OF THE RIGHT TO VOTE.

89. Every person, possessing the qualifications required by the constitution and laws of the State in which he resides, and not disqualified thereby, has a right to give his vote at all elections for whomsoever he pleases, whether a candidate or not, and whether eligible or not;[3] but, in order to entitle any one to exercise this right, it is necessary that he should have previously done every thing incumbent upon him by the laws, either in getting his name inscribed on the list of qualified voters, or in establishing his right by proper evidence at the polls.

[1] Such neglect of duty, or abuse of official authority, as will be sufficient to set aside an election, will be treated of further in the section on controverted elections.

[2] In the performance of them, the officers act partly in a ministerial, and partly in a judicial capacity; in the former, in receiving the votes and returning the persons elected; in the latter, in determining questions relating to the right to vote, and in deciding upon the result of the elections.

[3] Male on Elections, 30, note.

90. If an elector, therefore, having a legal right to vote, and having done every thing incumbent on him to entitle him to exercise his right, is wilfully and maliciously prevented from voting, by the officers whose duty it is to receive his vote, he may maintain an action on the case for damages against such officers; on the general ground, that, wherever the common law gives a right, or prohibits an injury, it also gives a remedy by action.[1]

91. Equality being essential to the right of suffrage, that is to say, each qualified voter being the equal in point of right of every other voter, whatever difference there may be in other respects between them, no person can be permitted to give more than one vote at the same election. If a second vote is given, it will not only be void, but if given knowingly and corruptly, will, in most, probably in all the States, subject the voter to punishment. The rule is the same, whether there is only one person to be elected, or whether two or more persons are to be chosen at the same time. In the latter case, each elector must vote for all the persons who are to be chosen, or as many of them as he pleases, by one and the same act; he cannot be permitted to give his vote first for one, and, after some interval, to come again to the polls, and vote for another; such a mode of voting by instalments would introduce the utmost confusion.[2]

92. This principle is only applicable to the same trial or attempt to elect; for if no election is effected at the first trial, and a second attempt takes place, or a new election is ordered, electors may not only vote again, but give their vote for a different or even opposing candidate;[3] nor in case of an equality of voices, have returning officers, as such, any right to vote a second time, and give a casting vote, in order to determine the election, or, which is the same thing, to return one of the candidates in preference to the other. This authority may be conferred upon returning officers, as it is by the constitution of Missouri in regard to elections of sheriff and coroner, by the constitution or laws of their State; but if no such authority is given them, returning officers, if qualified as electors, vote merely as such.

93. Where, however, several persons are to be chosen at the same time, unless there is some express provision of law to the contrary, or it is manifestly impracticable from the nature and situation of the constituency, or by reason of other circumstances, there is nothing to prevent the election of several persons from being

[1] Appendix, III.

[2] *Bridgewater*, Peckwell, I. 109; Comm. Jour. XIII. 90; Same, XV. 135; Male on Elections, 136; *Draper* v. *Johnston*, Clarke & Hall, 703.

[3] *Winchelsea*, Glanville, 21.

made separately; and where there is any doubt as to the number of persons to be elected, it is exceedingly important, if it can be done, that they should be so elected; for, where more persons are chosen and returned than a constituency is entitled to elect, if they are all chosen at once, the whole election will be void;[1] but if chosen separately, the election of those only will be void, who are chosen after the proper number has been elected.[2] The reason is, that in the first case, it is impossible to discriminate among the persons elected, and to assign the election to any of them, in preference to the others;[3] whereas, in the case of separate elections, the right of the constituency being exhausted, when the requisite number has been elected, all the further proceedings are merely nugatory.

SECTION II. OF THE DIFFERENT MODES OF VOTING.

94. Of all the modes of election, which have been practised among different nations, and at different times, two only are in general use in the United States, namely, the *viva voce* or oral, and the ballot or written, suffrage. In the constitutions of New Hampshire, Vermont, Massachusetts, and Rhode Island, the method of voting by ballot is considered to be established as the method in general use, and is sanctioned either in express terms or by equivalent language; in those of the following named States, it is expressly required, with some unimportant exceptions, in all general elections, namely: Maine, Connecticut, New York, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Florida, Alabama, Mississippi, Louisiana, Tennessee, Ohio, Indiana, Illinois, Michigan, Texas, Iowa, Wisconsin, and California; in the constitutions of four States, namely, Virginia, Kentucky, Georgia, and Arkansas, is the system of *viva voce* or oral suffrage prescribed at all general elections; while in those of Pennsylvania, California, Missouri, Florida, Louisiana, Tennessee, Ohio, Michigan, Alabama,

[1] The law of Massachusetts provides, that "if, at any election, a greater number of candidates, than the number to be elected, shall severally receive a majority of the whole number of ballots, a number equal to the number to be elected, of such, as have the greatest excess over such majority, shall be deemed and declared to be elected." Rev. Sts. c. 4, § 13. Perhaps, in that State, it would be held, under this provision, that if a greater number of members were returned than the inhabitants of any town or city were entitled to elect, and the state of the vote therefor was preserved, that the election of the proper number should be determined by the votes given respectively for each.

[2] *West Springfield*, Cushing, S. & D., 64; *Bath*, Same, 73; *Dighton*, Same, 74; *Oxford*, Same, 75; *Sutton*, Same, 80, 154; *Belchertown*, Same, 103; *Westford*, Same, 141; *Malden*, Same, 293.

[3] See Cong. Globe, VII. 135.

Iowa, North Carolina, Kentucky, Wisconsin, Arkansas, (in certain cases,) and Indiana, this system is required to be pursued only in elections by the legislature. Where the system of oral suffrage prevails, the elector makes a declaration to the returning officer, or to some person appointed by him, of the person or persons for whom he votes; which declaration is entered in a book provided for the purpose, called the poll book. In elections by ballot, each voter gives his suffrage by means of a piece of paper, or other convenient material, having the name of the person for whom he votes written or printed on it, which he deposits in a box, or urn, or other suitable receptacle provided for the purpose by the proper officers, and kept in their custody during the election. The distinguishing feature of the oral suffrage is publicity; that of voting by ballot, secrecy. When the particular mode is prescribed by law, or established by usage, no other can be regularly pursued.[1] The importance of the subject renders it proper to describe these modes of proceeding, and to state the principles applicable to each, with some degree of minuteness.

1. *Oral Suffrage.*

95. In England, where members of parliament are elected by oral suffrage exclusively, the mode of proceeding is as follows:— The electors being assembled together for the purpose of the election, the sheriff or other returning officer usually inquires of them, in the first instance, whom they elect to serve them in parliament. The candidates are thereupon proposed; each of them, to the requisite number, being nominated by one elector, and seconded by another. If no more candidates are proposed than are required to be chosen, those who are named, being thus silently agreed to, are to be declared duly elected, and immediately returned.

96. If opposing candidates offer themselves, or are proposed by the electors, the returning officer determines upon the view who are the choice of the major part of the electors, and makes declaration accordingly. If the electors are unanimous, or a few only dissent, it is easy to determine the election in this manner; but, if the returning officer is in doubt, or a poll is demanded, either by a candidate or an elector, (which demand must be made in due time, that is, before the majority is declared upon the view, or within a reasonable time afterwards,) the officer must then proceed

[1] *Easton* v. *Scott*, Clarke & Hall, 272.

to take the poll, or, in other words, to try the question by the numeration of the voices, in the manner already mentioned. When the votes have all been thus taken, and counted, the returning officer announces to the electors which of the candidates have the requisite number of voices, and declares them to be duly elected. An election, at which there are opposing candidates, is said to be contested.

97. In taking the poll, it frequently happens, that objections are made to particular votes, which are of a nature to require a more deliberate examination, than the hurry of the moment will admit of; or that doubts arise, in regard to votes, which may be removed on further inquiry. In such cases, it is usual for the returning officer to receive the votes, subject to his ulterior determination, whether to admit or reject them.[1] Votes received in this manner, which are denominated *queried* votes, must be examined and decided upon immediately on closing the poll, and before declaration of the election; and, if the returning officer is thereupon satisfied that they ought not to be received, or if the parties neglect or refuse to make them good, they are to be struck off the poll; otherwise they are allowed to remain.

98. Where votes are merely questioned in this manner, and a scrutiny is not called for, the returning officer has no authority to strike off any other votes; but if a scrutiny is demanded by a candidate, or by two or more electors, and the returning officer deems it necessary, (which is a matter entirely within his discretion,) the whole poll is then open to revision. A scrutiny is defined to be a general reconsideration, by the returning officer, or by other persons appointed by him, of the entire poll, or of the validity of particular votes; or an examination of the grounds of certain claims, which have been respectively received or rejected; and amending the poll by correcting or establishing the decisions so made, as they may prove to have been erroneous, or otherwise.[2]

99. When an elector has once voted in this form, he is not at liberty afterwards at the same trial to change his vote; but if, after it has been reduced to writing, that is, entered on the poll book, it appears to have been taken down for a wrong candidate, by mis-

[1] Male, 140.

[2] In the contested election for Westminster, in 1784, the returning officer granted a scrutiny, which lasted not only until after the return day of the writ, but for several months after the sitting of parliament. The house of commons at length directed the officer to make a return, which he did, of Lord Hood and Mr. Fox. The inconvenience of this case led to the passing of a statute, regulating polls and scrutinies, which among other things provides, that no scrutiny shall be protracted beyond the return day of the writ.

take, the vote may be corrected on clear and satisfactory evidence of the mistake, provided application be made for that purpose to the returning officer, before the close of the poll.[1]

100. The poll is to be closed, when all the electors who intend doing so may be presumed to have voted. But, as a man is not compellable to give his suffrage at all, or at any particular time, but at such period of the poll only, as he thinks will best serve the candidate to whom he gives it, or best suit his own convenience, it is left to the impartial discretion of the returning officer, regulated by common usage, to determine what time he will allow, towards the end of the poll, for the voters to come in. It is usual to make three proclamations at a small interval from each other, that the poll is about to be closed at a certain time, which is a fair notice to the remaining voters to come in. At the time appointed, the poll book is closed.[2]

101. When all the proceedings, which may intervene between the taking of the poll, and the declaration of the result, have been brought to a close, the returning officer declares who are elected, and proceeds forthwith to make his return.[3]

102. Such is an outline, — very briefly sketched, — of the manner in which an election of a member of parliament is conducted in England. The form of proceeding, in those parts of the United States, where oral suffrage is practised, is the same in substance; with such modifications as may have been introduced by the constitution and laws of each particular State.

2. *Ballot.*

103. A ballot may be defined to be a piece of paper, or other suitable material, with the name written or printed[4] upon it of the person to be voted for;[5] and where the suffrages are given in this form,[6] each of the electors, in person,[7] deposits such a vote in a box

[1] Male, 136.

[2] Male, 173.

[3] The form of this instrument will be described hereafter.

[4] Printed votes are *written* votes, within the meaning of the provision in the constitution of Massachusetts, that "every member of the house of representatives shall be chosen by written votes." *Henshaw* v. *Foster*, Pickering's Reports, IX. 312.

[5] Where a ballot had the name of a candidate printed on it, but was defaced by a single stroke of a pen drawn over it, it was held by the inspectors, to be a blank vote; and this was considered to be a question exclusively within the competency of the inspectors to decide. *Adams* v. *Wilson*, Clarke & Hall, 373.

[6] Where the form of a ballot, or the manner of depositing it in the box, is prescribed by law, ballots must be prepared and deposited accordingly, or they will be rejected by the returning officer. *Latimer* v. *Patton*, Clarke & Hall, 69; *Adams* v. *Wilson*, Same, 373; *Reed* v. *Corden*, Same, 353.

[7] See, as to voting by proxy, *Case of John Richards*, Clarke & Hall, 95, 99; *Case of Joseph B. Varnum*, Same, 112; *Lynn*, Cushing, S. & J., 255; *Jackson* v. *Wayne*, Clarke & Hall, 57, 59.

or other receptacle provided for the purpose, and kept in the custody of the proper officers.

104. Where two or more persons are to be elected to similar offices, at the same time, they may be voted for separately, that is, at separate ballotings; or they may be voted for all together on the same ballot; in the latter case, each ballot must contain no more (though it may contain fewer) names, than the number of persons to be elected; for, where more names are on a ballot than the number of persons to be voted for, it is impossible for the returning officers to determine which of them (amounting to the requisite number) the voter intends; and, consequently, such a vote must be rejected for uncertainty.[1]

105. Where several persons are voted for on the same ballot, for the same office, it is of no consequence to annex to the several names the offices for which they are respectively intended; but where different officers are thus voted for, it is essential that each of the names should be accompanied by a designation of the office, for which the voter intends it; and, if there is no such designation, the ballot must be rejected for uncertainty.

106. If a ballot happens to have the same name written or printed on it more than once, it is not therefore to be rejected; because, as it is but one piece of paper, it cannot be counted as more than one vote; and, though the same name is written on it several times, it is yet but one name. Thus, where ballots are prepared for distribution in the usual way practised in some of the States, that is, by the name of the candidate being written or printed several times on the same slip of paper, for the purpose of being cut up into separate ballots, and being nearly cut apart, but so as to adhere together at one end, and an elector inadvertently puts two votes not entirely separated into the box, they will be counted as one ballot, unless there are circumstances present, which afford a presumption of a fraudulent intent, in which case, they must either be rejected, or the whole ballot set aside.

107. Where several different officers, or sets of officers, are to be elected at the same election, two modes of receiving the votes may be practised, namely; either to receive all the ballots into one box,

[1] In the case of *Washburn* v. *Ripley*, Clarke & Hall, 679, the Committee on Elections held, that a ballot, having three different names on it, and another, having two different names on it, given at a balloting for a member of congress, might each of them be counted as a single ballot, in making up the whole number; but this decision cannot be sustained upon any other principle, than that an elector may vote *against* one man, without voting *for* another, which Lord Mansfield, in *Rex* v. *Monday*, Cowper, 530, declared could not be done.

in which case, each ballot, besides the name of the candidate voted for, must contain also a designation of the office, and the ballots may either be separated, or the names be contained all on one sheet;[1] or to have as many boxes as there are officers, or sets of officers to be voted for, in which case, the several boxes must be labelled with the designation of the office, and the votes for each be deposited in the appropriate box. Where the first mode is adopted, the intention of a voter can only be known from the designation on his vote; where the other mode is used, it can only be known from the designation of the box in which the ballot is deposited;[2] but if ballots, which bear a designation for one office, are put into the box appropriated and designated for another, such votes are not necessarily to be counted for the latter.[3]

108. When an elector has once voted, in this form, that is, when he has placed a ballot in each box (if there be more than one) in which votes are to be received, whether he has thereby fully exercised his right of suffrage or not, he cannot be permitted to add to, or to alter his vote,[4] any more than when the voting is oral, not even when he has by mistake voted differently from what he intended. A mistake occurring on the part of the officers conducting the election, by which a voter is made to vote differently from what he intended, may as well be corrected where the voting is by ballot, as where it is oral.

109. If the material, of which a ballot is composed, is suitable for the purpose, that is, convenient in point of size and shape, and sufficiently durable, and the writing or printing on it is legible and permanent, it can hardly be of any consequence what the material is, or in what manner the name is put upon it; unless these matters are particularly regulated by law. It is equally unimportant what sort of receptacle is used for receiving the ballots, provided it is sufficient to contain them and can be made reasonably secure.[5]

110. The name on a ballot being an essential part of it, it should be so written or printed, as to designate the person intended beyond any reasonable doubt. Where there are several persons

[1] In the city of Boston, the ballots are all brought in on one sheet.

[2] *Washburn* v. *Ripley*, Clarke & Hall, 679.

[3] *Case of Thomas Nash, Jr.*, Cushing, S. & J., 439.

[4] *Washburn* v. *Ripley*, Clarke & Hall, 679; Ante, § 97.

[5] In the case of *Arnold* v. *Lea*, decided in 1830 by the house of representatives of the United States, it appeared, that a large gourd was used for receiving the ballots; which during the adjournment of the poll, was secured by being carefully stopped, and tied up in a handkerchief; and it was held, that the direction of the law of Tennessee, requiring that the ballots should be placed in a box locked or otherwise well secured, was thereby sufficiently complied with. Clarke & Hall, 601.

of the same name in a constituency, all of whom are in fact equally eligible, and one of them has been designated as a candidate, ballots bearing that name are, by a reasonable intendment, and without any further designation, supposed to be given for such candidate. Questions relating to the name arise from the use of additions or abbreviations, and from the name being misspelt.

111. Additions to the name, as junior, senior, esquire, and the like, and titles prefixed thereto, as general, colonel, honorable, etc., constituting no part of the name, the general rule is, that they are to be wholly disregarded; so that all ballots, which bear the same name, however different they may be, in respect to such additions and titles, are to be considered as given for one and the same person.[1]

112. Abbreviations, which are in common use, such as those which usually and frequently occur in writing and printing christian names, must be considered as designating the persons intended with as much certainty as if the names were written at length. In regard to other abbreviations, and to the use of initial letters, in the place of names, no other general rule can be laid down, than that the name must be considered as properly written or printed on the ballot, provided the returning officers understand thereby, beyond a reasonable doubt, for whom the voter intends his vote.

113. When the name of a candidate is misspelt on the ballot, but still bears the same sound, when pronounced according to its orthography, with the true name, it is to be considered as the same to all intents and purposes; but, where the name on a ballot is spelt so differently from the true name of the candidate, for whom, if for any one, the voter probably intends it, as in reality to constitute a different name, though yet so similar as to render it probable that it was intended for such candidate, the only general rule seems to be, to regard such name as the same or as a different one, according the conviction of the returning officers as to the voter's intention.[2] Where the name is not only different, but unlike, no question can arise as to the intention; because, it clearly amounts to a mistake

[1] *Turner* v. *Baylies*, Clarke & Hall, 234; *Williams* v. *Bowers*, Same, 263; *Willoughby* v. *Smith*, Same, 265; *Guyon* v. *Sage*, Same, 348; *Hugunin* v. *Ten Eyck*, Same, 501; *Wright* v. *Fisher*, Same, 518; *Lynn*, Cushing, S. & J., 236.

[2] *Root* v. *Adams*, Clarke & Hall, 271; *Mallary* v. *Merrill*, Same, 330, 331; *Colden* v. *Sharpe*, Same, 369.

on the part of the voter, as to the name of the person for whom he intends to vote, which, as has already been stated, cannot be corrected.

114. Pieces of paper, of the shape, size, and general appearance of ballots, but without any name on them, placed in the ballot box by qualified voters, under the pretence of voting, are known by the incongruous name of blank votes or ballots; and, in some sections of the country, it is understood, are, or have been allowed to be counted as ballots, in making up the whole number of votes, where an absolute majority is necessary to a choice; on the ground that being cast by qualified voters as and for ballots, they must be received and allowed all the effect, of which they can, by any possibility, be capable, namely, that of being counted against the candidates voted for by the other electors. But this ground is wholly untenable, inasmuch as the right of suffrage is a right on the part of the electors to elect some one to an office, and not a right to prevent an election from being made; and, as all the electors have the same right, it follows, that each of them is bound to exercise his particular right in such a manner, as to allow to every other elector, the free and full exercise of the same right on his part; which would not be the case, if one elector had the power, by means of a blank, to defeat the vote of another for a particular candidate, without himself voting for anybody. Suffrage, being a solemn duty, as well as a fundamental right, ought neither to be neglected nor abused. Lord Mansfield,[1] speaking of the election of members of parliament in England, where, as has been seen, the electors give their suffrages orally, said, that the only way of defeating the election of one candidate was by voting for another. The remark is equally just in reference to elections by ballot.[2]

SECTION III. — OF THE PRINCIPLE UPON WHICH THE RESULT OF AN ELECTION IS DETERMINED.

115. In all collective bodies of men, assembled and acting together for the purpose of deliberating and deciding upon any

[1] In the *King* v. *Monday*, Cowper's Reports, 530.

[2] Blank votes cannot, of course, be given, where the voting is oral; nor, as will be seen hereafter, can they be supposed to have any effect at all, in elections by ballot, where a plurality alone is necessary to elect; unless indeed, the number of blanks exceeds the highest number of votes given, to any candidate; in which case, an effect might be given to them by regarding the balloting as ineffectual. In the house of representatives in congress, it is declared by a rule, (11,) that in all ballotings of the house, blanks shall be rejected, and not taken into the count in the enumeration of votes, or reported by the tellers. The same principle is declared by law in Massachusetts. Rev. Sts. c. 13, § 4.

subject, or for the purpose of electing to any office, it is an admitted principle, that whatever is done or agreed to by the greater number shall stand as the act or the will of the whole. This principle assumes, as its basis, the absolute and perfect equality of all the individuals, one with another, who enjoy the right of suffrage, in the possession of the elements essential to the determination of any act to be done, or to the formation of any judgment to be pronounced, or to the effecting of any election to be made, as the act, judgment, or choice, of the whole.

116. This equality being conceded,—and, as the foundation of a system of government, it can neither be denied in fact, nor questioned in principle,—it is easy to conclude, first,—that the knowledge and wisdom of the greater number taken promiscuously will be superior to the knowledge and wisdom of any smaller number of the same body of men; and, secondly, that, as whatever is done or resolved by the greater number affects and operates upon the individuals themselves composing it equally with the others, that which is so done must necessarily possess the quality of justice in a higher degree than the act or resolution of any smaller number would be likely to possess. It is upon these grounds, that the common sense of mankind recognizes the authority of the majority as the only solid foundation of all popular government.

117. The term majority, that is, the greater number, is understood in this country in two significations. In its broadest sense, it denotes the greatest of any number of unequal divisions of the whole body; in its strictest, the greater of any two unequal divisions of the whole body. In the popular elections of this country, both these principles are practically applied; the first being known as the principle of plurality; the other only as that of majority.

1. *Plurality.*

118. In elections, in which the principle of plurality is adopted, the candidate, who has the highest number of votes, is elected, although he may have received but a small part of the whole; and, where several persons are voted for at the same time for the same office, those (not exceeding the number to be chosen), who have respectively the highest number of votes, are elected. But, where two or more persons have equal numbers of votes, there is no election, and a new trial must take place, unless some other mode of determining the question is provided by law. In some of the States, where the votes are thus divided, the returning officers

are authorized to decide between them, and to return which they please; but, unless thus expressly authorized by law, the returning officers have no casting vote.[1]

2. *Majority.*

119. According to the definition just given, a majority as distinguished from a plurality being the greater of any two unequal divisions of the whole body, the candidate who is elected, where one only is to be chosen, must receive more votes than are given for all the other candidates put together; and, where two or more persons are to be elected at the same time, those who are elected must each of them receive a number not less than the greater of the two nearest unequal numbers, into which the whole number can be divided. If the whole number is an even one, the number necessary to a choice is its half, increased by one; if the whole number is uneven, the number necessary to a choice is the one half of the whole number increased by one; thus, if the whole number is *ten*, the number requisite to a choice is *six;* if the whole number is *nine*, the number requisite to a choice is *five.*

120. In order to determine the result of an election, on the principle of an absolute majority, it is necessary in the first place, to ascertain the whole number of persons who have voted; which, if the suffrages are taken orally, is effected by counting the names on the poll book; or if the voting is by ballot, by counting the number of ballots.[2]

121. This mode of ascertaining the whole number, although it seems to be the only practicable one, operates to the disadvantage of those of the candidates, if any, where several persons are voted for on the same ballot, whose names happen to be omitted from some of the tickets; because the number of votes, or majority, necessary for such persons to have, in order to be elected, being determined by counting all the ballots, including those which do not bear the whole number of names, and which, so far as those persons are concerned, are mere blanks, is increased beyond what it would be, if the candidates were voted for separately.

122. On the other hand, another mode of ascertaining the whole number, which has sometimes been adopted, with a view to avoid

[1] *Winchelsea*, Glanville, 21; Ante, § 92; *Queen* v. *Chapman*, Modern Reports, VI. 152; *Reed* v. *Corden*, Clarke & Hall, 353; *Sundry Citizens* v. *Sergeant*, Same, 516.

[2] Rev. Stat. of Mass. c. 4, § 13. See *Andover*, Cushing, S. & J. 205.

the inequality just alluded to, runs into the opposite extreme, and allows those whose names are on all the ballots to be elected by less than a majority. This mode consists in counting all the names on the ballots, and dividing the number by the number of persons to be chosen; the quotient is taken as the whole number of ballots given.[1] This mode of proceeding has not been sanctioned.

123. If the candidates on both sides could be numbered consecutively, and each number considered as a separate balloting, these inconveniences attending the voting by general ticket would be remedied.

124. In Massachusetts, when it happens, as it may where an election of several persons is made at one balloting, that more persons have the requisite majority than the number of persons to be chosen, it is provided by statute, that the highest on the list, not exceeding that number, shall be considered as elected.[2] The same statute also provides, that if the whole number of persons to be elected cannot be completed, by reason of any two or more having received an equal number of votes, the persons having such equal number shall be deemed not elected. The rules thus established are so reasonable and proper, and so entirely analogous to admitted principles of the law of elections, that they would probably be recognized, even though not sanctioned by any express provision of law.

125. The principles just stated lead to the conclusion, that where in any election, in which an absolute majority is necessary to a choice, the voting is by ballot, and the ballots are received and dealt with in such a manner, as to render it impossible to ascertain the number of persons voting, the whole proceeding is necessarily void. Thus, where two persons were to be elected at one balloting, and some of the voters gave in ballots containing two names, — some were allowed to give in two separate ballots with one name on each, — some gave in only one ballot with but one name on it, — and the officers presiding at the election divided those ballots having two names on them into two, before counting, — so that the whole number of persons voting could not be ascertained, the election was held void.[3] So where the officers presiding inadvertently omitted to sort and count a considerable part of the ballots.[4]

[1] *Charlestown*, Cushing, S. & J., 167; *Case of William B. Adams*, Same, 267; *Wrentham*, Same, 70; *Newbury*, Same, 191.

[2] Rev. Sts. *c.* 4, § 13.

[3] *Wrentham*, Cushing, S. & J., 70; *Newbury*, Same, 191; *Braintree*, Same, 395.

[4] *Andover*, Cushing, S. & J., 187.

3. *Origin and Introduction of the Majority Principle.*

126. At the time of the first settlement and colonization of the United States, the elections of members of parliament in England were conducted upon the principle of plurality; which also prevailed in all other elections, in which the electors were at liberty to select their candidates from an indefinite number of qualified persons. Such has been and still continues to be the common law of England; and such is the present practice in that country in all elections. Indeed, what is meant there by the term *majority* embraces what is denoted with us by the word *plurality*.

127. In this country, however, the principle of majority, or absolute majority, as it is sometimes called, was early introduced into the law of elections by the colonists of New England; where it has ever since prevailed to a greater or less extent; in some of the States exclusively, in others only partially.

128. In the States, where this principle is established, it is usually provided by the constitution or laws, that an absolute majority shall be necessary to the election of certain officers. But, even in cases where there is no such express provision, an absolute majority is nevertheless required, in some of the States, in the election of officers, in reference to whom no other provision is made. Thus, in Massachusetts, the constitution contains no provision requiring representatives to be elected by absolute majorities, as it does in reference to the governor, lieutenant-governor, and senators; nor, until the year 1836, when the Revised Statutes went into operation, was there any general law, requiring such a majority in the election of representatives or other public officers of any kind; but still in all elections previous to that time, an absolute majority was considered as necessary, by usage and custom, as it has since become by positive statutory enactment. Indeed, the majority principle is so essential and fundamental in Massachusetts, that it prevails in the elections of all private corporations and associations, as well as in those of a municipal character.[1]

129. In all the States with the exception of some of the New

[1] The plurality principle has recently been introduced into this State, in regard to all elections for the choice of town, city, or county officers, by the act of 1854, c. 39, and in regard to the election of members of congress by the act of 1854, c. 70. An amendment to the constitution, extending the same principle to the election of all civil officers under the constitution, was adopted by the legislature of 1854, and having been agreed to by the next legislature, and afterwards sanctioned by the people, it has become the supreme law of the land. In Maine, by the seventh article of the amendments to the constitution, the plurality principle has been introduced into the election of representatives.

England States, on the contrary, the principle of plurality generally prevails in reference to all municipal elections; being specially provided by the constitution or laws or usages of the several States. Whether, in the absence of any particular provision, the plurality or the majority principle would be recognized as the law, must depend, of course, upon the usage in each particular State.

130. It is not unreasonable to suppose, that the diversity, which thus exists in the mode of determining the result of an election, may be the source of corresponding diversities in the political character and history of the different States. But this is a topic, which it would be foreign to our present purpose to consider. It would be interesting doubtless to know what was the origin of this difference, whether it was accidental or intentional, — if the latter, was it the purpose in view, in the establishment of the majority principle, in some States, to secure greater permanence and stability in the administration of the government, — or was the plurality principle maintained in others, for the purpose of preventing or destroying the influence of third and other minor parties, — or whatever were the purposes in view, have those purposes been effected? These are questions, which do not probably admit of a satisfactory answer. The most that can now be done is to indulge in a conjecture, perhaps an ill founded one, that the origin and introduction of the majority principle are to be attributed to the proceedings under the colonial ordinances of Massachusetts, in the elections of the magistrates of the colony.[1]

131. In connection with this subject, it may be observed, that where there are but two sides to a question, — as for example, where a proposition is made in a deliberative assembly, and the members vote for or against it, — or where a particular person is nominated for office, and the electors vote for or against him, — or where an election of one out of two given persons is to be made, — in all these cases, the majority and plurality are one and the same thing.

[1] Appendix, IV.

CHAPTER FIFTH.

OF THE RETURN OF THE PERSONS ELECTED.

132. The election of members of parliament takes place, as already remarked, in pursuance of writs issued by the lord chancellor, in obedience to a royal proclamation.[1] Like other writs, which require the doing of something by those to whom they are directed, a writ of election is to be executed, and, with the proceedings of the officer indorsed thereon, to be returned[2] into chancery, and there placed in the custody of the clerk of the crown, on or before a certain day named in the writ, called the return day.

133. When an election is effected, a certificate thereof is made, by indentures under the seals of the electors, or some of them, of the one part, and of the returning officer of the other; one part of which is attached to the precept, in the case of borough elections, or to the writ in the case of a county election, and is denominated the return.[3] All the indentures of return are attached by the sheriff, to the writ of election, and with it returned by him into chancery.[4]

134. A writ of election, being returnable on a day named in it, must be returned accordingly, whether an election has taken place or not. Hence, returning officers sometimes make a special return, stating all the facts, where no election has been made; or a double return (as it is called) where they are unable to determine which of two, or of two sets of candidates, has been elected. It must be recollected, that, in England, members of parliament are elected by pluralities; and, consequently, that where the proceedings are regular and proper, there is but one case, in which there can be a failure to elect, namely, when two or more of the persons voted for have the same number of votes.

135. In this country, the election of the members and the convening of a legislative assembly being regulated by the constitution and laws, the proper officers proceed to the election, in the several constituencies, at the time appointed by law, of their own authority, and without any writ or precept from a higher power. With us, therefore, there being no writ or precept in ordinary cases, return-

[1] Ante, § 85.
[2] Appendix, V.
[3] Appendix, V.
[4] Rogers on Elections, 40.

ing officers do not usually make any return, unless, in their judgment, an election has taken place; though in some instances they have considered it their duty to make special statements, in place of returns, or to accompany their returns with such statements, — and for the same reason, double returns are rarely made, except under very peculiar circumstances, or where there are rival sets of returning officers. When a vacancy occurs in a legislative body, by death, resignation, or otherwise, an order is passed, or a precept issued, for filling the vacancy.

136. The purpose of a return is to authenticate the election in such a manner, as to enable the persons elected to take upon themselves their official functions. In this country, the object is effected by means of certificates of the election (also called returns) under the hands of the returning officers, either given to the persons elected, or sent to some appropriate department of the government.[1] The manner in which an election is evidenced varies so much in the several States, that it can only be laid down generally, that every election is judged of, in the first instance, by the officers appointed by law to preside thereat and receive the votes, or by other officers appointed by law to receive the returns of votes, and that the result of the adjudication is certified in writing.

137. A principle of the parliamentary law of England, which does not prevail here, may very properly be mentioned in connection with the subject of the return. The principle alluded to is, that all persons, free from disqualification, are eligible to the house of commons, even against their own consent, and contrary to their desire; and that after their election, they cannot renounce their return, but must serve in the trust conferred upon them, which is said to be a trust not for their own but for the public benefit.[2] But though it is not in the power of one elected to renounce his election, in direct terms, and thus prevent himself from being returned; certain expedients have nevertheless been resorted to for effecting the same object, which will be explained under the head of vacancies. In this country the rule established by usage is undoubtedly the reverse of the principle thus stated; no man here being considered as obliged to serve, against his own consent, in any office, unless specially required thereto by law. Hence, it is competent for one elected to a

[1] Where several persons are elected by the same constituency, it seems immaterial whether they are returned by one certificate, or by several

[2] *Gloucester*, Glanville, 99, 101; Male on Elections, 64; Fourth Institute, 49; *Sir Humphrey Hook's Case*, Comm. Jour. VIII. 250, 644; 1 Douglass, 281.

legislative assembly, to decline the office[1] conferred upon him; in which case, no return can be made, and a new election must be held in the manner required by law.

138. "With respect to the general duty of returning officers," an English writer on the law of elections remarks, "the law exacts of every person who is placed in this situation, that his conduct shall be upright, consistent, and impartial; and that he shall in all respects act to the best of his knowledge and capacity; from which line, wherever he shall deviate, by lending himself to the views of particular candidates, or by making the color and authority of his office subservient to private ends and purposes, the so doing will be highly criminal, and, if brought before the house, he will not fail to incur both censure and punishment."[2] Misconduct or neglect of duty, on the part of returning officers, may be considered as affecting the electors, the elected, the election, or the public generally.

139. In regard to the electors, we have already seen, that returning officers are liable in damages, for wilfully and maliciously refusing to receive the vote of a duly qualified elector.[3] In regard to the persons elected, the general rule is, that returning officers are not liable at common law, for refusing or neglecting to make a return, or for making a false or double return, in derogation of the right of a person duly elected. But in all these cases, by statute, in England, returning officers are made liable to penalties or damages. How far an election may be affected by the misconduct, want of qualification, or particular proceedings, of returning officers, we shall have occasion to consider under the head of controverted elections. In regard to the public, generally, the misconduct of returning officers has always been considered a public offence, within the criminal jurisdiction of the house of commons, and punishable by censure and imprisonment. In certain cases, also, they are made liable by statute to punishment by indictment. In this country, returning officers are punishable, by indictment, in several of the States, for various kinds of misconduct. How far they are, or would be considered, amenable to the criminal jurisdiction of the legislative assemblies, may be regarded as doubtful.

140. As to the general duty of returning officers, it has been a point much agitated in England, whether it is wholly ministerial, or whether it is in any degree judicial. In reference to this question, the writer already referred to remarks: — "There can be no doubt,

[1] *Bedford*, Cushing, S. & J., 351; *Hammond* v. *Herrick*, Clarke & Hall, 287.

[2] Male, 31.

[3] Ante, § 90.

that in those branches of their duty, wherein the law has marked out a definite line, it is ministerial; but as regarding the two material branches, of deciding upon the capacity or incapacity of candidates, or upon the qualifications or disqualifications of electors, the subject requires some investigation. But, if the returning officer be fully apprised of some notorious disqualification, whether of a candidate or of an elector, such as their being minors, or claiming in right of property, which clearly does not entitle them to the privilege, he is so far a judicial officer, as to prevent their voting, or being returned, and in case he returned the one as elected, or accepted the vote of the other, he would in such a case be highly culpable, and be punished by the house; but, on the other hand, he acts at his peril, and if he presume to refuse a vote without good and sufficient reasons, he will subject himself to an action at law, by the party aggrieved; but the plaintiff must show malice to support the action." In the judicial decisions of this country, — where this point is adverted to, — it seems to be considered, that the functions of the returning officers are chiefly judicial in their character. There are many particulars, however, in which their duties involve no exercise of discretion or judgment, — as, for example, in the State of Massachusetts, in receiving the unquestioned vote of an elector, whose name is on the list of voters, — and which are consequently merely ministerial.

141. It remains to be observed, in conclusion, that the proceedings of these officers, from the necessity of the case, are, in the first instance, uncontrollable by any other authority whatever; so that, if, on the one hand, notwithstanding an election has been effected, the returning officers refuse or neglect to make the proper return, the party thereby injured is without remedy or redress,[1] until the assembly to which he is chosen has examined his case, and adjudged him to be duly elected; and, on the other hand, if the returning officers make a return, when no election has in fact taken place, or of one who is not eligible,[2] the person returned will not only be entitled, but it is his duty, to assume and discharge the functions of a member, until his return and election are adjudged void.[3]

[1] No action lies at common law as to false or double returns. *Barnardiston* v. *Soame*, Levinz's Reports, II. 114; Lutwyche's Reports, I. 89; State Trials, VII. 431; *Onslow* v. *Rapley*, Ventris's Reports, II. 37; *Prideaux* v. *Morris*, Salkeld's Reports, 502.

[2] *Monmouth*, Glanville, 121.

[3] *Pontefract*, Glanville, 136.

CHAPTER SIXTH.

OF CONTROVERTED RETURNS AND ELECTIONS.

142. Though, as we have just seen, persons returned are presumed to be duly elected, at least, so far as to entitle them to assume the functions of members; yet the decisions of the returning officers are not conclusive; their proceedings may be revised, and their judgments corrected; and the members returned by them may be excluded and others admitted, upon due investigation by the competent authority.[1]

143. It will be perceived from what has been stated with regard to the determination and authenticating of elections, that one person may be in fact elected, whilst another is apparently elected, in which case, the latter is entitled to be returned, though the former is entitled to the seat; as, for example, where two candidates only are voted for, and by the decision of the returning officers, admitting illegal or rejecting legal votes, one of the candidates has an apparent majority, the latter is entitled to the return, but the other is clearly entitled to the seat.

144. This distinction, between elections and returns, has led in England, to their being in some instances separately considered, in the same case; so that where it appears, without going into the merits of an election, that the petitioner against a sitting member was apparently elected and ought to have been returned, the house of commons will reverse the position of the parties, by excluding the sitting member, and putting the petitioner in his place, as duly returned; leaving the election open to be controverted, and throwing the burden of doing so upon the party to whom it properly belongs.[2] The establishment of this principle in the English law of elections, though the distinction exists and is entirely well founded in those cases in which returning officers are obliged to grant or withhold the returns upon the *prima facie* evidence before them, and can have no means at hand of judging of the merits of an election, is, in part, at least, attributable to the very great expense attending the trial of a controverted election case in England; but in this country, — although the same distinction undoubtedly exists,

[1] *Southwark*, Glanville, 21.

[2] Rogers on Election Committees, 70, 71.

and it has frequently been attempted to be here introduced, — yet the practice of considering and deciding upon the return, distinct from the election, does not appear to have been anywhere introduced.[1] The question in every case relates to the right of membership, generally, without reference to the position of the parties.

145. Where a person, being duly elected, is not returned; or where one is returned, not being elected; or where one person is elected, and another returned; or when one is duly elected and returned, but is or becomes disqualified; in all these cases, the right of membership, whether depending upon the return or the election, or founded in circumstances afterwards transpiring, may be called in question, investigated, and adjudged. Questions of this description, though, in the order of time, not naturally arising in some cases until after the constitution of the assembly, yet involving the law relating to elections, may very properly be considered in connection with the latter subject. It is proposed, therefore, to state very briefly some of the principal points in the law and practice relating to controverted elections and returns, under the following heads, namely; first, Of the tribunal for the trial of rights of membership, and of the time and manner of proceeding therein; second, Of returns controverted or questioned; third, Of elections of, and votes given for, disqualified persons; fourth, Of elections, as affected by proceedings injurious to the freedom of election; fifth, Of elections as affected by the qualifications and conduct of the returning officers.[2]

SECTION I. — OF THE TRIBUNAL AND MODE OF PROCEEDING.

146. The present constitution of the house of commons is, to a considerable extent, the result of a series of struggles between it, on the one hand, and the sovereign, or the lords, or both, on the other. One of the earliest of these conflicts, and one of the most interesting, is that which terminated in the establishment of the right of the commons, to be the exclusive judges of the returns, elections, and qualifications, of their own members. This right, after having been claimed and exercised, at one time, by the king and council, at another, by the house of lords, and, again, by the

[1] *Easton* v. *Scott*, Clarke & Hall, 272, 278; *Biddle & another* v. *Wing*, Same, 504. See also *Potter* v. *Robbins*, Same, 877.

[2] This classification and arrangement of the subject, though not such as would be adopted in a complete and scientific treatise, on the law of elections, will be found adequate to the purposes of the present work.

lord chancellor, was declared by a resolution of the commons, in 1624, and has ever since been admitted to belong exclusively to the house itself, as "its ancient, natural, and undoubted privilege."[1]

147. This power is so essential to the free election and independent existence of a legislative assembly, that it may be regarded as a necessary incident to every body of that description, which emanates directly from the people; it is also, out of abundant caution, conferred upon or guarantied to most of the legislative assemblies of the United States, by express constitutional provisions.[2]

148. An inquiry into the right of a member to his seat may be brought forward, in the first instance, either by the motion of a member, or by the petition of a party interested; or it may arise from an examination of the returns.

149. It is undoubtedly competent to a legislative assembly to institute inquiries relative to the rights of its members, of its own mere motion, and without the intervention of any complaint on the part of the electors or of one claiming a seat; for, otherwise, the freedom of election might be as much injured, by a compromise between contending parties, or by a subsequent buying up of dissatisfied electors, as by direct bribery at the election. Any member, therefore, may bring forward an inquiry into the right of any other member, to his seat, by a motion, predicated upon facts which are notorious to the assembly, or upon statements or inquiries made by the mover himself.[3] Sometimes, also, an inquiry is instituted at the request of the member himself, whose right is implicated, either upon a statement or motion made by him, or upon his suggestion, or by a letter addressed by him to the presiding officer.[4]

150. A much more common mode of instituting the inquiry, especially where it relates to the election or return rather than to

[1] Glanville, lxxxiii. 60.

[2] Notwithstanding power is expressly given by the constitution of the United States to each of the two houses of congress to judge of the elections, returns, and qualifications of its own members, an attempt was early made to restrict the right to judge of the returns, in such a manner, as to confine it to the inquiry whether they conformed to the rules prescribed by the State from which they emanated. But the attempt did not succeed; and the power of each house of congress, in reference to these subjects, is now properly considered to be as full and perfect, as that of either branch of any State legislature. See *Spaulding* v. *Mead*, Clarke & Hall, 157, 161.

[3] Glanville, 119; *Hopkinton*, Cushing, S. & J., 6; *Dunstable*, Same, 19; *York*, Same, 30; *Case of David Bard*, Clarke & Hall, 116; *Case of John P. Van Ness*, Same, 122; *Williams* v. *Bowers*, Same, 263; see also, the case of *John Horne Tooke*, in the Parl. Reg. LIX. 305, 320.

[4] *Case of Asahiel Stearns*, Cushing, S. & J., 217.

any subsequent disqualification of a member, — is by means of a petition, (sometimes, but improperly, denominated a remonstrance) of some party interested, either as an elector, or as claiming the seat in question. Where this mode is adopted, the investigation assumes the character of an adversary proceeding before a judicial tribunal. The petition should state the facts relied upon with such certainty as to give the sitting member reasonable notice of the grounds upon which his right is controverted; — to enable the assembly to judge whether the facts alleged are verified by the proof; — and, if proved, to determine whether they are sufficient to require the election to be set aside; and the petitioner ought not in general to be permitted, without the consent of the other party, to give evidence of any fact not substantially set forth in his petition.

151. An inquiry is sometimes suggested into the right of a member to his seat by an inspection of the returns. In England, the returns are not made to the house itself, but to the clerk of the crown in chancery, in whose custody they remain, and by whom they are brought into the house, whenever required. In this country it is supposed to be the general practice, for the returns to be made to the assembly itself, in the first instance, or if made to any other authority, to be ultimately laid before the assembly for its inspection. If any of them are found to be defective in point of form, the members thereby returned may be required to procure them to be amended; or if they contain any statement or suggestion of facts, tending to invalidate the election, an inquiry may thereupon be instituted into the merits of the case.[1]

152. The validity of a return or election, unless there is some special order of the assembly, or some provision of law, to the contrary, may be examined at any time during the period for which the election purports to have been made; for an election or return, which is not good at first, cannot be made so by any lapse of time; *ut nullum tempus occurrit regi, ita nec reipublicæ;*[2] but, unless the subject is brought forward seasonably, that is, so as to admit of its being investigated fully and fairly, it is not usual for an investigation to take place.[3] In the house of commons, at the commencement of each session, it is ordered, that all persons, who will

[1] *Truro*, Cushing, S. & J., 5; *Lanesborough* and *New Ashford*, Same, 125; *Case of Moses F. Fearing*, Same, 231; *Attleborough*, Same, 254.

[2] *Haverford West*, Glanville, 113.

[3] *Sutton*, Cushing, S. & J., 80.

question any return of members to serve in parliament, do question the same within fourteen days next after the order, and so within fourteen days next after any new return shall be brought in. This order, although merely sessional, that is, renewed every session, yet being invariably adopted, is quite equivalent to a statute; and operates practically to limit the time for the commencement of all proceedings for questioning a member's right to his seat.[1]

153. From the time when the commons established their right to be the exclusive judges of the elections, returns, and qualifications of their own members, until the year 1770, two modes of proceeding prevailed, in the determination of controverted elections, and rights of membership. One of the standing committees appointed at the commencement of each session, was denominated the committee of privileges and elections, whose function was to hear and investigate all questions of this description which might be referred to them, and to report their proceedings, with their opinion thereupon, to the house, from time to time. When an election petition was referred to this committee, they heard the parties and their witnesses and other evidence, and made a report of all the evidence, together with their opinion thereupon, in the form of resolutions, which were considered and agreed or disagreed to by the house. The other mode of proceeding was by a hearing at the bar of the house itself. When this course was adopted, the case was heard and decided by the house, in substantially the same manner as by a committee. The committee of privileges and elections although a select committee was usually what is called an open one; that is to say, in order to constitute the committee, a quorum of the members named was required to be present, but all the members of the house were at liberty to attend the committee and vote if they pleased.

154. With the growth of political parties in parliament questions relating to the right of membership gradually assumed a political character; so that for many years previous to the year 1770, controverted elections had been tried and determined by the house of commons, as mere party questions, upon which the strength of contending factions might be tested. Thus, for example, in 1741, Sir Robert Walpole, after repeated attacks upon his government, resigned his office in consequence of an adverse vote upon the Chippenham election. Mr. Hatsell remarks, of the trial of election cases, as conducted under this system, that

[1] In the legislative assemblies of this country, no such restriction exists, it is believed.

"Every principle of decency and justice were notoriously and openly prostituted, from whence the younger part of the house were insensibly, but too successfully, induced to adopt the same licentious conduct in more serious matters, and in questions of higher importance to the public welfare." Mr. George Grenville, a distinguished member of the house of commons, undertook to propose a remedy for the evil, and, on the 7th of March, 1770, obtained the unanimous leave of the house to bring in a bill, "to regulate the trial of controverted elections, or returns of members to serve in parliament." In his speech to explain his plan, on the motion for leave, Mr. Grenville alluded to the existing practice in the following terms: "Instead of trusting to the merits of their respective causes, 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 favor 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."

155. It was to put an end to the practices thus described, that Mr. Grenville brought in a bill which met with the approbation of both houses, and received the royal assent on the 12th of April, 1770. This was the celebrated law since known by the name of the Grenville act; of which Mr. Hatsell declares, that it "was one of the noblest works, for the honor of the house of commons, and the security of the constitution, that was ever devised by any minister or statesman." It is probable, that the magnitude of the evil, or the apparent success of the remedy, may have led many of the contemporaries of the measure to the formation of a judgment, which was not acquiesced in by some of the leading statesmen of the day, and has not been entirely confirmed by subsequent experience. The bill was objected to by Lord North, Mr. De Grey, afterwards chief justice of the common pleas, Mr. Ellis, Mr. Dyson, who had been clerk of the house, and Mr. Charles James Fox, chiefly on the ground, that the introduction of the new system was an essential alteration of the constitution of parliament, and a total abrogation of one of the most important rights and jurisdictions of the house of commons.

156. The leading features of the system, which was thus introduced, and which has continued ever since, with certain modifications which will be presently alluded to, are two; first, the establishment of tribunals, with exclusive and final jurisdiction to decide upon all questions relating to the right of membership, independently of the house; and, second, the selection of the members of these tribunals by lot. It is true, that the tribunals thus authorized were composed of members of the house and were subject individually to its authority, but they were sworn to proceed according to the laws of the land, and their determinations were not subject to the revision of the house. The following is an outline of the original system of the Grenville act. A petition being presented, calling in question the right of a member to his seat, and a time assigned for its consideration, the house proceeded, on that day, to select a committee for the trial, by lot. For this purpose, a quorum of one hundred members was requisite. If that number was present, the names of all who were not entitled to be excused, from their age or other cause, were put into an urn, and forty-nine of them drawn out, one by one, and announced to the speaker by the clerk of the house. The parties interested, having been previously notified to be in attendance, were then called in, and furnished with lists of the forty-nine names so drawn. They were then allowed to strike off, alternately, and one by one, the names of such as they thought proper to exclude, until the number on the list was reduced to thirteen. Each of the parties was then allowed to name a member to be added, who were called the nominees of the respective parties. The fifteen members, thus selected, constituted a committee for the trial of the case in question. A distinct committee was selected for each case. When the committee had been appointed, they were sworn by the clerk of the house to the faithful performance of their duty, and then proceeded with the trial of the case for which they were selected. The committee was authorized to compel the attendance of witnesses, and to examine them under oath. They were attended by a clerk and short-hand writer appointed by the clerk of the house. They elected their own chairman, who, voting in the first instance with the other members, was entitled to a second or casting vote, if the votes were equal.

157. The system of Mr. Grenville underwent various modifications, from time to time, without any material departure from the principles on which it was founded. By the 9 Geo. 4, c. 22, thirty-three names only were balloted for, from which each of the parties was entitled to strike off eleven, thus reducing the number of the

committee to eleven. At length it began to be perceived, that the operation of the system was not so effectual, as its framers had supposed, in securing an impartial tribunal; the party, whose friends in the house attended on the day appointed for a ballot, in the greatest force, was likely to have a preponderance in the committee; and thus it was found that the expedient of chance did not operate as a sufficient check to party spirit in the appointment of election committees. Partiality and incompetence were very generally complained of, in the committees; and, in 1839, an act passed, (2 & 3 Victoria, c. 38, called Sir Robert Peel's Act,) establishing a new system, upon somewhat different principles, so far as regards the appointment of the committee, which increases the responsibility of individual members, and leaves but little to the operation of chance.

158. According to the new system, the speaker, at the beginning of every session, nominates six members as the "general committee of elections," whose names are submitted to the house; if not disapproved of, within the three next sitting days, the members so named become the committee; if any or all of them are objected to by the house, the speaker makes a new appointment in the same manner, within three days. The disapproval may be general, in respect to the constitution of the whole committee, or specially relating to particular members named; and the speaker, in his new appointment, may name again or not, as he pleases, those members who have not been specially disapproved. All election petitions are referred to this committee, whose duty it is to choose a committee for the trial of each, in the manner prescribed in the act.

159. Before the general committee proceed to choose a committee for the trial of any petition, an alphabetical list of all the members liable to serve is prepared, under the supervision of the house, and referred to the committee. The first duty of the committee is to select from this list six, eight, ten, or twelve members to serve as chairmen of election committees, who are called the "chairman's panel," and whose names are reported to the house. When the general committee have selected the chairmen's panel, they divide all the members remaining upon the list, into five panels, in whatever manner they please, provided that each panel contains, 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. The panels are then returned to the general committee,

and the committees for trial are chosen from each, in succession, according to its number.

160. When an election petition has been referred to the general committee, the latter gives previous notice to the parties of the time and place at which the committee will be chosen; and, at the time appointed, proceeds to choose six members from the panel standing next in the order of service. The parties in attendance are then called in, and the names of the committee are read over to them. The members or any of them may be objected to by the parties, and, if the objection is sustained, a new appointment is made from the same panel. When six members have been chosen against whom no objection is sustained, they are notified of their appointment, by the clerk of the general committee. Any member thus chosen may attend, if he pleases, before the general committee, and be excused from service, or discharged on the ground of disqualification, if he can prove his excuse or disqualification, to the satisfaction of the committee. If a member is discharged or excused, a new appointment takes place, in the same manner as before.

161. When the six members are finally chosen, the chairman's panel select one of their own body as the chairman, and notify the general committee of elections of his appointment. The general committee add this name to the other six, and communicate it to the parties, who may object to the chairman as well as to the other members of the committee. At the next meeting of the house, the seven members are required to attend in their places, and the general committee report their names to the house. The members are sworn at the table by the clerk, "well and truly to try the matter of the petition referred to them, and a true judgment to give, according to the evidence." The time for the meeting is then fixed, and the committee being duly constituted and organized is ready to proceed.

162. The mode of proceeding in the committee, and the incidental powers conferred upon it, do not require to be stated in this place; they are substantially the same as in other committees, with the exception, that election committees are authorized by law to administer oaths to witnesses, and will be more appropriately considered in connection with the general subject. When a case is concluded, and the committee has had due deliberation upon the merits of it, it is required to decide distinctly: — first, whether the petitioner, or the sitting member, or either of them, is duly returned, or elected; or second, whether the election is void; or,

third, whether a new writ ought to issue. The determination of the committee upon these points is final between the parties; and the house, on being informed of it, carries it into execution.

163. It will be perceived from the foregoing account of the constitution of election committees, as now regulated by law, that the system of the Grenville act has undergone no other substantial change than in the mode of appointing the committee. Whether the present mode will be effectual to secure a competent and at the same time impartial tribunal remains to be determined by experience. A committee, selected by competent persons, acting under a sense of public duty, will be more likely to possess the requisite ability, than one selected by lot; and so far, doubtless, the present is an improvement upon the old system. Impartiality in the committee can only be secured by the appointment of members, who, though they belong to one or another of the political parties, shall yet be entirely independent of party in the performance of a judicial duty; and herein it is perhaps equally true, that the most proper persons in the assembly are more likely to be selected by a competent committee, than by lot.[1]

164. In the constitution of the United States, and in the greater number of the State constitutions, it is merely provided, that "each house shall be the judge of the elections, returns, and qualifications of its own members." In that of Massachusetts, there is a clause, that each house "may try and determine all cases where their rights and privileges are concerned, and which, by the constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best." In the constitution of Pennsylvania, it is provided, that "contested elections shall be determined by a committee, to be selected, formed, and regulated, in such manner as shall be directed by law." The constitutions of Kentucky, Ohio, Lou-

[1] This subject has occupied more attention, than perhaps was necessary for the purpose immediately in view; partly on account of its great importance; but, chiefly, for the reason, that, it seemed necessary to explain fully the constitution of those tribunals, whose decisions form a distinct branch of English jurisprudence. Prior to the passing of the Grenville act, one small collection only of cases of election law had been made, that of Mr. Sergeant Glanville, who was chairman of the committee of privileges and elections in the 21st and 22d years of James I. This admirable work was first published in 1775, from the author's manuscript, with a historical introduction, giving an account of the ancient right of determining cases of controverted elections. Since the new system went into operation, the cases have been reported and published in several different collections, forming together quite a body of what may be called election jurisprudence. Two volumes only have hitherto been published in this country, one of cases in the congress of the United States, and the other of cases in the legislature of Massachusetts.

isiana, Florida, Mississippi, Alabama, Iowa, and Texas, after declaring, that "each house shall be the judge of the qualifications, elections, and returns of its members," add, "but a contested election shall be determined in such manner as shall be directed by law." In Missouri, the constitution declares that "the general assembly shall have power to pass laws regulating proceedings in cases of contested elections of senators and representatives." These different constitutional provisions have led to the introduction of corresponding proceedings in the trial of controverted elections. In Pennsylvania, a system appears to have been established, substantially the same with that of the Grenville act. In some, if not in all of the States last mentioned, the trial of controverted elections is more or less regulated by law; without however, the establishment of any new tribunal. In Massachusetts, the authority given to the two houses to try controverted elections by committees of their own members, or in such other way, as they may respectively think best, has never been exercised.

165. In all the legislative assemblies of the United States, therefore, except those in which the subject is particularly regulated by law, questions relating to the rights of membership are consequently to be investigated and determined in the ordinary course of proceeding. Two methods only appear to be in use, namely: first, a trial at the bar of the assembly, in which the case is investigated directly and decided upon by the assembly itself; and, second, a preliminary investigation by a committee, and a final determination by the assembly, on their report.[1] These modes of proceeding will be explained hereafter. When the latter mode is pursued, it is the duty of the committee to report the state and particulars of the proof, as well as their conclusion thereupon; the house not being concluded by the opinion of the committee in matter of fact, any more than in matter of law.[2]

166. It was for a long time the practice of the house of commons, on the decision of a controverted election or return, to require the attendance of the clerk of the crown in chancery with the return in question, and, also of the returning officers by whom it was made, and to direct the latter to amend the return agreeably to the decision of the house, or to take off the original return from the file, and substitute a new one. At the present day, the attendance of the returning officers is dispensed with, and the amendment or

[1] *Ramsay* v. *Smith*, Clarke & Hall, 23; *Moore* v. *Lewis*, Same, 128; *Cambridge*, Cushing, S. & J., 3; *Vassalborough*, Same, 4; *Woburn*, Same, 7.

[2] *Norfolk*, Glanville, 4 a.

substitution is made by the clerk of the crown. In our legislative assemblies, it is believed, the order or decision of the house is of itself generally regarded as sufficient, without any actual alteration or amendment of the return.

SECTION II. — OF RIGHTS OF MEMBERSHIP, AS AFFECTED BY THE FORM OR SUBSTANCE OF THE RETURN.

167. It has already been stated, that the right of a member to his seat may depend upon, or be involved in, the return, either in form or in substance, without regard to the election. Cases of this description are now to be considered.

168. If a return is good in substance, it is not to be impeached or set aside for want of form, or for surplusage in matter; as, for example, where there are two opposing sets of returning officers in a constituency entitled to two members, and each set makes a return of two members, one of whom is the same in both returns, the person so returned is duly returned.[1]

169. But, if a return is absolutely and irreconcilably repugnant, it is utterly void; as, if three members are returned from a constituency entitled to only two, and all of them are inserted in one return, or each of them in a separate return, or two of them in one, and the third in another, without any thing in either case to show the order or succession in which they were chosen; then, although the election of one or more of them may be good, yet, for want of a certain and sufficient return, whereby the person or persons duly elected may be designated, the house cannot take any notice thereof.[2]

170. Where returning officers make a mistake in the name of the person elected, and, in consequence thereof, return one who was not chosen, the mistake may be corrected, either upon the petition of the person really elected, or on motion merely,[3] or, it is presumed, upon the representation of the returning officers. Thus where *John* Maynard was elected, but, by mistake, *Charles* Maynard was returned, the return was amended upon the petition of the former, who was thereupon admitted to his seat.[4]

171. Where the returning officers, by mistake, consider votes which are really given for one person as given for two or more, as,

[1] *Southwark*, Glanville, 9.
[2] *Southwark*, Glanville, 9, a; *Pontefract*, Same, 230.
[3] Chambers's Dictionary, Christian Names.
[4] *Chippenham*, Glanville, 47, 59.

for example, where they regard votes given for A. B. and for A. B., Junior, as given for two persons;[1] or, where, in copying the lists of votes to be transmitted by the receiving officers to the returning officers, a mistake is made in the name of any of the persons voted for, so that a part of the votes given for one appear to be given for another person, thereby apparently defeating the election of the former;[2] and, in consequence of such mistakes, in either case, a person is returned who was not in fact elected, the return will be set aside, and the person really elected admitted as a member.

172. Where a return is obtained, by means of some fraud or trick, practised by or with the consent of the returning officers;[3] or where they are intimidated by riots and disturbance from making a return of the person duly elected, and are compelled to return another;[4] or where they are corrupted by bribery to make a false return;[5] in all these cases, the return will be set aside, and the person duly elected admitted to a seat.[6]

173. Where a constituency consists of several municipal corporations, the votes of which are required by law to be transmitted to the returning officers, on or before a certain time fixed, a valid return may be made upon the votes received at that time; but, upon proof that other votes were received at the election, and not duly transmitted to the returning officer, sufficient to change the election, the return will be set aside, and the person really elected admitted to the seat.[7]

174. As it is the duty of returning officers, in the first instance, to decide upon the result of an election, and, if, in their judgment, an election has taken place, to make a return of the persons elected; where they undertake to relieve themselves from this responsibility, by making a conditional return, that is, by stating certain facts, and referring the question of their legal operation to the judgment of the body to which the return is made, the return will be received as an unconditional one; and the only effect, if any, of the special statement of facts will be to give rise to an investigation of the merits of the election.[8]

[1] *Turner* v. *Baylies*, Clarke & Hall, 234; *Williams* v. *Bowers*, Same, 263. *Willoughby* v. *Smith*, Same, 265; *Guyon* v. *Sage*, Same, 348; *Hugunin* v. *Ten Eyck*, Same, 501; *Wright* v. *Fisher*, Same, 518; *Lynn*, Cushing, S. & J., 236.

[2] *Root* v. *Adams*, Clarke & Hall, 291; *Mallary* v. *Merrill*, Same, 330, 331; *Colden* v. *Sharpe*, Same, 369.

[3] Male on Elections, 338; Fourth Institute, 49; Glanville, 19.

[4] *Morpeth*, Douglass, I. 147.

[5] Rogers on Elections, 246; Fourth Institute, 23; D'Ewes, 183.

[6] As to riots and bribery, see the section on controverted elections.

[7] *Spaulding* v. *Mead*, Clarke & Hall, 157; *Mallary* v. *Merrill*, Same, 334.

[8] Rogers on Elections, 41; *Beeralston*, Comm. Jour. I. 14; *Attleborough*, Cushing, S. & J., 254.

SECTION III. OF ELECTIONS OF, AND VOTES GIVEN FOR, DISQUALIFIED PERSONS.

175. If an election is made of a person, who is ineligible, that is, incapable of being elected, the election of such person is absolutely void; even though he is voted for at the same time with others, who are eligible, and who are accordingly elected;[1] and this is equally true, whether the disability is known to the electors or not; whether a majority of all the votes, or a plurality only, is necessary to the election; and whether the votes are given orally or by ballot.

176. The principle above applies equally, where the constitution or law points out, among other eligible persons, the particular candidates to be voted for; in which case, votes given for other persons are void. Thus, the constitutions of Maine and Massachusetts providing, that in case of a failure to elect senators, at the general election, the deficiency shall be supplied on the day of the meeting of the legislature, by such senators as shall be elected, and the members of the other branch, from among the persons voted for and not elected as senators, all votes given on such occasions, for any other than the candidates designated by law, though otherwise eligible, are thrown away.

177. In England, where a plurality only is necessary to an election, and where the votes are given orally, it is also held that if the electors have notice of the disqualification of a candidate, every vote given for him afterwards, will be thrown away, and considered as not having been given at all.[2] The effect of this rule is, that not only will the election of a disqualified person be held void; but if such election takes place after notice of the disqualification is given to the electors, the candidate having the next highest number of votes will be elected.[3] This doctrine, however

[1] Male on Elections, 336.

[2] *King* v. *Monday*, Cowper's Reports, 537; *Rex* v. *Hawkins*, East's Reports, X. 211, and cases there cited; Dow's Reports, II. 124; *Claridge* v. *Evelyn*, Barnewall and Alderson's Reports, V. 81; *Rex* v. *Coe*, Heywood on County Elections, 538; Douglass's Reports, 398, n.; *Rex* v. *Blissell*, Heywood, 537; *Rex* v. *Parry*, East, XIV. 549; *Rex* v. *Bridge*, Maule & Selwyne's Reports, I. 76.

[3] *Fife*, Luders, I. 455; *Cockermouth*, Comm. Jour. XVIII. 672; *Flintshire*, Peckwell, I. 526; *Southwark* (2d), Clifford, 130; *Canterbury* (2d), Clifford, 353; *Kircudbright*, Luders, I. 72; *Radnorshire*, Peckwell, I. 496; *Leominster*, Corbet & Daniel, 1; *Leominster*, Rogers, app. ix.; *Cork County*, Knapp & Ombler, 406; *Belfast*, Falconer & Fitzherbert, 603; Rogers on Elections, 224. See also Male on Elections, 336, and *Abingdon*, Douglass, I. 419.

hard it may seem, is founded in the familiar principle, that every man is bound to know the law with reference to any act which he undertakes to do; and, consequently, that when an elector is apprised of the fact of disqualification of a candidate, and notwithstanding gives his vote for him, the elector takes upon himself the risk of losing his vote, if his construction of the law turns out to be wrong.[1]

178. In this country, it is equally true, that the election of a disqualified person is absolutely void; and, in those States where a plurality elects, and where the votes are given orally, as in England, votes given for a candidate after notice of his disqualification are thrown away, and the candidate having the next highest number of votes is elected.

179. In reference to elections by ballot, in which secrecy is the distinguishing feature, and, in which, consequently, neither the returning officers, nor the electors themselves, are supposed to know for whom the votes are given, until the result is declared; it seems not unreasonable, to consider the votes for ineligible candidates to be thrown away, in all cases, and the opposing candidate elected, where the electors know or must be presumed to know the disability; and, in all cases where there is no such actual or presumed knowledge, to hold the whole proceeding merely void.

180. In reference to elections, in which an absolute majority is requisite to a choice, and, in which, consequently, the whole number of votes received is first to be ascertained, votes given for ineligible persons must of course be excluded from the enumeration; for the reason, that as the whole balloting would be void, and all the votes excluded, if they were all for such candidates, it would be preposterous to enumerate such votes, where they constituted a part only of the votes given in. If, in consequence of such exclusion, the result of the election would be different from what it would otherwise be, the whole proceeding must perhaps be held void or valid, according as the electors have actual or presumed knowledge of the ineligibility of the persons for whom the excluded votes are given.

SECTION IV. — OF ELECTIONS AS AFFECTED BY PROCEEDINGS INJURIOUS TO THE FREEDOM OF ELECTION.

181. The great principle, which lies at the foundation of all elective governments, and is essential indeed to the very idea of

[1] Rogers on Elections, 226.

election, is, that the electors shall be free in the giving of their suffrages. This principle was declared by the English parliament, with regard to elections in general, in a statute of Edward I.,[1] and with regard to elections of members of parliment, in the Declaration of Rights.[2] The same principle is asserted or implied in the constitutions of all the States of the Union. Freedom of election is violated by external violence, by which the electors are constrained, or by bribery, by which their will is corrupted; and, in all cases, where the electors are prevented, in either of these ways, from the free exercise of their right, the election will be void without reference to the number of votes thereby affected.

1. *Riots.*

182. Wherever the freedom of election is violated by any riot, disturbance, or tumult, at the polls, by which the proceedings are actually interrupted; although the returning officer may not thereby be prevented from completing the poll and making a return, the election will be void.[3]

183. A riot may proceed by actual force or violence, or by a display of numerical strength, accompanied with threats; and, though no actual violence takes place, yet if the conduct of the parties engaged is of such a character as to strike terror into the mind of a man of ordinary firmness, and to deter him from proceeding to the poll, the election can hardly be said to be free.[4]

184. It is necessary, also, to the existence of such a riot as will avoid an election, that it should be founded on system, or, at least, upon premeditation; for a casual affray, or an accidental disturbance, without any intention of overawing or intimidating the electors, cannot be considered as affecting the freedom of election.[5]

185. And, where the proceedings at an election are interrupted by riots, the election will be held void, without reference to the number of votes thereby affected.[6]

2. *Bribery.*

186. The freedom of election may also be violated by corrupting the will of the electors, by means of bribery, as well as by intimidating or preventing them by external violence from exercising the

[1] 3 Edward I. chap. 5. The language is: "Because elections ought to be free, the king commandeth, upon great forfeiture, that no man, by force of arms, nor by malice or menacing, shall disturb any to make free election."

[2] Douglass, II. 403.

[3] Male on Elections, 125, 337.

[4] *Norfolk Petition*, Comm. Jour. IX. 631; Heywood, 546.

[5] Rogers on Elections, 242.

[6] Rogers on Elections, 243.

right of suffrage.[1] According to the definition given by a learned writer on the law of elections:[2] — "Wherever a person is bound by law to act without any view to his own private emolument, and another, by a corrupt contract,[3] engages such person, on condition of the payment or promise of money or other lucrative consideration, to act in a manner which he shall prescribe, both parties are, by such contract, guilty of bribery."

187. In the application of this definition to cases of controverted elections, it must be made to appear, first, that the act of bribery was at least inchoate, if not complete, before the election; for a distribution of money afterwards, unless coupled with an act done or promise made before, however it may induce suspicion, will not be sufficient to raise a presumption in a court of justice;[4] and second, that the bribery was committed by the candidate himself, or by some one on his behalf, that is, employed by him; for, otherwise, it would be in the power of any officious or ill designing person to avoid an election, by means of an act of bribery committed by himself for the very purpose.[5]

188. The actual giving of money to a voter is only one form of consideration for the corrupt contract of bribery. The offence is equally committed by treating or entertainment of any kind;[6] payment of travelling or other expenses, or for loss of time;[7] or (in England) advancing money to purchase the freedom of the cor-

[1] Male on Elections, 337, 347; Douglass, II. 403; See Rogers on Elections, 245.

[2] Lord Glenbervie, in his Notes to *St. Ives*, Douglass, II. 400.

[3] Mere solicitation, on the part of an elector, unaccepted by the candidate, or a mere offer, on the part of a candidate, unaccepted by the voter, will not constitute bribery. See Rogers on Elections, 252, 253.

[4] Male on Elections, 347. See *Sudbury*, Douglass, II. 137; *Cirencester*, Peckwell, I. 466; *Dublin*, Falconer & Fitzherbert, 204; *Lord Huntingtower* v. *Gardiner*, Dowling & Ryland's Reports, II. 450; Barnewall & Cresswell's Reports, I. 297.

[5] Male on Elections, 352, e. It does not seem to be necessary, in all cases, that the persons returned should participate in the bribery, any further than by taking advantage of it; as, for example, where the whole constituency is affected by the improper influence. In the case of *Gloucester*, in Massachusetts, (Cushing, S. & J. 82,) where it appeared that certain individuals, with a view to induce the town to elect the whole number (being six) of representatives, to which it was entitled by law, of a particular party, gave a bond, for the use of the inhabitants, with a condition, that the whole expense of six members should not exceed the pay of two, and six members of the party in question were elected accordingly, the election was adjudged void, although the members elected had no agency in procuring the bond to be given.

[6] *Middlesex*, Peckwell, II. 81; *Londonderry*, Perry & Knapp, 278; Corbet & Dan. 255; *Herefordshire*, Peckwell, I. 185; *Southwark*, Clifford, 25; *Berwick*, Peckwell, I. 404; *Montgomery*, (2d,) Perry & Knapp, 464; *Mansfield*, Cushing, S. & J., 17.

[7] *Newport*, Comm. Jour. XIII. 112; *Ipswich*, Luders, I. 21; *Berwick*, Peckwell, I. 401; *Durham*, Peckwell, II. 78; *Grantham*, Comm. Jour. LXXV. 443. See *Bremridge* v. *Campbell*, Carrington & Payne's Reports, V. 186; *Baynturn* v. *Cottle*, Manning & Ryland's Reports, I. 265.

poration for a voter, or to pay for his admission or enrolment.[1] In this country, the payment of a tax assessed upon an individual, with a view to enable him to become a voter, seems equivalent to advancing money to purchase the freedom of a corporation for the same purpose, and would doubtless be considered to have the same effect. So, a wager between two voters, or between a voter and another person, on the event of an election, amounts to bribery.[2] In all these cases, in order to constitute bribery, it is, of course, necessary that the other ingredients of that offence should exist.

189. In England, before the enactment of any of the statutes on the subject, bribery was not only a high misdemeanor, at common law, punishable by indictment, or information;[3] but when practised at elections of members of parliament, was also a breach of parliamentary privilege and punishable accordingly;[4] and it is an offence of so heinous a character, and so utterly subversive of the freedom of election, that, when proved to have been practised, though in one instance only, and though a majority of unbribed voters remain, the election will be absolutely void.[5] This severity is justified on the ground, that, in a country where bribery is so common as to form the subject of investigation in a large proportion of election cases, it is absolutely essential to the preservation of the freedom of election.[6]

190. Whether the same effect would be held to follow in this country may admit of some question, or perhaps depend upon the degree of guilt attached in the several States to the offence of bribery. This offence, though much less common here than in England, is nevertheless considered as so subversive of the freedom of election, and so disgraceful to the parties concerned, that it is made an express ground of disqualification in the constitutions of several of the States. In all such States, therefore, whatever may be the case in others, there can be no doubt, that an election tainted with bribery ought to be held void, without reference to the number of votes thereby affected.

191. The effect of bribery, in working a disqualification, is differently stated in the several constitutions. By those of Indiana, and

[1] *Leicester*, Comm. Jour. XV. 136; *Baynturn* v. *Cottle*, Manning & Ryland, I. 265. But see also *Worcester*, Corbet & Daniel, 173, and *Bristol*, Douglass, I. 243.

[2] See *Allen* v. *Hearne*, Term Reports, I. 56; *Jones* v. *Randall*, Cowper's Reports, 39; *Anonymous*, Lofft, 552, and Rogers on Elections, 258, note (*a*).

[3] *Rex* v. *Pitt*, Burrow's Reports, 1838; Wm. Blackstone, I. 382.

[4] *Bletchingley*, Glanville, 41.

[5] *St. Ives*, Douglass, II. 389; *Coventry*, Peckwell, I. 97; Male on Elections, 345.

[6] Male on Elections, 345.

Tennessee, the act alone disqualifies; by those of Kentucky, Louisiana, Mississippi, Alabama, Georgia, Rhode Island, Arkansas, Texas, California, and Missouri, a conviction is also requisite; while, by the constitutions of Massachusetts and New Hampshire, a conviction is not only necessary, but it must be in a due course of law. In Tennessee, the disqualification is for six years; in the States secondly above mentioned, including Indiana, the disqualification is limited to the term of office for which the election is made; and in the remaining States it is perpetual. In all these States an offer to bribe is as much a disqualification as bribery itself. In the constitutions of New Jersey, New York, Maryland, Mississippi, Missouri, Arkansas, Texas, and California, authority is expressly given to, or required to be exercised by, the legislative power to exclude from office all persons guilty of bribery, or crimes of a similar character.

192. The right of a legislative assembly, in those States where a conviction is necessary to disqualify, to set aside an election for bribery, where the majority is not thereby affected, before a conviction at law has taken place, seems to be clear; for, in the first place, the trial of a controverted election is a judicial proceeding; second, annulling an election for bribery, in the case supposed, is analogous to expulsion, which is the peculiar and appropriate punishment for bribery, by the common law of parliament; and, third, it might otherwise happen, that, by reason of there being no judicial courts in session, at the proper time, the constitutional provision would become entirely nugatory, or partially ineffectual.

SECTION V. — OF ELECTIONS AS AFFECTED BY THE QUALIFICATIONS AND CONDUCT OF THE RETURNING OFFICERS.

193. In England, where, as will be recollected, elections take place in virtue of precepts, it sometimes happens, that persons who are not the proper returning officers get possession of a precept, by some indirect means or otherwise, and hold an election. In such cases, if an election is fairly made, the proceedings will be confirmed; but if the usurpation is wilful, though the election will not thereby be invalidated, the officers will be subject to censure and punishment by the house.[1]

194. In this country, — precepts not being ordinarily the mode of proceeding, — the rule appears to be only so far adopted, that

[1] Male on Elections, 84, 85.

persons assuming to be returning officers and acting as such are presumed to be legally elected or appointed, and to be duly qualified for the discharge of their duties, until the contrary is made to appear; in which case, their proceedings in reference to elections will be set aside. Where an election takes place, in pursuance of a precept, the English rule seems applicable.

195. It is the invariable practice, therefore, with us, to allow the authority and qualifications of returning officers to be inquired into; and, if it appears, that persons assuming to act as such are not duly elected, as, if, in Massachusetts, where the selectmen are returning officers, an election is conducted by persons who are not duly elected selectmen;[1] or, if, in Georgia, where three magistrates are required to preside at elections, an election is conducted by three persons, one of whom only is a magistrate;[2] the proceedings of the persons thus assuming to act will be void.

196. So, if returning officers, being duly elected, refuse or neglect to take the oaths required by law, to qualify them to act in that capacity, their proceedings will be void;[3] but where the law required that returning officers, before entering on the execution of the duties of their office, should take an oath faithfully to discharge the duties of the same, respecting elections and returns, and they were sworn accordingly, after issuing the warrant calling the meeting, and before proceeding to the election, the requisitions of the law were deemed to be substantially complied with.[4]

197. If returning officers act in so illegal or arbitrary a manner, as to injure the freedom of election, the whole proceedings will be void. Thus, in Massachusetts, where members of the house of representatives are chosen by the towns in town meeting, if the selectmen, who preside and are the returning officers, refuse to put proper motions, as, for instance, as to the number of representatives to be chosen, or for an adjournment; or refuse to allow the discussion of any proper question; or close the polls without giving reasonable notice beforehand; an election effected under such circumstances will be void.[5]

198. An election may be controverted, on the ground of the

[1] *Adams*, Cushing, S. & J., 13; *Harwich*, Same, 38; *Troy*, Same, 56; *Chester*, Same, 238.

[2] *Jackson* v. *Wayne*, Clarke & Hall, 47.

[3] *McFarland* v. *Purviance*, Clarke & Hall, 131; *McFarland* v. *Culpepper*, Same, 221; *Easton* v. *Scott*, Same, 272; *Draper* v. *Johnston*, Same, 703; *Eliot*, Cushing, S. & J., 166. See *Woburn*, Cushing, S. & J., 302.

[4] *Eliot*, Cushing, S. & J., 166.

[5] *Rehoboth*, Cushing, S. & J., 127; *Roxbury*, Same, 157; *Nantucket*, Same, 180; *Nantucket*, *Sharon*, Same, 195; *Boston*, Same, 221; *Charlestown*, Same, 226; *Gloucester*, Same, 207.

illegal reception or illegal rejection of votes by the returning officers; and, in such a case, if it is proved, that votes sufficient to change the majority have been illegally received, or illegally rejected, the election will be set aside, and the candidate having the majority will be admitted;[1] but neither the reception of illegal nor the rejection of legal votes will have this effect, unless the majority is thereby affected.[2]

199. When the voting is by ballot, a voter is not compellable to disclose the character of his vote, or to testify for whom he voted, on a given occasion. When it becomes necessary, therefore, on the trial of a controverted election to show for whom votes by ballot were given, and such a voter refuses to appear, or appearing refuses to disclose for whom he voted, evidence is admissible "of the general reputation of the political character of the voter, and as to the party to which he belonged at the time of the election."[3]

200. Attempts have been sometimes made by rival candidates to get rid of troublesome questions, at an election, by entering into an agreement beforehand, touching the right of certain classes of persons to vote; but, it is settled, that such an agreement cannot have the effect either to diminish or enlarge the elective franchise, as established by law.[4]

201. The duties of returning officers in conducting elections being prescribed by the statute laws of the several States, it is obviously impossible to present any thing more than the general rule, as to how far a neglect or misconception of duty on their part will affect the validity of an election; and, herein, the leading principle, sanctioned both by law and common sense, undoubtedly is this, that where the provisions of law, whatever they may be, are imperative or peremptory, any neglect of returning officers to observe them will render their proceedings void; but that where the law is merely directory, no neglect, or mistake, or even improper conduct or irregularity on their part, will be fatal, though frequently made punishable by law, if in other respects, there has been a substantial and good election.[5] Provisions of law, which are introduced only as affirmative propositions, are commonly, unless essential in their character, merely directory; but if accom-

[1] Heywood on County Elections, 500; *Western*, Cushing, S. & J., 144; *Tyringham*, Same, 266; *Charlemont*, Same, 261; *Dighton*, Same, 175; *Shrewsbury*, Same, 275; *Sheffield and Mount Washington*, Same, 46; *Case of John Clopton*, Clarke & Hall, 101.

[2] *Case of Thomas Lewis*, Clarke & Hall, 128.

[3] Cong. Globe, XVI. App. 456.

[4] Glanville, 108; *Porterfield* v. *M'Coy*, Clarke & Hall, 269; *Draper* v. *Johnston*, Same, 706.

[5] Heywood on County Elections, 511; *Colden* v. *Sharpe*, Clarke & Hall, 369.

panied also by negative words, or their equivalent, they are, of course, without regard to their character, always peremptory.

202. In the application of this principle, much embarrassment will be prevented, by keeping in view these two considerations, first, that it is the language rather than the nature of a statutory provision, which makes it imperative or directory; and, second, that whether a neglect of the requisitions of a directory statute will be fatal or not to the proceedings does not depend so much upon the nature of the neglect, as upon its influence in producing the result of the election. Irregularities in the proceedings of returning officers, though not sufficient of themselves to authorize a presumption of fraud or corruption, are nevertheless always looked upon as strong corroborative circumstances.

203. The following cases are selected from a much greater number as examples of irregularities in the conduct of returning officers, in the observance of the requisitions of statutes, which have been held to be merely directory statutes, and which have been considered as insufficient to invalidate elections, namely: where the ballot box was not locked, as required by law, but was only tied with tape, and was also placed in the custody of a person not authorized to have charge of it;[1] where instead of "a box locked or otherwise well secured," a gourd "carefully stopped and tied up in a handkerchief" was used;[2] where there was an omission to give the notices required by law to two inconsiderable places within an election district;[3] where the returning officers did not meet for the purpose of making their return until after the time appointed by law;[4] where the poll clerks appointed by the sheriff were not sworn until after the election,[5] or were not sworn at all;[6] where the number of votes, being required by law to be set down in writing, was set down in figures;[7] where the return of votes was unsealed, instead of being sealed up, as required by law;[8] where the votes were returned after the time prescribed by law;[9] where the opening of the meeting was delayed for two hours beyond the time fixed;[10] where the officers presiding at an election, in the belief that illegal votes had been received, stopped

[1] *Van Rensselaer* v. *Van Allen*, Clarke & Hall, 73.

[2] *Arnold* v. *Lea*, Clarke & Hall, 601.

[3] *Lyon* v. *Smith*, Clarke & Hall, 101; *Orkney & Shetland*, Fraser, I. 369; but see *Seaford*, Luders, III. 3.

[4] *Case of David Bard*, Clarke & Hall, 116.

[5] *Porterfield* v. *McCoy*, Clarke & Hall, 267.

[6] *Colchester*, Peckwell, I. 503, 506, 507.

[7] *Easton* v. *Scott*, Clarke & Hall, 272.

[8] *Mallary* v. *Merrill*, Clarke & Hall, 328.

[9] *Draper* v. *Johnston*, Clarke & Hall, 703; *Spaulding* v. *Mead*, Same, 157.

[10] *Standish*, Cushing, S. & J., 82.

the balloting and commenced anew;[1] where the warrant, calling the meeting for an election did not specify the time when the poll would be opened;[2] where the poll was not kept open each day the number of hours required by law.[3] In all these cases, there being a substantial and good election notwithstanding the irregularities complained of, the proceedings were not invalidated.

204. The foregoing principles, though established with reference more particularly to municipal corporations, each of which is a constituency by itself, are equally applicable to two or more such corporations united together into one constituency or election district; but, if the votes of any one or more of the corporations so united are set aside for any cause whatever, the election will not be avoided, unless the majority of votes in the whole district is thereby changed.[4]

205. An election being a choice made by the requisite number of electors exercising their right of suffrage;[5] it is an established rule, that, when an election has been effected, the right of the electors is exhausted, and they have no further power in the matter, either to revoke the election, or to make a further choice. Thus, it has been held, in Massachusetts, that where a valid election had been made, it could not be rendered void by a subsequent reconsideration of the choice;[6] and, on the same principle, that an election of a member at one meeting could not be superseded and rendered void, by the election of another person, at a subsequent meeting.[7]

206. It is also an established rule, that, if the proceedings of electors, at a meeting for an election, are in fact void, and do not constitute a choice, they cannot be rendered valid, or turned into an election, by any subsequent proceeding. Thus, it has been held, that where an election was in fact illegal and void, it could not be rendered valid, by a refusal of the electors, acting upon the supposition of its validity, to reconsider the supposed choice;[8] so, where an election was illegal, by reason of its having been made after a vote of the town not to choose, it could not be made a good election, by a reconsideration of that vote.[9]

[1] *Chatham*, Cushing, S. & J., 423.

[2] *West Boylston*, Cushing, S. & J., 394.

[3] *Colchester*, Peckwell, I. 506; *Limerick*, Perry & Knapp, 355; Cockburne & Rowe, 288; *Warwick*, Cushing, S. & J., 401.

[4] *McFarland* v. *Purviance*, Clarke & Hall, 131; *McFarland* v. *Culpepper*, Same, 221; *Arnold* v. *Lea*, Same, 601; *Draper* v. *Johnston*, Same, 703.

[5] Male on Elections, 100.

[6] *Paxton*, Cushing, S. & J., 20.

[7] *Dresden*, Cushing, S. & J., 151.

[8] *Chesterfield*, Cushing, S. & J., 7.

[9] *Winslow*, Cushing, S. & J., 201; *Southbridge*, Same, 215.

207. So, if the returning officers, or judges of the election, upon receiving, examining, and counting the votes, decide that there is no choice, and upon that decision, a second balloting takes place, at which an election is effected, and a return is made accordingly; if there was in fact an election on the first balloting, the election on the second will be set aside, and the person first elected will be admitted. If, in such a case, the returning officers discover their mistake, or become convinced of their error, before making a return, they will be justified in returning the person really elected, in the first instance.

208. If an election is made on condition, as where a certain person was elected a burgess, provided certain other persons should be chosen knights of the shire, the condition is void, as inconsistent with the freedom of election.[1]

209. Where a constituency consists of several municipal corporations or districts, the officers of which receive the votes and make returns of them to the returning officers; and, upon their decision, that there is no choice, a new balloting takes place, at which an election is made, the latter will be set aside, if the decision of the returning officers upon the former was incorrect.[2]

210. The same general rules, by which courts of law are governed, in regard to the evidence in proceedings before them, prevail also in the investigation of cases of controverted elections;[3] but, inasmuch as a legislative assembly, touching things appertaining to its cognizance, is "as well a council of state and court of equity and discretion, as a court of law and justice,"[4] the legal rules of evidence are generally applied by election committees, more by analogy and according to their spirit, than with the technical strictness of the ordinary judicial tribunals.

211. The rule stated in the preceding paragraph relates of course only to investigations by the testimony of witnesses or other evidence before the assembly itself or its committees; but, where the testimony is contained in depositions, they ought to be taken according to the law of the State where they are taken; and where the trial is before a committee, they may either be laid directly before the committee, or through the intervention of the assembly. The former is usually the case when depositions are taken in pursuance of authority by or with the sanction of the committee. Where they are taken in pursuance of a law for that

[1] *Beeralston*, Comm. Jour. II. 14.
[2] *Washburn* v. *Ripley*, Clarke & Hall, 679.
[3] Rogers on Election Committees, 89.
[4] Glanville, 27, 118, 119.

purpose, the provisions thereof must regularly be pursued. The taking of depositions, in cases of controverted elections, in the house of representatives in congress, is regulated by statute.[1]

212. Where a case is tried, in the usual manner, between a petitioner claiming the seat, and the sitting member, the parties carry on and conduct the trial, but neither of them recovers any costs against the other. The sitting member, whether he retains his seat, in virtue of his election, or is deprived of it, by the petitioner, is entitled to his pay as a member, at least, during the time he occupied a seat as such. The petitioner, if the seat is awarded to him, will be entitled to his pay as a member for the whole term; while if he is unsuccessful, it appears to be the custom of the house of representatives in congress to allow the petitioner his pay as a member, or, at all events, to relieve him from the legal expenses of the controversy. Where the investigation into the merits of an election, or the right of a member to his seat, is set on foot by the assembly itself and not at the solicitation of any claimant of the seat, the assembly either defrays the expense out of its contingent fund, if it has one, or takes measures to obtain the passage of a law for that purpose.

213. If a petition against an election or return, (where the subject is not otherwise regulated by law,) is presented at so late a period of the session, that an investigation cannot conveniently be had thereon;[2] or, if a petitioner does not, within a reasonable time, bring forward the evidence in support of his allegations;[3] no further proceedings will, in general, be allowed to take place; though, as "the commonwealth hath an interest in the election and service of every particular member," and "the parties may desert their complaint by some underhand combination," the election or return in question may nevertheless be examined.[4]

[1] Act of Feb. 19, 1851.
[2] *Sutton*, Cushing, S. & J., 80.
[3] *Cabell* v. *Randolph*, Clarke & Hall, 134; *Lyon* v. *Bates*, Same, 372.
[4] Glanville, 58, 118.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART SECOND.

OF THE CONSTITUTION OF A LEGISLATIVE ASSEMBLY.

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214. HAVING explained in the preceding part what relates to the election of the members, the next thing in order is to treat of the constitution, of a legislative assembly. The sense, in which this term is intended to be used, will be apparent from a statement of the several topics, embraced under it, which it is proposed now to consider, namely: — first, of the assembling and qualifying of the members, and of the organization; second, of the officers; third, of the place and manner of sitting, and of the formalities of proceeding in the transaction of business; fourth, of vacancies occurring and elections to fill them; and, fifth, of the sitting of an assembly, and of adjournment, prorogation, assembling by proclamation, and dissolution.

CHAPTER FIRST.

OF THE ASSEMBLING, QUALIFYING, AND ORGANIZING OF A LEGISLATIVE ASSEMBLY.

SECTION I. PRELIMINARY PROCEEDINGS IN THE HOUSE OF COMMONS IN ENGLAND.

215. The legislative assemblies of the United States being all constituted upon the model of the two houses of parliament, and especially of the house of commons, it will be useful to give some account of the assembling together and organization of that body for the transaction of business.

216. The time and place for the holding of a parliament being fixed by the king in council, and inserted in the warrant directing the issuing of the writs of election, the members of the house of commons returned in pursuance thereof, as already described, attend on the day appointed for the meeting, in one of the rooms appropriated to the use of the clerk of the house, in the place where the parliament is to be held. They are there met by the clerk of the house, accompanied by the clerk of the crown in chancery; by whom the clerk of the house is then furnished with a book containing a duplicate record of the names of the members returned. The clerk of the house proceeds to call the names, and the members present answer as they are called, giving at the same time the names of the places for which they respectively serve.[1]

217. It was formerly necessary, at this point of the proceedings, that the members upon being called and answering to their names, should take the oaths of abjuration, allegiance, and supremacy; without which they were prohibited under a severe penalty from taking seats in the house. They were also required to take the same oaths after the speaker had been chosen. But the taking of these oaths, before entering the house, has been dispensed with by a recent statute,[2] and the members now proceed at once to their

[1] Lex Parliamentaria, 263. The clerk of the house is not elected by the house, but is appointed by letters patent from the king, and holds his office for life.

[2] 5 & 6 W. 4, c. 36.

seats, upon being called by the clerk and answering to their names.

218. The statute, providing for the taking of the oaths before entering the house, was required, on the ground, that it was necessary in order to prevent persons who were not duly returned from participating in the choice of a speaker. The provision was repealed, on the ground, that a person, who would enter the house and give his vote for speaker, without being returned, would not be deterred from doing so by the taking of these oaths.

219. When the members are thus assembled in the house, they receive a summons to attend immediately in the house of lords; to which they proceed in a body, and are there informed by the lord chancellor, that, as soon as the members of the two houses shall be sworn, the sovereign will declare the causes of calling the parliament; and, in the mean time, as it is necessary that a speaker should be chosen, he directs them in the name of the king, to return to their house, and there proceed to the appointment of some proper person to be their speaker, whom they are to present at a time named, in the house of lords, for the royal approbation.

220. The commons then return to their house, and proceed at once to the election of a speaker, which is conducted in the following manner: — Some one of the members, addressing himself to the clerk at the table, who thereupon responds to the member by rising and pointing to him with his finger, reminds the house of the king's command to elect a speaker, and, in a short complimentary speech, proposes a candidate for that office. If this nomination is seconded, as it commonly is in a similar speech, and happens not to be opposed by any other candidate's being brought forward, the member thus selected is at once called by the house to the chair, and is conducted there and placed in it by his proposer and seconder, without any other or more formal vote of the house.

221. If the nomination is opposed by that of some other candidate, both the candidates address themselves to the house, and a debate ensues, in which the merits and claims of the two are discussed by their respective friends; and a vote of the house is put on the question, that the member first proposed do take the chair as speaker. If this question should be decided in the negative, the opposing candidate is usually called to the chair, in the manner already mentioned, without a question being taken on his nomination.

222. The speaker elect, on being conducted to the chair, pauses for a moment on the upper step, to make his acknowledgments to

the house for the honor conferred on him, and then sits down in the chair. The mace, which is commonly described as a club of silver, used as an emblem of the authority of the house, which has thus far in the proceedings remained under the table, is now placed upon it by the sergeant at arms, in token that the house is regularly constituted. The speaker elect is then congratulated by some member; and the house adjourns to the day appointed for presenting the speaker for the royal approbation.

223. It was anciently the practice for the speaker elect, on being called to the chair, and before taking it, to disable himself, that is, to address the house with a great show of modesty and diffidence, deprecating their choice of himself, and beseeching them to recall it, and to proceed to a new one. Mr. Sargeant Yelverton, afterwards chief justice of the common pleas, in the year 1597, disabled himself in terms, which were probably not uncommon on such occasions. The following extract will afford some idea of the person and condition of the learned sergeant, as well as of the characteristics of a disabling speech: — "Whence your unexpected choice of me to be your mouth or speaker, should proceed, I am utterly ignorant. If from my merits, strange it were, that so few deserts should purchase suddenly so great an honor. Nor from my ability doth this your choice proceed; for well known it is to a great number in this place now assembled, that my estate is nothing correspondent for the maintenance of this dignity. For my father dying left me a younger brother, and nothing to me but my bare annuity. Then growing to man's estate, and some small practice of the law, I took a wife by whom I have had many children, the keeping of us all being a great impoverishing to my estate, and the daily living of us all nothing but my daily industry. Neither from my person or nature doth this choice arise; for he that supplieth this place ought to be a man big and comely, stately and wellspoken, his voice great, his carriage majestical, his nature haughty, and his purse plentiful and heavy; but contrarily, the stature of my body is small, myself not so wellspoken, my voice low, my carriage lawyer-like and of the common fashion, my nature soft and bashful, my purse thin, light, and never yet plentiful. Wherefore I now see the only cause of this choice is a gracious and favorable censure of your good and undeserved opinions of me."[1]

224. On the day appointed, the commons are again summoned to attend the king in the house of lords, and, going up accordingly,

[1] D'Ewes, 549.

the speaker is presented to the king by two of the members. The speaker then informs his majesty, that the choice of the commons has fallen on him, that he feels the difficulties of his high and arduous office, and that if it should be his majesty's pleasure to disapprove of the choice, the commons will at once select some other member, better qualified to fill the station. The practice anciently was, for the speaker "to disable himself again to the king, and, in most humble manner, to entreat the king to command them to choose a more sufficient man." The only instance of the royal approbation being refused was in the case of Sir Edward Seymour in 1678. Sir John Topham, who was chosen speaker in 1450, disabled and excused himself according to the fashion of the times, and his excuse being admitted by the king, another speaker was chosen by the commons in his place. Sir Edward Seymour, who knew that it had been determined to take advantage of his excuse, if he offered any, in the same manner, purposely avoided making one, so that the king was obliged to withhold his approbation in direct terms.

225. The royal approbation being signified, the speaker then prays, on behalf of the commons, that they may be allowed their ancient privileges, namely: "that their persons, their estates, and servants, may be free from all arrests and molestations; that they may enjoy liberty of speech in all their debates; that they may have access to his majesty's royal person, whenever occasion shall require; and that all their proceedings may receive from his majesty the most favorable construction."[1] These privileges being accorded to the commons, they return to their house, and the speaker makes a report of what has passed in the lords.

226. The speaker on the return of the commons to their house then calls the attention of the members to the oaths which they are required by law to take, before proceeding to any other business than the choice of speaker. The oaths are those of allegiance, abjuration, and supremacy, which are first taken by the speaker himself, standing in his place, and then by the other members at the table in the middle of the house, while the house is sitting, with the speaker in the chair, and all other business being suspended for

[1] The privileges of the commons, since the passing of the act of 10 Geo. III. c. 50, are not precisely what they are set forth to be in the speaker's petition, in which the ancient form of presenting them is preserved. The speaker's demand, and the king's allowance, of the privileges of the commons, are now mere forms, not at all essential to their existence; and were perhaps never intended as any thing more than a recognition of the commons as a duly organized body, and as from thenceforward entitled to the usual privileges of a house of commons.

the purpose, between nine o'clock in the morning and four in the afternoon.[1] Three or four days are usually occupied in this duty; and then, the commons are again summoned to attend in the lords, to hear the causes of calling the parliament declared, either by the king or by his commissioners. On returning to the house, the speaker reports the king's speech from "a copy he has obtained to prevent mistakes;" an address is voted in answer to the speech, and from thenceforward the business of the house proceeds regularly.[2]

227. At the same time, that the members take the oaths, each one delivers in a declaration or particular of his property qualification, and subscribes the return book in the custody of the clerk of the house. If members refuse or neglect to take the oaths, or to deliver in their property qualification, they cannot sit, but are discharged from being members. If they sit and vote without being regularly qualified, they also subject themselves to severe penalties and disabilities.[3]

SECTION II. PRELIMINARY PROCEEDINGS IN THE LEGISLATIVE ASSEMBLIES OF THE UNITED STATES.

228. In this country, the preliminary steps, as well as the subsequent proceedings, of the legislative assemblies, are more or less analogous to the corresponding proceedings of the house of commons; with the material exception, however, that the practice of presenting the presiding officer to the executive power for approval, which prevailed in the provincial assemblies, was wholly abrogated by the revolution, and has not been introduced into any of our present constitutions of government. According to our practice, the members elected and returned make their appearance at the time and place appointed,[4] and proceed to organize themselves as a

[1] 30 Car. II. Stat. 2, ch. 1.

[2] A curious custom prevails in both houses, immediately after the king's speech is reported, for the purpose of asserting the right of parliament, if the two houses see fit, to consider of any other business they please, in preference to the subjects referred to in the speech as the causes of summoning the parliament. This custom consists in reading a bill, which is prepared for the purpose by the clerk, and ordering it to be read a second time; which, it is hardly necessary to say, is never done. The bill, which has been made use of in the commons, time out of mind, for this ceremony, is entitled "a bill for the more effectual preventing of clandestine outlawries."

[3] In the house of lords, the members appear in their places, at the time appointed, in obedience to the writ of summons sent to each of them individually; their clerk and other officers being appointed by the crown for life are in attendance; and the lord chancellor, for the time being, is the presiding officer.

[4] In some of the States, the governor is authorized by the constitution to change the

legislative body, in the manner regulated by law, or sanctioned by usage.

229. The right to assume the functions of a member, in the first instance, and to participate in the preliminary proceedings and organization, depends wholly and exclusively upon the return or certificate of election; those persons who have been declared elected and are duly returned, being considered as members, until their election is investigated and set aside, and those who are not so returned being excluded from exercising the functions of members, even though duly elected, until their election is investigated and their right admitted.[1]

230. In some of the States, the names of the persons elected and returned are officially ascertained before the time of assembling, and a list or schedule made and the members themselves notified of their election, or summoned to attend; in others, the returns or certificates are either given to the members elected, or sent to the assembly which is thereby to be constituted. Where the former practice prevails, the persons summoned and no others, have it in their power to assume the functions of members; where the latter mode is adopted, it is in the power of any person claiming to have been elected, to appear and assume the functions of a member, without being in fact either elected or returned. In the former case, the returns are ultimately laid before the assembly by whom they are finally judged of. In the latter, they are counted and examined, in the first instance, by the members themselves, with a view to determine whether they may be allowed to proceed, and are afterwards more deliberately examined, usually, by a committee appointed for the purpose, with a view to determine who are duly returned as members. Members, duly returned, continue to be and act as members, however insufficient their returns, elections, or rights of membership may, in fact, be, until their seats are declared vacant by the assembly. Members, duly returned, but who have accidentally left their returns or credentials behind them,[2] either at their homes or their lodgings, have been allowed, upon a statement of the fact, to proceed to act, and be qualified, with the others, being enjoined in the mean time to produce their return as soon as may

place of meeting, when the health, lives, or liberty, of the members, would be endangered by their assembling or attempting to assemble in the place fixed by law.

[1] Scobel, 86; Lex Parliamentaria, 371. See also the *Case of Thomas Nash, Jr.*, Cushing, S. & J., 439, and *Chelsea*, Same, 474, and a pamphlet, entitled, "Proceedings and Debates in the House of Representatives of the Commonwealth of Massachusetts during the four days previous to the election of a Speaker, in January, 1843, by Luther S. Cushing."

[2] J. of S. 16th Cong. 1st Sess. 5; Cong. Globe, XXIII. App. 398.

be. This practice, where an election is notorious, or the member is well known, is not likely to be attended with any inconvenience. It depends, of course, upon the discretion of the assembly.

231. Though there can be no doubt, on the ground of authority, that the return or certificate required by law is the only evidence upon which one is entitled to assume the functions of a member; yet, as the struggles of conflicting parties frequently lead to controversies respecting the right of membership, and instances have occurred of persons attempting to act as members, without being legally returned; the question is of sufficient importance to deserve a careful investigation, in order that the decision of it may be placed upon the grounds of reason and principle, as well as authority.

232. In every free representative government, upon the principles of which this question depends, the distinguishing characteristic is its periodical renewal from the original elements of all government, namely, the immediate will of the people, and, in order to this renewal, it is indispensable, that the will of the people should be subject to no other control, than those forms of proceeding which must necessarily be agreed upon beforehand, or, in other words, which are established by the laws; that is, in this renewal of the sovereign legislative power, the course of proceeding must be from the people themselves, and not from any existing or previously elected officers; for, otherwise, instead of a recreation of the legislative power from its original elements, the forms of an election might merely result in the perpetuation of that which was already existing, and thus defeat the very intention and object of a representative government. The first requisite, therefore, to the existence of such a government, is freedom of election.

233. But it is also essential to the very idea of this form of government, that the electors should be divided into separate constituencies, either territorially or otherwise, for the purpose of effecting the elections; and, in order to insure equality of representation among these constituencies, without which some portion of the people would be deprived of their just rights in the functions of self-government, it is indispensable to regulate beforehand, by law, both the manner in which the elections shall be conducted, and the evidence by which the result shall be authenticated; otherwise, when the representatives should come to assemble themselves together, they would have no means whatever of ascertaining for themselves whether the several constituencies were duly and properly represented. The second essential requisite of a free representative government, therefore, is equality of representation.

234. If there were any contemporaneous power lodged anywhere (except in the representative body itself) to control or decide upon the elections and returns of members, freedom of election would be wanting; and, what was intended to be a renewal or rëcreation of the sovereign legislative power would be but a perpetuation of the old. If there were no regulations agreed upon beforehand, as to the manner of conducting the elections, the number of persons to be returned, and the evidence by which the elections should be authenticated, there could be no guarantee for equality of representation.

235. It follows, therefore, that wherever these two principles, freedom of election, and equality of representation, are admitted to be fundamental, (as they are in all the constitutions of government in this country,) the manner of conducting elections, which has been established by the laws, and the evidence agreed upon beforehand to authenticate them, cannot be varied or departed from in any important particular, consistently with the very nature of a representative government, and, consequently, that the only evidence, by virtue of which any one can rightfully assume or be permitted to assume the functions of a member of a legislative assembly, under such a form of government, is the return or certificate which contains and embodies the result of the proceedings at the election, as decided upon by the returning officers.[1]

236. The rule which has just been considered applies not only to the case of one assuming or claiming a right to assume the character of a member, without the regular and established evidence of a return or certificate; but also to the case of two or more persons claiming adversely to one another, each of whom possesses a return or certificate, which would be sufficient, if the others were not in possession of evidence of right of apparently equal validity; so that where adverse claimants are returned, neither can sit until his right is determined, any more than any one claimant can sit without any return. In England, the case of double returns is not at all uncommon, and an order is always passed in the house of commons at the commencement of each session, prohibiting persons so returned from sitting or voting, until the question of their election has been determined. In this country, for reasons already stated,[2] double returns are more infrequent; whenever they do happen, none of the persons so returned ought to presume to take any part in the proceedings, until their conflicting claims have been consid-

[1] See the pamphlet before cited.

[2] See ante, § 135.

ered and decided. In Massachusetts, several cases of this kind have occurred, in which the parties appeared and took seats in the house, but were suspended from acting, until their respective claims had been decided.[1]

237. Where the proceedings, preliminary to an organization, are such, that no person can intrude himself without possessing the regular evidence of election, no difficulty is likely to arise in the constitution of the assembly. But, where this is not the case, it is obvious, that persons claiming the right of membership, without possessing the requisite evidence, may insist upon participating in the preliminary proceedings, and thus give rise to questions, which there is no authority but their own to decide. In England, persons not returned as members, whose names of course are not on the book of returns, could hardly be able to obtain access to the house; and, if they could do so, there is not the same inducement there as in this country, to make the attempt. The house of commons consists of six hundred and fifty-eight members, a number much larger than any legislative assembly here; and quite unlikely, therefore, constituted as it now is, to be so nearly equally divided, as to make the political character of the house depend upon the manner in which the controverted elections and rights of membership are settled. Besides, in that body, it is comparatively a matter of little importance, from which party the speaker is elected; and the speaker is the only one of the officers who is elected by the house; the clerk and sergeant-at-arms holding their offices for life by appointment from the crown. The speaker of the house of commons, though holding an office of great dignity and importance, does not exercise nearly as much direct influence upon the proceedings of the house, as is exercised by the same officer in our legislative assemblies. One single point of difference between the functions of the two will serve to explain the relative authority which they possess. With us, it is the almost invariable practice to confer upon the presiding officer the appointment of all committees; which, whenever the subject to be referred is of a political character, are always constituted upon a party basis; all parties being duly represented, but the dominant party in the house of course predominating. In England, committees are usually named in the first instance, by the member, who proposes the resolution for their appointment, subject, of course, to the control of the

[1] See *Adams*, Cushing, S. & J., 13; *Hopkinton*, Same, 261; *Harwich*, Same, 38; *Troy*, Same, 56; *Chester*, Same, 238. See also, *Letcher* v. *Moore*, Clarke & Hall, 715, and the case of the *New Jersey members*.

nouse. On great and important occasions, they are chosen by ballot. And the most important committees, considered merely with reference to the state of parties, namely, election committees are selected, as we have already seen, in such a manner, as leaves very little, if any thing, in the power of the speaker. With us, therefore, the organization is certainly a matter of much more interest, if not of more importance, than it is in England.

238. Hence it has occurred more than once, that struggles for political power have begun among the members of our legislative assemblies even before their organization; and it has happened, on the one hand, that persons whose rights of membership were in dispute, and who had not the legal and regular evidence of election, have taken upon themselves the functions of members; and on the other, that persons having the legal evidence of membership have been excluded from participating in the proceedings. The house of representatives in congress was once delayed in its organization by conflicting claims of this description. Another instance of the same difficulty occurred in the State of Massachusetts, in the year 1843. And recently, one branch of the legislature of one of the most important States in the Union has found itself wholly unable to organize, for a similar reason.

239. Occurrences like these naturally lead to two inquiries, namely: first, what should be done in the particular case; and, second, what should be done to prevent the recurrence of such a state of things for the future. It is proposed to state the principles of parliamentary law, which apply to and indicate the answer which should be given to both these inquiries.

240. I. *What should be done in the particular case.* The principles of parliamentary law applicable to the question are perfectly simple and plain; founded in the very nature of things; established by the uniform practice and authority of parliament; and confirmed by reason and analogy. These principles are as follows:— first, that every person duly returned is a member, whether legally elected or not, until his election is set aside; second, that no person, who is not duly returned, is a member, even though legally elected, until his election is established; third, that conflicting claimants, both in form legally returned, are neither of them entitled to be considered as members, until the question between them has been settled; and, fourth, that those members, who are duly returned, and they alone, (the members whose rights are to be determined being excluded,) constitute a judicial tribunal, for the decision of all questions of this nature.

241. Where the number of members admitted on all sides to be legally returned is sufficient for the purpose, these principles may be and invariably are applied and enforced, without difficulty. Where this is not the case, — where there is no acknowledged majority to decide the question, and to compel obedience to its decisions, — each individual member must decide it for himself. In such a state of things, therefore, let each member apply the principles above stated to his own case and conduct himself accordingly. The result will be, either that one side will yield, or that both will remain in the condition which they have respectively chosen. In the first case, the party yielding waives its supposed rights for the time being, and submits its claims to the only contemporary tribunal competent to decide upon them, and trusts to its honor, patriotism, and sense of justice. If this reliance proves in vain, and right and justice are sacrificed to party; there is no alternative but to appeal to that tribunal, which revises the decision of all others; the tribunal of the future eternally and everywhere sitting in judgment upon the past; whose judges are the people, and whose judgments are recorded in public opinion. If neither party will yield, and no organization can legally and constitutionally be made, there seems to be no other alternative, than a suspension of the functions of the legislative department, so long as this state of things continues, or for the period of its official existence. The effect of this must depend, of course, upon the constitution of each particular State. In all the States, it is believed, the legislative body expires at all events, with the period for which it was chosen; while the officers of the executive and judiciary remain in office until their successors are chosen or appointed and duly qualified. The state of things alluded to would therefore result merely in a suspension of the legislative function for a period somewhat longer than usual; leaving the other departments of government to go on with their official duties, in the same manner, in which they ordinarily were accustomed to do, when the legislative body was not in session. This, though extremely undesirable and likely to be attended with many temporary inconveniences and embarrassments, is very far from being a dissolution or suspension of government. It would be analogous rather to what has repeatedly happened in England, when a premature dissolution of parliament has become necessary, in consequence of irreconcilable disputes and controversies between the two houses.

242. II. *What should be done to prevent the recurrence of such a*

state of things for the future.— The only mode in which an organization can be secured, at all events, is to designate by law the persons who shall temporarily constitute the officers of the assembly. In France, under the old constitution, it was provided, that, on the assembling of the deputies, the oldest member should take the chair as president, the five youngest members should act as secretaries; and that the assembly, thus temporarily constituted, should proceed to a verification of the powers of the members, or, in other words, should ascertain who were duly returned. A similar provision has been introduced into the laws of the State of Massachusetts with respect to the organization of the house of representatives. The returns are made into the office of the secretary of the commonwealth before the day of assembling; that officer furnishes the sergeant-at-arms with a list of the members so returned, who alone are to be admitted into the chamber of the house; the oldest of the members (not the oldest person) thus admitted takes the chair as presiding officer; the clerk of the preceding house acts as clerk, until his successor is chosen and qualified; the sergeant-at-arms in like manner continues in office until a new one is chosen; and the house is thus completely organized for the temporary purpose of ascertaining who are in fact members, and indeed for all necessary purposes, until new officers are regularly chosen.

243. The members elect of a legislative assembly being met together, at the time and place appointed by the constitution or law for their assembling, they proceed, at once, to take the necessary steps to enable them to discharge the functions of members, that is, to take the oath required, and to organize themselves, by the choice of the proper officers. For this purpose, they are either authorized to proceed without the presence of any particular number, or that of a specified number may be required.

244. In the States of Maine, New Hampshire, and Massachusetts, where the senate is to consist of a certain specified number of members, elected by the districts into which those States are respectively divided for the purpose, if there is a failure in any instance to elect by the people, the vacancies in the senate are to be filled, on the day appointed for the assembling of the legislature, by the house of representatives and such members of the senate as may be elected and summoned to attend accordingly, from among the candidates who received the highest number of votes for senators and were not elected. For the purpose of filling these vacancies, and taking the necessary preliminary steps thereto, no particular number either of the senate or house is necessary, or for adjourn-

ment from day to day, for the same purpose, although a certain specified number is required to be present therein, respectively, for the doing of any ordinary business.

245. In the States above mentioned, therefore, the vacancies in the senate may be filled by those members of the two branches who are duly returned, and attend on the day of assembling, though they do not amount to the number requisite to the transaction of business; but in other States, and in the federal government, whose legislative bodies are not authorized to proceed in this manner, their right to proceed to organize on their first assembling is supposed to depend, like their authority to proceed afterwards with the transaction of business, upon the presence or absence of a certain specified number of members, denominated a Quorum, which will be treated of immediately in connection with this subject.

SECTION III. QUORUM.

246. It being a general rule, that where authority is conferred upon several persons, to be exercised with others, all the persons authorized must be present, in order to exercise it, and that authority delegated to the discretion of an individual, cannot be delegated by him to another; it would be a consequence of these principles, if they were strictly applied to the proceedings of legislative assemblies, the members of which have but a merely delegated authority themselves, and constitute a representative body, that the members must all necessarily be present, and concur, in order to the doing of any valid official act. But this would be extremely inconvenient, in general, and, in the greater number of our legislative assemblies, which are bodies of considerable size, would render their proceeding wholly impracticable. Hence it has been found indispensable, in the constitution of legislative assemblies, to make them an exception, in both these respects, to the general principles above stated.

247. In all councils and other collective bodies of the same kind, it is necessary, therefore, that a certain specified number, called a *quorum*,[1] of the members, should meet and be present, in order to the transaction of business. This number may be precisely fixed in the first instance, or some proportional part established, leaving the particular number to be afterwards ascertained, with reference

[1] For the origin of this term, see Blackstone's Commentaries, I. 351.

to each assembly, and this may be done either by usage, or by positive regulation; and, if not so determined, it is supposed, that a majority of the members composing the body constitute a quorum. If the required number is not present, at the time appointed for the meeting of a legislative assembly, the members can ordinarily do nothing more than adjourn from day to day, and wait for the requisite number, unless they are specially authorized to take measures to compel the attendance of absent members. In this country, the number necessary to constitute a quorum is, in all the States, respectively, and in the congress of the United States, regulated by constitutional provisions.

248. In the British parliament, according to the ancient and invariable usage of the two houses, as evidenced by their rules, three is the number necessary to constitute a quorum of the lords,[1] and forty a quorum of the commons.[2] These numbers, respectively, although established by and dependent upon usage merely, and within the power of each house to abrogate or change at any time,[3] have nevertheless the force of standing orders,[4] that is, they are equally binding upon every succeeding parliament until abrogated,

[1] May, 191.

[2] This number, which appears to have been first recognized as the quorum of the commons, on the 5th of January, 1640, (Comm. Jour. II. 63,) depends only on usage, and may be altered at pleasure. From an entry on the 20th April, 1607, (Comm. Jour. I. 364,) it seems, that sixty was not then a sufficient number. An attempt was made in the commons, March 18, 1801, (Comm. Jour. LVI. 188,) to make the quorum sixty, but it failed.

[3] It is somewhat surprising, that in reference to so simple a matter as the number necessary to constitute a quorum of either house of parliament, there should be any diversity of statement among well-informed writers. But such is nevertheless the fact.

Judge Story, (Com. on Const. II. 295,) says that the number of forty-five constitutes a quorum to do business in the house of commons. And he adds, in a note, "I have not been able to find, in any books within my reach, whether any particular quorum is required in the house of lords."

Chancellor Kent, (Com. I. 235, note b,) says: — "In the English house of commons, forty members used to form a quorum for business, but in 1833, the requisite number was reduced to twenty."

The authors of a French work — *Confection des Lois*, (1839,) p. 163, — having spoken of forty members as a quorum of the house of commons, add, in a note, that the number is now fixed at twenty.

The notion, that the quorum of the commons had been reduced from forty to twenty, arose from the fact, that, in the years 1833 and 1834, the house met for the transaction of private business at three o'clock, and at five, proceeded to the public business as before; the quorum for the two hours devoted to private business was fixed at twenty members; leaving the quorum for the general business of the house at forty, as it had been established by usage time out of mind. This arrangement for private business was not renewed after 1834.

The origin of the number *three* as a quorum of the house of lords undoubtedly arose from a principle of the Roman law, that three persons suffice to make a college — *collegium*, equivalent to our word corporation, in most of its legal features.

[4] By the system of standing orders, which is in use in England, it is in the power of the house of commons, at any time, by simply declaring one of its orders a standing order, to make it binding on or in force in a succeeding house of commons, as much as if it was an order of that house itself. This system does not prevail in this country. It is not in the power of a legislative assembly here to make any rules to bind its successors. That can only be done by constitutional provision or

and do not require to be specially adopted in order to be in force.

249. In this country, the number necessary to form a quorum is different in each legislative assembly, according to its size, the quorum being for the most part fixed at some aliquot part, as for example, two thirds, or a majority of each; and, of course, being established only by constitutional provision, the number is in force at the commencement of each session, and is unalterable by the assemblies themselves.

250. In the constitutions of the United States and of the following named States, it is provided, in the same words, that "a majority of each house shall constitute a quorum to do business," namely: — Maine, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, South Carolina, Florida, Alabama, Mississippi, Michigan, Missouri, Iowa, Wisconsin, and California. In the constitutions of New Hampshire, (as to the house of representatives,) Maryland, and Vermont, the same proportional number is established in equivalent terms. In the constitution of Ohio it is declared, that "a majority of all the members elected to each house shall be a quorum to do business."

251. In the constitution of Illinois, it is provided, that "two thirds of each house shall constitute a quorum," and in those of Tennessee, Indiana, Arkansas, and Texas, that "two thirds of each house shall constitute a quorum to do business."[1]

252. In the constitution of New Hampshire, it is provided that, "not less than seven members of the senate shall make a quorum for doing business," and in that of Massachusetts, "that not less than sixteen members of the senate and sixty members of the house of representatives shall constitute a quorum for doing business." The constitutions of Louisiana and Kentucky declare, that "not less than a majority of the members of each house shall constitute a quorum to do business;" that of Georgia that "a majority of each house shall be authorized to proceed to business;" while that of North Carolina provides, that "neither house of the general assembly, shall proceed upon public business unless a majority of all the members of such house, are actually present." The assem-

by law. Each assembly, indeed, usually adopts the rules and orders of its predecessors, in express terms, and until this is done, they are not in force at all. There is an interval, therefore, of more or less duration, at the commencement of each assembly in this country, when the only rules in force in it are those of the common parliamentary law.

[1] In the several assemblies, therefore, mentioned in this and the preceding paragraph, the number necessary to a quorum is so fixed by the constitutions of the States, to which they respectively belong, that it cannot be varied therefrom by those assemblies themselves.

blies, therefore, in the States mentioned above, may establish the quorum of each at any number they please, provided it is not less than the constitutional number. Thus, in Massachusetts, where the senate is to consist of forty members, not less than sixteen of whom are to constitute a quorum, that body may itself determine upon and fix its own quorum at any number between sixteen and forty.

253. In some of the ways above mentioned, the quorum of each legislative assembly becomes established at a fixed number; the presence or absence of which can always be ascertained by counting. This is usually done, after the assembly is constituted, by its presiding officer, who announces or reports the result. In the senate of the United States this duty is performed by the sergeant-at-arms, upon whose report to the presiding officer, the latter announces the result. For the purpose of ascertaining whether a quorum is present, every person, who is entitled to vote, that is, every person, whose return as a member has been admitted, and who has been regularly sworn as such, and no other person, is to be counted. This rule excludes, first, all mere claimants to seats, whose claims, however well founded they may be, are not yet admitted; but it does not affect the right of persons duly returned, however ill founded their claim may be, and notwithstanding their elections may be controverted. In the second place, it excludes the presiding officer, when he is not a member of the body over which he presides, but presides in virtue of his election or appointment to some other office. Thus, the lord chancellor, who presides over the house of peers, in virtue of his office of chancellor, is not counted to make a quorum of that body, unless he is also a peer and as such a member of the house of lords. So, also, the vice-president of the United States, who, by virtue of his office, is the presiding officer of the senate, is not counted as a member, to make a quorum of that body, notwithstanding he is expressly entitled, by the constitution, to give the casting vote therein, when the senate is equally divided. In the third place, the rule above mentioned excludes the representatives of territories in the lower house of congress, denominated delegates, from being counted therein as members, to make a quorum, although by law they exercise all the functions of members except that of voting.

254. In the constitutions of the United States, and of all the States, except Massachusetts, New Hampshire, New York, New Jersey, and North Carolina, it is expressly provided, that a less number than a quorum may adjourn from day to day. This pro-

vision, being general, is applicable as well before as after the organization. But as a legislative assembly, when duly convened, cannot be adjourned without day, or dissolved, but by lapse of time, or in the manner provided by law; and as an adjournment from day to day can have no other effect than to enable those who attend personally to ascertain, in the most convenient manner, when the requisite number is present; it can scarcely be thought necessary to the existence of such a power, that it should be expressly conferred; and therefore it may be considered to exist, as well in those States whose constitutions are silent on the subject, as in those where it is expressly conferred.

255. If, on the day appointed for the meeting, the requisite number of members is not present, those who attend can only adjourn until the next day, and so on from day to day, until the requisite number appears, or a prorogation or dissolution takes place; unless a smaller number than a quorum should be expressly authorized to compel the attendance of absent members; in which case, proceedings may take place for that purpose. In reference to this subject, various provisions are in force. Those only which are found in the several constitutions will be briefly noticed.

256. I. The constitution of the United States provides, that a smaller number than a quorum "may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide." The same provision is found in the constitutions of New Jersey and Alabama, and with a slight verbal alteration in those of Delaware and Virginia; in the constitutions of Maine and Arkansas, and with a slight verbal alteration, in those of Rhode Island, Maryland, and Missouri, the language is, that a less number than a quorum "may compel the attendance of absent members, in such manner and under such penalties, as each house shall provide." The constitutions of Georgia, Florida, Michigan, Texas, Missouri, Iowa, Wisconsin, and California, contain clauses, similar in substance to those last mentioned. Constitutional provisions, of this kind, do not confer any present authority of themselves to compel the attendance of absent members; nor do they authorize the conferring of any such power by law; they merely authorize each house, when duly constituted, to compel the attendance of its members.[1] Consequently they can have no operation until after the organization.

[1] Congressional Globe, XVI. 977. In the rules and orders of the house of representatives in congress, it is provided, that any fifteen members, including the speaker, if there is one, shall be authorized to compel the attendance of absent members.

257. II. The constitution of Pennsylvania provides, that a smaller number than a quorum "may be authorized by law to compel the attendance of absent members in such manner and under such penalties as may be provided." That of Tennessee contains a similar clause. In the constitution of Louisiana, which contains a like provision, the word "shall" is inserted, instead of "may." The constitutions of Kentucky and Ohio have the same provision in substance as that of Pennsylvania. Clauses of this description authorize the legislatures of the States in which they prevail, to provide beforehand, by law, that each legislative assembly, though containing less than a quorum, may compel the attendance of its members; and this authority may as well be exercised, so as to relate to the first assembling, as after the constitution of the assembly. When this is the case, if the requisite number do not appear, those who do, may, of course, resort to the measures, provided by law, to compel the attendance of absent members.

258. III. In the constitution of Rhode Island, it is provided, that "a less number than a quorum of each house may compel the attendance of absent members, in such manner, and under such penalties, as may be prescribed by such house or by law;" in those of Indiana and Illinois, the terms are, that "a smaller number may meet, adjourn from day to day, and compel the attendance of absent members." In the first-mentioned State, certainly, and it is presumed, also, in the others, provision may be made either by law, or by each house acting for itself, to enforce the attendance of absent members.

259. IV. The constitutions of Massachusetts, New Hampshire, Vermont, New York, and North Carolina, are silent with reference to this subject. But it can scarcely be doubted, that in those States, and in those where the power is conferred upon the legislative bodies themselves, as well as in those whose constitutions authorize the regulation of this matter by law, the subject may be made one of ordinary legislation.

260. When the number necessary to constitute a quorum is fixed absolutely, as in Massachusetts, it is only necessary to count the members present, in order to ascertain whether the requisite number is in attendance; so where the quorum is some aliquot part of the whole number, as two thirds, or a majority, provided the whole number is fixed by law; but, where the number necessary to form a quorum is an aliquot part of the whole, and the number of which the whole assembly may consist is uncertain, depending upon the number of constituencies which elect mem-

bers, or the number of elections that take place, it is necessary, in the first instance, to ascertain how many the body consists of, before proceeding to determine whether a quorum is present; and, in order to do this, it is clear that those who are duly returned and those only must be reckoned as members. In all cases, therefore, it seems to be manifest, that a less number than a quorum must have power, at least, provisionally, from the very necessity of the case, to examine and decide upon the returns; for, otherwise, it might be impossible to ascertain how many members were present.

261. When the number, of which an assembly may consist, at any given time, is fixed by constitution, and an aliquot proportion of such assembly is required in order to constitute a quorum, the number of which such assembly may consist and not the number of which it does in fact consist, at the time in question, is the number of the assembly, and the number necessary to constitute a quorum is to be reckoned accordingly.[1] Thus, in the senate of the United States, to which by the constitution each State in the Union may elect two members, and which may consequently consist of two members from each State, the quorum is a majority of that number, whether the States have all exercised their constitutional right or not.[2] So, in the second branch of congress, in which, by the constitution, the whole number of representatives of which the house may consist is fixed by the last apportionment, increased by the number of members to which newly admitted States may be entitled, the quorum is a majority of the whole number, including the number to which such new States may be entitled, whether they have elected members or not, and making no deductions on account of vacant districts.[3]

262. Where a number less than a quorum is under the necessity of acting, as, to adjourn from day to day, to examine and decide upon returns, or to compel the attendance of absent members, the same person usually assumes, or is required by law, to preside, by whom the preliminary proceedings are afterwards conducted, until the organization takes place; but if no person is authorized by law or by custom to conduct or record their proceedings, the most convenient and proper mode to be adopted will be for them to appoint suitable temporary officers to prepare and manage their business, but for every order and record to be authenticated by the signature of each and every member present.

[1] J. of H. VI. 274, 395; J. of H. VII. 214.
[2] J. of S. 32d Cong. 2d Sess. 351; Cong. Globe, X. 1.
[3] J. of H. 30th Cong. 1st Sess. 877; Cong. Globe, XVIII. 821.

263. The right of the members of every legislative assembly to have the presence and attendance of other members, in order to a due organization of the assembly, has already been partly treated of in the preceding section, in connection with the number necessary to constitute a quorum. Very nearly akin to this right, is that of the assembly itself, after it is constituted, to have the attendance of all its members, for the transaction of business. Where the former right is conferred and measures are provided by law for its enforcement, those measures will, of course, depend upon the particular law by which they are created, and will be made adequate to the end in view, according to the circumstances and condition of each assembly, but will probably bear more or less analogy to the means resorted to by the assembly itself, after its constitution, to enforce the attendance of its members.

SECTION IV. — COMPELLING ATTENDANCE OF ABSENT MEMBERS.

264. Every legislative assembly, when duly constituted, has power to compel the attendance of its members; but, until so constituted, it has no such power, as it has itself no legal existence; and the right of the members who are present for the purpose of organization to compel the attendance of other members depends wholly, as has been seen, upon the constitution or law to which each assembly is subject. The right of a legislative assembly, after it is regularly constituted, to have the attendance of all its members except those who are absent on leave, or in the service of the assembly, and to enforce it, if necessary, is one of its most undoubted and important privileges. It is usually enforced by means of what is denominated a "call" [1] of the assembly, which is effected in the following manner in the house of commons.

265. When a call of the house is determined upon, the first step to be taken is to pass an order that the house be called over on a future day, and, for this purpose, it is usual to appoint a day which will enable the members to attend from all parts of the country. This order is always accompanied by a resolution "that such members as shall not then attend be sent for in custody of the sergeant-at-arms." On the day appointed for the call, the order of the day for that purpose is read in the usual manner, and proceeded with, postponed, or discharged, at the pleasure of the house. If proceeded with, the names of the members are called over in the

[1] May, 188.

order in which they stand on the roll of the house, and those who are present answer to their names. The names of those who do not answer are taken down by the clerk, and are afterwards called over again. If they appear in their place at this time, or in the course of the same sitting, it is usual to excuse them for their previous default;[1] but if they do not appear, and no sufficient excuse is offered for them, by their friends, they are ordered to attend on a future day.[2] It is also customary to excuse them if they attend on that day, or if a reasonable excuse is then offered, as illness,[3] the illness and death of near relations,[4] public service,[5] or being abroad.[6] If a member should not attend at this time, and no excuse should be offered, he will be liable to be taken into the custody of the sergeant-at-arms, and brought to the house in that manner. In this case, he will be liable to pay the fees incident to such commitment and detention. But instead of committing the defaulters, the house sometimes appoints another day for their attendance,[7] or discharges the order for their commitment altogether.[8] In earlier times, it was customary for the house to inflict fines upon defaulters, as well as other punishment.[9]

266. This is substantially the method pursued in our legislative assemblies, with such alterations as each may think proper, the elements of a call being the calling of the members at a given time; the sending for defaulters in custody; and the payment of fines and other expenses by them, in order to effect their discharge. In the senate of the United States, a compulsory attendance of the members has not been found necessary; and nothing analogous to a call of the house has ever been resorted to. In the house of representatives, on the contrary, a call of the house is of almost daily occurrence; it is incidental to all other business, and takes place, without the passing of any previous order for the purpose, or the giving of any notice thereof beforehand. The manner in which it is there practised, is made the subject of a special rule.[10]

267. The obligation of a member to attend the service of the house, at all times, when the house sits, is, of course, suspended for a time, while a member has leave of absence; which may

[1] Comm. Jour. LXXX. 147.
[2] Comm. Jour. LXXXIV. 106.
[3] Comm. Jour. LXXX. 130.
[4] Comm. Jour. LXXX. 130.
[5] Comm. Jour. LXXX. 130.
[6] Comm Jour. XCI. 278.
[7] Comm. Jour. XCI. 278.
[8] Comm. Jour. XC. 132.
[9] Comm. Jour. I. 300, 862; Same, II. 204; Same, IX. 75.
[10] Rules 62, 63, 64.

be obtained, on the application of the member himself, or of any one in his behalf, and, sometimes, on the report of a committee appointed for the purpose. The same effect results from absence or employment in the service of the house.

268. When the attendance of absent members is compellable by virtue of a rule of the assembly, it is usual to provide that the proceedings, for this purpose, may take place, when a number of the members less than the number necessary for an ordinary quorum is present; and that number, though they can do nothing else, may, of course, do whatever is necessary to compel the attendance of absent members. Thus, in the house of representatives of congress, fifteen members, including the speaker, if there is one, constitute a quorum for this purpose.

269. If the motion, for a call of the house, passes in the negative, a second motion, for the same purpose, is not in order, until after the intervention of some parliamentary proceeding.[1] If it passes in the affirmative, the order may be rescinded or discharged, or the subject may be reconsidered.

270. A motion, for a call of the house, cannot be suppressed by a motion to lie on the table, but must be decided specifically.[2] All proceedings under a call are, from its very nature, suppressed,[3] and all members under arrest, as defaulters, are discharged,[4] by an adjournment of the assembly, whatever may be its effect upon other proceedings. In the mean time, the latter are excluded from voting, or otherwise participating in the functions of members.[5]

SECTION V. — ORGANIZATION.

271. The modes of organization, though substantially the same in all, are yet so different in their details, in the several States, that it will be impossible to do any thing more than allude, in general terms, to some of their distinctive features. In most of the States, there are certain differences in the constitution of the two branches, composing the legislature, which lead to corresponding differences in the mode of organization; in some, the presiding officer of the senate, or first branch, is not a member of the body, but is elected to some other office, in virtue of which he presides, as that of lieu-

[1] J. of H. 27th Cong. 3d Sess. 532; J. of H. 28th Cong. 2d Sess. 1151; Cong. Globe, XX. 177, 178.

[2] Cong. Globe, XIII. 335.

[3] Cong. Globe, XVIII. 60.

[4] Cong. Globe, XV. 516.

[5] Cong. Globe, XVIII. 928.

tenant-governor, or vice-president, and is *ex officio* president of the senate; in others, a certain part only, as one third, or one fourth, of the senate, is chosen at the same time with every new election of the other branch; while, in other States, both these peculiarities concur; and, in all these cases, the mode of organization varies accordingly.

272. The senate of the United States, though it constitutes a branch of each succeeding congress, and its sessions are held periodically, and correspond with those of the house of representatives, is a continuous and permanent body, was organized under the constitution, when that instrument first went into operation in 1789, and has continued its organization ever since. Each State is entitled to be represented at all times by two senators in the senate of the United States, and elects them by the legislature of each, for the term of six years, whenever vacancies occur, by lapse of time. Occasional and unforeseen vacancies, occurring by reason of death, resignation, acceptance of a disqualifying office, or otherwise, are filled, for the residue of the unexpired term, either by the legislature, if then in session, or by appointment of the executive. Members, when elected or appointed, if the senate is then sitting, or as soon afterwards as it sits, present their credentials, and immediately take the oath of office, and their seats. The senate, on its first organization under the constitution, was divided, by lot, into three classes, one of which expires with each congress; and the same arrangement being repeated on the accession of new States,[1] as to the members therefrom, one third of the members of the senate go out of office every two years. Hence, at the commencement of each congress, two thirds of the senate, at least, which is more than a quorum, are then in office, duly qualified, and ready to proceed to business. The presiding officer of the senate being the vice-president of the United States, by virtue of his office, and in his absence, one of the senators, chosen temporarily; and the former retiring from the senate, towards the end of each congress, in order that his place may be supplied by the choice of a temporary president; the consequence is, that at the commencement of each congress, there is a presiding officer of the senate, already in office, ready to proceed at once with his duties as such, and without any further authority from the senate. The secretary, and other officers of this branch, remain in office until their successors are chosen. There is no ne-

[1] The members, whose terms of service are thus in question, cannot regulate the same, by an agreement among themselves. Cong. Globe, XV. 1.

cessity, therefore, at the commencement of each congress for an organization of the senate of the United States in the ordinary sense of that term. In these points, the senate of the United States bears a close analogy to the house of lords.

273. The senate of the United States being a permanent and continuing body, its officers, (except its presiding officer,) when once chosen, remained in office until vacancies occurred by death, resignation, or removal from office, which were equivalent, of course, to appointment for life. This system lasted from the first organization of the senate, under the constitution, until January, 1824, (18th congress,) when, upon the report of a committee to whom the subject was referred, it was resolved that the secretary, sergeant-at-arms, door-keeper, and assistant door-keeper, of the senate, should be chosen by the senate, on the second Monday of the first session of the nineteenth and every succeeding congress.[1] But this rule, it is believed, is no longer in force.

274. If the senate of the United States has some points of resemblance to the house of lords, in its constitution, the proceedings of the house of representatives, in its organization at the commencement of a congress, bears no less resemblance to that of the house of commons at the commencement of a parliament. The clerk and sergeant-at-arms, attendant upon the house of commons, being patent officers, appointed by the crown for life, are rightfully present at the commencement of a new parliament, in the discharge of their respective duties, and the former initiates the necessary steps and proceeds with the election of speaker, as the proper recording officer of the commons. The election and approval of the speaker having taken place, in the manner already described, the speaker and other members are then sworn, and the business of the house proceeds. The members elect of the house of representatives in congress assemble at the time and place appointed, in pursuance of the constitution, for their meeting, and are there met by the clerk of the last house of representatives, who has prepared, beforehand, from newspapers and other similar sources, a list of the members returned. He calls over the house by this list, and the members then proceed to the election of a speaker. The speaker being chosen, the oath is first administered to him by the oldest member of the house present, and then by the speaker to the rest of the members. The clerk is afterwards chosen, either immediately, or at the expiration of some days. In the mean time, the clerk of the last house is suf-

[1] Journal of House, 18th Cong. 1st Sess. 130, 133.

fered to act as clerk. The duty of the latter to act as clerk of the new house and initiate the steps necessary to its organization is founded merely in custom and usage copied doubtless from the practice which prevails in the house of commons. But in the latter the clerk is already appointed; whereas, in the house of representatives in congress, the clerk derives his appointment only from the last house, the authority of which expires with itself. A rule of the house first adopted in 1791[1] declares that the clerk "shall be deemed to continue in office until another be appointed," but inasmuch as the system of standing orders is not in use in this country, and each house adopts its own rules and orders, at the commencement of every congress, usually taking for this purpose those of its predecessors in office, there is commonly an interval during which the clerk is elected, when the rule in question is not yet adopted, and when, consequently, it is not in force, either as a rule of the old or the new house. The practice above described, though sanctioned by long usage, has no ground either of constitution or law, to rest upon, and has already led to inconvenience. Wherever it prevails, it demands the regulation of the legislative power.

275. The mode of organizing a legislative assembly may doubtless be regulated, as it has been in Massachusetts,[2] by law, whether express authority is given to this effect or not by constitution; but it has been deemed so important in Rhode Island and Ohio, that in the constitution of the former State it is provided, that "the organization of the two houses may be regulated by law," and the constitution of the latter declares, that "the mode of organizing the house of representatives, at the commencement of each regular session, shall be prescribed by law." In the constitution of Indiana, it is merely provided, that if a quorum of either house is in attendance, and the members present fail to effect an organization thereof within five days, such members shall receive no compensation from the end of said five days until an organization is effected. Whenever the method of proceeding is thus pointed out, it must, of course, be pursued. The constitution of Rhode Island also provides further that "The senior member from the town of Newport, if any be present, shall preside in the organization of the house."

276. The three essential parts of an organization are the qualification of the members, and the choice of the presiding and recording officers. In some of our legislative bodies, the speaker or president is first chosen, then the members are qualified, and lastly, the

[1] Rule 21.

[2] Act of 1844, c. 143.

clerk or secretary is chosen; in others, the members are first qualified, then the clerk elected, and lastly the presiding officer; and, in others, again, the members being first qualified, the election of the speaker or president precedes that of clerk.

277. When either branch is duly organized to proceed to business, which takes place when the members returned have taken the necessary oaths, and have chosen their presiding officer, a message is then to be sent to the other branch to inform it of the organization of the former; and when the two branches are organized, they join in sending a message to the executive, to inform the latter that a quorum of each branch has assembled, that they are duly organized to proceed with the public business, and are ready to receive any communication he may make to them. Each branch should, at the same time, or by separate message, inform the executive of the name of the presiding officer, of whom they make choice. The name of the clerk of each branch when chosen should be notified to the other and to the executive. This is done afterwards, whenever a change, either temporary or permanent, takes place in these officers. This notification is not a mere ceremony, inasmuch as the names of these important officers ought not to be left to find their way to the executive by chance or accident, but is necessary as a matter of business, in order that the latter may be informed to whose signature as attesting officer of the two branches credit is to be given.

278. Each branch, when duly organized, and without waiting for the organization of the other, may proceed to the transaction of any business, of which it has exclusive jurisdiction, by itself, and which does not require the intervention of the other; and, therefore, until both are organized should not send the above-mentioned notice to the executive. In the mean time, either branch, as soon as it is duly organized, may proceed, for example, to investigate and settle the rights of conflicting claimants to seats. So, the senate of the United States, which in various respects is an executive council, as well as one branch of congress, may proceed with executive business, and may notify the president accordingly, before the house of representatives has completed its organization.

279. The members of a legislative assembly, who are duly returned, having taken the oaths necessary to qualify them to discharge the functions of members, are all precisely equal in point of right, among themselves, and have an equal right to participate in all the proceedings of the assembly, so long as their election is not set aside, or until, in some other way, they cease to be members of the assembly.

280. Members, under restraint in the custody of the sergeant-at-arms, either to answer a complaint against them, or as a punishment,[1] cannot, of course, while they are so restrained, participate in the proceedings of the assembly. Members may also be suspended by way of punishment from their functions as such, either in whole or in part, for a limited time. Suspension is included in the right to expel, but expulsion puts an end altogether to the right of a member. Members under restraint, and those under suspension, retain, of course, the privileges, technically so called, of members.

281. Delegates in the lower house of congress, from the territories of the United States, stand upon a somewhat different footing. They are so called, not because they exercise the functions merely of agents, but probably because they are deprived of some of those of members. In every territory of the United States where a temporary government is established, which has conferred upon it the right to send a delegate to congress, it is provided by law that such delegate shall be elected every second year, in the same manner, and for the same term of two years for which members of the house of representatives in congress are elected; and shall be entitled to a seat in that house, with the right of debating therein, but not of voting.[2]

282. Under these provisions of law, delegates take their seats as members, and their returns and elections may be controverted as such;[3] they are entitled to the pay[4] and privileges of members; and are amenable in like manner to the house. In participating in the business of the house, a delegate is allowed to present petitions and other papers of a like nature;[5] to be of a committee[6] and to act as chairman, and make reports as such;[7] to offer orders or resolutions[8] for the adoption of the house; and, generally, to make any motion, either original, or which may be necessary for the transaction of other business.[9] But his right, in this respect, is limited to motions which do not involve the right of voting on his part. Thus, he may make a motion for the previous question,[10] but he cannot participate in seconding such a motion; because, by a rule of the house of representatives in congress, the seconding of the previous question takes place only by the votes of a majority of the members.

[1] Cong. Globe, XVIII. 928; May, 265.

[2] Act of March, 1817.

[3] Cong. Globe, X. 83; Cong. Globe, XI. 1; Cong. Globe, XXI. 1038.

[4] J. of H. II. 232, 239; Cong. Globe, VII. 102.

[5] J. of H. VII. 116.

[6] J. of H. VI. 128.

[7] J. of H. VII. 108, 112, 113.

[8] J. of H. 31st Cong. 1st Sess. 1216; Cong. Globe, VIII. 541, 547.

[9] Reg. of Deb. III. 805, 806.

[10] J. of H. 15th Cong. 2d Sess. 239; Same, 30th Cong. 2d Sess. 103.

So he cannot make a motion to reconsider a vote,[1] because, by a rule of the house, a motion to reconsider can only be made by one who voted in the affirmative of the question which it is proposed to reconsider. Delegates are members in every respect, except that of voting,[2] but they are not counted to make up a quorum of the house; and, though they have no right to vote, they are usually allowed to express their approbation of particular measures, by an entry, to that effect, on the journal.[3]

CHAPTER II.

OF THE OFFICERS OF A LEGISLATIVE ASSEMBLY.

283. In the several constitutions of the United States and of all the States, the right of each of the legislative assemblies therein established to choose its own officers, except, in some cases, its presiding officer, who is otherwise designated, is expressly secured, in appropriate language, to the assemblies themselves; leaving it to them to determine what officers are proper and convenient or necessary for the despatch of its business for each assembly to have; and these officers may be chosen by ballot or orally, and by majorities or pluralities, according to usage, or the rules of each assembly. Unless otherwise specified, the election or appointment is for the whole period of the legislative existence of the body by which it takes place, or until the death, resignation, or removal from office of any one of the officers thereby elected or appointed. When the presiding and the recording officer are chosen, there are usually no general rules in force. The officers of a legislative assembly, if there is no rule to the contrary, may be appointed by resolution.[4] But, in whatever way the officers of a legislative assembly may be appointed, they may be removed by a simple resolution to that effect.[5]

[1] J. of H. 31st Cong. 1st Sess. 1280; Cong. Globe, XII. 274; Cong. Globe, XXI. 1552.

[2] J. of H. 31st Cong. 1st Sess. 1280. See also Cong. Globe, VIII. 547.

[3] J. of H. VIII. 470, 471.

[4] J. of H. 21st Cong. 1st Sess. 9; Same, 28th Cong. 2d Sess. 223 to 233; Same, 29th Cong. 1st Sess. 101; Same, 30th Cong. 1st Sess. 923; Cong. Globe, XV. 12; Cong. Globe, XVIII. 855.

[5] J. of H. IX. 682. See also J. of H. 31st Cong. 1st Sess. 712, 713, 716.

284. The principal officers necessary to enable a legislative assembly to perform its various functions are three, namely; a presiding officer, called the speaker or president; a recording officer, denominated the secretary or clerk; and an executive officer, sometimes known as the messenger, but more commonly, the sergeant-at-arms. Besides these, there are officers of a less essential character, such as the chaplain and printer, and others of a subordinate description, as the assistant clerks, engrossing clerks, committee clerks, stenographers, door-keepers, and messengers of the sergeant-at-arms. All these officers, with the exception of the subordinates, who are usually appointed by their principals, and, in some States, the presiding officer of the senate, who is otherwise designated,[1] are chosen by the assemblies themselves, in virtue of constitutional provisions.

SECTION I. PRESIDING OFFICER.

285. In parliament, the presiding officer of the lords is the lord chancellor, who, unless he is at the same time a peer of the realm, is not a member of the house and has no right to speak or vote. In the commons, the presiding officer is always a member, who, being duly elected to the office by the house, is denominated the speaker, in Latin, *prolocutor*. The appellation of speaker is probably derived from the principal function exercised by this important officer, in the earliest periods of parliamentary history, and perhaps at the time when the whole parliament sat together. The chief business of the speaker originally was to express the will of the commons, and to speak for them, in all the proceedings of the parliament in which they were allowed or required to participate; the ascertaining of what their will was being doubtless, at that period, attended with little or no difficulty, and therefore a very subordinate and unimportant branch of the speaker's duty. In modern times, though the speaker still remains in some sense the formal mouth-piece of the house, the duty of presiding over its deliberations, and ascertaining its will, has become the principal and much the most important of all his functions.

286. In the legislatures of the United States, the presiding officer of the lower or popular branch is called the speaker; and, in some of them,[2] the same appellation is given to the presiding officer

[1] Where the presiding officer, being designated in this way, is absent, or his place is otherwise vacated, the vacancy is filled by election of the members of the assembly over which he presides.

[2] Pennsylvania, Delaware, North Carolina, Tennessee, Illinois, Kentucky.

of the other branch; but, in the greater number, the title of the latter is the president. If the origin of the word speaker, which has just been given, is correct, the term president is doubtless the most appropriate of the two to designate the presiding officer of a deliberative assembly of any kind.

287. The word *chairman* is frequently used to designate the presiding officer, but, not, of any legislative assembly; being more commonly applied to committees, and other assemblies of a temporary character. This term seems to derive its origin from the circumstance that in early times the presiding officer alone was furnished with a chair; because he must necessarily sit by himself, apart from the others, who were provided only with benches. Hence in modern times the presiding officer frequently denominates himself, and is spoken of by others, as the chair. The word *moderator* is sometimes used to denote a presiding officer; originally it applied to one who presided in a disputation, for the purpose of restraining the contending parties from indecency, and confining them to the question. In modern times, with the exception of town meetings in Massachusetts, which are presided over by a moderator, that term is more commonly used to denote the presiding officer of an ecclesiastical tribunal or council; not perhaps, because the proceedings of such a body, more than those of any other, require an application of the peculiar functions of a moderator, but, probably, because it was the business of such assemblies to settle disputed points, by means of forensic argument, rather than to deliberate upon subjects or measures generally.

288. The functions of the speaker of the house of commons are somewhat different from those of the lord chancellor, as presiding officer of the house of lords. The latter, though he presides in a deliberative assembly, is invested with no more authority for the preservation of order than any other member; and, if not himself a member, his office is limited to the putting of questions, and other formal proceedings. The lord chancellor, if he is a peer, may address the house, and participate in the debates as a member; but, as his opinion is liable to be questioned, like that of any other peer, he does not often speak to points of order. If a peer, he votes with the other members; if not, he does not vote at all. There is no casting vote in the lords; if the house is equally divided, the motion fails, and a record thereof is accordingly made on the journal, with the words accompanying, that in such cases, *semper præsumitur pro negante.*

289. It was probably upon the ground of some supposed analogy

between the functions of the vice-president of the United States as president of the senate, and those of the lord chancellor, as the presiding officer of the house of lords, that Mr. Calhoun, when vice-president, in 1826, decided, in effect, that, as president of the senate, he had no power of preserving order, or of calling any member to order, for words spoken in the course of debate, upon his own authority, but only so far, as it was given and regulated by the rules of the senate. This decision occasioned great surprise, and gave rise, at the time, to some severe remarks. As a practical question, it was in part settled in 1828, by the adoption of a rule, that "every question of order shall be decided by the president, without debate, subject to appeal to the senate." As a question of constitutional right and duty, it is difficult to perceive any reason for doubting, when the constitution declares expressly, that the vice-president of the United States shall BE president of the senate, that it intended to invest him with the ordinary powers of a presiding officer.

290. The functions of the speaker of the house of commons, are thus summed up by a late English writer:[1]—"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 sergeant-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." The duties of the presiding officers of our legislative assemblies are substantially the same as here described. In some points differences will be found to exist, which will be noticed hereafter.[2]

291. The duties of the presiding officer of a legislative assembly,

[1] May, 195.

[2] We shall have occasion to refer more particularly to the various duties of a presiding officer, in connection with the several topics to which they relate.

are manifold and various, corresponding in some sort with the different functions in which the assembly may be engaged.

In its ordinary capacity of a legislative body, his duties are: —

To open the sitting of each day, by taking the chair and calling the assembly to order:

To announce the business before the assembly, in the order in which it is to be acted upon:

To receive and submit in the proper manner all motions and propositions presented by the members:

To put to vote all questions properly submitted and announce the result:[1]

To restrain the members when engaged in debate within the rules of order:

To enforce the observance of order and decorum among the members:

To receive messages and other communications from other branches of the government, and announce them to the assembly:

To authenticate by his signature, when necessary, all the acts, orders, and proceedings, of the assembly:

To inform the assembly, when necessary, or when referred to for the purpose, in a point of order or practice:[2]

To name the members (where this is made by rule a part of his duty) who are to serve on committees:

To decide, in the first instance, and subject to the revision of the house, all questions of order, that may arise, or be submitted for his decision:

To issue his warrant, when directed, for the execution of the orders of the assembly, in the arrest of offenders, or the summoning of witnesses.

292. Where a legislative body is engaged in its judicial functions, it is the duty of the presiding officer to conduct the proceedings, to put questions to parties and witnesses, and to pronounce the sentence or judgment.

293. When the assembly is engaged in any of its high administrative functions, or in matters of state or ceremony, as for example, when a member or other person is to be reprimanded or thanked, the presiding officer is the mouth-piece and organ of the body.[3]

[1] In the house of commons the speaker puts all questions, even those which concern him personally. See Comm. Jour. XXXII. 708; and Hans. (1) X. 1170. In this country, he, generally, calls some other member to the chair, when questions are under discussion in which he is personally interested.

[2] Hatsell, II. 243.

[3] Hatsell, II. 247.

294. The presiding officer, though entitled on all occasions to be treated with the greatest attention and respect by the individual members, because the power, and dignity, and honor of the assembly, are officially embodied in his person, is yet but the servant of the house, to declare its will and to obey implicitly all its commands.[1] He is selected and appointed to the trust of presiding officer, in the confidence, and upon the supposition, of the conformity of his will to that of the assembly. In all his official acts and proceedings, therefore, he represents and stands for the assembly; and his will is taken for that of the whole body, compendiously expressed through him, and by his mouth, instead of being collected from the individual wills of all the members.[2]

295. In order to the convenient and proper discharge of these duties, they must be confided to a single person; for, if there were two, upon any difference of opinion, nothing could be done without appealing to the assembly; and, if there were more than two, or, in other words, if the duties of presiding were placed in the hands of a committee, the debating and deciding in this little assembly would only have the effect to prolong the proceedings to an inconvenient length.[3]

296. The office must also be permanent, not only to avoid the inconvenience of frequent elections, but because its duties will be more likely to be well performed by a permanent than by a temporary officer. The former will have more experience, and a better knowledge of the members; will be more familiar with the course of business; and will feel a stronger interest to do it properly. A permanent president, liable to be deprived of his office only in consequence of an unfaithful or inadequate discharge of its duties, will be thereby the more strongly induced to perform them well; a consideration, which can have no effect upon one elected for a certain period, who, whether he acquits himself well or ill in his office, must, at all events, give it up at the appointed time.[4] The speaker of the house of commons accordingly holds his office during the whole term of the parliament to which he is elected a member; and, in this

[1] "This duty," says Hatsell, "is extremely well expressed, in a very few words, by Mr. Speaker Lenthall; who, when that ill-advised monarch, Charles I., came into the house of commons, and having taken the speaker's chair, asked him, 'Whether any of the five members that he came to apprehend were in the house? whether he saw any of them? and where they were?' — made this answer: — 'May it please your majesty, I have neither eyes to see, nor tongue to speak, in this place, but as the house is pleased to direct me; whose servant I am here; and humbly beg your majesty's pardon, that I cannot give any other answer than this, to what your majesty is pleased to demand of me.'" Hatsell, II. 242.

[2] Dumont, 78.

[3] Dumont, 77.

[4] Dumont, 77.

country, the presiding officers of our legislative assemblies hold their offices, to the end of the term, for which their respective legislatures have been elected; notwithstanding any adjournment, or prorogation, that may take place in the mean time.

297. It is essential, also, to the satisfactory discharge of the duties of a presiding officer, that he should possess the confidence of the body over which he presides, in the highest practicable degree. It is apparently for the purpose of securing this necessary confidence, that the presiding officer is required to be chosen by the assembly itself, and by an absolute majority of votes; that he is removable by the assembly at its pleasure; and that he is excluded from all participation in the proceedings as a member. Each of these particulars requires to be briefly considered.

298. I. In regard to the election by the assembly itself of its presiding officer, the rule above stated can hardly be considered as admitting of an exception, even in those legislative bodies, in which, for special reasons, the presiding officer is designated by the constitution, instead of being chosen by the members; inasmuch, as in these cases, the presiding officer is chosen by the same authority by which the members are chosen. The constitution of the United States and the constitutions of fifteen of the States designate the presiding officer of the first branch of the legislature in this manner, the first declaring that the vice-president of the United States shall be president of the senate; the others providing that the lieutenant-governor elected in each, respectively, shall exercise the functions of presiding officer of the first branch of the legislature therein; and all conferring authority upon the bodies thus presided over to elect one of their own members as temporary presiding officer in place of the officer appointed, in case of his absence or disability. The States, in which the lieutenant-governor thus acts, in virtue of his office, as presiding officer of one branch of the legislature, are those of Vermont, Rhode Island, (in this State the governor is the presiding officer of the senate, if present,) Connecticut, New York, Virginia, Louisiana, Kentucky, Ohio, Indiana, Illinois, Missouri, Texas, Wisconsin, and California. In the constitution of the United States and in those of all the States above named, except that of Virginia, (in which it is declared, that the lieutenant-governor shall preside in the senate but shall have no vote therein,) it is provided, that the presiding officer thereby designated shall give the casting vote, when the body over which he presides is equally divided; in the constitutions of the United States and in those of Vermont, Rhode Island, New York, Louisiana, Ohio, Wisconsin, and Cali-

fornia, by the use both of affirmative and negative terms; and in the other constitutions above mentioned by the use of affirmative terms only. This right of the lieutenant-governor is extended, in the State of Rhode Island, to what is there called a grand committee, and in Missouri to a joint vote of the two houses. In Connecticut and Missouri, the lieutenant-governor is permitted to debate, and in the States of Kentucky, Indiana, Illinois, and Texas, to debate and vote, when the body over which he presides is in committee of the whole. In the constitution of Vermont, the provision is general, that the president of the senate (whoever may be exercising the duties of that office) shall have a casting vote therein, but no other. In regard to the number of votes necessary to elect, it seems to be a rule established at least by practice and usage, that nothing short of an absolute majority will be sufficient, even in those States where the election of other officers takes place by a plurality. In the house of commons, where several persons are proposed as candidates for the office of speaker, an election is made by putting a question in the ordinary manner on each name proposed, separately, instead of allowing all the candidates to be balloted for at the same time, and awarding the office to him who receives the greatest number of votes. In this mode of proceeding, no one can be elected without receiving a majority of all the votes; though, in all other elections, even of committees of the house chosen by ballot, a plurality would be sufficient. The same practice is understood to prevail in this country, and as well in the assemblies of those States, in which elections ordinarily take place by pluralities, as in those in which an absolute majority is requisite, and without regard to the form of election, whether by oral suffrage or by ballot.[1] Whether this practice had its origin from accident, or design, is perhaps doubtful; its effect undoubtedly has been to give the presiding officer a stronger hold upon the confidence of the

[1] In the house of representatives in congress, the speaker has always been elected, without any previous order of the house, or provision of law, to that effect, but simply in virtue of a resolution of the house, to proceed to the election of a speaker. On one occasion, and the only one, it is believed, that ever took place, this principle was departed from; the election of speaker of the house in the thirty-first congress, contested principally between the Hon. Robert C. Winthrop, of Massachusetts, who had been speaker of the last house, and the Hon. Howell Cobb, of Georgia. That memorable contest began on the third of December, 1849, and ended on the twenty-second, after sixty-three ballotings. Previous to the last balloting, a resolution was adopted, that at the next trial, in order to insure an organization, a plurality should be sufficient to elect. At the last balloting Mr. Cobb received 102 votes out of 222, and was accordingly declared elected. The vote had previously stood 100 for Mr. Winthrop, 102 for Mr. Cobb, and for various other persons 22. See the Cong. Globe, volume XXI.

assembly, than he would have, if elected by a bare plurality. If a plurality alone was sufficient to elect, it might and probably would happen, frequently, that an election would be made by a number less than a majority; in which case, the person elected might be instantly removed by those who were opposed to his election, who would of course constitute a majority of the whole.

299. II. The presiding officer, being freely elected by the members, by reason of the confidence which they have in him, is removable by them, at their pleasure, in the same manner, whenever he becomes permanently unable, by reason of sickness, or otherwise, to discharge the duties of his place, and does not resign his office; or, whenever he has, in any manner, or for any cause, forfeited or lost the confidence upon the strength of which he was elected.[1]

300. III. The duties of a presiding officer are of such a nature, and require him to possess so entirely and exclusively the confidence of the assembly, that, with certain exceptions, which will presently be mentioned, he is not allowed to exercise any other functions than those which properly belong to his office; that is to say, he is excluded from submitting propositions to the assembly, from participating in its deliberations, and from voting. The advantages of these restrictions are supposed to be threefold; first, the presiding officer is thus left to devote himself exclusively to his official duties, and to the cultivation of the peculiar talents which they require; which would hardly be the case, if he were called to take the part and sustain the reputation of a member, and were influenced by any other ambition than that of performing well the duties of his office; second, he is thereby secured against the seductions of partiality, and is placed beyond the reach even of suspicion, by being excluded from engaging as a party, in debates and proceedings, in which it may become his duty officially to act as judge; and, third, he is relieved from the danger of weakening his personal consideration, by failing in the measures he undertakes, or by giving cause of offence to his associates, to which a participation in the proceedings as a member would inevitably expose him.

301. Certain exceptions to this rule result from necessity or convenience, namely; the presiding officer may be of a committee,[2] may submit or rather suggest motions and propositions, relating to matters of form, the proper course of proceeding, or the order of

[1] Jefferson's Manual, § 9; Grey, II. 180; Same, V. 134.

[2] Comm. Deb. VI. 297. In this case, as it might not be convenient for the speaker himself to make the report while in the chair, he might substitute another to perform its duties while he makes the report; or the latter might be made by some other member of the committee.

business; he may engage in the debate by special leave of the house, or when the assembly is in committee of the whole, or when a question of order is under consideration; and, when the assembly is equally divided on any question, it is not only the right, but also the duty, of the presiding officer to give a casting vote.[1]

302. The exceptions, stated in the preceeding paragraph, except the last, require no further notice; but in view of the constitutional provision above mentioned, and that the subject may be understood, it will be necessary to investigate, at some length, the right and duty of the presiding officer of a legislative body to vote in the proceedings thereof. At the time when our colonial legislatures were founded, and the method of their proceedings was established, the only examples of parliamentary form which they could follow were to be found in the practice of the two houses of the British parliament. The peers sat together as a deliberative body, and a branch of the national legislature, but they were not a representative body, each of them sat and voted in his own individual right. The lord chancellor attended in virtue of his office with other great officers of the crown, in the house of peers, and collected their sense upon all questions that came before them, but he could scarcely be said to preside in the house of peers; and he did not vote at all, unless he happened to be a peer, which was not always the case, and as such, entitled to participate in their proceedings in his own individual right; in which case he was a member of the body, and voted with the others. In this mode, it sometimes happened, that when all the votes had been given on both sides of a question, the sides were equal. In this case, as a majority could not be reckoned on either side, the affirmative of the question could not be said to prevail, but inasmuch as the votes given for the negative were sufficient in number to neutralize the votes given on the other side, and to prevent them from prevailing, such question was properly held to be decided in the negative. But in the house of commons, the other branch of parliament, the practice was not altogether the same. The house of commons was a representative body; its members did not sit and vote in their own right, but in that of their constituencies; their presiding officer was one of their own members chosen by themselves, and not appointed, but only approved, by the crown; and he did not vote at all, unless the two sides were equal, in number, in which case he gave what was called the casting vote. One of the earliest writers on parliamentary law thus states the rule,[2]—"Upon the division, if the

[1] Hatsell, II. 244, 245. [2] Scobel, 27.

members appear to be equal, then the speaker is to declare his vote, whether he be a *yea* or *no*, which, in this case, is the casting voice; but, in other cases, the speaker gives no vote." Such was the practice of the two houses of the British parliament, when our ancestors emigrated, and established their colonial and provincial assemblies, in the proceedings and practice of which were laid the foundations of our present system of parliamentary practice; and such has continued to be and now is the practice in that body.

303. The casting vote is so called, not because on an equal division the question is decided by it, for, in fact, as we have seen, an equal division upon a question is a decision of it in the negative, but the question is then in such a position, that it is in the power of a single vote to decide the question either way, by being given on that side. Thus, if the votes are equal on each side, the affirmatives do not preponderate, and if there are no more votes to be given, the question must necessarily be held to be decided in the negative; but if there is another vote to be given, that vote must of course be a casting vote, because, on whichever side it is given, that becomes the preponderating side of the question. In the lords there is no such vote to be given; the chancellor if he has a right to vote, as when a peer, having already voted as such on one side or the other of the question; but the speaker of the commons is a member of the house, and if he was not in the chair would have the same right to vote with other members, and he has not voted on the question; and his vote can decide either way a question which is as interesting and important to him and his constituents, as it is to the other members and their constituents. The only mode, by which the lords and commons could be put upon a footing, in this respect, would be to allow the chancellor a vote in all cases, which would alter the constitution of the house of peers, or to authorize him, when a peer, to reserve his vote until the last, and to give it then as a casting vote, which besides the confusion that would thereby be introduced into the practice of parliament, would, so far, alter the constitution of the house of lords. For these reasons, it is presumed, a casting vote has always been refused to the chancellor, as presiding officer of the lords, and allowed to the speaker of the commons.

304. It was very early demanded,[1] that the speaker of the house

[1] The following passage occurs in Sir Simonds D'Ewes's Journals of Elizabeth's Parliaments. It is from the proceedings which took place in the house of commons of her last parliament, held in the year 1601, on the question of passing a bill "for the

of commons should not only vote when the house was equally divided, and give a casting vote, but that he should also vote, when, there being a majority of only one, his vote, if given with the minority, would make that side equal with the other, and then decide the question on that side. But this claim was disallowed, and has not hitherto been renewed in England. In this country it has been maintained, on plausible grounds, that a presiding officer who is also a member had a right to vote on all occasions. But the claim is inadmissible.

305. The claim, asserted in the preceding paragraph, that the speaker had a right to vote whenever his vote would produce an equal division, and thus decide the question, is inadmissible for the following reasons: — First, The practice has always been different. Second, The speaker has only heretofore given a casting vote, that is, when his vote, if given on either side, would have the effect to decide the question on that side; whereas, according to the claim in question, his vote could operate only, if given with the minority. Third, The question is already as effectually decided, according to the universal practice of all deliberative bodies, by a majority of one as it could be by a larger number. In view of the considerations stated in this and the preceding paragraphs, the following principles, with regard to the right and duty of the presiding officer of a legislative assembly in this country, may be considered as established: —

306. I. By a casting vote, is meant one which is given when the assembly is equally divided, and when the question pending is in such a situation, that a vote more on either side will cast the preponderance on that side, and decide the question accordingly; and not merely a vote, which, if given on one side, will produce an

more diligent coming to church on the Sunday." The speaker was John Crooke, Esq., recorder of London. "So it was put to the question thrice together, and because the truth could not be discerned, the house was again divided, and the I. I. I went forth and were a hundred and five, and the noes within were a hundred and six. So they got it by one voice, and the I. I. I lost; but then the I. I. I said they had Mr. Speaker which would make it even. And then it grew to a question, whether he had a voice. *Sir Edward Hobbie* who was of the I. I. I side, said, that when her majesty had given us leave to chuse our speaker, she gave us leave to chuse one out of our own number and not a stranger, a citizen of London and a member; and therefore he hath a voice. To which it was answered by *Sir Walter Raleigh*, and confirmed by the Speaker himself, that he was foreclosed of his Voice by taking that place, which it had pleased them to impose upon him; and that he was to be indifferent for both Parties: And withal shewed, that by order of the House the bill was lost."

Mr. Secretary *Cecil* said: "For the matter itself, the noes were a hundred and six, and the I. I. I a hundred and five, the Speaker hath no voice, and though I am sorry to say it, yet I must needs confess lost it is and farewell it."— D'Ewes's Journals, 683, 684.

equal division of the assembly, and thereby prevent the other side from prevailing. This principle extends to cases of election by ballot.[1] In these cases the speaker does not vote by ballot, but waits until the votes are reported, and then votes orally, not for whom he pleases, but for one, or for the requisite number, of the candidates voted for, who have received an equal number of votes. This principle applies equally in those cases where a less number than a majority is permitted, or a greater is required, to decide a question in the affirmative. Thus, if one third only is permitted or required, and the assembly, on a division, stands exactly one third to two thirds, there is then occasion for the giving of a casting vote; because the presiding officer can then, by giving his vote, decide the question either way.[2]

307. When the presiding officer is called upon to give the casting vote, he first states the vote on either side, and then that for certain reasons which he gives, he votes with the ayes or noes, as the case may be, and declares the question carried on that side. If, in consequence of a subsequent revision of the votes or otherwise, it is discovered that there was no occasion for a casting vote, but that the question was decided without it, the vote of the presiding officer is not reckoned with the others on the same side, but disregarded altogether as if it had never been given.[3]

308. II. When the presiding officer is not a member of the assembly over which he presides, but holds that office by constitutional provision in virtue of some other to which he is elected or appointed, he has and can have no other authority as such than that conferred upon him by the power from which he derives his appointment, and, consequently, can only give the casting vote, where authority to do so is alone conferred. The power to choose one of their own members a temporary presiding officer, in case of the absence or other disability of the officer designated, though expressly given in most instances, is a necessary incident to a parliamentary assembly in this country, and would be considered as given unless expressly withheld; and upon such temporary presiding officer, the assembly may confer what authority they please.

309. III. When the presiding officer is a member of the body over which he presides, he is entitled only to give the casting vote,[4]

[1] Commons' Debates, XIII. 216, 217; Comm. Jour. XXIV. 153.

[2] Cong. Globe, XV. 303, 304.

[3] J. of H. 30th Cong. 2nd Sess. 211.

[4] There is no exception to this rule even when the speaker is counted to make up a quorum. Ordinarily, if, on a division, the two sides taken together do not amount to a quorum, the question on which the division takes place is not decided, but falls to the

which is his ordinary parliamentary privilege; but his authority, in this respect, may be further restrained or enlarged by the constitution or by-laws made by the legislative body, or by the rules of proceeding made by the assembly itself, in pursuance thereof. This rule is confined strictly to ordinary parliamentary matters, such as the adoption of orders and resolutions, the appointment of committees, the passing of bills, and the like.

310. IV. But in this country, by constitutional and legal provisions, there are many duties in force upon our legislative assemblies, which are not parliamentary in their character, and especially are they frequently required to make certain important elections. In all these cases, where a proceeding, not of a parliamentary nature, is imposed by constitution or law upon a legislative assembly, the presiding officer, if a member, votes, in the first instance, like any other member, and does not give a casting vote.[1]

311. When it becomes the duty of a presiding officer to give the casting vote, he may, if he pleases, give the reasons by which his vote is governed; and this is no infringement of the rule, which prohibits him from participating in the proceedings; because, at the time when he gives his vote, it is no longer in his power to sway or influence the assembly by his reasons or example. When the occasion for a casting vote arises in the preliminary or before the final proceedings, it is usual for the presiding officer to give the casting vote in such a manner, (at the same time stating his reasons,) as to give the assembly a further opportunity of consider-

ground; but when the two sides, though they amount to less than a quorum, are yet enough, with the tellers and speaker, to make up a quorum, the question does not fall for want of a quorum, but is thereby decided. Thus, where the house of commons divided twenty-five ayes and eight nays, there being seven wanting to a quorum, which, of course, was not made up by the four tellers and the speaker, the question was not decided. Comm. Deb. XII. 313; Comm. Jour. XXIII. 700. But where the division was twenty-seven ayes and eight nays, the aggregate of which, with the two tellers on each side and the speaker, just made up a quorum, the question was thereby held decided. Comm. Jour. XXXIX. 845.

[1] The principles stated above are not at all impugned, but rather confirmed, by the celebrated vote given in the house of representatives of congress, by Mr. Speaker Macon, on occasion of the adoption of an amendment to the constitution of the United States in December, 1803. On this important question, which proposed to change the form of balloting for president and vice-president, a two thirds vote being required, there appeared eighty-three in the affirmative and forty-two in the negative, and one vote, therefore, was wanting in the affirmative to produce the constitutional majority. The speaker, (Mr. Macon,) notwithstanding the rule of the house, claimed a right to vote, and his claim being allowed by the house, he voted in the affirmative; and it was by that vote, that the amendment was carried. It will be perceived, that this was an extraordinary occasion, and not a common parliamentary proceeding. The rule of the house then, as now, declared, that the speaker should not be required to vote unless the house was equally divided, or unless his vote if given for the minority, would make the division equal.

ing the subject. The presiding officer, however, is at liberty to vote, even on preliminary questions, like any other member, according to his conscience, and either with or without assigning a reason. The reasons given on such occasions are entered in the journals.[1]

312. The rule of order, which prohibits the presiding officer from participating in the proceedings and from voting, with the exceptions and qualifications above stated, applies to all the legislative assemblies of the United States; though, it is not uncommon, except, in those bodies, in which the presiding officer is not a member, to authorize him to vote in all cases, leaving it obligatory on him to do so only when the assembly is equally divided. Where the presiding officer is not a member of the body over which he presides, he has only a right to vote, as provided by all the constitutions, (except that of Virginia, which precludes him from voting at all,) when the assembly is equally divided, and gives the casting vote. In these assemblies, therefore, in all of which there is the right to choose one of their own members a temporary presiding officer, it is competent only to regulate or enlarge the right of voting of the latter, but not of their regular presiding officer. Where the presiding officer exercises the privilege of voting in the first instance, and the votes are equally divided, the rule of the house of lords must be held to prevail, namely, that, on an equal division the negative is to be presumed, and consequently that the motion or question is resolved in the negative or, at all events, that it fails to be resolved in the affirmative, for want of a majority,[2] in virtue of a rule to that effect. The rule of the house of representatives in congress, on this subject, which was first adopted in 1789, provides that, "In all cases of ballot by the house, the speaker shall vote; in other cases he shall not be required to vote, unless the house be equally divided, or unless his vote, if given to the minority, will make the division equal, and in case of such equal division, the question shall be lost." The rule does not, in terms, require the speaker to give any

[1] One of the most remarkable cases of the giving of a casting vote was that of Mr. Speaker Abbott's vote, in 1805, relative to Lord Melville, and which led to the impeachment of the latter. Hans. (1) IV. 320.

[2] When a question is made and decided either affirmatively or negatively, the same question cannot be moved again during the same session. Where an equal division takes place, it might be a question, whether the motion is so far decided as to come within this rule. But inasmuch as the question is declared to be decided in the negative and is so entered on the journal, as in all other cases, without reference to the manner, in which it was made, or to the number of votes, on either side, there can be no doubt that the rule applies.

other than a casting vote, in elections by ballot; but, on these occasions, the speaker votes with the other members. It will be perceived, that this rule makes it imperative upon the speaker to vote only on two occasions, namely, first, when the house is equally divided in the first instance, which is the ordinary case of a casting vote, and, secondly, when there is a majority of only one in favor of the proposition, and the speaker is willing to vote against it.

313. On the death, resignation, disqualification, or removal of the presiding officer, a new election takes place, in the manner already described. But, whenever by reason of sickness or other cause, the presiding officer is prevented from attending to the duties of his office, and is not likely to be able to resume them for some time, it is usual in all our legislative assemblies to elect a presiding officer, *pro tempore*, to preside until the former is again able to attend, in his place, or ceases to hold the office of presiding officer. The duties and functions of this temporary officer, if elected in place of a presiding officer who is a member of the body over which he presides, are ordinarily the same with those of the permanent president, during his absence, and terminate with the return of the latter to the chair; but, where the presiding officer is not a member of the body over which he presides, the functions and duties of the temporary presiding officer may be otherwise regulated by law or by a rule of the assembly. In most of the legislative assemblies of this country, it is also provided by a rule, that the presiding officer if a member may substitute some other member to perform the duties of the chair, in his place, if he have occasion to be absent for a part or the whole of the then present sitting.[1] But he is not obliged to announce the name of the substitute to the house; and, if the latter is in committee of the whole, the speaker may appoint some member to take the chair, and preside, when the committee rises. But such substitution ought

[1] It is remarkable, that, in the house of commons, it is not the practice to elect a speaker *pro tempore*, or to allow the speaker to substitute any other member temporarily in his place. Several instances of the election of temporary speakers occurred during the time of the rebellion and of the commonwealth, but the example has not been imitated in more modern times. In the house of lords, on the contrary, several deputy speakers are usually appointed by commission from the crown, to officiate in the absence of the chancellor; and when the latter and all the deputies are absent, 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. See Hatsell, II. 223, note. In February, 1853, a select committee was appointed by the house of commons "to consider the best

to be made as an official act, and when the presiding officer is himself in the chair of the assembly, or present in it, and cannot be made in his absence by letter or otherwise; if the presiding officer is unable to attend, in person, at the commencement of the daily sitting of the assembly, his power of substitution no longer exists, and there is then occasion for the election of a temporary presiding officer.[1]

314. The authority to elect a presiding officer *pro tempore*, where the presiding officer is not a member of the body over which he presides,[2] is expressly given by all the constitutions, which designate the latter. But where the presiding officer is a member of the body over which he presides, the right to supply his place temporarily is admitted without any express provision, to that effect, either of constitution, or law, or by a rule of the assembly. When a temporary presiding officer is chosen, his election ought to be communicated to the other branch and to the executive; but this need not take place in the case of a mere substitution. A temporary presiding officer authenticates papers by his signature; one who is merely substituted by the presiding officer does not. The presiding officer usually names some other member to perform the duties of the chair, when he has occasion to address the house as a member, or when any matter is before the assembly in which he is interested.[3] Where the presiding officer of a legislative assembly is appointed by law, in virtue of his office, to per-

means of providing for the execution of the office of speaker, in the event of Mr. Speaker's unavoidable absence, by reason of illness or of other cause." The report of this committee, which embodies all the learning on the subject that could be found in the Journals or elsewhere, was made to the house, and ordered to be printed, on the 12th of May, 1853. The committee recommended the adoption of a standing order, that the place of the speaker, when he was absent, should be supplied, from day to day, by the chairman of the committee of the whole on Ways and Means, who acts as such during the session. In consequence of this report, resolutions were agreed to in 1853 by which the chairman of Ways and Means may take the chair during the temporary absence of the speaker.

[1] See J. of H. 25th Cong. 1st Sess. 630; J. of H. 28th Cong. 2d Sess. 509; J. of S. 32d Cong. 1st Sess. 515; Reg. of Deb. VIII. Part 3, 3, 68; Reg. of Deb. X. Part 3, 3, 62; Cong. Globe, XV. 804; Cong. Globe, XVII. 282.

[2] It appears to have been the practice of the Vice-President of the United States, formerly, to go through with the ceremony of obtaining leave of absence, when he had occasion to be absent from the chair; but this practice has been abandoned for many years. Such a presiding officer, when he intends to vacate his place for the time being, does so by being absent, or by giving previous notice of his intention.

[3] In the 28th Congress, the election of Mr. John W. Jones, of Virginia, who had been elected speaker of the house, being controverted, the speaker substituted Mr. Beardsley, of New York, to perform the duties of the chair when the committee of elections was directed to be appointed, who named the committee accordingly. On every subsequent occasion, when the same matter came before the house both incidentally and finally, the speaker substituted some member in his place to perform the duties of the chair. See Cong. Globe, XIII. 18, 21.

form other duties not of a parliamentary character nor of the assembly, these duties are performed by the presiding officer of the assembly, or the temporary presiding officer, and not by a substitute.

315. In every legislative assembly, in which it is not otherwise provided, either by some law, or by a rule of its own, its ordinary functions are suspended during the absence of the presiding officer from sickness or from any other cause.[1] The only business that can then be properly attended to is the choice of a speaker or president *pro tempore*, which must be conducted in the manner already described; the clerk usually presiding and putting the necessary questions.[2]

316. One of the most important of the functions of a presiding officer, whether chosen by the assembly itself, or otherwise appointed *virtute officii*, is the issuing of his warrant, when directed, for the arrest of offenders, or in the execution of the orders of the assembly.[3] This instrument is in the form of a common criminal warrant,[4] and is subject to no other formalities than are required with reference to other criminal warrants. It is under the hand and seal of the presiding officer, and countersigned by the clerk of the assembly.[5] When the warrant has been executed and returned, the service thereof, and what has been done in pursuance of it, are usually reported to the assembly by the presiding officer,[6] and such order taken thereupon as the assembly may think proper.

317. In our legislative assemblies, it is usual, either at the end of each session, or at the close of the period for which they were elected, to pass a resolution, thanking the presiding officer, in general terms, for the manner in which he has discharged the duties of his office. On these occasions the presiding officer usually calls some other member to the chair, when the resolution is under consideration, and takes a convenient opportunity, either at that time, or when he pronounces the final adjournment of the assembly, to express his acknowledgments. The resolution of thanks, which is not ordinarily opposed, though it may be, like any other, is usually

[1] In Massachusetts, it is provided by a rule in the house of representatives, that in case the speaker shall be absent at the hour, to which the house shall be adjourned, the house shall be called to order by the oldest monitor present who shall preside until the speaker returns or a temporary one is chosen.

[2] Hatsell, II. 223.

[3] J. of S. III. 37, 51, 55, 60; Ann. of Cong. II. 68.

[4] Appendix, VI.

[5] In one case, in which the warrant was directed to be issued for the arrest of the clerk of the house, it was ordered to be countersigned by the chief assistant clerk. See J. of H. 28th Cong. 2d Sess. 222 to 233.

[6] Cong. Globe, IV. 175.

moved and seconded by members opposed to the presiding officer in political sentiment.

318. The qualities of a presiding officer are thus delineated by the author of the *Lex Parliamentaria:* "The speaker ought to be religious, honest, grave, wise, faithful, and secret. These virtues must concur in one person able to supply that place."[1] His functions in ancient times are no less aptly described by Mr. Sergeant Glanville,[2] in his speech to the king, on being presented as speaker: The house of commons "have met together and chosen a speaker; one of themselves to be the mouth, indeed, the servant, of all the rest; to steer, watchfully and prudently, in all their weighty consultations and debates; to collect, faithfully and readily, the genuine sense of a numerous assembly; to propound the same seasonably, and to mould it into apt questions, for final resolutions;[3] and so represent them and their conclusions, their declarations and petitions, upon all urgent occasions, with truth, with right, with life, with lustre, and with full advantage, to your most excellent majesty."[4]

319. The personal qualities, which the presiding officer of a legislative assembly in modern times ought to possess, have been often described, but never perhaps in more just, forcible, or elegant terms, than by Sir William Scott, afterwards Lord Stowell, in his speech on nominating Mr. Speaker Abbott, for reëlection, in 1802: "To an enlargement of mind, capable of embracing the most comprehensive subjects, must be added the faculty of descending with precision to the most minute; to a tenacious respect for forms, a liberal regard for principles; to habits of laborious research, powers of prompt and instant decision; to a jealous affection for the privileges of the house, an awful sense of its duties; to a firmness that can resist solicitation, a suavity of nature that can receive it without impatience; and to a dignity of public demeanor, suited to the quality of great affairs, and commanding the respect that is requisite for conducting them, an urbanity of private manners that can soften the asperities of business, and adorn an office of severe labor with the conciliatory elegance of a station of ease."[5]

[1] Lex Parliamentaria, 264; Townsend's Collections, 174.

[2] Hansard's Parliamentary History, II. 535.

[3] Allusion is here made to a branch of the speaker's duty, namely, the forming of the question, which has now become nearly or quite obsolete.

[4] Hatsell, II. 242, note.

[5] Hans. P. H. XXXVI. 915.

SECTION II. RECORDING OFFICER.

320. The second of the officers, essential to a legislative assembly, and, with us, elected in the same manner with the speaker, is the recording officer, usually denominated the clerk or secretary. The clerks of the two houses of the British parliament receive their appointment from the sovereign, by letters patent, and hold their offices for life. The clerk of the lords is called the clerk of the parliaments, and the clerk of the commons the under clerk of the parliaments attending upon the commons. These titles are supposed to owe their origin to the form of the letters patent, previous to the separation of the two houses. When the separation took place, the under clerk went with the commons,[1] and was afterwards described in the letters patent, as *attending upon the commons.* The functions of these two officers are so essentially the same, that for the purpose of the summary statement, at present in view, it will only be necessary to refer to those of the clerk of the house of commons.

321. If an appointment of a clerk of the commons takes place, whilst parliament is sitting, an entry of the fact is made upon the journal; if during a recess, the new clerk enters upon his duties on the assembling of the house, without any formal notice being taken of his appointment.[2] In both cases he is previously sworn, in the presence of the lord chancellor, to be true and faithful to the king; to know nothing that shall be prejudicial to his crown, estate, and royal dignity, without resisting it, and with all speed advertising his grace thereof, or at least some of his council, so that the same may come to his knowledge; to serve the king well and truly, in the office of under clerk of the parliaments attending upon the commons, "making true entries, remembrances, and journals, of the things done and past in the same;" to keep secret all such matters as shall be treated of in parliament, and not to disclose the same before they shall be published, but to such as they ought to be disclosed unto; and, generally, well and truly to do and execute all things belonging to him to be done, appertaining to the office of under clerk of the parliaments.[3]

322. The clerk, in virtue of his office, has the right of appointing a deputy to take his place, and perform his duties; which, in effect, amounts to the substitution, by the clerk, of another person to the

[1] Hatsell, II. 255, 282.

[2] Hatsell, II. 264.

[3] Hatsell, II. 255. The terms of this oath are remarkable, with reference to the political history of the house of commons.

office which he holds. The clerk also appoints the clerks assistant, the committee clerks, and others to perform such clerical duties, as are to be done out of the house;[1] who are all subject to his direction, — hold their appointments during his pleasure, — and are responsible to him, (as he is to the house,) for the due and exact discharge of the duties of their several offices.[2]

323. When the clerk appoints a deputy, he makes the appointment in the usual manner by an instrument under seal, and then informs the speaker by a letter which is communicated to the house, that he desires leave to retire from any further execution of the duties of the office, and to appoint a certain person, naming him, as his deputy. The latter is then called in and takes the place of the clerk at the table.[3] When a clerk assistant is to be appointed, the clerk informs the speaker, that with the approbation of the house, he has named such a person to be his clerk assistant; the speaker acquaints the house with this nomination, and that the person so appointed attends at the door; the assistant is then called in and takes his seat at the table.[4]

324. Besides the clerk or his deputy, and the assistant, who sit at the table, the business of the house of commons requires sundry other clerks, namely: a particular clerk appointed to attend the committee of privileges, whose duty it is also to attend the select committees of elections, (and, when two or more of these committees are sitting at the same time, deputies to the clerk are appointed to attend them, by the clerk of the house); four principal clerks without doors, (each of whom has a deputy to assist him,) appointed to attend committees, who attend in rotation; two clerks who have the direction of the engrossing office, and have writing clerks under them for the engrossing[5] of bills; a clerk to collect the fees and distribute them to the speaker and other officers of the house; and a clerk who has the custody of the journals and papers, and who has several writing clerks under him. All these officers are appointed by the clerk, not by any written or formal appointment, like the assistant and deputy, but by nomination only.[6]

325. When the clerk or his assistant desires, for particular reasons, to absent himself for a time from the service of the house, his

[1] Hatsell, II. 256.
[2] Hatsell, II. 267.
[3] Hatsell, II. 254.
[4] Hatsell, II. 263. Notwithstanding the clerk has the appointment of the deputy and assistant, his authority in this respect seems always to be exercised with the leave of the house. See Hatsell, II. 254, 263.
[5] The engrossing of bills is now dispensed with in both houses, and printing substituted in its place. May, 563.
[6] Hatsell, II. 264, 274.

request is communicated to the house by the speaker, and leave being granted, some one, not unfrequently a member, is appointed to attend in his place during his absence. The same thing occurs, when the clerk or his assistant is unable to attend from indisposition.[1]

326. The duties of the clerk, in making a record of the proceedings, are summarily set forth in the words of the oath, namely; "to make true entries, remembrances, and journals, of the things done and past" in the house. But it is not his duty, to take minutes of "particular men's speeches,"[2] or to make a record of what is merely proposed or moved, without coming to a vote, or being introductory to one. It must be recollected, that, among things "done and past," negative as well as affirmative votes, being equally obligatory upon the house, are included.

327. The clerk and his assistant attend at the table and take notes of the orders and proceedings; from which the votes, as they are called, are made up and printed each day, agreeably to the order of the house, "under the direction of the speaker." At the end of the session, it is the business of the clerk to see that the journal of the session is properly prepared, and fairly transcribed, from the minute-books, the printed votes, and the original papers, that have been laid before the house.[3] It was formerly the practice for a committee "to survey the Clerk's Book every Saturday," and to be intrusted with a certain discretion in revising the entries; but now the votes are prepared on the responsibility of the clerk; and after "being first perused by Mr. Speaker," are printed for the use of members, and for general circulation.[4]

328. It is the duty of the clerk, also, and a part of his ordinary business, to read whatever is required to be read in the house; to authenticate, by his signature, all the orders of the house, for the attendance of persons, for the bringing of papers and records, for the appointment and meeting of committees;[5] and to certify and sign the bills which pass the house.[6] Lastly, the clerk has the

[1] Hatsell, II. 253, 254. See also J. of S. 20th Cong. 1st Sess. 130; J. of H. 29th Cong. 1st Sess. 1012.

[2] A supposed exception to this rule will be examined and considered in another place.

[3] Hatsell, II. 267, 268. At the time of the publication of the last edition of Mr. Hatsell's work, (1818,) from which the above statement is taken, it was not the practice to print the journal of the house of commons, until after the termination of the session. But now it seems (see Perry & Knapp, 536,) that the votes are printed from day to day, and the journal at an interval of about a week afterwards.

[4] May, 200.

[5] This happens only, when the time and place of the meeting of a committee are appointed by the house.

[6] Hatsell, II. 268.

custody of all the journals, papers, and files; and, it is at his peril, if he suffers any of them to be taken from the table, or out of his custody, without the leave of the house.[1]

329. If any mistake or omission occurs in the entries of the clerk, and it is taken notice of or pointed out,[2] on the same day, it may be corrected either by the order of the house, or by the clerk himself, without any order; but, if the mistake or omission is not discovered until afterwards, it ought not to be corrected without an order of the house, upon the report of a committee appointed to investigate the subject.[3]

330. The duties above specified, though set forth as the appropriate duties of the clerk of the house of commons, are, in general, equally incumbent on the clerk of the other branch. But the clerk of the lords has also some duties, which are peculiar to that house, namely, those which arise from its being the highest judicial tribunal of ordinary resort, and from its being constituted a court of extraordinary jurisdiction for the trial of impeachments preferred by the other house. These differences are not of a character to require any particular notice in reference to the duties of the clerk. There are some slight differences, also, in the duties of the two, in reference to the custody of bills, and to the routine of business, which, so far as they may be necessary, will be stated in their proper place.

331. In the legislatures of the United States, the clerks as well as the other officers are required by the several constitutions to be appointed by the assemblies themselves; and their offices expire, of course, with the authority of those from whom they are derived. In some States, provision is made by law, for the continuance in office of the clerks and other officers, until their successors are appointed. In the house of representatives, of the United States,[4] and, it is believed, in some of the State legislatures, it is the usage for the clerk of the preceding house to take a part in his capacity of clerk, in the organization of the succeeding one. Clerks are

[1] Hatsell, II. 265.

[2] In the commons, Oct. 27, 1680, it was ordered: "That the votes of each day be read the day following the first business;" "Ordered, That a committee be appointed to inspect the Journals of the House every day; and see that due entries be made therein."—Comm. Jour. IX. 640. But the practice required by these orders has been disused, probably, since the printing of the votes. At the present day, in neither house of parliament, is the journal of the preceding day read to the house, or supposed to be read, at the commencement of each daily sitting.

[3] Hatsell, II. 266.

[4] A rule of this body provides that the clerk "shall be deemed to continue in office until another be appointed." This cannot refer to a succeeding congress, but only to subsequent sessions of the same congress, or to the tenure by which the clerk holds his office.

usually qualified by taking an oath of office;[1] and are sometimes required to give bonds for the faithful disbursement of such sums of money as may pass through their hands, in the course of their official duties.[2]

332. The clerk of the house, in the execution of the duties of his office, which are exceedingly multifarious, may, if necessary, apply for and receive the direction of the house;[3] and, when appealed to concerning the state of the business, may respond thereto through the presiding officer.[4] It is scarcely necessary to observe that vacancies may occur in this office, either perpetual, as by death,[5] resignation,[6] or removal from office,[7] or temporary,[8] merely, in which cases, the vacancy may be filled in the manner already spoken of.

333. The number of the clerks employed in a legislative assembly, and their various duties and functions, will, of course, depend upon the size of the body, and upon the nature and amount of the business which usually comes before it. Hence, in the legislatures of this country, a great diversity prevails; in some there being but a single clerk; in others, several; and in others, again, some part of the duties, usually performed by the clerk, being imposed upon other officers.[9]

334. The powers and duties of the clerks of our legislative assemblies are substantially the same with those which have been just described, as belonging to the clerk of the house of commons; with the exception, probably, of the power of appointing deputies, assistants, and other subordinate officers and clerks. The right of electing their officers being conferred upon the legislative bodies by constitutional provisions, it would seem, that the mere election of a person to be clerk could not, of itself, give him a right, by implication, to appoint other officers, even in his own department. Clerks may, however, employ persons to assist them in the discharge of their duties, in such manner as they may think proper, without conferring on these persons any official character. Committees, with

[1] The secretary of the senate, and the clerk of the house of representatives, take an oath of office, prescribed by the Act of June 1, 1789.

[2] The officers above mentioned give bond for the faithful application and disbursement of such contingent funds of their respective houses as shall come to their hands. — Act of February 23, 1815.

[3] J. of H. IV. 255.

[4] Cong. Globe, X. 68.

[5] J. of H. 31st Cong. 1st Sess. 788.

[6] J. of H. III. 736.

[7] J. of H. IX. 682; Same, 28th Cong. 2d Sess. 223 to 233; Cong. Globe, XIV. 147, 150.

[8] J. of H. VIII. 290; Same, IX. 169.

[9] In Massachusetts, for example, bills which are usually engrossed by the clerk of the house in which they originate are engrossed in the office of the secretary of the commonwealth.

the assent of the assembly, of which they are members, that they may employ a clerk, appoint one for themselves. The secretary of the senate, and the clerk of the house of representatives, of the congress of the United States, employ such clerks and assistants, as are deemed necessary, from time to time, by their respective houses. The number, which is usually quite considerable, is often varied.

SECTION III. — EXECUTIVE OFFICER.

335. It is not enough, that a legislative assembly should have a presiding officer to ascertain and declare its will, and a recording officer to authenticate it; an executive officer, to see that its will is obeyed, is, in certain cases, equally essential. In parliament, this officer is denominated the sergeant-at-arms, and is appointed by letters patent from the crown. If he conducts himself in such a manner as to forfeit the confidence of the house, the course is to address the crown to remove him and appoint another in his place. The corresponding officer, in this country, most generally bears the same title, though he is sometimes called the messenger.

336. The duties of this officer are analogous to those of a sheriff in a court of justice. They consist principally in attending upon the assembly, — maintaining order among the persons there present, — serving the processes and executing the orders of the assembly, — giving notice to the presiding officer of persons attending with messages, or other communications, or in obedience to the orders of the assembly, — arresting persons, whether members or strangers, ordered to be taken into custody, — and restraining in confinement, in his custody or elsewhere, all persons subjected thereto by way of punishment. He has the appointment and supervision of various officers in his department, — such as the deputy-sergeant, messengers, and sometimes the door-keepers; and, as house-keeper of the house, has charge of all its committee-rooms and other buildings, during the sitting of the legislature. The door-keepers of the two houses of congress are independent officers appointed by the houses respectively. There is also an officer of the house called the postmaster. The number and occupations of the persons employed by the several legislative bodies are so various and different, that they do not admit of a more exact enumeration.

337. The sergeant-at-arms being the chief executive officer of the assembly, to whom the warrant of the presiding officer is directed,

and by whom it is served, it is commonly against him that complaints are instituted,[1] or actions brought[2] for executing the orders of the assembly.[3] In cases of this kind, the sergeant communicates the fact to the assembly, who thereupon assumes his defence, and orders the expense thereof to be defrayed out of its contingent fund.[4] Vacancies in this office may occur, and be filled, in the manner already mentioned.[5]

SECTION IV. — CHAPLAIN.

338. It has been the immemorial usage, in both houses of parliament, to commence the sitting of each day with the reading of prayers. In the lords, this service is performed by the youngest bishop present, or, if none are present, by any peer in holy orders. In the commons, prayers are read by a chaplain appointed by the speaker, or, as he is called, Mr. Speaker's Chaplain. It appears to have been the practice, at least, after the establishment of protestantism, in the time of Elizabeth, for the clerk of the house to read prayers, from the book of common prayer, and for the speaker also to read a special prayer composed by himself and "fitly conceived" for the time and purpose, every morning during the session. Some of the speaker's prayers,[6] which are preserved in the journals, are composed in a style, which would do credit to any bishop of the time. It is probable, that this practice was discontinued during the civil wars and the commonwealth. The present practice has prevailed for many years. Mr. Speaker's chaplain, besides a pecuniary compensation, usually receives some advancement in the church, for his services in that capacity. Absence from prayers was anciently punished by a small fine, for the use of the poor. At the present day, no fine is payable for non-attendance, but presence in a particular seat at prayers entitles the member to hold the same seat for the day.

339. In the legislatures of the United States, it is the general practice for each branch, soon after its organization, to elect a chap-

[1] J. of H. III. 748, 752, 754; Ann. of Cong. I. 865.

[2] J. of H. 15th Cong. 2d Sess. 135.

[3] The leading cases, in which the power of a legislative assembly to commit is established, are, in England, that of *Burdett* v. *Abbott*, reported in the fourteenth volume of East's Reports, and, in this country, that of *Anderson* v. *Dunn*, reported in the sixth volume of Wheaton's Reports. In the former case, the action was brought against the speaker, and in the latter, against the sergeant. Sir Francis Burdett, also, brought an action against the sergeant-at-arms.

[4] J. of H. 15th Cong. 2d Sess. 135.

[5] J. of H. 21st Cong. 1st Sess. 9; J. of H. 22d Cong. 2d Sess. 374.

[6] Appendix, VII.

lain, who attends at the commencement of each day's sitting, and prays with the members, after the manner of the sect or denomination to which he belongs. The two branches of congress, in pursuance of a joint resolution, previously agreed upon for the purpose, elect each a chaplain of a different sect, who exchange with one another weekly.

SECTION V. PRINTER.

340. In modern times, the substitution of printing for reading in legislative assemblies has become so general, that it is usual to appoint some one to the office of printer to the assembly. In the house of commons, this appointment is usually left with the speaker. With us the choice is generally made by the assembly itself; either by means of an election, in the ordinary way, or by receiving proposals, and giving the appointment to the person, whose terms, on the whole, are the most advantageous. In assemblies, where there is but little printing required, the usage sometimes is, to authorize the presiding officer or the clerk, on each particular occasion, to employ some one for the purpose. In whatever manner, however, a printer may be employed, he is, for the time being, the servant of the assembly; and, as such, responsible for the custody and safe-keeping of all papers and documents intrusted to his care, and bound to secrecy in all cases, where secrecy is enjoined, either expressly or by the nature of the subject. He is also entitled to the protection of the house in the discharge of his duty.[1] The printing of congress is of such importance, and of such vast extent, that it is the subject of regulation by law. Each house employs its own printer.

[1] The powers and duties of this officer, in the house of commons, have within a few years given rise to the only controversy of much importance, touching parliamentary privilege, which has occurred in modern times. The immediate occasion was the publication, in pursuance of an order of the house of commons, by the Messrs. Hansard, printers of the house, of certain reports of the inspectors of prisons, in one of which, a book published by a bookseller named Stockdale, was described in a manner which he conceived to be libellous. Stockdale brought his action against the printers. The question primarily involved was whether the house of commons could authorize the publication of a libel. The house took the side of their printers, and passed several resolutions, asserting their own privileges, and their exclusive jurisdiction of all questions in which they were involved. But the claim of privilege set up by the defendant was disallowed by the court of King's Bench. — See *Post*, § 433.

CHAPTER THIRD.

OF THE PLACE AND MANNER OF SITTING OF A LEGISLATIVE ASSEMBLY, AND OF THE FORMAL PROCEEDINGS THEREIN FOR THE TRANSACTION OF BUSINESS.

341. Under this head of the subject, it is proposed to give an explanation of several matters, which are essential to or connected with the orderly proceeding of a legislative assembly, in the transaction of its business, namely; of the place and manner of sitting; of the continuation, and close, of the daily sitting; of the personal deportment of the members during the sitting; of the manner of speaking; of the rule of decision; of the several forms of taking a question to ascertain the sense of the assembly; of the journal or record of the proceedings; of the printing of bills and other documents; and of the attendance and pay of the members.

SECTION I. PLACE AND MANNER OF SITTING.

342. The rooms, necessary for the holding of a legislative assembly, consist of a principal hall or chamber, of a sufficient size for the ordinary sitting of the members, when occupied with business; a number of smaller rooms adjoining, or in the same building with, the principal hall, for the use of committees; a room adjoining the principal chamber, for the use of the presiding officer; one or more apartments for the accommodation of the recording officers, and the custody of their papers, journals, and records; one or more rooms for the sergeant-at-arms, suitable for the restraint of persons in his custody; and one or more rooms to be used as ante-rooms, for persons in attendance by order of the assembly or otherwise. To these must be added a conference room, for occasional meetings of the two branches.

343. The place where the assembly is to sit, being designated and appointed beforehand by law, and to be changed only by legal authority, no valid meeting can be held, or business transacted, at any other place. The place of meeting is in the possession of the assembly while sitting, and of its appropriate officers when not in session. The assembly itself, as an aggregate body, and the per-

sons of its members individually, while sitting, are sacred and inviolable, and cannot rightfully be interfered with, in any manner, by any other tribunal or authority whatever.[1] This principle is so essential, that when violated, the government itself is attacked; and, if the violation is continued, the government is for the time overturned. The assembly, also, has the absolute control of the place of its sitting, and may exclude therefrom, at its pleasure, all strangers, that is, all persons who are not its members, even though they are members of a coördinate branch, or of some other department of government. It is hardly necessary to remark, that, the assembly may compel the observance of a proper decorum by all persons, whom it allows to be present at its proceedings. On the other hand, the mere place of sitting is no sanctuary; and, when the assembly is not in session, is no more inviolable than any other private or public apartment.[2]

344. In theory, the internal proceedings of all deliberative bodies, legislative as well as others, are supposed to be conducted with closed doors, and in secret;[3] the result only of their deliberations being made known, according to the subject-matter, or the persons interested, either by public proclamation, or by being announced to the parties, who are called in for the purpose; and in courts of justice, juries, courts-martial, committees, and, indeed, in almost every variety of deliberative bodies, not legislative in their character, the practice conforms to the theory. In regard to legislative assemblies, though supposed, with certain exceptions, which will be mentioned, presently, to sit with closed doors, they are all now practically and to a greater or less extent open to the public.

[1] An instance of the invasion of a legislative assembly by another coördinate branch of the government occurred in the reign of Charles I. and was among the last acts of that infatuated and unfortunate sovereign. I allude to his going into the house of commons, on the 4th of January, 1641, while the house was sitting, for the purpose of seizing certain members, whom he had accused of high treason. This incident is probably familiar, as it is described in the books of history. Those who wish to see it more fully set forth, will find an account of it in Rushworth's Historical Collections, vol. IV. p. 474. This event also constitutes a sort of epoch in parliamentary law. Mr. Hatsell, in his collection of Precedents, omits every thing that occurred in parliament from this time, until the restoration, in 1660; the precedents of proceedings during this period not being in his opinion of such a character as to entitle them to any weight or authority.

[2] An attempt was made in 1815, by a member of the house of commons to make the chamber of the house a sort of sanctuary. Lord Cochrane, (then in the naval service, afterwards Lord Dundonald,) a member, having been indicted and convicted for a conspiracy, was committed by the court of King's Bench to prison. He escaped therefrom, and took refuge in the house, at a time when the house was not sitting, although at a time when, by law, the sitting might have commenced. He was pursued by the marshal, and arrested in the house, and taken back to prison. The matter was investigated by a committee, who came to the conclusion, that the privileges of the house had not been violated.

[3] Pemberton, 25.

345. In both branches of parliament, the proceedings were conducted with closed doors from the earliest times, down to less than a hundred years ago; though it is not improbable, that a few persons were always occasionally allowed to be present, by the connivance of the officers or members, till the number became quite considerable, and a sort of system was established, upon which admission to these bodies could be obtained by a limited number of persons; but this always was and now is a matter of mere connivance, and not of right; and the proceedings of these bodies are supposed, even at the present day, to be conducted in private; accommodation is indeed provided in each for the reporters for the newspapers; for a limited number of the members of the other house; and for a very few other persons occasionally present; but, all this is a mere matter of indulgence; and the house may notwithstanding be cleared of all but members, at any moment, without debate or delay, and upon the demand of any single member. The exclusion of strangers from these bodies, though their presence is connived at by the officers and members, can at any time be enforced without a previous order of the house, all that is necessary, for this purpose being that some member should take notice of their presence, and should communicate that fact to the house; in the house of commons, the speaker is then obliged to order them to withdraw without putting a question. Strangers are present in either house only by sufferance, and upon no other ground has their presence been recognized.[1]

346. In this country, with the exceptions alluded to, all the legislative assemblies are, in theory, and until a comparatively recent period, were in fact, closed against the public; all the provincial legislatures probably sat with closed doors; the proceedings of the old confederation congress were always in secret; and it was not until the fourth congress which commenced in the year 1795,[2] that, after a long struggle, the doors of the United States senate, when sitting in a legislative or judicial capacity,[3] were thrown open to the public. The public have since been admitted to the debates in all our legislative bodies; in some by the permission of the assemblies themselves; in others by constitutional right. In the first, unless the theoretical character of those bodies should be considered as changed by long usage and the nature of our government and institutions, it would seem, that it could not be compe-

[1] May, 207.
[2] J. of S. II. 33, 34.
[3] The doors are still closed when the senate is sitting in its executive capacity.

tent for a legislative assembly by any connivance, remissness, or voluntary act of its own, to change the basis of its original constitution. In these bodies, therefore, whatever rule or usage there may be to the contrary, their theoretical character is to sit with closed doors; and it is in the power of any member, upon his mere demand, and without any previous order therefor, to make the practice correspond to the theory, or, in other words, to exclude strangers therefrom at his pleasure.

347. This right of an individual member, without debate, and at pleasure, to exclude strangers from a legislative assembly,[1] is essential to its independent existence, and the due exercise of its functions, as such; for otherwise, it would be out of the power of the members to make those communications to the assembly which they think ought to be confidential, and out of the power of the assembly itself to consider any thing in secret; for if it was necessary to obtain a previous order of the assembly, before it could receive a communication, or discuss a subject, with closed doors, then a motion must be made and seconded for such order, and, a debate might ensue thereon, in public, whether a particular matter should be considered with closed doors, which, in most cases, would be equivalent to divulging the matter proposed to be kept secret.

348. The legislative assemblies of the United States and of the several States owe both their existence and their character, in respect to the publicity of their proceedings, to the respective constitutions by which they are established, and are divisible into two principal classes.

349. I. The constitution of the United States and those of the States of Maine, Massachusetts, Rhode Island, New Jersey, Virginia, North Carolina, South Carolina, Georgia, Louisiana, Kentucky, contain no provisions at all with regard to this subject. The legislative assemblies, therefore, established by these constitutions, according to the common parliamentary law above stated, are not public in their character. In these assemblies, consequently, it is the right of each individual member, in theory, at least, whenever he notices the presence of strangers, to have the assembly cleared of them, and brought back to its proper character of an assembly sitting with closed doors. Whatever might be thought, or might be the result, of an attempt on the part of individual members to

[1] The standing order of the house of commons, by which the sergeant is directed to take into his custody all strangers that he may see in the house, or that may be pointed out to him, adds nothing to the right of the house to proceed without the presence of strangers, or to that of any member to exclude them from the assembly. — May, 206, 207.

assert this right, its application may doubtless be constitutionally regulated by each assembly for itself. The rule on this subject, adopted by the house of representatives of the United States, which is one of the bodies belonging to this class, is as follows: — "Whenever confidential communications are received from the president of the United States, the house shall be cleared of all persons, except the members, clerk, sergeant-at-arms, and door-keeper, and so continue during the reading of such communications, and, (unless otherwise directed by the house,) during all debates and proceedings to be had thereon. And when the speaker, or any other member, shall inform the house that he has communications to make which he conceives ought to be kept secret, the house shall, in like manner, be cleared till the communication be made; the house shall then determine whether the matter communicated requires secrecy or not, and take order accordingly." The rule on this subject, in the senate of the United States, is, besides enjoining secrecy as to confidential communications from the president, that, "On a motion made and seconded to shut the doors of the senate, on the discussion of any business which may, in the opinion of a member, require secrecy, the president shall direct the gallery to be cleared; and, during the discussion of such motion, the doors shall remain shut." These rules, it will be perceived, do not cover the whole ground; but the practice under them, seems to leave no doubt that the principle of the common parliamentary law, as above stated, is recognized in both houses of congress. In the senate, it has been decided, that the house is to be cleared, and the proceedings conducted in secret, on the annunciation of a message of a confidential character, from the other house,[1] or at the request of any individual member;[2] and in the house of representatives, messages from the senate are received in the same manner, and put upon the same footing,[3] with messages from the president of the United States.[4] In both houses, therefore, when a confidential message is announced, either from one house to the other, or from the executive to either, the house is cleared to receive it in the manner mentioned in the rule; if the message is in writing, marked confidential, or, from an inspection of its contents or otherwise it appears to be so, either wholly or in part,[5] the presiding officer announces the fact, and the house is thereupon immediately cleared, and the message, or such

[1] J. of S. III. 265; Same, V. 93.
[2] J. of S. V. 93.
[3] J. of H. V. 550; Same, VII. 474; Same, VIII. 289; Same, 471, 476, 522.
[4] J. of H. VII. 472, 474, 488; Same, VIII. 273, 628.
[5] J. of H. II. 331.

part thereof as is confidential, is at once communicated; and, so, if the speaker,[1] or the chairman of a committee,[2] or any individual member,[3] informs the house that he has a communication to make to it which he thinks ought to be made in secret, and requests the house to be cleared for the purpose, the house is immediately cleared accordingly. The injunction of secrecy thus imposed may be removed[4] at any time; but the motion for this purpose is confidential in its nature, and can only be made with closed doors;[5] though when made it is entitled to precedence over any motion to proceed to the business to which it is applicable.[6] When any matter has once been introduced into the house in its ordinary capacity, a motion, that the further discussion thereof shall take place in secret, may be made, considered, and decided, in open session.[7] Any invasion of the obligation of secrecy, imposed in the manner above described, or by any other vote of the house, as, for example, the printing of a bill,[8] whether such invasion takes place by members,[9] or others,[10] is punishable as a contempt. The proceedings, which take place with closed doors, are recorded in a separate journal, which partakes of the character of the transactions recorded in it, and cannot be adverted to, read in debate, or amended, at any distance of time, until the injunction of secrecy is removed.[11]

350. II. The second class of legislative assemblies consists of those, in reference to which it is provided, in the instrument of their creation, and in some appropriate phraseology, that all their proceedings and debates shall be open to the public, except upon occasions when secrecy is required. The States, in the constitutions of which this provision is inserted, are the following, namely: — New Hampshire, Vermont, Connecticut, New York, Pennsylvania, Delaware, Maryland, Florida, Alabama, Mississippi, Tennessee, Ohio, Indiana, Illinois, Michigan, Missouri, Arkansas, Iowa, Wisconsin, and California. In these States, therefore, the legislative assemblies are open and public, by the instrument of their creation, and cannot proceed, upon any particular occasion, with closed doors, without an order to that effect. This may take place, in all the

[1] J. of H. VII. 493; Same, 19th Cong. 1st Sess. 98.
[2] J. of H. VIII. 273.
[3] J. of H. VII. 474, 492; Same, VIII. 546, 547, 616, 675; Same, 15th Cong. 2d Sess. 117; Ann. of Cong. 5th Cong. 955; Ann. of Cong. 9th Cong. 1st Sess. 342; 2d Sess. 1261, 530.
[4] J. of S. V. 106, 149; J. of H. VI. 198, 199, 597, 598; Same, VIII. 459 to 469, 493, 494, 495, 496.
[5] J. of H. VI. 382; Same, VII. 492.
[6] Ann. of Cong. 9th Cong. 2d Sess. 402, 403.
[7] J. of H. VIII. 436, 444; Same, 32d Cong. 2d Sess. 172.
[8] J. of S. I. 384; Same, V. 367.
[9] J. of S. III. 265.
[10] J. of H. VIII. 279, 280, 445.
[11] J. of H. V. 369, 550.

States above mentioned, except Ohio, by a major vote; in Ohio, the provision is, that "the proceedings of both houses shall be public, except in cases, which in the opinion of two thirds of those present require secrecy." In these States, therefore, the legislative assemblies are not competent to make any rule with regard to proceeding in secret, contrary to the constitutional provisions above mentioned. It is probable, however, that the reception of a confidential message from the executive would be considered, without regard to its character, as a further reason for the adoption of an order to proceed upon it, at least, in the first instance, with closed doors. In several of the States enumerated in this paragraph, namely, Pennsylvania, Delaware, Maryland, Tennessee, Indiana, Illinois, Missouri, Arkansas, the provisions as to publicity are expressly extended to committees of the whole.

351. III. The constitution of Texas is the only one, which provides simply that "The doors of each house shall be kept open." In this State, therefore, the legislative assemblies cannot, on any occasion, or for any purpose, proceed with closed doors, in virtue of any rule or order to that effect.

352. In the absence of any rule on the subject every member occupies any vacant seat he pleases, and abandons his right to it, when he leaves the seat. In the house of lords, there is a standing order, assigning the places for the sitting of members; but this order is only enforced occasionally; in general, the peers, with the exception of the bishops, who always sit together in a particular part of the house, occupy different sides of it, according to the parties to which they belong. In the house of commons, no places are particularly allotted to members; but it is understood, that members who have received the thanks of the house in their places, (which often happens to officers of the army or navy who are members,) are entitled, by courtesy, to keep the same places during that parliament;[1] 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. With these exceptions, the only mode of securing a particular seat is by being present at prayers. The practice is, for the two parties, into which the house is usually divided, to arrange themselves on opposite sides, the ministers and their friends on the right, and the opposition on the left of the chair; the front bench on the right hand, which is called the treasury or privy councillors' bench, being appropriated to the members of the

[1] Hatsell, II. 93, 94.

administration; and the front bench on the opposite side to the leading members of the opposition who have served in high offices of state.[1]

353. In the legislative assemblies of the United States, besides the above, three modes of assigning the seats among the members appear to be commonly in use, namely: the seats are either determined by lot; or according to seniority of age, or membership; or are taken possession of by the members individually; but in whatever mode they may be assigned or appropriated, in the first instance, they are permanent during the session. In the house of representatives of the United States, the members, having taken what seats they please, in the first instance, at the commencement of the first session of each congress, abandon them in pursuance of an order to that effect, and draw lots for the right of choice, and make their selection accordingly.[2] If a dispute arises between two members, as to their respective rights to a particular seat, they may refer the matter to the house.[3] In the senate of Massachusetts, which always consists of a certain fixed number of members, the seats are assigned by a committee, usually according to seniority of legislative service. In the house of representatives of the same State, which is a large body, but of uncertain size, the seats themselves, and not merely the right of selection, are assigned by lot a day or two previous to the commencement of each session, under the direction of the sergeant-at-arms.

354. The mace, which is the emblem of the authority of a legislative assembly, is an ornamented silver club of a convenient size. The one belonging to the house of commons was originally

[1] The rooms in which the two houses of the British parliament sit, in the new buildings for their use at Westminster, are probably not different in shape, size, or internal arrangements, from the old apartments which they occupied, when Mr. Hatsell's treatise was compiled, and to which allusion is frequently made in that work. The chamber, in which the house of commons sits, at the present time, is an oblong square, extending from one side of the building to the other, with the bar at one end, and the speaker's chair towards and near the other, and with fixed rows of benches, or seats with backs, on each side. In the area between and directly in front of the speaker's chair, there is a very long and wide table, at the upper end of which sit the clerk and his assistant, and the lower end of which is occupied with the mace resting upon its frame. The table of the house is so wide that it nearly fills the area, so that those members who address the house from the first row of benches on either side, make use of it for their papers. At the end behind the speaker's chair there is a small gallery for the use of reporters, and at the opposite end, over the bar, is a larger one for the use of persons introduced by the speaker, or members. At each side there is a gallery extending from one end to the other, and containing a single row of seats only, for the use of members. Behind the reporters' gallery, there is a seat for ladies, separated from the house by the partition wall at that end, which is here partly made of screen-work of polished brass, through which the occupants can see the interior of the house and hear the debates, without themselves being seen. These galleries are approached from without.

[2] J. of H. 29th Cong. 1st Sess. 55.

[3] J. of H. 27th Cong. 2d Sess. 27, 28.

made for the use of Charles I. When parliament is prorogued or dissolved, it is kept at the jewel office. On the assembling of parliament, the mace is brought into the house by the sergeant-at-arms, and placed under the table of the house, where it remains until a speaker is chosen, and then it is placed upon the table, where it is always put while the house is sitting and the speaker is in the chair. During the sitting of parliament, and adjournments thereof, (for however long a time,) the speaker has the keeping of the mace, which is always carried before him, when he enters the house or leaves it; and also on all public occasions. The mace is then borne by the sergeant-at-arms of the house on his shoulder. When the mace lies *upon* the table of the house, the assembly is a house; when it is *under* the table, the house is in committee of the whole; when the mace is out of the house, (as, when the speaker omits to attend the house from illness or other cause) nothing can be done but to adjourn. When the mace is not on the table, but borne by the sergeant on his shoulder in the house, (as, when messengers from the house of lords are introduced, or when a witness is examined at the bar of the house, or a person accused, or an offender is brought to the bar) no member, except the speaker, can say a word, or make a motion, or indicate a question to be put to a witness, but the speaker alone manages. This implement is in use for the same or analogous purposes in congress, and probably in the legislative assemblies of some of the States, but is not essential to the regularity of proceeding.[1]

355. An essential part of the arrangements for the transaction of business is the rail or bar, by which the members are separated from persons attending the assembly, not to witness the proceedings, but to participate in them, either as witnesses, parties, counsel, or messengers; but which is also made movable, in order to admit the ingress and egress of members. In the house of lords, the bar is a rail extending from one side to the other of the room, and dividing it into two unequal portions. In the house of commons and in our large assemblies, the bar is nothing more than a rail extending, across the passage way, into the area within the seats, and does not in fact separate the members from persons attending. The "bar of the house" has, in this country, become more a metaphor than a reality; the expression "placed at the bar," denoting that a person is on trial before the assembly; and to be

[1] The mace must not be confounded with the small hammer of wood, ivory, or metal, which the speaker or other presiding officer uses to attract the attention of the assembly, or for the preservation of order.

"heard at the bar" meaning only that some person, not a member, is allowed to address the assembly. It is essential, however, to the orderly conducting of the business of a legislative assembly, that the members should, in fact, be separated from other persons attending, or should have the means of such separation at command. Where there is a space between the bar, and the walls of the room in which the assembly meets, those members only are said to be present in the assembly, and are recognized by the presiding officer, as members, who are within the bar; or where there is no separation by means of an actual rail or bar, within the exterior limits of the seats appropriated to members. In England, members who have reports to make from committees, or bills or petitions to present, or messages to deliver from the sovereign, go down from their places in the house for the purpose to the bar, and are there called to by the speaker. According to our practice, the only papers delivered at the bar accompany the messages which are there always received from the executive, and from the other branch.

SECTION II. — OPENING, CONTINUATION, AND CLOSE, OF THE DAILY SITTING.

356. A legislative assembly, having once met, either with or without a quorum, on the day appointed for its meeting, continues to meet afterwards regularly, and as a matter of course, every legislative day, that is to say, every day, except Sundays and such other days, (as, for example, in England, Christmas and Good-Friday) as, by the law and usage of each particular State, are accounted as holidays.[1] But though these days are not legislative, on which an assembly meets, as of course, or on which it would meet unless otherwise ordered, they may nevertheless be made legislative days by the assembly itself. Thus, if the assembly sits over from the day preceding, or appoints them beforehand for a meeting, they then become legislative days.[2] In the eastern, and, probably in some of the other States, Sunday is the only day, which is not an ordinary legislative day, and on which a legislative assembly does not meet, as a matter of course.

357. Sundays, and the other days above mentioned, being legislative days or not according to the determination of the assembly,

[1] Whitelocke, I. 219.

[2] J. of H. 24th Cong. 1st Sess. 577; Cong. Globe, VI. 371; Cong. Globe, VII. 244.

they are always reckoned as a part, or so many days of, the session;[1] thus, for example, the members draw their daily pay for these as much as for any other days; and when it is provided by constitution, that neither house shall adjourn for more than a given number of days, without the consent of the other; that the executive shall return a bill within a certain number of days; these days are included in the computation; but where the rules of an assembly require that certain motions, as, for example, the motion for reconsideration, shall be made within a fixed number of days, Sundays and the other days above mentioned are included or not in the computation, according as the assembly sits or not on those days.

358. When certain days in the week are set apart by rule for the consideration of a certain class of business, that kind of *business* is entitled to the preference on those days. But it does not thereby lose its place on the general docket, and may be considered on other days.[2]

359. Where the assembly has a clock which has received its sanction, and is used for the purpose of indicating the time, the presiding officer ordinarily goes by it in conducting the business of the house.[3]

360. It not unfrequently happens, that the daily sitting of the assembly on one day is prolonged into the next day, in the course of business, and without any previous order therefor. In this case the transition of time is to be noted on the journal, as near as may be, and a new date inserted, and, at the end of the day's sitting, the true day to which the house stands adjourned is put down.[4] It is important, on many occasions, to know the precise day on which particular proceedings take place. Where the sitting of one day is prolonged, in this manner, into the next, it may be extended beyond the time assigned for reading the journal and commencing the regular proceedings of the last-mentioned day;[5] but business which is in order only on the day when the sitting commences, and is then properly taken up for consideration, ceases to be in order, and goes over to the next day on which such business is in order, by the natural expiration of the day on which it is taken up.[6]

[1] J. of H. 31st Cong. 1st Sess. 226, 227; Cong. Globe, XIII. 70; Cong. Globe, XVIII. 1029.

[2] J. of H. 19th Cong. 1st Sess. 795.

[3] Cong. Globe, XV. 1223.

[4] In the house of commons, the entry on the journal, when the change of time takes place, followed by a new date, is thus:—"and the house having continued to sit until after twelve o'clock on [Saturday] morning;" at the end of the day's sitting, the entry is:—"And then the house, having continued to sit till after three o'clock on [Saturday] morning, adjourned till this day."

[5] Cong. Globe, VIII. 288.

[6] J. of H. 31st Cong. 1st Sess. 226, 227 577.

361. Where the number necessary to form a quorum of a legislative assembly is fixed, without the presence of whom no business can be entered upon or proceeded with, the inability extends and applies to questions of adjournment as well as to other matters of business; and, if a quorum is not present, no question of adjournment can properly be proposed to the assembly itself for its decision, for it is not then in a condition to decide any question. The only thing that can be done, in such an emergency, is, for the presiding officer, or the clerk, if the former is not present, to declare without putting the question thereupon, that the assembly stands adjourned until the next sitting day. This is as effectual, to continue the session, as an adjournment on question, and the assembly is as regularly appointed to meet on the next sitting day as it would be by its own order. This rule, which is derived from the practice of the house of commons, only applies to those assemblies, which like that house have a fixed quorum, but no power of dispensing with the want of one, or of proceeding upon any thing in its absence. The States, in which the legislative assemblies are of this character, and to which consequently the rule applies, are those of New Hampshire, Vermont, Massachusetts, New York, and North Carolina.

362. In these assemblies, therefore, the chair is not generally to be taken by the presiding officer, and the assembly called to order, until a quorum is present. If no time has been fixed upon beforehand for the meeting, the presiding officer should wait a reasonable time; and, then, if a quorum does not appear to be present, he should take the chair for the purpose, and declare the assembly adjourned until the next sitting day, without a question.[1] If the presiding officer should not happen to be present, the declaration should be made by the clerk. In this case, the adjournment does not take place in virtue of any act of the members assembled, but in virtue of the principle, that the assembly, when once constituted, continues as of course to meet every legislative day, until dissolved. If an hour has been fixed for the meeting, and at the expiration of that hour, a sufficient number is not present, the assembly is adjourned until the next sitting day, in the manner just stated.

363. But in all the legislative assemblies of this country, except those in the States above enumerated, the rule is different. In the constitution of the United States, and in those of the other States

[1] Hatsell, II. 173.

not above enumerated, while the quorum of each is thereby fixed, it is expressly provided, that "a less number may adjourn from day to day." In these assemblies, therefore, the chair may be taken precisely at the moment fixed for the meeting of the assembly, without waiting for the presence of a quorum; and the assembly, then, however few there may be present, is competent to adjourn itself on question, to the next sitting day. The assembly, being thus competent to adjourn itself, or not to adjourn, as the members present may think proper, the authority of the presiding officer to declare an adjournment without a question is, of course, superseded. The rule of the house of representatives of the United States provides, that the speaker shall take the chair, precisely at the hour to which the house stands adjourned, and that body by the constitution has authority to act upon the question of adjournment without a quorum.

364. It appears to have been the custom of the house of commons, two centuries ago, to meet at a fixed hour, generally at eight o'clock in the morning; to proceed to business of importance at nine or ten; and to adjourn for the day, by twelve, or soon after. This practice left the afternoons for the meetings of committees, especially what were called the grand committees, which usually met in the house. But within the last century, the practice of sitting in the fore part of the day has gradually given place to the opposite custom of sitting in the afternoon and evening; and, with the latter practice, that of fixing the time of meeting by a special order has also been discontinued. The sittings of the commons do not now commence until four o'clock in the afternoon.

365. This change in the time of sitting, from the morning to the evening, — and the debates frequently hold on till after midnight, — is owing in part to the composition of the assembly, and in part to a change in the usages of business generally. The ministers, who are always members, are occupied in the morning in their several offices; the law-officers of the crown, who are usually members, and other members, who are also of the legal profession, are busied in the courts; persons engaged in commerce are employed in their own affairs during the early part of the day; and the committees of the house, besides the necessity of having some time allowed them for their sittings, are also under the necessity of examining great numbers of witnesses, who cannot conveniently attend at any other time than during the day.[1]

[1] Dumont, 219

366. The origin of the present practice of the house of commons, with regard to the commencement of the daily sitting, being somewhat curious, as well as instructive, may very properly be mentioned. The statutes of 30th Charles II. and 13th William III. having provided that members returned to fill vacancies, occurring after the commencement of the session, should take the oaths in the house, between the hours of nine in the morning and four in the afternoon, the officers of the house have considered these statutes as imposing upon them the duty of attending in the house, and they are in attendance accordingly, between the hours named, for the purpose of the oaths being administered to any new members that may present themselves. If therefore any member is introduced between those hours, for the purpose of being sworn, the speaker immediately takes the chair, and the member is sworn, whether a quorum is present or not; inasmuch as it is considered, that a rule, laid down by the house as a regulation for itself, (and the number necessary to form a quorum is only fixed by a declaration of the house) cannot supersede the directions of an act of parliament. When the chair is thus taken for the purpose of qualifying a member, without a quorum being present, the speaker continues to sit in the chair until four o'clock, beyond which time no new member can be introduced; and, then, the requisite number not appearing, he adjourns the house without a question; if forty members should then be present, the business proceeds. From the requirements of the statutes alluded to, and the obligation which they are considered as imposing upon the officers of the house, to be in attendance from nine to four, the time of assembling seems to have been fixed by law at those hours, or at any intermediate time between those hours, and by usage at the latest of the two, namely, at four o'clock.

367. The time fixed or agreed upon for the meeting of any assembly, consisting of a considerable number of persons, cannot ordinarily be considered as a single moment or point, without great and manifest inconvenience; and, therefore, unless it is otherwise expressly established, it would seem, that the time fixed for a meeting ought to cover a certain period of greater or less duration; which, in practice, is usually from the hour named until the next. Thus, the house of commons assembles at any point of time, between nine and four o'clock; a meeting called for a certain hour assembles at any time within the hour; and, consequently, it should seem, that where a particular hour is fixed for the assembling of a

legislative body, it should not be adjourned for want of a quorum, until the expiration of the hour named.[1]

368. It is the practice, in this country, by a standing order, adopted at the beginning of each session, to fix an hour for commencing the daily sitting; so, that, when an adjournment takes place, simply, whether by a vote or otherwise, the assembly stands adjourned, as of course, until that hour on the next sitting day. When the hour of assembling is not thus fixed, the time should be agreed upon before the adjournment each day; otherwise the assembly would stand adjourned indefinitely, or until the next sitting day merely.

369. It has already been stated, that the chair is not to be taken for the purpose of proceeding with business, or for any other purpose than that of adjourning, if a less number is competent to do so, until a quorum is present; so, if the number of members present, at any time during the sitting, falls below the requisite number, business is at once suspended. If, therefore, it appears on a division, or if notice is taken by any member, that a quorum is not present, it then becomes the immediate duty[2] of the presiding officer to count the members; and if they do not amount to a quorum, to suspend all further proceedings until the requisite number comes in, or, to adjourn the assembly without a question, until the next sitting day. If the assembly is one, which is competent to adjourn itself, the presiding officer has no authority to declare an adjournment, but must wait for a motion for that purpose. In counting for this purpose, the presiding officer, if he is a member, reckons himself, and includes all members who come in after the counting has commenced.[3] When an adjournment takes place in the house of commons, for want of a quorum, the house is said to be counted out. A quorum, having once been present, is presumed to continue, although not of the same individuals, until the contrary appears in the manner already stated; and, hence, if business is proceeded in, after the number of members present is in fact reduced below a quorum, the validity of the votes agreed to before notice is taken, and the assembly counted, cannot be questioned.[4]

[1] See *Blanchard* v. *Walker*, Cushing's Reports, IV. 455.

[2] The presiding officer usually remains passive, unless the want of a quorum appears, or is suggested by a member; though there seems to be no good reason why he should not take notice of the deficiency as well as any other member. See the Parl. Reg. (2) XLVII. 747.

[3] Hatsell, II. 176.

[4] It has been said to be the practice, in the house of commons, for the government or ad-

370. When, upon a division, it appears, that a quorum is not present, the question, upon which such division occurs, ordinarily remains undecided; but, where the aggregate of the votes on each side, with the tellers and speaker, make up a quorum, the question is decided. Thus, where upon a division in the house of commons, it appeared, that there were twenty-seven ayes and eight noes, which, with the four tellers, who are reckoned as voting, and the speaker, made up the number of forty, which is the number necessary to constitute a quorum of the house of commons, the question pending was held to be thereby decided.[1]

371. The practice, with us, in regard to the opening of the daily sitting, seems to be somewhat different from that in parliament. In the commons, prayers are read before the speaker takes the chair, and the chair is not taken, except for a particular purpose, until forty members are present. With us the chair is to be taken punctually at the hour to which the assembly stands adjourned, if a quorum is then present, or if a number less has the right of adjournment; otherwise the presiding officer waits until the requisite number is present; prayers are then said; the journal of the day preceding is read; and the business of the day proceeds. In the house of representatives of the United States, the course is that the chair is taken punctually at the hour; the members are immediately called to order; the chaplain performs the duty of his office; if a quorum is not present, such proceedings take place, in pursuance of the rules of the house, as may be proper to compel the attendance of absent members; if a quorum is present, the journal of the preceding day is read; and then the business of the day proceeds according to the established order. When the business has been completed, or the usual time of sitting has been exhausted, or the members are weary of proceeding, or wish to put an end for the time to a particular matter of business, an adjournment takes place.

ministration, that is, the ministers, to take measures to prevent the formation of a house, on a particular day, or to reduce the number present below a quorum, on particular occasions, with a view to put off or suppress a discussion, which they wish to get rid of, without putting it down by a direct vote. The business assigned beforehand for the day, on which the sitting is thus prevented or terminated, falls to the ground, and must be renewed on some other day; which, as every day is usually appropriated in advance, for a considerable period, is difficult, if not impossible. This practice is not likely to occur in the two houses of congress, or in any of the legislative assemblies of this country, in which a less number than a quorum has the right of adjournment.

[1] Parl. Reg. (2) XII. 461; Comm. Jour. XXXIX. 845.

SECTION III. PERSONAL DEPORTMENT OF THE MEMBERS, WHILST THE ASSEMBLY IS SITTING.

372. In parliament, the presiding officers and clerks of both branches, like the judges and other officers of courts of justice, appear in gowns and wigs, and sit uncovered. The members, except on occasions of state, appear in their ordinary costume,[1] and also sit covered. If a member comes in or goes out, or moves from one part of the chamber to another, while the house is sitting, he takes off his hat, and bows in passing the speaker, who bows in return. In our assemblies, the members and officers wear their ordinary costume, and, with scarcely an exception, sit uncovered. It is usual, also, to observe the same ceremonial in going out, coming in, and moving about the house, as is practised in the house of commons.

373. When the presiding officer has taken the chair, every member is to be seated in his place, and to give his attention to whatever business may be presented, without departing unnecessarily from the house, until the sitting for the day is at an end; and while business is proceeding, as, for example, when the presiding officer or clerk is reading a bill or other paper, — or a member is speaking, — or the members are engaged in voting, — it is the especial duty of every member to abstain from all whispering, speaking, moving about, or other conduct which may be to the annoyance and disturbance of the house, or of any member. For the purpose of obtaining and securing the observance of order and decorum among the members of a legislative assembly, whilst they are sitting as such, the presiding officer is invested with authority to suspend all ordinary business, until order is restored;[2] and, if order cannot be obtained in any other way, to call men by their *names*,[3] which is equivalent to a complaint against them.[4] Besides these rules, which are general, and apply to all assemblies, every one has regulations of its own, which are specially adapted to its peculiar circumstances. The rules relating to the deportment of members are founded in the principle of the equality of their rights and duties. Every member has an equal right with every other, to

[1] As an exception to this rule, Mr. Hatsell is careful to inform his reader, that it is contrary to usage for newly elected members, on being introduced to take the oaths, to appear in boots. Hatsell, II. 85.

[2] Cong. Globe, XVIII. 1007; Cong. Globe, XXI. 1749, 1776; Cong. Globe, XXI. 1923.

[3] Cong. Globe, XXI. 1776, 1923.

[4] May, 261; Post, 1506.

bring forward and advocate the adoption of whatever measures he may think conducive to the public interest; and, consequently, every one must exercise his individual right in such a manner, as to admit of a similar exercise on the part of others.

SECTION IV. MANNER OF SPEAKING.

374. Whenever a member desires to make any communication to the assembly, — as to present a petition, make a report, propose a motion, or participate in a debate, — he rises in his place, and, standing uncovered, addresses himself to the presiding officer by his title, saying Mr. Speaker, or Mr. President, or Mr. Chairman, as the case may be; the member then pauses for a moment, until the presiding officer calls to him by his name or designates him by his locality, or, in some other way, recognizes him as addressing the chair; this being done (but not before) the member proceeds.

375. When two or more members rise at or about the same time, it is sometimes difficult to determine which of them shall be heard. In the lords, the authority of the presiding officer being limited, — the right of a peer to speak depends solely upon the will of the house; and when two rise at the same time, unless one or the other immediately gives way, the house calls upon one of them by name to speak; but, if each is supported by a party, there is no alternative but to decide the matter by a question and a vote of the house thereupon.

376. In the house of commons, the speaker calls upon the member, who was first observed by him. But the right of a member to be heard, in preference to others, 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. If the speaker should happen to overlook the member, who in fact was the first to rise, 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 motion may be made and a question put, that a particular member be heard.

377. In the legislative assemblies of this country, it is for the most part provided by a rule, as, for example, in the house of representatives in congress, that " when two or more members happen

to rise at once, the speaker shall name the member who is first to speak." Where there is no rule established, of this kind, the parliamentary rule just explained applies. To the rule, that the member first up is to speak in preference to others, there are several exceptions, which will be explained in another part of this work.

378. In deliberative assemblies of any considerable size, it is the rule, that members should speak standing in their places;[1] but this rule admits of an exception in the case of old, infirm, or sick members, who, by the indulgence of the assembly, are allowed to speak sitting,[2] or in more convenient places than their accustomed seats.[3] The advantages ascribed to the former position are, that the member speaking has his body and limbs at better command; his voice is more free and varied; he is in a situation to exercise a greater influence over his hearers; and he better perceives the impression produced by his speech. The close of his discourse is also more distinctly marked by the movement of taking his seat, than by merely ceasing to speak.[4] This rule is more applicable to a large than a small assembly, and is not necessary to be observed in committees and similar bodies consisting of but few members.

379. In the French and some other legislative assemblies, on the continent of Europe, a little platform or desk, called the tribune, is provided, from which members are required to speak, when they address the assembly.[5] This practice, though attended or supposed to be with some advantages, has never been adopted in England or here, or any practice analogous to it, except that in the house of representatives of the United States and probably in other legislative assemblies, the members are allowed, if they desire it, to address the house from the clerk's desk, or from a place near the speaker's chair in preference to their own seats.

380. It is a general rule, also, in speaking, that the member speaking should address himself to the presiding officer, and not to the assembly in general. This is the usage of the house of commons, from whence it has been introduced into the legislative assemblies of the United States. The advantages of this practice, which is admitted to be exceedingly proper in a numerous assembly, are much more easily felt than analyzed and described.[6] In

[1] May, 240.

[2] The motion for this purpose, whether general, or for a particular occasion, may be made by the member himself or another. See Hansard's Debates, (1st Series,) V. 793; Same, VII. 617.

[3] Hatsell's Precedents, II. 104, 107; Lord Journals, LXIV. 167; Hans. (3) LXVII. 658; Same, LXXVI. 542.

[4] Dumont, 136.

[5] The use of the tribune is now dispensed with in France.

[6] Dumont, 164.

the house of lords, this rule does not prevail. Members, in speaking, address themselves directly to the house.

381. A third rule, not less essential in point of decorum, is, that, in speaking, members are not to be spoken of or alluded to by their names, but to be respectfully described in some other manner, or by some circumlocution, as, for example, the member on the right or left,—the gentleman who spoke last,—the member from such a place. The purpose of this rule is, to guard as much as possible against the excitement of all personal feeling, either of favor or of hostility, by separating, as it were, the political from the personal character of each member, and considering the former only in the discussion.[1]

SECTION V. OF THE SEVERAL FORMS OF TAKING THE QUESTION, IN ORDER TO ASCERTAIN THE SENSE OF A LEGISLATIVE ASSEMBLY.

382. In order to ascertain the sense of the assembly, in reference to any subject, that subject must be propounded to it, in the form of a question, to be answered simply in the affirmative or negative, by each individual member. The proceeding for this purpose, which is called taking the question, varies considerably as to its form in different assemblies. It will be convenient to describe, in the first place, the forms which are used in the two houses of parliament, and which to a greater or less extent prevail with us, and then those which are peculiar to the United States.[2]

383. There is one mode, however, of ascertaining the sense of an assembly, which is common to all, and which may therefore properly be first stated. The opinion of an assembly being sufficiently known, in many cases, by irregular and informal manifestations of it, and being safely taken for granted in many others, in which it cannot reasonably be supposed, that there is any ground for a difference of opinion, it has not been found necessary, in practice, to propose and take a formal question, in all cases. This mode of proceeding is, perhaps oftenest, though not exclusively, adopted, in reference to those merely formal matters, in which it is not deemed necessary that there should even be a motion made; and when judiciously and discreetly practised by the presiding

[1] Dumont, 166.

[2] The different methods of taking the question are here described, as a part of the mechanism by which the business of a legislative assembly is conducted. They are mentioned, again, in the sixth part, in connection with the rules for their practical application.

officer, for it depends entirely on him, it is no doubt productive of great convenience to the assembly.

384. When this mode is adopted, the question is not put for those who are on the one side or on the other to declare themselves, but simply, is it the pleasure of the assembly, that such or such a thing be done? or "If there is no objection, it will be so ordered," and if no objection is made or dissent offered, then the thing is considered as ordered or voted, without putting the question in any other form. For example, when a message is announced, in the house of commons, it is not usual for a motion to be made and a question put in a formal manner, for admitting the messengers; but the speaker simply says at once, Is it the pleasure of the house, that the messengers be called in? and if no member objects, they are immediately introduced without further question. If, in any such case, objection should be made, even by a single member, the question should either be put in the usual form; or, perhaps it might be more proper, in some cases, where no motion had in fact been made, for the presiding officer to require one to be regularly made and seconded, before putting the question.

385. In parliament, a question not informally decided is always taken in the first instance by the voices. The following is the method practised in the house of commons. The question being stated by the speaker, he first puts it in the affimative, namely: — *As many as are of opinion that,* — repeating the words of the question, — *say aye;* and immediately all the members who are of that opinion answer with one voice, *aye;* the speaker then puts the question negatively: — *As many as are of a different opinion, say no;* and, thereupon, all the members who are of that opinion answer *no.* The speaker judges by his ear which side has "the more voices," and decides accordingly that *the ayes have it,* or *the noes have it,* as the case may be.

386. If the speaker is doubtful about the majority of the voices, he may put the question a second or even a third time in the same manner; but, if, having decided according to his judgment, any member rises and declares, that he believes the ayes or noes (whichever it may be) have it, contrary to the speaker's opinion, then the speaker directs the house to divide, in order that the number on either side may be counted. The decision of the speaker must be questioned immediately, so as to make a part of the same proceeding; for, if any new motion is made,[1] or if a member, who was

[1] Scobell, 24.

not in the house, when the question was taken, comes into it,[1] after the declaration is made, and before it is questioned, it is then too late to contradict the speaker and divide the house. After a division has been called for, it must go on, unless all agree to waive it before any go out.

387. The speaker's decision cannot be questioned, where the voices are given only on one side, and the speaker declares on that side. A motion being declared by the speaker to be negatived, some voices called out that "the ayes have it" after the speaker had decided, but the speaker said they were too late, for not one "aye" had been uttered when he put the question.[2] The reason is, that the purpose of dividing is to ascertain what number of members gave their voices on the one side and on the other; and, consequently, if voices are given only on one side, and the speaker declares the vote carried on that side, no division can take place, for there is in fact only one side.

388. Before proceeding to a division, and, indeed, before a question is put, in the first instance, upon which it is known that a division will be called for, the speaker directs the sergeant-at-arms to clear the house of strangers and to shut the doors. He then appoints two members, on each side, as tellers,[3] to count the house; but, if, on naming the tellers, it appears that there is but one member on one side of the question, and, consequently, that two tellers cannot be appointed on that side, the division cannot go on, and the speaker declares on the other side.[4]

389. The purpose of a division is not so much to enable members to vote, as it is to ascertain how they have already declared themselves by their voices; and, therefore, if a member, when the voices are given, declares himself with the ayes or the noes, he cannot be permitted, on the division, to vote with the other side; but if he does so, and notice is taken of the fact, his vote will be counted on the side for which he gave his voice. So if a member, after the voices are given, calls out that, "the noes have it," or "the ayes have it," contrary to the determination of the speaker, he will be considered as giving his vote on that side.[5]

390. The tellers being appointed, the question is again stated, and the speaker directs the house to divide. Previous to the year

[1] Hatsell, II. 194.

[2] Hansard (3), XVII. 194.

[3] Hatsell, II. 201.

[4] Formerly, when there was no mode in use for preserving and publishing the names of members voting on the different sides on a division, it was the practice for distinguished members, to request to be appointed tellers, in order that their names might be entered on the journal, and a record of their opinion be thus preserved.

[5] May, 225.

1836, the manner of dividing was as follows. The speaker directed one party, generally the ayes, to go forth into the lobby, and the other to remain in the house. The ayes having gone out, the tellers, then, each with a staff in his hand, counted first the numbers who remained sitting in the house; and, when they were all agreed, delivered in the number at the table, to the clerk, in order to prevent any dispute afterwards. Those in the house having been counted, the door was opened, and the members who went forth came in, and were counted by the tellers standing within the door, two on each side. Since the year 1836, a different mode has been in use, which has superseded the old one. Two lobbies, one at each end of the house, are employed for the purpose, and the tellers being appointed, the speaker then sends one party into each lobby. Two clerks are stationed at each of the entrances from the lobbies to the house, holding lists of the members arranged in alphabetical order, printed upon large sheets of thick pasteboard, so as to avoid the delay and trouble of turning over pages. The members then pass into the house again, first one side and then the other, and, as they pass, the clerks place a mark against each of their names. The tellers ascertain the numbers by counting the marks on each sheet.[1]

391. Under the old mode, it was not always the case, that the ayes went forth, nor was it optional with the speaker which side to send forth. The rule was, that those who were for an innovation or alteration of that, which, by presumption, is well enough, until it is actually resolved to the contrary, ought to undergo the trouble and disadvantage, if it should happen to be any, of going forth, when a division takes place. This rule, when the question was upon passing a bill, required the affirmatives to go out; but, upon other questions, sometimes the one side and sometimes the other; and the application of the rule frequently gave rise to embarrassment and difficulty. The party, which remained in the house, were supposed to have the advantage, where but little interest was felt in the fate of a measure; as they would, in such a case, probably have with them all the indolent, the indifferent, and the inattentive.[2]

392. When the house has been counted, or *told*, as the expression is, and the tellers are agreed upon the numbers, they all place themselves at the bar, those who have told on the part of the majority on the right hand, and the others on the left, and then come from thence up to the table together (bowing to the house three times,

[1] May, 273, 274, 275. [2] See Jefferson's Manual, Sec. XLI.

once at the bar, again at the middle of the house, and the third time when they have come up to the table) and the teller on the right hand declares to the speaker the number of the ayes and of the noes; which having done, the tellers withdraw to their places, with the same ceremony, and the speaker then reports the numbers, and declares the result to the house. When the numbers are equal, the tellers come up to the table "mixed," as it is called, instead of two on a side; and the speaker, having reported the numbers, gives his own *aye* or *no*, together with his reasons, if he thinks proper, and then declares the determination of the house.[1] Until the declaration is thus made by the speaker, it is the duty of the sergeant-at-arms and other officers, to keep the avenues to the house closed, so as to prevent members from coming in or going out.

393. Every member, who is in the house when a question is stated, must remain and give his vote, and cannot be permitted to withdraw; and, for this purpose, every room, passage, gallery, or other place, to which there is no access, except through the house, is considered as a part of it; but, if any member, in consequence of not being in the body of the house, does not hear the question stated, he may, if called upon to vote, demand to have it stated to him.

394. The converse of the rule above stated also holds; no member is permitted to vote, on the division, unless he is in the house when the question is put; and whenever it is ascertained, that members have voted, who were not in the house when the question was put, whether during the division, or before the numbers are reported, or after they are declared, or even several days after the division, the votes of such members will be disallowed, and the numbers cancelled.[2]

395. It sometimes happens, that several questions are pending at the same time, which are to be taken consecutively, as where an amendment, or the previous question, is moved on a main question, and a division takes place on the first question, and is expected to take place on the others. In such a case, members who are not in the house, and consequently do not vote on the amendment or previous question, are nevertheless entitled to vote on the main question, and to be admitted to the house for that purpose. It is necessary, therefore, after the first division, and before proceeding

[1] Hatsell, II. 202; Scobell, 26.

[2] May, 267, 268. Concerning the disallowing of votes, see Post, § 1836.

to another, that the doors should be opened for the admission of members.[1]

396. Whilst the tellers are counting the house, on a division, members should be silent, that the tellers may not be interrupted; for, if any one of the tellers thinks there is a mistake, or if they are not all agreed, they must begin and count again. For the same reason, no member should remove from his place, when they have begun; nor can any member be counted, standing or sitting on the steps, or in the passage ways, or in the area in front of the chair, but only in his seat.[2] If a mistake is made in the report of the numbers, the tellers being agreed, the mistake may be corrected; but, if any difficulty or irregularity occurs, — as, where a stranger was inadvertently counted, — there must be a new division, if any member insists upon it.[3]

397. If any question arises, in point of order, or any difficulty occurs, which calls for the interference of the speaker, during a division, the speaker must take upon himself to decide it "peremptorily;" for, as it cannot be decided by the house, without having a division upon a division, there is no other practical way of settling the question, without great delay and inconvenience; and, in such a case, therefore, the determination of the speaker must be implicitly submitted to, until the division is over and the result ascertained and declared. The decision may then be revised by the house, and, if irregular or partial, may be corrected either by altering the numbers or by a new division. For the purpose of forming a determination upon questions arising in the course of a division, though there can regularly be no debate, the speaker may allow members to express their opinions sitting in their seats, with their hats on in order to avoid even the appearance of debate; but this cannot be done without the speaker's leave, and must be brought to a close at his pleasure.[4]

398. One of the most remarkable occasions, on which the speaker of the house of commons was ever called upon to exercise the summary authority with which he is invested during a division, occurred in 1780, on the presentation of a petition by Lord George Gordon, praying for a repeal of the act which had just passed in favor of the Catholics. A motion being made for the house to resolve itself into a committee of the whole to consider the petition, a division took place, and the yeas were directed to go forth into

[1] May, 270, 271.
[2] Hatsell, II. 198.
[3] Hatsell, II. 201.
[4] Hatsell, II. 199.

the lobby. It was found impossible, however, for the members to leave the house on account of a tumultuous crowd of people who had taken possession of the lobby. This being reported by the sergeant-at-arms, the speaker directed him to send for the sheriff and magistrates of the county of Middlesex, and city of Westminster, within the limits of which parliament was sitting, to attend the house immediately. After some time, several of these officers attending in the house according to order, the speaker informed them of the circumstances, and that it was their duty to preserve the peace, and directed them to use their utmost exertions to restore peace and good order. They then withdrew, and having succeeded in clearing the lobby the division proceeded. During all this time, it was the duty of the members to remain in their places, without doing or attempting any other business, while the speaker gave the necessary orders, without any previous vote or direction.[1]

399. The rule allowing members to speak sitting and covered during a division is confined to questions of order, referred to the decision of the speaker, and does not apply to distinct motions proposed for the adoption of the house; as for example, where a motion was made, after the numbers had been reported on a division, but had not been declared by the speaker, that the votes of certain members should be disallowed, on the ground of personal interest in the question, the speaker required the debate to be conducted in the ordinary manner.[2]

400. When a division takes place in a committee of the whole, the members are directed to arrange themselves on opposite sides of the house, and are numbered by the tellers, in the manner already described, as in use previous to the year 1836, unless five members require that the names shall be noted in the usual manner, in which case, the members are counted according to the new method.[3]

401. In the house of lords, the question is stated, and the members answer, *content*, or *not content*, instead of *aye* or *no*, as in the commons. If the lord chancellor is unable to decide, or his decision is questioned, a division takes place. This is effected by the not-contents remaining within the bar, and the contents going below the bar, instead of withdrawing from the house. One teller is then appointed for each party, by whom they are respectively counted.

[1] Comm. Jour. XXXVII. 901.
[2] May, 240.
[3] May, 277.

When all the lords then present have been counted, they resume their places and the clerk calls over the names of those lords who hold proxies, who, rising uncovered in their places, declare whether those for whom they are proxies are content or not content. The lord chancellor or speaker if a peer gives his voice like the other lords, on being required by the tellers, but he does not leave his place to vote. The total number of lords present and of the proxies is then declared, and the question is decided by the joint majority of both classes of votes. In case of an equality of voices and proxies combined, the not contents have it, and the question is declared to be resolved in the negative. When this occurs, it is always entered in the journal, "Then according to the ancient rule in the like cases, *semper presumitur pro negante*, etc." The effect of this rule is different when the house is sitting judicially, as the question is then put, "for reversing" and not "for affirming;" and, consequently, if the numbers are equal, the judgment of the court below is affirmed. The privilege of voting by proxy is peculiar to the house of lords, who sit in their own right, and for themselves only; in the house of commons, no man can make a proxy, because (as it is said) the members represent others, and are in effect but proxies or as it were deputies themselves.[1] The form of taking the question is the same when the house is in a committee, except that proxies are not allowed.[2]

402. It is not the practice, in either house of parliament, to record on the journals the names of the members voting on either side; nothing more appearing there than the numbers on the division. In the house of commons, since the introduction of the new mode of dividing, a practice has prevailed, by which the votes of the members are made known and preserved. The printed lists of the members, made use of on the division, are sent to the printer, who prints the marked names in their order; and the division lists are delivered in the house on the following morning, together with the printed votes and proceedings. In the house of lords, the names of those members, who dissent from any vote or resolution of the majority, may be entered on the journals together with their reasons, in the form of what is called a protest.

403. In the legislative assemblies of this country, besides the method by general consent, there are two modes in use, for taking a question, in the first instance, both of which are derived to us from methods practised in England. The first is that by the voices

[1] Whitelocke, I. 390.

[2] May, 279; Appendix, VIII.

already described. The other differs from it, by the members holding up the right hand, instead of answering *aye* or *no*. When this form is used, the presiding officer puts the question affirmatively, *as many as are of opinion that*, etc., *will manifest it, by holding up the right hand*, or simply, *will manifest it;* and negatively, *as many as are of a different opinion will manifest it*, or, *will show their dissent, by the same sign*, or, in the same manner; and, the members on the different sides, respectively, thereupon hold up their right hands as directed. If the presiding officer is unable to decide by the sound of the voices, if the question is taken in that manner, or from the show of hands, or his decision is questioned, a division takes place.

404. The most common form of dividing is that prescribed by the rules of the house of representatives in congress, namely; the members simply rise in their seats and stand uncovered, first those in the affirmative and then those in the negative. If the speaker still doubts, or a count is required, the speaker names two members one from each side, to count the members in the affirmative; which being reported he then names two others one from each side, to count those in the negative; these being also reported, the speaker then rises and states the decision to the house. In telling the house, the tellers take their stand in the area in front of the speaker's chair, and first those in the affirmative, and then those in the negative, pass between them. A division and count by tellers can only take place,[1] upon a motion seconded by at least one fifth of a quorum of the members. In the house of representatives of Massachusetts, when a division takes place, the members rise in their seats, first on one side and then on the other, and are counted by the monitors of the house, who are officers appointed at the commencement of each session, two (of different political parties) for each division of the house, and sitting with the divisions to which they belong. The monitors count the members in their respective divisions, and return the numbers to the speaker, in order, commencing with the first; the members of each division remaining standing, until the vote of that division is declared, when they resume their seats. When the numbers are returned on each side, the speaker adds them up, and declares the result. The monitors vote and are counted with the other members. Other methods of dividing are doubtless in use, varying from those described, according to the circumstances of different assemblies; in all, however, the duties of the members, and the authority of the presiding officer, are the same as in the house of commons.

[1] Rules 4.

405. Another mode of taking a question, which is in common use in this country, and which is of American origin, is intended to ascertain the names as well as the numbers of those who vote on each side; with a view to their being entered in the journals, or otherwise preserved in an authentic form, in order that the people may know how their representatives vote on important occasions. This proceeding is denominated taking the yeas and nays. It has not been introduced, anywhere, as the ordinary mode of taking a question, but as a substitute for that mode, when so resolved by the assembly, or otherwise required by law. As it is the minority, generally, who desire to have the votes preserved and made known to the people, power is usually conferred upon a number less than a majority, either by the constitution or by a rule of the assembly, to require a question to be taken by yeas and nays. When a question is pending, therefore, or is about to be taken, if any member desires it to be taken in this manner, he makes a motion that when the question shall be taken, it be taken by yeas and nays, and if the requisite number agree with him, it is so ordered. The question, then, when taken, is taken in that manner, in the first instance; without being previously taken by the voices or by a show of hands, as is the case on a division in the ordinary form.

406. When or how this practice first began is a matter of uncertainty; but it appears to have been first made use of by the congress of the confederation. That body voted by States, and the delegates from each cast the vote of their State. Consequently, it was necessary, in order to know whether a vote was correctly declared, to know how each individual delegate voted, on a given occasion. This method was, therefore, invented or adopted in that assembly, in the first instance, in order to determine, whether the votes were correctly declared. This appears to have been the only purpose, for which this mode of taking the question was originally invented and adopted; inasmuch, as, in a body, which, like the congress of the confederation, conducted its proceedings in secret, the constituents were not entitled to know what its proceedings were, or in what manner their representatives voted, on any particular occasion. The obvious facility which this method furnishes of making known to constituents how their representatives vote, where the proceedings of an assembly are accessible, has made it a favorite method of taking a question, and led to its general use in our legislative assemblies. It is usually called, as it is in fact, an American practice. In the first code of rules promulgated

by congress in July, 1777,[1] there is no mention whatever of this subject; but in the month of August following a specific rule was made, by which it was resolved by congress, "that if any member chooses to have the ayes and noes taken upon any question, he shall move for the same previous to the president's taking the sense of the house on such question, and, if the motion be seconded, the individual members of each State shall be called upon to answer *aye* or *no* to the question, which answer shall be entered on the journal, and the question be determined by the majority of States, as the majority of votes in each shall make appear."[2] This rule was inserted in the code of May, 1778, and again in that of May, 1781, and continued in force until the adoption of the constitution of the United States. In that instrument, this mode of taking a question was recognized as an existing practice, and provided for, in both houses, on the demand of one fifth of the members. This provision, or its equivalent, has been generally adopted in the State constitutions since made.

407. In order to take a question in this manner, it is stated by the presiding officer on both sides at once, namely: — *As many as are of opinion that*, etc., will, *when their names are called, answer, yes; and as many as are of a different opinion will, when their names are called, answer, no;* the roll of the assembly is then called over by the clerk, and each member, as his name is called, rises in his place, and answers yes or no; and the clerk first responding to the member, by repeating his answer, in order to be sure that he apprehends it, then notes it on the roll. When the names have all been called over, first, in regular course, and then those who did not answer when their names were called, together with the names of those members, whom he may be directed by the presiding officer to call, and the names of such as having already voted wish to change their votes, and noted the answers, it is usual for the clerk to read over first the names of those who have answered in the affirmative, and then the names of those who have answered in the negative, in order that, if he has made any mistake in noting the answer, or has omitted to note the answer of a member, the mistake may be corrected. The clerk then gives the list to the presiding officer who states the numbers and declares the result.[3]

[1] In the constitution of North Carolina, which was adopted in 1776, it is provided, that upon a motion made and seconded, the yeas and nays, upon any question, shall be taken and entered on the journals, which shall be printed, and made public, immediately after the adjournment.

[2] J. of C. III. 349.

[3] Appendix, IX.

408. This proceeding has been deemed so important, in the United States, that, in several of the constitutions, it is provided, that the yeas and nays of the members of either branch shall be taken and entered in the journal, at the request of a certain specified number of the members present. In the constitutions of the United States, Maine, Rhode Island, New Jersey, Virginia, Michigan, and Connecticut, the number is one fifth; in those of Maryland, (as to the house of representatives,) Missouri, and Arkansas, five members; in those of Mississippi, Texas, and California, three members; in those of Pennsylvania, North Carolina, Georgia, Kentucky, Tennessee, Ohio, Indiana, Louisiana, Illinois, Alabama, Florida, and Iowa, two; and in those of New Hampshire, Vermont, Delaware, and Maryland, (as to the senate,) one. In Michigan, the number required is one fifth of the members elected; in the other assemblies, in which one fifth is required, it is one fifth only of those present. In Wisconsin, the number of members requisite to demand the yeas and nays is one sixth of those present. In the other States, there is no constitutional provision on the subject.

409. Besides these provisions, according to which a certain specified number of the members may require any question to be taken by yeas and nays, there are also provisions, which require certain specified questions to be taken in this manner, whether requested by any of the members or not. In the constitutions in which the executive is invested with a qualified veto, it is generally provided, that the question, on passing a bill notwithstanding the objections of the executive, shall be taken by yeas and nays, and that the names of the members voting on either side shall be entered in the journals. A similar provision exists in most of the constitutions, in reference to amendments of the constitution, when the legislature is authorized to make or propose amendments. It is also required, in many of the constitutions, that the yeas and nays should be taken on other special occasions.

410. The use of protests or dissents, entered in the journals, which in England is peculiar to the house of lords, prevails here in all our legislative assemblies, and, in some of the States, is expressly regulated and secured by constitutional provisions. By the constitutions of New Hampshire, Vermont, North Carolina, Florida, Tennessee, Ohio, Michigan, Iowa, and Alabama, any one member of either branch may dissent from and protest against any act or proceeding, which he considers injurious to the public, or to any individual, and have his reasons therefor entered in the journal. By the constitution of Illinois, the same right is secured to any two members.

411. Where no provision is made, either by the constitution or the laws, in reference to taking questions by yeas and nays, or as to the right of one or more of the members to dissent from and protest against the proceedings, these subjects may be and usually are, (particularly the taking of questions by yeas and nays,) regulated by the rules and orders of each assembly. Where this is not the case, they must be determined, in each particular case, upon a motion made and the question stated, like all other questions, by a vote of the majority. The constitutional provision above mentioned refers only to members of the same assembly, and not to members of a coördinate branch, or to the coördinate branches themselves, or the executive. Protests, coming from these individuals or bodies, therefore, as well as those of strangers, must be determined by a vote in each particular case.

SECTION VI. — OF THE PRINCIPLE OR RULE OF DECISION IN A LEGISLATIVE ASSEMBLY.

412. The rule of decision, in all councils and deliberative assemblies, whose members are equal in point of right, is, that the will of the greater number of those present and voting, — the assembly being duly constituted, — is the will of the whole body. Hence whatever is regularly agreed upon by a majority of the members of a legislative assembly is a thing "done and past" by that body. Where the assembly is equally divided, there is, of course, not a majority in favor of the proposition, which is put to vote, and that proposition is consequently decided in the negative.

413. The right of the majority thus to decide, which is instinctively admitted as an ultimate fact, is also founded in good reason. In the first place, as has already been remarked with reference to electors, the members being supposed equal, it is at least probable, if not certain, that there will be more knowledge, wisdom, and virtue in a majority than in any smaller number; secondly, there is no other practicable way, by which, in the last resort, any matter can be concluded, in reference to which there is a diversity of opinion;[1] thirdly, the supremacy of the majority is not the dominion of a certain number of the individual members arrayed together for the purpose of governing the others on all questions and subjects; but

[1] "If the consent of the majority shall not in reason be received as the act of the whole, and include every individual, nothing but the consent of every individual can make any thing to be the act of the whole." — Locke on Civil Government.

those who constitute the majority or minority on any one point may change places on the next question that arises; and, fourthly, as a council or other organized assembly, consisting of several members, is considered as one person or body, as to all other persons and bodies, its will can be no other than that which predominates in it, where there are several discordant wills among the members.

414. For these reasons, the law of the majority is universally admitted in all legislative assemblies;[1] unless, in reference to particular cases, persons or circumstances, a different rule is prescribed, by some paramount authority, or is agreed upon beforehand and established by the assembly itself, by which a smaller number is permitted, or a larger number is required, to do some particular act. But even in these cases, it is the will of the majority that governs; because it is by a major vote, in the first instance, that the rule itself is established; or, where the rule is established by the constitution, or by law, it derives its authority from the sovereign power of the people acting in a constitutional manner, which ultimately resolves itself into the will of the majority. The constitution of the United States, requires the agreement of two thirds of each branch to pass a bill, notwithstanding the objections of the president, and also allows one fifth of the number necessary to a quorum to require a question to be taken by yeas and nays. There are examples of the establishment by express provision of a rule of decision, different from the majority.

SECTION VII. — OF THE JOURNAL OR RECORD OF THE PROCEEDINGS.

415. The official record of what is "done and past," in a legislative assembly, is called the Journal. It is so called, because the proceedings are entered therein, in chronological order, as they occur from day to day; the business of each day forming the matter of a complete record by itself; hence the record is frequently spoken of in the plural as the journals.

[1] In the monthly, quarterly, and yearly meetings of the Quakers, as well as those of committees and select bodies from them, the mode of acting and deciding is, "not by a numerical or any other fixed majority of votes, given by those authorized and qualified to give a voice upon any question; but upon the solid sense of the aggregate body, having regard to age, character, judgment, piety, and numbers, combined, to be gathered and ascertained by the clerk, who is uniformly the presiding officer." — By Shaw, C. J., *Earle* v. *Wood*, Cushing's Reports, VIII. 454.

416. In the two houses of parliament, the clerks take minutes of all the proceedings, orders, and judgments, of their respective houses, as they occur, and make short entries of them in their minute-books. These minutes are printed and distributed among the members daily, under the title of "Minutes of the Proceedings" in the lords, and of "Votes and Proceedings," in the commons; the latter "being first perused by the speaker," and corrected if necessary. From these, and from the papers on file, it is the duty of the clerks afterwards to prepare the journals, in which the entries are made at greater length and with the forms more distinctly pointed out. The journal of the commons is printed, from time to time, during the session; that of the lords not until after its termination. All persons may have access to the journals of the two houses, in the same manner as to the records of the courts.[1]

417. In this country, the clerks make similar minutes and entries of the daily proceedings, which either constitute the journal, or are used in making it up at the end of the session. The journal, as it is thus made up, is published in some of the States from day to day; in others, not until the close of the session; in others again, it is not published at all.

418. The journal is to be kept or made up, in the first instance, by the clerk alone, who is the sworn recording officer of the assembly, subject only to the control of the assembly itself, and not to the control of the presiding officer,[2] or of any other member; though in cases of difficulty and importance, the form of entry has been settled by a committee appointed for the purpose.[3] So, too, the assembly itself may direct a particular proceeding to be entered,[4] or not to be entered,[5] on the journals, or to be entered thereon in a particular manner,[6] or with explanatory remarks stating the grounds of it.[7] In general, it is the custom, in the legislative assemblies of the United States, to make the entries in the journals in a more concise and summary form. It appears to be a general rule, in the keeping of the journal of a legislative assembly, that nothing shall be spread upon it at length, by the way of correction, or otherwise, which the assembly has previously refused to admit.[8]

419. The practice is very general, with us, though the secretary

[1] Grey, II. 340.
[2] Hatsell, II. 339, n.
[3] Hatsell, II. 216, n.
[4] J. of C. VII. 60; J. of H. 29th Cong. 1st Sess. 1047; Comm. Jour. LV., 783, 785.
[5] Parl. Reg. XLVIII. 59; Cav. Deb. I. 66.
[6] Hatsell, II. 354, n.; Hans. (1) XXXVIII. 194.
[7] Parl. Reg. LVII. 593; Hans. (3) XLIX. 331.
[8] Cong. Globe, XV. 1064, 1065.

or clerk is an independent officer, and, in the first instance, makes up his record of the proceedings of the assembly, without any dictation, for the clerk to read over, at the commencement of each daily sitting, the journal of the preceding sitting. The journal is to be corrected, either at the suggestion of a member, or upon motion, when the reading is completed. It is then considered as approved by the assembly; to which no formal vote or proceeding is necessary; if the correction suggested or moved is made, or none is suggested, the approval of the assembly follows of course. This proceeding cannot take place without the presence of a quorum. The practice of reading and revising the journal, in the manner above stated, is generally provided and regulated by each assembly for itself by a special rule. But even if this is not the case, the practice is so general, that it must be regarded as incidental to the duty of keeping a journal. Though the correction of the journal commonly occurs immediately after the reading, it may be made at any time afterwards, when a mistake is discovered.[1]

420. If, in consequence of such correction, the apparent determination of the assembly is changed, the alteration takes place nevertheless, accordingly, and all the subsequent proceedings must conform to it, in the same manner as if it had been originally so recorded. Thus if a bill is recorded as having passed one of its stages, and, by a subsequent correction of the vote, it is ascertained that the bill did not pass, as supposed, the determination of the house is altered accordingly, and all subsequent proceedings are null and void.[2]

421. In the senate of the United States, it is provided by the first rule of that body, that the president having taken the chair, and a quorum being present, "the journal of the preceding day shall be read to the end that any mistake may be corrected that shall be made in the entries." In the house of representatives of the United States, it is made the duty of the speaker, by the sixth rule, "to examine and correct the journal before it is read," and, by the first, on the appearance of a quorum, to "cause the journal of the preceding day to be read." Under these rules, the practice is substantially as above stated, except, that the speaker, in the house of representatives, revises the journal and corrects it before it is read, and if any mistakes occur, or are pointed out, on the reading, he directs the proper correction to be made, in pursuance of his general authority to revise the journal. If a correction takes place by the

[1] Cong. Globe, VIII. 93.

[2] J. of H. 31st Cong. 1st Sess. 1436.

authority of the speaker, or otherwise, on the reading, the journal itself ought to be altered accordingly; if, by a vote of the assembly, after the reading, the proceedings should be recorded at length, and thus show the alteration; particularly as the correction may be made after a considerable interval, and the journal may, in the mean time, have been printed.

422. A record or minute of the proceedings of a deliberative assembly of any kind is so essential to the convenient and efficient exercise of its functions, that it must be considered as a necessary incident to the existence of every such body. But the importance of having and preserving such a record of the votes and acts of a legislative body, in a form accessible to the public, has been considered so great in this country, as to be required by express constitutional provisions. This requisition, though imperative as to keeping a daily record of the proceedings, leaves the form and manner of keeping it wholly to the assemblies themselves, who may, notwithstanding, direct what entries shall be made therein.[1]

423. The constitutions of the United States, and of all the States, except Massachusetts, and South Carolina, require each branch of the legislature to keep and publish a journal of its proceedings. In several of the States, the requisition to publish is general, without limitation or condition; but, in Vermont, a vote of one third, and in Connecticut, of one fifth, of the members, is necessary; by the constitutions of the United States, Virginia, Missouri, Arkansas, and Maine, the publication is to be made from time to time; by those of New Hampshire, Delaware, Alabama, North Carolina, Florida, Vermont, and Georgia, it is to be made immediately, or as soon as convenient, after every session; by those of Pennsylvania, Kentucky, and Louisiana, the journals are required to be published weekly; and by the constitutions of the United States, Maine, Connecticut, New York, Pennsylvania, Delaware, Tennessee, Alabama, Michigan, Arkansas, Wisconsin, and Missouri, those parts are to be omitted, which the public welfare requires should be kept secret. The phrase "to keep a journal," seems borrowed from the technical language, as the keeping of a journal corresponds to the practice, of mercantile bookkeeping. The term evidently means to make a permanent record of the daily transactions.[2]

424. It is in general competent to a legislative body to rescind

[1] J. of H. 29th Cong. 1st Sess. 1047.

[2] It is remarkable, that, out of the great number, thirty nine, significations, which are given of the word "keep," in Johnson's Dictionary, there is not one which denotes the sense here ascribed to it.

any of its orders, resolutions, or other proceedings, either of the same or of a former session. When this is done, the operation or effect of the matter rescinded is entirely annulled; though the entry itself still remains upon the journal. It sometimes happens, however, that it is not only desired to rescind or annul the effect of a former proceeding, but to treat it with strong disapprobation or contempt; in which case, the obnoxious entry itself is expunged, that is, erased or obliterated from the journal. This proceeding is of extremely rare occurrence. In 1772, the house of commons passed a vote of thanks to Dr. Nowell, for his sermon preached before the house, at their request, and very soon after, in the same session, ordered the entry of this vote to be expunged. In 1782, the house of commons ordered all the entries relative to Mr. Wilkes, in the journals of the year 1769, to be expunged. In these cases, it appears, that the entries ordered to be expunged were literally erased from the original journal, though they both appear in the printed copies; the former in a memorandum by the clerk, in the place where the order was originally entered, stating the order, and that it had been expunged from the votes by the order of the house, and the latter precisely as they were originally made. In the house of lords, the protests, or parts of them, entered by the members have frequently been ordered to be expunged; an order which is usually followed by a protest. In our legislative assemblies, this proceeding has occasionally taken place; in most instances the expunging being effected by an actual obliteration of the obnoxious passages; on one memorable occasion, by drawing black lines around and writing the word *expunged* across the offending matter. The right to expunge whatever it pleases from the journal of its proceedings is one which can only be limited, like the right of expulsion, by the absolute discretion of the assembly; and is not restrained by the constitutional right of a member, to enter a protest thereon, or by the constitutional injunction to keep and publish a journal.[1]

425. It remains only to consider the character of the journals, and the competency and effect of entries in them, as evidence in a court of justice. The house of lords, having a power of judicature, in matters of law and equity, in the last resort, is a court of record, and its journals are consequently considered as public records. The house of commons having no such power of judicature, its journals are not usually described as records.

[1] J. of H. 29th Cong. 1st Sess. 1047; Cong. Globe, XX. 13.

But, in truth, both houses have power of judicature and are consequently courts of record, in certain matters. In the language of Sir Edward Coke,[1] "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." The commons exercise judicial functions, in adjudicating upon controverted elections and returns; and both branches exercise judicial functions, in inflicting punishments for breaches of privilege and contempts. The two branches, acting concurrently, exercise a power of judicature in bills of a judicial character, such as bills of attainder, pains and penalties, pardon and divorce. In performing their legislative and judicial functions, the two houses do not proceed in separate and distinct capacities; but are constantly exercising both functions at the same sitting, and in reference perhaps to the same subjects; and their proceedings upon both are entered by their sworn officers in a similar form, and in the same page of one book.

426. Wherever, therefore, the journals of either house have the character of records, they are admissible as such, and prove the fact adjudicated, in the same manner and to the same extent with the records of the judicial courts; where they do not possess that character, they are evidence only of the proceedings which they purport to record, but not of the facts affirmed or implied in those proceedings.[2] Thus a 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 any other court; so the proceedings of the house of commons, upon a controverted election or return, as recorded in the journals, are evidence of the right of membership; and, in like manner, a resolution of either house, as entered in the journals, that a party had been guilty of a breach of privilege, or of a contempt, would be conclusive evidence of the fact, that the party had been adjudged by the house to be guilty of such offence. In other cases, in which the houses are not in the exercise of judicial functions, their journals are admissible as evidence of the proceedings, but not of the facts alleged or implied in those proceedings. 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

[1] Fourth Inst. 23.

[2] With respect to the character of the journals as records, see Fourth Inst. 23; Comm. Jour. I. 517, 673, 676, 683; Phillipps on Evidence, I. 386; *Rex* v. *Lord George Gordon*, Douglass's (K. B.) Reports, II. 593; *Jones* v. *Randall*, Cowper's Reports, 17; Hawkins's State Trials, 683; May, 200.

evidence of that fact; although it was clearly admissible to prove that the house of commons had so resolved. The journals of the two houses, therefore, as evidence, stand upon the same grounds; although those of the lords possess the character of records, to a greater extent; they are both good evidence of proceedings in parliament, but are not conclusive of facts, alleged by either house, unless those facts are 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 proof of the fact, although founded in evidence taken upon oath. In this country, the same principles are evidently applicable, in the absence of any special provision, to the proceedings of our legislative assemblies.

427. The contents of the journals, according to the practice in England, may be proved in two modes; first, by the production of a copy of such portions as may be wanted, authenticated either by the certificate and signature of the clerk, or by the oath of the party himself or some other person, that it is a true copy from the original in the journal office; and, second, by the attendance of the clerk or other proper officer in court, either with the printed journal, or with extracts which he certifies to be true copies, or if necessary, with the original manuscript journal; but, where the clerk attends, the previous consent of the house, or of the speaker, if the house is not sitting, must first be obtained. These different modes of proof seem to indicate that the character of the journals, as instruments of evidence, is either uncertain, or that it is differently regarded in different courts.

428. In this country, the contents of the journals, where they are not printed and published by public authority, or until they are so published, are probably proved by copies of extracts authenticated by the certificate and signature of the clerk, in the manner in which the proceedings of public bodies are usually proved. In some of the States, as in Massachusetts, the mode of proof is regulated by law. Where the journals are printed merely by the order of the assembly itself, it is held that printed copies are not evidence, unless compared and certified. Where they are required by law to be printed, and are printed accordingly by the authorized printer,—as in certain States which have been mentioned,—it would seem, that they ought to be placed, as evidence, upon the same footing with the printed statutes.

429. Where the practice prevails of taking minutes of the "votes and proceedings" in the first instance, and of making up the

journal therefrom afterwards, the former must be considered as bearing the same analogy to the latter, that the docket of the clerk of a judicial court bears to the complete record. The votes and proceedings are usually printed from day to day, for the use and convenience of the members; but, when the journal comes to be made up, if there is any discrepancy between the two, the journals are held to be correct.[1]

SECTION VIII. OF THE PRINTING BY ORDER OF A LEGISLATIVE ASSEMBLY.

430. The art of printing furnishes so obvious a mode of facilitating the proceedings of a legislative assembly, that, at the present day, it has almost entirely or to a considerable extent superseded the reading at length of papers and documents of every description in all assemblies in which much business is transacted. It has also, for the most part, taken the place of all other modes of making their acts and doings known to the public.

431. The practice of printing the votes and proceedings of the house of commons, which commenced about the year 1680, became firmly established, though not without some struggle, in the beginning of the eighteenth century, and has continued every session since that time. The practice of printing bills and other documents which began at a later period is now also general. The immense accession to the business of parliament, resulting from the extraordinary activity, physical and mental, which distinguishes the present day, could not have been properly transacted, according to the established methods of proceeding, without the aid of the press. The business of receiving and proceeding upon petitions will alone illustrate the truth of this statement. In the five years preceding and including the year 1843, the number of public petitions presented in the house of commons was 94,292; every one of which, according to the ancient method, would require to be read and proceeded upon, and might be debated, by itself; and to do this would have required more than the whole time of the house. The difficulty has been obviated by the appointment of a standing committee on public petitions, by whom they are classified, analyzed, and, when necessary, directed to be printed at length. Besides petitions, there are three other classes of papers or documents, which are now generally printed, namely, the accounts, returns, and other papers

[1] Perry & Knapp, 536; Parl. Deb. V. 20.

presented from the public officers, by order of the house; bills public and private; and reports of committees. In regard to the first, there is a select committee appointed at the commencement of each session, to assist the 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. The business of this committee is to examine all papers, and determine whether they shall be printed at length, or in the form of an abstract. Public bills are generally ordered to be printed, and not unfrequently more than once. Private bills are required to be presented in a printed form. Reports of committees are made accessible to the members and to the public in the same manner. In both houses of congress, and in the legislatures of the States, generally, it has become equally necessary to provide for the printing of every paper or document, which may become the subject of legislative consideration.

432. In England, all papers printed by the order of either house, are distributed to the members of both; those of past sessions are preserved; and all those which are 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. Parliamentary papers are sold at the low rate of a half penny a sheet, which is supposed to be moderate enough to secure the distribution of them to all persons who may be interested in their contents. They may also be sent through the post-office at a lower than the ordinary rate, and by members during the session free of postage. In our legislative assemblies, measures are usually taken for the effectual distribution of all public documents, by orders for the purpose. In congress, they are distributed by members, through the post-office, under the privilege of franking. But no regular provision is made for their sale.

433. It remains to be considered how far the order of a legislative assembly will justify or excuse the printing and publishing of that which would otherwise be libellous. In reference to this question, the house of commons and the court of king's bench are apparently at variance with each other; the former having resolved, "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;" and the latter having decided, "that the fact of the house of commons having directed their printers 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." If the privilege of freedom of debate may be considered, by analogy, as furnishing the true rule on this subject; and this seems the most reasonable and proper ground to place the matter upon; the claim of the commons may be admitted in its fullest extent, and the doctrine of the court sustained at the same time, by limiting the publication to the members of the house, and this appears to be, in fact, the decision of the court of king's bench in the case referred to of *Stockdale* v. *Hansard*.[1] In England, the question is now of little practical importance, in consequence of the passing of a statute, by which it is provided, that all proceedings, criminal as well as 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.[2]

SECTION IX. — OF THE ATTENDANCE AND PAY OF THE MEMBERS.

434. Every member of a legislative assembly is under a constitutional obligation to attend the service of the house to which he belongs, both in the first instance, for the purpose of being qualified and assuming the functions of a member, and, afterwards, for the purpose of participating in the daily business. In the commons, house of parliament, and in all the legislative bodies of the United States, the attendance must be in person; in the house of lords, after a member has appeared in person, and has been qualified, he may afterwards give his attendance and vote by proxy. If a mem-

[1] Adolphus and Ellis's Reports, XI. 253.

[2] For an account of this controversy, see May, 156. In the case of *Lake* v. *King*, (Saunders's Reports, I. 131,) which was an action of the case for printing and publishing a libel, the defendant pleaded, that the supposed libel was contained in a petition which he caused to be presented and delivered to the committee of grievances of the house of commons, which committee had full power and authority to hear and examine such grievances, by whom the same was taken cognizance of; and that he afterwards caused the petition to be printed and distributed to the members of that committee, which was the publication complained of. The court of king's bench considered this as a sufficient justification. This transaction occurred in the 18th of Charles the Second, at which time the grand committees on grievances, religion, trade, and courts of justice, which had been a great political engine in the preceding reign, were still in use, and were authorized to receive and investigate the complaints relative to those subjects respectively, without their being first referred by the house. But at the present day grand committees are abolished in parliament, and no committee, either of that body, or of any of our legislative assemblies, has any authority, in the first instance, to receive a petition. It may be doubted, therefore, whether the case of *Lake* v. *King* would now be considered as of any authority.

ber neglects to give his attendance, when ordered by the assembly, without any sufficient excuse, he may not only be taken into custody, and punished, but may also be expelled. The power of expulsion, in such a case, is essential not merely to preserve the dignity and authority of the assembly, but likewise to the right of the people to be represented; as, otherwise, a constituency might be deprived of the services of a member whom they had elected, and, at the same time, be prevented from electing a member upon whose services they could rely.

435. When members absent themselves from their attendance upon the assembly, without leave therefor, or after leave of absence has been revoked, there are several modes of proceeding which may be resorted to in order to compel them to attend. The house of commons has sometimes directed the speaker to write circular letters to the sheriffs, to summon the members within their several counties to attend; or to take measures to inform the several constituencies of the manner in which their members neglect their service; and it is not uncommon, also, to order, "that no member shall go out of town without leave of the house;" but the most common mode of enforcing attendance is by what is denominated a call of the house.

436. The proceedings which take place on a call of the house, which are substantially the same in all legislative bodies, having been already sufficiently described,[1] under the head of compelling the attendance of absent members, it is only necessary to refer to them in this place.

437. A call of the house, though it is usual to give previous notice thereof, by passing an order for the purpose some days beforehand, is, in fact, incidental[2] to the general business and condition of the assembly, and a motion therefor may be made at any time, and upon any business;[3] and, unless restrained or regulated by some rule,[4] will take precedence of and suspend any other motion then pending, whether principal or subsidiary; thus, on a

[1] Ante, § 265 to 270.

[2] J. of H. 20th Cong. 1st Sess. 1041.

[3] J. of H. 21st Cong. 1st Sess. 669.

[4] The house of representatives of the United States, after different decisions upon the point whether a call of the house was in order pending a motion for the previous question, as, that it was, (J. of H. 19th Cong. 2d Sess. 264; J. of H. 26th Cong. 1st Sess. 233, 1081; Reg. of Deb. XI. Part II. 1332, 1333, 1337, 1338; Cong. Globe, XIII. 335); and that it was not, (J. of H. 23d Cong. 1st Sess. 341; J. of H. 23d Cong. 2d Sess. 368; J. of H. 26th Cong. 1st Sess. 233; J. of H. 32d Cong. 1st Sess. 813; Reg. of Deb. X. Part II. 2735, 2736); finally adopted a rule, that on motion for the previous question and prior to the seconding of the same, a call of the house should be in order; but that after a majority shall have seconded the motion, no call shall be in order prior to the decision of the main question. (Rule 50.)

motion to recommit with instructions,[1] or to postpone indefinitely,[2] or for the previous question,[3] or after the latter has been sustained,[4] a call of the house may be moved for, and, if sustained, will supersede these motions respectively, as well as the subjects upon which they are moved, until the proceedings upon the call are at an end. The business thus suspended then revives again and proceeds as before. The motion for a call of the house, being merely incidental, can only be decided by a direct vote, and not by an order to lie on the table;[5] and, on this motion, even under a general provision to that effect, it is not in order to ask to be excused from voting.[6]

438. A second call cannot be moved for, when the first is decided in the affirmative, inasmuch as there cannot be two calls at once:[7] nor if the first motion is decided in the negative can there be a second, until some intervening business has taken place.[8] While the proceedings are going on the assembly may pass any orders, as, for example, that absent members shall be brought in to make their excuses on a future day,[9] or that members absenting themselves after the first call shall be sent for,[10] which fairly relate to the subject.

439. The proceedings on a call of the house may be terminated at any time by a vote,[11] or by an adjournment of the assembly,[12] in which case, members under arrest are thereby discharged.[13] In the mean time, members under arrest, though personally present, are not allowed to participate in the proceedings, or recognized as members of the assembly, by the presiding officer.[14] A call of the house is a matter of business, which can only take place in virtue of an order for that purpose made when a quorum of the assembly is present; but it may, sometimes, however, in virtue of a special rule, be authorized by less than the ordinary quorum, for the purpose of compelling the attendance of absent members.[15] In these cases, the assembly may take all the measures that properly belong to a call, as, for instance, the imposition of a fine for non-attendance,[16]

[1] J. of H. 19th Cong. 2d Sess. 264.
[2] J. of H. 20th Cong. 1st Sess. 1041.
[3] J. of H. 26th Cong. 1st Sess. 233.
[4] J. of H. 20th Cong. 1st Sess. 1041, 656, 657.
[5] Cong. Globe, XIII. 335.
[6] J. of H. 31st Cong. 1st Sess. 1538, 1539.
[7] Cong. Globe, VIII. 361.
[8] Cong. Globe, XX. 177, 178.
[9] J. of H. 29th Cong. 1st Sess. 1045, 1046; J. of H. 30th Cong. 1st Sess. 1035, 1036.
[10] J. of H. 25th Cong. 2d Sess. 1289, 1300; Cong. Globe, VIII. 361; Cong. Globe, XVIII. 926.
[11] J. of H. IX. 651; J. of H. 20th Cong. 2d Sess. 375.
[12] Cong. Globe, XVIII. 60; Cong. Globe, XXI. 1472.
[13] Cong. Globe, XV. 516; Cong. Globe, XVIII. 926, 928, 929.
[14] Cong. Globe, XVIII. 928; but see Cong. Globe, XIII. 602.
[15] The quorum for this purpose in the lower branch of congress is 15.
[16] Cong. Globe, VIII. 287.

without the presence of the ordinary quorum; and on any question that may be taken by less than a quorum, it is competent for a less number to order the question to be taken by yeas and nays.[1]

440. It will be perceived, that a call of the house only operates to compel the attendance and presence of members on the particular day on which the call is ordered to take place, or on the day or days, to which the call may be postponed; but not during the intermediate time, or afterwards. Attempts are sometimes made to compel members not merely to attend at particular times, but to continue their attendance; as, for example, by an order that no member do presume to go out of town without leave of the house. An old statute of 6 Henry 8, ch. 16, holds out an inducement to members to attend, by providing that every member, who absents himself, without license from the house, shall lose his wages; but as the provision for wages has long since become obsolete in England, the penalty inflicted by this statute has now no longer any existence.

441. When members absent themselves from their places merely, their attendance may be enforced when necessary, on particular occasions, by sending the officers of the house to summon them; as, for example, it is a common proceeding, when the house of commons is going upon very important business, to send the sergeant with the mace into Westminster Hall, and the places adjacent, to summon the members to attend the service of the house. It seems to be a practice recently introduced in the house of commons, before proceeding to a division, to summon members in the rooms and places adjoining, to attend in the house, by ringing a bell called the division bell. The same summons is given when the speaker is called upon to count the house, on a suggestion, that forty members are not present.

442. The subject of the attendance of the members of a legislative assembly may be left to stand upon the common parliamentary law, or it may be regulated by a special rule, if expedient. In the senate of the United States it has not hitherto been found necessary to resort to a call of the house to enforce the attendance of the members;[2] some milder measure having been sufficient for that purpose. In the house of representatives of the United States, which is a more numerous body, a call of the house, which is there regulated by special rules,[3] is almost a daily proceeding; being incidental to other business, and, with an exception or two, always

[1] J. of H. 32d Cong. 1st Sess. 651, 652, 727; J. of H. 32d Cong. 2d Sess. 87, 145.

[2] Reg. of Deb. IV. Part I. 773; Cong. Globe, XXI. 1533.

[3] Rules 50, 62, 63, 64.

in order. In that house a call is usually ordered when the number of members present falls below a quorum; provided there are fifteen members present, that being the smaller number fixed upon by the house, in pursuance of the constitution, for compelling the attendance of absent members. The only other thing that can be done, without a quorum, and for this no particular number is necessary, is to adjourn. When a call of the house takes place in this assembly, no time is fixed upon beforehand, and the proceedings, which, if thought proper, may at any time be suspended, are all immediate.

443. A practice prevails in both houses of the British parliament, and in congress, growing out of the division of these assemblies into distinct political parties, by means of which the absence of a member is ordinarily looked upon with more indulgence. Two members, of different parties, "pair off," as it is called, that is, they agree with each other to be absent at the same time; by which arrangement a vote is neutralized on both sides of every political question, which arises during its existence, the relative numbers of the votes remaining the same, as if both the absent members were present. Members sometimes pair off, not only upon particular questions, or for one sitting, but for several weeks or even months. This practice is not recognized as a parliamentary proceeding. In congress, it sometimes happens, that only one of the members, by whom this agreement is made, is actually absent; in which case the member present declines to vote; giving, as an excuse, if need be, the fact, that he has paired off with such a member. The excuse is always admitted by the house.

444. Members of the house of commons formerly received wages from the boroughs and places, which they represented. In the time of Edward III. four shillings a day were allowed to a knight of the shire, and two shillings to a citizen or burgess. This charge, in the case of poor and small communities, was considered as too great an evil to be compensated by the possible benefit of representation. But this practice has for a long time been obsolete. Andrew Marvell, the poet, who died in 1678, and who had been a member from the time of the restoration, in 1660, is said to have been the last person, who accepted wages for his attendance as a member. The only members of the house of commons, who now receive wages, as such, are the speaker, who receives an annual salary of five thousand pounds sterling, the use of a furnished residence, and of a service of plate, and the chairman of the committee of the whole on ways and means, who receives an annual salary of fifteen hun-

dred pounds sterling. The latter takes the chair, whenever the house is in committee of the whole, and, by a rule recently adopted, is authorized to take the chair of the house, as speaker, during the temporary absence of that officer.

445. In this country, the members of legislative bodies are paid for their services and expenses as such, either by the constituencies which they represent, or which is the most common mode, from the public treasury; and, in most of the States, the compensation of the members has been deemed of sufficient importance to be made the subject of constitutional provision. By the constitution of the United States, and in those of most of the States, provision is made for the compensation of the members of the legislature by law, for their travel and attendance, and for payment thereof out of the public treasury; and, by many of them, provision is also made, that no law increasing or diminishing the rate of compensation existing at any time shall take effect until after the termination of the legislature by which it is enacted. In Maine, a law increasing the compensation is only required to be prospective; and, in Massachusetts, New Hampshire, and Maine, in order to entitle members to their travelling expenses, they are required to attend seasonably, and not to depart without leave. The presiding officers, when they are members of the bodies over which they preside, receive usually additional compensation for performing the duties of the chair.

CHAPTER FOURTH.

OF THE FUNCTIONS OF THE EXECUTIVE IN CONNECTION WITH THE LEGISLATIVE DEPARTMENT.

446. The functions of the executive department, in its connection with the legislative, are not of such a nature as to require the former to be considered as a branch of the latter; and, though much less numerous and important with us than they are in England; they yet touch upon, and have so important a connection with, the legislative, that they deserve to be separately enumerated, and not left to be merely alluded to incidentally. Besides, the

executive is the head of the government, as the legislative department is the depository of the sovereign power, of all free countries. The executive is always ready to act, in the performance of its appropriate functions; the legislative is only called into operation occasionally, or at stated periods, with considerable intervals. When the legislature is organized and proceeding with the public business, it is said to be in session; the interval, when it is not in session, is usually denominated a recess. The executive is connected with the legislative department, at the commencement and close, and during the continuance of each regular session, of the latter.

447. The British parliament is convened and held, at the time and place appointed by the king for the purpose, in virtue of his royal proclamation, and of the writs of summons and election, issued in pursuance thereof by the chancellor; it is continued, from time to time, at the king's pleasure, by what is called a prorogation;[1] and is finally dissolved by the same authority, or by the termination of that authority by the demise of the crown. According to the theory of the British constitution, as it stood not many years since, there was no legal restriction upon the power of the king, in any of these particulars; he might neglect altogether to call a parliament; or he might call one and keep it in existence during the whole of his reign; or he might call parliaments and dissolve them as frequently or unfrequently as suited his convenience or pleasure. But it is now provided by sundry statutes, that every parliament, unless sooner dissolved by the king, or by his death, shall have continuance for seven years and no longer;[2] that, in all cases, writs shall be issued for the calling of a new parliament, within three years from the determination of the next preceding one; and that, on the demise of the crown, the parliament then in being shall continue, or the last preceding parliament be revived, and proceed to act, for the term of six months, unless sooner prorogued or dissolved.[3] At the time fixed for the commencement of a new parliament, it is usual to postpone it, until a convenient season, for the despatch of business, by one or more successive prorogations, when it assembles for that purpose, and in a meeting of both branches in the house of lords, the sovereign,

[1] The right of the king to order an adjournment, which, as will be seen hereafter, is different as to its legal effect from a prorogation, is not admitted in theory; but, whenever he signifies his pleasure that an adjournment should take place, his wishes are generally acceded to; as, otherwise, a prorogation would be sure to follow.

[2] Hatsell, II. 384.

[3] May, 40, 41.

in a speech from the throne, declares the causes of summoning the parliament. Sometimes the sovereign does not attend in person, but appoints commissioners by whom the causes of summons are declared. When this is done, the commons return to their house and the business of the session proceeds. The first thing usually done in both houses, though this is by no means imperative, is to take into consideration, for the purpose of responding to the sentiments contained in, the royal speech. On the proposed answers in both branches, the members in opposition usually move their amendments, which are discussed and decided on party grounds. Besides the usual speech, at the commencement of the session, in which the general concerns of the nation are treated of, the sovereign afterwards during the session communicates important matters, to both branches, or either of them, by messages for the purpose. These messages are generally in writing, but are sometimes verbal. The sovereign intervenes also, in the course of the session, for the approval of bills, which is done, in the presence of both branches, by the sovereign in person or by commissioners, in the manner that parliament is first opened. At the end of the session, parliament is prorogued or dissolved in the same manner. This is understood to have been substantially the form of proceeding in all our legislative assemblies previous to the revolution, as it is now in the colonial and provincial legislatures of Great Britain. But very considerable changes have been introduced by our constitutions, and the practice under them, since the period referred to.

448. In this country, the times of holding the legislative assemblies, and the periods for which they are respectively elected, are fixed by constitutional provisions; and, when assembled, they are not subject in any degree or manner to the control of the executive authority; though, in most of the constitutions, power is given to the executive to convene the legislature on extraordinary occasions, and to fix the time of adjournment or prorogation, in case of a disagreement in relation thereto between the two branches. In congress, from its first assembling under the constitution, and during the administrations of Washington and the elder Adams, it was the custom of the president to open each session, in person, by an address to both branches, assembled together for the purpose in the representatives' chamber. This communication was usually shorter and more general in its character, than in more modern times, and was answered in the same manner, by each branch in person. With the advent of Mr. Jefferson to the presidency the modern practice was introduced. The president, instead of a short address,

transmitted a more elaborate message in writing to both branches, with his reasons for adopting that form. Answers were dispensed with; but the different subjects treated of in the message were taken into consideration. This practice has ever since continued in congress, and has been adopted in the State governments, in which, however, as well as in congress, it is not imperative but optional. Communications of the executive, to the two branches, or either of them, in the course of a session, are by message. It is scarcely necessary to observe, that these messages are for the information of the bodies to whom they are communicated; who may consider of the matters therein referred to or not at their pleasure; though it is customary to do so out of respect to the executive.

449. It is the invariable practice therefore in all our legislatures, (and made necessary by express provision in some of the constitutions,) for the governor, president, or other executive head, at the commencement of every session, whether regular or special, to make a communication to the two branches, either by message or in person, usually by message, touching the general affairs and condition of the State, or relating to the particular subject for which the legislature is convened, and to recommend to them such measures as he may deem expedient. These communications may or may not be accompanied with other written documents, as the case may be. When other documents are referred to in a verbal address, they are usually sent in afterwards by message.

450. In parliament, in congress, and in all the States of the Union, except, it is believed,[1] Rhode Island, Delaware, Maryland, Virginia, North Carolina, South Carolina, Tennessee, and Ohio, the executive is invested with a veto power in matters of legislation; or rather it would be more correct to say, that every act of legislation of the two branches, though drawn up in the form of a law, before it can become such, must be approved and signed by the executive. In parliament the veto is absolute; but, inasmuch as that body is now so constituted, that nothing can pass which is not agreeable to the sovereign, there has been no exercise of the veto power, in its direct form, for many years. In this country the veto power is not absolute, but conditional; the legislative branches being authorized, in certain cases, to pass a law, from which the executive approval is withheld; and the executive being bound to exercise his right of approval or disapproval, within

[1] If there are any others, in the thirty-one States, of which the Union is composed, they have escaped the author's notice, in a pretty careful search.

a given number of days. The direct interference of the executive, in any other form, would justly be considered as unparliamentary, and unconstitutional.

451. In this country the executive is very generally invested with authority either by constitutional provision, or by statute, on the requisition of the legislative assemblies, to issue writs of election to fill vacancies occurring therein. This function of the executive, and others, with which it is invested, in aid of the legislative, in the matter of adjournment, prorogation, or dissolution, are more appropriately noticed elsewhere.

CHAPTER FIFTH.

OF VACANCIES, AND ELECTIONS TO FILL THEM.

452. Vacancies may occur in a legislative body, in consequence of the death, removal, refusal to qualify, resignation, expulsion, or disqualification of the members, or of their return or election being vacated by the assembly; and, as it is of the highest importance, both to the immediate constituency, and to the whole State, that the representative body should at all times be complete and entire, it is essential, that there should somewhere exist a power to take the necessary steps for the filling of such vacancies.

453. In England, the house of commons has always regarded the right of determining upon the existence of vacancies among its members, and of taking measures to fill them, as essential to its free and independent existence; and has consequently asserted and maintained it as a most important and undoubted privilege, resting upon the same foundation with the right of determining upon the elections and returns of its members.

454. When, therefore, the house has determined that a vacancy exists, the practice is for the speaker, by the order of the house, to send his warrant to the clerk of the crown in chancery, directing him to issue a writ to the proper officers, requiring them to proceed to a new election, for the county, borough, or city, which, by means of the vacancy, is deprived, either wholly, or in part, of its repre-

sentation. The writ is accordingly issued, an election takes place, and the person elected is returned, in the manner already described.[1]

455. This mode of proceeding, being solely in virtue of the authority of the house, cannot of course take place at any other time than during a session. In regard to vacancies occurring in a recess, the speaker is authorized by statute (24 Geo. III. c. 26) to issue his warrant for a new writ of election, upon the existence of the vacancy being certified to him, by two of the members, and notice of it being previously published by him in the London Gazette; and, in order to secure the filling of all such vacancies, the speaker is also authorized by statute to appoint certain members to issue the warrant, in case of his death, vacation of his seat, or his absence from the realm. The vacancies, which may thus be filled, are those only which are occasioned by the death or bankruptcy of members, or from their being elevated to the peerage.

456. In determining upon the existence of a vacancy, the house acts in its judicial capacity; sometimes instituting a previous inquiry, where the law or the fact is doubtful; but proceeding at once if no question is made as to either. If, for example, the death of a member, or his elevation to the peerage, is notorious, the house proceeds at once to order the speaker to issue his warrant for a new writ of election. If upon the motion being made, there appears to be any doubt concerning the fact, supposed to create the vacancy, the order is deferred until the house is in possession of more certain information. If, after the issuing of the writ, it is discovered that the house was misinformed, the course is to direct the speaker to issue his warrant for a *supersedeas* of the writ. In the case of vacancies occurring in the recess, the proceedings must, of course, be subject to the subsequent revision of the house.[2]

457. In this country, writs of election to fill vacancies are either issued directly by the assemblies themselves, or, on their authority, by the governor. But there are various constitutional[3] and statu-

[1] Hatsell, II. 245, note. It is a breach of privilege, and punishable as such, to delay the delivery of such a writ. Hans. (1) IX. 974.

[2] In 1765, a new writ of election was ordered, for Devizes, in the room of a member, who was said to be deceased. The next day, further information being received, which made it doubtful, whether the member was dead, the messenger intrusted with the delivery of the writ was ordered to forbear delivering it until further directions. The member proved to be alive, and a writ of *supersedeas* was accordingly issued a few days afterwards.

[3] It is expressly provided in some of the constitutions, that members elected to fill vacancies shall hold their offices only for the unexpired term; but this can hardly be necessary except as a matter of precaution.

tory provisions, relating to the filling of vacancies, which, in some States, supersede, — in others, extend, — and, in others again, are subsidiary to, — the principle which has just been stated, namely, that it is the right of a legislative assembly to determine upon the existence of vacancies among its members and to take measures to fill them. Some of these provisions relate to the manner in which vacancies are to be filled; others to the preliminary measures to be taken for the purpose. The most important require to be briefly noticed; so far only, however, as they are found in the various constitutions.

458. In the States of Massachusetts, Maine, and New Hampshire, if the full number of senators is not elected at the general election, the vacancies are filled, on the meeting of the legislature, by the joint ballot of the representatives and such senators as are elected, from among the persons voted for and not elected by the electors; and, in the same manner, all vacancies afterwards occurring in the senate are to be filled. In these States, therefore, the principle of parliamentary law, which has just been stated, is so far superseded by constitutional provisions, as relates to filling vacancies in the senate, but not as to the determination of the existence of those vacancies.

459. In all the other States, and in the second branch of the legislature, in the States just mentioned, vacancies are filled in the same manner as the elections are originally made; in some of them in virtue of the principle alluded to; and, in others, in virtue of constitutional or legal regulations touching the existence of vacancies and elections to fill them.

460. Where the constitution is silent on the subject, or where the provision is general, that all intermediate vacancies shall be filled; or where the constitution provides for the regulation by law, in what manner and by whom writs of election shall be issued to fill vacancies; in all these cases, the matter may be regulated by law; but, if not so, the assembly, in which a vacancy occurs, whether before or after the sitting commences, or, in the recess, may, while in session, issue a precept or take the proper order for an election; but whether the electors, if the vacancy occurs before the meeting of the assembly or in a recess, or the assembly refuses to issue a precept, may, of themselves, proceed to an election, when the nature of the constituency will admit of it, is a question not without difficulty.

461. Where the constitution contains a general provision, that when vacancies occur in either branch, the governor shall issue writs of election, the legislature may undoubtedly regulate the exercise of this power, by law; but if no such regulation is made, it will be the duty of the governor, when the legislature is in session, to issue writs of election, on being officially notified of the existence of a vacancy, by the body in which it occurs; and, at other times, if thereunto authorized by constitution or law, to act in the matter upon his own judgment and discretion, both in regard to the existence of a vacancy, and the necessity or expediency of filling it, subject, of course, to the revision of the legislative body.

462. Where the constitutional provision on this subject is, that when vacancies occur, the presiding officer shall issue writs of election to fill them, provision may doubtless be made by law, as in reference to the house of commons, for the issuing of writs of election in the recess of the legislature. If there is no such provision, vacancies occurring in the recess cannot be filled, inasmuch as the constitutional provision alluded to can only be considered as declaratory of the ordinary principle of parliamentary law.

463. In several of the States, writs to fill vacancies are to be issued by the presiding officers, during the session of the legislature; at other times, by the governor.

464. By whatever authority, however, or in whatever manner, writs of election are issued, as well as when the electors proceed to an election of themselves, for the purpose of filling vacancies, the proceedings are necessarily subject to the revision of the assembly itself; by whom, both the existence of the vacancy, and the validity of the election to fill it, are to be judged of, when the person elected presents himself to take his seat; and, it is supposed, generally, that whatever constitutional provisions there may be, in any State, on this subject, writs of election to fill vacancies may be further regulated by law, provided only that such regulations are consistent with the constitution, and do not infringe the great principle of parliamentary law above stated.

465. Having thus considered of the authority, and of the necessary measures to be taken, to fill vacancies, it now remains to consider in what manner, and when, they occur; but, before proceeding to examine the subject in detail, it will be proper to point out a difference between the political law of England, and of this country, in reference to the right of a member to renounce his election

or to resign his seat. In England, it is an established principle, that every person, who is constitutionally eligible to the house of commons, may be elected against his own consent, and contrary to his desire, and, if lawfully chosen, cannot refuse the place;[1] because, as it is said, "The country and the commonwealth have such an interest in every man, that when by lawful election he is appointed to this public service, he cannot by any unwillingness or refusal of his own, make himself incapable; for that were to prefer the will or contentment of a private man before the desire and satisfaction of the whole country, and a ready way to put by the sufficientest men, who are commonly those who least endeavor to obtain the place."[2]

466. For the same reason, that one duly elected cannot renounce his election, so, after having been qualified and taken his seat, he cannot resign his office. But this principle is rendered inoperative by a proceeding, which has been introduced for the purpose, the legal effect of which is to vacate the seat. The statute, 6 Anne, ch. 7, provides, that if any member shall accept of any office of profit from the crown, his election shall thereupon become void, and a writ shall issue for a new election, as if he were naturally dead. The practice alluded to is to obtain some office, corresponding to the description in the statute, as an office of profit under the crown, which consequently vacates the seat. Certain offices are made use of for this purpose, which, though in a technical sense offices of profit, have nevertheless become in process of time merely nominal, and are conferred by the crown upon any member who desires to obtain them in order to vacate his seat. The offices of steward or bailiff of the three Chiltern Hundreds, and of the manors of East Hendred and North-Stead, are of this description. When any member wishes to vacate his seat in the house of commons, he signifies his desire to the proper officers of the government to be appointed to one of these offices. The appointment being conferred accordingly, — and in ordinary cases it is not refused, — the member immediately notifies the speaker that his seat has thereby become vacant, and a writ is ordered for a new election. The purpose of the appointment being thus effected, the office is forthwith

[1] It is hardly necessary to observe, that, even in England, this principle prevails only with regard to members of the house of commons; the speaker of that body may refuse or resign his office as such, and all other officers may resign their offices at pleasure.

[2] Glanville, 101; Comm. Jour. I. 724; Same, 201; Fourth Institute, 49; Male, 63; May, 435.

resigned, to be conferred on the next member, who desires to make use of it for the same purpose.[1] This proceeding is alike effectual before and after a member has been qualified.

467. There are other indirect methods, also, of renouncing an election, or of refusing to serve in parliament. A member elect may refuse or decline to take the oaths,[2] in which case he must be discharged from being a member; but, in such a case, he may subject himself to punishment, as for a contempt, or to be discharged with some degree of obloquy, according to his motives and conduct.[3] So a member may refuse or decline to give in a particular of his qualification as to property, in which case, he will be discharged.[4]

468. In this country, though some traces of the principle, that a member cannot renounce his election or resign his office, may still be found in the laws and usages of some of the older States, it seems now to be taken for granted, and to be considered as an admitted and established principle, that no one can be compelled to serve in a legislative assembly, against his will; and, consequently, that any one being elected may decline to accept the office; but whether having been elected and taken his seat, he may resign it at his pleasure, and without the consent of the assembly of which he is a member, may admit of some question, though this consent is always implied, unless there is some expression to the contrary.

469. Vacancies may occur, before the meeting of the assembly, by members chosen thereto declining to accept the office; after the meeting, by their declining to take the oaths or complying with the other conditions, if any, requisite to entitle them to sit and vote; after the organization, by resignation, expulsion, or vacation of the election or return; and either after or before, by death, disqualification, or acceptance of a disqualifying office or employment. If the

[1] May, 435; Hatsell, II. 55.

[2] Douglass, I. 283.

[3] Soon after the revolution, in 1688, two persons returned as members refused to take the oaths, and were discharged; a third, who appears to have equivocated in his statements, was committed to the tower for contempt. Comm. Jour. X. 131, 138. A more recent case is that of Mr. O'Connell, in 1830, (Comm. Jour. LXXXIV. 303, 311, 314, 325,) who declined to take the oath of supremacy, and claimed to be admitted on taking the oath in the Roman Catholic Relief Act, which had not then come into operation. Mr. O'Connell was heard in support of his claim, but the house resolved that he was not entitled to sit or vote, unless he took the oath of supremacy; and, persisting in his refusal, a writ was issued for a new election.

[4] This was the course adopted by Mr. Southey, in 1826. Being elected a member, during his absence from the country, on his return, he addressed a letter to the speaker, in which he stated for the information of the house, that he did not possess the qualification of estate required by law. A new election was accordingly ordered. Comm. Jour. LXXXIV. 28.

fact, which is supposed to create a vacancy occurs while the assembly is sitting, the existence of the vacancy must be judicially ascertained and declared, before measures can be taken to fill it. If it occurs before the sitting or in a recess, and the new election takes place without the previous authority of the assembly, the existence of a vacancy must be determined upon when the member elected presents himself to take his seat.

470. Members, who are returned to fill vacancies, or who first take their seats, after the assembly has commenced its sitting, usually cause their certificates of election to be presented to the assembly by some member, and are then introduced, if there is no objection, and are qualified and take their seats. If objection is made, or the return is questioned, the assembly takes such action in the matter as it may think proper, before the member is allowed to take his seat. Such members are entitled to take seats, and to claim and exercise the privileges of members, in the assembly, whether a quorum is present therein or not, but they cannot be qualified, by taking the necessary oaths, until a quorum is present.[1] The qualification of newly returned members is a question of privilege, which may be brought forward at any time,[2] even when a member is speaking, who may be interrupted for the purpose,[3] and will supersede all other business until it is disposed of. A petitioner, who prevails in a controverted election, and is adjudged to have been duly elected, is introduced, or is present, and takes his seat in the same manner. Where the qualification does not take place in the assembly, but elsewhere, as, in Massachusetts, before the governor and council, the assembly appoints a committee to accompany the member to the proper authority to be qualified; and upon the return and report of the committee the member takes his seat in the house. A remark or two, with reference to some of the principal modes, in which a vacancy may occur, and with reference to vacancies, in the congress of the United States, will conclude the subject of vacancies.

SECTION I. REFUSAL TO ACCEPT.

471. A person, elected a member, who is unwilling to serve in that capacity, may, on being notified of his election, refuse to accept the office. But the local laws, relative to elections, are so

[1] J. of H. III. 80, 400; but see J. of S. III. 411, and ante, 366.

[2] Cong. Globe, X. 349, 350.

[3] Cong. Globe, XIII. 223.

different in different States, that it can only be remarked in general of a refusal to accept, that it should be signified to the electors themselves, or to their authorized officers, or to the persons, if any, whose duty it is by law to call meetings for the new election; provided the vacancy can constitutionally and legally be filled before the meeting of the assembly; but, if there is no provision by law for that purpose, or if the determination to decline the office is not formed until it is too late for a new election, the notice of non-acceptance can only be given to the assembly itself, on its meeting.

SECTION II. REFUSAL TO QUALIFY.

472. One, who is returned a member of a legislative assembly, and assumes a seat as such, is bound to take the oaths required of him, and perform such other acts as may be necessary to qualify him, if any, to discharge the duties of his office. If a member elect refuses to qualify, he will be discharged from being a member, with more or less of obloquy or none at all according to the circumstances of his case; but he cannot be expelled, because he cannot as yet, discharge the duties of a member.[1]

SECTION III. RESIGNATION.

473. After the meeting of the assembly, and the acceptance and qualification of the members, any one may, at pleasure, resign his office, which will, at all events, be effectual, if accepted, unless there is some express provision of law or otherwise to the contrary. If a member desires to resign while the assembly is in session, his resignation should be made to the assembly itself; if, afterwards, to the officer, if there is one, specially provided and appointed by law to receive it; and, if there is no such provision, it would seem, that the right of resignation, in such a case, cannot be exercised. A resignation takes effect, from the time when it is accepted, or presumed to be so; or, it may be, when it is received; or when there is a presumption that it has been received.

SECTION IV. EXPULSION.

474. The right of a legislative body to expel a member will

[1] The refusal to qualify is expressly mentioned in some of the constitutions as one of the grounds of a vacancy. See instances of it. Comm. Jour. X. 131, 138; Same, LXXXII. 28; Same, LXXXIV. 303, 311, 314, 325.

come under consideration hereafter, as one of the powers necessarily incident to every such body; it is mentioned here only as one of the modes in which a vacancy may occur. Expulsion being the act of the assembly itself, no other notice or proof of the vacancy can of course be necessary. The discharge of a member is the same thing as expulsion, in a less ignominious form;[1] as the latter is always, and the former may not be, an adverse proceeding.

SECTION V. ADJUDICATION OF A CONTROVERTED RETURN AND ELECTION.

475. Another mode, in which vacancies may occur, results from a judgment pronounced by the assembly vacating the seat of a member, whose election or return is controverted. Where an election, having been controverted, is adjudged void, a vacancy is thereby created, which, in general, is to be filled by a new election, in virtue of a writ or precept issued from the assembly, for that purpose. In England, if it appears, in the investigation of an election, that bribery and corruption have been practised therein, the house sometimes suspends the issuing of the writ, with a view to further inquiry, and the ultimate disfranchisement of the corrupt constituency by an act of parliament.[2] In Massachusetts, where no such disfranchisement can take place by law, the issuing of a precept for a new election has been frequently refused, in the case of an illegal election.[3]

SECTION VI. DEATH.

476. When a member elect dies before the meeting of the assembly, official notice of the fact must be taken by the person or persons, (if there is any,) whose duty it is by law to do so, and information given by him or them to the proper authorities, in order that a new election may take place; but if the law is silent on the subject, the electors may in some cases proceed of themselves to fill the vacancy, where the nature of the constituency will admit of such a proceeding. If the subject is neither regulated by law, nor any power exists on the part of the electors to proceed, nothing can be done to fill the vacancy until the meeting of the assembly.[4]

[1] Post, 475, 478.
[2] May, 466.
[3] Cushing, S. & J., 67, 146, 399, 422, 518.
[4] *Selectmen of Sherburne, Petitioners*, Cushing, S. & J., 342.

Where the death of a member occurs, either before or after the meeting of the assembly, or during a recess, no other proof of the fact is required, than the statement of a member in his place.

SECTION VII. DISQUALIFICATION.

477. Whenever a member ceases to possess those qualifications, which are in their nature continuing, or which members are expressly required to possess during their continuance in office, — as, for example, when a member removes from the State or other local constituency in which he is required to continue to reside whilst in office, — the seat of such member is thereby liable to be adjudged vacant, upon the fact of such disqualification being brought to the knowledge of the assembly. To the disqualifications of this kind, may be added those which result from the commission of some crime, which would render the member ineligible, or from some gross official or other misconduct, in consequence of which he is expelled, or discharged from being a member. In all these cases, unless there is some express provision of law, by which the subject is regulated, the fact of disqualification can only be inquired into and decided upon by the assembly itself.

SECTION VIII. ACCEPTANCE OF DISQUALIFYING OR INCOMPATIBLE OFFICES.

478. The distinction has already been explained between those offices or employments, the possession of which at the time of the election renders a person ineligible, and those the functions of which are merely incompatible with the functions of a member; the former avoiding the election; the latter only preventing the person elected from exercising the functions of a member until they are removed. When, however, a member has once been duly elected and taken his seat, this distinction no longer exists; the acceptance of disqualifying and incompatible offices being equally effectual to create a vacancy.

479. The only practical question, in cases of this kind, usually relates to the time when the acceptance of an office takes place. The subject is sometimes regulated by law, but where this is not the case, it may be considered as a rule, founded in the reason of the thing, and corresponding with the practice, so far as it is known, of all our legislative assemblies, that, in order to vacate the seat of

a member, by the acceptance of a disqualifying or incompatible office, the election or appointment thereto alone is not sufficient, but the member must either have signified his acceptance of the office in a formal manner, or have done what is incumbent on him to qualify himself to discharge its duties, or have actually entered upon their discharge. In cases of this kind, the existence of the vacancy must be declared by the assembly itself. In cases arising under this and the preceding section, there is, in fact, no vacancy, until it is so declared or implied by the resolution of the assembly itself.

SECTION IX. OF VACANCIES IN THE CONGRESS OF THE UNITED STATES.

480. The congress of the United States being differently constituted from all the other legislative bodies in this country, a corresponding difference will be found to exist in this respect; the senate of the United States representing the people of the several States in their aggregate or municipal capacity, and the house of representatives representing the same people as individuals. Vacancies occur in congress in the same manner, and for the same causes, as in other legislative bodies; but the mode of filling them, though in many respects similar, depends wholly upon the constitution of the United States.

481. That instrument, having established the basis of the apportionment of representatives among the several States, and fixed the numbers to which the thirteen States then in the Union were respectively entitled, proceeds to declare, that, "When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies." This language, though broad enough to include the senate, applies only, it is clear from the context, to vacancies occurring in the house of representatives. The constitution also provides, generally, in reference to both branches, that unless otherwise regulated by congress, (except as to the place of choosing senators) the times, places, and manner of holding elections, shall be prescribed in each State by the legislature thereof.

482. The language being that "when vacancies happen in the representation from any State," the executive thereof shall issue writs of election to fill them, it would seem to follow, that where a vacancy is of such a nature that it may be created or exist independently of the house itself, the executive of the State may in all

cases take official notice of the vacancy, and proceed at once to take the proper measures for filling it; but that where the vacancy is of such a nature that it cannot exist or be created without some act[1] of the house itself, the executive of a State cannot proceed to take measures to fill it, until he receives official notice from the house.

483. I. It will be the duty of the executive of a State, therefore, to take official notice of all vacancies which happen when congress is not in session, and issue writs to fill them. A refusal to accept belongs to this class.

484. II. The executive of a State may take official notice of a vacancy, which occurs during the sitting of congress, provided it is of such a nature as not to require any agency of the house to its creation or consummation. Thus, the executive of the State to which a member belongs may take official notice of his death, although congress is then in session, and take measures to fill the vacancy occasioned thereby.[2]

485. III. In regard to vacancies, which are not created or consummated, without some vote or resolution to that effect, on the part of the house, although the act or event, from which they result, happened when congress was not in session, such vacancies cannot be filled, until official notice is given by the house to the executive of the State. Vacancies of this description are those which result from a refusal to qualify, expulsion, adjudication of a controverted election or return, disqualification, or acceptance of a disqualifying office.

486. IV. Ordinarily, when a legislative assembly is not in session, there is no power in being to which a member of such a body can resign his office; but in consequence of the constitutional provision above mentioned, respecting the filling of vacancies, it was very early decided[3] that the executive of a State, in the recess of congress, might receive the resignation of a member, and issue a writ of election to fill the vacancy.

487. V. It seems also to have been decided,[4] that the executive of a State might receive the resignation of a member of congress while that body was in session, and issue a writ of election to fill the vacancy. But inasmuch as every legislative body has a control over its own members, so far as to be competent to prevent them

[1] There need not be any other vote declaring a vacancy than the official notice of its existence.

[2] Cong. Globe, XVII. 339.

[3] *Case of John F. Mercer*, Clarke & Hall, 44; *Case of John Hoge*, Same, 136.

[4] *Case of Benjamin Edwards*, Clarke & Hall, 92.

from divesting themselves of membership at pleasure, it may well be doubted, whether a member can resign his office, when congress is in session, to any other authority than the body of which he is a member. The most common course of proceeding, when a member wishes to resign, while congress is in session, is, for him to address a letter to the house, resigning his office, and, at the same time another letter to the governor of his State, to inform the latter that he has done so. The executive of the State, thereupon, first waiting a reasonable time for the resignation to be accepted or refused, or, most commonly, perhaps, assuming that it will be accepted, proceeds, at once, to take measures to fill the vacancy.

488. If the legislature of a State fails to prescribe "the times, places, and manner of holding elections" for the choice of representatives in congress, as required by the constitution, the executive of the State, in his writ of election, to fill a vacancy, may fix upon the time and place for holding the election.[1]

489. The constitution of the United States declares, that the senate shall be composed of two senators from each State, chosen by the legislature thereof, for six years, and divided into three classes, so that one third may be chosen every second year. It then proceeds to say:—"and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies."

490. When the senate first assembled and organized, under the constitution, the senators present from the States which then constituted the Union were classed accordingly; and as new States have since been formed and admitted into the Union, their senators have been assigned by lot to two out of the three classes into which the senate is divided. The consequence is, that the senators of each State are to be elected therein, by the legislatures of the same, respectively, at regular periods recurring after intervals of six years from the expiration of their first senatorial terms of office. Vacancies, therefore, occurring by the mere lapse of time, are known beforehand, and may be provided for by the legislative bodies whose duty it is to fill them. They do not fall, properly, under the head of vacancies, but rather constitute the regular elections of the senate. These elections, by custom, are to be made by the legislature, which sits next preceding the expiration of the regular term of office of a senator, and for the term of six years. There is nothing

[1] *Case of John Hoge*, Clarke & Hall, 135.

in the constitution to prevent the legislature of a State from anticipating the election of a senator; but where an election of this kind is to be made by the legislature, it appears to devolve, as a matter of course, upon that which immediately precedes the occurrence of a vacancy.

491. The vacancies in the senate of the United States, which are mentioned in the extract above quoted from the constitution, are not those which take place at regular intervals, but those which occur occasionally and irregularly, and which correspond, therefore, as to the causes from which they arise, and are subject to the same observations, with those which occur in the other branch. Vacancies in the senate are communicated to, or taken official notice of by, the executive of the State, as the head of the government, and not as in reference to vacancies occurring in the other branch in virtue of any constitutional provision. This subject requires to be noticed with relation to three particulars, namely: — First, The kind of vacancy; second, The appointing power; and, third, The duration of the appointment.

492. I. The vacancies alluded to are those which take place occasionally and irregularly, and which cannot therefore be foreseen; such, for example, as those which are occasioned by death, resignation, acceptance of an incompatible office, disqualification, or any cause other than mere lapse of time. Vacancies of this description are filled only for the remainder of the unexpired term.

493. II. If the legislature of a State is in session, when a vacancy occurs in the office of senator from such State in the senate of the United States, the vacancy is to be filled thereby, in the same manner as the original appointment was made, for the residue of the unexpired term. If the legislature is not in session, the vacancy is to be filled temporarily, until the meeting of the legislature, by the executive of the State.

494. III. If the vacancy is filled by the legislature, the appointment is made, in all cases, for the unexpired term, if by the executive, it is declared to be temporary only, "until the next meeting of the legislature," which shall then fill such vacancy. In the construction of this provision the following points have been held, First, if the legislature, which next meets after the occurrence of a vacancy, whether a temporary appointment has been made or not, fails to make an election, and adjourns without filling the vacancy, the power of the executive to make a temporary appointment is at an end. Second, by the terms "next meeting of the

legislature," is not meant the first or any intermediate day of the session; these terms include the whole period of the session until its close, during which the vacancy may be filled, and, if not sooner superseded by an election, a temporary appointment will last to that time. Third, if an executive appointment is superseded by a legislative election, the latter takes effect and vacates the former, when the acceptance of the latter is officially made known to, or may be presumed by the senate.

CHAPTER SIXTH.

OF THE SESSION, ADJOURNMENT, PROROGATION, ASSEMBLING BY PROCLAMATION, AND DISSOLUTION OF A LEGISLATIVE ASSEMBLY.

SECTION I. SESSION.

495. The term of time for which a legislative assembly is elected, and during which it is competent to sit, is usually broken into shorter periods, during which it actually sits, which are called sessions, and which are usually (especially the first time an assembly meets) appointed by law. A session is the period of time, during which both the branches of the legislature sit from day to day, with occasional intermissions of a day or two at a time, by one or both, until the business before them is completed, and the daily sittings are brought to a close. This takes place either by lapse of time, or by means of what is called a prorogation, or dissolution. In this country, a session of a legislative assembly most commonly terminates by an adjournment without day mutually agreed upon. The term adjournment, which, in strictness, denotes only a continuation of the session, is used with us to denote its conclusion. The reason for this use of the term undoubtedly is, that an adjournment always takes place by the authority of the legislative body itself; *and, in this country, the executive has no authority*, in any case, or, at least, without its consent, to put an end to the session of a legislative assembly.

496. The members of a legislative assembly, before its first meeting, as well as during the intervals of its sitting, have, as we shall see hereafter, some necessary privileges as such; but the assembly itself has no authority, and can exercise none, except during a session, and while the assembly is duly organized for the transaction of business. So its authority terminates with the session. Its officers, as we have seen, are elected, unless it is otherwise declared, for the whole term of the legal existence of the assembly itself; but unless otherwise extended, all its orders, resolutions, and proceedings, which are of a continuous nature, necessarily expire, with its own authority, at the end of the session. They may be made to extend to and be in force in, the next session of the same body, but they cannot be extended, unless they have taken the form of laws, beyond the period of its legal existence. Ordinarily, therefore, to be in force in the next session, they must be revived for that purpose; and to be in force in a succeeding assembly, they must be renewed in it as original measures.

497. In parliament, it is customary for both branches, at the commencement of each session, to agree to or adopt certain orders, which have been found necessary in the transaction of business, and which last during the session only. These orders are very nearly or quite the same from one session to another. The sessional orders, which are some of them merely in affirmance of the common parliamentary law, have but very little to do with the ordinary proceedings of the house; which are governed and regulated, for the most part, by a system of procedure, which constitutes the law of the house, without any previous adoption or sanction by the house itself. This system consists, in part, of customs and usages, which have been handed down, in the practice of both houses, from time immemorial, and, in part, of positive regulations, which have been made, from time to time, by the two houses, respectively, and declared to be standing orders, and which consequently are binding upon every succeeding house, by the law and custom of parliament, until they are vacated or rescinded. The consequence is, that each house of parliament, as soon as it assembles, is provided with a code of rules for the government and regulation of its proceedings.

498. But in this country, every one of the constitutions contains a provision, that each legislative assembly thereby established may determine the rules of its proceeding. Hence, probably, in consequence of this constitutional principle, the system of standing orders has never been established in this country; and no legislative

assembly is here governed, or its proceedings regulated, by any other rules and orders than those to which it gives its own consent. One of the proceedings, therefore, which takes place at the commencement of the first session of legislative bodies in this country, is the adoption of rules and orders for the regulation of its proceedings; and as this adoption of rules would expire with the session, unless otherwise specified, it would require to be renewed at the commencement of each succeeding session.

499. Every parliament is commonly designated by the name and year of the reign of the sovereign, by whose authority it is held; and the several sessions, if more than one, into which it is divided, by prorogations, and in which it does business, are designated as the first, second, etc., of such a parliament. Thus the parliament, which first assembled for the despatch of business, on the 22d of January, 1801, is known as The First Parliament of the United Kingdom of Great Britain and Ireland. But this designation is merely conventional; an act of parliament can only be legally described by reference to the name and year of the sovereign, in whose reign it is enacted.

500. The legislative department of the federal government is called the congress of the United States; in the States of Maine, Michigan, Wisconsin, California, New York, Texas, and Mississippi, it is styled the legislature; in Massachusetts and New Hampshire, the general court; and, in all the other States, the general assembly. In the States of Maine, Massachusetts, Vermont, Rhode Island, Connecticut, New York, Georgia, the legislative term for members of both branches is one year; in the States of Florida, Wisconsin, and California, it is one year for members of the second branch, and two years for those of the other; in those of New Jersey, Pennsylvania, and Alabama, it is one year for members of the second branch, and three years for those of the other; in those of North Carolina, Tennessee, Ohio, Illinois, and Michigan, it is two years, for members of both branches; and in the States of Delaware, Maryland, Virginia, South Carolina, Mississippi, Louisiana, Kentucky, Indiana, Illinois, Missouri, Arkansas, Texas, and Iowa, it is two years for the second branch, and four years for members of the other. In the following States the regular meeting of the legislature is appointed to take place biennially, namely: — Delaware, Maryland, Virginia, North Carolina, Mississippi, Kentucky, Ohio, Indiana, Illinois, Michigan, Missouri, Arkansas, Texas, and Iowa; in all the other States it is annual; and in Rhode Island the legislature is appointed to meet regularly twice a year. Representatives

in the congress of the United States, are also elected for two years; senators for six years; and the session of congress is annual.

501. In the congress of the United States, and in the legislatures of several of the States, the members of the first branch are chosen for longer periods than those of the other, and are divided into two or more classes, the official term of one of which expires at the same time with that of the second branch. The members of the senate of the United States are chosen for six years, and are divided into three classes, one of which goes out of office and is renewed every two years; the members of the senate in the States of Florida, Wisconsin, and California, are chosen for two years, and divided into two classes, one of which goes out of office and is renewed every year; in the States of New Jersey, Pennsylvania, and Alabama, the members of the senate are chosen for three years, and divided into three classes, one of which goes out of office and is renewed every year; in the States of Maryland, Virginia, South Carolina, Louisiana, Mississippi, Kentucky, Indiana, Illinois, Iowa, Texas, and Missouri, the members of the senate are chosen for four years each and are divided into two classes, one of which goes out of office every two years. In Delaware and Arkansas, the members of the senate are chosen for four years, but are not divided into classes; so that in these States, the legislative term of members of the senate is double that of the members of the other branch. In all these cases, as both branches are necessary to constitute a legislature, the period of the duration of that department of the government is necessarily determined by the official term of the second branch, though the members of the first are chosen for longer periods, that is, for two or more successive legislatures.

502. Each successive legislature either receives its designation from the year or years for which it is held, or according to its number commencing with the organization of the government of which it is a part; thus, the successive congresses of the United States are known as the first, second, etc.; and the successive legislatures of the several States as the first, second, etc., general assembly, or as the legislature or general court of such a State for such a year. The sessions held by each, if more than one, are numbered consecutively and designated by their numbers.

503. In order to determine what kind of a meeting of a legislative assembly in this country will constitute a session, it seems necessary to consider its commencement, its proceedings, and its termination. In regard to its *commencement*, there can be no doubt, when an assembly comes together, at the time required by law for

the commencement of the regular session; or in pursuance of an executive proclamation, for an extraordinary session; or in pursuance of an adjournment by both branches, for the purpose of closing one session and commencing another; that in all these cases, there is the commencement of a session. As to the *proceedings*, it was formerly held in England, that, in order to constitute a session of parliament, it was necessary either that some judgment should be given, by the house of lords as a court of law, or that a bill should be passed by both houses, and receive the royal assent; and that otherwise the meeting would be only a convention and not a session. Such proceedings, however, do not now seem to be requisite; but if parliament assembles and sits, and may proceed with business, though it does not in fact transact any, the proceedings will suffice for a session. The *termination* of the meeting gives rise to some question. The only termination of the sitting of parliament, which will constitute a session, is undoubtedly a prorogation, or a dissolution either by royal authority, or by lapse of time; no mere adjournment, even in obedience to the king's command, being sufficient for the purpose. When a prorogation takes place, it is immaterial for how long or short a time it may be; a prorogation for a single day being as effectual as one for a longer period, to make the meeting so terminated a session. In our legislative assemblies, a prorogation where that mode of proceeding is in use, or a dissolution by lapse of time, will have the same effect to constitute a session as in England. But there are many, indeed the greater part, of the States, in which prorogation is not a constitutional proceeding, but, in which, every termination of the sitting of the legislative bodies is denominated an adjournment. In all these States, there can be no doubt, that an adjournment without day will be a sufficient termination of the session; but, whether an adjournment from one day to another, however distant, will constitute a session, may, perhaps, be doubtful. According to the law of parliament, it would not; and the same rule may be admitted here, unless the adjournment is accompanied with a declaration, that it is for the purpose of closing the session, or is attended with circumstances of equivalent character; in which case, the session would doubtless be considered as terminated.

504. The congress of the United States furnishes a good example of both modes, in which the session of a legislative assembly in this country terminates, usually by lapse of time, or by mutual agreement to adjourn. The members of the second branch being previously chosen, in every alternate year, hold their offices for two

years from the fourth of March thence next ensuing; and congress is required, by the constitution, to meet every year on the first Monday of December, unless a different day is appointed by law. Each congress, therefore, usually has two sessions, commencing on the first Monday of December annually. The first session terminates by agreement of the two branches; the second by lapse of time.

505. When the session of congress terminates, with the functions of its members, on the day preceding the fourth of March, it seems to have been held, that the sitting of that day might be prolonged, at pleasure, beyond the natural day, without losing its appropriate designation of a sitting on that day, and be, therefore, within the official term of the members, provided it should not be extended beyond twelve o'clock at noon,[1] on the fourth of March, at which time the functions of the members, and of course the legal existence of congress, would terminate.

506. When a session of congress terminates by mutual agreement, the day being agreed upon beforehand, by a joint resolution, when that day arrives, and the two branches have done what business they intend doing, they unite in a message to the president, to inform him, that, unless he has some further communication to make to them, they propose to bring the session to a close. The president returning for answer that he has no further communication to make to them, the two branches, first giving each other notice, then adjourn without day, on motion. If the two houses have come to a previous resolution, that they shall be adjourned by their respective presiding officers at a particular point of time, on the day fixed, for the adjournment, when that time arrives, the business on hand, whatever it may be, is then arrested, and the house declared to be adjourned without day.

507. The sitting of a legislative assembly, from day to day, begun on the day fixed by law, whether a quorum assembles, or the assembly is organized on that day, or not, and brought to a close by lapse of time, or by mutual agreement, constitutes a session for all legal or parliamentary purposes.

508. During the session of a legislative assembly, the person or persons exercising the executive authority should be of convenient access to either branch; as in Massachusetts, where the executive authority is in the governor and council, who are always sitting, in the State House, while the legislature is in session; and this con-

[1] Cong. Globe, XXIII. 787.

venient access to the executive has been considered so important in some of the States, as to be expressly provided for in their constitutions.

SECTION II. ADJOURNMENT.

509. A legislative assembly, having once met, on the day appointed for its assembling, continues to meet every day, as a matter of course, except on Sundays and such other days (Christmas and Good-Friday, for example) as are not considered legislative days, until it is prorogued, or otherwise adjourned, or dissolved by lapse of time. By special order, however, the assembly may sit on Sundays and other non-legislative days. "The parliament," says Whitelocke,[1] "is so constant in their daily sitting, that every time when the house of commons riseth, the speaker pronounceth, that the house adjourns until the next morning; and so on Saturdays the house adjourns itself until Monday. The word *adjourn* is from the French word *jour;* and to adjourn is to put off from one day to another."

510. When therefore a legislative assembly simply adjourns, or rises, without any previous order or resolution on the subject, its sitting is to be resumed on the next legislative day, whenever a quorum is assembled in the usual place of sitting. It is the practice, however, in this country, to fix a time for the assembling on each day, by a standing order; so that when an adjournment takes place, without any previous resolution or special order, on the subject, the sitting is resumed at that hour on the next day.

511. A legislative assembly may also adjourn to a day beyond the next regular sitting day; but, in order to prevent the inconvenience and delay, which would result from the adjournment of one branch for a considerable period, without the consent and knowledge of the other, it is provided in nearly all our constitutions, that neither branch shall adjourn for more than a certain number of days, as, for example, two or three, without the consent of the other. The days intended by this prohibition must of course be days on which the other branch might sit, that is, legislative days, and others which might be made so; and, therefore, an adjournment from Friday to the next Tuesday would be for three days; Sunday, though not an ordinary sitting day, being one on which either branch may sit and transact business, if it should think proper.

512. For the reasons given in the preceding paragraph, it is also provided in many of the constitutions that neither branch, without

[1] Whitelocke, I. 219.

the consent of the other, shall adjourn to any other place than that in which the two branches shall then be sitting.

513. The prohibitions above mentioned are restrictions upon the proceeding of one branch independently, and without the consent of the other; if the two branches agree upon the time and place, they may adjourn for any number of days, and to any place, that they may think proper or convenient.

514. An adjournment, being in strictness of language nothing more than a continuation of one branch of the assembly from day to day, by its own act, either independently of, or in concurrence with, a similar act of the other branch, the parliamentary effect of it, as regards the business introduced and pending at the time it takes place, is, that every proceeding remains entire, and, at the meeting after the recess, may be taken up in the state, and at the period, or stage, in which it was left.[1]

515. A temporary suspension of business sometimes takes place in the course of the daily sitting, without an adjournment; which may either occur by the general consent and acquiescence of the assembly, or by motion and vote for the purpose. In the latter case, the suspension is usually denominated a recess. When the time for which it was taken has expired, the business of the day is to be resumed precisely where it was suspended. A motion for a recess has nothing of the peculiar character, which belongs to the motion to adjourn, or is sometimes given to the latter in our legislative assemblies.[2]

SECTION III. PROROGATION.

516. When the business of a legislative body is completed, but the time for its dissolution has not arrived, and the sittings of both branches are suspended, by a joint act, to be resumed at a future time, this suspension is properly denominated a prorogation. In England, a prorogation can only take place by the authority of the king; in this country, with certain exceptions and limitations, only by the act either concurrent or joint, of the two branches of the legislature. All the constitutions, though they differ as to the mode, concur in withdrawing from the executive department the power to terminate at pleasure the existence of the legislative. The lan-

[1] Hatsell, II. 337. The effect of an adjournment, to supersede a motion, will be noticed hereafter.

[2] J. of H. 29th Cong. 1st Sess. 357; J. of H. 29th Cong. 2nd Sess. 343; J. of H. 32nd Cong. 2nd Sess. 389; Cong. Globe, VIII. 361.

guage, frequently made use of to express this idea, is, that "Each house shall sit upon its own adjournment."

517. In Massachusetts alone, is the form of a prorogation still preserved. By the constitution of that State, it is made the duty of the governor, with the advice and consent of the council, to prorogue the general court, when in session, to any time the two houses shall desire. It also further provides, that during the recess, the governor may prorogue it from time to time, not exceeding ninety days at any one time. This last provision is the only remnant left in the United States, of the absolute control of the executive over the legislative department. In this State, also, the governor is authorized, in case of a disagreement between the two houses, as to the necessity, expediency, or time of adjournment, or prorogation, to adjourn or prorogue them, at his pleasure, not exceeding ninety days at any one time.

518. In all the other legislatures, with the exception of that of North Carolina, a prorogation takes place by the concurrent act of the two branches, without any interference on the part of the executive, unless the two branches disagree; in which case the governor or president, except in the States of Virginia, New York, Tennessee, New Jersey, Maryland, Indiana, Michigan, Wisconsin, California, and Missouri, is authorized to adjourn or prorogue them to such time as he may think proper, not exceeding the period mentioned in each particular constitution, nor, of course, beyond the period at which the functions of the legislative body expire. In North Carolina, the two branches prorogue themselves to such future day and place as they may think proper, by joint ballot.

519. A prorogation, as already remarked, is the termination for the time being, of the functions of the legislative body, as an adjournment is a continuation from day to day, of the functions of each of its branches. In whichever of the ways above mentioned, this termination in fact takes place, or by whatever name it may be called, the legal effect of it is to conclude the session; by which all bills and other proceedings of a legislative character,[1] depending in either branch, in whatever state they are at the time, are entirely put an end to, and must be instituted again, in the next session

[1] In England the house of lords is a court of errors in the last resort, which is the case also with the senatorial branch in some of the States. Where this is the character of a legislative body, judiciary cases depending therein are not affected by a prorogation. The same is true in regard to impeachments. The officers of the assembly being chosen for the term of office of the members, it is scarcely necessary to add, that the organization of the assembly remains notwithstanding any prorogation.

precisely as if they had never been begun.[1] This rule applies to every proceeding instituted by, or depending for its existence upon, any order of the assembly.

SECTION IV. ASSEMBLING BY PROCLAMATION.

520. There are two kinds of contingencies mentioned in the several constitutions, on the occasion of which it is made the duty of the executive to intervene in the calling of a meeting of the legislature; and wherever this power is exercised, it is of course to be effected by means of an official proclamation, issued and promulgated in the usual manner, by the executive authority. The occasions, on which this interference takes place are, first, to convene the legislature on extraordinary occasions, and second, to change the place of meeting.

521. The ordinary business of a legislature does not require it to sit uninterruptedly, but only to hold one or more regular sessions, during the period for which it is elected; but, as extraordinary occasions may occur, on which it is absolutely necessary, or, at any rate, extremely convenient, that the legislature should act, or advise, it is provided, in all the constitutions, except those of New Hampshire, North Carolina, and Indiana, that the legislature may be convened, on extraordinary occasions, by the executive authority. The constitutions of the States last named are silent on this subject; that of North Carolina, however, declares that the governor may exercise all the executive powers of government, limited and restrained by the constitution and laws; and, by that of Virginia, the governor is required to convene the legislature, not only when "in his opinion the interest of the commonwealth may require it," but also, "on application of a majority of the members of both houses."

522. The executive, on the assembling of the legislature by proclamation, would, of course, state to them the causes for which they were convened. In Tennessee, Illinois, and Iowa, he is required to do so by constitution; and in the two former the legislature is expressly prohibited from entering upon any other business than that for which it is thus specially convened. If it were not for this prohibition, the legislature, notwithstanding they were called

[1] Hatsell, II. 335. The twenty-second rule of the house of representatives of the United States provides for the continuance of bills, joint resolutions, and reports, from one session to another of the same congress.

together for a special purpose, might proceed upon any business they should think proper.

523. The constitutions of Florida, Alabama, Mississippi, Louisiana, Kentucky, Arkansas, and Wisconsin, while they provide that the governor on extraordinary occasions, may call meetings of the legislature, at the place appointed by law for their assembling, provide, also, that if that place has become unsafe and improper by reason of an enemy or disease, the session may be called at a different place. In Texas, the place may be changed, if the ordinary place of meeting is in the actual possession of a public enemy.

524. The only other purpose, for which it is the duty of the executive to interfere in the calling of a meeting of the legislature, is to effect a change in the place of its assembling. The place for the sitting of the legislature is always prescribed beforehand, either by the constitution, or by the laws; but, as circumstances may occur, to make it necessary or convenient to change the place of assembling, authority is given to the governor by the constitutions of Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, South Carolina, Indiana, and Maryland, and to the president of the United States by an act of congress, to convene the legislature next to be holden at any time, at some other than the regular place of assembling, provided he should deem it necessary to do so, in order to preserve the health, lives, or freedom of the members. A change in the place of meeting of the congress of the United States and of the legislatures of Massachusetts, Connecticut, and New Hampshire, may take place, on account of any infectious distemper prevailing in the place where the legislature is to convene, or any cause happening whereby danger may arise to the health or lives of the members from their attendance; in Maryland, to authorize this change there must be danger "from the presence of an enemy or from any other cause;" in Rhode Island it may take place, "in case of danger from the prevalence of epidemic or contagious disease," or "for other urgent reasons;" in Indiana, "should the seat of government become dangerous from disease or a common enemy," the governor may convene the legislature at any other place; and in Maine, the change may take place on the occurrence of danger, "from an enemy or contagious disease."

SECTION V. DISSOLUTION.

525. The British parliament, as has already been stated, may be dissolved by the king at his pleasure, in virtue of his royal preroga-

tive; otherwise it will continue for seven years from the day on which it was first appointed to meet; and is then dissolved by lapse of time. In this country, every legislature, with one exception, continues in existence for the period for which it was elected, whether in session or not, and cannot be dissolved by the executive or any other authority. In New Hampshire, however, the constitution provides, that the general court shall dissolve of itself, or, if in session, be dissolved by the governor, seven days preceding the day, on which the term of office of the members expires.

526. In England, when it is the intention of the king to dissolve the parliament, the practice has prevailed for a long time, first, to prorogue it to a certain day; and, then, at some intermediate period, a proclamation issues, discharging the members of both houses from their attendance on that day, and dissolving the parliament. The reasons for this practice, according to Hatsell,[1] are probably those suggested by Charles I. 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."

527. The members of the legislative assemblies, in the several States, are chosen for certain specified terms, which, of course, expire with the limitation of time, and if the assembly is then in session, it is dissolved, with the functions of its members. The constitution of the United States declares that representatives shall be chosen for two years and senators for six; but it does not specify the time from which this term of service shall commence running. In practice, however, the commencement of the political year, under the constitution of the United States, has been fixed at the fourth of March, in consequence of that day having been appointed by the old congress, when the constitution was adopted, for commencing proceedings under it. Members were elected, therefore, to the first congress, whose term of service commenced on the fourth of March, for two years, and their successors being elected accordingly, for two years, from the expiration of the term of office of their predecessors, the fourth of March has since been recognized and practically established, as the commencement of the political year, under the constitution of the United States. If congress is in session, when the term of office of the members of one of its branches expires, it is, of course, dissolved by lapse of time.

[1] Hatsell, II. 383.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART THIRD.

OF THE PRIVILEGES AND INCIDENTAL POWERS OF A LEGISLATIVE ASSEMBLY.

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528. The several subjects, embraced and treated of in this part of the work, may properly be considered under the following heads, namely: — I. Of the General Nature of the Privileges and Incidental Powers of a Legislative Assembly; II. Of the Personal Privileges of the Members; III. Of the Collective or Aggregate Privileges of the Assembly; IV. Of the Incidental Powers of a Legislative Assembly.

CHAPTER FIRST.

OF THE GENERAL NATURE OF THE PRIVILEGES AND INCIDENTAL POWERS OF A LEGISLATIVE ASSEMBLY.

529. The functions of a legislative assembly can only be exercised, when the members are assembled together, as a legislative body, that is, as a collective and representative body of the whole

people, at the time and place, appointed and established for the purpose of such meeting; but singly or separately, or at any other time or place, the members have no legislative power or authority whatever.[1] It is essential, therefore, in order to enable the members to assemble themselves, and to remain together, for the purposes for which they are constituted, that they should not be prevented or withdrawn from their attendance, by any causes of a less important character; but, that for a certain time, at least, they should be excused from obeying any other call, not so immediately necessary for the great services of the nation; and hence it has always been admitted, that the members of a legislative assembly, during their service and attendance, as such, were entitled to be exempted from several duties, and not considered as liable to some legal processes, to which other citizens were by law obliged to pay obedience.[2]

530. It is not enough, however, to secure the free attendance of the members merely; they must *always* be protected in the free enjoyment of the rights of speech, debate, and determination, in reference to all subjects upon which they may be rightfully called to deliberate and act; and, hence, it is established as a general principle of parliamentary law, that no member of a legislative assembly can be questioned or punished by any other court or authority, but only by the assembly itself of which he is a member, for any thing said or done by him in that capacity.

531. The rights and immunities alluded to in the foregoing paragraphs belong principally to the individual members, and only secondarily and indirectly to the assembly itself;[3] but there are also other legislative rights and immunities, equally essential to enable the assembly to perform the functions with which it is invested, which, being directed rather to the maintenance of its collective authority than to the security of the individual members, may be properly said to belong primarily to the assembly itself, and only secondarily and by relation to the members of which it is composed.[4]

532. All these rights and immunities, both of the members, individually, and of the assembly in its collective capacity, are known by the general name of *privileges;* and when they are disregarded by any individual or authority, whose duty it is to take notice of

[1] Whitelocke, II. 192; Mass. Reports, II. 27.

[2] "When you violate the privilege of one member of this house, you do it to the whole house." Grey, III. 58. By Mr. Speaker.

[3] Hatsell, I. 2.

[4] The personal privileges cannot be waived by the members themselves, without the consent of the assembly. Dwarris, I. 103; D'Ewes, 436; *Fortam* v. *Lord Rokeby*, Taunton's Reports, IV. 668; Taunt. Rep. VII. 172.

and observe them, or when they are directly attacked in any way, or, in general, when any impediment or obstruction is interposed to the free proceeding of a legislative assembly or its members, the offence is denominated a breach of privilege.

533. The privileges of a legislative assembly would be entirely ineffectual to enable it to discharge its functions, if it had no power to punish offenders, to impose disciplinary regulations upon its members, or to enforce obedience to its commands. These powers are so essential to the authority of a legislative assembly, that it cannot well exist without them; and they are consequently entitled to be regarded as belonging to every such assembly as a necessary incident. The privileges and the powers of a legislative assembly are therefore so far connected together that the latter are the necessary complement of the former.

534. The privileges and powers which were claimed and exercised in ancient times by the two houses of the British parliament, embraced a wide extent of jurisdiction, legislative, judicial, and administrative, and were to a considerable extent vague, indefinite, and anomalous. Their nature and extent formed a fruitful and frequent subject of inquiry, and gave rise to numerous controversies, sometimes between the two houses themselves, and sometimes between them or one of them, on the one hand, and the king, or some of the courts on the other. In consequence of these controversies, the privileges and powers of parliament have gradually assumed a more distinct form and become more definite in their object; so that in modern times, those only remain which are essential to enable each branch to perform its appropriate constitutional functions; and these are now as well recognized and established, and as accurately defined, partly by usage, partly by law, and partly by the admission of coördinate authorities, as are any of the rules and principles of the common law.

535. During the reigns of George I. and II. and for some time afterwards, it appears to have been the established principle, that any illegal or wrongfully injurious act, which subjected a member to any inconvenience, or had a tendency to divert his mind or his attention from his parliamentary duties, was a breach of privilege and punishable as such. Thus, there is a great number of cases of complaints in the house of commons for breaches of privilege which were nothing more than trespasses upon the real or personal estates of members, and in no way affected their persons. Some of these complaints are sufficiently curious. One member complained, that several men, who were at work upon his tenant's

land had been turned out; another that several persons had taken and carried away timber-trees, and quantities of fagots belonging to him; another that several persons had dug quantities of lead ore out of his mines; another, that a person had made a forcible entry into and a lease of part of his estate; another, that several persons had broken open his gate, and drove a great number of waggons over his field; another, that several persons had killed a great number of his rabbits. In these cases, after the offending parties had been sent for in custody, further proceedings were usually stayed, on the house being informed that the party had made satisfaction. It was with such precedents as these before him, that Blackstone lays down the doctrine of the large and indefinite nature of privilege. "Privilege of parliament was principally established, in order to protect its members not only from being molested by their fellow-subjects, but also more especially from being oppressed by the power of the crown. If therefore all the privileges of parliament were once to be set down and ascertained, and no privilege to be allowed but what was so defined and determined, it were easy for the executive power to devise some new case, not within the line of privilege, and under pretence thereof to harass any refractory member, and violate the freedom of parliament. The dignity and independence of the two houses are therefore in great measure preserved by keeping their privileges indefinite." This doctrine went upon the ground, that the house of commons by a declaratory resolution, operating retrospectively, could make any thing a breach of privilege, which it might think fit to bring within its jurisdiction. This right, lately, if not now claimed in theory, appears to be abandoned in practice.[1]

536. In both branches of the British parliament, the privileges of the members are doubtless founded in the same general reason, namely, the necessity of their existence to enable a legislative body to perform its appropriate functions; but in the house of commons a custom has prevailed from a very early period, which seems also to imply the necessity of a special grant from the king, at the commencement of every new parliament. When the house of commons first assembles after a general election, the speaker elect, on being presented to the king, in the house of lords, and confirmed, makes a claim, on behalf of the commons, of their ancient privileges, which are thereupon recognized and allowed by the king. The origin of this practice, or the reason of it, cannot now be ascer-

[1] May, 108; see also *Thorpe's Case*, Comm. Jour. X. 402.

tained with certainty. It may be conjectured, however, that when the commons and lords separated, and the former became a separate and coördinate branch, the members of which did not, like the lords, sit in their own right, but as the representatives of the people, it was thought necessary to invest them with the privileges of a court of parliament, by a special law. This conjecture is strengthened by the form of the ceremony, which corresponds precisely to the ancient mode of making laws, namely, a petition preferred by the commons and assented to by the king and lords; and also by the fact, that upon the election and approval of a new speaker in the same parliament, he does not renew the claim of privileges for the commons. But whatever may have been the origin of the custom, or its supposed necessity, it is not now imagined to be any more requisite to the existence of the privileges of the commons than to those of the lords; and the former would undoubtedly be held to exist, though the speaker should omit to claim them, at the commencement of the parliament; or if, when claimed, they should be refused.[1] The commons, says Hatsell, by this ceremony never acknowledged "that their privileges were derived from the grace and permission" of the sovereign; "but they considered it as a public claim and notification to the king, and to the people, of the privileges of the house of commons, that none might plead ignorance."[2]

537. It was anciently attempted by the house of commons, not only to arrogate to themselves the exclusive jurisdiction of all cases in which they pretended that their privileges were concerned, even incidentally; but, also, and as a necessary consequence, to deny all other tribunals all knowledge of what those privileges were; but both these pretensions have for a long time been abandoned; the privileges of the members are now a part of the law of the land, and, as such, taken notice of judicially by all courts and tribunals; and, at the present day, whenever a question of privilege arises or is made in any court, either directly or indirectly, in the exercise of its ordinary jurisdiction, such court is bound to take notice of and decide upon, the privilege in question; and such decision is binding and conclusive, so far as the particular case is concerned, but without prejudice to the right of the house itself to decide upon it in an equally conclusive manner, whenever it is brought in question there.[3] In this country, the same principles prevail; and, with the

[1] Hatsell, II. 229.
[2] Hatsell, II. 226.
[3] See May, 143.

greater reason, as, in most of the States, the privileges of the members of our legislative assemblies do not rest merely upon common or statute law, but upon constitutional provisions.[1]

538. In England, as has already been remarked, the powers and privileges of the two houses of parliament have for a long time been so regulated, defined, and limited, that they are as well established and known as the maxims and principles of the common law; and before the American revolution, they were equally recognized and admitted, in this country, as belonging to the colonial and provincial legislatures. Since the revolution, they have been embodied, in some form or other, in all the constitutions of government. In those constitutions which took the place of the colonial and provincial charters, existing and established institutions were reduced into a written form, with such alterations and additions as the new circumstances made necessary, but with very little change, even of name, in matters of comparatively small importance, or which were already conformable to the spirit of the new order of things. We find, consequently, little or no change introduced by the revolution into the constitution of the second branch of the legislative body, and no disposition manifested to limit, but rather to strengthen and establish, the privileges and powers, both of that and also of the other branch, which so far as its constitution was concerned, was now put upon the same footing with the former.

539. In all the constitutions, a legislative department is provided for in general terms, to consist of two branches, each of which, as to the number, qualifications, and elections of its members, is particularly regulated. In some of these constitutions, certain powers and privileges are enumerated, in affirmative language, as belonging to each branch, accompanied sometimes by a general provision covering all other necessary powers and privileges; in some, negative words are used in reference to particular powers; in many of them, certain powers and privileges are expressly enumerated, and others equally essential to the very existence of a legislative body wholly omitted; but, in all, the powers and privileges in question are referred to as existing and well-known principles of parliamentary law, and merely enumerated without being defined.

540. In this variety and discrepancy of constitutional provisions, the only mode of treating the subject, which will be sufficiently full and satisfactory, without being tediously minute, or running into repetition, will be to consider the privileges and powers of a legis-

[1] *Coffin* v. *Coffin*, Mass. Rep. IV. 31, 32.

lative assembly, in the first instance, on the broad ground of common parliamentary law; and having done this, to point out, how far these general principles have been adopted, recognized, or restrained by each particular constitution.

541. The following rules of constitutional construction, which seem to be founded in reason, will assist us in ascertaining the powers and privileges of our several legislative assemblies, so far as they result from the principles of parliamentary law, in connection with constitutional and legal provisions.

542. I. It may be laid down as the first rule on this subject, that the establishment, in general terms, of a legislative department, is equivalent to an express grant, to each branch composing it, of all the powers and privileges which are necessarily incident to a legislative assembly.[1]

543. II. The express enumeration of certain of these incidental powers and privileges, in a constitution by which a legislative department is established in general terms, cannot be considered as the exclusion of others not named, unless negative terms, or words equivalent thereto, are used; such affirmative enumeration being merely out of abundant caution, and its only effect, to place the subjects of it beyond legislative control or interference.

[1] Cong. Globe, XXI. 1337. Mr. Jefferson, (Manual, Sec. III.,) in his remarks upon Duane's Case in the senate, for a libel on that branch, and upon the case of Randall and Whitney, who were convicted and punished in the house of representatives, for bribery and corruption, lays down the doctrine, that the federal government being one of limited powers, neither branch of congress can exercise any powers but those which are clearly delegated to them by the constitution and that until they make a law for the purpose, under that provision of the constitution which authorizes them to make all laws necessary and proper for carrying into effect the powers vested in them by the constitution, neither house has any authority to commit for a contempt. Fifty years have elapsed, since this doctrine was first brought forward; but no law has been passed, and the power in question has been repeatedly exercised. The principle, stated by Mr. Jefferson, seems to confound together two things which are essentially different, the powers of a legislative assembly, as such, and the subjects of legislation, and to apply to the former, an argument which only bears upon the latter. The doctrine of the text may now be considered as established by usage, and by the cases of *Burdett* v. *Abbott*, in the fourteenth volume of Mr. East's Reports, and that of *Anderson* v. *Dunn*, reported in the sixth volume of Mr. Wheaton's collection, to which cases a general reference is here accordingly made. The power of a legislative body, to punish for a contempt, as incidental to its power to legislate, was never more forcibly maintained or better expressed than by the old congress of the confederation, in a resolution of June, 1777, on the occasion of one of the members being challenged for words spoken in debate: "*Resolved*, that congress have, and always had, authority to protect their members from insult, for any thing by them said or done in congress in the exercise of their duty, which is a privilege essential to the freedom of debate, and to the faithful discharge of the great trust reposed in them by their constituents." Mr. Gunning Bedford the challenger was thereupon summoned to appear before congress to answer for his conduct, and, having appeared in obedience to the requisition, and asked pardon of the house, and of the member challenged, he was discharged.

544. III. Where a particular power, whether given expressly or by implication, is regulated by express constitutional provision, either as to the cases to which, or the manner in which, it is to be applied, the power in question is not applicable to any other cases, or in any different manner.

545. IV. Where there is no constitutional restriction, either by negative words, or terms equivalent thereto, and also where there is no enumeration, or a general one only, the powers and privileges of a legislative assembly may be provided for, regulated, or limited, by law; and, in all these cases, if there is no provision or regulation of law, or only in part, the first and second rules above given are applicable.

CHAPTER SECOND.

OF THE PERSONAL PRIVILEGES OF THE MEMBERS.

546. The parliamentary privileges coming under this head, so far as they belong to the lords, being the privileges of the peerage rather than of parliament,[1] have remained nearly the same from the earliest period, and are somewhat different, as to their nature and extent, from the corresponding privileges of the commons; but the latter house has from time to time been obliged to make new claims of privilege, and to exert new modes of maintaining and defending those claims, in proportion as the lengthening of the duration of the session made other avocations inconvenient and incompatible with their parliamentary duties; and as the increase of their consequence in the State, and their influence in the management of public affairs, rendered them more an object of the attention of the ministers of the crown.[2] The principal view of the commons, in all their claims of privilege, has been to enable themselves to discharge their public duties, by a constant attendance in parliament, without being deterred by threats or insults of private persons; or diverted by any concern for their estates or affairs; or restrained by the summons of other courts, the arrest of their bodies in civil cases, or commitment by order of the crown.[3] But they have never gone the length of claiming any exemption

[1] Hammond, 71.
[2] Hatsell, I. 206.
[3] Hatsell, I. 206.

from the operation of the criminal laws; or of attempting to protect themselves from any prosecution for treason, felony, or breach of the peace; "being sensible, that it equally imported them, as well to see justice done against them that are criminous, as to defend the just rights and liberties of the subject and parliament of England." [1]

547. The personal privileges of the members, are so far matters of public concern, that they cannot be taken away by any act of the assembly, other than by expulsion or its equivalent; nor, where they are secured by constitutional provisions, can they be taken away or annulled even by an act of the legislature.[2] For the same reason, also, it is not in the power of a member to waive any of his privileges, the purpose of which is to enable him to give his attendance; [3] though there seems to be no good reason why he might not waive any of the others.

548. The personal privileges of the members are intended to enable them to give their attendance; to guarantee them against all restraint or intimidation in the discharge of their duties; and to facilitate communication between them and their immediate constituents. These privileges are the following, namely: — 1st, Exemption from legal process; 2d, Exemption from service as jurors or witnesses; 3d, Freedom of debate and proceedings; 4th, Franking Privilege. These subjects being treated of in their order, a fifth section will be devoted to the personal disabilities of members, which seem proper to be treated of in this connection.

SECTION I. — EXEMPTION FROM LEGAL PROCESS.

549. Exemption from legal process, which is one of the most important of the personal privileges of the members of a legislative assembly, will be considered under the following heads, namely: — 1st, Its nature and extent as to persons; 2d, Of the cases to which it is applicable; 3d, Of this privilege as affected by the constitutions of the several States; 4th, Of the duration of this privilege; and, 5th, In what manner it may be taken advantage of.

[1] Hatsell, I. 207.

[2] *Coffin* v. *Coffin*, Mass. Rep. IV. 27.

[3] D'Ewes, 436; Dwarris, I. 103; *Fortam* v. *Lord Rokeby*, Taunt. Reports, IV. 668; Taunt. Rep. VII. 172.

ARTICLE I. — *Of the Nature and Extent of this Privilege as to Persons.*

550. The personal privileges of the members of a legislative assembly, being intended for the most part to enable them to discharge their duties as such, and essential to that end, it is clear, that those persons only can claim the rights and immunities secured by these privileges, who are either entitled *prima facie* to take upon themselves the functions of members, or whose official character is admitted or recognized by the assembly itself; for none others are entitled, or can be admitted, to perform the functions of members.

551. From the time of an election to the time of meeting of the assembly, to which period, one of the most important of the personal privileges of members refers, namely, that of freedom from arrest in going to the place of meeting, those only who have a right to take upon themselves the functions of members are entitled to privilege, that is to say, who have been declared to be elected by the competent officers, and have received certificates of their election, or have been otherwise duly returned.

552. After the commencement of the session, and whilst the assembly is sitting, those only can be accounted as members, who have been duly elected as above mentioned, but, who, for some reason, have not yet taken their seats, or, who, having taken their seats, are admitted and recognized by the assembly itself, as members.

553. After the termination of the session, either by adjournment, or prorogation, those only are to be regarded as members, who were duly in or *prima facie* entitled to the exercise of their official functions, at the time of such adjournment or prorogation; or who have since been duly elected to fill vacancies, in which case their rights are the same as those of members originally elected, prior to the first meeting of the assembly.

554. The privileges of the members are of so great importance that no man is allowed to plead ignorance of the persons of those who are entitled to them. It is laid down accordingly by Sir Edward Coke,[1] "that every man is obliged, at his peril, to take notice who are members of either house, returned of record;" and, as it is also a general principle of the English parliamentary law,[2]

[1] Fourth Institute, 24. See also *Fortam* v. *Lord Rokeby*, Taunt. Rep. IV. 668.

[2] Hatsell, II. 75, note. See also Hatsell, I. 166.

that, "at the moment of the execution of the indenture, (or return,) the existence of the member, as a member of parliament, commences to all intents and purposes whatsoever," it follows, that in England, every man is bound to take notice of the official character of a member of the house of commons, from the moment of the execution of the indenture or return.

555. In this country, the making of the certificate of election by the competent officers being equivalent to the execution of the indenture, according to the form of proceeding in England, it may be laid down as a rule of our parliamentary law, in conformity with the principles above stated, that, when an election has been duly declared and certified, by the proper returning officers, every citizen, and much more every public officer, is bound to take notice of the official character of the member elected. In England, as has been seen, in another place, the returns on file in the crown office always indicate who are members, to the end of the parliament, because none but persons duly returned are allowed to take seats, in the first instance, and, when an election or return is set aside, and a petitioner admitted to a seat, instead of the member originally returned, the return is amended, taken off the file, or a new one placed there, in conformity with the decision of the house. In our legislative bodies, it is not supposed, that this form of proceeding is always or even at all observed; but, where it is not, the order or vote of the house must be considered of equivalent authority. The presiding officer, when not a member of the body over which he presides, is entitled to the privileges of a member, at least, during the time he presides.

556. It being a principle of parliamentary law, that a legislative assembly is the sole and exclusive judge of the returns and elections of its own members,[1] it follows that the validity of an election or return cannot be drawn into question on a claim of privilege; for, otherwise, the independence of the assembly would be placed completely at the discretion and in the power of other coördinate branches of the government; but, on the other hand, as the privileges of members "are not to be used for the danger of the commonwealth,"[2] and, moreover, are sometimes necessary to be claimed when the assembly is not in session, it is an admitted principle, that their validity and extent are also to be judged of by the tribunal in which the claim is made. If in this way, any collision of authority

[1] Ante, § 138. This principle is very generally declared in the constitutions of the several States.

[2] Hatsell, I. 206.

or jurisdiction should arise, the difficulty can only be accommodated by concession.

557. The personal privileges of members continue in full force, notwithstanding their absence, either with or without leave of the assembly, in the same manner, and to the same extent, as if they were present; for, otherwise, it would be in the power of any member, by his own act or fault, to oust the assembly of its right to his attendance and services; but, on ceasing to be a member, either by resignation, acceptance of an incompatible office, or by expulsion, the privilege is at an end.

558. At the period, when parliamentary privilege by the gradual process of claim by one or both of the two houses, coupled with the submission of individuals against whom it was exerted, and the sanction of the judicial tribunals, had risen to its greatest height, the privilege of exemption from legal process embraced the servants of members, and extended, also, to their goods and estates; the former being exempted from summons and arrest, and the latter from attachment; but the personal privileges of members, so far as they operated to obstruct the ordinary course of justice, have been since reduced, in part by the voluntary abandonment of the two houses, but chiefly by sundry statutes,[1] and particularly by that of 10 Geo. III. c. 50, which allows members to be sued, and their estates to be attached, and which also withdraws all protection whatever from their servants; so, that, at the present day, the privilege of exemption from legal process, so far as relates to the subjects of it, is confined strictly to the persons of members, and of the officers, such as the sergeant-at-arms, door-keepers, and clerks attending upon either house.[2]

ARTICLE II. *Of the Cases to which this Privilege is applicable.*

559. In regard to the cases to which this privilege extends, it is laid down by Sir Edward Coke,[3] that, "generally, the privilege of parliament do hold, unless it be in three cases, namely, treason, felony, and the peace;" and, the same language is used, in stating the rule on this subject, by all the compilers and writers, since his time, as well as by the house of commons, in their frequent resolutions concerning privilege; though, sometimes, instead of the phrase, "the peace," the words "breach or surety of the peace," are used. The

[1] 12 & 13 Will. III. c. 3; 2 & 3 Ann. c. 18; 11 Geo. II. c. 24.

[2] Lex Parliamentaria, 380.

[3] Fourth Institute, 25.

correctness of the distinction, however, implied in the rule as thus stated, is called in question by lord chancellor Brougham, as "inconsistent with itself, fruitful of bad consequences, and incapable of being pursued through the authorities;"[1] and he lays down the following as "the plain, broad, obvious, and intelligible rule," namely, "that with respect to every thing which is in its nature criminal, privilege of parliament will be no protection; but with respect to every thing in the nature of civil process, whatever may be the technical and outward form of that process, such privilege will enure to protect the party."[2]

560. It is quite obvious that the excepted cases of "treason, felony, and the peace," do not cover the whole ground of criminal matters, inasmuch as they do not in strictness include those misdemeanors, such, for example, as perjury, which are neither felonies, nor accompanied with a breach of the peace, but which are nevertheless as criminal, and punishable with as much severity, as many felonies, and the prosecution and punishment of which are equally important to the public welfare. In these and other cases of the same description, which do not fall properly under either of the heads of treason, felony, or the peace, lord chancellor Brougham says, that "the privilege of parliament has been held to be no protection,"[3] and, it is not unworthy of notice, also, that in the language of Sir Edward Coke, the rule is qualified by the term "generally." In this uncertainty, therefore, as to the rule, as an abstract proposition, it will be useful to present the results of the authorities somewhat in detail.

561. I. In regard to civil process, properly so called, that is, proceedings instituted for the enforcement of a civil right,[4] either by way of damages for its infraction, or by way of recovery of a specific thing, there can be no doubt, that the privilege protects from arrest and imprisonment, whether the process is original, mesne, or final, and whether the proceeding is by action at the suit of an individual, or by information,[5] or other process, at the suit or on the behalf of the public.[6]

562. II. In regard to criminal process, properly so called, that is, proceedings instituted for the apprehension and trial, before a competent tribunal, with a view to punishment, of one accused of crime, the authorities are equally clear, that the privilege affords no

[1] *Wellesley's Case*, Russell & Mylne's Reports, II. 673.
[2] *Westmeath* v. *Westmeath*, Law Journal, IX. (Chancery), 179.
[3] Hale on Parliaments, 30.
[4] Jefferson's Manual, § 3.
[5] Hale on Parliaments, 30.
[6] Hale on Parliaments, 16.

protection, provided that the offence, on or in reference to which the process is issued, is either treason, felony, or breach of the peace, or the proceeding in question is instituted for the purpose of obtaining surety of the peace.[1]

563. III. In reference to misdemeanors, unaccompanied by a breach of the peace, which are not technically included in the excepted cases, the authorities are conflicting. Lord Camden, in the case of John Wilkes, who, whilst a member of the house of commons, was indicted for a seditious libel, discharged him from arrest, on the ground, that the offence was neither treason, felony, nor breach of the peace, and consequently, came within the privilege of parliament.[2] On the contrary, it was afterwards resolved by both houses, in reference to the same subject, and upon reasons, which apply equally to every indictable offence, that the privileges of parliament did not extend to the case of writing and publishing a seditious libel;[3] and Lord Brougham in the cases cited in a preceding paragraph, (in neither of which, however, was the decision of this point necessary,) lays down the rule, in general and broad terms, that the privilege of parliament does not extend to any criminal matter or proceeding whatever. In this conflict of authorities, the reason of the whole matter, which clearly excludes all distinction of offences, in reference to this subject, may be allowed to turn the scale, in favor of the broad rule, which withdraws the protection of parliamentary privilege from offences and criminal proceedings of every description.

564. IV. There is another class of cases, which do not come properly under the denomination of either civil or criminal proceedings, as above defined, but which ordinarily give rise to an attachment or an arrest and imprisonment of the person, namely; contempts of the judicial tribunals, either by disobedience of their orders, or by contumelious and disorderly behavior towards their authority or in their presence. In reference to these cases, the authorities show, that where the contempt is a mere disobedience of an order of the court, made for the sole purpose of enforcing a civil right, and in the nature of a process to compel the doing of a specific act, as, for the payment of money, or other performance of an award,[4] or for the payment of costs,[5] the privilege will protect against an attachment; but, where the contempt arises from the

[1] *Rex* v. *Ferres*, Burrow's Reports, I. 631.

[2] See May, 130.

[3] Dwarris, Part I. 98; Comm. Jour. XXIX. 689.

[4] *Walker* v. *Earl of Grosvenor*, Taunt. Rep. VII. 171; *Catmur* v. *Knatchbull*, Same, 448.

[5] *Westmeath* v. *Westmeath*, Law Journal, IX. (Chancery), 179.

disobedience of such an order, and is accompanied by criminal incidents, as where a ward of the court of chancery was clandestinely removed from the custody of the person with whom the ward was residing under the authority and by the order of the court;[1] or, where it consists of contumelious, disorderly, or indecent behavior towards and in presence of a judicial tribunal, as, for example, refusing to be sworn as a witness,[2] the privilege will afford no protection.

565. V. There is still a further class of cases, somewhat analogous to those last mentioned, which, so far as the privilege of parliament is concerned, seem to have been placed upon a distinct footing from ordinary contempts of the judicial tribunals. These are cases in which the personal liberty of the citizen is involved, and the contempt consists in refusing obedience to a writ *de homine replegiando*, or of *habeas corpus*. In cases of this kind, the privilege of parliament affords no protection. In reference to the first-mentioned writ, it is laid down by Fitzherbert,[3] that "if there be any eloignment returned by the sheriff, the plaintiff shall have a *capias in withernam*, to take the defendant's body, and to keep the same *quousque*, etc., whether it be a *peer* of the realm or other common person;" and in reference to the writ of *habeas corpus*, it was "ordered and declared" by the lords, in conformity with a decision of the court of king's bench,[4] which gave occasion to the resolution, "that no peer or lord or lord of parliament hath privilege against being compelled, by process of the courts of Westminster Hall, to pay obedience to a writ of *habeas corpus* directed to him."[5]

ARTICLE III. *Of this Privilege as affected by the Constitutions of the several States.*

566. Having thus examined the subject of the privilege of exemption from legal process, on the ground of common parliamentary law, it remains to point out how far the general principles relating thereto have been adopted, recognized, or restrained by constitutional or legal provisions, in this country. In the constitution of the United States and in those of the several States, except Vermont, New York, Virginia, and North Carolina, this privilege is particularly defined and recognized.

[1] *Wellesley's case*, Russell & Mylne's Rep. II. 639. See also *Wilkinson* v. *Boulton*, Levinz's Reports, I. 162.

[2] *Rex* v. *Preston*, Salkeld, I. 278.

[3] Natura Brevium, 155, C.

[4] *Rex* v. *Ferrers*, Burrows's Rep. I. 631.

[5] June 8th, 1757: Lords' Jour. XXIX. 181.

567. In the greater number of the constitutions it is expressly provided, that members shall be privileged from arrest, during their attendance at the session of their respective houses, and in going to and returning from the same, in all cases, except "treason, felony, and breach of the peace." This it will be recollected is the form in which the privilege is stated by Sir Edward Coke, and in which it is usually expressed by the English writers on parliamentary law; and it was undoubtedly adopted in the constitutions as correctly expressing the parliamentary rule on the subject. The inaccuracy of the language has already been pointed out, and it has been shown, that, in England, the exception embraces all criminal matters whatsoever, and, of course, includes many cases which do not fall within the denomination either of treason, felony, or breach of the peace. The question, therefore, arises, whether the exception of treason, felony, or breach of the peace, being stated in express terms, in these constitutions, is to be understood strictly, and confined to cases coming within the technical definitions of those offences, or whether it is used as a compendious expression to denote all criminal cases of every description. In favor of the latter opinion, it may be said, first, there can be no doubt, that the framers of these constitutions intended to secure the privilege in question upon as reasonable and intelligible a foundation, as it existed by the parliamentary and common law of England; in short, that as in a multitude of other cases, they intended to adopt, with the words, the full meaning which had been given to them by usage and authoritative construction; and, second, that the word *felony*, which alone gives rise to any doubt, "has derived so many meanings from so many parts of the common law, and so many statutes in England, and has got to be used in such a vast number of different senses, that it is now impossible to know precisely in what sense we are to understand it;"[1] and, consequently, that unless it is allowed to have such a signification, as with the other words of the exception, will cover the whole extent of criminal matters, it must be rejected altogether for uncertainty, or, at least, restricted to a very few cases. These reasons, alone, though others might be added, are sufficient to establish the point, that the terms "treason, felony, and breach of the peace," as used in our constitutions, embrace all criminal cases and proceedings whatsoever. In the federal government, therefore, and in the States above referred to, the privilege of exemption from legal process may be considered the same as it is in England.

[1] Dane's Abridgment, C. 200, Art. 12.

568. This is the form, in which the privilege is stated in all the constitutions except those above excepted, and in those of Massachusetts, New Hampshire, Connecticut, and Rhode Island. The constitutions of Pennsylvania and Kentucky, extend the exemption to "surety of the peace," and that of Maryland to "other criminal offence." The constitutions of Indiana, Michigan, Wisconsin, and California, after stating the privilege in the above-mentioned form, add also that no member shall be subject to any civil process, during the session of the legislature of which he is a member, nor, in the first-named State, for fifteen days next before the commencement, and in the others, for fifteen days before the commencement, and for fifteen days after the termination, of the session.

569. The constitutions of New Hampshire and Massachusetts provide, that no member shall be arrested or held to bail on mesne process, during the sitting of the legislature, and in going to and returning from the same; by the constitution of Rhode Island, the privilege protects the persons of members from arrest, and their estates from attachment, in any civil action, and by that of Connecticut members are, in all cases of civil process, privileged from arrest.

570. The constitution of South Carolina contains a similar provision, but extending the protection of the privilege to the estates as well as the persons of members. In North Carolina and Virginia, there is a like provision by law, embracing, in the former State, the estates, and in the latter, both the estates and the servants, of the members. In Vermont, there is no express provision on the subject of privilege; the constitution merely declaring, after an enumeration of sundry powers conferred upon the assembly, that it "shall have all the other powers necessary for the legislature of a free and sovereign State." The constitutions of Connecticut, Pennsylvania, Delaware, Alabama, Mississippi, Tennessee, Indiana, and Iowa, besides what is said therein specifically concerning the exemption of members from legal process, contain a general provision that each house shall have all other powers necessary for a branch of the legislature of a free and independent State. The provision in the constitution of Ohio, is, that each house shall have all other powers, necessary "to provide for its safety, and the undisturbed transaction of its business." In these States, therefore, the privileges of members may be considered to be such as usually belong to legislative assemblies, by the common law of parliament.

571. In New York, it is provided by law,[1] that members of the legislature shall be privileged from arrest on civil process, except when issued on account of any forfeiture, misdemeanor, or breach of trust, in any office or place of public trust, held by any person otherwise entitled to privilege. In Maryland, the constitution gives the house of delegates express power to punish by imprisonment any person who shall be guilty of a breach of privilege by arresting a member on civil process.

572. The nature of the preceding investigation has been such, and it has unavoidably been extended to so great a length, that it will be practically useful to present the results in a more summary form. The privilege of exemption from legal process, as established in this country, by constitutional and legal provisions, appears under the following modifications.

573. I. *Exemptions of the persons of members from arrest, according to the common parliamentary law of England, as stated in the preceding paragraphs.* In this form the privilege exists in the federal government, and in the States of Maine, Pennsylvania, Delaware, Georgia, Kentucky, Tennessee, Ohio, Indiana, Louisiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, South Carolina, North Carolina, Virginia, Michigan, Vermont, New Jersey, New York, (with certain exceptions,) Maryland, Connecticut, Florida, Texas, Iowa, Wisconsin, California, and Rhode Island.

574. II. *Exemption of the persons of members from being arrested or held to bail on mesne process.* This is the form of the privilege as established by the constitutions of Massachusetts and New Hampshire.

575. III. *Exemption of the estates of members from attachment.* This form of the privilege exists in Virginia, North Carolina, South Carolina, Rhode Island, in addition to the other privileges established in those States.

576. IV. *Exemption of the servants of members from arrest.* This ancient extension of the privilege is found only in the laws of Virginia. It is restricted by the common parliamentary law, to menial servants only,[2] that is, those who are necessarily and properly employed about the estates or persons of members,[3] and will not protect a person who is not *bona fide* a servant, but who has obtained the situation of one for the purpose of screening his person;[4] nor will it protect one, who, besides being a menial servant,

[1] Revised Statutes, I. 154.
[2] D'Ewes, 315, 655.
[3] Wilson's Reports, 278.
[4] D'Ewes, 373.

acts also in some additional character, as that of an attorney.[1] The rule that every person is bound, at his peril, to take notice who are members, returned of record, does not apply to the servants of members.[2]

577. V. *Exemption from civil process altogether.* This provision is found only in the constitutions of Rhode Island and Michigan; the former declaring all process served contrary to the privilege therein contained to be void; and, the latter, in addition to freedom from arrest, declaring that members shall not be subject to any civil process.

578. VI. It has been seen, that, according to the common parliamentary law, the officers of a legislative assembly, necessarily attendant thereon, as the clerks, sergeant-at-arms, and door-keeper, are equally privileged with the members,[3] from being withdrawn by legal process, from the performance of their official duties; and this privilege is so essential to the very existence of a legislative assembly, that it must be considered as a necessary incident to the establishment of such a body, though not expressly declared. In Arkansas and New York, it is provided by law;[4] but in the latter State, the privilege is limited to the time of the actual attendance of the officers in question.

ARTICLE IV. *Of the Duration of this Privilege.*

579. The privilege of exemption from legal process being intended to enable the members to give their attendance at the time and place appointed for their sitting, and to remain together for the purpose of performing their duties as members; it is manifest, that to be commensurate with the purpose for which it was intended, the privilege must commence a sufficient time previous to the session to enable the members to attend in season, and must continue all the time of the sitting of the assembly; and for the same reason which prevails in other cases of privilege, it ought also to continue for such a time after the termination of the sitting, as to enable the members to return to their homes.

580. In England, the duration of this privilege, so far as relates to the peers, is the privilege of the peerage, and perpetual; but as to members of the house of commons, in reference to whom it is

[1] Strange's Reports, 1065.
[2] Fourth Institute, 24.
[3] Ante, § 558.
[4] Revised Statutes of Arkansas, 106; Revised Statutes of New York, I. 154.

not a private right but a parliamentary privilege, its duration is not precisely determined. The received opinion appears to be,[1] that the members are entitled to a reasonable time to enable them to attend at the commencement of the parliament;[2] to forty days after each prorogation and the same number of days before the next appointed meeting;[3] and upon a dissolution, to a reasonable time for returning home.[4]

581. In this country, the duration of the privilege is fixed by constitutional and legal provisions, according to the circumstances and condition of each particular legislative assembly. In all, the privilege continues during each session of the assembly; but as to the time allowed for going and returning, different regulations prevail.

582. In the federal government, and in the States of Maine, Massachusetts, New Hampshire, Pennsylvania, Delaware, Kentucky, Tennessee, Ohio, Louisiana, Illinois, North Carolina, Iowa, Vermont, and New Jersey,[5] members are privileged whilst going and returning merely, without other limitation of time. Where the duration of the privilege is thus stated, members are entitled to a reasonable, or as it was expressed by the house of commons, on one occasion,[6] a *convenient* time, for going and returning; thus, they are not obliged at the close of the session, to set out immediately on their return home, but may take a reasonable time to settle their private affairs, and prepare for the journey; nor will the privilege be forfeited by reason of some slight deviation from the most direct road.[7]

583. In all the other States, this privilege is limited, as to its duration, to a certain number of days before and after each session, namely, in Rhode Island, to two; Connecticut, four; South Carolina and Georgia, ten; New York, fourteen; Indiana, (before the session only,) Wisconsin, California, Missouri, Arkansas, and Michigan, fifteen; in Mississippi, Alabama, Florida, Texas, and Virginia, to one day for every twenty miles distance from the place of sitting,

[1] See May, (3d ed.,) 120–123.

[2] In Temple's case, Sergeant Maynard said, "the privilege goeth twenty days before the session of the parliament; *ad quod non fuit responsum.*"

[3] Levinz's Reports, II. 72; *Athol* v. *Derby*, Wellsby, Hurlstone & Gordon, I. 430; May, 118.

[4] Dwarris, I. 101; Hammond, 7172. See also Fortescue, 159; *Pitt's Case*, Strange, 985; Cases Tempore Hardwicke, 28.

[5] In the first of these two States, as there is no constitutional or legal provision on the subject, the duration of the privilege is stated as above, in accordance with what is supposed to be the common law of privilege.

[6] D'Ewes, 414.

[7] Strange, II. 986; Jefferson's Manual, Sec. III.

and in Indiana to one day for every thirty miles distance therefrom. Where the time of privilege is thus regulated, the day of the commencement or close of the session must be excluded from the enumeration.

584. The time of privilege being limited to the duration of the session, and for a certain period previous and subsequent thereto, it is important to determine what constitutes a session. In England, where the distinction between a prorogation and an adjournment is practically as well as theoretically recognized, this is a question of no difficulty; because, it is there held, that when the parliament is prorogued, the session is terminated, but, that when an adjournment of one or both branches takes place, the session is continued; and the privileges of the members continue during an adjournment, however long it may be.[1] But, in this country, some difficulty may arise in determining when the session is closed, and when it is merely continued; inasmuch as the same term, *adjournment*, is used almost invariably to denote both; and the question must therefore depend upon whether the session is *in fact* terminated or only continued by the proceeding which is denominated an adjournment. Where one branch only adjourns itself, there can be no doubt, that the privilege continues during the time of the adjournment. Where both branches adjourn at the same time, without day, or to the time fixed for the next regular session, such adjournment is clearly a termination of the session; but where this is not the case, the question can only be determined by the intention.[2]

ARTICLE V. *Of the Manner in which this Privilege is to be taken advantage of.*

585. The great purpose of the institution of privilege being to enable the members of a legislative assembly to give their attendance, as such; when one is illegally arrested or detained, it is his duty to take immediate and effectual measures to obtain a discharge; for which purpose, the proceedings may be different according as the privileging tribunal, or the arresting tribunal, or neither of them, may then happen to be in session. If the assembly is in

[1] Hatsell, I. 162. Mr. Dwarris (I. 102) quotes Hakewell as saying, that privilege does not continue during an adjournment, because "parliament doth not give privilege *tempore vacationis, sed sedente curiâ* only." But Mr. Dwarris is mistaken; for the words which immediately follow the passage quoted from Hakewell, show that by *tempore vacationis*, he meant the time after a prorogation and not an adjournment.

[2] Ante, § 503.

session, at the time of the arrest of one of its members, he may be discharged by its authority; if the court or tribunal, to which the process is returnable, is in session, he may be discharged by the authority of such tribunal; if neither is in session, he must make his application to some other court or authority, invested with the cognizance of cases of illegal restraint of the person. It will be proper, therefore, to consider of the proceedings for a discharge, first, by the assembly itself; second, by the court to which the process is returnable, and, third, by some other court or authority.

I. *Of Proceedings by the Authority of the Assembly.*

586. This form of proceeding, which can only be resorted to when the assembly is in session, is founded in the general principle, that it is the proper function of every court or tribunal to protect its own officers, suitors, and attendants, from being withdrawn from their attendance upon it; and, consequently, that the arrest of any such persons, during the time of their privilege, is a contempt of the authority of the court by which they are privileged.[1]

587. In England, various methods have at different periods been resorted to by the house of commons, for the delivery of privileged persons from arrest. One mode was for the speaker to issue his warrant to the lord chancellor, for a writ of *supersedeas* or privilege; another, to send the sergeant-at-arms, with the mace for his warrant, to deliver the person arrested and bring him into the house; a third, for the speaker, by direction of the house, to issue a warrant to the clerk of the crown in chancery, for a writ of *habeas corpus* directed to the officer having the privileged person in custody, to bring him with the cause of his detention forthwith before the house, and upon the return of the writ and the appearance of the parties, for the house to discharge the prisoner, if entitled to privilege; a fourth method, which was much in use during the reign of James I. was for the speaker to write letters to the several courts for a stay of the proceedings in cases in which members were concerned;[2] but this course was not always effectual, and, on one occasion in the reign of Charles I. the court of king's bench declared that it was against the oaths of the judges to stay judgment upon such letters.[3] The course adopted in modern times has been merely to

[1] Term Reports, IV. 377.

[2] See Hatsell, I. 185.

[3] *Hodges* v. *Moore*, Latch's Reports, 15, 48, 150; Noy, 83; Prynne's Fourth Register, 810; Hatsell, I. 184.

make an order for the discharge of the person arrested, and to signify the same, properly authenticated by the clerk, to the officer having the privileged person in custody.[1]

588. Of all these modes of proceeding, the only one which can properly be adopted at the present day, in this country, is the last mentioned. When relief is sought in this manner, the first step is to inform the assembly of the illegal arrest; which may be done either by a petition from the person arrested, or by a statement of his case by one of the members. If the facts appear to be sufficient to establish the right of the party to privilege, an order may be made at once to discharge him from the arrest; if the facts are doubtful, witnesses may first be heard at the bar, or the case may be referred to the examination of a committee.

589. When the order for the discharge has been passed, it should be properly authenticated by the clerk, and served upon the officer having the custody of the privileged person. If the officer refuses to obey it, he may be proceeded against as for a contempt; and such other measures may also then be resorted to for the delivery of the person privileged, as may be proper for that purpose.

II. *Of Proceedings by the Authority of the Court to which the Process is returnable.*

590. This form of proceeding is founded, in part, on the principle of comity, by which one tribunal recognizes the privileges of another, and, partly, on the principle, that the privileges of members are part of the law of the land, of which it is the duty of all courts and tribunals to take official notice.

591. Anciently, when relief was sought in this manner, it was, in general, necessary for the party to obtain his writ of privilege from the court or tribunal by which he was privileged, and to plead it in the court by whose process he was arrested. In the case of attorneys and some other privileged persons, this course seems to have been attended with little or no difficulty, the writ being issued by the proper officer, as a matter of course; but in the case of members of the house of commons, who obtained their writ of privilege from the lord chancellor, both the form of the writ, and the manner of issuing it, seem to have been attended with so much difficulty

[1] Hatsell, I. 166, 167, n.; and see also *Petrie's case*, Comm. Jour. LXI. 406, 423, March 20, 1793.

and uncertainty, that, in Pitt's case, in which application was made to the chancellor for such a writ in favor of the defendant, the petition was withdrawn at the suggestion of the chancellor himself.[1]

592. This mode of proceeding, however, so far as relates to members of parliament, has been superseded, in more modern times, by the summary course of a motion for a discharge supported by the affidavit of the party in custody. This was first sanctioned by the judgment of ten of the twelve judges in Pitt's case, above referred to, decided in the twelfth year of George II.; and it has since been the usual form of proceeding, for the delivery of a privileged person from arrest, both in England and in this country.[2] Where this course is resorted to, the person arrested makes his affidavit, setting forth all the facts of his case; and, thereupon, moves to be discharged from arrest. The proceedings being similar in all respects, to what take place upon other motions grounded on facts, need not be here stated at length.

III. *Of Proceedings by the Authority of some other competent Tribunal.*

593. If there were no other modes, than those above specified, by which a privileged person could be discharged from arrest, his privilege might often prove wholly ineffectual; inasmuch as occasions may occur, for taking advantage of it, when neither the assembly itself, nor the court to which the process is returnable, is in session. In all such cases, application may be made to that court or tribunal, whatever it may be, which, in every State or country, deriving its institutions from those of England, is authorized to grant relief, by means of the writ of *habeas corpus*, when the personal liberty of the citizen is restrained. Where this mode is adopted, the proceedings are the same, of course, as in all other cases of *habeas corpus*.

594. The first and second of the above-mentioned modes of proceeding can only be adopted, when the assembly itself, or the arresting tribunal, is in session; but, even when in session, their jurisdiction is not exclusive. Thus, if the assembly is sitting, at the time of the arrest of one of its members, he may apply to it for

[1] *Holliday & others* v. *Pitt*, Strange, II. 985; Fortescue's Reports, 165; Comyn's Reports, 444; Cases Tempore Hardwicke, 25, 33.

[2] See *Barnard* v. *Mordaunt*, Lord Kenyon's Reports, I. 125; *Bolton* v. *Martin*, Dallas, I. 296; *Colvin* v. *Morgan*, Johnson's Cases, I. 415; *Lewis* v. *Elmendorf*, Same, II. 222; *Corey* v. *Russell*, Wendell's Reports, IV. 204.

relief; if the arresting tribunal is also sitting, he may make his application there; and, notwithstanding he may have it in his power to obtain relief by either of these modes, he may, if he chooses, resort to some other tribunal or authority, for a discharge on *habeas corpus*. Neither will the jurisdiction of any one of these tribunals be taken away or concluded by an adverse decision of either or both of the others; unless it be in the case of a decision of the assembly itself, that the person claiming privilege is not entitled thereto; so that if the arresting tribunal refuse to discharge, the assembly may, notwithstanding, set its member at liberty, or he may be relieved by *habeas corpus* from some other tribunal.

595. In regard to the evidence necessary to be produced by a person entitled to privilege, in order to obtain his discharge, it is only necessary to advert to that part of it, which relates to the membership of the party, on which his claim to relief is founded. In some of the older cases, contained in the English books, it seems to have been held, that in the case of members of the house of commons, the production of the original return was necessary,[1] but in several subsequent cases, of an analogous character, the affidavit of the party appears to have been held sufficient;[2] and in the few cases that have occurred in this country, in which a claim of discharge has been made on motion, no objection seems to have been made to the sufficiency of the proof by affidavit.[3]

596. It has been made a question, whether the election of one under arrest, or imprisonment, for a cause embraced within the privilege of exemption from legal process, will entitle such person to be discharged as a member. This question resolves itself into the question whether an arrest for any cause, other than treason, felony, or the peace, is a disqualification; for, as it is the highest and most essential prerogative of a legislative assembly to be possessed of all and every one of its members, it is idle to say, that a person is eligible as a member, at a time, when he neither has power by law to attend, nor the assembly power by law to compel his attendance. Upon the hypothesis, that such a person is eligible to election, whilst the assembly has no power to obtain his attend-

[1] See Sir Richard Temple's case; Siderfin's Reports, I. 192; Keble's Reports, I. 3; *Holliday* v. *Pitt*, Strange, II. 990; Fortescue's Reports, 165; Comyn's Reports, 444; Cases Temp. Hard. 25, 33; *Fenwick* v. *Fenwick*, Wm. Blackstone's Reports, II. 788.

[2] See the cases collected in Harrison's Digest, Article "Arrest."

[3] *Bolton* v. *Martin*, Dallas's Reports, I. 296; *Colvin* v. *Morgan*, Johnson's Cases, I. 415; *Lewis* v. *Elmendorf*, Same, II. 222; *Corey* v. *Russell*, Wendell's Reports, IV. 204.

ance, the assembly must either be obliged to submit to an infringement of its prerogative, or be compelled to set aside the election, and order a new one to fill the vacancy; and this proceeding would be precisely equivalent to a disqualification. The only alternative, therefore, seems to be, either to consider an arrest on civil process as a disqualification, or to hold that a subsequent election entitles the person elected to his discharge. The inconvenience and danger, which would result from the establishment of the former principle, have led the house of commons in England to adopt the other alternative, and with but a single exception, for more than two hundred years,[1] to order the discharge of members, who were in custody before and at the time of their election, in the same manner, as if the arrest had taken place afterwards;[2] and, in a recent case, the same principle has been recognized and established by a decision of the court of king's bench.[3] The reasons upon which these decisions rest, being founded in the principles of strict parliamentary law, are equally applicable, and would probably be recognized and applied in this country, as well as in England.

597. In England, as has already been seen, the returns on file in the crown office, being altered, amended, or taken off the files, according to the determination of the house, always show who are members entitled to privilege; but, in this country, as it is not the usage in all or perhaps any of the States, to alter or amend the returns, this principle is not true to the same extent. Before the meeting and organization of the assembly, the return or its equivalent is doubtless the best evidence of membership, because it is the only evidence upon which one is allowed to assume the functions of a member; but, after that time, the roll or list of the assembly, or a certificate from the clerk, is better; and, whenever a claim of privilege is made, it will be expedient for the party to be prepared with one or another of these kinds of proof, according to the nature

[1] The only case, that I have met with in my investigation of this question, in which the house of commons refused to order the discharge of a member, who was under arrest, on civil process, at the time of his election, is that of *Fitzherbert*, in 1592, reported by Moor, 340, and of which also, D'Ewes gives a full account in his journal, 479.

[2] See Comm. Jour., (March 25th and May 5th, 1690,) X. 356, 401, 411; Same, (10th and 15th Nov. and 16th Dec. 1707,) XV. 396, 400, 466; Same, (6th and 7th July, 1807,) LXII. 635, 636, 642, 644, 653; and the precedents and observations in Hatsell's first volume.

[3] *Phillips* v. *Wellesley*, Dowling's Practice Cases, I. 9; Law Journal, IX., (King's Bench,) 6. In this case, which was decided in the King's Bench, Nov. 18, 1830, *Parke*, J. referring to Burton's case in which he was counsel, said, that "on searching the precedents of the house, it was found, that a person in custody, though after final judgment, was entitled to be discharged, on being elected a member. The speaker issued his warrant, and Mr. Burton was discharged; but I have no doubt, that he was entitled to be discharged by this court."

of his case, and to the time when he finds it necessary to avail himself of his privilege. It will be sufficient, however, in all cases, when the assembly has been once organized, to prove, that the person claiming the privilege has acted in the capacity of a member.[1]

SECTION II. — EXEMPTION FROM SERVICE AS JURORS OR WITNESSES.

598. The privileges of exemption from serving on juries, and from attending as witnesses, though well established according to the common parliamentary law,[2] are mentioned in none of the constitutions, and in but few of the laws of the several States. Mr. Jefferson places these privileges on the ground, that "the privilege from arrest privileges of course against all process the disobedience to which is punishable by an attachment of the person; as a *subpœna ad respondendum*, or *testificandum*, or a summons on a jury; and with reason, because a member has superior duties to perform in another place."[3] It may be true, perhaps, as a general principle, that the privilege from arrest privileges against all process, the disobedience to which is punishable by an attachment of the person; and though this principle may relieve the party from all restraint of his person, yet this alone is not enough to protect one against other consequences, resulting from non-attendance as a juror or witness, as, for example, the imposition of a fine in the first case, or the action of the party for damages in the second; and, consequently, these privileges, in order to be effectual, must rest upon a broader ground, than the mere exemption from process; and this can only be found in the general principle of parliamentary law, by which the members of a legislative assembly are protected from all the consequences of refusing to attend as witnesses or serve as jurors.

599. Serving as a juror would, in general, be likely to withdraw a member from his attendance as such for a considerable length of time; and this might also be the consequence, in some instances, of attending as a witness; but, frequently, the attendance of a member may be dispensed with in the assembly, without detriment to the public interest, for a sufficient length of time to enable him to give his testimony as a witness. It is consequently the practice in such cases, for members to obtain leave of absence for the pur-

[1] Greenleaf on Evidence, I. 83, 92.

[2] Hatsell, I. 112, 118, 171, 173; D'Ewes, 637; Dwarris, I. 103, 105.

[3] Manual, Sec. III.

pose of attending elsewhere as witnesses;[1] or for the court, in which the cause is pending, to request by letter the assembly to allow the member to attend.[2] So, when the testimony of a member or officer of either house is wanted in the other, leave is first obtained from the house, of which such person[3] is a member.[4]

600. The duration of these privileges must necessarily be the same, in each State, as the privilege therein against legal process; and the same modes of proceeding may be adopted in taking advantage of them, with a view to relief from personal restraint.

SECTION III. — FREEDOM OF DEBATE AND PROCEEDING.

601. Freedom of speech and debate has always been enjoyed by the members of both houses of the British parliament; as one of their most ancient and necessary rights and privileges, and entirely essential to the free and independent exercise of their functions. This privilege, though originally intended as a protection against the power of the crown, has always been equally effectual to protect the members against the attacks of their fellow-subjects. After many controversies between the two houses themselves, or one of them and some other court or authority, it was finally settled at the revolution, and expressly declared by the bill of rights, as one of the fundamental liberties of the people, that "the freedom of speech and debates, and proceedings in parliament, ought not to be impeached or questioned, in any court or place out of parliament."

602. In this country, this privilege has been expressly declared by constitution, in favor of the members of all our legislative assemblies, except those of Virginia, North Carolina, South Carolina, Mississippi, Iowa, Texas, and California, in substantially the same form as above stated, and with the same legal effect; though, in general, somewhat more tersely expressed, the language being for the most part, that "for any speech or debate, in either house, members shall not be questioned in any other place." In the States above mentioned, there does not appear to be any provision of constitution on this subject; but the constitutions of Mississippi and

[1] J. of H. 29th Cong. 1st Sess. 757, 758, 759; J. of S. 29th Cong. 1st Sess. 50; Reg. of Deb. VIII. Part I. 802; Cong. Globe, XV. 769.

[2] *Boulton* v. *Martin*, Dallas's Reports, I. 296.

[3] J. of H. 14th Cong. 1st Sess. 605; J. of S. 15th Cong. 2d Sess. 192, 195; J. of H. 15th Cong. 2d Sess. 216; J. of S. 14th Cong. 1st Sess. 407.

[4] J. of S. IV. 259; J. of H. 14th Cong. 1st Sess. 637; J. of S. 15th Cong. 2d Sess. 192, 195; J. of H. 15th Cong. 2d Sess. 216; J. of S. 14th Cong. 1st Sess. 407, 410; Same, 22d Cong. 1st Sess. 370; Reg. of Deb. VIII. Part I. 802.

Iowa, after conferring certain specified powers and privileges upon the houses of their legislative assemblies, contain a general grant to them of all other necessary powers; and, in South Carolina, the existence of the privilege, as a constitutional one, is only to be inferred from its being therein made a punishable offence to threaten harm to any member, for any thing said or done in the house of which he is a member. There can be no doubt, however, that according to the principles already laid down,[1] the privilege of freedom of speech and debate exists in these States as fully and effectually, as if it had been expressly provided.

603. The privilege, secured by this constitutional provision, though of a personal nature, is not so much intended to protect the members against prosecutions, for their own individual advantage, as to support the rights of the people, by enabling their representatives to execute the functions of their office, without fear either of civil or criminal prosecutions; and therefore it ought not to be construed strictly, and confined strictly within the literal meaning of the words in which it is expressed, but to receive a liberal and broad construction, commensurate with the design for which it is established. It is accordingly held, that this privilege secures to every member an immunity from prosecutions for any thing said or done by him, as a representative of the people, in the exercise of the functions of that office; whether such exercise is regular according to the rules of the assembly, or irregular and against their rules; whether the member is in his place within the house, delivering an opinion,—uttering a speech,—engaging in debate,—giving his vote,—making a written report—communicating information either to the house or to a member; or, whether he is out of the house, sitting in committee, and engaged in debating or voting therein, or in drawing up a report to be submitted to the assembly; in short, that the privilege in question secures the members of a legislative assembly against all prosecutions, whether civil or criminal, on account of any thing said or done by them, during the session, resulting from the nature and in the execution of their office. It is hardly necessary to add, that as a legislative assembly has no existence or authority, as such, except when regularly in session, the members cannot claim this privilege for any thing said or done at any other time. It is to be observed, however, that mere temporary adjournments, for the convenience of the members, and not for the

[1] Ante, § 542, 543, 544, 545.

purpose of putting an end to the session, are in fact continuations and not terminations of it.[1]

604. But though a member in the exercise of the functions of his office may speak, write, or vote, in any manner that he deems proper, and may consequently give utterance, with impunity, to what would subject a private person to a prosecution for libel or slander; yet he will not therefore be justified in printing and publishing what he has spoken, if it contains matter injurious to the character of an individual;[2] not even if the publication is intended to correct a misrepresentation contained in a report of his speech previously published without his authority or sanction.[3]

SECTION IV. PRIVILEGE OF FRANKING.

605. The last personal privilege, to be noticed, is that of sending and receiving letters and other communications of a similar nature, through the public post-office, free of postage; a privilege, which has been enjoyed by members of parliament in England, for many years, at first by the indulgence of the crown, but now by law.[4] In this country, the franking privilege is usually conferred, by law, upon the members, and certain of the officers, of both branches of the congress of the United States, upon the delegates of territories in the lower branch, and upon such other persons, as congress may choose to compliment in that manner;[5] that body having exclusive jurisdiction, by the constitution, to establish post-offices and post-roads. It is a breach of privilege to counterfeit or forge a frank. When a member or officer desires to make use of this privilege, he writes his name and the title of his office on the back of the letter, over the superscription, sometimes with the addition of the word "free."

SECTION V. PERSONAL DISABILITIES INCIDENT TO MEMBERSHIP.

606. It seems proper, by way of supplement to the subject of the personal privileges of members, to take some notice of the disabilities to which they are subjected by the federal and by many

[1] Appendix, X.

[2] *The King* v. *Lord Abingdon*, Espinasse's Reports, 226.

[3] *The King* v. *Creevy*, Maule & Selwyn's Reports, I. 273.

[4] See Dwarris, I. 107, and Parl. Hist. XXIII. 56, for the history of the origin of this privilege. The franking privilege in England, it is believed, has lately been abolished by law, except in regard to sending certain parliamentary papers through the post-office during the sitting of parliament. See May, 398.

[5] Gordon's Digest, section 990.

of the State constitutions, as a consequence of their official character.

607. The constitution of the United States provides, that no member during the time for which he is elected shall be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments of which shall have been increased, during such time. A similar provision is inserted in the constitutions of Pennsylvania, Delaware, New Jersey, and Maryland; and also in those of Maine, Virginia, Alabama, Indiana, Louisiana, Kentucky, and Missouri, with the addition of an exception of such offices as may be filled by elections by the people. In Kentucky and Louisiana, Mississippi and Ohio, the same disability is extended for one year beyond the term of office.[1]

CHAPTER THIRD.

OF THE COLLECTIVE OR AGGREGATE PRIVILEGES OF A LEGISLATIVE ASSEMBLY.

608. Where the collective privileges of a legislative assembly are invaded, the means of enforcing them are various, according to circumstances. If private persons are the offenders, they may be punished for a contempt; and so in some cases, where they have an official character. But where the parties concerned are beyond the reach of the assembly, it can do nothing more than to protest against the breach of privilege, and, also, if it thinks proper, suspend all its own functions, until the cause has been removed, or it has received satisfaction.

609. Where the breach of privilege is also an offence against the laws, and cognizable by the ordinary tribunals, as by assaulting a member, or libelling the assembly, there may be a prosecution at

[1] See Story's Commentaries on the Constitution, II. § 330, 331, 332, for some interesting and judicious observations on the subject of these disabilities of members. The author concludes with the following remark: "The history of our State governments, (to go no further) will scarcely be thought by any ingenuous mind to afford any proofs, that the absence of such a disqualification has rendered State legislation less pure, or less intelligent; or that the existence of such a disqualification would have retarded one rash measure, or introduced one salutary scruple into the elements of a popular or party strife."

law, as well as a proceeding and punishment by the assembly itself.

610. The rights and immunities, incident to or conferred upon a legislative assembly, considered as an aggregate body, are founded in the same general reason, upon which those of the individual members rest, namely, to enable the assembly to perform the functions with which it is invested, in a free, intelligent, and impartial manner.

611. The privileges of this kind, which belong to each branch of a legislative assembly, may be classified and arranged under the following heads, namely: —

1. To judge of the returns, elections, and qualifications of its members:

2. To choose its own officers and remove them at pleasure:

3. To establish its own rules of proceeding:

4. To have the attendance and service of its members:

5. To be secret in its proceedings and debates:

6. To preserve its own honor, dignity, purity, and efficiency, by the expulsion of an unworthy, or the discharge of an incompetent, member:

7. To protect itself and its members from personal violence:

8. To protect itself and its members from libellous and slanderous attacks:

9. To protect itself and its members from corruption:

10. To require information touching public affairs, from the public officers:

11. To require the opinion of the judges and other law-officers, on important occasions:

12. To investigate, by the testimony of witnesses or otherwise, any subject or matter, in reference to which it has power to act; and, consequently, to protect parties, witnesses, and counsel, in their attendance, when summoned, or having occasion to attend for that purpose:

13. To be free from all interference of the other coördinate branch, and of the executive and judiciary departments, in its proceedings on any matter depending before it.

1, 2. *Elections; Officers.*

612. It is not only a principle of parliamentary law, but is declared also in the greater number of our constitutions, that every legislative assembly is to be the sole and exclusive judge of the

returns, elections, and qualifications of its own members. The same thing may be said of the choice and removal of its own officers. These subjects have already been sufficiently treated of elsewhere.

3. *Rules of Proceeding.*

613. In addition to what has already been incidentally stated concerning the rules of proceeding which are in use in our legislative assemblies, it may be remarked here, that, in all the American constitutions, except those of North Carolina and Georgia, it is expressly provided, that each assembly shall determine the rules of its proceeding. Two important differences, between the two houses of the British parliament, and our legislative assemblies, in respect to the rules by which they are respectively governed, seem to result from the establishment of this principle. The first is, that the system of standing orders, by which one house of parliament binds its successors, does not prevail here at all. The other is, that each assembly, until it adopts rules and orders for itself, (and it usually adopts those of its predecessors,) is without any other rules for its government, than those which result from the common parliamentary law.[1]

614. The principle, that each branch of a legislative assembly has a right to determine its own rules, is deemed so important that where it is inserted in the constitution of a State, it has been doubted, whether it was competent for the legislature of such State, by law, to provide rules for the government of its respective branches, which should bind them and supersede their authority to make rules for themselves.[2]

4. *Attendance and Service of its Members.*

615. This subject, so far as relates to the right and duty of members to attend, has been already considered; and it has been seen, that members are privileged, to a certain extent, against all detentions by means of legal process, by which they would be withdrawn from the performance of their duty in this respect. But this personal privilege is subordinate to that of the assembly itself; it cannot be waived without the consent of the assembly; and, when a member is improperly detained, not only may he himself insist

[1] The subject of rules and orders is treated of at length in the fourth part.

[2] Cong. Globe, XXI. 1372, 1373.

upon his privilege, but the assembly of which he is a member may send for and set him at liberty, by its own officers, and may also punish as for a contempt all persons privy to or engaged in such detention.

616. It seems formerly in England to have been considered the privilege of the houses of lords and commons, to be previously informed of the case of a member, about to be arrested for a cause to which his privilege did not extend, before the arrest took place, in order that the house might judge of the fact and of the grounds of the accusation, and how far the manner of the trial might concern their privileges; for the reason, that otherwise "it would be in the power of other branches of the government, and even of every private man, under pretences of treason, etc., to take any man from his service in the house, and so as many, one after another, as would make the house what he pleased;"[1] and the propriety of this manner of proceeding has been repeatedly recognized by the several temporary statutes for suspending the *habeas corpus* act; by which it is provided that no member of either house shall be detained, until the matter of which he stands suspected shall have been first communicated to the house of which he is a member, and the consent thereof obtained for his commitment or detention.[2]

617. But, since the revolution, however, whenever the king or any of his ministers, or persons employed by him, finds it necessary for the public service to put a member of the house of commons under arrest; or that in any public inquiry, matter comes out, which may tend to affect the person of a member, or to require the seizure of his papers; it has been the uniform practice immediately to acquaint the house of commons, that they may know the reasons for such proceeding, and take such steps as they may think proper; and Hatsell adds, that as there is no privilege, of which the house of commons has been or ought to be more jealous, than the security of the persons of the members, "that they shall be under no undue restraint from being able to attend their duty in parliament," it is highly expedient, that whenever the public necessity appears to the ministers of the crown to justify any breach of this privilege, they should as soon as possible acquaint the house with the steps they have taken, and the grounds and reasons which induced them thereto.[3]

618. From the uniform practice to the contrary, it appears that

[1] Jefferson's Manual, § 3.

[2] Dwarris, 1, 9, 8; Blackstone's Comm. I. 167; Hammond, 72.

[3] Hatsell, II. 365.

the house of commons has not for a long course of years insisted upon being notified of the case prior to the arrest; and, probably, at the present day, nothing more than a simultaneous or immediately subsequent communication would be held requisite. This course of proceeding, though extremely proper, has not, it is believed, been considered necessary in this country.

619. The exceptions to the privilege from arrest being of such a nature, that a member, if guilty, would be unworthy to continue such, a very proper course of proceeding on the part of the assembly, in the case above supposed, would be to institute an inquiry into the cause of the arrest or detention, and either to take measures to procure his discharge therefrom, or to expel him, according to the circumstances of the case. In this way, the rights of the assembly itself, and of the constituents of the member, might both be preserved, and the course of public justice subserved, at the same time.

620. When any of the members of a legislative assembly are improperly arrested, and detained by force, or otherwise, against the rights and privileges of the assembly, and in such a manner that neither they themselves, nor the assembly, can effect their discharge, the only course for the assembly to pursue is to suspend all business until they are restored; and this has been frequently done by the house of commons, in England, when its members have been detained, and before the revolution in this country, in analogous cases, by the colonial or provincial legislatures.

621. If a member absents himself, without leave, or continues his absence, after his leave has expired, he may be brought in by the sergeant-at-arms, by order of the house, and compelled to give his attendance; and if contumacious, he may be expelled, and give place to a successor, who better understands, and is more willing to do, his duty.

622. Cases may happen, however, in which a member is prevented from giving his attendance for causes not within his own power, and for which he cannot be held responsible, as sickness, of body or mind, or domestic or other calamity, which withdraws him from his attendance. In such cases the ignominious proceeding of expulsion ought not to be resorted to, but yet the assembly ought to have the services of all its members; and, therefore, a proper course, where the member might not think proper to resign, would be to discharge him from his membership, or to declare his seat vacant, and order a new election.[1]

[1] Post, § 625.

5. *Secrecy of Debates and Proceedings.*

623. This subject has already been considered, in the greater part, under the head of proceeding with open or closed doors;[1] and, for the same reason, that, according to the theory of legislative assemblies, it is one of their essential privileges to be secret in their proceedings and debates, and, therefore, to exclude all strangers from witnessing them, no person, whether a member or other person accidentally or otherwise present, or any of its officers or servants, is allowed to promulgate or publish what is said and done, either by speaking, writing, or printing the same, without the leave of the assembly.

624. But this prohibition to publish any account of the proceedings of a legislative assembly, without previously obtaining its permission, though still existing potentially, as it did actually, from time out of mind, until about the middle of the last century, is now practically abandoned in England, the reporters for daily journals being allowed places, by the indulgence of the presiding officers, for the exercise of their functions. In this country, if this restraint can be said ever to have had any existence in fact, (though in theory, the right to conduct their proceedings, in secret, evidently includes a right to restrain any one from publishing them,) it is certainly abandoned in theory, as well as in fact, in those States where the proceedings are required to be in public, except on occasions when secrecy is requisite. In all the other States, it seems to have been practically abandoned. The senate of the United States, which, besides being one branch of congress, is also an executive council, has never conducted its proceedings in the latter capacity with open doors.[2] It must be competent, however, to every legislative assembly to enjoin secrecy, upon its members and officers, as well as others, either in respect to a particular matter, or to its proceedings generally; and any breach of its injunction in this respect, or any invasion of its right of secrecy will, of course, be punishable as a contempt.[3]

6. *Expulsion or Discharge of a Member.*

625. The power to expel a member is naturally and even necessarily incidental to all aggregate, and especially all legislative bodies;[4] which, without such power, could not exist honorably, and

[1] Ante, § 344 to 353.

[2] Ante, § 343.

[3] See the case of *Mr. Senator Pickering*, of Massachnsetts, J. of S. IV. 536.

[4] Male, 44. See, in the fourth volume of the Journals of the Senate of the United States, the case of *Mr. Senator Smith*, of Ohio, against whom a resolution of expulsion was reported, for his participation in Burr's conspiracy, by a committee, of which Mr. John Quincy Adams was chairman.

fulfil the object of their creation. In England, this power is sanctioned by continued usage, which, in part, constitutes the law of parliament. It is in its very nature discretionary, that is, it is impossible to specify beforehand all the causes, for which a member ought to be expelled; and, therefore, in the exercise of this power, in each particular case, a legislative body should be governed by the strictest justice; for if the violence of party should be let loose upon an obnoxious member, and a representative of the people discharged of the trust conferred upon him by his constituents, without good cause, a power of control would thus be assumed by the representative body over the constituent, wholly inconsistent with the freedom of election.[1]

626. The power to expel also includes in it a power to discharge a member, for good cause, without inflicting upon him the censure and disgrace implied in the term expulsion; and this has accordingly been done, in some instances, by the house of commons.[2]

627. Analogous to the right of expulsion, is that of suspending a member from the exercise of his functions as such, for a longer or shorter period; which is a sentence of a milder character than the former, though attended with somewhat different effects; for during the suspension, the electors are deprived of the services of their representative, without power to supply his place; but the rights of the electors are no more infringed by this proceeding, than by an exercise of the power to imprison.[3]

7. *Protection against Personal Violence.*

628. All attacks upon the persons of the members, or officers, of a legislative assembly, or others attending and privileged, as witnesses and parties, whether by actual violence, or by threats, and all disorders, in, near, or about the place of sitting, have been always deemed high breaches of privilege and punishable accordingly.

8. *Protection against Slanderous and Libellous Attacks.*

629. No form of attack, upon the rights and privileges of a legislative assembly, has been more common, or subjected offenders to a severer punishment, than this. When the libel is on the assembly itself, there can be but little doubt of its authority to punish the

[1] Male, 44.
[2] Male, 44.
[3] Comm. Jour. II. 128; Same, VIII. 280; Same, IX. 105; Same, X. 846; May, 55.

offender; but, when it is committed against a member, it can hardly be considered a breach of privilege, unless it attack him in that capacity, or on account of something said or done by him as a member.[1]

9. *Protection against Corruption.*

630. Bribery or attempts to bribe, or otherwise improperly influence or corrupt members or officers,[2] are high breaches of privilege and punishable accordingly. So it is an offence to suborn or tamper with witnesses attending.[3]

10. *Right to be informed by Public Officers.*

631. In England, it has always been deemed the right of both houses of parliament, (and this right, it is believed, is incidental to every legislative assembly,) to call on the officers connected with other branches or departments of the government for information touching public affairs, sometimes by a direct application, and sometimes through the head of the executive department.

632. In some of the States, it is expressly provided by constitution, and, in all of them, it is understood to be the duty of the chief executive officer, that the latter shall give information of the state of public affairs to the legislature, on their assembling and organization, and from time to time afterwards, as may be deemed proper; and, though this leaves it in some degree discretionary with the executive, as to the time, manner, and extent of the communication, yet it is the constant practice in all our legislative assemblies to ask for, and for the executive to communicate, information touching the public affairs, at any time, during the session of the assemblies. When a communication is made by the executive, without being called for by either branch, it is usually addressed to both; though, when the subject of it relates particularly to the functions of one, it may be addressed to that one alone; but it is the right of either, without the concurrence of the other, to request information.

[1] For a case of the first description, see the proceedings in the case of *William Duane* in the senate of the United States, J. of S. III. 37; Jefferson's Manual, Sec. III.; see also J. of S. 29th Cong. 1st Scss. 191; Cong. Globe, XV. 525; and for the case of a libellous attack upon an individual member, see Cong. Globe, XV. 457, 458.

[2] See the case of *Whitney and Randall*, J. of H. II. 389; and that of *John Anderson*, J. of H. 15th Cong. 1st Sess. 117.

[3] See the *case of William Williams*, in the proceedings concerning the conduct of the Duke of York, Hans. (1), XII. 460.

In a few of the States, there is a provision of the constitution conferring upon the governor, for this purpose, among others, the right to require information of the officers of the executive department upon any subject relating to the duties of their respective offices.

11. *Right to require Opinions of the Judges.*

633. In England, the judges of the superior courts are technically considered as assistants in the house of lords, and are summoned to attend as such. In this country, the right to call upon the superior courts, for their opinions on important questions of law, and on solemn occasions, is conferred upon the legislative bodies, by express constitutional provision, only in the States of New Hampshire, Maine, and Massachusetts.[1] In the other States, where there is no such constitutional provision, the right cannot be considered to exist.

12. *Right of Investigation.*

634. It has always, at least practically, been considered to be the right of legislative assemblies, to call upon and examine all persons within their jurisdiction, as witnesses, in regard to subjects, in reference to which they have power to act, and into which they have already instituted, or are about to institute an investigation. Hence they are authorized to summon and compel the attendance of all persons, within the limits of their constituency, as witnesses, and to bring with them papers and records, in the same manner, as is practised by courts of law. When an assembly proceeds by means of a committee, in the investigation of any subject, the committee may be, and usually is, authorized by the assembly to send for persons, papers, and records.[2]

635. Witnesses before a legislative assembly, or a committee, are not sworn, unless there is some express provision of law or constitution, authorizing their examination in that manner; but they give their testimony under the penalty of being adjudged guilty of a contempt, and punished accordingly, if they prevaricate, or testify falsely.

[1] These opinions, although given upon the arguments of persons interested, which, of course, must be voluntary, are not considered by the court as binding precedents in actions subsequently arising. *Adams* v. *Bucklin*, Pickering's Reports, VII. 125.

[2] In the constitution of Maryland it is provided that the house of delegates may inquire, on the oath of witnesses, into all complaints, grievances, and offences, as the grand inquest of the State, and may commit any person for any crime to the public jail, there to remain until discharged by due course of law.

636. The right of investigation implies that of hearing parties and their counsel, as well as witnesses; and, consequently, the house of commons in England has, from the earliest times, exercised the right of giving the protection and privilege of the house to the several persons who have been ordered to attend the house or committees, or who, either on public or private concerns, were attending the service or business of the house; and in many of such cases, the house has given orders, that such persons, having been arrested by process from the courts of law, should be delivered out of custody.[1]

637. There are precedents for the granting of this protection to persons attending to prefer or prosecute a private bill,[2] or as the solicitor of a party,[3] to prosecute a petition,[4] to claim a seat as a member,[5] or to attend an election committee,[5] summoned to testify as a witness, either before the house, or a committee.[6]

638. In all cases of the above description, if the person privileged is arrested, he is to be discharged in the same manner, and by the same proceeding, as in the case of members; if not yet arrested, but only in danger, he may give information thereof to the assembly, and thereupon an order will be passed, that the protection of the assembly be allowed to such person, during the pendency of the matter or business which entitles him to privilege. This order is equivalent to the writ of privilege, granted to parties, witnesses, etc., by the ordinary tribunals. It does not seem to be necessary in the case of members, whose official character is supposed to be known to everybody (all persons being bound to take notice of who are members returned of record);[7] but, in the case of other persons, it may be of utility in preventing an arrest, or in rendering the officer making it liable to an action.[8]

13. *Freedom from Interference.*

639. It has been already seen with how much care the parliamentary law has guarded against all interference in the proceedings of a legislative assembly, on the part of private persons. The same jealous watchfulness is also manifested to protect them from all

[1] Comm. Jour. XLVIII. 424.
[2] Comm. Jour. I. 766, 702, 921, 924.
[3] Comm. Jour. IX. 472; Same, XXIV. 170.
[4] Comm. Jour. II. 72.
[5] Comm. Jour. XXXIX. 83; Same, XLVIII. 426.
[6] Comm. Jour. I. 863; Same, VIII. 525; Same, IX. 20, 366; Same, XII. 304.
[7] Ante, § 554.
[8] See *McNeil's Case*, Mass. Rep. III. 288, and Same, VI. 264, as to the effect of a writ of privilege. See also Comm. Jour. XLVIII. 406, 423.

influence of one another, or of other coördinate departments of the government. In England, accordingly, it is held to be a high breach of privilege, for the king to interfere in or take notice of any proceeding in either branch, except in such manner as he is constitutionally authorized to do; and it is also a high breach of privilege for either branch to interfere, in any other than the regular and constitutional manner, in the proceedings of the other; though either house, when sending a bill to the other, may signify its wish to have it attended to, and may, in the course of business, send to the other for information in regard to the state of any bill or other matter, in which it has a common concern. The same principles prevail here, both as regards the executive, and both branches of the legislature.

CHAPTER FOURTH.

OF THE INCIDENTAL POWERS OF A LEGISLATIVE ASSEMBLY.

640. The powers incidental to a legislative assembly, like the rights and immunities, which, under the name of privileges, have been considered, are such only as are necessary to enable it to perform its principal or legislative and administrative functions. These powers are of two kinds, the inquisitorial and the judicial.

641. A legislative assembly being authorized, in the exercise of its constitutional functions, both administrative and legislative, to institute inquiries into all grievances of the citizen, which are remediable by legislative enactment, and into all abuses of power by persons in office, with a view either to their removal by address, or to their punishment by impeachment, it has a power to investigate all such subjects, by the examination of witnesses, or otherwise, in the same manner, as is practised by grand-juries; and, as a consequence of this authority, the assembly itself, its officers, and servants, and all persons connected with every such investigation, enjoy a perfect immunity for every thing fairly said, done, or published, in the course of such inquiry.

642. The other incidental powers of a legislative assembly, being more strictly analogous to those exercised by judicial tribunals, constitute its judicial powers, as distinguished from its legislative; and,

accordingly, in the exercise of these functions, a legislative assembly is considered as a court, and the journal of its proceedings as a record. The judicial powers, anciently claimed and exercised by the house of commons, in England, were much more extensive than they are at present; having, in the course of many conflicts with the courts, and by the gradual progress of knowledge on the subject of the separation of the legislative and judicial functions of government, been reduced from a vague, uncertain, and indefinite mass of powers to those alone, which are considered necessary to enable it to discharge its peculiar functions as the depositary of the legislative, and, in part, of the administrative power of the State.

643. The judicial powers,[1] exercised by a legislative assembly, as incidental to or in aid of its general functions, must be carefully distinguished from those which it exercises as a branch of its legislative duties or in the course of the latter. Thus, in the exercise of its general functions of administration or legislation, a legislative assembly frequently has occasion to pass upon the private rights of individuals, in conflict either with those of other individuals, or with those of the public. The railroad legislation of modern times furnishes abundant example of the exercise of judicial functions of this description. So, likewise, in the exercise of its supreme and sovereign power, where such power is not expressly restrained, a legislative assembly may find it necessary to try, convict, and punish offenders, out of the common course of criminal jurisdiction, by means of acts of attainder, and of pains and penalties. Legislative proceedings of this description, though frequent in the earlier periods of parliamentary history, have, in modern times, become extremely infrequent; partly, in consequence of the improvements which have taken place in the criminal law and its administration; but chiefly, perhaps, from an unwillingness to administer criminal justice through the forms of legislation. In all these cases, the proceedings are to a greater or less extent judicial, and conducted accordingly. Judicial functions of this description, not coming under the head of incidental powers, will be treated of in another place. These functions can only be exercised by the concurrent act of the two branches and the consent of the executive. The judicial powers, which are incidental, are exercised by each branch separately and independently of the other.

644. In treating of those judicial powers of a legislative assem-

[1] In the exercise of its judicial functions, a legislative body is governed by its ordinary rules of proceeding. See Reg. of Deb. VIII. Part 2, 2548; Cong. Globe, IV. 176.

bly, which are now in question, namely, those which are incidental to its general functions, it will be convenient to consider, first, the jurisdiction; second, the mode of proceeding; third, in what manner the judgments of the assembly are enforced; and fourth, what punishments it may inflict; and, under each head, to state the differences, if there are any, between cases in which the proceedings relate to members, and those in which they relate to other persons.

SECTION I. — OF THE INCIDENTAL JURISDICTION OF A LEGISLATIVE ASSEMBLY.

645. This jurisdiction, being conferred for the purpose of enabling a legislative assembly to discharge its peculiar functions, in a free, independent, and intelligent manner, is in its very nature, original, exclusive, and final.

646. It is original, because, being conferred for the benefit of the assembly itself, and not for the advantage of any private individual, it arises only in reference to matters growing out of the proceedings, or connected with the official character of the members of the assembly.

647. It is exclusive, because, otherwise, the objects for which it is conferred, namely, the freedom and independence of the assembly, would fail of their attainment; inasmuch as a portion of the means, by which the assembly is enabled to perform these functions, would be restrained, by the concurrent or appellant jurisdiction of some other tribunal.

648. But this jurisdiction is not exclusive in any other sense than this, that no other tribunal can control the action, set aside the judgments, or revise the proceedings, of the assembly; though, whenever any question, which has already been decided by the assembly itself, or which belongs within its jurisdiction, arises incidentally in any other court or tribunal, and for any other purpose than that for which it is entertained by, or comes within the jurisdiction of, the assembly, such tribunal may judge of and decide that question, for the purposes of the proceeding in reference to which it has arisen. Thus, the assembly is the judge of the election of its members, and may consequently, for that purpose, decide upon the right of an elector to vote; but, notwithstanding, an elector, whose vote has been refused, by the returning officers, may also bring his action against them for damages, for such refusal, and for that purpose may establish his right to vote, at law, though the assembly may have decided otherwise in determining the election.

649. The jurisdiction of a legislative assembly, acting judicially, is necessarily final, that is, its proceedings cannot be revised, nor its judgment suspended, by any other court or tribunal. Thus, when a member is expelled, no other court can revise the doings of the assembly, and reinstate such member in his place. So, if a legislative assembly commit a member or other person as a punishment for a contempt or other offence, no other court or tribunal can discharge the prisoner, on the ground of his having been illegally committed, provided the cause of the commitment appear with the requisite certainty. In cases of this kind, therefore, it should clearly appear, in the warrant, that the assembly has jurisdiction of the matter for which the commitment takes place; but the particular facts of the case, upon which the assembly has predicated its judgment, should not be stated; if they are, they will be subject to revision.

650. The jurisdiction of a legislative assembly, as a judicial tribunal, is both civil and criminal, but chiefly the latter, and for contempts.

1. *Civil Jurisdiction.*

651. As a civil tribunal, a legislative assembly, at the present day, claims and exercises no other jurisdiction, than to decide upon the returns and elections of its members, and upon the question of their rights as such, as affected by disqualifying circumstances subsequently arising. Formerly, the house of commons, in England, under pretence of privilege, entertained jurisdiction of cases of mere civil right, in which members were concerned; but this course of proceeding, which appears to have commenced with the long parliament, and to have terminated only about the year 1768,[1] is now wholly abandoned. In this country, no such pretence was ever set up, and the only civil jurisdiction of a judicial nature, exercised in our legislative assemblies, either before or since the revolution, is that of deciding upon the returns and elections of their members.

2. *Criminal Jurisdiction.*

652. The criminal jurisdiction of a legislative assembly is much more extensive than the civil; embracing the misconduct or disorderly behavior of its own members, as well as misdemeanors and offences committed by other persons. In both cases, the offence

[1] Pemberton, 91. See ante, 8, 537.

may be committed either against the assembly itself, or against its members individually.

653. Members may be guilty of misconduct, either towards the assembly itself, towards one another, or towards strangers. Misconduct of members towards the assembly, besides being the same in general as may be committed by other persons, consists of any breaches of decorum or order, or of any disorderly conduct, disobedience to the rules of proceeding, neglect of attendance, etc.; or of any crime, misdemeanor, or misconduct, either civil, moral, or official, which, though not strictly an attack upon the house itself, is of such a nature as to render the individual a disgrace to the body of which he is a member. Misconduct of members towards one another consists of insulting remarks in debate, personal assaults, threats, challenges, etc., in reference to which, besides the ordinary remedies at law or otherwise, the assembly interferes to protect the member, who is injured, insulted, or threatened. Offences by members towards other persons, of which the assembly has cognizance, consist only of injurious and slanderous assertions, either in speech or by writing, which, as there is no other remedy, the assembly itself, if it thinks proper, takes cognizance of and punishes.

654. The offences against a legislative assembly, which may be committed by persons who are not members of it, are exceedingly multifarious; embracing all offences against its members individually, all breaches of privilege, whether personal or collective, and all wilful obstructions to its regular proceedings, and to the free, independent, and full performance of its various functions.

3. *Jurisdiction of Contempts.*

655. Like every other tribunal, a legislative assembly is authorized to punish persons, whether members or others, who are guilty of any contempt towards it, by disorderly or contumacious behavior in its presence, or by any wilful disobedience to its orders. It seems necessary to observe, that the contempts punishable by a legislative assembly are not confined to proceedings in its judicial capacity, but may arise in the course of its legislative or other functions.

SECTION II. — OF THE MODE OF PROCEEDING BY A LEGISLATIVE ASSEMBLY, IN THE EXERCISE OF ITS JUDICIAL FUNCTIONS.

656. It will be most convenient, as well as intelligible, to consider the mode of proceeding, under the several heads which have already been adopted in treating of the jurisdiction, namely: — first, civil proceedings; second, criminal proceedings; and, third, contempts.

1. *Civil Proceedings.*

657. The only subjects, which come within the civil jurisdiction of a legislative assembly, relate to the rights of members to their seats; in reference to which, the proceedings are either between parties adversely interested, or *ex parte*. Cases of the first kind arise where a member is returned, and the return, election, or right of the member returned to sit, is controverted by the electors or some of them, or by an opposing candidate. Cases of the latter kind occur, when an inquiry is instituted by the assembly itself, on the motion or suggestion of some member. In the former class of cases, which constitute what are usually called controverted elections, if the proceedings are not otherwise regulated by law, as they are in England and in some of the United States, the trial may be either at the bar of the assembly, or, in the first instance, before a committee appointed for the purpose, and, in either case, the proceedings are as closely assimilated, as the nature of the subject will admit, to those which usually take place on the trial of an action at law in the ordinary courts; the parties being commonly assisted by counsel, and witnesses examined, as in other cases, except that they are not necessarily or perhaps usually upon oath. Where an inquiry is instituted *ex parte*, on the motion or suggestion of a member, the subject is generally referred to a committee; and if the right of a member or other person happens to be involved in the proceedings, they may assume the form of a controverted election, in which case, they will be the same as already mentioned; but, where the investigation is one-sided, the committee may examine witnesses or arrive at the knowledge of the facts in such other way as it may think proper. Members, if interested in such investigation, are to withdraw from the assembly, after being heard, in the manner stated under the head of Criminal Proceedings.

658. Witnesses may be summoned to appear and give their testimony, before the assembly, or before a committee, either by a warrant from the presiding officer, issued in pursuance of a general

order previously adopted, authorizing him to send "for persons, papers, and records," or in pursuance of a special order to the same effect, relating to the particular case or person; or they may be summoned by the special order of a committee, in pursuance of a similar general or special order. The summons may be served by the sergeant-at-arms, a messenger, or by any other officer, or in such other manner, as will be legal in other cases, according to the laws of the particular State.[1]

659. If the person, whose testimony is wanted as a witness, is in custody, it is the practice for the presiding officer, by the order and direction of the assembly, to issue his warrant to the officer having such person in custody, and to the sergeant-at-arms of the assembly, for the production of the witness at the bar, or before the committee. When the witness is in the custody of the assembly itself, he may be brought to the bar or before the committee, by an order to that effect to the sergeant-at-arms. It is usual, also, where the testimony of a witness in the custody of the sergeant is wanted before a committee, for the assembly to order, that when the committee requires the attendance of the witness, it may send for him.[2]

660. With regard to the expenses of the witnesses, the rule in legislative assemblies is analogous to that which prevails in courts of law, not to compel a witness to give his testimony, until his reasonable charges have been paid or tendered.[3] Where a witness is summoned on the behalf and at the request of an individual, such party is bound to pay the expenses; but where the investigation is *ex parte*, he can only receive payment of his expenses, in the same manner that government witnesses are paid according to the laws of the particular State. In all cases, however, it seems, that witnesses are bound to appear, in obedience to the summons, without being previously paid their expenses.[4]

661. The only difference, between the examination of witnesses, before a legislative assembly or committee, and their examination before other tribunals, is, that in the former, the testimony is not usually given under oath; a legislative assembly, unless there is particular provision to that effect by law, not being authorized to administer oaths.[5] Whether, however, the testimony is given under oath or not, if a witness prevaricates, testifies falsely, or other-

[1] The subject of witnesses, which is here and elsewhere in this chapter mentioned, only incidentally, is fully treated of in the fifth part.

[2] Rogers on Election Committees, 86.

[3] Rogers, 87.

[4] Rogers, 88.

[5] This power is expressly conferred by the constitution of Vermont.

wise misbehaves himself, in giving or refusing to give his testimony, he will be guilty of a contempt, and punishable accordingly. If such misbehavior occurs at the bar of the assembly, the offender may be proceeded against at once; if, before a committee, it must first be reported to the assembly, for its interposition.

662. If a witness, being duly summoned, in either of the modes above mentioned, refuses or neglects to appear, and such refusal or neglect is made manifest to the assembly, by the non-appearance of the witness at the time appointed, or upon the report of the committee, the witness may be ordered to be taken into custody by the sergeant-at-arms, and will also be punishable as for a contempt.

663. Parties and witnesses, attending as such, or having occasion, or ordered, to attend as such, before a legislative assembly or its committees, are entitled to the same protection in going, staying, and returning, as they would receive in a court of law; and, if arrested, will be entitled to their discharge in the same manner as members, and by the same form of proceeding. When they are apprehensive of an arrest, and make that fact known to the assembly, it is usual for that body to order that its protection be allowed to such persons, during the pendency of the business which entitles them to privilege, or their necessary attendance as witnesses.[1]

2. *Criminal Proceedings.*

664. The conduct of members may become implicated either incidentally in the course of other proceedings, or it may be the subject of a direct complaint, verbal or in writing, by other members, or by other persons; and, in all these cases, the proceedings do not differ essentially from what they would be in the case of private persons, except that it is not necessary, in all cases, to place the member accused at the bar. When a complaint is to be made against a member, it appears to be the practice to give him notice beforehand,[2] or to procure an order to be passed, requiring his attendance at a particular time to hear the complaint, and otherwise not to make it in his absence. Where the member remains in his place in the assembly, during the preliminary proceedings, it is the rule, that when the question is stated in the assembly, the

[1] As to the effect of these orders of protection, see ante, 638, note.

[2] In the case of *Mr. Senator Smith*, the committee to whom his case was referred, gave notice when they were ready to report, and thereupon, at the suggestion of the chairman, an order was passed for the attendance of Mr. Smith in his place. Ann. of Cong. 10th Cong. 1st Sess. I. 39, 56.

member implicated should be first heard, and then withdraw from the assembly, until the question is decided. This is the established practice in the house of commons, and is founded in the indecency of a man's sitting as a judge in his own cause. If the member does not withdraw of his own accord, he may be ordered to do so by the assembly. ¶ If the case be not perfectly clear, as to the propriety of a member's withdrawing, he may himself make a question to the assembly for their opinion.

665. But where the immediate question before the assembly is not the one in which a member is interested, but only relates to the time at which that question is to be tried,[1] or is a mere question of order involving the precedence of business, with relation thereto,[2] it has been held in this country that such member may nevertheless vote thereon.

666. When, in consequence of words spoken in debate, or in the course of any other proceeding of the house, or of a committee either select or of the whole or otherwise, a quarrel arises between members, which the speaker sees may lead to injurious results, it is his duty to interfere at once without waiting for the previous authority of the house, and, by means of a retraction or apology, compel such members to settle their quarrel immediately, or, by ordering them into the custody of the sergeant-at-arms, prevent them from leaving the house until they pledge themselves that the quarrel shall go no further.[3] The propriety of this course is still more manifest where the parties, as sometimes happens, resort to blows or other acts of violence.[4] The speaker, instead of proceeding at once, of his own authority, or the implied sanction of the house, may wait for it to take or indicate such course as it may think proper. The former method is most generally adopted by the speaker of the house of commons; the latter has been most commonly pursued by presiding officers in this country. The sending of a challenge by one member to another, or by any person to a member, for words spoken by the latter in debate, is a breach of privilege, and will be dealt with accordingly, unless a full and ample apology is offered to the house and to the member offended.[5]

667. The most usual course of proceeding, where a person not a member has been guilty of some misconduct, of which the assembly has judicial cognizance, is, in the first place, upon the complaint or

[1] J. of H. 26th Cong. 1st Sess. 1283.
[2] Cong. Globe, VIII. 531.
[3] May, 258.
[4] See J. of H. 30th Cong. 1st Sess. 536; Cong. Globe, X. 451; Cong. Globe, XIII. 578.
[5] May, 258. See also J. of C. III. 232, 233, 236.

motion of some member to ascertain the facts, and then to declare them to be an offence, and to order the individual implicated or supposed to be guilty, into the custody of the sergeant-at-arms. When that officer has informed the assembly, through the speaker, that he has the offender in custody, he is brought to the bar of the assembly, and being there informed of the charge against him, is interrogated as to his guilt or innocence. He is then heard in his defence, by counsel, if he desires it, and such subsequent proceedings are adopted as may be deemed proper. If he refuses to answer the interrogatories, he will be punishable as for a contempt. If he denies the facts alleged against him, they may be investigated either by the assembly itself, or by a committee. If the proceedings require more than one sitting, the accused is to be retained in the custody of the sergeant-at-arms, and brought to the bar whenever the assembly may order. Sometimes the supposed offender, instead of being ordered into the custody of the sergeant-at-arms, and brought to the bar by that officer, is merely summoned to appear before the assembly at an appointed time, to answer to the offence alleged against him.[1] An offender may be discharged, at any time upon causing a petition, expressing proper contrition for his offence, to be presented to the assembly.[2]

668. When the matter complained of is something published in a newspaper, the newspaper must be produced, in order that the paragraphs complained of may be read; and, in one case, in the house of commons, where a member, who complained of the manner in which his speech was published in a newspaper, was proceeding to address the house, he was stopped by the speaker for the reason that he had no copy of the newspaper on which to found his complaint. The member, who makes the complaint, must also be prepared with the names of the printer or publisher if he intends to follow up his complaint with a motion.[3]

669. According to Mr. May,[4] "It is the present practice" in parliament, "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

[1] See the proceedings of the senate of the United States, in 1800, against *William Duane* for a libel on the senate, published in the Aurora; and the proceedings of the house of representatives, in 1832, in the *case of Samuel Houston*, for an assault on William Stanbury, a member.

[2] May, 94.

[3] May, 88, 89.

[4] May, 88.

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."

670. If there are, in the particular State, by the authority of whose legislative assemblies a commitment takes place, any constitutional or legal provisions relating to the subject of criminal commitments generally, it will be safest to follow such provisions; but the warrant should only state the fact of the offence, in general terms, in order to show that the assembly has jurisdiction of it without setting forth the particular facts, which are supposed by the assembly, to constitute the offence.

3. *Proceedings in case of Contempt.*

671. A contempt of the authority of a legislative assembly may be committed either in or out of its presence. In the former case, it may be either by a person already in custody of the sergeant-at-arms, or by some person attending as a party or witness, or as a spectator or auditor of the proceedings. Where the contempt is in the presence of the assembly, if the offender is not in custody, the first thing is to order him to be taken into custody, and then, which is also the case where the offender is already in custody, the assembly proceeds at once, the offence being apparent, to pass such sentence upon him as it may think proper.

672. Contempts committed out of the presence of the assembly usually consist of disobedience to its orders. In these cases, the first step is to adjudge the disobedience a contempt, and then to order the offender into custody. He is then brought to the bar and interrogated, and such further proceedings had as may be deemed proper. Where the offender is a member, the proceedings do not differ, except in his being required to withdraw when the question is made.

SECTION III. IN WHAT MANNER THE JUDGMENTS OF A LEGISLATIVE ASSEMBLY ARE ENFORCED.

673. One of the modes by which the orders or judgments of a legislative assembly may be enforced, is, to bring the person refusing or disobeying to the bar, and there require him to submit himself to the assembly; and, on his refusing, in their presence, so to do, to punish him as for a contempt.

674. It was formerly the practice, in both houses of the British parliament, to require offenders to receive the judgment of the house kneeling at the bar. But the practice has long since been discontinued in both houses; though in the lords, the entries in the journals still assume that the prisoners "are on their knees" at the bar. In the house of commons, in the year 1750, Mr. Alexander Murray obstinately refused to receive his sentence kneeling at the bar, and was severely punished for his contempt of the authority of the house.[1] But, afterwards, in 1772, and probably in consequence of this refusal, the house ordered, that whenever any person should thenceforth be brought to the bar for judgment, or to be discharged, he should receive the judgment of the house standing, unless, it should be otherwise directed in the order.[2]

SECTION IV. OF THE PUNISHMENTS WHICH A LEGISLATIVE ASSEMBLY MAY INFLICT.

675. The punishments, besides the withdrawal of privileges conferred,[3] which are usually within the competency of a legislative assembly to inflict, are those of fine, imprisonment, and reprimand, to which must be added, where the offender is a member, that of expulsion.

1. *Fine.*

676. In England, both houses of parliament were anciently in the practice of imposing the payment of a fine by way of punishment; and this is understood, at the present day, to be the practice of the lords; but the commons appear to have long since waived or abandoned this form of punishment; and it has even been laid down that they now have no such power. In this country, with one or two exceptions, in which there is a special constitutional provision to that effect, the legislative assemblies are not authorized to impose a fine by way of punishment. The house of commons, however, does, in some sort inflict a fine; persons in the custody of the sergeant-at-arms being usually required, before being discharged, to pay the fees of that officer. Where this punishment is inflicted, the order is that the offender pay such a sum, and, in the mean time, stand committed to the custody of the sergeant-at-arms.

[1] Comm. Jour. XXVI. 48; Hans. P. H. XIV. 894; Walpole's Memoirs of Geo. II. 15.

[2] Comm. Jour. XXXIII. 594.

[3] As for example that of a reporter. J. of H. 24th Cong. 1st Sess. 983, 1020, 1021.

2. *Imprisonment.*

677. This mode of punishment is, in general, the only one now authorized or resorted to, in ordinary cases, by legislative assemblies. According to the parliamentary law of England, there is a difference between the lords and commons, in this respect, the former being authorized, and the latter not, to imprison for a period beyond the session. In this country, the power to imprison is either incidental to or expressly conferred upon all our legislative assemblies; and in some of the States, it is also regulated by express constitutional provision. Where it is not so regulated it is understood, that the imprisonment terminates with the session.

678. Where there is no provision regulating the time of imprisonment, if a commitment is general, the prisoner will be entitled to his discharge on the termination of the session; if it is for a certain time, the prisoner will be entitled to his discharge on the expiration of the time, or the termination of the session, whichsoever first happens.

679. Where the time of imprisonment is regulated and limited, a commitment for any period not exceeding that time may be made, notwithstanding the termination of the session in the mean time; but, if a commitment is general, without limitation of time, the case must be deemed the same, as if it had been for the utmost limit of time, and such commitment will accordingly terminate either with the expiration of that time, or with the session.

680. Where this form of punishment is adopted, a warrant is issued by the presiding officer, by order of the assembly, reciting the judgment or order of the assembly, and directing the sergeant-at-arms, to commit the prisoner to such a prison, and the keeper thereof to receive him into his custody, and safely keep him to the expiration of the sentence.

681. In the house of commons, when an offender is punished by imprisonment, the form of the sentence is, that he be committed to the custody of the sergeant-at-arms, or to Newgate, or the Tower, during the pleasure of the house; and the practice is, to keep offenders, so committed, in custody, 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. They are then to be brought to the bar, and after an admonition or reprimand from the speaker, are discharged on

the payment of their fees.[1] Under peculiar circumstances, however, attendance at the bar,[2] and the admonition or reprimand,[3] have been dispensed with, and the payment of fees remitted.[4]

3. *Reprimand.*

682. Where this form of punishment is inflicted upon a person who is not a member, the offender is brought to the bar of the assembly, by the sergeant-at-arms, and there reprimanded by the presiding officer, in the name, and by the authority of the assembly. The offender is then discharged. Where the offender is a member, he receives the reprimand standing in his place. Admonition may be considered as a mild form of reprimand. What is said by the presiding officer on these occasions, is usually ordered to be entered on the journal.

4. *Expulsion.*

683. The three forms of punishment already mentioned may be inflicted upon all persons, whether members or not; but expulsion can only be inflicted upon members. Where no provision is made relating to this subject, expulsion takes place in the same manner with any other proceeding. In some of the constitutions, there are express provisions upon this subject, which in those States, of course, must be observed.

SECTION V. IN WHAT MANNER AND TO WHAT EXTENT THE INCIDENTAL POWERS OF LEGISLATIVE ASSEMBLIES IN THE UNITED STATES HAVE BEEN AFFECTED BY CONSTITUTIONAL AND LEGAL PROVISIONS.

684. The constitutions of the United States, and of almost all the States, contain provisions relating to the incidental powers of their legislative assemblies, which, although widely differing among themselves, in some cases, as to the number of powers enumerated, come clearly within the first two rules[5] already mentioned in regard to the privileges of members, and do not, in any degree, change,

[1] May, 94.
[2] Comm. Jour. LXXV. 467.
[3] Comm. Jour. LXXXVI. 333; Same, XC. 532; Same, CI. 768.
[4] Comm. Jour. LVIII. 221; Same, LXXX. 470; Same, LXXXIII. 199; Same, XC. 532; Same, LXXIV. 192; LXXXV. 465.
[5] Ante, 542, 543.

either by enlarging or diminishing, the powers of jurisdiction recognized by the ordinary parliamentary law. The only changes, made by these provisions, relate to the kind, form, and duration of the punishments to be inflicted. It may be laid down, therefore, first, that every legislative assembly in the United States possesses all the powers of jurisdiction, in a judicial way, which are recognized by the common parliamentary law; and, second, that they possess authority to punish agreeably to the rules of that law, as modified by express constitutional or legal provision. It only remains, therefore, to state these modifications; first, those which relate to the members themselves, and, second, those which relate to other persons.

ARTICLE I. *Incidental Powers relating to Members.*

685. In all the constitutions except those of New Hampshire, Vermont, Massachusetts, New York, North Carolina, Michigan, and California, there is inserted an express provision authorizing each branch of the legislature thereby established, "to punish its members for disorderly behavior;" to which the constitution of Rhode Island adds a general authority to punish for contempt, and that of Maryland the word "disrespectful."

686. In the constitution of New Hampshire the power to punish members appears to be included in that of punishing generally; that of Vermont, after enumerating certain powers, declares, of the general assembly, that "they shall have all other powers necessary for the legislature of a free and sovereign State;" whilst those of Massachusetts, New York, North Carolina, Michigan, and California, are altogether silent on the subject. In all these States, therefore, members of the legislative assemblies are amenable to their respective houses according to the principles of the common parliamentary law.

687. In the States of Massachusetts, New Hampshire, New York, and North Carolina, there being no constitutional provision on this subject, the power to expel exists, as a necessary incident to every deliberative[1] body, and may be exercised at the discretion of the assembly, and in the usual way of proceeding.

688. In the constitutions of the United States, and of all the other States, the power to expel is expressly recognized and declared; but, in all of them, except those of Vermont and Geor-

[1] It does not belong to every collective body which deliberates, as for instance, a committee, or a board of trustees or bank directors, or other similar officers.

gia, in which the usual majority only is required, the concurrence of two thirds is necessary. In Illinois, Michigan, Missouri, and Wisconsin, two thirds of all the members elected are requisite to a vote of expulsion.

689. In the constitutions of Maine, Rhode Island, Connecticut, Pennsylvania, Maryland, Virginia, South Carolina, Florida, Kentucky, Tennessee, Ohio, Indiana, Louisiana, Mississippi, Illinois, Alabama, Michigan, Arkansas, Texas, Iowa, Wisconsin, and Missouri, there is a prohibition against expelling a member a second time for the same offence; in those of Vermont and Michigan, there is a prohibition against expulsion for causes known to the constituents of a member antecedent to his election; and in Georgia, the power to expel is restrained, as to cause, to disorderly behavior, and to conviction of any felonious or infamous offence. The constitutions of Illinois and Michigan require the reasons for the expulsion to be entered on the journal with the names of the members voting on the question.

ARTICLE II. *Incidental Powers relating to Persons not Members.*

690. In the American constitutions, this subject, though important as regards the independence of the legislature, is very diversely treated; some contain no provision at all, or a general one, relating to it; others enumerate the offences that may be committed against a legislative assembly by persons not members of it with considerable detail; while all, which contain any thing on the subject, unite in prescribing imprisonment as the mode of punishment.

691. The constitution of Maine gives authority to each branch of its legislature, during the session, to punish any person not a member by imprisonment not extending beyond the session. "Each house, during its session, may punish, by imprisonment, any person not a member, for disrespectful or disorderly behavior in its presence; for obstructing any of its proceedings; for threatening, assaulting, or abusing any of its members for any thing said, done, or doing, in either house; provided, that no imprisonment shall extend beyond the period of the same session." This provision is apparently broad enough to include all the incidental powers of a legislative assembly, in regard to persons not members, by the common parliamentary law. The mode and duration of punishment are also the same.

692. The constitution of New Hampshire confers authority upon each branch of the legislature of that State to punish by imprisonment, not exceeding ten days for each offence, "every person who shall be guilty of disrespect to the house in its presence, by any disorderly and contemptuous behavior, or by threatening or ill treating any of its members; or by obstructing its deliberations; every person guilty of a breach of its privileges, in making arrests for debt, or by assaulting any member during his attendance at any session; in assaulting or disturbing any one of its officers in the execution of any order or procedure of the house; — in assaulting any witness or other person ordered to attend by and during his attendance on the house, or in rescuing any person arrested by order of the house knowing them to be such. The senate, governor, and council shall have the same powers in like cases; provided that no imprisonment by either for any offence exceed ten days." This provision, like that above recited, seems broad enough to cover all offences, against a legislative assembly, by persons not members. The mode of punishment remains the same as by the common parliamentary law; while its duration may be greater.

693. The constitutions of Massachusetts, South Carolina, and Georgia, contain substantially the same provision on this subject. The former gives authority to each of its legislative branches to "punish, by imprisonment, every person (not a member) who shall be guilty of disrespect to the house, by any disorderly or contemptuous behavior in its presence; or who in the town where the general court is sitting, and during the time of its sitting, shall threaten harm to the body or estate of any of its members, for any thing said or done in the house; or who shall assault any of them therefor; or who shall assault or arrest any witness or other person, ordered to attend the house in his way in going or returning; or who shall rescue any person arrested by the order of the house." By the constitution of this State, the term of imprisonment is not to exceed thirty days; by those of South Carolina and Georgia, it is unlimited. These provisions seem broad enough to cover all offences against legislative bodies by persons not members.

694. The constitution of Florida provides that "each house during the session may punish, by imprisonment, any person not a member, for disrespectful or disorderly behavior, in its presence, or for obstructing any of its proceedings." The same provision is found in the constitutions of Alabama, Mississippi, Louisiana, Tennessee, Indiana, Illinois, and Texas; but in those of Tennessee and Indiana without the latter clause. In Florida and Tennessee,

the imprisonment is general and must expire with the session, while in Indiana and Illinois it cannot exceed twenty-four hours; in Alabama, Mississippi, and Texas, forty-eight hours; and in Louisiana, it is limited to ten days. The terms used in these constitutions are comprehensive enough to include all legislative offences.

695. The constitutions of the United States and those of the States of Vermont, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Kentucky, Ohio, Michigan, Missouri, Arkansas, Iowa, Wisconsin, and California, are silent with respect to the punishment of strangers for legislative offences; but the constitution of Rhode Island expressly authorizes the punishment of contempt; and those of Vermont, Connecticut, Pennsylvania, Delaware, Ohio, and Iowa, after conferring certain powers, therein enumerated, upon each branch, add the general clause already cited, that it shall also have all the other powers necessary to a branch of the legislature of a free State. In the foregoing and all the States mentioned in this paragraph, therefore, as well those whose constitutions do not as those which do contain the general clause, above mentioned, it may be considered, that each of the legislative branches has jurisdiction, according to the common parliamentary law, of all offences committed against it by persons not members.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART FOURTH.

OF THE POWERS AND FUNCTIONS OF A LEGISLATIVE ASSEMBLY AS SUCH.

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696. In the preceding parts of this work, having considered the election, constitution, and incidental powers of a legislative assembly; it will be proper, before entering upon the forms of proceeding, by which it is governed and regulated, in the performance of its appropriate functions, to consider what those functions are; or, in other words, what are the powers and duties, for which a legislative assembly is elected and constituted, and invested with the incidental powers already treated of.

697. The legislative assemblies of the United States, having all been constructed upon the model of the two houses of the British parliament; the forms of proceeding which prevail in the latter have been adopted by them as their common parliamentary law; and upon that have been ingrafted the peculiar usages which distinguish the various systems of parliamentary practice in this country; precisely, as, upon the basis of the common law of England, the different legal systems of the several States have been established.

698. In order, therefore, to give a complete and intelligible view of the law and practice of our own legislative assemblies, it will be necessary to exhibit somewhat fully and distinctly the law and practice of the British parliament. Having thus indicated the common parliamentary law of all, — the basis upon which each peculiar system rests, — it will then be attempted, to point out wherein this system has been altered, added to, extended, or abrogated, in the systems which prevail in this country.

699. The imperial parliament of the united kingdom of Great Britain and Ireland is composed of the crown and of what are called the three estates of the realm, namely, the lords spiritual, the lords temporal, and the commons. These several estates collectively constitute the parliament, in which the supreme or sovereign power of the British government resides.

700. The crown, among other important prerogatives, is invested with certain powers and functions relative to the parliament, which confer upon the king, or queen regnant, the chief place in that body. It belongs to the prerogative of the crown to assemble, continue, and put an end to, parliaments, at its discretion; but the exercise of this branch of the royal prerogative is so far regulated, first, by law, that measures must be taken by the crown for the assembling of a new parliament within three years after every dissolution, and that no parliament can be continued in existence longer than seven years; and, second, by the mode in which the government is now administered, parliament must at all events be assembled as often as once a year, and it cannot safely be dissolved (without a new one being called,) until the supplies necessary to carry on the government for the current year have been provided. In addition to these prerogatives, the crown has a negative upon the choice of speaker by the commons, and upon bills agreed to by both the other branches.

701. The lords spiritual and temporal, though generally spoken of as two of the three estates of the realm, sit together and jointly constitute the house of lords, which, in point of rank and dignity, is the second branch of the parliament. The lords spiritual are composed of the archbishops and bishops of the established church of England, together with four representative bishops of the church of Ireland, who sit by rotation of sessions. The lords temporal consist, first, of the peers of England, second, of sixteen representative peers for Scotland, chosen by the Scottish peers, for each parliament, from their own body, and, third, of twenty-eight representative peers of Ireland chosen for life from the peerage of Ireland.

The lords spiritual are virtually appointed by the crown, as the head of the church. The lords temporal exercise their parliamentary functions, by virtue of some title of honor conferred upon them by the crown, or of their descent or inheritance from some one upon whom or whose ancestors such a title of honor has been antecedently conferred.

702. The third estate, constituting the lowest branch of parliament in point of rank and dignity (perhaps the highest in point of real power) consists of the commons, elected for each parliament by and for the several constituencies of Great Britain and Ireland. These constituencies in England, Wales, and Ireland, are, first, the several counties, sending members who are entitled knights of the shire; second, the cities, whose members are denominated citizens; third, the boroughs and universities, whose members are known as burgesses; fourth, the cinque ports, who elect what are called barons; and fifth, the towns and burghs of Scotland, who elect commissioners. These all sit together, and constitute the house of commons. The collective name of this branch is the knights, citizens, and burgesses.

CHAPTER FIRST.

OF THE GENERAL POWERS OF A LEGISLATIVE ASSEMBLY IN THE MAKING OF LAWS.

SECTION I. POWERS OF THE ASSEMBLY AS AN AGGREGATE BODY.

1. *Legislative Powers of Parliament.*

703. With reference to the distribution which has been made in modern times of the functions of government, into the three departments of the legislative, executive, and judicial, the collective body of the parliament exercises the function of the legislative, and is accordingly denominated the legislature; the executive being vested in and exercised by the crown and its subordinate officers; and the judicial intrusted to the judges of the several courts.

704. In the exercise of their ordinary functions, these three

departments are entirely independent and free from the control each of the others; but, from the nature of the functions attributed to each, the legislative or lawmaking must necessarily be the superior and sovereign power; for though it may not rightfully interfere with either of the others, in the discharge of their respective duties, as a superior interferes in the proceedings and controls the acts of an inferior power; yet, it may, in the exercise of its own appropriate functions, enlarge, restrain, alter, or regulate, at its discretion, the powers and functions of the other departments.

705. The power of parliament has been variously described; but, by no author, in more brief, comprehensive, and forcible terms, than by Sir Edward Coke, as quoted by the learned and elegant commentator on the laws of England:[1] — "It hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible determinations, ecclesiastical or temporal, civil, military, maritime, or criminal: This being the place, where that absolute, despotic power, which must in all governments reside somewhere, is intrusted by the constitution of these kingdoms. All mischiefs and grievances, operations and remedies, that transcend the ordinary course of the laws, are within the reach of this extraordinary tribunal. It can regulate or new model the succession to the crown; as was done in the reigns of Henry VIII. and William III. It can alter the established religion of the land; as was done in a variety of instances, in the reigns of king Henry VIII. and his three children. It can change and create afresh even the constitution of the kingdom and of parliaments themselves; as was done by the act of union, and the several statutes for triennial and septennial elections. It can, in short, do every thing that is not naturally impossible; and, therefore, some have not scrupled to call its power, by a figure rather too bold, the omnipotence of parliament. True it is, that what the parliament doth, no authority upon earth can undo."

706. In describing the extent of the jurisdiction, as well as the power of parliament, Mr. May remarks: — "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

[1] Blackstone's Comm. I. 160; Fourth Institute, 36.

many other countries, it is bound by no fundamental charter or constitution; but has itself the sole constitutional right of establishing and altering the laws and government of the empire. In the ordinary exercise 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 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 statute for that purpose. The assembly were indignant at the interference of the mother country, and neglected their functions, upon which an act 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." [1]

707. In the exercise of this vast power, according to the fundamental idea and constitution of parliament, the concurrence of the three distinct bodies of which it is composed, each acting by itself, and independent of the others, is necessary. No two of them acting together, much less one alone, can make a law. This fundamental idea of all modern legislative bodies, which are fairly entitled to the name, has been adopted into all the constitutions of the United States, fully as regards the two branches, but partially only as regards the executive.

708. The reasons, on which this negative voice of each branch is

[1] May, 36, 37.

founded, are stated with great force and clearness by a learned, able, and judicious writer, who had himself been a witness of the advantages and disadvantages of which he speaks, and who had himself been a member both of a parliamentary body exercising alone and by itself the functions of government, and of parliaments constituted in the ordinary manner.

709. "Some affirm, that nothing doth more conduce to the liberty and security of a people than to have their supreme public councils, under such several negatives. All their interest, their lives, liberties, and estates, being under the power of those councils, it is more safe where they are to pass, from and after one resolution, to a yet further scrutiny and consideration, under another vote and negative, than where all may be taken away, as it were, at one blow, by one single person's vote; which, happening to make one vote more than those of the other judgment, this one man's voice carries with it the destruction of any man's life and fortune, and of the public interest.

710. "But where there be several negatives, in the several estates, the party concerned gains new opportunity to inform the truth, and to defend himself; and the matter, whether public or private, is again and perhaps more thoroughly considered and weighed, than before possibly it could or should have been. If, for example, one house be misinformed, as too often is done; or be mistaken in their judgments, which is possible, because they are men; the other house, or the king, the third estate, may be better informed, or rectify that mistake; and thereby do right to the person, who, otherwise, might have been, contrary to justice, ruined; or to the commonwealth, which otherwise might have suffered prejudice.

711. "But without these several negatives, a person may be surprised, and his life and fortune lost; or the whole kingdom suffer detriment, by the resolution of a supreme council, and that without redemption, or appeal; or such impositions be laid upon the persons, estates, and consciences of men, (whereof some examples, and too many, have been felt,) which, in case of several negatives, had not been done; and which have deserved second thoughts. And by these several negatives, is prevented the arbitrary power of princes, — the domineering of great men, — and the insulting of inferior men being got into power, which of all other grievances is the most intolerable.

712. "But where the several estates have several negatives, the greater care is had, by each of them, of all those whose conditions

are nearest to them. And as every negative is an additional security for the freedom and safety of the people, so the more deliberation, debate, and disquisition is had, by several judgments and parts of supreme councils, the more ripe and perfect their laws and judgments will be, and the less subject to any just exception, and the more obeyed by those whose representatives consented to them. Excellent herein, is the frame and constitution of our parliament; in which every one of the three estates hath his negative; the king hath his negative; the lords have theirs; and the commons theirs. But the bishops had no negative; nor the knights no negative; but all the lords had one; and all the commons, another; and the king, the third."[1]

713. The three branches exercise their negative upon each other in a different manner; the crown has a single negative upon bills that have been agreed upon by the other branches, but is not authorized to originate any legislative act, (with a single exception,) or to propose amendments or alterations to such as come from the two houses; whereas each of the two houses (with the exception of money bills on the part of the lords) is authorized to originate and mature measures by itself, and, when its concurrence is asked to measures originated and matured by others, to propose amendments.

714. Besides the functions of the three branches, which are purely and exclusively legislative, each of them is invested with others; the crown is the principal executive and administrative power; the house of lords is a judicial court of error and appeals in the last resort, having also original and exclusive jurisdiction of impeachments and of certain offences committed by peers; and the house of commons is usually called the grand inquest of the nation, in determining upon and preferring impeachments to be tried at the bar of the lords.

2. *Legislative Powers as restricted by Constitutional Provisions in the United States.*

715. The legislative power, which, in the parliament of Great Britain, is unlimited and absolute, restrained only by the nature of the subject-matter, is in this country variously regulated, modified, and limited by constitutional provisions; in virtue of which the judicial tribunals are authorized to adjudge all acts of legislation,

[1] Whitelocke, II. 339, 340, 341.

which transcend the powers of the legislative bodies from which they emanate, to be void and inoperative as being unconstitutional.

716. The several subjects of these provisions, as they have been developed and applied in the decisions of the highest judicial tribunals, constitute a branch of jurisprudence peculiar to this country, denominated constitutional, a topic altogether too copious to be embraced in this work, and only necessary, for the present purpose, to be briefly alluded to, in order to point out, or to lay down, a rule for determining, if possible, the precise limits and boundaries of the legislative power, or in other words the line which separates the powers conferred from those withheld. There are three aspects, in which the subject presents itself, which it may be useful to consider; — first, the powers of State legislatures under the constitutions of the several States; second, the powers of congress under the constitution of the United States; and third, the powers of the State legislatures as affected by the constitution of the United States.

717. I. In the constitutions of the several States, the legislative department is established, and power conferred upon it, in general terms, as the supreme law making authority, limited only by the restraints thereon expressly declared in the instrument itself, and by the implied prohibition to change any part of the form of government thereby established. The power of a State legislature, therefore, is general, and unlimited, and extends to all subjects of legislation, except in those particulars wherein it is expressly restrained as above stated. Consequently, when a question arises, whether a given subject is within the constitutional power of a State legislature, the inquiry should be, not whether it is conferred, specifically, but, whether it is withheld, in terms, or by necessary implication. If it cannot be said, affirmatively, that the power in question is withheld, then it exists under the general grant. If the inquiry leads merely to a doubt of the power, the doubt is in favor of its being granted.

718. II. In the constitution of the United States, which was established by the citizens of the several States, in which the State legislatures had already been invested with the sovereign power of legislation, the proceeding is directly the reverse of that above stated. Instead of conferring legislative power upon congress, in general terms, and then restricting the grant by specific provisions, which mode, besides being inconsistent with the purposes of the federal government, would have superseded the legislative powers

of the States, the grant of power is specific; so that congress has no powers except those which are expressly, or by necessary implication, conferred upon it. Consequently, when a question arises, whether a given subject is within the constitutional power of congress, the inquiry should be, whether that power is conferred, not whether it is withheld. If it cannot be said affirmatively, that the power in question is conferred, then it does not exist; if the inquiry leads merely to a doubt, the doubt is against the grant.

719. III. In regard to the third inquiry above suggested, which relates to the powers of the State legislatures, as affected by the constitution of the United States, the provisions of the latter operate upon the former in two ways, first, by a direct prohibition to legislate upon certain subjects at all, and second, by means of powers which supersede the exercise of the same, or similar powers on the part of the State legislatures; and, in reference to both, the rules above stated are to be applied, the first to determine whether a given power would exist in a State legislature, independent of the constitution of the United States, and if so, second, to determine whether the power in question is taken away by the latter.

SECTION II. POWERS OF THE MEMBERS INDIVIDUALLY.

720. There are two distinct fundamental forms, in which a legislative assembly may be supposed to exist, namely, as an assemblage of the deputies of the several constituencies, by which they are elected, to treat of and determine certain matters wherein they have a common interest, and thereupon to form a compact with one another concerning the same, binding upon those whom they represent; or as a meeting of the representatives, not of the particular constituencies, but of the whole people in their legislative capacity, and authorized to act for and to bind them, within the scope of the powers which they have seen fit to confer upon the supreme legislative department. The first idea probably lies at the foundation of the British house of commons; but for a very long period, that body has ceased to be regarded merely as a collection of deputies,[1] and has been looked upon as a branch of the sovereign legislative power; and such also is the character which belongs to legislative bodies in this country.

721. "The citizens and burgesses," says Whitelocke,[2] "are to have the same power with the knights; and the knights with them,

[1] Hans. (3) II. 1090.

[2] Whitelocke, II. 329, 330.

when they are met in parliament. They are not citizens and burgesses only for the places for which they serve; but they are then members of parliament, serving for every county, city, and borough, in England, for the whole kingdom; and are obliged by the duty of parliament men, to take equal care of the good and safety of every other county, city, and borough of England, as they are to take of those which particularly chose them. So that now they are become 'knights, citizens, and burgesses of England.' And a defect of power in them, or an improvident choice of them, may hinder the business of the whole kingdom, wherewith every one of them is intrusted."

722. It follows, in the first place, from this principle, that every member represents and binds both himself and his fellows; or, as the same thing is more fully stated by the author just quoted:[1] — "It is the wisdom of our law, that acts of parliament are equally binding to the makers of them, as to the rest of the people; and, though the knights of the shire do represent all the commonalty of the county, and bind them all by their public resolutions; yet are they not exempt themselves from the force of those laws which are made by them; but are equally engaged to submit to them, and obey them, as those whom they represent ought to do. If they [the commons] grant a tax upon the people, they themselves must pay their share of it; if they make a severe law, they themselves, as much as others, are liable to the penalties thereof. They cannot prejudice the people's rights and liberties, but they prejudice their own. They are empowered for themselves, as well as for the commonalty of the county; and shall taste themselves, as well as others, of the good or evil fruits of their consultations; and therefore will be the more provident and wary in their determinations."

723. Secondly, the power conferred by the election is the entire power possessed by the electors, and, when once conferred, is irrevocable. Whitelocke, in the following paragraph, while he waives the discussion of these propositions, considers them as established.[2] "The electors in each county, city, and borough, are those who give the power, and parliamentary authority to their deputies; and they are by this writ to give full, and sufficient power, for the despatch of the great affairs to be treated on. There must be no defect; that is, their knights, citizens, and burgesses must want no power. I shall not hereupon discourse of that power in the electors, to give more or less authority and power to their deputies, as

[1] Whitelocke, II. 87.

[2] Whitelocke, II. 306, 307.

the electors please; nor, of that point, whether the authority being given by them, it be not in their power to recall the same again, when they think fit; in case the actings of their deputies be judged by them, to be contrary to their good. Such questions as these, and of the power in the people, are never stirred without some damage and trouble likely to arise therefrom. It is nowhere to be found, that these questions have been determined; or, such powers executed, by the electors, only, by their indenture, to give full authority to their deputies; who have been also so careful, not to give distaste to their electors, that they have answered, upon new affairs to them propounded, that 'they were ready to aid the king's estate; only, in a new devise, they durst not agree without further conference with their county, from whom they received their authority; and desired to have their pleasure in the particular execution of it.'"

724. Thirdly, the giving of pledges or promises by members, before their election, in regard to their conduct afterwards, is inconsistent with their public duties: — "The members of parliament are not, beforehand, to make any compacts, or undertakings, what they will do, or not do. But what shall be propounded among them when they are met together, — that is to be considered by them, — that they are to deliberate upon. And after a free debate in full parliament; as their judgment shall be swayed by reason, and as God shall put it into their hearts, so are they to ordain; and therefore it is said, 'shall happen to be ordained.' The members come not to parliament prepared, or bespoken beforehand; but, as free counsellors, to give their votes, as their reason shall be satisfied; as they judge will most conduce to public good. And the word 'ordain' is proper for all their determinations; either of advice, or which are judicial, or legislative. We find the word 'ordinances' often used in our books of law, and in the records of parliament, in several senses."[1]

725. Lastly, it follows from the nature of a legislative assembly, as above stated, that each individual member has power to participate as such in every thing which the assembly itself may do as an aggregate body: — "It is the great privilege of the parliament of England, that every one of the members thereof hath the liberty of proposing, in that assembly, what he judgeth may be fit for the public good. He may 'do as well as consent.' He may complain of any public or private grievance; and propound reme-

[1] Whitelocke, II. 294.

dies. He may present petitions for others; or offer bills for repealing or altering old laws, or for making new ones." [1]

726. Such is the general nature of the powers and functions of the individual members of a legislative assembly as admitted both in England and in this country. But a right has been asserted and contended for in England, as well as here, on the part of the immediate constituents of members, to give directions or instructions to their respresentatives, how they shall proceed and vote in reference to particular topics or questions. The right of instruction, as it is called, appears to have been generally admitted in England, and obedience rendered accordingly, by individual members to whom instructions have been addressed; [2] but obedience has been sometimes refused; and the right itself denied, by writers on political and parliamentary law, as absolutely binding upon the acts and votes of members. The doctrine on this subject, as generally if not universally admitted in England, is thus stated by Mr. Speaker Onslow: — "Every member, as soon as he is chosen, becomes a representative of the whole body of the commons, without any distinction of the place from whence he is sent to parliament. Instructions, therefore, from particular constituents to their own members, are or can be only of information, advice, and recommendation, (which they have an undoubted right to offer, if done decently; and which ought to be respectfully received and well considered,) but are not absolutely binding upon votes, and actings, and conscience, in parliament." [3]

727. In this country, the right of instruction has been contended for, on the one hand, independent of constitutional provision, and, on the other, has been denied to exist, even where it is expressly conferred, in any other sense, than as declaring the right of constituents to make known their views and wishes to their representatives. Both propositions are equally untenable. A right of instruction, to which the duty of obedience is not correlative, is entirely inconsistent with the constitution and functions of an independent, sovereign legislative power; and it is equally impossible to suppose that the right of instruction is restricted, in those of the constitutions in which it is declared, to signify a mere expression of opinion, on the part of constituents, with which representatives are at liberty to

[1] Whitelocke, II. 181.

[2] Commons Debates, XIII. 15, 115; Same, XIV. 1; Parl. Reg. III. 216, 228, 399; Same, XVII. 254, 255, 256; Same, XXI. 282, 283; Same, X. (2) 159; Same, XII. (2) 331.

[3] Hatsell, II. 76, n. See also Blackstone's Comm. I. 159; Fourth Inst. 14; Sydney on Government, § 44, p. 451.

comply or not at their pleasure. It may be stated, therefore, in regard to the right of instruction in this country, that it exists only in those States in which it is expressly reserved by constitutional provision; and that where it so exists, it is an absolute right, to be implicitly obeyed, when exercised, so far as it is authoritatively expressed.[1]

728. Where the right of instruction exists by constitutional provision,[2] or is admitted as obligatory, it is important to ascertain in what manner it may be exercised, for which a few remarks will be sufficient. In the first place, if the constituency is a municipal corporation, competent to express itself by a corporate act, that is clearly the only authentic mode of giving binding instructions to its representatives; so if the constituency is a sovereign State, as is the case with reference to the senate of the United States, it can only give binding instructions by means of a legislative act, passed in the ordinary form. If the constituency is not a municipal corporation, as is the case with the greater number of districts for the election of representatives in the congress of the United States, there is no other mode of instructing their representatives than by the signatures of individuals, or by their attendance at a public meeting called for the purpose. In a case of this kind, the member, to whom the instructions are addressed, must determine for himself, whether they express the opinions of a majority of the constituency, (for no smaller number certainly can be competent to instruct,) and, therefore, whether they are to be implicitly obeyed, or only respectfully considered. Lastly, if the instructions are sufficiently expressed, and the obligation of obedience exists or is recognized, the member addressed has no alternative but to obey, and cannot relieve himself from his obligation by resigning his seat; a proceeding which, in most cases, would as effectually destroy the right of instruction as direct disobedience.

729. It is the right of every member of a legislative assembly, and essential to the proper transaction of the business, to have the orders of the assembly enforced without delay or debate when infringed. The orders may be waived or suspended in virtue of a rule or vote to that effect, but whilst they remain in force, every

[1] See, on the right of instruction, Lieber's Political Ethics, Part II. Book VII.; American Review, (1812,) IV. 137.

[2] The right of instruction is recognized in the constitutions of Maine, New Hampshire, Vermont, Massachusetts, Tennessee, Ohio, Indiana, Illinois, Michigan, Arkansas, and California. Whether and to what extent, it is admitted as obligatory, in the other States, in the constitutions of which it is not inserted, is not known to the writer.

member may require their observance. A frequent example of the practical assertion of this right occurs in the British parliament when the house is cleared of strangers. It is a standing rule of both houses, that strangers shall not be present in the house when it is sitting, and that all persons offending against this order shall be taken into custody. Notwithstanding this rule, strangers are constantly present, and accommodations are even provided for them. But this infraction of the rule takes place merely by sufferance; it is not even by the indulgence of the house; strangers are not supposed to be present, until their presence is noticed by some member; but when this is the case, and the infraction of the rule becomes officially apparent, it must be enforced, without delay or debate, upon the demand of any member. So, if a stranger should happen to be counted with one side, on a division, if any member requires it, there must be a new division. So, when a motion has been made, seconded, and proposed by the speaker as a question, it must be decided by the house, according to the rule of order, and the mover is not at liberty to withdraw it, so long as any member insists upon its being put. It may be said, therefore, that when a thing can only be done by general consent, every individual member may prevent it from being done, by interposing an objection.

730. It may be inferred, from what has been previously stated, not only that the members of a legislative assembly are perfectly equal among themselves, but that each had a right to participate in all the proceedings of the assembly to which he belongs. This principle admits in this country of three exceptions, first, in the case of those presiding officers, who preside in virtue of some other office to which they are elected or appointed, and who only participate in the proceedings of the assemblies over which they preside, by presiding and giving a casting vote therein; secondly, in the case of members under arrest or otherwise suspended from their functions, and, thirdly, in the case of those members of the house of representatives in congress, who, under the name of delegates, are elected by and represent territories which are not yet organized as States.[1]

[1] These exceptions have been already sufficiently considered; see ante, § 280, 281, 282.

CHAPTER SECOND.

OF THE RELATION OF THE DIFFERENT BRANCHES OF THE LEGISLATIVE DEPARTMENT TO ONE ANOTHER.

731. According to the constitution of parliament, as above delineated, and of those of other similarly constituted legislative bodies, two principles evidently lie at the foundation of all its proceedings, namely, that the concurrence of each of the branches of which it is composed is necessary to the doing of every legislative act; and that, in coming to such agreement or concurrence each of the several branches is entitled to proceed with entire freedom, and in perfect independence of both the others. From these two principles, it follows, first, that each of the three branches should do every thing in its power to promote, and should refrain from every thing that might prevent a good correspondence and harmony between the several branches; second, that each should do all in its power to facilitate the proceeding of the others, in a parliamentary way; and, third, that each should abstain from all such interference with the proceedings of the others, as may tend to injure their freedom and independence, by exerting any undue influence upon them in respect to any pending measure. These principles are equally applicable to the legislative assemblies of this country. The topics thus suggested will form the subject of the three following sections.

SECTION I. OF THE GOOD CORRESPONDENCE AND HARMONY WHICH OUGHT TO PREVAIL BETWEEN THE DIFFERENT BRANCHES.

732. In order to the efficient action of parliament, as a collective body, to which the concurrence of all its members is necessary, nothing is or can be more essential than the existence of harmony and a good correspondence among the several branches. In order to insure these desirable objects, it is necessary that each branch should on all occasions pursue the accustomed methods of proceeding, and observe the usual ceremonies in whatever communications take place between the several branches; that they should respectively abstain from every proceeding inconsistent with the legisla-

tive prerogatives of the crown, or the privileges of either house; that the members of the two houses should respectively abstain from all offensive and unparliamentary remarks, either in debate or in any other parliamentary proceeding, of or towards the other or its members, or towards the executive; and that the two houses should extend to each other and their members respectively all the accustomed courtesies and civilities, which are due from one equal to another.

733. If either of the two branches has any ground to complain of the proceedings of the other, for any of the causes above mentioned, the course of proceeding is to make a representation of the matter of the complaint by means of a conference, and to leave to the other house to do what it thinks proper in the premises; as neither house has any power over the other or its members, except that which results from the justice of its demands, and the proper temper and spirit with which they are made. It may be added, as essential to a good correspondence between the several branches, that, when a member, officer, or servant of either, has been guilty of any offence either against the other house, or against its members, which would be punishable by the latter if committed by one of its own members, officers, or servants, it is the duty of the house to which such offender belongs, upon being apprised of the fact, to take proper measures to inquire into and punish the offence in a proper manner.

SECTION II. OF THE DUTY OF EACH BRANCH TO FACILITATE THE PROCEEDINGS OF THE OTHERS.

734. In the course of the proceedings in one house, it frequently becomes necessary to have the attendance of the members or officers of the other as witnesses, or to obtain a knowledge of its proceedings, or to have the evidence of some one in its custody. In all such cases, the former, as it cannot command, or exercise any power, makes its request to the latter; and, accordingly, whenever any such request is made in a parliamentary manner, it is the duty of the house so applied to, to grant the request.

735. The attendance of the members or officers or persons in the custody of one house, in the other, as witnesses, will be treated of in connection with that of witnesses generally. In regard to the communication of documentary evidence, upon which bills or other measures, agreed to in one house and sent to the other for concur-

rence, is founded, it is not the custom [1] to transmit it with the bill, but if the house to which the bill is sent desire to have it, that house sends to the other house for it, which transmits it accordingly. This proceeding may take place either by message, or by conference; which latter is the more proper mode. In this country, it is believed to be the practice, generally, to transmit the evidence, in the first instance.

736. If either house of parliament desires to know what takes place in the other, with reference to any particular measure, the information can be obtained (a committee being appointed for the purpose) from the votes and proceedings, which are now printed and distributed from day to day in both houses.[2] Formerly, if the house of commons had occasion and desired to know the proceedings of the house of lords, in which the votes were not printed at all, and the journals not until some time after the termination of the session, the course was to appoint a committee to search the lord's journals, with reference to the matter in question, and to report the proceedings to the house.[3] The journals of the lords being a record to which every one may resort for information, the committee of the commons had a right to make such inspection, and it was of course the duty of the clerk or officer having the custody of the journals, or of the minutes from which the journals were to be made up, to afford the committee the needful facilities to accomplish their mission. In modern times, the proceedings of the two houses of the British parliament, as well as those of our legislative assemblies, are practically so far public, that what is done in one branch, with reference to any parliamentary matter, is commonly sufficiently known in the other without searching the journals of the former.

SECTION III. OF THE INTERFERENCE OF ANY OF THE BRANCHES IN THE PROCEEDINGS OF THE OTHERS.

737. As it is highly expedient, for the due preservation of the privileges of the separate branches of the legislature, that neither should encroach upon the other; it is equally important that neither should interfere in any matter depending in the other, so as to preclude, or even influence, that freedom of debate or of action, which is essential to a free council; and, therefore, neither the king, nor lords, nor commons, are to take notice of any bills, or other matters

[1] Sometimes it appears to be sent; Parl. Reg. (2.) XVIII. 27, 30, 33.

[2] May, 198, 200.

[3] See Hatsell, III. 32, 33.

depending, or of votes that have been given, or of speeches that have been made, by the members of either of the other branches, until such proceedings have been communicated to them in the usual and parliamentary manner.[1]

738. For the same reason, it is irregular and disorderly for a member to make use of the name of the sovereign in debate, for the purpose of influencing the decision of the house. In this country, it is equally irregular and disorderly to allude to the executive department, for the same purpose, even in those States where the executive has no veto power.

739. So it is unparliamentary, in one house, to inform the other, to which a bill or other measure is sent for concurrence, by what majority it passed in that branch; though where a bill passes by an unanimous vote, in which case the fact appears in the indorsement by the clerk, it is not considered irregular thus to notify the house to which it is sent of the fact.[2] So it is equally irregular in the house, from which a bill or other measure is sent for concurrence, to call on the house to which it is sent to be informed of the reasons, why that house has proceeded in the particular manner, in which it has proceeded, or why it has not proceeded at all.

740. But, it is no improper interference for one house to remind the other of bills which have been sent to it for concurrence; or for one house to request the other to remain sitting, in order that the first may have an opportunity to send a message to it; both which proceedings are of frequent occurrence.

CHAPTER THIRD.

OF THE EVIDENCE AND INFORMATION ON WHICH PARLIAMENTARY PROCEEDINGS ARE FOUNDED.

741. This chapter will treat, in the first place, of the nature and applicability of the evidence, upon which a parliamentary proceeding is grounded; and, secondly, of some particular kinds of evidence which are much in use in legislative assemblies. The latter consist

[1] Hatsell, II. 356.

[2] Parl. Reg. XV. 238.

mainly of the evidence of common fame, and of the statements of members.

SECTION I. OF THE NATURE OF THE EVIDENCE UPON WHICH A PARLIAMENTARY PROCEEDING MAY BE FOUNDED.

742. The proceedings of a legislative assembly frequently render it necessary to institute inquiries into matters-of-fact, and, of course, to receive and judge of the various kinds of evidence upon which human conduct is predicated, and which may be submitted to its consideration. In the every-day affairs of life, and in reference to matters in which their own interests are alone involved, men act upon every kind of evidence, which has any even the slightest tendency to induce belief. But in regard to affairs in which parties are adversely interested, and in which there are conflicting rights and claims to be adjusted, the law has wisely provided, that only such evidence shall be received, and under such circumstances as shall afford reasonable security both against designed falsification and unintentional mistake. Between the highest kind of this evidence, and the lowest of that before alluded to, there is of course an infinite diversity of degrees of proof, ranging from the one extreme to the other; all of which are receivable and entitled to consideration in parliamentary proceedings, according to the nature of the subject-matter, to which the evidence is to be applied.[1]

SECTION II. HOW THE DIFFERENT KINDS OF EVIDENCE ARE APPLICABLE.

743. The rules of evidence by which courts of justice are governed, and by which their proceedings are regulated, in the investigation of the cases which come before them, make a part of the civil right of the citizens, as much as the rules regulating the acquisition, the enjoyment, or the transmission of property, or which govern any other matter of civil right; and, when a question of the same nature is pending in the legislature, involving private interests only, no good reason can be assigned why the rules of evidence should not be the same. It would seem reasonable therefore to regard it as a rule of parliamentary practice, that when the private interests of individuals are the subject of investigation, or, in other

[1] See also Cong. Globe, XVIII. 653.

words, where the investigation is a judicial one, and so far as it is of that character, the same or analogous rules of evidence should be applied, as would be observed in the investigation of similar interests in any of the courts of law or equity; and this appears to be the rule, which has prevailed in modern times. On the occasion of what is called the Queen's trial, which took place on a bill of pains and penalties pending in the house of lords,[1] the rules of evidence were strictly observed.[2]

744. Where the subject under investigation is not of a judicial nature, no other rule can be given as to the kind or degree of evidence to be required, than that it should be such as to satisfy the mind and conscience of individual members, and afford them sufficient ground for belief and action, in reference to their own private affairs.

SECTION III. OF THE EVIDENCE OF COMMON FAME.

745. In the earlier periods of parliamentary history, when it was more common than it has since been to institute inquiries into the conduct of high officers of state, the evidence of common fame or report was admitted, as sufficient ground for an inquiry, though not for a condemnation; provided it "was a general report or voice of neighborhood," and not a mere "rumor which is a particular assertion from an uncertain author;" and provided also that it was not a "reputation or fame upon a generality" but "upon a particular specification."[3] The evidence of common fame, thus defined and restricted, seems proper to be received for the purpose merely of founding an inquiry upon it; and such seems to be the effect which has been attributed to it in more recent times.

SECTION IV. OF THE STATEMENTS OF MEMBERS.

746. The other source of evidence, to which allusion was made, is the statements of members, not as witnesses, but as members, and upon their responsibility as such. These statements are always received as worthy of credit, and are acted upon accordingly when uncontradicted.[4] What a member states of his own knowledge is of course entitled to at least as much credit as if it came from

[1] Broderip & Bingham, II. 287.
[2] Hans. (1) VII. 518, 519.
[3] Whitelocke, I. 471.
[4] Hans. (1) XII. 655.

the mouth of a witness, but the statements of members are not confined to matters and things within their own knowledge; whatever they have derived from other sources they are equally at liberty to state; and it is for the house to judge, in each particular case, what credit is due to the statement; it is not always to be received merely because it comes from a member; neither is it to be rejected because it is the opinion or judgment of a member formed upon exterior evidence, and not a matter within his own personal knowledge. The statements of members are constantly received and acted upon in a great variety of cases. In making statements, which are to be acted upon, members are responsible to the house, and liable to censure and punishment for any culpable misrepresentation.

SECTION V. OF OTHER SOURCES OF EVIDENCE.

747. In addition to what may properly be called evidence, namely, that which is obtained by means of an inquiry instituted by the house, or brought forward by a party, all the information of every description, which, in any way, comes into the possession of the house, may be regarded as evidence. Messages from the executive, either at the commencement or in the course of the session, — documents from the same source, — returns from public officers or commissioners, either in pursuance of law, or of the orders of the house, — constitute evidence upon which legislative proceedings may be founded. In regard to the credit which may be due to evidence of this sort, no general rule can be given. The house must judge in each individual case.

748. It frequently happens, that documents received by one house from extraneous sources, are communicated to the other, either at its request, or voluntarily on the part of the former. Such papers are, of course, to be judged of by the house to which they are sent, according to their nature, and to the source from which they emanate; they derive no additional weight from the medium through which they come.

749. The minutes of the evidence taken by one house, upon which a bill or other measure sent to the other for concurrence is founded, are not unfrequently sent to the latter, either with the bill or measure in question, or at the request of that house. In the latter case, the minutes so sent become evidence in the house to which they are sent; in the latter, they are looked upon not as

evidence which may be read and considered as such, but only in the light of an index or memorandum of the names of witnesses, and of the statements made by them, to assist the house in its examination.[1]

750. To the head of information, introduced for the purpose of aiding the house in its deliberations, belong the inquiries, which are allowed to be put to and answered by ministers, in reference to matters of public interest. By the practice of both houses, members are allowed to put questions 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. 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. The answer should, in the same manner, be confined to the points contained in the question, with such explanations only, as will render the answer intelligible.[2] This topic will be explained more at length hereafter.

CHAPTER FOURTH.

OF THE FORMS IN WHICH THE POWER OF LEGISLATION IS EXERCISED BY A LEGISLATIVE ASSEMBLY.

751. It is only those functions of the three branches of parliament, which are exercised in the way of legislation, — that is, which terminate in the form of acts of parliament passed by the concurrent agreement of the two houses, and assented to by the crown, — that there is any present occasion to notice. The strictly judicial functions of each house, exercised independently and exclusively of the other, so far as they are branches of a legislative body, have already been treated of, under the head of incidental powers. The judicial functions of the house of lords, as a court of error and appeal, do not fall within the purposes of this work. The proceeding by impeachment, which belongs to the two branches as the sovereign legislative power, though not conducted

[1] Parl. Reg. (2) XVIII. 27, 30, 33. [2] May, 195.

according to the forms of legislation, will be treated of in another place. At present, then, the inquiry relates only to those functions which are strictly legislative in point of form.

752. In this country a form of legislative act is much in use, denominated a joint resolution, or more commonly, perhaps, a resolve; which, in fact, is only another name for bill or act.[1] A resolve, though the line which separates a legislative act of the kind from a bill properly so called, cannot be accurately discriminated, is the form generally adopted in this country, when administrative, local, or temporary laws are to be passed. In what follows, in this chapter, resolves or joint resolutions as such do not require to be separately noticed.

SECTION I. CLASSIFICATION AND DESCRIPTION OF THE DIFFERENT KINDS OF BILLS.

753. There are two modes of classifying acts of parliament, or bills, as they are technically called, before they have received the royal assent; the one founded in the extent, the other in the nature, of their operation. According to the first division, bills are either public or private; according to the second, they may be termed legislative or judicial. Besides these, there are other modes, in which bills are designated, which are not at present material to be explained. The first-mentioned distinctions, as they have an important bearing upon the forms of proceeding, require to be briefly considered.

754. A *public* bill is one which operates upon some subject or measure of public policy in which the whole community is interested.[2] A *private* bill is one which is for the particular interest or benefit of some person or persons, whether an individual or a number of individuals, a public company or corporation, a parish, city, county, or other locality having not a legal but a popular name only.[3] In strictness, a private bill is one which, as regards the interest of the parties, is exceptional to the general law, so far as the particular subject of it is concerned; or which makes, or allows the parties to make, other and different arrangements, in reference to some particular matter, than would be authorized or allowed by the general law. A bill, which is purely *legislative* in its character, is one which provides prospectively for the regulation

[1] J. of H. 20th Cong. 1st Sess. 816; J. of H. 32d Cong. 1st Sess. 679.

[2] May, 486.

[3] May, 486.

and conduct of some matter of public or private concern, of general or local application. A bill purely *judicial* in its character is retrospective in its operation; having for its object the settling and adjusting of some matter of conflicting right or interest between individuals, or between the public and an individual, or the trying of a party for some public offence.[1]

755. These different kinds of bills, though susceptible of being accurately discriminated one from another, very seldom occur in their pure and distinct character. A public bill is very often purely of that character, or combined at the same time with the legislative; but one may nevertheless partake (and this occasionally happens) both of the character of the private and of the judicial. A private bill is seldom exclusively so; but is almost always in part judicial and to a certain extent public, that is, involving interests which are of general concern. A judicial bill always necessarily affects the interests of the parties concerned, and is so far private; while, at the same time, the interests of the public are concerned, in a greater or less degree, and, as a precedent for the future, it may be considered as legislative. A legislative bill, providing a law for the future, and affecting no interests in being at the time, is not of frequent occurrence. A bill affecting, or which may affect, all the citizens indiscriminately, is purely public; if it provides a code of general laws, to take effect at a future time, and contains a saving of all existing rights or interests, it is also purely legislative. A bill by which a foreigner is naturalized, — by which an individual is authorized to change his name, — or by which the tenure of an estate in which no one is interested but the proprietor is changed, — may be regarded as a private bill, without being judicial or legislative, and (the public interest being so remote as to be practically nothing) without being public in its character. A bill, which takes cognizance of and adjusts a private controversy, is judicial and private, but neither public nor legislative. A bill, which convicts an individual of an offence and inflicts punishment on him, is judicial, as it tries and punishes an offender, — private, as it affects the party concerned, — public, so far as the offence is of a public character and involving the interests of the whole community, — and legislative, as it establishes or may establish a precedent for the future.

756. It may be useful to indicate in what manner and to what extent the proceedings of a legislative body should be affected,

[1] See *Peyton* v. *Smith*, McCord's Reports, IV. 476; McCord, II. 440.

according as a measure before it is regarded as belonging to one or another of these different classes. A purely legislative measure, affecting no present interests, and entirely prospective in its operation, may, to a certain extent, be regarded as an abstract proposition, and be determined upon higher and more general principles, than a measure merely public, affecting the present interests of the whole community, which must consequently be taken into consideration. Before passing a private bill, the consent of the party or parties is essential; and, before proceeding with a judicial measure, the parties interested are entitled to notice and a hearing if they desire it. It will be seen, that, according to the course of proceedings in parliament, these principles are recognized and established, so far as they are susceptible of being reduced to practical rules. In practice, as bills seldom or never belong exclusively to any one of the classes above-mentioned, they take their distinctive appellations from the character which predominates; the usual division being into public, private, and judicial; the rules and course of proceeding applicable to which will now be briefly stated.

1. *Public Bills.*

757. In passing bills of this description, parliament acts strictly (though not always exclusively) in its legislative capacity. As the sovereign legislative power, it originates all those measures, which, in its judgment, appear to be demanded by or conducive to the public good; it undertakes and conducts all such inquiries as may be necessary to obtain for it the information which it needs; and it enacts laws, with reference to such measures, and upon such information, according to its own wisdom and judgment. The forms, in which its deliberations are conducted, are established principally and primarily for its own convenience; its proceedings are independent for the most part, of individual parties; persons interested, or deeming themselves so, may indeed bring their wishes and opinions to the knowledge of parliament by means of petitions, and, in peculiar cases, may be heard; but individual parties do not ordinarily participate in the conducting of the business, nor are they, as parties, supposed to have, or entitled to have, any immediate influence upon the judgment of parliament.[1]

[1] May, 487, 488

2. *Private Bills.*

758. It being rarely the case, as already remarked, that a private bill is not also at the same time to some extent judicial, — inasmuch as that which is for the particular benefit of some persons may be injurious to others, — it is almost always necessary in proceeding upon private bills, to discriminate between the conflicting interests of different parties. In passing private bills, therefore, the proceedings of parliament, though legislative in point of form, 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; if the parties do not sustain the bill in its progress, by following every regulation and form prescribed, it is not forwarded or suffered to proceed, by the house in which it is pending; if the parties abandon it, and no other parties undertake its support, the bill is lost, however sensible the house may be of its value. The analogy, which all these circumstances bear to the proceedings of a court of justice, is further supported by the payment of fees, which is required of every party promoting or opposing a private bill, or desiring or opposing any particular provision, and also by the employment of parliamentary agents, by whom every private bill is solicited. Courts of equity, also, look upon the solicitation of a bill in parliament in the light of an ordinary suit, and will in a proper case restrain the promoters by injunction from proceeding with, or petitioners against from opposing. 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; yet, if parliament apprehends that it will be hurtful to the community, it is rejected as if it were a public measure, or qualified by restrictive enactments, not solicited by the parties.[1] The same principles prevail, to a greater or less extent, in the practice of our legislative assemblies.

[1] May, 488, 489.

3. *Judicial Bills.*

759. The terms public and private are in common use, in parliamentary proceedings, to denote the two kinds of bills above mentioned. The term *judicial* has been adopted to designate a class of bills equally distinct and specific in its character; embracing in a civil sense, among others already alluded to, all bills founded on a claim of right against the government, as for a debt, and in a criminal sense, bills of attainder, of pains and penalties, and disqualifying and disabling bills. The great principle, to be observed in proceeding upon this description of bills, both civil and criminal, is, that the parties interested are to have an opportunity to be heard, if they desire it, in as full and ample a manner as if their cause was on trial in a court of justice.

760. The power of parliament, to punish offenders by statute, belongs to the highest attributes of sovereignty. In passing bills for this purpose, the proceedings are the same as 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. The two houses are thus judges of equal jurisdiction and responsibility; and a conviction and consequent punishment can only take place by the concurrent act of the three branches of parliament. In these proceedings the prosecution is conducted, on the part of the government, by counsel and witnesses, and the parties against whom they are directed are admitted to defend themselves by counsel and witnesses; that is, a solemn trial takes place, or may take place, in each house. In both houses, the members decide as well upon the law as the fact; but in the house of lords, the judges are in attendance to give their opinion and advice as to matters of law. In modern times, trials of this description have been conducted in a manner analogous to the proceedings in a court of justice; the ordinary rules of evidence observed in courts of justice have been strictly adhered to; and the utmost solicitude has been manifested, that the parties implicated should be fully heard and fairly tried.[1] In evil times, this power has been perverted and abused; and, at all times, it cannot but be regarded with great jealousy.[2] The American constitutions, gener-

[1] The most remarkable instance of this mode of proceeding, in modern times, is *The Queen's Case*, Broderip & Bingham's Reports, II. 287.

[2] May, 484, 485.

ally, contain express prohibitions, restraining the legislature from the exercise of this power.

SECTION II. OF CERTAIN CLASSES OF LAWS WHICH ARE WITHHELD FROM THE LEGISLATIVE AUTHORITY, OR REGULATED, BY CONSTITUTIONAL PROVISIONS.

761. In the constitutions of the United States and of the several States, there are various provisions, by which legislative bodies are prohibited from passing laws, with reference to particular topics; and besides these they also contain prohibitions with reference to certain classes of laws, which it is proposed to notice.

762. In the constitution of the United States, there are two provisions of this description, first, a provision, prohibiting congress from passing bills of attainder, and *ex post facto* laws; and secondly, a provision, prohibiting the several States from passing bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts.

763. The constitutions of the several States contain similar prohibitions, which may all be arranged in the following classes, namely, 1. Bills of attainder, of pains and penalties, and declaring guilty of treason or felony; 2. *Ex post facto* laws; 3. Laws impairing the obligation of contracts; and, 4. Retrospective laws.

764. I. *Bills of attainder.* Some of the constitutions prohibit the passing of bills of attainder generally. In England, when sentence of death is passed upon a person who is convicted of an offence, he is said to be attainted, that is, stained and rendered infamous. Bills of attainder are therefore such as convict the party, against whom they are directed, and at the same time, sentence him to the punishment of death therefor, and, which are followed by a loss of the power of transmitting real estate to his heirs, and a forfeiture of both real and personal estate. This is supposed to be the strict sense of the terms, *bill of attainder.*

765. In some of the constitutions, the prohibition is, that no person shall be attainted of treason or felony by the legislature. This seems to confine the prohibition, in terms, to cases of the description of treason or felony, according to the existing laws, and to leave the legislative bodies at liberty, unless restrained by some other provision, to pass bills of attainder with reference to other offences.

766. In other States, the provision is that no person shall be declared, by the legislature, guilty of treason or felony. The pur-

pose of this provision was doubtless the same with the last mentioned; but a different construction is possible; inasmuch, as it might be said, that attainting implied the punishment of death, and that declaring a party guilty of treason or felony did not; and thus this provision might receive a broader meaning than the former.

767. Bills of pains and penalties are such as declare a person guilty of some offence, not punishable with death, and prescribe the punishment to be inflicted therefor. Laws of this description do not appear to be within the prohibition as to bills of attainder, and unless restrained by some other prohibition a legislative body might enact such.

768. Various other constitutional provisions exist, which might restrain the power of the legislature to pass bills of this description, such as the separation of the judicial, legislative, and executive functions; and perhaps they would be held so utterly at variance with the spirit of our government and institutions as not to be considered within the ordinary powers of a legislative body. At all events, the occasions must be extremely rare, on which there is likely to be any call for legislation of this sort.

769. II. *Ex post facto* laws. These terms are sometimes used to denote retrospective laws, but, in strictness, they embrace only such as inflict punishment for acts, which, at the time they were done, were not legally punishable. The constitution of Massachusetts does not use the term *ex post facto*, but language descriptive of such laws, namely: "Laws made to punish for actions done before the existence of such laws, and which have not been declared criminal by previous laws." In Maryland, North Carolina, and Tennessee, the constitutions first describe *ex post facto* laws, in the sense above explained, and then prohibit them in express terms.

770. III. Laws impairing the obligation of contracts. This branch of legislation opens too wide a subject altogether to be taken up in connection with parliamentary law.

771. IV. Retrospective laws. Several of the State constitutions prohibit the passing of laws of this description in general terms. In New Hampshire, the provision is, that "because retrospective laws are highly injurious, oppressive, and unjust, no such laws should be made, either for the decision of civil causes, or the punishment of offences." It is not supposed that this adds any thing to the force of the general expression. The term *retrospective* applies as well to civil as to criminal proceedings, and therefore embraces *ex post facto* laws. Retrospective laws have been reprobated as

unjust, but, unless expressly forbidden by some constitutional provision, they appear to be in the power of a legislative body to pass.

772. Besides these and other constitutional provisions, which withdraw certain subjects altogether from ordinary legislative action, there are also others, which relate to the form or course of proceeding on particular classes of bills. In the former case, the court, which decides upon the constitutionality of every act, judges of it by what appears upon its face. In the latter, the court must first decide whether the act in question belongs to a particular class; and, secondly, whether the requisite forms have been pursued. This subject will be further considered in connection with the forms of proceeding in the passing of bills.

CHAPTER FIFTH.

OF THE RULES OR LAWS BY WHICH THE PROCEEDINGS OF A LEGISLATIVE ASSEMBLY ARE REGULATED.

SECTION I. GENERAL VIEW OF THE FORMS AND RULES OF PROCEEDING.

773. The business of every court or tribunal, which is of a permanent character, and whose functions are set in motion upon applications made to it from without, is regulated by settled forms and methods, which constitute what is called the style or practice of the particular court. Rules of this description, which prescribe the terms, conditions, and modes of proceeding, between the tribunal and those who resort to it for the exercise of its functions, make a part of the law of the land, and are binding upon the tribunal itself until abrogated or modified.

774. But besides the external business of the court, there are also deliberations, consultations, and debates, among its members, (where it is composed of more than a single individual,) in forming the judgments which it promulgates; and these proceedings, even when of the simplest character, require nevertheless to be conducted in a greater or less degree according to settled methods and

forms. The rules, by which these internal proceedings are regulated, are of a different nature from the former; they do not, strictly speaking, form a part of the practice of the court; they are the law of the members of which it consists; and they may not only be abrogated or repealed, but dispensed with or disregarded, at its pleasure. In all courts, tribunals, councils, and official boards of every description consisting of several members, both these systems are in use; the one or the other predominating, according to the nature of the functions exercised by each particular body. In judicial courts the rules of proceedings relate more to the external, in legislative bodies more to the internal, course of business. The laws, by which the proceedings of legislative assemblies are regulated, and which are now to be considered, belong to both classes, but chiefly to the latter.

775. If a deliberative body is composed of but few members, it will have little occasion for rules to govern its internal proceedings, whatever may be the nature or extent of its powers; if its powers are limited, and in proportion as they are limited, it will have as little occasion for rules of proceeding, however great its numbers may be; if its numbers are considerable, and its powers extensive, settled rules and methods of proceeding are indispensable to a proper discharge of its functions. A committee of three or five members is an example of the first kind of deliberative body; a grand-jury, though not a numerous body, furnishes a good example of the second; the two houses of the British parliament, and the legislative assemblies of the United States, belong to the third.

776. It is highly important to the preservation of order, decency, and regularity, in a numerous assembly, and not less essential to its power of harmonious and efficient action, that its proceedings should be regulated by established forms and methods; and, with a view to these purposes, it is more material, perhaps, that there should be rules established, than that they should be founded upon the firmest basis of reason and argument;[1] the great object being to effect a uniformity of proceeding in the business of the assembly, securing it at once against the caprice of the presiding officer, and the captious disputes of members. It is to the observance of regularity and order among the members, that the minority look for protection against the power of the majority;[2] and in the adherence to established forms, between the different branches, that each finds its security against the encroachments of the others.[3]

[1] Hatsell, II. 207, 208. [2] Parl. Reg. XLVI. 28. [3] Hatsell, III. 25, note.

SECTION II. SOURCES OF PARLIAMENTARY RULES.

777. The forms and methods of proceeding in the British parliament, — especially those which prevail in the house of commons, which has served as a model for most of the legislative assemblies of the present day, — are the fruit of more than two centuries of the wisdom and experience of that celebrated body. They are founded partly in usages which are nowhere recorded in express terms on the journals, but are constantly recognized and practised upon, as, for example, the rule that a bill, before passing, is to be read three times on three several days; partly in resolutions and precedents of proceedings which are considered as declaratory of the law and usage of parliament; partly in orders made from time to time for the purpose of regulating the proceedings; and partly in statutes or acts of parliament.

I. *Usages.*

778. The usages of parliament, by which is here intended the constant and usual method of proceeding, when not declared in any more direct or specific manner, are to be collected from the entries in the journals; from the history of parliamentary proceedings; from the treatises on parliamentary practice that have been published from time to time; and from the observations of experienced members, and the remarks of the speakers in the house of commons, with relation to the forms and methods of proceedings, as contained in the published debates. There are doubtless many points, especially of modern practice, which can only be known by personal experience or observation. This is no inconsiderable source of parliamentary law in this country.

II. *Resolutions.*

779. Resolutions or declarations, entered in the journal, expressive of the opinion of the house relative to its rules or usages, constitute another source of parliamentary practice, of equal if not superior authority with that already mentioned. An example of this kind occurs in an entry in the journals of the commons, under date of January 5, 1640, which is the only written evidence of the number of members necessary to form a quorum of that house,

namely: — "It was declared as a constant rule, that Mr. Speaker is not to go to his chair, till there be at least forty in the house."[1] Entries of a similar character are not unfrequent in the earlier journals. Sometimes a declaration of the rule takes place with reference to a question then pending, and for the purpose of deciding it; as, for example, where a petition was presented and read and the petitioners, on being called in, made a statement relative to the manner in which the petition was signed, on which a debate arose "touching the manner how petitions ought to be signed," the house resolved, "that the petitions presented to the house ought to be signed by the petitioners, with their own hands, by their names or marks."[2]

III. *Precedents.*

780. Precedents, though coming under the general head of usage, in its broadest signification, are nevertheless distinguishable from the sort of usages above spoken of; the former being only the occasional proceedings, the latter the constant and daily practice of parliament. Precedents, in parliamentary proceedings, have been established in substantially the same manner, and are regarded with equal respect, as those which have been established by the practice of the judicial courts. When any new case occurs, for which the anterior practice of parliament furnishes no rule of proceeding, the usual course is to settle it upon a careful consideration of analogous cases, if any have occurred, and it then becomes a precedent for future proceedings. If the circumstances of the case are so peculiar that a proceeding ought not to be regarded as a precedent; or, if, for any other cause, the house is unwilling that it should be so regarded, the usage is to make an entry on the journal, that what has thus been done is not to be drawn into precedent. The journals contain many entries of this sort.

781. It is the constant practice, also, on the occurrence of a new point of parliamentary practice, for the house to suspend its proceeding upon the matter out of which it arises, and, in the mean time, to appoint a committee to search the journals for precedents of "what hath been done in like cases," and, upon their report, to settle the point, either by a distinct resolution declaratory of the law and usage of parliament, or by the form of its proceeding upon the matter in question. If the report of the committee is, that it finds no precedents, the question must be settled, as already sug-

[1] Comm. Jour. II. 63. [2] Comm. Jour. X. 285.

gested; if it reports a series of precedents on both sides, it is for the house to decide which is the most worthy of its deliberate sanction; if the precedents are found to be uniform, this, of course, settles the question.

782. Another and a frequent course, when a question of practice arises, is, to move for the reading of proceedings from the journals, in analogous cases, and thereupon to come to a decision, without the delay of a committee to search for precedents. The advantage of the latter mode is, that it enables the house to see the precedents on both sides, if the practice has not been uniform; whereas the former only presents those cases, which can be brought to mind at the moment, or which may have been carefully selected for the particular purpose.[1]

783. The value of precedents must depend, of course, partly upon the character of the proceedings to which they belong; partly upon that of the assembly by which they are established; and partly upon that of the times in which they occur. Some parliaments have been more observant than others of what belongs to regularity of proceeding; some have carried their privileges to a much greater extent than would now be considered warrantable; some have been occupied rather with administrative than with legislative functions. Mr. Hatsell rejects as precedents all the proceedings in both houses, from the 4th of January, 1641, (when the king, Charles I., went in person to the house of commons, for the purpose of arresting certain members,) to the restoration, on the ground that,[2] "however necessary to protect the State from the return of arbitrary power, and however excusable from the very particular circumstances of the times, or justified by the confusion into which the government was thrown by the conduct of the king, they cannot be considered as precedents to be followed in times of peace and quietness." The value ascribed to precedents, in the parliamentary law of England, is not less in this country; but their existence does not appear to be ascertained in the same formal and solemn manner.[3]

IV. *Orders.*

784. Orders, which constitute a fourth source of the law and practice of parliament, are the rules and regulations, or, in other

[1] Hansard (3), XLV. 505, 506.
[2] Hatsell, I. 223.
[3] See J. of S. III. 332; Ann. of Cong. 4th Cong. 2d Sess. 1777; Reg. of Deb. VI. Part I. 2; Cong. Globe, XI. 133, 140, 238; Same, XV. 529.

words, the by-laws, which have been expressly agreed upon by either house, for the government of its own proceedings. Orders of this description, which are analogous to general laws, must not be confounded with those orders which are constantly made with reference to matters pending in either house, and by means of which the business of the house is carried on. The orders now under consideration may be divided into three kinds: 1. Standing orders; 2. Sessional orders; 3. Occasional orders, or those which are undetermined in regard to their duration.

1. *Standing Orders.*

785. The orders of both houses, which are known by the name of standing orders, are those which they have from time to time agreed to, for the government and regulation of their proceedings, and which they have declared to be standing orders. Orders of this description do not expire with the session or parliament, in which they are made; but endure from one parliament to another, and are of equal force in every succeeding parliament, until vacated, rescinded, or abrogated, by the house in which they are established.[1] A standing order is sometimes made at once, but, not unfrequently, an occasional order or resolution of a previous session or parliament is revived and declared to be a standing order. Thus a resolution of the house of commons of December 11, 1706,[2] "that this house will receive no petition for any sum of money relating to public service, but what is recommended from the crown," was revived June 11, 1713, and declared to be a standing order, and has ever since been observed as such.[3] The system of standing orders, which plays so important a part in the proceedings of the English parliament, has no existence in the legislative assemblies of this country. The nearest approach to it is found in the rules and orders of the senate of the United States, and other similarly constituted bodies. That branch being a permanent body, containing always more than a quorum of its members, and being duly organized, its rules and orders are not renewed from one congress to another.

2. *Sessional Orders.*

786. It has been the practice of the two houses, for a long period, at the commencement of each session, to agree to certain orders

[1] A standing order cannot be dispensed with by one house for a succeeding house. Hans. (3) LV. 14.

[2] Comm. Jour. XV. 211.

[3] Comm. Jour. XVII. 417.

and resolutions, which are regularly renewed in every succeeding session, and which are consequently intended to endure only during the session in which they are made. These orders are known by the name of sessional orders. They relate in part to what may be called the police of the house; and are in part merely subsidiary to the known law and usage of parliament. The sessional orders of the house of commons, which are usually made at the present time relate to the appointment of the committee of privileges; the punishment of false evidence and tampering with witnesses; the time within which election proceedings are to be commenced; the taking of strangers into custody; the keeping of the passages to the house clear of obstruction; the receiving and distributing of letters addressed to members, etc. These are the only permanent orders, which have any existence in this country; and all orders are merely sessional, that is, they last during the session in which they are made, unless otherwise expressed to be made for a longer or shorter time. It is supposed to be competent for a legislative assembly to bind itself, if it thinks fit, for a succeeding session.

3. *Occasional Orders.*

787. Orders of this kind do not differ from standing orders, in any other respect, than that they are binding only during the session at which they are made. If declaratory of a general law or usage of parliament, they are observed as such, after the expiration of the session. If introductory of a new usage, which is found beneficial, they may be declared to be standing orders, or may take the form of sessional orders. The order of the commons first adopted in 1833, for the holding of morning sittings, for private business and petitions, was an occasional order, which was renewed only in the next session, after which the morning sittings were discontinued.

V. *Statutes.*

788. Although it is not in the power of one legislature to make laws which a succeeding legislature shall be bound not to repeal; yet it is nevertheless competent to any legislature if not otherwise restrained, to regulate by statute the future proceedings of the separate branches. The principal regulations, in the house of commons, which are derived from this source, are those which relate to the trial of controverted elections.

789. To the same head of statutory regulations belong those pro-

visions relating to legislative proceedings, which are sometimes inserted in the constitution; as, for example, that every bill shall be read three several times; that certain bills shall not pass but by a certain specific majority; that money bills, or bills for raising a revenue, shall originate in the most popular branch.

790. The foregoing are the several sources of the law and practice of parliament, by which the proceedings of its several branches are regulated. They are of different degrees of authority. A statute regulation supersedes, and cannot be abrogated by, any order of the house to which it applies. An express order of the house, whether standing or occasional, supersedes every mere usage or precedent. In the absence of any express order "what can or ought to be done by either house of parliament, is best known by the custom and proceedings of parliament in former times." [1]

SECTION III. OF THE RULES BY WHICH LEGISLATIVE ASSEMBLIES IN THIS COUNTRY ARE GOVERNED.

791. The sources of parliamentary rules, which have been above described, are the sources of the parliamentary law of this country, as well as that of the British parliament, through which they are derived, but, in different degrees, perhaps, to our legislative assemblies. The ways and methods of parliament, so far as they are applicable, have been adopted in this country; and to these have been added such parliamentary usages of our own, as have been adapted to the wants of legislative assemblies in this country. The latter are strictly analogous to and merely extend the former. These usages lie at the foundation of many of the written rules by which our legislative assemblies are governed, and which are the principal source and depositary of parliamentary law in this country.

792. In the American constitutions it is provided, generally, that each house shall have the right to determine the rules of its own proceedings. No legislative assembly, therefore, can make any rules, which shall be binding upon its successors, even until abrogated or rescinded by them. Hence the system of standing orders is not in use in our legislative bodies; but it is the invariable practice, for each of them, soon after its first meeting and organization, to frame and adopt a code of written rules for the government and regulation of its own proceedings. The rules of the different assem-

[1] Hatsell, IV. 491, note.

blies, throughout the Union, which differ greatly both in numbers and in quantity of business, are, of course, very different; but each is adapted to the peculiar wants and condition of the assembly by which it is formed; and all are founded in and recognize the usages and methods of parliament. The code of rules, which each house thus adopts for itself, commonly undergoes amendments and receives accessions, during the session; and being adopted by each successive house, the system of rules in force in each has attained and preserved an uniform and consistent character, and, in process of time, has grown to considerable size. But though each house may and does determine its rules of procedure, it does not follow, from this principle, that, until it adopts rules, a legislative assembly is entirely destitute of rules for the government of its proceedings. It is, in the mean time, governed by what may be called the common parliamentary law, that is, so much of the usages and methods of parliament, as are of general application, modified by usage and practice in this country.

793. The result of the foregoing considerations is, that, after a legislative assembly meets, and until it adopts rules and orders, it is governed and its proceedings regulated by the common parliamentary law;[1] and that when it has adopted rules and orders of its own, it is governed partly by them, in cases to which they apply; and partly in all cases to which the rules and orders are not applicable, by rules drawn from the common parliamentary law as above explained.[2]

794. But, though it is essential to regularity of proceeding, that a legislative assembly should possess rules and orders for its government, and that every member should have the right to insist upon their observance; yet a member may waive his right, and the assembly itself, on a proper occasion, may dispense with its own rules. Hence it is an established practice, in all our legislative assemblies, to do any matter, or to take any course of proceeding, which is contrary to the rules, provided it is done by general consent, that is, no member interposing an objection. Hence, also, it is an established practice, whether an individual objection is properly interposed or not, for the assembly itself, on a motion and

[1] J. of H. 27th Cong. 1st Sess. 36, 52; Cong. Globe, IV. 99; Cong. Globe, XI. 341.

[2] The 139th rule of the house of representatives in congress provides, that "The rules of parliamentary practice, comprised in Jefferson's Manual, shall govern the house in all cases to which they are applicable, and in which they are not inconsistent with the standing rules and orders of the house and the joint rules of the senate and house of representatives."

vote to that effect, to dispense with any one or all of its rules, on some particular occasion. The assembly may, in this way, dispense with its unwritten as well as its written rules and unless otherwise required in the rules themselves, the dispensing may take place by the ordinary major vote. These rules, touching the disregarding of the rules, by general consent, and dispensing with them by a vote, apply only to the rules which the assembly has itself adopted, and not to those which are prescribed by constitution or law, and which cannot be abrogated even by general consent.

SECTION IV. OF THE FORMS IN WHICH THE PROCEEDINGS OF A LEGISLATIVE ASSEMBLY ARE EXPRESSED.

795. The various topics, which engage and occupy the attention of a legislative assembly, are brought to its notice, either by the communications which are made to it from external sources, as, for example, the executive or the other branch, — official bodies or persons, — its constituents; or from the suggestions of its own members, relative to matters of public concern, in which it has jurisdiction to interfere.

796. In proceeding upon the matters thus brought before it, the principal forms or instruments made use of by the house are motions, orders, resolutions, addresses, bills; all of which will be fully treated of and explained hereafter; it being at present only proposed to give some general idea of certain of these parts of the mechanism of parliamentary proceedings.

1. *Motion or Vote.*

797. A *motion* is a proposition made to the assembly by one member, and seconded by another, that the assembly do something or order something to be done, or express an opinion with regard to some matter or thing. If the proposition is agreed to, it becomes an order, or resolution, or whatever else it purports to be. Every matter of business must be commenced and set in progress by means of a motion, in the first instance, and must be carried forward, at every stage of its progress, in the same manner. If not thus forwarded, a measure remains precisely where it is left by the last proceeding upon it.

2. *Order.*

798. When the house directs or commands any thing to be done, either by its members, its officers, or others, its will is expressed in the form of an *order;* thus, it orders that a petition be referred to a committee, — that it lie on the table, — that it be printed; that a bill be read the first, second, or third time, — that it be engrossed, — that it be committed or printed; that certain persons attend the house; that a debate be adjourned; that a certain person be taken into custody. When the house orders any thing to be done by itself, or, in other words, forms and declares its intention to do something in the ordinary course of its proceedings, it expresses itself in the form of a resolution; as, that it will resolve itself into a committee of the whole on a given day, — or that a bill do pass. Resolutions of this kind, must not be confounded with resolutions properly so called.

3. *Resolution.*

799. When the house expresses any opinion, with reference to any subject before it, either public or private; or its will to do something at a given time, (not incidental to the ordinary course of business); or declares its adoption of general orders relative to its proceedings; in all these cases, it expresses itself in the form of *resolutions;* thus it resolves upon the sessional and standing orders; that a standing committee be appointed; that the explanation given by a member is satisfactory; that private petitions be not received after a certain time; that it entertains certain opinions; that the thanks of the house be given to certain persons. It is not easy to understand, so as to describe with accuracy, all the occasions on which the one or the other of these terms, *ordered* or *resolved*, is most proper.[1] Besides, the use of them does not appear to be uniform. In the earlier journals of the house of commons, those, for example, of a hundred and fifty years ago, the word *resolved* is frequently used, where the word *ordered* would now be found. Perhaps the distinctions above indicated may be sufficient to suggest the proper use of these terms. It is often very important to

[1] "When the house commands, it is by an 'order.' But fact, principles, their own opinions, and purposes, are expressed in the form of resolutions." Jefferson's Manual, § XXI.

distinguish "orders," on the one hand, and "joint resolutions," on the other, from "resolutions," properly so called, as the different classes of papers are ordinarily subject to different rules of proceeding.[1]

800. It is a common course of proceeding, for the house to agree to certain resolutions, either reported by a committee, or introduced by a member, as the basis of proceedings to be afterwards instituted, in the form of an address, impeachment, or bill; in which case, the practice is to refer the resolutions to a committee for the purpose of being put into the proper form. Resolutions of this description are sometimes made the joint act of both branches, by being first agreed to in one branch, and then sent to the other for its concurrence.

801. Orders or resolutions, by whichever name they may be called, which direct the doing something prospectively by the assembly itself, or that it will, at a given time, do a certain thing, must be carefully distinguished from those which require the doing of a thing by an individual member, even though the execution of the order will have an effect upon the business of the house. In the latter case, when the time arrives, the individual or member upon whom the order is made, proceeds to execute it in the manner therein directed. In the former case, the house must determine, when the time arrives, whether it will then proceed to execute its own intention or not; for no resolution of the house, however stringently expressed, can ever constrain or absolutely bind itself to the doing of a future act. Thus if the house directs the speaker, at a given point of time to adjourn the house,[2] on the arrival of the time in question, he pronounces the house adjourned accordingly; but, if the house makes a special order for the consideration of a particular subject at a given time, or assigns a time therefor by resolution, it must, on the arrival of the time, determine, by a question, whether it will then proceed to execute its own intention or not.

4. *Address.*

802. An *address* is the form in which the wishes or requests of the two houses, or either of them, are expressed and made known to the executive. In England this form of proceeding is not infrequent; the sovereign being addressed in answer to the royal speech

[1] J. of H. 32d Cong. 1st Sess. 679; Cong. Globe, XVII. 281.

[2] Cong. Globe, XIII. 214, 215.

at the commencement of the sessions — for copies of papers, — and for other important information, — expressing confidence, or the want of it in ministers, — or for the rémoval of public officers holding their appointment under the crown. In this country, addresses were formerly in frequent use; but at the present day, they are chiefly resorted to, being provided for the purpose, and regulated by the several constitutions, for the removal of judicial officers.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART FIFTH.

OF COMMUNICATIONS BETWEEN THE DIFFERENT BRANCHES OF A LEGISLATIVE BODY, AND BETWEEN THEM OR EITHER OF THEM AND OTHER BODIES OR PERSONS.

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803. HAVING treated, in the preceding parts of this work, of the election, constitution, and incidental powers, of a legislative assembly, and enumerated its general powers and functions, it will now be useful, also, before describing its forms and methods of proceeding, within itself, to consider the relations which it bears to other bodies and persons without, by means of a communication with which its business is not only conducted, but it obtains possession of the materials upon which the greater part of its proceedings are exercised. This part is therefore devoted to the subject of the communications which take place between the two houses; between either of them and the executive; and between them or either of them and other official bodies or persons, or individuals, or the public in general; in the course of the performance of their legislative and other official functions. These several subjects are arranged and treated of under the following heads or divisions, namely:— I. Communications between the two Houses; II. Communications of the two Houses, or either of them, with the Executive;

III. Accounts, — Papers, — Returns; — presented in pursuance of Orders, or in obedience to Acts of Parliament; IV. Witnesses, and their Attendance and Examination, before either House, or Committees; V. Hearing Parties interested; VI. Public Officers subject to the Order of the House; VII. Petitions.

CHAPTER FIRST.

OF COMMUNICATIONS BETWEEN THE TWO BRANCHES.

804. The two branches of a legislative assembly being members of the same body; convened and sitting at the same time; charged with the performance of the same or analogous functions; simultaneously engaged in the exercise of those functions; and required by their constitution, though proceeding separately and independently, to concur in the doing of every legislative act; they have frequent occasion, both in the incidental and preliminary, as well as the final, proceedings, to communicate with each other, in reference to the several matters about which they are employed. The regular modes, by which these communications take place, are three, namely: — I. By message; II. By conference; and, III. By committees.

SECTION I. COMMUNICATIONS BY MESSAGE.

805. This form of communication, which is the most simple, and the most frequently resorted to, consists, as its name indicates, in the sending of a member, or other appropriate person, by the one house to the other, either to inform the latter of some fact, or to communicate some request, or both, on the part of the former. Messages pass between the two houses for a great variety of purposes, but more especially at the present day in relation to the proceedings on bills. These purposes will be particularly noticed, in connection with the subjects to which they relate. At present, the forms of proceeding only are to be adverted to. Messages are also the commencement of the other and more important modes of intercourse between the two houses, by means of conferences and committees.

806. Messages from the lords to the commons are not sent by members, but ordinarily by two of the masters in chancery, who are attendants upon the lords; and, on special occasions, by two of the judges, who are their assistants. The special occasions, on which the latter are sent as messengers, occur, for the most part, though there are others,[1] when bills relating to the crown or royal family are to be sent to the commons.[2]

807. If the persons, who are regularly to be employed as messengers from the lords, do not happen to be present, when a message is to be sent, other persons attending the lords are substituted in their stead. If the judges are on the circuit, or, for other causes, only one is in attendance, when an occasion occurs for sending a message by them, the message may be sent by one judge and one master in chancery. If, on ordinary occasions, two masters in chancery do not happen to be in attendance, a message may be sent by one master and the clerk assistant; or, if no master in chancery is present, the clerk assistant, and the additional clerk assistant, or the reading clerk may be sent with the message. Whenever a message is sent in this manner, the lords at the same time acquaint the commons with the reasons which have induced them to depart from the ordinary practice; and the commons, on receiving the message, immediately come to a resolution, which, at a convenient time, either immediately or after an interval of some days, they communicate to the lords by messengers of their own, acquiescing in the reasons assigned by the lords, but "trusting that the same will not be drawn into precedent for the future."[3]

808. Messages from the commons to the lords are always sent by members. The ancient and accustomed form is to send by one member, who, upon motion made, and question put, is named by the house as the bearer of the message. The member, thus appointed, is usually selected either from having been the promoter, or having had charge, of the bill which is to be sent, or for his known approbation of the subject-matter of the message. But the bearer of the message, though a single member, must be accompanied by others, to the number of seven at least; as it is the rule and practice of the house of lords not to receive a message from the commons, unless eight members attend with it.[4] The member, selected

[1] Comm. Jour. IX. 351.
[2] May, 319, 320.
[3] May, 319, 320.
[4] "Eight was formerly the common number which formed a quorum of a select committee, and was probably, for this reason, adopted as the number for carrying a message to the house of lords." May, 320.

as the bearer of the message, is not at liberty to decline the order of the house, or to neglect or refuse obedience to it, without being guilty of a contempt.[1] The attendance of other members appears to be voluntary; and, for the purpose of obtaining it, when the bearer of the message takes it from the table, the speaker always calls aloud to the house, "gentlemen, attend your messenger." In bills that have passed the house of commons with a general concurrence, and in other messages, in which the house of commons wish to show their approbation of the measure, it is customary for a great number of members to follow the messenger, and to attend him to the bar of the house of lords.[2]

809. The form of receiving messengers from the commons in the house of lords, according to the standing orders of the latter house, is as follows. The messengers proceed to the house of lords, and signify the purpose of their attendance to the usher, who informs the lords of the message. The lords, thereupon, if not engaged in any business, or first bringing the business in which they are engaged "to some end," send for the messengers, who are admitted and take their places at the lower end of the room. The lord chancellor then rises, and, with such lords as please, goes down to the middle of the bar; then the bearer of the message, in the midst, and the rest about him, come up to the bar, making three obeisances, and there delivers the message to the lord chancellor, who, after receiving it, retires to his place, and the messengers withdraw. When the house is cleared and settled, the lord chancellor reports the message with the assistance of the other lords, if his memory happens to be at fault, in respect to any part of it, and the house then proceeds to consider the message.[3]

810. The ceremony of receiving messages from the lords in the house of commons is thus described: "The messenger from the lords proceeds to the house of commons, and if that house be then engaged in business which will not admit of immediate interruption, he takes a seat below the bar until he can be received. It is usual, however, to admit him when the member then addressing the house has resumed his seat. For this purpose the sergeant-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

[1] Grey, IX. 305.
[2] Hatsell, III. 27, 28.
[3] May, 321.

messenger be now called in; which being agreed to, as a matter of course, he directs the sergeant to call in the messenger. The sergeant again advances to the table, and takes the mace, with which he introduces the messenger, and walks up to the table of the house on his right hand. They both make three obeisances in coming up the house, and, on reaching the table, the master reads the message; and, when there are bills, delivers them to the clerk of the house. The sergeant retires with him to the bar (both making obeisances), and then returns and replaces the mace upon the table." [1]

311. If a message is of such a nature as to require an answer, the messengers remain in attendance in the lobby, for the purpose of receiving it. If the business admits of an answer being given immediately, the house proceeds at once to resolve upon the proper answer; and if it accedes to the request contained in the message, the messengers are called in and informed of it by the lord chancellor or speaker, as the case may be. If the business does not admit of an immediate answer, or if the business in which the house is engaged does not allow the message to be then considered,[2] or if the answer is in the negative,[3] the messengers are called in and acquainted (in the lords they are sent to and informed by the usher) that the house will send an answer by messengers of its own.[4]

312. In the commons, when a message is received from the lords by persons who are not ordinarily employed as messengers, with a statement of the reasons for deviating from the usual practice, no other answer is returned by the messengers, than that the house will send an answer by messengers of their own, even though the subject of the message is acted upon forthwith, and an answer agreed to. The answer is communicated by the commons to the lords by messengers of their own. The lords are also informed, at the same time, or by a separate message, that the commons have acquiesced in the reasons given by the former for deviating from the ordinary practice.[5]

313. The messengers are to receive and communicate the answer, if there is one, to the message which they deliver; or to inform the house to which they belong, that the other will send an answer by messengers of their own; but it is not according to parliamentary usage, for the house to which a message is sent, to

[1] May, 321, 322.
[2] Comm. Jour. IX. 152.
[3] Comm. Jour. I. 156, 200, 492, 498, 813.
[4] Hatsell, III. 29.
[5] Parl. Reg. LVI. 638, 641; Comm. Jour. LV. 539, 542.

send a message to the other by the messengers of that house.[1] The same messengers may be, and often are, the bearers of several different messages at the same time; and both the terms of the message, and the persons to be sent as messengers, are the subjects of orders, moved, debated, and agreed to, in the usual course of proceeding.

814. The business of the house, by which a message is sent, is not interrupted while their messengers are proceeding to or are at the other house. But, in the house to which a message is sent, it is the practice to discontinue or suspend the business in hand, as soon as may be after the message is announced, so as not unnecessarily to detain the messengers.[2] Thus, if the house is in a committee of the whole, when a message is sent to it, the committee rises and the house is resumed, for the purpose of receiving the message;[3] so, when the house is engaged in debate, the business is suspended without a formal adjournment of the debate; and the message received.[4] If a member happens to be speaking, at the time the messengers attend, it is not usual to receive them until the member has resumed his seat; but as this, in some cases, might amount to a very long detention, it is competent for the speaker to interrupt the member speaking,[5] or to interrupt a member in presenting a petition,[6] in order to receive the message. When the message has been received and disposed of, either finally, or for the time being, the house again resolves into the committee, or proceeds with the debate or other business which was interrupted; the business being taken up precisely where it was suspended, and a member interrupted in his speech, or other proceeding, at the point where he was interrupted.[7] But, though the admission of the messengers, as above stated, is generally a matter of course; yet, where the house is informed of their attendance, a motion is always made and a question put, or supposed to be so, for calling them in; and this question may be (and on one occasion, at least, was) decided in the negative.[8]

815. It appears to have been an ancient order, that one house

[1] Hatsell, III. 22; Hatsell, IV. 35; Comm. Jour. I. 426, 813.

[2] May, 322.

[3] Grey, IV. 226; Same, IX. 148, 150, 153; Comm. Jour. X. 45; Hatsell, III. 30, 31; Cong. Globe, VIII. 509; Same, XI. 298, 358, 396; Same, XV. 685.

[4] Parl. Reg. XLIII. 56; Comm. Jour. LI. 5; Hatsell, III. 30, 31.

[5] Parl. Reg. LXIII. 769, 770; Cong. Globe, XI. 618; Cong. Globe, XVIII. 167.

[6] Hansard (1), V. 843.

[7] Parl. Reg. LXIII. 769, 770.

[8] Comm. Jour. XVII. 614; see also J. of S. 23d Cong. 1st Sess. 325.

could not regularly send a message to the other, "but whilst both houses were sitting, the speaker of each house being in the chair;"[1] but this rule is not now observed, and either house may agree upon and send a message to the other, although it is known that the latter has adjourned for the day.[2] In such a case, the messengers proceed with the message, as soon as the house to which it is to be delivered is sitting.[3] When the sending of a message is under consideration, and it is feared that the house to which it is to be sent may adjourn before the message can be agreed upon, a message may be and very frequently is sent immediately to the latter, requesting them to continue to sit for some time, in order to receive a message.[4]

816. When a message has been delivered, and the messengers returned to their own house, it is their duty (of one of the two in the lords, and of the bearer of the message in the commons), to make report of their proceedings, and of the answer of the house, to which the message was sent.[5] If the messengers are unable to deliver their message, in consequence of the house to which they are sent being then adjourned, they should report that fact, on returning to their own house, and again proceed when the other house is next sitting.[6] If prevented from delivering their message, from any other cause, as, for example, by being refused admittance, the messengers should report the fact, for the information and consideration of the house. When a message admits or requires no answer, — as, for example, when bills passed in one house are sent to the other to be there proceeded upon, — it does not appear to be necessary for the messengers to make any report on their return.

817. A message from one house to the other cannot be received by the house to which it is sent;[7] nor can an answer to a message be received by the house by which it is sent, unless a quorum is present.[8] When such a case occurs, the only course for the messengers to pursue is to defer delivering their message, or making their report, until the requisite number is present.[9]

[1] Hatsell, III. 19.

[2] Parl. Reg. XXXV. 631; Hatsell, IV. 141, note.

[3] Hatsell, IV. 141, note.

[4] Parl. Reg. XXXV. 630.

[5] Hansard (1), XVIII. 804, 817.

[6] Parl. Reg. XLIII. 55, 56; Comm. Jour. LI. 7, 10.

[7] Parl. Reg. LVII. 593; Comm. Jour. LV. 785; Hatsell, II. 339, note.

[8] Parl. Reg. XXXV. 632; Cong. Globe, XI. 253.

[9] J. of S. 28th Cong. 1st Sess. 402. The usher of the black rod, an officer of the lords, a part of whose business it is to deliver messages from the sovereign to the commons, with a message from the king, or from lords' commissioners authorized by him, for the attendance of the house of commons in the lords, must be admitted whether a quorum is

818. When there is any mistake in a message, either as sent or delivered, it appears to be the custom for the house by which it is sent to correct the mistake by a subsequent message, and for the house to which it is sent, to discharge any order predicated on such erroneous message.[1] If the mistake is perceived before the messengers have returned, they may be called in to correct it, if it has occurred in the delivery; but in this case, if the mistake is a merely verbal one, which cannot possibly give rise to any error or misunderstanding, as, for example, where messengers from the lords informed the commons that the house of commons had sent them a bill, etc., it is most proper to overlook the error, and to consider the message as expressing what was evidently intended by it.[2] If the mistake is one which belongs to the message as sent, and not as delivered, or if it is equivocal in its terms, the messengers may be called in and receive for answer, that the house desires of the other house a correction or explanation; as, for example, where the commons had sent several messages to the lords on the same day, and the lords sent them a message desiring a present conference "upon the subject-matter of their message," to the lords, the messengers were called in, and acquainted by the speaker, "that the commons, having sent several messages this day to the lords, do desire to know from their lordships, upon the subject-matter of which message, their lordships desire a present conference." The same messengers returned immediately with a message specifying

present or not, and the members present must thereupon immediately attend the king or the commissioners in the house of lords. The opposition between this rule, and that stated in the text, led, on one occasion, to a curious state of things in the house of commons. That house had passed certain money bills, and had sent them to the house of lords, where they had passed without amendment; the lords then sent them to the house of commons, with a message to inform the latter of their being so passed. The bills were placed upon the table of the commons; but, as forty members were not present, the messengers could not be admitted with their message. In the mean time, the usher of the black rod came with a message from the lords' commissioners, directing the attendance of the commons in the house of lords, and being admitted and having delivered his message, the speaker, with the members present immediately went to the lords; the speaker carrying with him the bills alluded to, upon a private intimation that they had passed the lords without amendment. The speaker then presented the bills to the commissioners, from whom they received the royal assent. On the return of the commons, the speaker reported that the house had been at the lords, where the royal assent was given to certain bills, among which were the money bills above mentioned. Forty members being then present, and the lords' messengers in attendance, they were called in, and delivered their message to acquaint the commons with the agreement of the lords to the same bills, to which the royal assent had just been reported to be given. The speaker thereupon explained what he had done, which was approved of by the house, and a special entry to that effect, at his suggestion, made on the journal. Comm. Jour. LV. 783, 785.

[1] Hatsell, III. 23, 26.

[2] Grey, IV. 39, 41.

more particularly the subject-matter upon which the conference was desired.[1]

819. In this country, messages from one branch of a legislative body to the other are commonly sent, on ordinary occasions of business, by the clerk or secretary of each branch, respectively, or some subordinate officer of his department;[2] but on extraordinary occasions, or in reference to matters of importance, they may be, and usually are, sent by members; and no reason is ever given or demanded for sending by unusual messengers. The names of messengers are always to be entered on the journals.

SECTION II. COMMUNICATIONS BY CONFERENCE.

820. The second mode of communication between the two houses is by means of a conference; in which, as its name imports, the communication takes place in the presence of both houses, either actually, or by deputations of their members. This is a more formal and ceremonious mode than that already described. It is conducted by members appointed for the purpose; is held in a room distinct from those occupied by the two houses when sitting; and so entirely are both supposed to be engaged in the proceeding, while the managers are at the conference, that the usual and ordinary business of both houses is in the mean time suspended. When it is the purpose of a communication between the two houses to explain opinions, or to reconcile differences, or to induce one of the houses to waive a proceeding, or form of proceeding, which the other deems unparliamentary, a conference is supposed to be more respectful and better calculated to effect the object in view than a message.

821. It would not be easy to express, by any general rule, the different occasions on which a conference or a message would be the most appropriate and effectual form of communication. The purposes for which messages are commonly employed have already been alluded to. The most usual occasions, upon which it is competent for either house, according to the practice of parliament, to demand a conference with the other, may be arranged under the

[1] Comm. Jour. XXXII. 92; Cavendish's Debates, I. 82, 83.

[2] J. of S. I. 465; Same, V. 403; J. of H. 17th Cong. 1st Sess. 139; Same, 17th Cong. 2d Sess. 7; J. of S. 17th Cong. 2d Sess. 233; J. of H. 30th Cong. 1st Sess. 596.

following heads, namely: 1, to communicate resolutions or addresses, to which the concurrence of the other house is desired; 2, concerning the privileges of the two houses with relation to one another; 3, in relation to the course of proceedings of one, in which the other is concerned; 4, to require or to communicate statements of facts, on which bills have passed or other proceedings have taken place; and, 5, to offer reasons for disagreeing to, or insisting on, amendments made by one house to bills, resolutions, or addresses, passed or agreed upon in the other.[1] This classification, though it may not perhaps, be found to embrace all the occasions, upon which conferences have taken place, will nevertheless serve to give some general idea of the various matters, in reference to which this form of communication may be adopted.

822. It is not always a matter of indifference, even when there may be a fit occasion for a conference, at what time, or by which house, the conference is requested; for, as it is the duty of the two houses, on all occasions, to maintain a good understanding and coöperation with one another, and to allow each other to proceed, in the discharge of their respective duties, with perfect freedom and independence, it would not be proper for one, by means of a conference, to interfere with, and anticipate, or endeavor to influence, the proceedings of the other, until that other has first acted upon the subject in question. Thus, while a bill, which has passed in one house, and been sent to the other, is there pending and under consideration, it is irregular for the former to take any notice of the proceedings in the latter, and to demand a conference thereon. This rule, which lies at the foundation of the freedom and independence of the two houses, as regards one another, was established at a very early period of parliamentary history;[2] and, though originally restricted in its terms to bills, the principle of it is so obviously convenient and proper, that, for a long course of years, it has been extended and applied as a general rule to resolutions and all other matters, which have been communicated from the one house

[1] This is substantially the classification adopted by Mr. May, (p. 323); except that his fifth head is included under the fourth, where, on examining the journal to which he refers, it will be found to belong.

[2] In the 18 Elizabeth (1575), Hansard (2), IV. 518, 519, the lords passed a bill for the restitution in blood of Lord Sturton, and sent it to the commons, where, it being proposed to amend the bill, the lords sent a message to the commons requesting that certain committees appointed to have conference with the lords on another subject, "may also have commission to show unto their lordships the reasons, which did move this house to deal so hardly in the bill, which being signed by her majesty, passed their lordships, for the restitution in blood of the lord Sturton; being a nobleman, and seeking but the same course and form of restitution, which other noble-

to the other, and are there pending and under consideration. For example, if the commons, at a conference, communicate a resolution to the lords, and request the concurrence of the latter, they must wait until some answer is returned, before demanding another conference on the same subject. When the lords are prepared with their answer, it is for them to demand a conference with the commons, for the purpose of communicating it to them.[1]

823. The proceedings preliminary to a conference, in the house by which it is requested, usually commence by their coming to a resolution, that a conference be demanded of the other, in reference to a certain subject. The next step is the appointment of a committee to consider of and draw up reasons, etc., or what may be proper to be offered at the conference. When this committee has reported, and the house has thereupon agreed upon the reasons, or whatever else is to be offered at the conference, a message is then sent to the other house, in the ordinary manner, requesting a conference on the subject or matter in question.[2] When the occasion of conference arises in the regular course of proceeding, one or more of these previous steps is omitted; as, for example, when the purpose of the conference is to communicate reasons for disagreeing to amendments to a bill, the first step, namely, a resolution for a conference, becomes unnecessary, because a conference is the regular course of proceeding, and the first step is therefore the appointment of a committee to prepare the reasons;[3] so, when it is the object of a conference to communicate resolutions merely,[4] or to inform the other which of their amendments are agreed to and which are not, without reasons;[5] the conference may at once be

men in like cases have done, and had heretofore; which message, being opened unto the house was not well liked of, but thought perilous and prejudicial to the liberties of this house; whereupon, it was resolved by this house, that no such reason shall be rendered, nor any of this house to be appointed unto any such commission." The next day, the lords sent another message to the commons, "to desire conference with such of this house, as this house shall appoint, touching conference with their lordships for the bill of the lord Sturton; which their lordships do hear hath had offer of provisos, or some other things, to the stay of the proceedings of the said bill; whereupon, after sundry motions and arguments," it was answered, "that by the resolution of this house, according to 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 [by] any other court: And, further, that this house, being now possessed of the bill, and minding to add some amendments to the said bill, will (if they see cause, and think meet,) pray conference therein with their lordships themselves; and else not." — Comm. Jour. I. 114.

[1] May, 323.

[2] Comm. Jour. XVIII. 376, 377.

[3] Comm. Jour. XVIII. 290.

[4] Comm. Jour. XXI. 932.

[5] Comm. Jour. X. 510.

requested, without either of the above-named preliminary steps being taken, because such is the regular course of proceeding, and what is to be presented at the conference is already prepared.

824. The message requesting a conference should clearly describe the subject-matter upon which it is desired, not only as a matter of civility, but in order to enable the other house to judge of the importance of the subject, as well as of the fitness of the occasion, or whether it may not relate to a matter, upon which, consistently with the preservation of their privileges, they cannot consent even to meet and confer. If this is not done, the house to which the application is made may decline the request, on the ground of such omission. Thus, in 1641, the lords having sent to the commons to desire a conference, without expressing the subject of it at all, the conference was declined, on the ground, that a message for a conference, "without any expression of the subject or matter of that conference, is contrary to the course of either house."[1] In 1678, a similar request was declined by the commons, on the ground, that it was "not agreeable to the usage and proceedings of parliament, for either house to send for a conference, without expressing the subject-matter of that conference."[2] The like informality having again occurred in 1795, the entries on the journals in the foregoing cases were read, and the commons thereupon declined the conference, for the reasons given in the entry of 1678.[3] In all these cases, messages were immediately afterwards sent by the lords, expressing the subject-matter of the proposed conference. But, in another case, where a conference was requested by the lords, "touching matters of great importance,"[4] the commons agreed to the conference; but "it was observed, and so declared, that this message was so general, that the house was not bound to make answer thereunto; and, though in this strait of time, they are content to give answer to this; but have ordered not to be bound by this precedent for the future."[5]

825. It does not appear to be necessary, however, to state in the message the precise subject upon which a conference is desired, or, if stated, to do it with minute distinctness; it is sufficient if the message so far describes the subject-matter, in general terms, as to

[1] Comm. Jour. II. 232.
[2] Comm. Jour. IX. 574.
[3] Comm. Jour. LI. 5.
[4] In this case, there appears to be a discrepancy between the message as sent and as delivered. The order for the message as entered in the Lords' Journal, expresses the subject of it with sufficient distinctness.
[5] Comm. Jour. II. 581.

show that there is a parliamentary ground for the proceeding. Thus, for example, the subject of a proposed conference may be described as a matter "highly concerning the honor of his majesty and his government," or "in which the honor and interest of the public are essentially concerned," or "highly important to the privileges of both houses of parliament."[1] The following examples will serve to show in what manner, and how far, it is customary to describe the subject of a conference in the message by which it is requested. The house of commons having agreed upon an address for the removal of Sir Jonah Barrington from the office of judge of the admiralty in Ireland, and having ordered the same to be communicated to the lords, and their concurrence therein desired, at a conference, ordered a message to be sent to the lords, to desire a conference "upon a matter of high importance and concern, respecting the due administration of justice."[2] The commons having agreed to certain resolutions relating to the affairs and proceedings of the East India Company, ordered them to be communicated to the lords at a conference, upon "a subject of the highest importance to the prosperity of the British possessions in India."[3] Resolutions of the commons, relating to the abolition of slavery in the West Indies, were described in the message, desiring a conference for the purpose of communicating them to the lords, as "a matter deeply connected with the interests of his majesty's West India Colonies."[4] The commons, having agreed upon an address to the king, to inform him of their determination to maintain the union with Ireland, and having ordered the same to be communicated to the lords for their concurrence, sent a message to the lords for that purpose, requesting a conference "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."[5] In these cases, the subject-matter of the conference is not so stated, as to give any distinct notion of what it was, but is merely described so as to show that the request might with propriety be granted. When a second or subsequent conference is requested, the subject of it is described in the message as that of the last conference.

826. Whenever a conference is requested by either house, it is the sole privilege of the lords to name the time and place, at which it is to be held. If the commons find the time or place so appointed

[1] Hatsell, IV. 51, 52.
[2] Comm. Jour. LXXXV. 473.
[3] Comm. Jour. LXXXVIII. 488.
[4] Comm. Jour. LXXXI. 488.
[5] Comm. Jour. LXXXIV. 232.

inconvenient, as, for example, if they have themselves appointed the same time for other business, which cannot conveniently be postponed,[1] or, if they consider the place a dangerous one,[2] they may disagree to holding the conference at the time or place appointed, at the same time informing the lords of the reasons which have induced them to decline the request; and it then rests with the lords, if they think proper, to change the time or place. So, after the lords have fixed the time and place, they are at liberty to change either or both.[3] But, in no case, will the lords permit the commons, nor indeed have the commons ever claimed the privilege, to name the time or place of meeting.[4]

827. When a message is sent from the one house to the other for a conference, it is received, treated, and acted upon, in the same manner as other messages; and, in order to preserve harmony and a good correspondence between the two houses, it should be answered, as soon as the convenience of the house will admit.[5] The house, of which the conference is requested, may simply agree, and it would be unparliamentary to refuse a conference which was demanded on parliamentary grounds; or it may disagree, in which case, the reasons for disagreeing should be stated;[6] or, if it is the house of commons, of which the conference is requested, it may agree to the conference, but disagree as to the time or place,[7] in which case, the reasons should also be stated, and the lords will thereupon, if they see fit, appoint some other time or place.[8] But it does not appear to be according to parliamentary usage, nor would it consist with convenience, to agree, on condition,[9] or with some amendment or modification, as to the subject-matter of the conference; such an agreement may be considered as a refusal of conference, and treated as such. Thus, where, in answer to a request of the commons for a conference, the lords informed them by message, that they agreed to the conference, "always provided, that nothing be offered at the conference, that may anyways concern their lordships' judicature," the commons resolved, "that, by the lords' answer, there is no grant of a conference upon the matter, as it was desired by this house," and also that a conference be desired with

[1] Hatsell, IV. 17, 18, note; Hans. Parl. Hist. I. 1068; Comm. Jour. I. 832.
[2] Comm. Jour. I. 812.
[3] Comm. Jour. I. 717.
[4] Hatsell, IV. 50.
[5] There are instances of messages for a conference remaining unanswered altogether.
[6] Comm. Jour. I. 114.
[7] Comm. Jour. I. 200, 812.
[8] Comm. Jour. I. 200, 812.
[9] Hargrave's Preface, etc., 137.

the lords on the subject of that answer."[1] When a proposition for a conference has been considered, the answer is to be returned by a message; if agreed to at once, the answer may be returned by the same messengers; if disagreed to at once, either wholly, or only as to time or place, the most regular course seems to be for the house disagreeing to return an answer by messengers of its own;[2] if the answer is not resolved upon immediately, it must be returned in that manner, whatever it may be.

828. A conference is conducted usually, and, in modern times, exclusively, by members appointed for the purpose by each of the two houses, who are denominated managers, and who represent and act for their respective houses. Instances occur, in the reigns of James I. and Charles I., of conferences between the two houses, conducted by all the members of both, in which the whole house of commons attended, either with the speaker as a house, or as a committee without the speaker.[3] When a conference takes place in this manner, all the members are of course managers, and certain members are appointed by their respective houses as reporters of the conference. When a conference is to be conducted by managers, it is an ancient and understood rule, that the number on the part of the commons is to be double that on the part of the lords.[4] But it is not the modern practice, when conferences are proposed or agreed to, to make any mention of this rule, or of the number of managers on either side.[5] The number employed is not always the same. On the part of the lords, it does not appear to be less than eight; in the commons, it must, of course, be not less than sixteen; and in point of fact, it is frequently greater, on both sides, than those numbers respectively.

829. The managers of a conference are appointed in the same manner as the members of select committees; by members calling out indiscriminately the names of other members, which are taken down by the clerk as he hears them; or by all the names being moved together on a list by some member; or by the managers of a former conference being moved together under that appellation;[6] or by the names being suggested by the speaker. But, in all these cases, if it is insisted on, the name of each member must be moved separately, and a question put upon his being one of the managers.[7]

830. The managers for the house which requests conference are

[1] Comm. Jour. IX. 346.
[2] Comm. Jour. I. 156, 200, 492, 498, 813.
[3] Comm. Jour. I. 576, 631, 640, 812.
[4] Comm. Jour. I. 154.
[5] May, 254; Hatsell, IV. 17, note.
[6] Hansard (3), XXXV. 1135.
[7] Hatsell, IV. 22, note.

usually the members of the committee, to whom it was referred to draw up reasons, or to prepare what might be proper to offer at the conference, with whom others are usually joined. On the part of the house, of whom the conference is requested, the managers are usually selected from those members who have taken an active part in the discussion of the matter, whatever it may be, which has given occasion to the conference, if they happen to be present.[1] In the absence of members who have participated in the proceeding, or where the matter has newly arisen, the managers can only be selected in the same manner, and upon the same principles, that the members of select committees are appointed. If there is a difference of opinion in the house, with reference to the proposition, which is the subject of a conference, it would seem to be improper to appoint any one a manager, who is against the proceeding.[2]

831. The duty of the managers, on the part of the house proposing the conference, is confined to the delivery to the managers for the other, of the communication, whatever it may be, which it is the purpose of the communication to make; and the duty of the managers for the other house is merely to receive such communication. They are not at liberty to speak, either on the one side to enforce, or on the other to make objections to, the communication. One of the managers for the house proposing the conference, (the member first named,[3] it is presumed, unless otherwise agreed among themselves,) first stating the occasion of it in his own words,[4] then reads the communication, and delivers the paper on which it is written to one of the managers for the other house, by whom it is received. When the conference is over, the managers return to their respective houses, and one of them reports their proceedings.[5]

832. At the time appointed for the conference, the course of proceedings is somewhat different in the two houses. In the com-

[1] May, 325.

[2] The several parts to be assigned among the managers at a free conference being under consideration in the house of commons:

"Mr. Hedley being assigned with the rest for the point of assurance, excuseth himself, in that he was directly against the matter itself, in opinion."

"Conceived for a rule, that no man was to be employed that had declared himself against it."

"Hereupon a question made, whether Mr. Hedley were to be employed: Resolved, not to be employed." Comm. Jour. I. 350.

The principle thus established, though originally laid down with regard to a free conference, is equally applicable in regard to others; because, the managers, who are appointed to conduct the first and second conferences, are usually appointed for the free conferences, if any, which take place afterwards. On one occasion, it appears, that the lord chancellor was one of the managers for the lords. Comm. Jour. IX. 538.

[3] Parl. Reg. LIII. 108.

[4] Mr. Onslow. Hatsell, IV. 28, note.

[5] May, 325.

mons, the speaker informing the house, if necessary, that the time for holding the conference has arrived, the managers are appointed, their names are called over by the clerk, and, without any formal adjournment of the house, but only a tacit suspension of the business in hand, they go to the place at which the conference is to be held, and their presence there is then made known to the lords by the usher of the latter or his deputy.[1] If the managers for the lords thereupon attend, the conference takes place. If the managers for the lords do not attend, the managers for the commons wait as long as they think proper, and then return to their house, and report that the conference has not been held, together with the reason of the failure, if within their knowledge. Thus, on one occasion, the managers for the commons reported, "that they had been at the place appointed for the conference, and understood that the house was not then sat;[2] and, on another, "that they had been at the place of conference, and had there waited a considerable time; but that the lords not coming, the managers thought it their duty to stay no longer."[3]

833. In the lords, when the time appointed for the conference arrives, nothing is done until the house is informed by the usher or his deputy, that the commons are in attendance at the place of conference. Managers are then appointed, — their names called over, — the house is, on motion, adjourned during pleasure, — and the managers go to the conference. While the managers are at the conference, the business of each house is entirely suspended.[4]

834. When the conference is concluded, the managers on both sides return to their respective houses, which are immediately resumed, and the managers make their report. The report is first disposed of, either finally or for the time, and then the business which was interrupted by the conference is taken up and proceeded with at the point where it was interrupted. As the lords do not attend at all, unless the commons first attend, there is no occasion for that house to be informed that the conference has fallen through. It falls through, as a matter of course, unless the lords are notified of the attendance of the commons, at the time and place appointed.

835. When a conference falls through, by reason of the neglect of one of the houses to attend, if the omission is occasioned by some accident, the cause of it is signified to the other by a message

[1] Parl. Reg. LXIII. 737.
[2] Comm. Jour. 838.
[3] Comm. Jour. XXIII. 525.
[4] May, 323.

by way of apology. Thus, in the first of the cases mentioned in the preceding paragraph, the lords very soon afterwards sent a message to acquaint the commons "that the speaker of the house of lords living two miles out of town, and the badness of the roads, at this present, was the only occasion of their lordships not coming to the conference at the time appointed."[1] The commons, — who, on receiving the report of their managers, had resolved, "that a conference be desired with the lords upon the method of proceeding between the two houses," and had appointed a committee to consider of and prepare reasons to be offered at the said conference, — on receiving the apology above recited, waived all further proceedings with reference to the irregularity, and the next day requested a conference on the subject-matter of the original conference.[2] In the other case mentioned above, the lords on the next day informed the commons by message, that they were prevented "by extraordinary business" from meeting them the day before, and that they had appointed another time for the conference. The commons thereupon resolved to agree to the conference as thus appointed.[3] In another case, where the neglect to attend was on the part of the commons, they sent a message to the lords to inform them that the failure to attend was in consequence of "extraordinary business," and desired the lords to appoint some other time; to which the lords agreed, and appointed a time accordingly.[4] In some one of these modes, proceedings which have been interrupted by the falling through of a conference may be renewed.

836. As has already been observed, the duty of the managers, on the one side, is to make, and on the other to receive, the communication, which is the subject of the conference, and, of both, on returning to their respective houses, to make a report of their proceedings. The report of the managers for the house, at whose request the conference has taken place, is, in substance, that they have met the managers for the other house, and have delivered them the communication, with which they were charged. The report of the managers for the other house is, in substance, that they have met the managers for the former, and that the purpose of the conference was, to make a certain communication which they have received and which they then proceed to lay before the house. This communication, or rather the report of the managers embracing it, is then to be considered and disposed of by the house to

[1] Comm. Jour. X. 839.
[2] Comm. Jour. X. 840.
[3] Comm. Jour. XXIII. 525, 526.
[4] Comm. Jour. XVIII. 390.

which it is sent; which may take place immediately, or be postponed to a future time.

837. When it has been definitely acted upon, if the purpose of the communication is accomplished, — that is, if the house to which it is made at once agrees with the other, — it then only remains for the former to signify the result to the latter, which is sometimes done by a message, and sometimes at a second conference. If the object of the communication is not effected, but the house to which it is made reaffirms the opinion or act which is objected to, the course of parliamentary proceedings requires, that it should notify the other of its disagreement, with the reasons upon which it is founded; and this must always be done, by means of a second conference, requested by the house disagreeing, and agreed upon and held in the manner already described; at which the duties of the managers for the two houses are reversed, those who before made a communication now receiving one, and those who before received now making one.

838. The result of this second conference, being considered and acted upon, as above mentioned, may be to satisfy the house which first made the communication, that the other house is in the right; in which case, the agreement of the latter may be signified by message, or at a conference. If the two houses still remain at difference with regard to the matter in question, the one which first moved in it may either allow it to rest where it is, or may make a further attempt to induce an agreement, on the part of the other. If the latter course is deemed the most proper, the only mode of effecting it is by means of what is called a free conference, which the house first requesting a conference may then request of the other upon the same subject-matter.

839. A free conference [1] differs materially from the ordinary conference already described. In the first place, the duties of the managers at the latter are confined to the making and receiving a communication, which has previously been agreed upon and sanctioned by the house at whose request the conference is held. In a free conference, they are at liberty, and it is their duty, to urge their own arguments, to offer and combat objections, and, in short, to attempt, by personal persuasion and argument, to effect an agreement between the two houses.[2]

840. It is competent for the two houses respectively, however,

[1] In the indexes to the lords' journals, conferences are called *bare* to distinguish them from *free* conferences.

[2] May, 326.

being now by means of the two preceding conferences in possession of each other's views in regard to the matter in controversy, to arrange beforehand the general course of proceeding, and to distribute amongst their respective managers the several heads and topics, which they are to present and insist upon in their arguments; which is usually done upon the report of the managers themselves, previously appointed a committee for the purpose;[1] or the managers may be allowed to make such arrangement and distribution among themselves; but, in either case, the arguments used, and the mode of handling the several topics agreed upon, must be suggested by the managers themselves.

841. The only rules, relating to the manner in which the discussions at a free conference are to be conducted, seem to be the same by which a debate in either house on the same subject-matter would be conducted, namely: — 1. That no personalities, either towards the managers on the other side, or the house which they represent, are to be indulged in; and, 2. That no irrelevant topic, that is, one not embraced within the subject-matter of the conference, as agreed upon, is to be introduced. If either of these rules is infringed, by the managers or any of them, on the one side, there is no other remedy but for the managers on the other to object to any further proceeding, — stating at the same time the reason of their objection, — and then to withdraw from the conference, and report the whole matter to the house of which they are members; which can then take such order in the premises as it may think proper.

842. The following case will serve to illustrate the first of the foregoing rules. In the year 1701, a conference being held with reference to the proceedings against Lord Somers, Lord Haversham, one of the managers for the lords, making use of certain expressions which gave offence to the managers for the commons, the latter withdrew from the conference, returning to their house, and one of them reported "what happened at the conference in a speech of Lord Haversham, upon which the managers thought fit to withdraw from the conference, to the end they might acquaint the house therewith." The managers were thereupon directed to "withdraw into the speaker's chamber and collect the matter of the conference, and what was said by the lord Haversham, and report the same to the house." The report of the managers being made, the house thereupon resolved, that the expressions made use of by Lord Haversham, at the conference, were false and scandalous, —

[1] Comm. Jour. I. 340, 349, 350.

highly reflecting on the honor and justice of the commons, — and tending to a breach of the good correspondence between the two houses." They also resolved that Lord Haversham be charged, for the words so spoken, before the lords, and that the lords be desired to proceed in justice against him therefor. These resolutions were communicated to the lords, who, thereupon, appointed a committee "to state the matter of the free conference, and to inspect precedents of what has happened of a like nature." In the mean time, in order that the public business might receive no interruption, they proposed a renewal of the free conference immediately. But to this the commons would not agree. They answered, that they were desirous to preserve a good correspondence with the lords, and to expedite the business of parliament; but it would not consist with their honor, to renew the conference, until they had received reparation for the indignity offered to them by Lord Haversham.[1]

843. The rule, as to relevancy, was the ground upon which the free conference, with reference to the matter of the Aylesbury men, in March, 1704, was broken up, and the proceedings brought to a close. The managers for the commons, on their return to the house, reported, "that they had met the lords at the free conference, which had lasted very long; and that when the managers for the commons took notice of some invasions of the house of lords, in point of judicature, particularly as to appeals, the lords broke up the conference." The managers were thereupon directed "to draw up what had passed at the conference, and lay the same before the house with all convenient speed;" which being done accordingly, the report was made and entered at length on the journal. The house thereupon resolved, that their proceedings, in relation to the Aylesbury men, were in maintenance of the rights and privileges of the commons of England, and directed the whole to be printed.[2]

844. The following order, agreed to by the house of commons, in 1580, though it seems to refer, especially in the last clause, to something in the forms of proceeding at conferences which is not now in use or to a free conference merely, embodies a principle which appears to be strictly applicable to the discussions, which take place at free conferences in modern times: — "It is ordered, that such persons as shall be appointed by this house, at any time, to have conference with the lords, shall and may use any reasons or persua-

[1] Comm. Jour. XIII. 629, 630, 631. [2] Comm. Jour. XIV. 566, 569, 575.

sions they shall think good in their discretions; so as it tend to the maintenance of any thing done or passed this house, before such conference had, and not otherwise; but that any such person shall not, in anywise, yield or assent, to [at] any such conferences to any new thing there propounded until this house be first made privy thereof and give such order."[1]

845. A second important difference between a conference and a free conference relates to the report. The communication, which forms the subject of an ordinary conference, being previously agreed to by the house making it, is usually in a written form, and is furnished by the managers for that house to the managers for the other, by whom it is made use of in making their report; but this paper is only to be regarded as a memorandum of which the managers are at liberty to avail themselves, in aid of their memory, and not as an official document authenticated by the house, from which it emanates.[2] Sometimes, however, it happens, that the manager making the communication relies entirely upon his memory; in which case, the managers for the other house must trust to their own recollection, aided by the notes they may have taken, if any,[3] in order to make their report. In the case of a free conference, the communications which take place are exclusively verbal, except as to the statement of the votes or proceedings of the house, at whose request it is held, which are usually contained in a written memorandum, as at an ordinary conference; and, therefore, they must necessarily be drawn up and reported from recollection, either alone, or assisted by the notes or memoranda of the managers. Hence it happens, in practice, that the discussions which take place at a free conference are not, in the first instance, reported; the managers, on their return, merely making a general statement, that they have been at the conference, which was very long, etc., and that they have left the bill, etc., with the managers for the other house. Where any votes or proceedings are communicated, they are of course reported. If subsequent proceedings should render it necessary or desirable, the course is, for the house to direct the managers to make a full report forthwith, or in a convenient time, or by such

[1] Comm. Jour. I. 123.

[2] Comm. Jour. I. 554, 555; Grey, III. 240; IX. 51.

[3] Mr. Powle, one of the managers for the commons at a conference, which was not a free conference, began the report by saying, "he" (the lord chancellor, who managed "for the lords,") "delivered all by word of mouth, without the help of any paper; and, therefore, I must crave pardon, if what I report be not exactly according to his words; though I hope I shall not omit any material passage." Comm. Jour. IX. 538.

a day. The report, when made, is ordered to be entered on the journal.[1]

846. At a free conference, the discussion commences with the managers on the part of the house at whose request it is held; they are answered by the managers for the other house; who are in turn replied to by the first; and so on alternately until both parties have exhausted their arguments. The managers, on each side, unless the course of proceeding has been particularly marked out for them by the house, arrange among themselves their several parts, and the different branches of the subject, which each of them is to maintain or enforce.

847. According to the regular course of proceeding, it is a rule, *first*, that a free conference ought not to take place until after two conferences, — that is, for the making of one communication on each side, — have been held, without bringing the two houses to an agreement; and, *secondly*, that if any further conference is desired after two conferences, it must be a free conference. In 1667, the commons acquiesced in a third conference, protesting, at the same time, "that, according to the usual course of proceeding between the two houses, there was a mistake in the lords demanding a conference, and that it should have been a free conference."[2] A *third* rule is, that after one free conference has been held, no conference but a free one can afterwards be held, touching the same subject-matter; but as many free conferences may be held, as may be found necessary, consistently with other forms of proceeding.[3]

848. These rules all relate to and suppose the same subject-matter. But if, in the course of proceedings by the way of conference, any new matter, as, for example, some question of privilege, or of the order of proceeding, should arise, either from the conduct of any of the managers, or the proceedings of either house towards the other, or some alteration should take place in the matter; in all these cases, a conference may be held with reference to such new matter, in precisely the same manner, as if no other subject were in dispute between the two houses. The matter thus incidentally arising may or may not be deemed of sufficient importance to take precedence of the principal subject; if it should be, that matter is suspended, until the former is disposed of, when the latter may again be taken up, and proceeded in at the point where it was broken off.[4]

[1] Comm. Jour. XIV. 180, 183, 566, 569, 575; Lords' Jour. XVII. 264.

[2] Hatsell, IV. 54.

[3] Hatsell, IV. 54.

[4] Hatsell, IV. 54; Comm. Jour. XVIII. 608–614.

849. In the regular course of proceeding, therefore, there must, in the *first* place, be a conference, on the request of one of the two houses, acceded to by the other, at which the former makes a communication to the latter; *second*, a conference, on the request of the house of whom the first conference was requested, for the purpose of giving reasons for disagreeing to, or for the purpose of otherwise answering, the communication which was the subject of the first conference; *third*, a free conference on the request of the house which first requested a conference; *fourth*, a free conference on the request of the other; and, so on, alternate free conferences, if the two houses think proper, until they either agree, or come to a final and peremptory disagreement.

850. At every successive conference, a new set of managers is appointed, usually however composed of the same members who were first appointed, with the addition of new ones, if occasion should require it. If the proceedings commence with the appointment of managers, which is always the case in the house of whom conference is requested, the managers are generally afterwards appointed the committee to report the reasons, or prepare the communication to be presented at the second conference. If the proceedings commence with the appointment of a committee to prepare for the conference, which is usually the case in the house which first requests conference, the members of the committee are afterwards appointed the managers. Sometimes the proceedings commence in the house which requests the conference, with the appointment of managers; in which case, the same members are usually employed afterwards as managers, or as a committee to prepare reasons, etc.

851. In reference to the proceedings of the two houses, on the report of a conference, whether free or not, it is a general rule, which has already been alluded to, that the house, at whose request the conference was held, takes no further steps whatever in the matter until something has been done by the other, upon whom alone it rests, to proceed or not, as it may think proper. It may, if it pleases, let the matter drop where it is. But if it thinks proper to take the report into consideration (which is the next step in the orderly course of proceeding), if it is the report of the first conference, it may either accede to the proposition or request, which is the subject of the conference, or it may disagree to it. If it disagrees, its disagreement is communicated at the second conference. Upon the report of this, the house which first requested the conference may then proceed or not, as it pleases, or may let the mat-

ter drop. If it proceeds with the report, three different courses are open, namely: 1. To yield the point in dispute; 2. To reaffirm its proceedings in such a manner, that, upon further conference or consideration of the matter, it may be at liberty, if it thinks proper, to yield the point; 3. To reaffirm its proceedings in such a manner, as not to be at liberty to retract, in which latter case, there can be no agreement between the two houses unless the other should think proper to yield. In the first case, the house *agrees;* in the second, it *insists;* in the third, it *adheres.* The nature of the proceedings to be considered will indicate which of these forms should be adopted.

852. If the house, of whom the conference has been demanded, sees fit, upon the report thereof, to yield the point in dispute, or to acquiesce in what is desired of it, (the particular form of proceeding will be noticed hereafter,) it is said to agree with the other. This agreement, which, of course, terminates the proceedings, may be signified by a message, in whatever stage it may happen to occur.

853. If the house, of whom the conference has been demanded, does not see fit, upon considering the report of the conference, to agree with the other, or to yield the point in dispute, it may either allow the matter to rest where it is, or it may reaffirm its proceedings, according to the stage in which the matter then is, and to the state of its mind in reference to it. If it is on the report of the first conference, or the first free conference, it is proper merely to insist; in which case, the house may, upon further proceedings, retract and agree. To adhere at either of these stages, is irregular, or, at least, contrary to the ordinary course of proceedings between the two houses; it being usual to have two free conferences, or more, before either house proceeds to adhere.[1]

854. If the stage of the proceedings is on the report of the second, or any subsequent free conference, the house, of whom the conference has been demanded, may, if it does not see fit to yield the point in dispute, insist as before, which it is still proper for it to do, in which case, it may afterwards agree; or it may adhere, in which case, it cannot afterwards retract and agree. And as it is the parliamentary course, so it is no less agreeable to the nature of things, that there should be no adhering, on either side, until after two free conferences, at least: because, before that time neither of the two houses can be possessed of the reasons upon which the

[1] Hatsell, IV. 356.

other proceeds; nor can they have had full opportunity to reply to the arguments of one another. To adhere sooner, therefore, is to exclude all possibility of offering expedients.[1]

855. When the house, whose business it is to take the next step in the course of the proceedings, subsequent to a conference, has considered and acted upon the report thereof, its proceedings are to be communicated to the other, if it yields and agrees, by a message; if not, at a conference, which must be either a conference, or a free conference, according to the stage in which it takes place. If the vote of the house is to insist, then the other may agree, insist, or adhere, according to the rules above stated, and demand a conference, to communicate its proceedings, which, as it must be at least the third conference, must regularly be a free conference.

856. Sometimes, instead of a single point of difference between the two houses, there are several relating to or growing out of the same subject-matter; in which case, the two houses may agree upon different points at different stages of the proceedings; but, so long as any one point remains, they have not arrived at that full and perfect agreement, which it is the purpose of conferences to bring about. Conferences may consequently take place until nothing remains in dispute, or until one or the other of the houses sees fit to drop all further proceedings, or until both houses adhere to their respective proceedings. A partial agreement is, of course, communicated at the conference, which is held upon the points still remaining in dispute.

857. Strangers are no more entitled to be present at conferences, than at committees, or in either house;[2] nor are any members entitled to be present but those who are appointed to manage the conference;[3] and, if the managers for the commons, on going to the conference room, (the lords do not go to the place of conference until they are notified that the commons are there,) find strangers in the room, who are not entitled to be present, the course is, for the managers to return and make report of that fact to the house; and the other house being also informed of the fact by message, measures are then taken by both, to remove the obstruction.[4]

858. It seems hardly necessary to observe, that orders relating to conferences, as for example, for requesting a conference, for the appointment of a committee to prepare reasons, for the appoint-

[1] Hatsell, IV. 356.
[2] Comm. Jour. I. 545.
[3] Comm. Jour. I. 156, 717, 756; Same, X. 20.
[4] Comm. Jour. XIV. 115, 116; Lords' Jour. XVII.

ment of managers, or for the reporting of the discussions at a free conference, may, like all other orders, be discharged by the house; that, like other reports, the report of the managers may remain without further notice, or it may be presently considered, or it may be considered on a day assigned, or the consideration of it may be fixed for a day beyond the session; and that in all these cases, whenever a debate ensues, it may be adjourned and resumed or not resumed, or adjourned to a day beyond the session. So, the report of the committee for drawing reasons or preparing matter for a conference, may be amended,[1] and, for that purpose, recommitted to the same or a different committee.[2]

859. When the whole house attends as a house, with the speaker, it is the duty of the speaker, it is presumed, to report the conference, in the same manner, as when the house attends as such in the lords, or in a body presents an address to the king; when the whole house attends as a committee, without the speaker,[3] or when a large number of members is appointed a committee to attend the conference, certain members are designated by name to be the reporters,[4] who may, either by direction of the house, or otherwise, arrange among themselves the duty of taking the notes and reporting,[5] and may either report by one of their number, or may each report upon some particular branch of the subject.[6]

860. The lords being adjourned during pleasure, and the business of the commons suspended, without any formal adjournment, in order that the conference may take place, it is incumbent on the officers of both (including the lord chancellor and speaker, if they do not go to the conference, either with their respective houses, or as managers), to remain in attendance, whilst the managers are at the conference, so, that, on their return, business may at once be resumed.[7]

861. In the year 1667, the painted chamber, a room near the chamber of the house of lords, was fitted up as a place of conference for the two houses, and so used, until after the fire, in 1834, when it was fitted up as a temporary house of lords, and another room taken for a conference room.[8] The new palace at Westminster, in which the two houses of parliament now sit, contains an apartment denominated the painted chamber, which is used for the holding of conferences.

[1] Comm. Jour. IX. 348.
[2] Comm. Jour. IX. 348.
[3] Comm. Jour. I. 716.
[4] Comm. Jour. I. 832, 896.
[5] Comm. Jour. I. 832.
[6] Comm. Jour. I. 812, 813.
[7] Comm. Jour. I. 896.
[8] Hatsell, IV. 31, and note; May, 327, n.

862. In regard to the ceremonies to be observed at conferences, which in the earlier periods of parliamentary history were thought of sufficient consequence to be settled, according to the relative rank and dignity of the members of the two houses, the following seems all that is necessary to be stated. When the time fixed for holding a conference has arrived, the speaker in the house of commons, if necessary, calls the attention of the house to the fact,— other business, if the house is engaged in any, is suspended,— managers, if not previously selected, are appointed,— their names are called over by the clerk,— and they leave their places in the house, and repair to the place where the conference is to be held. They enter the room uncovered, and remain uncovered and standing, during the conference, unless it be some infirm person, who by connivance is allowed to sit, uncovered, in a corner out of sight.[1]

863. When the commons are thus in attendance, the lords are immediately informed of it by their usher or his deputy. Business is thereupon suspended,— the managers are appointed and their names called over,— the house is adjourned during pleasure,— and the managers go to the conference. When they enter the room, they have their hats on, until they come just within the bar of the place of conference, when they take them off, and walk uncovered to the seats provided for them. They then seat themselves, and remain sitting and covered during the conference. The manager for the lords, who receives or delivers the paper, which contains the resolutions, votes, reasons, or other matter, which is to be delivered, 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 managers rise from their seats, take off their hats, and walk uncovered from the place of conference. At a free conference, those of the lords who speak do so standing and uncovered.[2]

864. In the earlier periods of parliamentary history, conferences between the two houses were of frequent occurrence; and, from the time of James I. to that of George I. the journals contain a great number of precedents, furnishing abundant learning on this subject. But, since the latter period, a number of different causes have contributed to render this mode of proceediug in a great degree unnecessary. The forms of proceeding between the two houses have become fixed and settled; the jurisdiction of the lords, as a judicial court of the last resort, is no longer regarded with

[1] Lords' Standing Orders, No. 37.

[2] May, 327; Hatsell, IV. 28, note.

jealousy, as conflicting with the privileges of the commons; and, in consequence of the greater publicity of proceedings in both houses, by means of reporters and the press, all the arguments and considerations, which, in one house, have led to the adoption of certain measures, are immediately known in the other, without coming through the formal channel of a free conference. There is, therefore, at the present day, but very little occasion for conferences, except with reference to the amendments to bills between the two houses; and only one case of this kind has given occasion to a free conference, within the present century; which occurred in 1836, when the amendments made by the lords to a bill for amending the act for regulating municipal corporations, led to a free conference.[1]

865. In this country, the occasions for conference are less likely to occur than in England, except in reference to disagreeing votes on bills and other similar matters, in which the two houses proceed, at once, to a free conference, and which will be described hereafter. If a proper occasion should occur, for the holding of a conference, as above described, in any of our legislative assemblies, no good reason can be perceived, why it should not take place. The same ceremonies would be required, but, as the two branches are equal in point of dignity and rank, it would not be the exclusive privilege of either to appoint the time and place for the conference. The house proposing the conference would also propose the time and place for holding it, or they might be left to be agreed upon by the managers on each side.

SECTION III. COMMUNICATIONS BY COMMITTEES.

866. The two houses may also be brought into communication, by means of select committees[2] appointed by each house, with power to communicate to the other, in reference to the subject or business referred to them.[3] In 1794, the commons communicated to the lords certain papers which had been laid before them by the

[1] Mr. May remarks, that this was the only instance of a free conference since 1702; but in this he appears to be mistaken. There was a free conference on the matter of the Aylesbury men in 1704; another March 20, 1717, (Comm. Jour. XVIII. 769); and a third, April 23, 1740. The free conference, which he refers to, in 1702, took place in reference to the amendments to the bill for preventing occasional conformity, the proceedings on which are well worthy of attention as regards form. See May, 368.

[2] The subject of committees is explained in the seventh part.

[3] May, 328, 329.

king, in relation to corresponding societies, together with a report thereon of their committee of secrecy;[1] and these papers being referred in the house of lords to a select committee, the house gave the committee power to receive such communications as might be made to them, by the committee of secrecy appointed by the house of commons;[2] to which the commons, on being informed of the order by message, 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.[3] Similar proceedings were adopted, upon the inquiry into the state of Ireland, in 1801, which was conducted by secret committees of the commons and lords communicating with each other.[4]

CHAPTER SECOND.

OF COMMUNICATIONS BETWEEN THE TWO BRANCHES, OR EITHER OF THEM AND THE EXECUTIVE.

867. The sovereign, in addition to his character of chief executive magistrate, is also one branch of the legislature; and, in both capacities, there is frequent occasion for communication between him and one or both the houses. The various constitutional forms in which these communications take place, on the one side, and on the other, will now be noticed:—I. Communications from the sovereign to the two houses, or either of them; and, II. Communications from one or both of the houses to the sovereign.

SECTION I. OF COMMUNICATIONS FROM THE SOVEREIGN TO THE TWO HOUSES, OR EITHER OF THEM.

868. The sovereign communicates with the two houses, either in their presence, which takes place when the king, being present in person or by commissioners, is attended by the two houses in the house of lords; or by message, which is either written or verbal.

[1] Comm. Jour. XLIX. 613.
[2] Lords' Jour. XL. 202.
[3] Comm. Jour. XLIX. 620.
[4] Comm. Jour. LXVI. 287, 291.

These several forms of communication, with the incidental proceedings to which they give rise, will now be considered.

I. *Communications by the Sovereign in Person, or by Commissioners.*

869. The sovereign is always supposed, in a constitutional sense, to be present, in the high court of parliament, in the same manner that he is present in all the other courts of the realm; but as in the latter he can only exercise the functions of justice, through and by means of his judges, so in the former he can only take a part in the proceedings in those constitutional modes, by which the exercise of the parliamentary prerogatives of the crown is rendered consistent with the entire freedom and independence of each house of parliament, in all its debates and proceedings. The king may be present, in person, in the house of lords, at any time; and may witness its deliberations and proceedings, but he can only participate in them, when he comes there for the purpose of exercising his constitutional functions, as the chief executive magistrate, or as one branch of the legislature. Charles II. and his immediate successors were accustomed to be present and witness the debates in the house of lords; but, since the accession of George I., this practice, which might be abused to overawe and influence the proceedings of that house, has been discontinued; and, according to the subsequent practice, the king is never personally present in parliament, except on its opening and prorogation, and occasionally during a session for the purpose of giving the royal assent to bills.[1]

870. When the king meets parliament in person, for either of the above-mentioned purposes, he proceeds in state to the house of lords, where, being seated on the throne, and attended by his officers of state (all the lords being in their robes and standing while the king is present), he commands the gentleman usher of the black rod, through the lord high chamberlain, to let the commons know, that it is his majesty's pleasure that they attend him immediately in the house of lords. 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 (it is not competent for the house to refuse him admittance) he advances up the middle of the house towards the table, making three obeisances to the chair, and says: — "Mr. Speaker, the king commands this honorable house to attend his

[1] May, 331.

majesty immediately in the house of peers." He then withdraws, still making obeisances, and without turning his back upon the house, until he has reached the bar. The speaker and the house immediately go up to the bar of the house of lords; upon which, the royal communication, whatever it may be, is then made.

871. When the king is not personally present, the communication is made by the lords commissioners appointed for the purpose. 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 that honorable house in the house of peers, to hear the commission read; and, when the speaker and the house attend, as it is equally their duty to do, at the bar of the lords, the lord chancellor makes the royal communication.

872. The particular ceremonies attending the opening and prorogation of parliament have been already described; those which accompany the giving of the royal assent to bills will be mentioned in a subsequent part of the work, in which the proceedings in the passing of bills are described.

873. According to the established custom, when the usher of the black rod knocks at the door of the house of commons, he is immediately let in, without any notice being given by the sergeant-at-arms to the house, or any question put for his admission; and, as soon as he knocks, all other business, of what kind soever, should immediately cease, the doors should be opened, and when he has delivered his message, the speaker and the house ought to go, without debate or delay, to attend the king in the house of lords.[1]

874. Where the black rod brings a message to the house, from commissioners authorized by the king, in which is contained the subject of the commission, which they are desired to attend to hear read; if the commons see any irregularity in the proceeding, they do not immediately comply, but when the black rod is withdrawn, they send a message to the lords stating this irregularity, and their reasons for declining to attend.[2]

875. In the case of a message from the house of lords and the

[1] Hatsell, II. 374, 375.

[2] Hatsell, II. 377. Mr. Maxwell, gentleman usher of the house of lords, coming into the house without knocking at the door, and before he was called, without the black rod in his hand, exceptions were taken to both, whereupon he withdrew, and afterwards came again with the black rod and did signify to the house, that his majesty's assent to the bill of attainder was now about to be given, and that the lords did expect Mr. Speaker, and the house of commons, to come up." (May 10, 1641.) Rushworth, IV. 262.

messengers are at the door, the speaker cannot, agreeably to the ancient rule and unbroken practice of the house, take the chair, for the purpose of admitting the messengers, till there are forty members present. A message from the king, to attend him in the house of peers, or from the lords authorized by his majesty's commission, is the only authority, which can allow the speaker to dispense with the rule as to forty members, and permit his taking the chair, though forty members are not present.

876. In this country, the only occasion, on which the executive meets the two branches of the legislature in person, — after taking the oaths of office, which he is sometimes required to do in the presence of the two houses, — occurs when he meets them for the purpose of making a personal communication to them at the commencement of each session. In most cases, it is optional with the executive, to send a message or to make an address in person. Where the latter course is adopted, the time and place are agreed upon beforehand. Communications which take place afterwards, during the session, from the executive to the legislative branches or either of them, are made by message. No good reason is perceived, why the executive may not be present, as a private individual, and witness the debates in either house of the legislature, at any time; although a proper sense of self-respect, and of official propriety might restrain him from doing so.

II. *Communications of the Sovereign by Message.*

877. Communications by message are of two kinds, *written* and *verbal*. The former, which are under the royal signmanual, are addressed to either house singly, or to both houses separately. The message is brought by a member of the house, being a minister of the crown, or one of the royal household. In the house of lords, the peer who is charged with the message acquaints the house, that he has a message under the royal signmanual, which his majesty has commanded him to deliver to their lordships. The lord chancellor then reads the message at length, and it is immediately afterwards read again by the clerk. In the house of commons, the member who is charged with the message appears at the bar, from whence he informs the speaker, that he has a message from his majesty to the house, signed by himself; which he thereupon takes to the table and presents to the house. The message is delivered to the speaker,

by whom it is read at length, and during the reading the members are uncovered.[1]

878. The subjects of communications, by messages under the royal signmanual, usually relate to important public events, which require the attention of parliament; to the prerogatives or property of the crown; to provision for the royal family; and to various matters in which the king, as the chief executive authority, seeks for pecuniary aid from parliament. These messages may be regarded, in short, as additions to the royal speech at the commencement of the session, submitting for the consideration of parliament other matters which have since occurred, or which were not thought of sufficient general interest to be embraced in the speech.

879. The subjects of these messages under the signmanual being analogous to those which are introduced into the king's speech, which is delivered to both houses, it is a general rule, that every such message should, if practicable, be sent to both houses.[2] But it is otherwise, when the message, from its nature, can only be communicated to one house; as where a message was accompanied with an original declaration signed by the Pretender, to which the message referred; or where the message informed the house, that the king had directed certain books and papers to be laid before them, which had been seized by his order; in both which cases, the documents being original, could not possibly be sent to both houses at the same time.[3]

880. The more proper and regular course, also, is to deliver messages, which are communicated to both houses separately, on the same day, and a departure from this rule has been a subject of complaint; but, from the accident of both houses not sitting on the same day, or from some other casual circumstance, it has frequently happened, that the messages have been delivered on different days.[4]

881. The practice of the federal government, in sending messages from the executive, which is as follows, is in exact accordance with the principles laid down in the preceding paragraphs. Executive messages, when not in answer to a communication from one or both of the two houses, are usually sent at the same time to both;[5] but if the subject of the message is of such a nature as not to admit of being sent to both, as where the document to be sent

[1] May, 332.
[2] May, 332.
[3] Hatsell, II. 367, 368, n.
[4] Lords' Jour. LXVI. 958; Comm. Jour. LXXXIX. 575.
[5] Jefferson's Manual, sec. XLVII.

with it consists of only a single copy,[1] which, from its great size,[2] does not admit of being seasonably copied, or, from its character,[3] does not admit of being copied at all, the message and document accompanying may be sent to one only; or a part of the documents may be sent to the one house and a part to the other.[4] In these cases, the message commonly contains a request that the documents sent may be communicated to the other house. Sometimes, also, a message, transmitting original documents, requests that after being seen by both houses they may be returned to the department from whence they emanated.[5] The documents accompanying an executive message ordinarily remain in the possession of the house to which they are sent. It is by means of executive messages that documents are laid before the two houses, which the executive is requested to transmit to them.[6] Messages from the executive are usually read, by customary courtesy,[7] though the reading may be dispensed with,[8] before they are disposed of; and they are recorded at length on the journal. The documents accompanying a message stand upon the same footing with other papers, and are neither read nor entered on the journal, as a part of the message which they accompany.

882. Messages for pecuniary aid are also usually sent to both houses of parliament on account of the analogy which they bear to the demand for supplies, which, though addressed exclusively to the commons, yet makes a part of the royal speech to both houses; but the form of the message 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.[9]

883. Another form of communication from the crown to either house of parliament, is in the nature of a verbal message, delivered, by command, by a minister of the crown to the house of which he is a member. This communication is used whenever a member of either house is arrested for any crime at the suit of the crown; as the privileges of parliament require that the house should be informed of the cause for which their member is imprisoned, and detained from his service in parliament. Thus, in 1780, Lord

[1] J. of H. III. 591.
[2] J. of S. III. 182.
[3] J. of S. 20th Cong. 2d Sess. 155.
[4] J. of H. III. 591; J. of S. III. 182; Same, 20th Cong. 2d Sess. 155.
[5] J. of S. IV. 237, 238; Same, 20th Cong. 2d Sess. 155.
[6] J. of H. VIII. 49; Same, VIII. 138; Cong. Globe, XVII. 231.
[7] Cong. Globe, XXI. 1524, 1525.
[8] Cong. Globe, XVIII. 4.
[9] May, 333.

North informed the house of commons, that he was commanded by his majesty to acquaint the house, that his majesty had caused Lord George Gordon, a member of the house, to be apprehended, and committed for high treason.[1] And at the same time Lord North presented, by command, the proclamation that had been issued, in reference to the riots in which Lord George Gordon had been implicated.[2]

884. In the same manner, when members have been placed under arrest, in order to be tried by military court-martial, the secretary-at-war, or some other minister of the crown, being a privy-councillor, informs the house that he had been commanded to acquaint them of the arrest of their member, and its cause.[3] Communications of the latter description are made when members have been placed under arrest, to be tried by naval court-martial; but in these cases they are not in the form of a royal message, but are communications from the lord high admiral or the lords commissioners of the admiralty, by whom the warrants are issued for taking the members into custody; and copies of the warrants are, at the same time, laid before the house.[4]

885. There are other modes of communication from the king to the parliament, — analogous to verbal messages, — in which the king's *pleasure*, *recommendation*, or *consent* is signified.

886. The sovereign'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. His majesty's pleasure is also signified for the attendance of the commons in the house of peers; in regard to the times at which he appoints to be attended with addresses; and concerning matters personally affecting the interests of the royal family.[5] 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.

887. The royal *recommendation* is signified to the commons by a minister of the crown, 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

[1] Comm. Jour. XXXVII. 903.
[2] May, 333.
[3] Comm. Jour. LVIII. 597; Same, LIX. 33; Same, LXX. 70.
[4] Comm. Jour. LXII. 145; Same, LXIV. 214; Same, LXVII. 246; May, 333.
[5] Comm. Jour. LXXXVI. 460.

grant is to be made in the committee of supply, or any other committee; or which would have the effect of releasing or compounding any sum of money owing to the crown.[1]

888. 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.[2] The mode of communicating the recommendation and consent is the same; but the former is given at the very commencement of a proceeding, and must precede all grants of money; while the latter may be given at any time during the progress of a bill, in which the consent of the crown is required.[3]

889. Another form of communication, similar in principle to the last, is when the crown "places its interests at the disposal of parliament," which is signified in the same manner, by a minister of the crown.[4]

890. The respect, which is deemed to be due from the two houses to the executive, requires, that certain of these communications, from the sovereign to either or both the two houses, should be acknowledged in an appropriate manner. The communications, which thus require acknowledgment, are the royal speech at the commencement, and messages received in the course of the session.

891. 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 royal 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 his majesty. When the speech has been delivered by the sovereign in person and he remains in town, the address is presented by the whole house; but, when it has been read by the

[1] Comm. Jour. LXXV. 152, 167; Same, LXXXIX. 52; May, 335.

[2] Comm. Jour. LXXVII. 408; Same, LXXXVI. 485, 550; Same, XCI. 548; Same, CV. 492.

[3] May, 335.

[4] Comm. Jour. LXXXVIII. 381; Same, XC. 447; Same, XCI. 427; May, 336.

lords commissioners, or if the sovereign is in the country, the address of the upper house is presented "by the lords with white staves;"[1] and the address of the commons by "such members of the house as are of his majesty's most honorable 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 "humbly to know his majesty's pleasure when he will be attended" with the address. Each house meets when it is understood that this ceremony will take place, and after his majesty's pleasure has been reported,[2] proceeds separately to the palace.[3]

892. Messages under the royal signmanual are generally acknowledged by addresses in both houses, which are presented from the house of lords by the "lords with white staves," and from the house of commons by those of the privy-councillors who happen to be members; in the same manner as addresses in answer to royal speeches when parliament has been opened by commission.

893. In the commons, however, it is not always necessary to 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 presents an address, in order to declare its willingness to concur in the measures which may be adopted by the other house;[4] but the bills consequent upon messages relating to grants, are presented by the speaker of the commons, and are substantial answers to the demands of the crown. The rule, therefore, in the commons, appears to be, to answer, by address, all written messages which relate to important public events,[5] or matters connected with the prerogatives, interests, or property of the crown;[6] or which call for general legislative measures;[7] but in regard to messages relating exclusively to pecuniary aids of whatever kind, to consider them in a committee of the whole house, on a future day when provision is made accordingly.[8]

894. When the house is informed, by command of the crown, of the arrest of a member to be tried by a military court-martial, it immediately resolves upon an address of thanks to his majesty, "for his tender regard to the privileges of this house."[9] And in

[1] Of the royal household.
[2] Lords' Jour. LXXIV. 10; Comm. Jour. XCVI. 11; Same, CI. 10.
[3] May, 182.
[4] Lords' Jour. LXIII. 891.
[5] Comm. Jour. LXXXII. 114.
[6] Comm. Jour. LXXXV. 466; Same, LXXXIX. 578.
[7] Comm. Jour. LXXXV. 214.
[8] Comm. Jour. LXXXVI. 488, 491; Same, CV. 539, 544; May, 337.
[9] Comm. Jour. LXX. 70.

all cases in which the arrest of a member for a criminal offence is communicated, an address of thanks is voted in answer.[1] But as the arrest of a member to be tried by a naval court-martial does not proceed immediately from the crown, and the communication is only made from the lords of the admiralty, no address is necessary in answer to this indirect form of message.[2]

895. The matters upon which the royal pleasure is usually signified need no address in answer, as immediate compliance is given by the house; and the recommendation and consent of the crown, as already explained, are only signified as introductory to proceedings in parliament, or essential to their progress.[3]

896. In this country, when a verbal message is to be sent by the executive to the two houses or either of them, it is usually in answer to a communication to him, and is returned by the same messengers. On other occasions, as ministers and other official persons connected with the executive department, are carefully excluded by the American constitutions, from having seats in the legislative assemblies, executive messages are not sent by members, but by the secretary of state, or analogous officer, or some subordinate officer of his department,[4] or by a private secretary. The messenger commonly employed by the president of the United States, though others have been made use of, has been his private secretary. It is a breach of privilege to assault the executive,[5] or his messenger,[6] whilst going to or returning from the delivery of an address or message. It is not now the custom in this country to answer either an executive address or message in a formal manner.

SECTION II. OF COMMUNICATIONS FROM THE TWO HOUSES, OR EITHER OF THEM, TO THE SOVEREIGN.

897. Having thus described the forms of communication from the sovereign to the two houses or either of them, together with the forms in which they are acknowledged, it now becomes necessary to describe those which originate with the two houses or either of them. It is by addresses alone, that the resolutions of parliament, or of either house, can be conveyed directly to the crown. These resolutions are sometimes in answer to royal speeches, or

[1] Comm. Jour. XXXVII. 903.
[2] May, 338.
[3] May, 338.
[4] J. of H. III. 123.
[5] Parl. Reg. XLV.; Comm. Jour. LV. 7.
[6] J. of H. 20th Cong. 1st Sess. 587, 589, 764; J. of S. 20th Cong. 1st. Sess. 491.

messages, but are more frequently in reference to other matters, upon which either house is desirous of making known its opinions to the crown.[1]

898. Addresses are sometimes agreed upon by both houses, and jointly presented to the crown, but are more generally confined to each house singly. When some event of unusual importance[2] 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 there filled up, and a message is returned, acquainting the house with its concurrence, and that the blank has been filled up. Such addresses are presented either by both houses in a body,[3] or by two peers and four members of the house of commons;[4] and they have been presented also by committees of both houses;[5] by a joint committee of lords and commons,[6] and by the lord chancellor and speaker of the house of commons;[7] but the lords always learn his majesty's pleasure, and communicate to the commons, by message, the time at which he has appointed to be attended.[8]

899. 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;[9] by the lords with white staves, or privy-councillors;[10] and, in some peculiar cases, by members specially nominated.[11]

900. The subjects upon which addresses are presented are too varied to admit of enumeration. They have comprised every matter of foreign[12] or domestic policy;[13] the administration of justice;[14] the confidence of parliament in the ministers of the crown;[15] the expression of congratulation or condolence (which are agreed to *nem. con.*;)[16] and, in short, representations upon all points connected with the government and welfare of the country. But they ought

[1] May, 337, 338.
[2] Comm. Jour. LXXXVII. 421; Same, LXXXVIII. 235.
[3] Comm. Jour. LXXXVII. 424.
[4] Comm. Jour. LXXXV. 652.
[5] Comm. Jour. I. 877.
[6] Comm. Jour. II. 462.
[7] 23d Dec. 1708; Comm. Jour. XVI. 54.
[8] May, 338.
[9] Comm. Jour. XCII. 492.
[10] Lord's Jour. XCII. 19.
[11] Comm. Jour. X. 295; May, 339.
[12] Comm. Jour. LXXVIII. 278; Same, LXXXII. 118; Same, LXXXVIII. 471.
[13] Comm. Jour. LXXXIX. 225.
[14] Comm. Jour. LXXXV. 472.
[15] Comm. Jour. LXXXVII. 325.
[16] Comm. Jour. LXXXV. 591; Same, XCII. 493; Same, CV. 508.

not to be presented in relation to any bill depending in either house of parliament.[1]

901. 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. On reaching the palace, the two houses assemble in a chamber adjoining the throne room, and when the king is prepared to receive them, the doors are thrown open, and the lord chancellor and the speaker 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 the king returns an answer, and both houses retire from the royal presence.[2]

902. 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 the speaker. Each house proceeds by its accustomed route to the palace, and is admitted with similar ceremonies. In presenting the address, the mover and seconder are always on the left hand of the speaker.[3]

903. It is customary for all the lords, without exception, who attend his majesty, to be in full dress; 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.[4]

904. 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 his majesty; but when they have been presented by privy-councillors only, the answer is reported by one of those who have had the honor of attending his majesty, or by one of the royal household.[5]

905. Another mode of communication with the crown, less direct and formal than an address, has been occasionally adopted; when resolutions of the house,[6] and resolutions and evidence taken before a committee,[7] have been ordered to be laid before the sovereign. In such cases the resolutions have been presented in the same manner as addresses, and answers have sometimes been returned.[8]

[1] Lords' Jour. XII. 72, 81, 88; Comm. Jour. VIII. 670; Grey, I. 5; May, 339.

[2] May, 339.

[3] May, 340.

[4] They are not permitted to enter the royal presence with sticks or umbrellas; May, 340.

[5] May, 340.

[6] Comm. Jour. XXXVII. 330; Same, XXXIX. 884; Same, XL. 1157; Same, LX. 206; Same, LXVII. 462; Same, LXXVIII. 316.

[7] Comm. Jour. XC. 534.

[8] May, 341. The paragraphs composing this and the preceding section are, for the most part, taken almost literally from this author.

906. When the king's answer to an address has been reported, it is the usual practice for the house to come to a resolution expressing its thanks therefor.

907. In this country, though the formal address might properly be employed, it is not now commonly in use, in making communications from one or both branches of the legislature to the executive; but they are made by means of resolutions authenticated and transmitted in the usual manner. Formerly, it was the practice in the congress of the United States to transmit resolutions to the executive by members, but this practice appears, for many years, to have been discontinued.

CHAPTER THIRD.

OF ACCOUNTS, PAPERS, RETURNS, PRESENTED IN PURSUANCE OF ORDERS, OR IN OBEDIENCE TO ACTS OF PARLIAMENT.

908. One of the powers incidental to parliament is that of obtaining all information which may be necessary to enable it to act efficiently, thoroughly, and properly, in the exercise of its various functions.[1] Each of the houses, therefore, as it acts separately and independently of the other, is invested with this authority, and may consequently resort both to other official persons and bodies for information connected with their respective offices or functions,[2] and also to private individuals, for all information in their possession relative to subjects or matters pending in parliament. Sometimes, also, acts of parliament provide that certain official persons shall make periodical or special returns, to parliament, or that commissioners appointed for some special purpose shall present the result of their inquiries to parliament. The proceedings which take place with a view to obtain, or with reference to the receiving, of information of this official character, will form the subject of the present chapter. Proceedings with reference to the information derivable from private sources will be treated of in the chapter following, relating to witnesses.

[1] By Sir William Yonge, Comm. Deb. VIII. 15.

[2] See also Cong. Globe, XI. 712.

909. The authority to obtain information of the official character above mentioned is invested in each house separately, and may be exercised either directly by an order of the house, or indirectly by means of an address to 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, to the house from whence it issues; but returns of matters connected with the exercise of the royal prerogatives, are only to be obtained by means of addresses to the crown.[1]

910. The distinction between these two classes of returns is important; as, on the one hand, it is considered irregular to order directly that which should be sought for by address; and, on the other, it is regarded as a compromise of the authority of parliament, to resort to the crown for information, which it can obtain by its own order. It is not always easy, in practice, to make the necessary discrimination; 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 the secretaries of state are only 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 treasury, are obtained by orders. These returns include every account that can be rendered of the revenue, and expenditure of the country; of commerce and navigation; of salaries and pensions; of general statistics; and of facts connected with the administration of all the revenue departments. Addresses 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.[2]

911. Motions for addresses, or for orders, with a view to obtain papers or returns, are subject to debate and amendment, according to the ordinary course of proceedings in parliament. It is also necessary, that in the house of commons they should be preceded by notices,[3] in reference to which the following rules are laid down by Mr. Speaker Abbott: *first*, any member may move for any of the returns, or public accounts, usually returned to parliament every

[1] May, 393.

[2] May, 394.

[3] The subject of notices of motions is considered in the first division of the sixth part. In this country nothing of this kind is necessary, unless required by some special rule.

session, without giving any notice; *second*, any of his majesty's servants in the house of commons may move for any returns they choose, at the same time stating them to be for the use and information of the house, without any previous notice; *third*, any gentleman may move for any official document, without notice, if he at the same time states that he has communicated his intention to some one or more of the persons, in whose department such document is deposited, and that there is no likelihood of objection to the motion; in all other cases, no motion for any such document can be entertained by the house, without previous notice.[1]

912. Addresses for papers or returns pray the sovereign to be graciously pleased to give directions to the proper officers, that the documents desired may be laid before the house; and are ordinarily ordered to be presented to the sovereign by such members of the house as are of the privy council. When presented, an answer is returned, which is afterwards reported to the house by one of the members by whom the address has been presented. The answer, if favorable, is, that his majesty had commanded him to acquaint the house, that he will give directions accordingly.

913. If the papers or information sought to be attained by means of an address should be such, as, either in whole or in part, in the judgment of the crown, it would not be proper to make public, the answer is, that the subject to which the papers or some of them relate, is one which requires the greatest secrecy, and that the information desired cannot be given without manifest prejudice to the public;[2] or, that the subject of the address being of the greatest importance, his majesty will take it into his most serious consideration, in order to see how far the same can be complied with, without prejudice to the public.[3] If the house should be dissatisfied with such an answer, which, without strong reasons, would not be likely to be the case,[4] it is competent for it to present a further address, representing its right to have the information in question, and earnestly beseeching his majesty to order it to be laid before them.[5]

914. When papers are ordered directly, the order is signed by the clerk of the house, and sent at once to the persons by whom it is to be executed; and, it seems, that persons, who are thus subject to

[1] Hans. (1) VI. 521, 522. See also Reg. of Deb. X. Part I. 12, 13.

[2] Comm. Jour. XX. 749; Same, XXI. 70, 293; Same, XXIV. 56; Comm. Deb. VIII. 17.

[3] Comm. Jour. XXIV. 57.

[4] Comm. Deb. VIII. 17.

[5] Comm. Jour. XX. 749.

the authority of the house have no discretion to determine that the information sought for ought not to be made public.[1]

915. If an address should happen to be presented for papers, which are within the direct order of the house, it is the usual course, provided no answer to it has been reported, to discharge the order for the address, and to order the papers to be laid before the house;[2] and so when a return has been ordered, for which an address ought to have been moved, the order is discharged, and an address presented in its stead.[3]

916. When an address for papers has received a favorable answer, namely, that the crown will give directions to the proper officers to prepare and lay them before the house, the parties who are to make them are then within the immediate reach of an order of the house,[4] and consequently stand upon the same footing with parties originally within the direction of the house. If any parties, thus under obligations to the house to make the required returns, whether originally, or upon the king's answer to an address, neglect to make them within a reasonable time, they may be ordered to make them forthwith; and if after such order, they continue to withhold them, they may be ordered to attend the house, and may be censured or punished, according to the circumstances of the case.[5]

917. The effect of a prorogation being to put an end to every proceeding pending in parliament, and to vacate all orders not fully executed, there is no doubt, that an order for returns or papers, whether by way of address, or by direct order, ceases to be obligatory upon a prorogation; and, it is usual, therefore, when a prorogation takes place before a return is presented in pursuance of the directions of the king or of the order of the house, (if the papers are then wanted,) to renew the order in the ensuing session, as if no order had been previously given. Returns, however, are frequently made, in pursuance of addresses presented at a previous session without any renewal of the address.[6] Orders are also occasionally made, which assume that an order has force from one session to another; as, for example, returns have been ordered "to be prepared, to be laid before the house in the next session;"[7] orders of a former session have been read, for the information of the house, and the papers therein mentioned ordered to be prepared and produced;[8] and, on one occasion, the order for an address made

[1] Comm. Deb. VIII. 17.
[2] Comm. Jour. XCII. 580.
[3] Comm. Jour. XCII. 365.
[4] Comm. Jour. XC. 413, 650.
[5] May, 195.
[6] Comm. Jour. XCVIII. 428.
[7] Comm. Jour. LXXVIII. 472; Same, LXXX. 631.
[8] Comm. Jour. LXXVIII. 72.

by a former parliament was read, and the house being informed that certain persons had not made the return, they were ordered to make it forthwith.[1]

918. Besides the modes above described, in which the two houses obtain official information, by means of orders and addresses, which emanate from themselves, there are two other modes by which documentary information of the same general character is placed in the possession of one or both houses, for their consideration, namely, by command of the king, and in compliance with acts of parliament.[2]

919. The ordinary mode in which papers and documents are presented to the house, either in pursuance of its direct order, or of its address to the king, or in compliance with acts of parliament, is, for the officer or person who is to present them, if not a member, to attend at the door of the house, and on the house being thereupon informed that he is in attendance, he is called in, and, at the bar, presents to the house the papers with which he is charged. If a member, he presents them in the ordinary manner, in which papers are presented to the house. Sometimes, however, under peculiar circumstances, papers are transmitted to the speaker, and by him presented to the house. Sometimes, also, returns are directed to be made to the clerk, in which case, they are presented by him to the house.

920. When a motion is made for the production of papers, in either of the modes above mentioned, the papers sought to be obtained should be particularly described;[3] and, if the propriety of the motion is manifest, or if no objection is made, it is the constant usage for the motion to be acceded to as a matter of course, without any reason being given; but, if the ground of the motion is not clear, or if objection is made, it is then incumbent upon the mover to state the reasons upon which his motion is founded in order that the house may judge of the necessity, importance, and expediency of calling for the papers which are the subject of it.[4] In order to establish a parliamentary ground for ordering the production of papers, several things appear to be essential, which are enumerated in the following paragraphs.

921. I. It seems, that the person or body thus subject to the order of the house, must possess a public official character, known as such in law; as, for example, where it was proposed to move for

[1] Comm. Jour. XC. 413.
[2] May, 395.
[3] Parl. Reg. XI. 128.
[4] Parl. Reg. XI. 132, 133; Cav. Deb. II. 237.

copies of all communications made to the chairman of the committee at Lloyd's for the relief of wounded seamen, Mr. Speaker Abbott observed, "that the society were not known to that house, and, therefore, could not form part of a motion from the chair."[1]

922. II. The paper, or document, a copy of which it is proposed to order, must be official in its character, that is, an office document or paper,[2] and not a mere private letter or other written document. Where a motion was made for the production of a copy of an opinion and advice, given by counsel in a case of toll, in which the corporation of Kilkenny was interested, the original of which was in the possession of the present mayor and aldermen of that city; and objection was made, that the document required was "the opinion confidentially given by a counsel to his clients," and that to call for the public production of such a document "was as unprecedented as it would be of dangerous example," the motion was rejected.[3] So, where certain papers relative to Westminster Abbey were moved for, the motion was objected to and negatived on the ground, among others, "that it was for the production of papers, which were, in fact, the titles of the dean and chapter to certain houses and lands they possessed, and that it would be a dangerous precedent to establish, to grant an application to know the titles of landlords to their property."[4]

923. III. In the third place, it is essential, that a motion for the production of papers should rest on a parliamentary ground: — 1. They must relate to a subject or matter within the legitimate powers and appropriate functions of parliament. Where the production of papers was objected to on the ground, that the subject to which they related was one which belonged to the jurisdiction of the ordinary tribunals, and with which parliament had no authority to interfere, and that the only use which could be made of the documents would be as evidence against the claims of the party called upon to produce them, the motion was refused;[5] so, it is no proper ground for the production of papers, that they will either prove or disprove an assertion made by a member, on some former occasion;[6] or that they will enable the mover to proceed individually upon a charge against a party, whom he desires to bring before some other body or tribunal.[7] 2. The matter, to which the papers relate, must either be already pending, or about

[1] Hans. (1), XI. 271.
[2] Parl. Reg. XI. 128.
[3] Hans. (3), LXXIV. 865.
[4] Hans. (2), XV. 194, 195, 199.
[5] Hans. (2), XV. 194, 195, 199.
[6] Hans. (1), XXII. 120.
[7] Hans. (3), XVI. 194, 195.

to be introduced. If such matter is already pending, the propriety of the motion for papers will be apparent, or otherwise, from the terms in which the motion is expressed; if not pending, then it is incumbent upon the member who moves for papers, to declare that he intends to found some motion, and what, upon them when produced,[1] or to explain in what manner their production will throw light upon any matter hereafter to be moved or pending in the house.[2] Thus, where a motion was made in the house of lords, for the production of certain reports, which had been made to the privy council, the mover explained the ground of his motion to be, to lay the foundation of a measure, which it was the intention of the government immediately to introduce; that "he was aware, that such an act could not originate in that house, but it would be immediately brought into the other house, and it was probable their lordships would be speedily called upon to give it their sanction."[3]

3. The papers must be so necessary and pertinent to the matter to which they relate, that it cannot otherwise be fully and clearly understood.[4]

924. IV. The information or document moved for, if not in the possession, must, at least, be within the power, of the officer who is called upon, to obtain it. Thus, an account being moved for of the places of profit and emolument, and of the pensions enjoyed under the crown in Ireland, by the representatives in parliament of that part of the united kingdom; it was objected that there was no officer of the executive government who could present the account required, as none had any official knowledge of such pensioners and placemen as were members of that house; the speaker, Sir John Mitford, observed, "that the motion before the house could not be complied with; no person could give information who were members of that house, but the clerk of the crown in Ireland; and he was not bound to certify to any person who should call on him who those members were;" and, thereupon, the mover obtained leave to withdraw his motion, in order to amend it, so as to provide for the appointment of a committee to inquire.[5]

925. V. The paper moved for, though in other respects proper, ought to be calculated to give important and useful information to the house. It would seem, therefore, to be irregular to call for papers, which had been already published, and were or might be in

[1] Parl. Reg. XVI. 509.
[2] Hans. (3), X. 248, 249.
[3] Hans. (3), X. 248, 249.
[4] By Sir Wm. Yonge, Comm. Deb. VIII. 15; Cav. Deb. II. 237.
[5] Parl. Reg. LIX. 247, 249.

everybody's hands; unless it were considered necessary to authenticate them, or to bring the subject of them before the house in a more solemn manner, in which case, they may be ordered from the proper office.[1] Where it was proposed to proceed, in the house of lords, to consider a printed paper, in the form of a proclamation or manifesto said to have been published by his majesty's commissioners in America, and objection was made, that the paper was not authenticated, it was thought proper to address the king for copies of all papers published by these commissioners;[2] and so where papers already in a printed form, and which had been published and circulated, were moved for, and it was objected, "as a very novel mode of parliamentary proceeding, to call upon the admiralty board, or any other board or office, to produce what was either notoriously known, or might with facility be procured in another manner," yet as the documents moved for were of an official character, it was deemed proper to order them to be produced in the usual manner.[3] It would seem to be irregular, also, to move for papers, which though pertinent contain no information of any importance. Thus, where a motion was made for the production of certain letters, and it was objected, that, if produced, "they would be found to contain nothing but a simple resignation on the part of the duke of Cambridge, and a formal acceptance on the part of the commander-in-chief," and the mover thereupon explained, "that he did not move for the papers from any idea that they contained any thing of importance but merely for the purpose of grounding a resolution upon them," — the motion was refused.[4]

926. When papers or accounts have been ordered, it is the duty of the persons who are to produce them to lay them before the house immediately or within a reasonable time, in as perfect a state as they can be made up; if presented in an imperfect form they should be accompanied with reasons showing why the order could not be more fully complied with; the house will then judge whether the reasons are satisfactory, and will take measures accordingly.[5]

927. The principles relating to this subject, drawn from the practice of parliament, and developed in the preceding paragraphs, are, doubtless, equally applicable here, but it would be obviously impossible, to set forth, in detail, all the occasions on which, and the public officers on whom, requisitions for information may be made

[1] Parl. Reg. XI. 49, 128.
[2] Parl. Reg. XI. 50.
[3] Parl. Reg. XI. 127, 128, 129.
[4] Hansard (1), IX. 171.
[5] Parl. Reg. IV. 37.

in this country. The practice, in the congress of the United States, in this respect, will probably give an adequate idea of what takes place in the several States with regard to the ordering of papers.

928. When information is wanted by either house, respecting any matter which is within the appropriate functions, or known to be in the possession of any department, or public officer, the course is to pass a resolution, directing the head of that department or officer, to prepare and lay before the house a statement containing the information in question. The answer to these requisitions is inclosed in a letter directed to the presiding officer of the house which ordered the information, and sent to him to be laid before the house. Returns, statements, and accounts, made to either branch, in pursuance of law, are transmitted to it usually in the same manner. When applied to personally, if information merely is wanted, they are directed to furnish it; if their opinion is also desired, they are requested to give it.[1] This right applies as well to the previous collection of information, as to the communication of it when obtained; and does not appear to be confined exclusively to officers directly connected with the administration of government; thus by an order of the house of representatives in congress, the clerks of the district courts were directed to obtain and furnish the attorney-general with tables of fees payable in the highest courts of the States where they respectively resided.[2] In all these cases, a copy of the resolution duly authenticated by the clerk, is, of course, sufficient.

929. Formerly, it appears to have been the practice to request the president to direct the proper officer to prepare and lay before the house the information wanted.[3] But this practice has, it is believed, been long discontinued; and papers are now in all cases directly requested to be furnished by the president, in virtue of a resolution for the purpose.[4] The resolution usually requests the president to furnish the information in question only if, in his opinion, not incompatible with the public interest; but if this clause is omitted, the president will feel at equal liberty to decline the request if he thinks proper. This, of course, very rarely happens,[5] and the desired information is usually obtained whether it lies within the president's peculiar department or knowledge or not; but the

[1] Cong. Globe, XV. 147.
[2] J. of H. II. 212.
[3] J. of H. II. 239, 259, 237; Same, 298; J. of S. II. 208.
[4] J. of H. I. 551, 552; Same, VII. 459; Same, VIII. 127; Same, 20th Cong. 1st Sess. 581; Same, 29th Cong. 1st Sess. 653.
[5] J. of H. 17th Cong. 1st Sess. 198.

request may be, and sometimes is, declined;[1] and there is one kind of information that is always refused, namely, the instructions given by the president upon which a treaty is negotiated,[2] although these instructions are laid before the senate in executive session, and although the treaty itself may be before the house. It was formerly the practice to transmit a resolution requesting papers of the president by two of the members, who usually reported thereon verbally that they had delivered the request with which they were charged, and that the president answered them that he would give the subject due attention.[3] But the practice now is, in all cases, that the resolution is authenticated and transmitted in the usual manner by the clerk or secretary. In order to enable the executive to comply with resolutions of this description, it is provided by the constitutions in some of the States, that "all officers in the executive department, when required by the governor, shall give him information in writing, upon any subject relating to the duties of their respective offices."

CHAPTER FOURTH.

OF WITNESSES, AND THEIR ATTENDANCE AND EXAMINATION BEFORE EITHER HOUSE OR COMMITTEES.

SECTION I. OF THE OCCASIONS ON WHICH AN EXAMINATION OF WITNESSES MAY TAKE PLACE.

930. One of the modes, by which a legislative assembly obtains a knowledge of the facts, upon which its orders, resolutions, or acts are founded, is by the examination of witnesses; who, when a proper occasion occurs, may be summoned and examined, as in the ordinary courts of justice.

[1] J. of H. II. 482, 487; Same, 18th Cong. 1st Sess. 139; Cong. Globe, XVIII. 166, 167.

[2] J. of H. 30th Cong. 1st Sess. 232; Ann. of Cong. 4th Cong. 1st Sess. 760. Information of this kind was first refused by President Washington, by his message of 30th March, 1796, and again by President Polk, by his message of 20th April, 1846. See Appendix, X½.

[3] J. of H. II. 239, 259; Same, 482, 487; Same, VIII. 50; Same, 87; Same, 146.

931. Before an examination of witnesses can take place, consistently with the rules of orderly proceeding, it is necessary, that, in some form or other, the house should come to a previous resolution, that an inquiry shall be entered into with reference to the subject on which such examination is proposed.[1] It is not in order, therefore, for a member to offer to produce witnesses to be examined at the bar, or to proceed to examine another member in his place, in support of a motion, which he has made, or is about to make.[2]

932. When the house has come to a resolution, that an inquiry shall be entered into with reference to a particular subject, either in the house itself, or in a committee of the whole house; or has appointed a select committee to make such inquiry, either by a reference to it of some petition, return, or other document, or by a resolution; or has received and entertained a petition praying to be heard in favor of, or against, a particular bill, or some provision of a bill which is pending; in all these cases, there is a proper occasion for ordering or otherwise procuring the attendance, and proceeding to the examination, of witnesses.

933. The inquiries, in which it is customary for either house of parliament to examine witnesses, may be regarded, and it will be useful for some purposes to consider them, as of three different kinds. The first kind includes those cases in which the house is engaged in the exercise of its inquisitorial functions merely, that is, when it is investigating some topic or matter of public interest, with a view to general legislation, or to some ulterior proceeding, in which the public generally are concerned. The second comprises those inquiries in which the house is engaged in the exercise of its judicial or *quasi* judicial powers, for the purposes of punishment, for some offence either directed against itself, or its members, or against the public. The third sort of inquiries consists of those, in which the rights and interests of individuals on the one side and on the other are alone involved.

SECTION II. OF THE SEVERAL MODES OF OBTAINING OR COMPELLING THE ATTENDANCE OF WITNESSES.

934. When it has been resolved upon, that an inquiry shall take place before the house, or before a committee of the whole, the

[1] Parl. Reg. XXIII. 684.

[2] Hansard (2), XXIV. 225, 226; Hatsell, II. 137, and notes.

usual course is for the house, on the suggestion or motion of those members by whom the inquiry is promoted,[1] or who take an interest in the subject of it, to order that certain witnesses named[2] by them[3] do attend the house or the committee on a day fixed.[4] If the inquiry is in the house of lords, either before the house, or any committee, whether of the whole or select, the witnesses are ordered to attend at the bar, on a certain day, to be sworn.[5]

935. The mode of proceeding stated in the foregoing paragraph is according to the modern practice. At an earlier period, it appears to have been customary to pass an order directing Mr. Speaker to issue his warrant for summoning the witnesses.[6] The order for the warrant sometimes contained the names of the witnesses to be summoned; but, more frequently was in general terms, for the attendance of all such witnesses, "as the parties of either side shall think fit to make use of at the hearing,"[7] or "as shall be desired to attend the committee;"[8] or, of witnesses to attend at the hearing of the matter upon a certain petition,[9] or bill;[10] or "of such witnesses as there shall be occasion for at the hearing of the cause touching the return and election" for such a borough.[11] In all these cases, the persons to be summoned as witnesses were of course to be designated by the parties on whose behalf the order was passed, in order that their names might be inserted in the warrant. This practice appears now to be confined to the trial of controverted elections, in reference to which it has been established by law.

936. The order for the attendance of witnesses, or for the issuing of a speaker's warrant to summon them, may also require the production of books, papers, and records. In the former case, the order ought to be as specific, and to describe the books, papers, or records to be produced, with as much certainty as the nature of the case will admit of; in the latter the order may be in as general terms, as, for example, for such books or writings as shall be desired, as the order for issuing the warrant;[12] but the warrant itself should be as specific and as certain as above mentioned. It does not appear to be necessary, however, that the name of the particular wit-

[1] Grey, III. 51.

[2] It seems there may be a summons for witnesses without divulging their names. Hatsell, IV. 213. Members, moving for witnesses to be summoned, directed by the house to *name* them. Grey, III. 51[2], 58[2].

[3] Grey, III. 51.

[4] May, 307.

[5] May, 306.

[6] Comm. Jour. X. 34, 136, 236, 278, 547.

[7] Comm. Jour. VIII. 322.

[8] Comm. Jour. X. 547.

[9] Comm. Jour. X. 278.

[10] Comm. Jour. X. 236.

[11] Comm. Jour. X. 34.

[12] Comm. Jour. X. 236.

ness, who is required to produce a paper or other document should be mentioned in the order or warrant, provided he be otherwise designated or may be ascertained with sufficient certainty. Thus, the order may direct that the proper person or officer shall attend with the books, papers, or records desired, as, for example, a proper person from a banking-house named, with their banking books for a particular month;[1] or the proper officer with a specified paper from one of the public offices;[2] or a particular paper may be ordered to be laid before the house, without specifying by whom it is to be done.[3]

937. The house may, of course, make all such orders, with reference to the attendance and examination of witnesses, as the peculiar circumstances of each case may render convenient or necessary. Thus, there may be as many separate orders made from time to time, for the attendance of witnesses, during the inquiry, as the convenience of the parties, or the circumstances of the investigation, may require;[4] so an order for the attendance of witnesses on the hearing of a private matter may, if the house thinks proper, impose it as a condition upon the parties, that they shall pay the witnesses their reasonable charges, if required, for their travel and attendance;[5] so, the house may, on the petition of one of the parties, order the other to furnish the petitioner with the names of the witnesses to be produced by such party, on pain of not being permitted otherwise to examine them;[6] so the order for the attendance of witnesses may be discharged altogether;[7] or discharged for one day and renewed for another;[8] or discharged as to a particular witness and another substituted in his place.[9]

938. An order for the attendance of witnesses may require them to appear and attend from day to day, until the inquiry has been concluded;[10] or, which is the more usual form, it may direct their attendance either forthwith, or on a particular day named, without requiring them to continue in attendance. In this latter case, the order is obligatory on the witness only during the day on which his attendance is directed;[11] on which day it is the duty of the wit-

[1] Comm. Jour. LXIV. 17, 35.
[2] Comm. Jour. LXIV. 23, 24.
[3] Comm. Jour. LXIV. 28.
[4] See Comm. Jour. LXIV. the several orders for the attendance of witnesses on the inquiry relative to the Duke of York.
[5] Comm. Jour. VIII. 322.
[6] Comm. Jour. XIII. 290. In this case, the request of the petitioners was to be furnished with the places of abode as well as with the names of the witnesses. The former part of the petition was refused.
[7] Comm. Jour. IX. 502.
[8] Comm. Jour. XXXV. 200, 588.
[9] Comm. Jour. XXXV. 329.
[10] Comm. Jour. X. 395.
[11] Comm. Jour. LXIV. 17, 24, 31, 32.

ness to attend and remain in attendance, during the sitting of the house, whether called or not, unless the order should be discharged, or the inquiry should be postponed,[1] on pain of being punished, if he withdraws, as for a contempt.[2] It is necessary, therefore, where witnesses are in attendance, in pursuance of such an order, and their attendance is made necessary on another day, either because the investigation is not concluded, or because it is put off to a future time, that the order for their attendance should be renewed for the day on which it is proposed to continue the inquiry.[3]

939. When the inquiry is referred to a select committee, the most usual course is, either at the time of its appointment, or subsequently, to give the committee power to send for persons, papers, and records; in which case, the attendance of a witness before the committee is ordinarily secured by an order signed by the chairman by direction of the committee; but if a witness should neglect to appear when summoned in this manner, his conduct must be reported to the house, by whom an order is immediately made for his attendance. If, in the mean time, the witness should appear before the committee, the order for his attendance may be discharged;[4] but, if he still neglects to appear, he is to be dealt with as in other cases of disobedience to the order of the house.[5] If the committee should not be authorized to send for persons, papers, and records, at the time of their appointment, this power may be conferred upon them afterwards, if necessary; or, on the request of the committee, or otherwise, an order may be made by the house for the attendance of witnesses before them.

940. The power to send for persons, papers, and records, is not usually given to committees on private bills. The parties interested 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 to oblige the witness to attend and give evidence before the committee.[6]

941. When the evidence of a peer, peeress, or lord of parlia-

[1] Comm. Jour. XXXV. 200, 588.
[2] Hans. (1), XI. 642; Hans. (2), II. 320.
[3] Comm. Jour. LXIV. 17, 24, 31, 32; Same, XXXVII. 354, 724, 727; Same, XXXV. 202, 323, 324.
[4] Comm. Jour. XCI. 352.
[5] May, 308.
[6] May, 308; Comm. Jour. XCVIII. 152, 153, 174, 279, 288.

ment, is required in the house of lords, the lord chancellor is directed to write a letter to the party, desiring his or her attendance to be examined as a witness.[1]

942. If the evidence of a member of the house of commons is desired in the house, or before a committee of the whole house, the course is to order such member to attend in his place, on the day when the inquiry is to take place.[2] If no order for the attendance of a member has been made, the house or committee of the whole may at any time, during the progress of the inquiry, call upon any of the members present to be examined as witnesses. But when the attendance of a member is required before a select committee, which has a general power to send for persons, papers, and records, it is the custom to request such member to come, without addressing a summons to him in the ordinary form. If a member, so requested, refuses to attend and give his evidence, the committee is to inform the house of such refusal. The house may then, if it thinks proper, make an order for the attendance of the member before the committee.[3] A member may also submit himself to examination as a witness, without any order of the house; in which case, he is to be treated precisely like any other witness, and is not at liberty to qualify his submission, by stipulating that he is to answer only such questions as he pleases.[4]

943. If the attendance of a peer should be desired, to give evidence before the house of commons, or any committee of that house, a message is sent by the house of commons "to the lords to

[1] May, 307.

[2] May, 308.

[3] Comm. Jour. X. 51; Same, XIX. 403.

[4] Some question appears to have been recently made in the house of commons, whether it was within the constitutional power of the house to compel the attendance of one of its members to give evidence before a select committee. On the 28th June, 1842, a select committee reported, that a member of the house had declined to comply with their request for his attendance, as a witness. A motion was thereupon made, for ordering him to attend the committee and give evidence. This motion led to a debate, which was adjourned; and, in the mean time, a committee was appointed to examine precedents. But, on the day for resuming the debate, the member in question having signified his willingness to attend the committee, the motion was withdrawn, and the matter ended. In the course of the debate, which took place on this occasion, the speaker, Mr. Shaw Le Fevre, being called upon to state what he considered to be the usage with respect to members attending select committees, informed the house, "that he had searched the Journals, within the last two or three days, and had not as yet discovered any instance, where an order had been made on a member of the house to give evidence before a select committee."— Hans. (3), LXIV. 771, 982, 1015. The speaker seems to have overlooked entirely the case of the four members, who, on the 19th January, 1720, were ordered by the house to attend the committee of secrecy, and be examined as witnesses in the most solemn manner, relating to certain proceedings of the South Sea Company, of which these members were directors. — Comm. Jour. XIX. 403. See also, in relation to the general power of the house to examine members as witnesses, the remarks of Mr. Wynne, and Sir Robert Peel, Hans. (2), XVIII. 1067, &c., 1084, &c., in which the authority of the house to compel its members to testify is fully sustained.

request that their lordships will give leave to the peer in question to attend, in order to his being examined." If such peer should be in his place, when this message is received, and he consents, leave is immediately given for him to attend and be examined, if he thinks fit. If not present, a message is returned on a future day, when the peer has, in his place, consented to go. The same form exactly is observed by the lords, when they desire the attendance of a member of the house of commons. When the attendance of a member of one house is desired by a committee of the other, it is advisable to give such member private intimation, and to learn that he is then willing to attend, before a formal message is sent to request his attendance.[1] These formalities are not usual in the case of private bills.[2]

944. When the attendance of any of the officers of one house is desired in the other, in order to their being examined as witnesses, either in the house itself or before any of its committees, the same ceremony is maintained between the two houses, as where the members of the one are requested to attend in the other as witnesses;[3] 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.[4] Whether, when one has given its members or officers leave to attend the other or its committees, as witnesses, the latter house thereby becomes invested with power to punish such witnesses for prevarication or other contempt, is a question, which does not seem ever to have been made. If witnesses of this description should be guilty of any breach of their duty, in this respect, the dignity of the house against which they have offended would require their punishment; but a due regard to the dignity and rights of the house to which they belong would seem to require, that in such cases, as in others of offences against a coördinate branch, the punishment should be inflicted by their own house.

945. When an order has been made for the attendance of witnesses, a transcript of it authenticated by the clerk of the house must be served upon them by the proper officer. If a witness is in or near the place where parliament is sitting, the order is served on him, that is, given to him personally; if at a distance, it is forwarded to him by the sergeant-at-arms by post, or, in special cases, by a messenger.[5]

[1] May, 309, 310; J. of S. IV. 259; J. of H. 14th Cong. 1st Sess. 637; J. of S. 15th Cong. 2d Sess. 195; J. of H. 15th Cong. 2d Sess. 216; J. of S. 14th Cong. 1st Sess. 410.

[2] Hatsell, III. 21.

[3] J. of S. 22d Cong. 1st. Sess. 370.

[4] Comm. Jour. X. 325; May, 311.

[5] May, 306, 307.

946. If a witness upon whom an order for his attendance has been personally served, is guilty of disobeying the order; or if one absconds for the purpose of preventing the service of the order upon him; such delinquent witness is then ordered to be taken into custody, by the sergeant-at-arms or other proper officer. If, however, there is reason merely to believe, that a witness is purposely keeping out of the way to avoid service, the practice is, in the first instance, to direct that the service of the order at his house shall be deemed good service. This precaution is observed, of course, in order to guard against the danger of taking a witness into custody, who may be innocent of any intentional contempt of the house. But, where the circumstances of the case are such as to preclude all reasonable doubt, as to the intention of the witness, he may be ordered into custody at once. Thus, where it appeared by the report of a committee, that two persons who were ordered to attend the committee had not attended; but that, having attended on the day previous, agreeably to order, they had afterwards purposely kept out of the way, in order to avoid being served with the order for their attendance on the day in question, they were ordered forthwith to be taken into the custody of the sergeant-at-arms.[1] If after such service of the order, the witness should not attend, he is then ordered (sometimes not immediately but after a short interval) to be taken into custody.[2]

947. When witnesses abscond, or keep out of the way, so that the officers of the house are unable to take them into custody, in pursuance of the orders of the house, the last step taken is to address the crown to issue a proclamation, offering a reward for their apprehension;[3] the consequence of which usually is, in a very short time, the voluntary surrender of the delinquents, into the custody of the officer.

948. If a person, whose testimony is desired as a witness, is then in the custody of the keeper of one of the public prisons, either for debt or otherwise, an order is made requiring the keeper of such prison to bring his prisoner in custody to the house or the committee, to be examined.[4] The order may either require the prisoner to be brought up, on a day named, or from day to day, or as often as the committee may require. The order is carried into effect by means of a speaker's warrant.[5] Where a witness is in the custody

[1] Comm. Jour. XXXV. 323, 324.
[2] May, 306, 307.
[3] May, 308, 309.
[4] May, 306, 307; Comm. Jour. XIX. 514; Comm. Jour. XXXV. 78, 379.
[5] Comm. Jour. LXIV. 55, 60, 71, 72. Where

of the sergeant-at-arms, he is to be brought in custody to the house, or committee, in the manner above mentioned, in pursuance of an order of the house, without any other warrant.[1]

949. When a person, whose testimony is desired by one house, is in the custody of the other, the practice is for the former, by message, to request the latter to direct their officer to attend with the witness in custody, at such time or times as his attendance may be desired by the house or a committee, for the purpose of his being examined.[2]

950. Witnesses that have been taken into or are in custody, for disobeying the order of the house, for their attendance, or for keeping out of the way, or absconding, are usually committed to Newgate, by way of punishment for their offence; from whence, whilst thus undergoing their punishment, they are brought in custody to the house, or before a committee, to give their evidence, whenever their testimony is wanted; the speaker's warrant being ordered to be issued for that purpose.

951. If it appear, however, to the house, that a witness, who has thus been taken into custody, has not been guilty of any intentional contempt,— as where a witness neglected to attend in obedience to the order of the house, by reason of infirmity, being eighty-six years of age, or for want of means to defray his necessary expenses,[3]— such witness may be discharged out of custody. So, it is presumed, a witness who has intentionally disobeyed or set at defiance the order of the house, and has been sentenced to imprisonment as a punishment therefor, may, upon submitting himself to the authority of the house, be discharged from such custody, provided the house should be satisfied that he would attend and submit himself to examination.[4] On one occasion, certain witnesses, who had been taken on a speaker's warrant, were freed from restraint, on recognizing, without surety, in the sum of one thousand pounds each, to appear from day to day, "and testify at such times, as the house or the committee for the business shall require."[5]

952. The mode of obtaining the attendance of witnesses before an election committee is regulated chiefly by the statute provisions relating to the trial of controverted elections. When an election

there are two or more witnesses in the same prison, whose testimony is wanted at the same time, they may all be included in the same warrant. — Comm. Jour. LXIV. 71, 72.

[1] Comm. Jour. LXIV. 55, 60, 71, 72.

[2] Comm. Jour. XXI. 926.

[3] Comm. Jour. LXXIV. 170, 181, 182.

[4] See Hans. (1), XX. 845, 846.

[5] Comm. Jour. II. To what extent this precedent has been followed does not appear.

petition is presented and received, there is a general order made, that the speaker 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 petition. In pursuance of this order, all witnesses intended to be examined before an election committee are summoned, before the appointment of the committee, by a speaker's warrant issued on the application of the parties, and without any special order of the house in each case. Disobedience to a speaker's warrant, issued by virtue of this general order, is punishable in the same manner as disobedience to a special order of the house. After the appointment of an election committee, the witnesses are summoned by orders signed by the chairman.[1]

953. Strangers not being allowed to enter the room, in which the house is sitting, until regularly called in, the proper place for witnesses summoned to attend the house, or a committee of the whole, to be in attendance, is in the lobby, or in some other room if there is one, appropriated for the purpose. Witnesses, ordered to attend a select committee, are bound to attend at the place specified by the order; which may be either one of the committee rooms, or such other place without the precincts of the house, as the committee having authority to adjourn from place to place, have fixed upon to sit in.[2]

954. When a witness, by reason of sickness or infirmity, is unable to attend, and this fact is made known to the house, the examination of such witness may be taken at the place where he is, by a committee or certain members appointed by the house for the purpose. If the evidence is wanted before a select committee, the house may either authorize the committee to take the examination, or to appoint certain of its own members for that purpose, or the house may appoint certain members not of the committee for the same purpose. Such examination may either be taken upon interrogatories, prepared beforehand, and agreed to by the house or committee; or it may be upon interrogatories framed at the time by the members appointed to conduct the examination. In either case, the manner of conducting the examination may be prescribed, as, for example, that it shall be in writing and signed by the witnesses, or that it shall take place in the presence of the parties; or it may be left to the members appointed to conduct it without any particular instructions, in which case, the examination should be conducted according to the ordinary course of proceeding. It is

[1] May, 307, 308.

[2] Comm. Jour. XXI. 24.

competent, for the house, also, if it thinks fit, to give a committee general power, "if any of the witnesses shall be sick, or hindered by other impediment, that they cannot come to them," to take the examination of such witnesses by certain of their own members.[1]

SECTION III. OF THE EXAMINATION OF WITNESSES.

955. The principal difference between the two houses of parliament, in respect to the examination of witnesses, is, that in the house of lords they are sworn and give their evidence under oath; whereas, in the house of commons, they testify without any such sanction. In the former, 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;[2] and, if, while the house is in committee, it becomes necessary to examine a witness who has not been sworn, the house is resumed for the purpose of swearing the witness, and then again immediately put into the committee.[3]

956. The house of commons has not, at any period, except during the commonwealth,[4] claimed, much less exercised, the right of administering an oath to witnesses; not even in cases of privilege, or in cases of controverted elections,[5] where its right of judicature was acknowledged, and on questions upon which it was admitted to be the sole court competent to determine.[6] But, from what anomalous cause, and at what period, the power of administering oaths, which, by the laws of England, has been considered essential to the discovery of truth, and which must have been inherent in the high court of parliament, has been retained by one branch of it, and severed from the other, cannot now be satisfactorily established. 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 as already mentioned, has never yet asserted it.[7]

957. But, though the commons have never undertaken to exercise this right, except during the brief period of the commonwealth,

[1] Hatsell, II. 138, n.; Comm. Jour. I. 849; Same, II. 49, 194.

[2] May, 306, 312.

[3] Parl. Reg. XIII. 324.

[4] See Comm. Jour. VI. 214; Same, VII. 287.

[5] According to the system of proceeding for the trial of controverted elections, which was introduced by the Grenville act, the committee appointed to try an election case is authorized to examine witnesses on oath. But no such power is thereby conferred on the house.

[6] Hatsell, II. 158.

[7] May, 313.

their experience of it then seems to have rendered them evidently alive to its importance, and, for nearly a century after the restoration, they resorted to various expedients in order to supply the defect in their own authority. In the year 1678, on the breaking out of the popish plot, it was thought expedient, in order to give an appearance of greater weight to the testimony of the witnesses in that business, to direct certain of their own members, who happened to be justices of the peace for Middlesex and Westminster, within the limits of which parliament was sitting, to withdraw and take the evidence on oath. This practice was manifestly irregular, if not illegal, as justices of the peace are only authorized to administer oaths in the investigation of matters within their own jurisdiction, and regularly before them.[1] Another mode, equally irregular, which was occasionally resorted to, was to call in the assistance of one of the judges of the common law courts.[2] The commons also 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.

958. All these methods of obtaining the sanction of an oath to evidence taken at their instance were implied admissions, on the part of the commons, of their own want of authority. But, in 1715, the practice was introduced of empowering justices of the peace for Middlesex to examine witnesses "in the most solemn manner," that is, on oath, before committees of the house; and, in 1720, when a committee was appointed to inquire into the affairs of the South Sea Company, witnesses were ordered to be examined before them in the most solemn manner, without any mention made of the persons by whom they were to be sworn. This practice, by which the commons seemed to assume a right to delegate to others a power which they had not claimed to exercise themselves, prevailed until about the year 1757; since which time, the examinations of witnesses, in all the great and important inquiries that have taken place, have been conducted without the sanction of an oath.[3] In this country, legislative assemblies have no authority, unless it is conferred upon them by law, to administer oaths to witnesses. This power is very generally conferred.

959. Witnesses, as already remarked, may be examined in both

[1] Black. Comm. IV. 137.

[2] This method was practised in the lower house of congress. J. of H. III. 71, 154, 155, 158, 165.

[3] Hatsell, II. 160; May, 314, 315.

branches, either before the house itself, or before a committee of the whole, or a select committee. The mode of proceeding, except in some few unimportant particulars, being substantially the same in both houses, it will be sufficient to describe the usual course in the house of commons; noticing, if deemed of importance, such differences as exist between the two houses, in reference to any particular proceeding; and pointing out also the different forms of proceeding which take place, according as the examination is before the house, or a committee of the whole, or a select committee.

960. When an inquiry has been resolved upon, in which witnesses are to be examined before the house itself, or a committee of the whole house, and the time appointed for the purpose has arrived, the house proceeds with the usual formalities to the business which is the order of the day; and the witnesses as they are wanted are then called in, on motion and question taken, if necessary, by the sergeant-at-arms, or, if in custody, brought in by him or the officer in whose custody they are, and placed at the bar for examination.[1] When a motion is made for calling in a witness, it may either be general, or may specify the subject upon which it is proposed to examine him.[2]

961. When witnesses are thus called or brought in to be examined, either before the house, or a committee of the whole, the rule of proceeding requires that the bar should be down; which is not the case, when a select committee, as, for example, the committee of privileges, are sitting in the house, notwithstanding such committees may be so constituted, that all the members of the house are at liberty to attend and participate in the proceedings.[3]

962. When a witness attends in the custody of the sergeant-at-arms, it is in strictness requisite, as it is where one who is accused

[1] When the forms of proceeding, if strictly observed, require a motion to be made, seconded, and proposed, the subject thus brought forward is always open to debate. When, therefore, it is proposed in the house, that witnesses be directed to attend for the purpose of a particular inquiry, the propriety or expediency of going into that inquiry, whether it be a principal one or incidental, is open to question and debate, on the motion for the attendance of the witnesses; although it may already have been debated and decided, on the motion for the inquiry, or for the appointment of the committee for the purpose. If, however, the witnesses have been ordered to attend, and are in attendance, the proceeding with the inquiry at the time assigned may be opposed, on the usual motion for reading the order of the day; or if the inquiry is proceeded in, a motion may be made, before any of the witnesses are called in, that the evidence about to be produced be not received (Hans. (1), XII. 855); or when a motion is made for calling in a witness, it may be opposed; or when a witness has been called in without opposition, any member may request him to withdraw, and then oppose the motion for calling him in, (Same, 847); or objection may be made to the inquiry, when a question is put to the witness.

[2] Parl. Reg. XII. 354, etc.

[3] Comm. Jour. II. 26; Hatsell, II. 140.

of some offence against the house is brought in to be examined, or sentenced, or discharged, that the sergeant should stand by the witness with the mace on his shoulder.[1] When a witness is thus standing at the bar, the speaker alone manages, and no member is at liberty to speak, not even for the purpose of suggesting questions to the chair; and, consequently, in such a case, it is necessary, that the questions to be proposed to the witness should either be previously reduced to writing by individual members, or, which is the more common practice, should be settled beforehand in the house, upon the report of a committee for the purpose or otherwise, and in the possession of the speaker before the prisoner is brought to the bar.[2] But this strictness of form, as Hatsell suggests, may very well be, and, in point of fact, usually is, dispensed with; and, when this is the case, the examination is conducted in the ordinary manner.

963. When a witness, not in the custody of the sergeant, or in custody without the mace standing by him, is at the bar to be examined, the regular course of proceeding requires, that the necessary questions, (except such as are put by the speaker himself of his own motion,) should be proposed to the chair by the individual members (which may be done whilst the witness is standing at the bar,) and should then be put by the speaker to the witness.[3] The question, thus suggested, should regularly be put by the speaker in the form in which it is proposed; though, if the speaker thinks the form objectionable, it is the practice for him to alter the phraseology, and to put the question in what he deems the proper form; but, still, if the member proposing the question objects to the change, and insists upon its being put in the original form, the sense of the house must be taken as to the terms in which the question shall be put.[4]

964. It is usual, however, for the sake of convenience, to disregard the strict rule as stated in the preceding paragraph, and to allow the members themselves, standing uncovered in their places,[5] to put questions directly to a witness, without the intervention of the speaker; though this is a practice which, according to Hatsell, is irregular, and seldom fails to produce disorder.[6] Where mem-

[1] When the mace lies *upon* the table, this constitutes a house; when *under*, it is a committee; when the mace is out of the house, no business can be done; when from the table, and upon the sergeant's shoulder, at the bar, the speaker only manages, and no motion can be made. By Mr. Speaker Onslow, Hatsell, II. 141, n.

[2] May, 317; Hatsell, II. 142, n.

[3] Hatsell, II. 141.

[4] Parl. Reg. XI. 188, 189.

[5] Hansard (2), XXIV. 225, 226.

[6] Hatsell, II. 141; Parl. Reg. XI. 233, 234.

bers are thus allowed to conduct the examination of a witness, it is still supposed, and should be constantly borne in mind both by the member examining and the witness, that the questions are suggested to the speaker by the member, and that they are put to the witness by the speaker by the authority and as the representative of the house.[1] The answers of the witness should therefore be returned to the chair, that is, to the house; and they cannot, without disrespect to the house, be addressed personally to, or contain remarks upon, the member by whom the questions are in fact propounded; although the questions should be improper, and tend to provoke personality.[2] The only course, proper for a witness to pursue, in such a case, would be either to answer the question substantially, and without regard to its form, or to decline answering and to refer it to the house for their consideration.

965. When an inquiry is instituted, and an examination of witnesses undertaken by the house, in its *inquisitorial* capacity, it is customary for the member, on whose motion or suggestion the inquiry has been engaged in, or for some of the members voting with him for the inquiry, to take the lead in the examination of the witnesses, by making the proper motions for calling them in, and either by suggesting or putting such introductory questions to each witness, as may be necessary to bring forward the facts relating to the subject of the inquiry which are within his knowledge; or, in other words, to examine the witnesses in chief. On the other hand, it is customary for those members who are opposed to the inquiry, or to the purpose which is to be effected by it, to cross-examine the witnesses. In fact, when the house is divided in opinion, in reference to the purpose of an inquiry, the leading members arrange themselves, and procure the attendance of witnesses to be ordered, on the one side and on the other, and examine and cross-examine the witnesses, very much after the manner of opposing counsel, in the trial of a cause in any of the ordinary courts of justice.[3]

966. When the house is proceeding in its *judicial* capacity, or the inquiry relates wholly to a matter of *private* interest, it is the practice to allow the parties to be heard and to introduce and examine witnesses by themselves or their counsel. This is a privilege usually granted by the house upon the petition of the parties, but sometimes on motion merely. When this privilege is accorded, the inquiry is then conducted by the parties or their counsel, pre-

[1] Cavendish's Debates on Canada, 170, 171.
[2] Cav. Deb. Can. 170.
[3] Hansard (1), XXXIX. 976. See also the inquiry concerning the duke of York.

cisely in the same manner, as if they were before any other judicial tribunal. Sometimes parties are allowed to be heard and to examine witnesses so far as their private interests are affected, for or against a measure of public concern; and, in such cases, they are to be heard and to examine witnesses to the extent allowed them, in the same manner, as if their private interests were alone concerned.

967. In regard to the phraseology of the questions which are put to a witness, and the language of the answers returned by him while under examination, it is to be observed, on the one hand, that the witness is in the protection of the house; that no question ought to be permitted to be put to him which is couched in disrespectful terms; and that no insulting or abusive language or conduct towards him ought to be allowed;[1] and, any member,[2] counsel, or party, who in examining a witness should insult or abuse him, would subject himself to the censure and punishment of the house. On the other hand, it is the duty of a witness to answer every question in a respectful manner, both towards the house, and towards the member, party, or counsel, by whom he is examined.[3] If a witness, forgetful of his duty in this respect, gives his answer in an indecorous or disrespectful manner, the usual course is for the speaker to reprimand him immediately, and to caution him to be more careful for the future.[4] If the offence is clearly manifest, the speaker will proceed at once to reprimand and caution the offender; if not, the witness may be directed to withdraw, and the sense and direction of the house may then be taken upon the subject.[5]

968. In regard to the course of inquiry, a distinction must be made, corresponding to that by which the different subjects of investigation are distinguished, namely, between inquisitorial proceedings, and those which are judicial and relate to private individuals. In the former, the utmost latitude, both as to the form and the subject-matter of the questions proposed, is allowed; the house being governed only by its own discretion, — having reference to the public interest, — in permitting or restraining the course of inquiry. The rule is thus stated by Mr. Wynne: "It was clear, that the house was at liberty to exercise the fullest discretion upon every question which it was proposed to ask of any witness at their bar. In a court of justice, the parties had the right to put any

[1] Parl. Reg. XI. 232, 233, 234.
[2] Parl. Reg. XIII. 232, 233.
[3] Cav. Deb. Can. 170; Same, 170, 171.
[4] Hans. (1), XI. 662.
[5] Hans. (2), IX. 75.

question they chose. The judge had only to determine whether it was a legal one, and if it was, he could not refuse to admit it. In that house, the case was widely different. There the questions were those of the whole body, though proposed by an individual member: there could be no obligation upon any one to consent to a question being put, which he conceived to be irrelevant, immaterial, or in any way inexpedient for the public interest."[1] In the course of the inquiry relative to the conduct of the duke of York, Mr. Whitbread said that, "The committee were not fettered by settled forms or principles of evidence, as was the case in the courts below. If once such a limit was imposed upon the investigations of the house of commons, there was an end to the inquisitorial power of parliament."[2] And Sir Samuel Romilly said that, "The object was very different from that of courts of justice, and therefore the house could not be bound by the same ties."[3]

969. In reference to judicial and private proceedings, it may be stated generally, that the two houses of parliament consider themselves governed by the same rules of evidence, which prevail in the ordinary courts of justice, so far as they are applicable, or by analogous rules, according to the nature and subject of each particular inquiry.[4] In applying these rules, the spirit rather than the letter, and the substance rather than any technical form, will, of course, be regarded.[5]

970. The following cases will serve as examples of the mode in which witnesses and evidence are dealt with, in inquiries of a private character. On a hearing at the bar of the lords, against a private bill, a witness being called, who had signed a petition against the bill, it was stated by Lord Mansfield to be a rule of parliament, that no person was competent to testify as a witness in a hearing upon a private bill, who had signed a petition against the bill, either in whole or in part; not because he was a party, nor because he might have an eventual interest in the fate of the bill, but simply because he had signed a petition against it;[6] and, in the house of commons, a witness against a private bill was rejected as incompetent, on the ground that he had distributed to members of

[1] Hans. (2), IX. 493.

[2] Hans. (1), XII. 585.

[3] Hans. (1), XII. 853. This inquiry, which was considered as altogether of a public character, and was conducted entirely without the aid of counsel, and in the absence of the individual whose official conduct was involved, affords a good illustration of the manner of proceeding of the house in its inquisitorial capacity.

[4] A fundamental rule is, that witnesses can only be examined to matters and things which are relevant to the allegations in the petition; Comm. Jour. XLI. 839; Same, L. 176.

[5] Hans. (2), V. 152.

[6] Parl. Reg. XIX. 336, 337.

the house a printed paper, on behalf of himself and others, against the bill;[1] and another on the ground that he had subscribed a sum of money in support of one of the petitions against the bill;[2] so persons who were petitioners against an election, being offered as witnesses to controvert the election, and objected to on the ground that they had signed the indenture of return, were rejected.[3]

971. In reference to judicial proceedings, in the way of legislation,[4] the bill of pains and penalties, on which the trial of the queen took place, affords a good example. In this case, all the rules of evidence, by which courts of justice regulate their proceedings, were adhered to.[5] So on the motion for an address to the crown for the removal of Mr. Justice Fox from office, on which witnesses were examined, and the inquiry conducted by counsel on both sides, a witness being called to testify to the charges in the address, and being objected to on the ground that he was one of the petitioners against the judge, the house considered the witness competent, by analogy to the practice of the judicial courts, in which the evidence of a prosecutor is always admissible.[6]

972. The two houses pay that respect to each other's proceedings, that a witness, who has been examined in one house, will not be allowed, on his examination in the other, to testify to what passed on his first examination;[7] and this rule seems applicable to every kind of inquiry, whether public or private.

973. When an examination takes place before the house, or a committee of the whole house, witnesses are usually required to stand at the bar uncovered, while giving their evidence; unless, from fatigue or sickness, or other cause, they should be unable to stand, in which case, they are allowed to sit.[8] But this rule does not apply to members of the house, who are always examined in their places, standing (unless sick or infirm) and uncovered; nor to peers, lords of parliament, the judges, and the lord mayor of London, who, when attending as witnesses, have chairs placed for them within the bar, and are introduced by the sergeant-at-arms. Peers sit down covered, but rise and answer all questions uncovered. The judges and the lord mayor, though provided with chairs, and informed by the speaker that there are chairs to repose themselves upon, do not sit, but only rest with their hands upon the chair backs.[9]

[1] Comm. Jour. XXXV. 382.
[2] Comm. Jour. XXXV. 589.
[3] Comm. Jour. XVIII. 181.
[4] See Parl. Reg. VIII. (2), 291.
[5] Hans. (2), V. 152.
[6] Hans. (1), V. 167.
[7] Comm. Jour. XXXII. 113.
[8] Hans. (1), XII. 436, 985.
[9] May, 317; Hatsell, II. 149. The latter author, who minutely describes all these forms,

974. According to the strict rules of proceeding, as already explained, there are three modes of examining witnesses, namely: *first*, upon interrogatories previously agreed upon by the house and put to the witness by the speaker;[1] *second*, upon interrogatories framed at the time of the examination by the speaker, or suggested to him by individual members, and put by him to the witness; and, *third*, upon interrogatories framed at the time and put directly to the witness by individual members.

975. In regard to interrogatories of the first kind, — although optional with the house to proceed with the inquiry or not as it is to proceed with every order of the day, — it would seem, when the examination has once been entered upon, that it is then too late for particular interrogatories to be withdrawn, or to be objected to in the usual way on the part of the members; yet it is doubtless competent for the house to expunge a particular interrogatory, if it thinks proper, or to direct that it shall not be put.

976. When the second mode is adopted, the theory of the proceeding supposes, that the questions as they are propounded to the witness are agreed upon and sanctioned by the house, though without the formality of a motion and question; in the same manner, in fact, as if there had been a motion made that the particular question, stating it, be put by the speaker or chairman to the witness, and the house on question had agreed to the motion; and, it seems, that it is the right of each individual member to require, that every question shall be agreed upon and put in this manner.[2]

977. Where the strict form is thus observed, every motion for a question stands precisely in the situation of all other motions, subject to be withdrawn by the mover with or without the leave of the house, and to be disposed of by amendment or otherwise. When agreed to by the house or committee, it is no longer the question of the member by whom it was moved, and subject to his control, but of the house or the committee, by whom it may of course be expunged or ordered not to be put.

978. When the questions are suggested by individual members, and put to the witness by the speaker, without the formality of a motion and question, the proceeding is by general consent, which is of course presumed so long as no one objects. Until, therefore, the question has been actually put to the witness by the speaker, it

does not acquaint us with the reasons or origin of this somewhat curious distinction between *sitting* on, and *reposing upon*, a chair.

[1] A witness, who was very deaf, being called, the clerk was ordered to stand by him, and repeat the questions that were put to him. Hans. (1), IX. 974.

[2] Hans. (2), IX. 524, 526.

is undoubtedly competent to the member suggesting the question to withdraw it,[1] or for any other member to object to the question, and to require it to be agreed upon and put according to the regular form of proceeding.

979. Where the usual practice is adopted of allowing the members to put their questions directly to the witness, without being previously agreed to on motion, or even suggested to the speaker to be put by him, the whole proceeding is by general consent; and, consequently, may be objected to by any member, and the strict rule enforced, at any time before the question is actually answered by the witness. Until that time, therefore, the member proposing the question may withdraw it, or it may be objected to by any other member.[2]

980. If, while a witness is under examination at the bar, any member wishes to address the house, or to make a motion, either in reference to the business in hand, or to any other subject, or if it becomes necessary to take the sense of the house on any matter, the witness is directed to withdraw,[3] without any motion or vote for the purpose, but simply in pursuance of the right of each individual member to have the house cleared of strangers, whenever he pleases.[4] When the occasion for the withdrawal of the witness is at an end, a motion must then be made, and a question put for calling him in again. The withdrawal of a witness is usually effected by individual members calling out to withdraw. The more proper course is for the speaker, at the request of some member, or on his own suggestion, to direct the witness to withdraw.[5]

981. Where the questions, upon which a witness is to be examined, are settled by the house, in either of the modes above described, every member has an opportunity, before a question is put, to object to it, and to have his objection, considered, and the whole matter decided by the house. Where the members are allowed to examine the witnesses directly, without the intervention of the house or the speaker, other members have no opportunity to

[1] Hans. (2), XI. 523.

[2] The rules of proceeding, as laid down in these paragraphs, seem to be the fair result of what is said in debate, and of the proceedings in the examination of witnesses, in the several inquiries of public importance, reported in the published debates.

[3] It does not seem to be the practice, in modern times, to require witnesses, counsel, and parties, actually to withdraw from the house, and retire into the lobby, or witnesses room, in all cases, but only to withdraw from the bar a few feet. Hans. (1), VIII. 1063, 1064.

[4] Cav. Deb. I. 128, 129, 131; Cav. Deb. Can. 123.

[5] Cav. Deb. Can. 123.

object, until the questions are actually propounded. Questions are usually objected to by members for much the same reasons with those offered by parties or counsel, as, for example, that the question is irrelevant,[1] or that the mode of interrogation is improper,[2] or that the question relates to mere matter of opinion,[3] or hearsay.[4] But members are not, of course, confined to objections of this description. When questions are thus objected to, the witness is withdrawn, and the house proceeds to consider the matter, either formally, upon some appropriate motion being made, as that the speaker put the question, or that the question be not put, or in an informal manner. When the house has come to some conclusion upon the subject, the witness is again called in and the examination proceeds.

982. Whatever form of examination may be adopted, the proper time for a witness himself to object to a question, is when it is put to him. When a witness is unwilling to answer any question, he should state the reasons why he declines, or desires to be excused from answering, and should respectfully appeal to the chair, whether, under the circumstances, or for the reasons stated by him, he ought to answer.[5] He is then directed to withdraw, and the matter is considered by the house, whether and in what form the question shall be answered. When the point is settled, the witness is recalled, and the speaker informs him, that it is or is not the pleasure of the house that he should answer the question.[6] The same proceedings take place when the house is in a committee of the whole. When the decision is, that the question shall be answered, and the witness is recalled for that purpose, the speaker or chairman informs him, that he will be entitled to the protection of the house, against the consequences of giving his testimony, and that under such protection, he is bound to answer all questions which the house or committee should see fit to put to him.[7]

983. A witness cannot excuse himself from answering, on the ground that he may thereby subject himself to a civil action, or expose himself to a criminal prosecution,[8] or because he has taken a judicial oath, as a grand-juror, for example, or a voluntary oath, as a freemason or an orange-man, not to disclose the matter about

[1] Hans. (1), XII. 402.
[2] Hans. (1), XII. 277.
[3] Hans. (1), XII. 589.
[4] Hans. (1), XII. 584.
[5] Hans. (1), XII. 396, 478.
[6] Hans. (1), XII. 543, 590.
[7] Hans. (2), XVIII. 974.
[8] In the house of lords, there appears to be some exception to the general rule with reference to questions of this description. See *post*, § 1005.

which he is required to testify;[1] or because the matter was a privileged communication to him, as where an attorney is called upon to disclose the secrets of his client;[2] or on the ground, that he is advised by counsel, that he cannot do so, without incurring the risk of criminating himself, or exposing himself to a civil suit.[3]

984. When a question has been propounded to a witness, without objection, or, if objected to, has been directed by the house to be put or answered, it is then the duty of the witness forthwith to answer it directly, plainly, fully,[4] and truly, according to the best of his knowledge,[5] and in a respectful manner, both towards the house and the members individually. If the witness appears to be unmindful or ignorant of his duty, or manifests a disposition to evade its performance, it is the business of the speaker to admonish him,[6] that it is his duty to answer the question, or to answer it directly, or fully, or truly, or to conduct himself respectfully,[7] as the case may be; and, if necessary, to inform the witness, that the house is armed with power to enforce obedience to its commands, and to punish him with great severity for any disobedience, misbehavior, or contempt.[8]

985. Witnesses are called in, one at a time, on motion and question, as they are wanted, and withdraw by the direction of the speaker, when they have gone through with their evidence. It is not in strictness regular for any of the witnesses to remain in the house during the examination of any other witnesses;[9] but this rule is dispensed with, whenever it is necessary to confront two or more witnesses together;[10] in which case, the witnesses may be called in to give their evidence in the first instance, in each other's presence, or, after having testified, may be examined over again, in the presence of each other, to the same subjects.

986. In respect to the order, in which witnesses are to be examined, it appears to be customary to conform to the general practice of courts of justice, so far as that practice is applicable, subject to such changes and modifications, as the convenience of the house or of the members managing the examination, or of the

[1] Hans. (2), IX. 113; Same, 119, 120; Same, 493.
[2] Hans. (2), XVIII. 968, 969, 970, 971, 972, 973, 974.
[3] Hans. (1), VI. 353, 359.
[4] Hans. (1), XII. 542, 590.
[5] Hans. (1), XII. 283, 286, 449, 534, 541, 542, 831.
[6] Hans. (1), XII. 450, 831.
[7] Hans. (1), XII. 538, 542, 600; Same, XI. 642; Grey, III. 102.
[8] Hans. (1), XII. 590, 591, 592.
[9] Hans. (1), IX. 23.
[10] Comm. Jour. XII. 83, 88; Same, XVIII. 752; Hans. (1), XII. 749; Same, (2), IX. 487.

witnesses, may require. Thus, the select committee on the abolition of the slave-trade, in 1790, while hearing the witnesses in favor of the abolition, were directed by the house to take the testimony of two witnesses on the other side, who were under the necessity of soon leaving the kingdom; it appearing to the house, that the examination of those witnesses, out of course, would not be attended with any inconvenience to the several petitioners in favor of the abolition, who were then in the course of examining their witnesses.[1] So where a witness against a bill was under immediate orders for the East Indies, and might probably be obliged to leave before the party could examine him, in the ordinary course, the house allowed him to be examined in the then present stage of the bill.[2]

987. When an examination of witnesses takes place in the course of any inquiry, either before the house itself, or before a committee of the whole, or a select committee, it is necessary that minutes of the examination should be taken and preserved, that is, that the questions propounded, together with the answers of the witnesses, and the contents of letters and papers read in evidence, should be reduced to writing by the clerk of the house, or some other, usually a shorthand writer, appointed and employed by him for the purpose. When an examination takes place before a committee of the whole, the minutes of the evidence are usually presented to the house from time to time by its order and printed; when before the house itself, the minutes being already in the possession of the house, there is no occasion for any such order. The minutes of the testimony are not entered on the journal, unless in the form of a report from the committee, or by the special order of the house; but they are nevertheless essential to be taken and preserved, as the basis of the further proceedings of the committee, where their duties are not confined to the taking of the evidence; and until the evidence is taken down no debate can occur consistently with order, nor can any motion be predicated, upon it, as it is to the minutes alone, that reference can be made for these purposes.[3]

988. In select committees, which are generally made use of for inquiries in which the examination of witnesses is necessary, the evidence is taken down in shorthand, and, in the commons, printed daily for the use of the committee. A copy of his own examination is also sent to each witness for his revision, with an instruction, that he is at liberty only to make verbal corrections, and not altera-

[1] Comm. Jour. XLV. 115.
[2] Comm. Jour. XXXIX. 143.
[3] Cav. Deb. Can. 120; Parl. Reg. XII. 34, 35, 36, 37.

tions in substance, which can only be effected by a reëxamination before the committee. Neither the members of the committee, for whose immediate use the minutes are printed, nor the witnesses to whom copies are sent for revision, are at liberty to publish any portion of the evidence, until it has been reported to the house.[1]

989. In the ordinary mode of examination, it may happen, that a question, which, on being objected to, is decided to be improper or inadmissible, has been already inserted in the minutes. When such is the case, the question is to be expunged.[2] So an answer, which, properly speaking, is not evidence and ought not to have been received as such, may be expunged on motion and question for the purpose;[3] and, in like manner, if a question is incorrectly taken down by the shorthand writer, it may be corrected, even after the answer has been given and taken down.[4]

990. If in the course of the examination it becomes necessary to refer to the testimony previously given by any of the witnesses, as, for example, to reëxamine the witness himself with reference thereto, or to confront him with other witnesses,[5] such evidence is to be read by the clerk from the minutes, and to be entered as read in the minutes.[6]

991. If a witness desires to correct any thing in his evidence, he may be permitted to do so, on expressing his desire to that effect before leaving the bar. Where some time has elapsed, the rule seems to be different. In the examination before a committee of the whole, of the East India charges against Warren Hastings, Sir Elijah Impey having testified on the 5th of February, applied to the committee when they next sat, which was on the 8th, to be called to the bar, for the purpose of delivering in a written paper "containing an explanation and correction of some few of his answers when last examined." The committee, after debate, refused the request.[7] If his examination has been closed, he must signify his wish through the speaker, or chairman, or some member,[8] in order that a motion may be made, that he may be called in to correct a mistake in his evidence.[9] If the witness is a member, he can of course, make the request for himself. The only proper time, for allowing a witness to correct a mistake in his evidence, is regu-

[1] May, 304.
[2] Hans. (1), XII. 752, 853.
[3] Hans. (1), XII. 673; Comm. Jour. XXXIX. 143.
[4] Hans. (1), XII. 341.
[5] Hans. (2), IX. 487.
[6] Hans. (1), XII. 422, 572, 747, 748.
[7] Parl. Reg. (2), XXI. 106, 107.
[8] Parl. Reg. (2), XXI. 106, 107.
[9] Hans. (1), XII. 515.

larly when the house or committee is proceeding with the inquiry;[1] so that if the inquiry has been closed, the only mode, in which a witness can be allowed to correct a mistake in his evidence, would seem to be by reviving and opening the inquiry for that purpose.

992. The mode of examination, described in the preceding paragraphs, is what takes place when the inquiry is conducted by members. When the examination is conducted by the parties themselves, or by their counsel, questions are put by them to the witnesses, and objections are taken and argued to the house or the committee in the same manner as in the ordinary courts of justice. Members also may participate in the examination, and may put questions, and make objections, in the same manner as when the inquiry is conducted exclusively by them. Where parties and counsel are present at the examination, whether conducting it or not, they must all regularly withdraw, on both sides, whenever the course of proceeding requires the witnesses to be excluded.

993. Some points of difference between the form of proceeding in the house, and in a committee, require notice. When an examination takes place at the bar of the house, the house has full power to proceed at once and to determine finally upon every emergency that may arise; as, for example, to commit a witness, counsel, or party, for contempt, — to order the attendance of new witnesses forthwith, — or to proceed to any collateral inquiry they may think proper. In a committee, even of the whole, the case is otherwise; as a committee has no power except what is specially conferred upon it by the house. Hence, a committee is not at liberty to punish for a contempt, or to take any other step out of the limits of the authority conferred upon it; but only to report the special matter to the house, to be there considered and determined upon. Such special matter may be reported whilst the examination is proceeding, or at its close, as may be necessary or convenient. A committee of the whole, if it reports specially, in the course of the examination, may make the report either when it reports progress at the close of its daily sitting, or, if necessary, it may rise and make the report immediately. In the latter case, when the report has been received, and the house has proceeded therewith in such manner as it may think proper, the house again resolves into the committee, and the examination is resumed at the point where it was broken off. A select committee, if authorized to sit whilst the house is sitting, but not otherwise, may make a special report, in

[1] Hans. (1), XII. 327.

the same manner. A committee of the whole may also, it seems, when necessary in support of its own proceedings, give orders for the taking into custody of any person guilty of a contempt. Thus, when, in the course of the inquiry into the conduct of the duke of York, before a committee of the whole, it appeared that a person, within the precincts of the house, had been tampering with one of the witnesses in attendance, the committee rose, and the house was resumed, for the purpose of ordering the offender into custody; but, in the proceedings which ensued the speaker stated, "that it would have been competent for the committee, in support of their own proceedings, to order the sergeant-at-arms to take into custody any person without delay. The first duty of the chairman [the committee] would then have been to report progress, and when the person was actually in custody, to move that he be committed."[1]

994. As all the proceedings of a committee are ultimately to be revised by the house, it is competent for the committee, if it thinks proper, while an examination is proceeding, to ask the instruction of the house, by means of a special report, with reference to the questions of evidence, which are within its authority to decide. On such a report being made, the house proceeds to consider the question proposed to it, and to instruct the committee agreeably to its request. Thus, where one of the members of a committee, to whom a private petition was referred, reported from the committee, "that they had directed him to move that the house will please to give directions, whether affidavits, taken in the plantations, can be read before the said committee or not;" a motion was then made, that the committee have leave to read the depositions in question, which passed in the negative.[2] So, where one of the members of a select committee acquainted the house, "that he was directed by the committee to report to the house the special matter, upon which a witness was, in the said committee, resolved to be an incompetent witness," and he read the report accordingly; it was thereupon, ordered, that it be an instruction to the committee, to admit the evidence of the witness in question, as a competent witness.[3]

995. A select committee may, also, in its report, present the questions of evidence which it has decided, in such a manner, as to enable the house to revise its decision thereon. In such a case, the committee reports the matter "as it appears to them," upon the evidence, together with a statement of the questions of evidence

[1] Hans. (1), XII. 461.
[2] Comm. Jour. XIII. 769.
[3] Comm. Jour. XXXIV. 202.

decided. If the decision of the committee is not satisfactory to the house, the proper course is to recommit the report to the committee.[1]

SECTION IV. OF THE PRIVILEGES OF WITNESSES.

996. In order to enable persons, whose testimony is wanted before either house of parliament, or a committee, to give their attendance, and to testify fully and freely to all matters and things within their knowledge, certain privileges, analogous to those of members, are attributed to them. These privileges are of three kinds: *first*, freedom from arrest in coming, staying, and returning; *second*, protection against the consequences of the disclosures, which they may make in their evidence; and, *third*, protection against personal violence, or threatened injury, in consequence of their being witnesses.

ARTICLE I. *Freedom from Arrest, in coming, staying, and returning.*

997. This privilege, which is similar in its nature and extent to the analogous privilege enjoyed by members, is as much the privilege of the house itself, as of the persons who are more immediately the subjects of it; or, as it was expressed in the resolutions of the commons, March 8, 1688, "it is the undoubted right of this house, that all witnesses summoned to attend this house, or any committees appointed by it, have the privilege of this house, in coming, staying, and returning."[2] This privilege is of a twofold character: —*first*, it entitles witnesses to protection against the danger of arrest; and, *second*, if arrested to be discharged.

1. *Protection.*

998. In order to entitle a witness to the protection of the house, it is not necessary that he should have been summoned by a party, or ordered by the house, to attend; it is enough, if he is a material witness, and is willing and about to attend, or is in attendance, as such; and that he desires to have the protection of the house. If a witness has been summoned to attend, in virtue of a summons

[1] Comm. Jour. XX. 679. See also Same, XXV. 133. Such a report is equivalent to a report in the alternative.

[2] Comm. Jour. X. 45.

issued by the house, or by a committee authorized to summon witnesses, on behalf of a party interested, or has been directed to attend by an order of the house, there can be no question, that he is entitled to the protection of the house, if he desires it. In other cases, it will be necessary to satisfy the house by proper evidence, that the witness is material, and is willing to attend. When, therefore, it is made satisfactorily to appear to the house, upon the petition of the party interested,[1] or of the witness himself; or upon the statement of a member; or upon the report or application of a committee; that a particular person is a material witness in some proceeding or inquiry before the house; about to attend, attending, or returning; and is in danger of an arrest, unless he have the privilege of the house; an order will thereupon be made, that such witness have the protection of the house, in coming, staying, and returning, in order to give his evidence.[2] Sometimes a general resolution is agreed to, that all such witnesses as are necessary with reference to a particular matter, as, for example, an impeachment, shall have the protection of the house, during their attendance upon that service.[3] A transcript of the order, certified by the clerk of the house, must, of course, be equivalent to the writ of protection, which is usually granted by courts of justice.

2. *Discharge from Arrest.*

999. If a person, entitled to the privilege of the house, as a witness, is arrested, either in coming,[4] while attending,[5] or in returning,[6] the house will, on the facts being made satisfactorily to appear, take measures for the discharge of the witness from custody. Sometimes the course of proceedings is to order the officer who made the arrest to attend the house with his prisoner, at a time appointed;[7] and then, upon such attendance, and the facts appearing on examination, to order the prisoner to be discharged. Sometimes the course is to refer the complaint to the committee of privileges,[8] and to order the discharge upon their report. The house may, also, upon being satisfied of the facts, at once order the prisoner to be released.[9] At the same time, if the house should judge proper, the persons making or concerned in the arrest may be punished, as for a contempt.

[1] Lords' Journals, XXV. 625.
[2] Comm. Jour. IX. 366; Lords' Jour. IV. 143; Same, XXV. 625.
[3] Comm. Jour. XIII. 521.
[4] Comm. Jour. IX. 20.
[5] Comm. Jour. VIII. 525.
[6] Comm. Jour. XII. 364.
[7] Comm. Jour. XII. 364, 610.
[8] Comm. Jour. IX. 20.
[9] Comm. Jour. VIII. 525; Same, IX. 72.

1000. If a witness should be arrested on some criminal charge, against which the privilege of the house does not extend; or if, being arrested in a civil suit or proceeding, the house should not be immediately satisfied that he was entitled to privilege;[1] the officer having the witness in custody may be ordered to bring him in custody to the house or committee, before whom his evidence is wanted, provided he has not already been examined.

ARTICLE II. *Protection of a Witness against the Consequences of the Disclosures made by him in his Evidence.*

1001. It has already been seen, that a witness before either house of parliament cannot excuse himself from answering any question that may be put to him, (with a single exception presently to be noticed,) on the ground that the answer would subject him to an action; or expose him to a criminal proceeding; or be the means of divulging the secrets of his client communicated to him in professional confidence; or be in breach of a judicial oath, as a grand-juror; or of a voluntary oath, as a freemason, or the like; some of which would be sufficient grounds of excuse in a court of justice. This difference, between proceedings in parliament, and in the ordinary courts, has been established upon grounds of public policy, and is considered to be fundamentally essential to the efficiency of a parliamentary inquiry. But while the law of parliament thus demands the disclosure of the evidence, it recognizes to the fullest extent, the principle upon which the witness is excused from making such disclosure in the ordinary courts of justice, and protects him against the consequences which might otherwise result from his testimony; the rule of parliament being, that no evidence given in either house can be used against the witness in any other place, without the permission of the house, which is never granted, provided the witness testifies truly.[2]

1002. The parliamentary law on this subject is declared and embodied in the following resolutions of the house of commons of May 26, 1818, namely: first, "that all witnesses examined before this house, or any committee thereof, are entitled to the protection of this house, in respect of any thing that may be said by them in their evidence;" and, second, "that no clerk or officer of this house, or shorthand writer employed to take minutes of evidence before

[1] Comm. Jour. IX. 20.

[2] Hans. (2), XVIII. 968, 969, 970, 971, 972, 973, 974.

this house, or any committee thereof, do not 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."[1] During the recess, it is the constant practice for the speaker to grant such leave, on the application of the parties to a suit.[2]

1003. It will be observed, that these resolutions do not in terms prohibit members from giving evidence of the confessions or statements of a witness before the house. This circumstance having been alluded to in debate, Mr. Speaker Manners Sutton took occasion thereupon to make the following remarks: "Some expressions have fallen from the learned member, which are so directly at variance with the first and most important privileges of this house, that I feel it my duty, not to allow them to pass without notice. I understood him to say, that it might possibly happen that a member of this house might be required to give evidence in a court of law of what had passed within these walls. Now I conceive that hardly any doubt can exist in the mind of any honorable member, that he is not at liberty to give evidence elsewhere of what passes here, without the direct, or, at least, the implied permission of the house. I wish to state this principle as broadly as possible; for if I am mistaken, it is high time my error should be corrected. At present, I certainly conceive, that on the privilege of preventing what passes here from being communicated elsewhere, vitally depends the dignity and the rights of this house. No honorable member who hears what passes within these walls (and no other person has a right to hear it) can be required or allowed, to give evidence in a court of justice touching the matter which he has so heard."[3]

1004. If a witness is thus sufficiently protected, so far as the officers and members of the house are concerned, there yet seems to be nothing in the law or practice of parliament, which prevents other persons (reporters, for example,) accidentally or perhaps even officially present, if not under the control of the house, and hearing the statement of a witness, from testifying to such statement in any court of justice. If the law of parliament does not extend to such persons, the only effectual mode of securing the protection of a

[1] Comm. Jour. LXXIII. 358; Hans. (1), XXXVIII. 919, 956. These resolutions were agreed to, on the suggestion of Mr. Speaker, in consequence of the shorthand writer having been examined in the case of *The King* v. *Merceron*, Starkie, N. P. Cases, II. 366, without previous leave.

[2] May, 316.

[3] Hans. (2), XVIII. 968, 969, 970, 971, 972, 973, 974.

witness would be, to exclude all but members and officers from the house or committee room during the examination; or to have recourse to the expedient, which will be presently mentioned, as usually resorted to in the house of lords.

1005. In the house of lords, although the same power clearly exists, to compel the answer of a witness to criminate himself, and although the rule above mentioned is recognized, namely, that evidence taken at the bar cannot be used against a witness, yet, as such evidence may lead to the discovery of other evidence, sufficient to convict them, the protection afforded by the rule alluded to does not seem to be regarded as adequate; and it has accordingly been the practice for many years, when the evidence of such witnesses is about to be taken, to pass an act (which is of course agreed to by the commons) to indemnify them in the fullest manner against the consequences of their evidence.[1]

ARTICLE III. *Protection against Abuse and Insult, Personal Violence, and Injury actual or threatened to Person or Property.*

1006. The personal immunities, besides those already mentioned, to which witnesses are entitled, are, to be free from all insulting and abusive language;[2] and from all personal violence;[3] and to be protected against any threatened violence or injury, either as to person or property;[4] on account or by reason of their attendance or testimony as witnesses. All conduct of this kind is regarded as a contempt of the authority of the house, and a breach of its privileges, and, on the fact being made to appear, punished accordingly.

1007. Thus where it appeared that one of the witnesses, before a committee, had been insulted and abused, in respect of the evidence given by him before the committee;[5] where a committee having sat at the Fleet prison, and there examined some of the prisoners as witnesses, and it appeared that the warden of the prison had cruelly used one of the witnesses, in consequence of the testi-

[1] Hans. (2), XXIII. 1197, 1198. In the year 1742, the house of commons, in consequence of the refusal of Paxton and other witnesses to testify before the secret committee to inquire into the conduct of the earl of Oxford, notwithstanding the severe punishment the witnesses received for their conduct, found themselves under the necessity of passing a bill to indemnify such witnesses as should testify truly before the committee; but the bill was rejected by the lords. See Comm. Deb. XIII. 245; Lords' Deb. V. III. 174.

[2] Comm. Jour. XVIII. 73, 74, 371.

[3] Comm. Jour. XXI. 247.

[4] Comm. Jour. XVI. 535.

[5] Comm. Jour. XVIII. 371.

mony given by him;[1] where it appeared, that a party, whose conduct was under investigation before a committee, had used insulting language towards one of the witnesses, and had threatened him with personal violence, on account of the evidence given by him, and in case he should give similar evidence in any further stage of the proceedings;[2] the offenders were adjudged guilty of a breach of the privileges of the house, and committed to the custody of the sergeant-at-arms.

1008. So, where a committee, while proceeding with the inquiry referred to it, acquainted the house, that one of the witnesses, after his examination before the committee, had received a letter informing him that his life was threatened, and his house threatened to be burnt down; the house thereupon directed the sheriffs, justices of the peace, and other peace-officers of the county, to take effectual measures for securing the peace in the place in question.[3] So, where a committee acquainted the house, that a witness before them, who was a private soldier, gave his evidence with great reluctance, as being apprehensive of ill usage, and of being sent away, and that the committee promised him to lay the matter before the house, that he might have their protection; it was thereupon resolved, that this house will proceed with the utmost severity against any person that shall threaten, or any way injure, or send away, the said witness, or any other person that shall give evidence to any committee of this house.[4]

SECTION V. OF MISCONDUCT ON THE PART OF WITNESSES, OR OTHER PERSONS, RELATIVE TO THEIR ATTENDANCE AND EXAMINATION.

1009. The offences, of which witnesses may be guilty, relative to their attendance,—such as disobedience of the order or summons for their attendance, keeping out of the way to avoid service, absconding to avoid being taken into custody,—having already

[1] Comm. Jour. XXI. 247.

[2] Comm. Jour. LXIV. 223.

[3] Comm. Jour. XX. 355.

[4] Comm. Jour. XVI. 535. The proceedings in the house of commons, in 1733, relative to the censure passed by the house of representatives of the province of Massachusetts Bay, upon Jeremiah Dunbar, on account of certain evidence given by him before a committee of the house of commons, were of too political a character, perhaps, to be considered as embodying a rule of parliamentary law. The house of commons, upon complaint being made of the censure of Dunbar, resolved, "that the presuming to call any person to account, or to pass a censure upon him, for evidence given by such person before this house, or any committee thereof, is an audacious proceeding, and an high violation of the privileges of this house." Comm. Jour. XXII. 145, 146; May, 140.

been incidentally treated of, so far as relates to compelling their attendance, it only remains to be observed, that all such misconduct on the part of a witness, if intentional, is also a breach of the privileges of the house, and a contempt, for which the offender is usually punished with great severity. If it appears, however, that no intentional contempt has been committed, as where a witness neglects to attend, by reason of infirmity, or for want of means to defray necessary expenses, such witness is discharged from custody, without punishment.[1]

1010. Witnesses, while under examination, may also be guilty of a contempt and breach of privilege, by refusing to answer a proper question, or to produce a paper which they have been directed to produce; by giving false testimony; by prevaricating in their evidence; or by disorderly or disrespectful conduct towards the house or committee, or towards members, or towards any party or counsel.

1011. When a witness refuses to answer the questions which he is directed to answer, or to produce a paper or other document, the proceeding against him is intended not only as a punishment for his contempt, but also to compel him to obey the order. For these purposes a contumacious witness is usually committed, in the first instance, to the custody of the sergeant-at-arms. If this fails to induce him to submit himself to the order, he may then be committed to Newgate, or some other public prison. Instances have occurred, in which the confinement of a witness has been accompanied with circumstances of severity, intended to bring him to submission; as, for example, in the year 1742, in the case of Nicholas Paxton, who, for refusing to answer the questions put to him by the secret committee to inquire into the conduct of the earl of Oxford, was, in the first instance, committed to the custody of the sergeant-at-arms, and debarred the use of paper, pen, and ink; and, persisting in his refusal, was then committed a close prisoner to Newgate, the house at the same time ordering, that he be not allowed pen, ink, or paper, — that no person be permitted to have access to him, without leave of the house, — that his wife have leave to remain with him during the time of his confinement, but that she be not allowed pen, ink, or paper, — and that no person have access to her without leave of the house.[2] In this case, the severity with which Paxton was treated proved ineffectual; and the

[1] Comm. Jour. LXXIV. 170, 181, 182.

[2] Comm. Jour. XXIV. 184; Comm. Deb. XIII. 224, 225.

house finding it impossible to compel him, with some others, to answer, resorted to the expedient of passing a bill of indemnity; but, this being rejected by the house of lords, the inquiry was, of course, defeated. Other instances of the same kind occur in the journals. In the year 1809, on the occasion of the inquiry with reference to the conduct of the duke of York, it being proposed to commit one of the witnesses (Mrs. Clarke) to the custody of the sergeant-at-arms, with orders to deny her access to any person whatever, Mr. Speaker said, "the house ought to pause, before they came to a decision upon a point, in which the liberty of the subject was so materially concerned."[1] There seems to be no reason to doubt, that the house may put a contumacious witness into close confinement,—and this in fact was all that was done in Paxton's and other cases of the same kind,—accompanied with such restraints from communication with other persons as it may deem necessary to prevent the ends of public justice from being frustrated; but whether this right should be exercised or not, in any given case, is a question deserving of very grave and careful consideration.[2]

1012. In regard to false testimony, there is a difference between the two houses. In the house of lords, where witnesses are sworn and examined on oath, false testimony amounts to the legal crime of perjury, and is punishable as such by prosecution in the courts of ordinary criminal jurisdiction. Hence it does not appear to be customary there to punish false evidence as a contempt. In the house of commons, where, as already stated, witnesses are not sworn, false evidence is only punishable as a contempt; but in order that the nature of the offence may be distinctly known, one of the sessional orders (first adopted in the year 1700), declares, "that if it shall appear, that any person hath given false evidence in any cause before the house, or any committee thereof, this house will proceed with the utmost severity against such offenders."[3] The journals contain many cases of proceedings against witnesses for this offence.

1013. Prevarication is a term of general and broad signification, which seems to embrace every form and variety of intentional evasion of the inquiry put to a witness, short of direct falsehood; as, by answering aside from the question; answering a question in a different sense from that in which it is put; pretending ignorance

[1] Hans. (1), XII. 436.
[2] See Hans. (1), XXXIX. 976.
[3] Comm. Jour. XIII. 350.

or want of recollection; in short, by attempting to prevent the house from obtaining the truth, by any cavilling, quibbling, or shuffling, or by any form of fraudulent or deceptive answers. This offence is only punishable as a contempt.

1014. Besides the different kinds of misconduct, which may be committed by other persons with reference to the attendance or examination of witnesses, and which have already been adverted to under the head of privilege, there are two offences, which form the subjects of the following sessional order of the house of commons, which was first adopted in 1700, namely: — "that if it shall appear, that any person hath tampered with any witnesses, in respect of their evidence to be given to this house, or any committee;[1] or, directly or indirectly, endeavor to deter or hinder any person from appearing or giving evidence;[2] the same is declared to be a high crime and misdemeanor; and this house will proceed with the utmost severity against such offenders."[3]

1015. If any of the offences above mentioned are committed in the course of an examination before the house, the house may proceed at once, if it thinks proper, to suspend the examination and to inflict punishment for the contempt, and then to resume and proceed with the examination; or, if it be deemed most convenient not to interrupt the business in hand, it may defer the matter until the examination is completed. Where the contempt is of a nature to interrupt or embarrass the proceedings, it will, of course, be most proper, if not entirely indispensable, to consider and punish the contempt immediately.

1016. When any such misconduct takes place before a committee of the whole, — which, as a committee has no power to punish, — it is in the power of the committee, if it thinks proper, to rise and report the special matter to the house immediately; the house may proceed forthwith to punish the offender, or put off the matter to a more convenient time; and may then again resolve into the committee and proceed with the examination; or the committee may report the special matter, when it reports progress, at the close of its sitting for that day, or reserve it until its final report.

1017. A select committee can only report the special matter relating to the misconduct of a witness, when the house is next sitting, or when it makes its final report.

[1] See the case of *William Williams*, Hans. (1), XII. 460, 461.

[2] May, 307; Comm. Jour. XXXVIII. 651, 677, 813, 856, 875, Same, XC. 330.

[3] Comm. Jour. XIII. 350, 648.

1018. In all cases of misconduct on the part of a witness, if the house proceeds to punishment, before the examination is concluded, it can, at the same time, direct the officer having the custody of the offender, to bring him in custody to give his evidence before the house or the committee.[1]

1019. It is scarcely possible to enumerate all the different sorts of disorderly conduct, of which a witness may be guilty; it is disorderly, for example, to appear at the bar in a state of intoxication;[2] or for a quaker, in the midst of his testimony, to address the house.[3]

1020. It seems hardly necessary to observe, that, whilst a witness is under examination, all persons participating in it, as parties, counsel,[4] or members, are to conduct themselves in an orderly and respectful manner.[5]

SECTION VI. OF OTHER MATTERS RELATING TO WITNESSES AND THEIR EXAMINATION.

1021. It may sometimes happen, especially in inquiries of a public nature, that persons not attending as witnesses or concerned as parties may find themselves implicated by the testimony of the witnesses, and may desire to relieve themselves from the imputation, or to explain the matters with which they are thus connected. When this is the case, such persons may by petition to the house, or through some member, signify their desire to be examined as witnesses, and, if the house thinks proper, may be so examined touching the matters which they wish to explain or deny.[6] So, where witnesses are contradicted by other witnesses, the former may, at their own request, be reëxamined to the same facts, in the presence of the latter, who may then be called upon to affirm or take back their first statement.[7] Members, who desire to make explanatory statements, or to contradict witnesses, may be allowed to do so, upon signifying their wishes to the house, and submitting themselves to examination thereupon, in the same manner as other witnesses.[8] If the testimony complained of has been given before a select committee, which has not yet made its report, or which

[1] Comm. Jour. XVI. 338, 455, 456, 473, 484.
[2] Grey, I. 141; Hans. (1), XII. 678.
[3] Grey, III. 102.
[4] Lords' Jour. XXV. 315, b. 316, a.
[5] See the case of *Mr. Paull*, a petitioner — 1062. Hans. (1), VIII. 1063, 1064.
[6] Hans. (1), XII. 441, 511.
[7] Hans. (2), IX. 487.
[8] Hans. (1), XII. 521, 522.

has adjourned without reporting, it seems, that the matter cannot be regularly proceeded with, until the report of the committee has been received, or the minutes of their proceedings laid before the house; until which time, the house can have no cognizance of what has passed in the committee, but are bound to presume that every thing done by it has been regular.[1]

1022. The proper officer, to have the custody of papers and letters produced by witnesses, or otherwise introduced in evidence, during the intervals between one examination and another, before the house or a committee of the whole, is the clerk of the journals and papers, who is an officer of the clerk's, and for whom the latter is responsible.[2]

1023. But where the papers produced by a witness were to be submitted to the examination of experts, for the purpose of enabling them to testify, on the examination being resumed, as to whether the writings were genuine writings or not, the papers were ordered to be placed in a box and delivered to the clerk with directions that they should remain in his custody, until the examination was resumed; but that at particular hours, they should be shown to members of the house, and to such other persons, as should be authorized by the speaker.[3]

1024. When witnesses are summoned for the purpose of any public inquiry, to be examined by the house or a committee, their expenses are paid by the treasury, under orders signed by the assistant clerk of the parliaments (that is, the clerk assistant in the house of lords), the clerk of the house of commons, or by the chairman of committees in either house. In the house of commons, where public inquiries are the most frequent, certain regulations have been adopted, by which all the facts, necessary to enable the house to determine upon the proper allowance to be made to witnesses for their expenses, are made to appear in the printed proceedings of every committee. In the house of lords, a select committee has sometimes been appointed, to inquire into and report in detail the expenses that should be allowed to witnesses.[4] In this country, when an investigation by witnesses takes place at the public expense, the witnesses are usually paid out of the contingent fund of the house, by whose order the inquiry is undertaken, if it has any; otherwise, out of the public treasury, in virtue of an act passed for the purpose.

[1] Hans. (2), X. 8, 9, 10.
[2] Hans. (1), XII. 839, 840.
[3] Hans. (1), XII. 840.
[4] May, 317. See also Comm. Jour. XXXV 559, 596.

1025. When witnesses attend at the instance of a party, their expenses are to be defrayed by such party. If the witnesses attend without any summons or order, their expenses seem to be matter of private agreement or understanding between them and the parties on whose behalf they attend, with which the house has nothing to do; if they attend upon the summons or order of the house, and the parties refuse to pay them, it is competent for the house to interfere and order them to be paid;[1] and, in the order or summons for the attendance of witnesses, a condition may be inserted, that they shall first be paid or satisfied their reasonable charges, if they require it, before being obliged to attend.[2]

CHAPTER FIFTH.

OF HEARING PARTIES INTERESTED.

1026. It is a principle of general jurisprudence, recognized in the practice of all judicial tribunals, that no man's rights or interests shall be adjudicated upon until he has had an opportunity to be heard to explain, assert, or defend them. The same principle is recognized in the practice of parliament, so far as its proceedings are judicial, or partake of the judicial character, and so far as they affect the rights and interests of particular individuals, distinct from those of the citizens in general.[3]

1027. According to the usual practice, a hearing takes place, in pursuance of an order of the house, made either upon the petition of the party interested, praying to be heard, or upon the motion of some member.[4] The common form, in which a hearing is prayed for, is, that the petitioner may be heard either by himself or by his

[1] Comm. Jour. XVIII. 301, 596.

[2] Comm. Jour. VIII. 322.

[3] It must be borne in mind, that the subject of this chapter relates to the right of being heard, orally and by witnesses and evidence, either in person or by counsel, and not to the right of petition, which is treated of separately and by itself.

[4] A hearing of the parties takes place in the house of representatives of the congress of the United States, most frequently, as we shall see hereafter, in cases of controverted elections; but hearings may occur upon other important occasions, especially in reference to private claims, which, either from their magnitude, or from the principles involved, are assimilated to public measures. See J. of H. IV. 354, 355, 361; Same, 527, 542, 545; Same, VI. 175; Same, VIII. 234. When a hearing is allowed, the parties are introduced by the officers of the house, under the direction of the speaker, and are then informed by him of the order of the house in their behalf. Cong. Globe, VI. 105.

counsel; and this is the usual form of the order, whether it is made on motion merely, or upon petition; but, as it is entirely in the discretion of the house to determine how a party shall be heard, the order may be framed thus in the alternative, or it may restrict the hearing to the party alone without counsel,[1] or, to the counsel alone, without the party. It is not usual to allow a party to be heard both in person and by counsel; and a motion to that effect being made in the time of Mr. Speaker Onslow, he said that "it never was the method of this house to admit parties to be heard by themselves and counsel; the motion that is always made in such cases is, that the petitioners be admitted to be heard by themselves or their counsel."[2] If, however, a peculiar case should occur, in which the interests of a party could only be properly presented, by hearing both him and his counsel, the house would doubtless allow a hearing to take place in that manner.[3]

1028. It does not appear to be necessary, however, in every case, that there should be an express order for the hearing of a party; it may be implied from the nature of the subject of a petition, or from the proceeding which takes place; thus, where a petitioner sets forth certain facts in his petition, and prays that leave may be granted to bring in a bill, thereupon, and the petition is ordered to be taken into consideration at the bar of the house, or is referred to a committee in the usual form, such a proceeding appears to be equivalent to an order for hearing the petitioner, in support of the matters and things in his petition; so the reference of an election petition, or an order for taking such a petition into consideration at the bar of the house, before the introduction of the modern system of trying controverted elections, was equivalent to an order for hearing the parties on both sides. The right to introduce evidence and to examine witnesses, seems to be incidental to the right of being heard.

1029. When a party is admitted to be heard in any of the forms above mentioned, the hearing must be restricted, of course, to the matters and things set forth in the petition, or which are embraced within the terms of the order, when it is not founded on a petition. It is competent for the house, however, to impose such special restrictions, with regard to the hearing, as it may think proper; which may either be included in the order made for the hearing, in the first instance, or be the subject of one subsequently made even during the course of the hearing.[4] When the hearing is ordered to

[1] Comm. Deb. X. 419.
[2] Comm. Deb. X. 98.
[3] Parl. Reg. II. (Lords), 30.
[4] Hans. (3), LIV. 73; Parl. Reg. XVII. 199.

take place before a committee, any variation from the terms of the original order must be effected by means of an instruction from the house to the committee, and not by any vote or proceeding of the committee itself.

1030. Where a hearing is ordered at the bar of the house, and the order of the day for the proceeding has been read, the house may then refuse to direct the party or counsel to be called in, thus in fact discharging the order for the hearing; or it may restrict the hearing in any manner it may think proper, either before or after the hearing has commenced. But when the hearing is before a committee, the committee has no such discretion, either as to the hearing itself, or the manner in which it is to be conducted; the order of the house being obligatory upon it to hear the party according to the terms of the order.[1]

1031. When a hearing takes place with reference to any subject, which is not embraced in the form of a bill, it is for the house to determine as to the time and manner, in each particular case; when had upon bills, the hearing usually takes place on the second reading, according to certain established rules of proceeding, which, so far as may be necessary, will be treated of under the head of bills, in the fifth and sixth sections following.

1032. In the year 1771, it was stated by a member in debate in the house of commons, that "The rule of proceeding of this high and supreme court, upon a question of privilege, is, not to hear counsel; not to allow counsel, to allow lawyers, to reason and argue, and form conclusions, at its bar, on this subject."[2] This was laid down at a time when the privileges of parliament were considered to be very large and indefinite, "and when it was thought that the most dangerous consequences would result," if all the privileges of parliament were once to be set down and ascertained, and no privilege to be allowed, but what was so defined and determined.[3] When such notions prevailed, — when, in short, the privilege of parliament was what each house chose to make so upon the particular occasion, — it cannot be thought strange, that counsel should be precluded from addressing the house upon topics so entirely and exclusively within its own absolute discretion, and to be decided upon principles and with reference to circumstances, of which strangers must necessarily be ignorant. To allow counsel to be heard on a question of privilege, — such being the nature of privilege, — would be precisely equivalent to calling in the party

[1] Parl. Reg. (2), XVIII. 16, 18.
[2] Cav. Deb. II. 428.
[3] Black. Comm. I. 164.

implicated, or his counsel, to give their advice or to make their request to the house, with reference to the kind or degree of punishment which it would be proper to inflict on him. Since the period above mentioned, a different doctrine has been established as to the nature of parliamentary privilege; which is now regarded as a part of the law of the land evidenced by the customs and usages of parliament, when not specially defined by statute, and incapable of enlargement by the resolutions or proceedings of either house. It may well be doubted, therefore, whether the rule above mentioned ought not now to be considered as obsolete.[1]

1033. It is the duty of a party, or counsel, on a hearing, to confine himself, both in the introduction of his evidence, and in the course of his argument, to the matters and things contained in his petition, or, embraced in the order for the hearing;[2] to pay due observance to the orders of the house; to conduct himself respectfully towards the house or committee and towards all the members; and to treat other parties, counsel and witnesses, in a proper manner.

1034. Having thus considered the subject generally, it will be proper now to examine it with especial reference to each class of cases in which hearings take place. The cases, in which the rights or interests of individuals are so involved as to give them a right, according to the law and practice of parliament, to be heard, occur: *first*, when the house is proceeding in its judicial or quasi-judicial capacity; *second*, when it is proceeding legislatively in reference to a matter of private concern; and, *third*, when it is proceeding, in its legislative capacity, in reference to a matter of public concern. Under the head of judicial proceedings, are embraced those which take place in adjudicating upon the right of members to their seats, and in punishing for offences committed against the authority of the house or the persons of its members, both of which are strictly judicial, the first being of a civil, and the last of a criminal character; and, under the head of quasi-judicial proceedings, are embraced inquiries instituted into the conduct of some public officer or other functionary, with a view to his impeachment or removal from office, or for the purpose of correcting some official abuse, and the proceedings which take place in reference to bills of attainder, of pains and penalties, and disqualifying bills. The second division above suggested includes private, and the third public, bills. The several sorts of proceedings thus enumerated will now be separately considered, with reference to the hearing of the parties.

[1] See Hans. (1), VIII. 1000, 1002, 1059.

[2] Comm. Jour. XLI. 839.

SECTION I. RIGHTS OF MEMBERS TO THEIR SEATS.

1035. In both houses, when the right of a member to his seat comes in question, it is tried between the parties, if there are adverse claimants, or *ex parte*, if there is but one, in a manner analogous to the trial of a question of civil right before the ordinary tribunals; the parties are allowed to introduce and examine witnesses, and are fully heard, by themselves or their counsel, and the members, who sit as judges, are bound to decide not according to what they may think most expedient in the particular case, but according to the law and the evidence. In all cases of this kind, in whatever form the inquiry may be instituted, it is the right of the parties interested to be heard, either with or without an express order to that effect. When a petition is received and referred to a committee, or ordered to be taken into consideration at the bar of the house, no express order seems to be necessary; the proceeding itself is a sufficient authority to the parties to be heard. In the commons, the practice with reference to controverted elections is now regulated entirely by statute. In the house of representatives in congress, inquiries relating to the seats of members are usually referred, in the first instance, to the committee on elections before whom the parties produce their evidence and are heard. It is common, also, for them to be allowed a hearing, by leave of the house in the house itself, or in committee of the whole, on the resolutions reported by the committee on elections. Where a hearing of this kind takes place, the petitioner, or other person, addressing the house on his behalf, is bound, by all the rules, with regard to speaking, which are obligatory on members.[1]

SECTION II. INFLICTION OF PUNISHMENT.

1036. When proceedings are instituted or take place for the punishment of offences, — against the house itself or the persons of its members, — the parties implicated are always heard in their defence, unless the offence is of such a nature and so manifest in its character, as to render any such proceeding a mere idle ceremony; as, for example, in the case of a witness who prevaricates, testifies falsely, or refuses to answer, the house proceeds at once, without hearing the offender, unless by way of apology, or to manifest his contrition, — to punish him for his contempt.

[1] Cong. Globe, XV. 230, 231.

SECTION III. INQUIRIES RESPECTING THE CONDUCT OF PUBLIC OFFICERS.

1037. In cases of this description, when the purpose in view is the removal or punishment of the individual, opportunity is always afforded, before the proceeding is terminated, for the party concerned to be heard in his defence. When a complaint of misconduct is made by private individuals against a public officer, and an investigation takes place, for either of the purposes above stated, the inquiry is usually conducted by the parties before the house or committee, in a manner analogous to a proceeding in court. When an inquiry is instituted, in which the conduct of a public officer is involved, or incidentally comes in question, the investigation is usually *ex parte*, and necessarily so, when it is before a committee of secrecy. In such a case, if any charge grows out of the proceeding, the party implicated will be entitled to a hearing. When an investigation takes place, with a view to an impeachment, the preliminary inquiries, upon which the articles of impeachment are founded, are generally *ex parte*.

SECTION IV. BILLS OF ATTAINDER AND OF PAINS AND PENALTIES.

1038. The preliminary inquiries, if any are instituted, which take place previous to the introduction of bills of this description, are usually, if not always, conducted *ex parte;* but, at the proper stage the parties affected by them are admitted to defend themselves by counsel and witnesses before both houses.

SECTION V. PRIVATE BILLS.

1039. In reference to private bills, the proceeding is partly of a legislative and partly of a judicial character; legislative, so far as the forms of proceeding are concerned, and the interests of the public are involved; judicial, so far as it is necessary to discriminate between and adjudicate upon the conflicting interests of different parties. When, therefore, in proceeding upon a private bill, there is occasion for the exercise of judicial inquiry and determination, the parties interested on all sides are entitled to be heard.

1040. By the standing orders of both houses of parliament, all private bills are required to be brought in upon petition; and the

receiving such a petition, and referring it to a committee for consideration, in the usual manner, is equivalent to an order authorizing the petitioners to be heard. But it is an established rule or order, not to admit adverse parties to be heard before the committee to whom such petition is referred, in the first instance. If, upon the case as presented by the petitioners, the committee come to a conclusion favorable to the prayer of the petition, and a bill is thereupon brought in, those parties who are adversely interested may present their petitions against the bill or some of its provisions, and be thereupon heard against it at some appropriate stage of the proceedings. Where adverse parties are thus allowed, upon their petition, to be heard, it is usual, at the same time, to make an order for the hearing of the parties in favor of the bill, and against such petition. The rule is the same, where a bill is introduced on leave, without any previous reference of the petition; or, where the petition is taken into consideration by the house itself, instead of being referred.

SECTION VI. PUBLIC BILLS AND OTHER MEASURES OF A PUBLIC CHARACTER.

1041. In reference to public bills, and other measures of a public character, the proceeding of parliament is strictly in its legislative capacity. It originates all such measures as it deems for the public good; it institutes and conducts inquiries, when necessary, for its own information; and it enacts laws and takes other public measures, according to its own wisdom and judgment. The forms, in which its deliberations are conducted, are established for its own convenience; and all its proceedings are independent of individual parties; the constituents of the legislative body may petition, and, in peculiar circumstances, may be heard, but they do not, as in the case of private bills, participate directly in the conduct of the business, or have any immediate influence upon the judgment of parliament.[1] At the same time, however, that parliament is bound, in the exercise of the high and important functions with which it is intrusted, to decide upon measures of public concern, with reference to public and general grounds only, and irrespective of the wishes of private individuals; it yet recognizes the great principle, that the interests of the public are nevertheless to be effected at

[1] May, 384, 385.

the smallest possible expense of private and individual interests; and it therefore allows private persons, whose interests are injuriously affected or likely to be so by public measures, to be heard with reference to such measures.

1042. The ground, therefore, upon which private individuals are allowed to be heard with reference to public measures, is the effect and operation of those measures upon the peculiar interests of such persons, distinct from their effect and operation upon the public generally. In such cases the controversy is not between the conflicting claims and interests of individuals; but between the interests real or supposed of the public, on the one side, and the interests real or supposed of private persons, on the other. With regard to the former, it would be manifestly at variance with the theory of legislative assemblies, to allow individuals to be heard; this would be to allow persons who were not members to participate in the performance of duties, which members alone are appointed to perform, and for the performance of which they alone are responsible; and as there could be no limit to such hearings, if allowed at all, — one individual having as much right as another, to present his views, — it would be clearly impracticable, consistently with the performance of any legislative business at all, to allow such hearings to take place. With regard to the latter, it is equally clear, that in no other mode than by a hearing, can the rights and interests of individuals be adequately represented for the consideration of the legislative power. The foregoing considerations suggest the general ground upon which, it is believed, the usage and practice of parliament, on this subject, rests, namely, that individuals are entitled to be heard, with reference to measures of public concern, so far as their private and peculiar interests are thereby affected, and so far as those interests are legitimately entitled to the consideration of the legislature. The cases in which private parties are entitled to be heard, with reference to public measures, may be arranged in two classes, *first*, where the parties pray for relief by the introduction of some public measure; and, *second*, where they seek to avoid an injury, which will result to them from the adoption of some public measures already pending.

1043. I. When the rights or interests of private individuals are peculiarly affected, in an injurious manner by the state of existing institutions and laws, or by circumstances growing out of the foreign or other relations of the country, such persons may bring their grievances to the attention of parliament, by way of petition,

and may be heard in support of their claim to relief; although relief can only be obtained by the adoption of some measure of a public character. Many cases of this description are to be found in the journals of both houses. The following may be taken as examples. In the year 1737, several petitions of merchants and others, trading to and interested in the British plantations in America, were presented to the house of commons, setting forth the injuries and losses, which the petitioners had sustained, in consequence of the depredations of the Spaniards upon their trade and commerce. These petitions were referred to the consideration of a committee of the whole house, with instructions to hear the petitioners, if they should think fit.[1] In the following year, a convention having in the mean time been concluded with Spain, a copy of which had been communicated to the house of commons, and referred to a committee of the whole house, several petitions of a similar character were presented, representing the insufficiency of the measures for the relief of the petitioners; which petitions were referred to the committee of the whole, with instructions to hear the petitioners.[2] In the year 1786, the retail shopkeepers of London and other places petitioned parliament for the repeal of an act passed in the previous session for imposing a tax on shops, on the ground, that the tax was in fact an additional house tax, borne by retail traders alone, which did not fall upon the consumer, and was consequently partial and unjust; these petitions were referred to the consideration of a committee of the whole house, with directions to hear the petitioners.[3] But where the abuse or grievance complained of is of a general and public character, and does not peculiarly affect the rights or interests of particular individuals, petitioners of that description are not in general entitled to be heard; thus, where a petition of certain burgesses of the royal burghs of Scotland, in behalf of themselves and others, was presented to the house of commons, complaining of very great grievance in the administration of the government of all the royal burghs of Scotland, and praying that the system of government might be altered, corrected, or amended; the house refused the petitioners a hearing, apparently, on the ground above mentioned.[4]

[1] Comm. Deb. X. 96, 105.

[2] Comm. Deb. X. 417.

[3] Comm. Jour. XLI. 175, 176, 177, 187, 189, 205, 245.

[4] Comm. Jour. XLVII. 749, 750; Parl. Reg. (2), XXXII. 447, 448, 449; Mr. Speaker Addington, in giving his opinion, said, that "generally speaking, none but private petitions from individuals, were supported by counsel at the bar; but there were exceptions to this, according to circumstances; the East India Company, who held rights by charter, had been heard by counsel on public bills." Parl. Reg. as above.

1044. II. When the rights or interests of private individuals are liable to be injuriously affected by the adoption of some public measure, which is already introduced and pending, such persons are entitled to be heard against the measure in question, so far as their interests are concerned. The following are cases of this kind. In the year 1783, a bill to shorten the period of limitation for the bringing of writs of right being under consideration in the house of commons, an individual, alleging himself to be the son and heir of the late earl of Leicester, petitioned to be heard at the bar against the bill, on the ground, that, as it was then drawn, it would be an effectual and insuperable bar to the prosecution of his claims to the estate of his father; the petitioner was heard accordingly, and a general saving clause was thereupon introduced into the bill, allowing him and all others similarly situated, a reasonable time for the commencement of their actions.[1] In the year 1785, the house of commons having agreed to certain resolutions for adjusting the commercial intercourse between Great Britain and Ireland, and sent them to the lords for their concurrence, petitions were presented in that house against the resolutions, by the manufacturers of glass and others, who were allowed to be heard in support of their petitions.[2] The rule is otherwise, where the measure in question is not one which affects the interests of individuals in a peculiar and distinct manner. Thus, where a bill was pending in the house of commons for repealing the duties on tobacco and snuff, and for granting new duties in lieu thereof, and the city of London petitioned to be heard against the bill in order to show the injurious consequences which would result to the trade and navigation of Great Britain from any further extension of the excise laws, the house refused a hearing, on the ground, that it was "a principle, never to hear any persons at the bar of the house, by their counsel, against a bill, but when they stated that they had an immediate interest in such bill, and that if it passed into a law, their interest would be materially affected."[3]

1045. In the cases above stated, and in other similar cases, where petitioners are allowed a hearing with reference to public measures, it is not the usage, as it is in the case of private bills, to make an order for the hearing of parties on the other side; the measure thus called in question being of a public character, and to be sustained on public grounds, which it would be inconsistent with the func-

[1] Parl. Reg. (2), X. 201, 202, 203.
[2] Parl. Reg. (2), XVIII.; Lords, 27.
[3] Comm. Jour. XLIV. 511; Parl. Reg. (2), XXVI. 306.

tions of a legislative body to receive, either on the one side or on the other, from a hearing of private individuals at its bar. Many cases have occurred, however, in which the house, without any claim made on the part of an adverse party, to be heard, has thought fit, for its own satisfaction, to call for and hear further evidence, after the petitioners against a bill have closed their case.[1]

1046. In order to authorize a hearing, in reference to a public measure, there must be an order of the house to that effect; which is usually made upon the petition of the parties interested, and either directs the hearing to take place at the bar of the house, or refers the petition to the consideration of a committee, with an instruction or direction to the committee to hear the parties thereupon, agreeable to the prayer of their petition.[2]

1047. It frequently happens, that the public measures, which are the subject of a hearing, affect great numbers or particular classes of individuals, in a similar manner. When this is the case, those persons who are similarly interested may unite in one petition, or they may come to the house with several petitions. In the latter case, it must be optional with the house, of course, to allow as many hearings as there are petitions, or to restrict all the petitions in the same interest to one hearing. If the house was obliged to hear the parties separately on each of a number of separate petitions, — all having the same interest in view, — persons desirous of impeding the progress of any public measure would have nothing more to do than to come to the house with separate petitions, all of the same tendency, and calculated to promote the same interests; and, by that means, the house or the committee would be obliged to sit and hear day by day, arguments and evidence solely calculated for the purpose of procrastination, but without affording any new light upon the matter before it.[3] But this is a matter which of necessity must depend entirely upon the discretion of the house, to be exercised according to the circumstances of each particular case; and, in which great latitude would be likely to be allowed, so long as the object of petitioners appeared to be to inform the house, without any unnecessary consumption of its time; thus, where petitions relative to the same public measure, and founded in the same interest, have been received from several different places, it has been the usage to allow a separate hearing on each, if desired by the parties.

[1] Hans. (1), X. 1251, 1252, 1253.
[2] Comm. Jour. XLI. 205.
[3] Parl. Reg. II. 18; Same, XXIV. 91, 102.

CHAPTER SIXTH.

PUBLIC OFFICERS SUBJECT TO THE ORDER OF THE ASSEMBLY.

1048. The power of the two houses to obtain information, by calling on public officers to furnish them with accounts, returns, and statements of facts, relative to the duties and business of their respective offices, has already been alluded to in a former chapter. Such officers may also be required to attend as witnesses, and to produce records and papers, which are in their official custody. But the authority of parliament does not stop here. Public officers are not only bound to yield obedience to requisitions of this kind; they are also required to lend their official aid, in certain cases, or to perform certain official duties, by the direction of either house. It would not be practicable to enumerate in detail, all the officers who are thus, for particular purposes, subject to the order of parliament; or the various official acts, which, according to the laws and usage of parliament, they may be called upon to perform. It is proposed only to mention some of the most important, which will be enumerated by reference rather to the duties or services required, than to the several officers by whom they are to be performed. Some of the principal of these purposes, for which the services of public officers are called in to the aid of parliament, relate, *first*, to the returns and elections of members; *second*, to the prosecution and punishment of offenders; *third*, to publishing or distributing the orders of the house; *fourth*, to rendering assistance to the officers of the house; and, *fifth*, to the preservation of the peace in the place where the parliament is sitting; to which may be added, *sixth*, the right of the house of lords to call upon the judges for their opinions in matters of law.

SECTION I. RETURNING OFFICERS.

1049. The election of members of the house of commons takes place in pursuance of writs issued out of chancery, directed to the proper officers; who are bound by their official duties to cause the writs to be executed by the election of members, and to be seasonably returned into chancery; where the writs and returns are placed in the custody of the clerk of the crown in chancery, who makes a

record of the members so returned in a book kept by him for that purpose.

1050. The return thus made and the record of it as above mentioned are the evidence of a member's right to his seat. But, as this record is made up from the returns, in the first instance, and as they are received, which cannot be altered but by the authority of the house;[1] and, as the house which is the sole judge of the returns and elections of its members, may afterwards upon investigation find that a particular return is wrong, and that some other person should have been returned; it then becomes necessary, by analogy to legal proceedings in certain cases, that the record should be made to conform to the fact. Inasmuch, however, as the record is in the chancery, and the power to rectify it exists only in the house, the method of proceeding is for the house to direct the returning officers, if necessary, and the clerk of the crown in chancery, to attend in the house, and there in its presence to make the requisite alterations.

1051. These officers may also be directed to perform other official acts connected with the election and return of members, and are subject to the censure and punishment of the house for any neglect of duty. The election and return of members, having already been treated of at length, need not be further alluded to in this place. In the house of lords, where the representative peers of Scotland and Ireland are elected and returned in a manner analogous to the election and return of members of the house of commons, the returning officers are subject to the same control and direction of the house.

SECTION II. PROSECUTION AND PUNISHMENT OF OFFENDERS.

1052. In the prosecution and punishment of offences, which affect either house of parliament, or the persons of its members, the house for the most part proceeds directly by its own authority and by the agency of its own officers;[2] still, there are cases, in which it directs proceedings to be instituted in other courts, either as a substitute for, or in addition to, the punishments which it inflicts.[3]

[1] Comm. Jour. X. 377.

[2] See Lords' Jour. XX. 363.

[3] The house of representatives of congress, in January, 1845, having previously dismissed its defaulting clerk, C. J. McNulty, then requested the president of the United States to institute criminal, and directed the secretary of the treasury to institute civil, proceedings against him for an embezzlement of the public money. Cong. Globe, XII. 153.

There are also many cases, which are brought to the knowledge of the house, either directly or indirectly, in which the house itself has no jurisdiction or an inadequate one to punish; or which it does not look upon as sufficiently important to be the subjects of impeachment; but which, nevertheless, the public interest requires should be adequately punished. In all these cases, it is the usage of the two houses to take measures for the institution of prosecutions by the attorney-general (sometimes, but rarely, the solicitor-general is joined with him) in the courts of common law. In the house of commons, the course is either to order the attorney-general directly, or to address the crown to direct him, to institute the prosecution;[1] in the house of lords, in which proceedings of this kind are comparatively infrequent, the form is by direct order, and not by address.[2] Some examples will now be given of the occasions on which prosecutions by the attorney-general have been ordered or addressed for.

1053. I. Where, in the course of the investigations, instituted for a different purpose, the existence of some offence of a public character has incidentally come to light, the house has ordered a prosecution to be instituted. Thus, the commissioners for stating the public account, in 1693, having acquainted the house of commons, that they had taken the examinations of several witnesses touching an embezzlement of goods out of a French prize by the captain and lieutenant of the ship of war by whom the prize was taken, the house thereupon ordered the commissioners to deliver the examinations to the attorney-general, and the latter to take care that there be an effectual prosecution of the captain and lieutenant for their offence.[3]

1054. II. Where, in the investigation of some abuse or grievance of a private character, with a view to a remedy therefor by way of legislation, it appears that offences have been committed which are deserving of punishment, the house has not only given leave for bills to be introduced to remedy the inconvenience complained of, but has also directed prosecutions at law. Thus, where certain petitions were presented to the house of commons in 1695, complaining that the petitioners, who were carriers and wagoners, and others in the habit of travelling the northern and western

[1] According to Sir Samuel Romilly, the house orders a prosecution of its own authority, when it thinks that a prosecution is necessary, but, at the same time, that the proposition would not be agreeable to the king; in other cases it proceeds by address. Romilly, 300.

[2] Lords' Jour. XX. 357, 362.

[3] Comm. Jour. XI. 53, 54, 55.

roads, suffered great extortion and abuses from persons acting as informers, and demanding penalties under a doubtful construction of the statute 22 Charles II., for repairing highways; and these petitions were referred to a committee, who, upon investigation, reported the facts at length, together with resolutions that the petitioners had fully proved the allegations of their several petitions, and deserved the relief of the house, and also that leave should be given to bring in a bill for explaining the act in question, and for preventing the abuses arising thereby; the house agreed to the resolutions, and also made an order that a copy of the report should be delivered to the attorney-general, and that he take care to prosecute the parties implicated thereby.[1] So, where a committee, which was appointed to inquire into the abuses practised in the manufacturing of tobacco, reported a statement of the facts relating thereto, the house thereupon gave leave for a bill to prevent frauds in the manufacture of tobacco, and also resolved upon an address to the king, to direct the attorney-general to prosecute certain persons mentioned in the report, for the frauds of which they were alleged to be guilty.[2]

1055. III. Where, on inquiries being instituted into the conduct of public officers, or persons then or previously in some public employment, or into the management of a trust of a public character, it is ascertained that the parties implicated have been guilty of some misconduct, abuse, breach of trust, fraud, or other official delinquency, the house of commons has directed prosecutions to be instituted at law, instead of resorting to the extraordinary process of impeachment.[3] The following are examples of this kind: In 1701, a committee having been appointed to inspect the conduct of Edward Whitacre, solicitor to the admiralty, and having reported a statement of the facts relating thereto, the house thereupon resolved that the said Edward Whitacre had been guilty of divers ill practices, corruptions, and breaches of trust, in execution of his said employment.[4] In the same year, a petition being presented from certain persons in behalf of themselves and other merchants in England and foreign parts, freighters and insurers of a certain ship, complaining of the escape of a prisoner from the Fleet prison, who was charged therein with taking out the goods, and

[1] Comm. Jour. XI. 397, 434, 513. See, also, Same, XII. 682, 683.

[2] Comm. Jour. XVIII. 421.

[3] The intention of the house of commons, with regard to proceedings against Lord Melville, was, in the first instance, to direct a prosecution by the attorney-general. Subsequently impeachment was resolved upon. Comm. Jour. LX. 374, 421.

[4] Comm. Jour. XIII. 616, 623.

afterwards burning the said ship, upon which he had made great insurances; and the committee to whom the petition was referred having reported the facts in the case; the house thereupon resolved, that the warden of the Fleet, by suffering the party to escape after he was legally charged in his custody for the said offence, was guilty of a notorious breach of duty.[1] In the year 1699, the house of commons resolved upon the investigation and report of a committee, that one Daniel Gwyn, who had been engaged in several public employments, had been guilty of divers notorious frauds and extortions, and was not fit to be continued or employed in any place under government.[2] In the year 1729, a committee appointed by the house of commons to inquire into the state of the jails, having made a report relative to the Marshalsea, — the house thereupon resolved that the keeper, and another person to whom he had farmed the gaol and the profits thereof, were guilty of inhuman, cruel, and barbarous treatment of prisoners in custody for debt, of fraudulently and cruelly withholding certain charities from the poor prisoners, and of a high misdemeanor and breach of trust.[3] In the year 1733, an inquiry was instituted by the house of commons, into the management of the affairs of a company known as the charitable corporation for the relief of the industrious poor, by assisting them with small sums upon pledges, at legal interest. The committee, to whom the inquiry was referred, reported that certain persons connected with the management of the affairs of the company had been guilty of many notorious breaches of trust, and many indirect and fraudulent practices in the management of the affairs of the said corporation.[4] An investigation having been made by the house of commons into the management of a lottery authorized by parliament for the purchase of the museum of Sir Hans Sloane, and for other purposes, the house addressed the king to direct the attorney-general to institute a prosecution against one of the commissioners for a violation of the act and a breach of trust.[5] In all these cases, the house took measures, either by order or by address, to the king, for the prosecution of the parties implicated, by the attorney-general.

1056. IV. In cases of breach of privilege, which are also offences at law, where the punishment in the power of the house to inflict would not be adequate to the offence, — or where the acts charged could not be investigated by the house without greatly delaying

[1] Comm. Jour. XIII. 826, 827, 828.
[2] Comm. Jour. XII. 680.
[3] Comm. Jour. XXI. 376, 387.
[4] Comm. Jour. XXII. 137.
[5] Comm. Jour. XXVI. 1001.

the public business,— or where, for any other cause, the house has thought a proceeding at law necessary, either as a substitute for, or in addition to, its own proceeding, the attorney-general has been directed to prosecute. Thus, where the sergeant-at-arms acquainted the house that two prisoners in his custody who had been ordered the day before to be discharged, paying their fees, had refused to pay any thing, and had endeavored violently to make their escape; and that having thereupon sent them both to his house, they had broken several doors, and spoiled his goods, and endeavored forcibly to go away, and had abused, assaulted, and beaten his servants, the house ordered the offenders to be committed to the Gatehouse, and the attorney-general to prosecute them for their misdemeanors;[1] where a committee, appointed to ascertain how letters addressed to members came to be intercepted, reported that they had been taken out of the box every postday by one Richard Frogatt, the house thereupon proceeded to make further provision for the due delivery of the letters, and also directed the attorney-general to prosecute the offender at law;[2] where it appeared that the handwriting of members had been counterfeited on letters, the house resolved, that the king be addressed to direct the attorney-general to prosecute at law such persons as counterfeit or otherwise fraudulently make use of the handwriting of members upon letters in order to prevent such letters from being charged with postage;[3] where a printed paper was complained of and read, containing high reflections upon the honor of the house in general, and in particular upon one of the members, the house resolved that the said paper was a false and scandalous libel, and directed the attorney-general to prosecute the person by whom it was signed;[4] where a complaint was made of a printed pamphlet which was brought up to the table and read, the house resolved, that the same was an impudent, malicious, scandalous, and seditious libel, falsely and most injuriously reflecting upon and aspersing the proceedings of the house, and thereupon addressed the king to direct a prosecution therefor against the authors, printers, and publishers, by the attorney-general;[5] where a crowd of people assembled in the neighborhood of the house and in the passages leading thereto, in a tumultuous and riotous manner, and it appeared that one John Garrard had uttered very insolent words, inciting the said tumult against the members of the house; it was resolved, that John Garrard

[1] Comm. Jour. XI. 730.
[2] Comm. Jour. XII. 287, 288.
[3] Comm. Jour. XXIV. 394.
[4] Comm. Jour. XIII. 230.
[5] Comm. Jour. XXVI. 304.

hath incited the rabble against the members of this house, in violation of the rights and constitutions of parliament, — that he be committed to the Gatehouse therefor, — and that the attorney and solicitor-general do effectually prosecute him for his said offence;[1] and, on the occasion of the riots and tumults in London and Westminster in 1780, the house resolved, that the taking possession of the lobby and the avenues to the house, by a large and tumultuous assembly of the people, and maintaining the same, to the great obstruction of the business of the house, was a high violation of the privileges of the house, and that an address be presented to the king, to direct the attorney-general forthwith to prosecute all such persons as shall be found to have been the instigators or abettors of, or active in promoting, the riots in the old palace yard and the avenues to the house.[2]

1057. V. The purpose of the trial of a controverted election is, of course, to determine which of two or more conflicting claimants is entitled to a seat; but, in the investigation of cases of this kind, it frequently happens, that offences against the laws are proved to have been committed by the parties or persons in their interest, for the purpose of effecting or defeating an election; and, upon the facts being made to appear in such cases, it is usual for the house to direct prosecutions to be commenced at law by the attorney-general. Thus, prosecutions have been ordered in cases, in which it appeared to the house, that there had been illegal and indirect practices, in a certain borough, to examine persons upon oath, and to take affidavits, in relation to the evidence they were to give at the bar of the house, touching the election therein;[3] that a party had been guilty of bribery and corruption, in procuring an election of a burgess;[4] that a candidate had been guilty of bribery and corruption in endeavoring to procure himself to be elected;[5] that another had been guilty of corrupt, scandalous, and indirect practices, in endeavoring to procure himself to be elected, and for promoting a scandalous, villanous, and groundless reflection upon the last house of commons;[6] that certain persons had been guilty of an illegal and corrupt conspiracy in relation to an election;[7] that certain persons were principal promoters and suborners of corrupt and wilful perjury committed at an election;[8] that there were strong grounds for

[1] Comm. Jour. XIII. 230, 231.
[2] Comm. Jour. XXXVII. 902.
[3] Comm. Jour. XIII. 383.
[4] Comm. Jour. XIII. 640.
[5] Comm. Jour. XIII. 711.
[6] Comm. Jour. XIII. 735.
[7] Comm. Jour. XXXIII. 179.
[8] Comm. Jour. XXXV. 538.

believing that a witness, in giving his evidence before an election committee, had been guilty of wilful and corrupt perjury.[1]

1058. In some cases the house has thought proper to direct prosecutions to be instituted by the attorney-general, for offences not referring particularly to the house, or brought to light in the course of any parliamentary investigation, but in general affecting the government; as, for example, for libels on the constitution,[2] on the king's government and person,[3] on the king and government;[4] for high treason of which a member had been guilty before his election, and for which he had been expelled.[5]

1059. The above-mentioned cases are given merely as examples of the duties, which the two houses of parliament may require of the attorney and solicitor-general, in the prosecution and punishment of offences. There are also other occasions on which the services of those officers have been required; thus, in the course of the proceeding which terminated in the impeachment of Lord Melville, the attorney-general was directed to take measures for ascertaining and recovering any sums that might be due to the public from Lord Melville or Alexander Trotter, in respect of profits derived by them from moneys issued for naval purposes;[6] and when actions were brought by Sir Francis Burdett against the speaker and sergeant-at-arms for arresting him on a speaker's warrant issued by order of the house, the attorney-general was directed to defend the actions.[7] Under this head, must be mentioned those cases, in which the two houses have thought proper to express their opinion of books, pamphlets, or other printed papers by ordering them to be publicly burnt by the common hangman.[8]

1060. When state prosecutions are carried on in parliament, in the form of bills of attainder, or bills of pains and penalties, or when other bills of analogous character are pending, the attorney and solicitor-general are required to act as counsel in support of the proceedings. When bills to inflict pains and penalties on George Kelly, John Plunkett, and the bishop of Rochester, were pending in the house of commons, in 1722;[9] to make void contracts for the

[1] Comm. Jour. LXXV. 332.
[2] Comm. Jour. XXXIV. 464.
[3] Comm. Jour. XXXII. 828.
[4] Comm. Jour. XIX. 562.
[5] Comm. Jour. XVIII. 467.
[6] Comm. Jour. LX. 221.
[7] Comm. Jour. LXV. 355. In the case of *Anderson* v. *Dunn*, (Wheaton's Reports, VI.) which was an action against the sergeant-at-arms of the house of representatives in congress, for arresting the plaintiff on a speaker's warrant, the house directed the attorney-general to defend the action.
[8] Comm. Jour. VIII. 259, 400; Same, X. 786, 787; Same, XII. 28, 224, 572; Same, XI. 667, 668.
[9] Comm. Jour. XX. 180, 183, 186.

sale of the earl of Derwentwater's estate, in 1723;[1] and to disable Alexander Wilson from holding any office in Edinburgh, etc., in 1737;[2] the attorney and solicitor-general were directed to take care, that the evidence against the parties should be ready to be produced to the house on the day appointed for the second reading; and the attorney-general was ordered to appoint counsel, learned in the law, to produce and manage the evidence at the bar of the house on the hearing. In the house of lords, notice was ordered to be given to the attorney-general of the orders of the house relative to the said bills; "in order," as expressed in one instance, "for them to appoint counsel to methodize the evidence to be given in support of the allegations, and to produce and examine the witnesses with relation thereto."[3] A bill to inflict pains and penalties upon Sir Thomas Rumbold and Peter Perring, being before the house of commons in 1782, the house directed the attorney-general to provide counsel to produce and manage the evidence on the second reading.[4]

SECTION III. PUBLISHING OR DISTRIBUTING THE ORDERS OF THE HOUSE.

1061. It is the constant usage of the house of commons to direct the sheriffs to give notices to the members within their several counties of the orders of the house requiring their attendance; as, that the speaker be desired to send his letters to the several sheriffs, with a particular order of the house inclosed, for the members' attendance at the meeting of the house after Christmas;[5] that the house be called over on a particular day, and that every member who shall then make default of attendance, whose excuse shall not be allowed by the house, shall be doubly assessed in the bill of subsidies, and that notice of this vote be sent by the clerk to the sheriffs of the several counties, to be by them communicated to such members of parliament in each county as are concerned;[6] that the clerk prepare letters to be signed by the speaker, to be sent to the sheriffs, requiring them to signify to all the members that serve for the places within their respective counties, that they give their attendance on a particular day mentioned, and that the house is to

[1] Comm. Jour. XXI. 891.
[2] Comm. Jour. XXII. 887.
[3] Lords' Jour. XXII. 144; Same, XXIV. 111 b.; Same, XXV. 75 a.
[4] Comm. Jour. XXXVIII. 1004.
[5] Comm. Jour. IX. 42.
[6] Comm. Jour. IX. 187, 463.

be called over the day following, at which time, such as shall be absent will incur the displeasure of the house;[1] that the speaker write letters to the sheriffs of the respective counties, to summon the members of the house now in the country, to attend their service in parliament, on a day named, notwithstanding any leave of absence, and that such as shall not then attend shall be sent for in custody of the sergeant-at-arms.[2] Sometimes, the order is directed to other officers besides the sheriffs; as, that the speaker be desired to send his letters to the several sheriffs of the respective counties, and to the several mayors, bailiffs, and other proper officers in the several cities, boroughs, corporations, and cinque-ports, requiring them to give notice to all such members of this house that serve for such respective places, as have absented themselves from the service of the house without leave, to attend the house within ten days.[3] The circular letters of the speaker require the sheriffs to give an account of the receipt of the letters, and of what they do thereupon, to the speaker.[4] Sometimes the house directs that its orders of a different kind shall be sent to the sheriffs and others, by way of publishing them, as, where the house of commons directed that printed copies of the standing orders of the house respecting private bills should be sent to the sheriffs and clerks of the peace of the several counties of England and Ireland, to be by them severally preserved in and for the use of their respective counties.[5] So, where the house having agreed upon certain resolutions relative to the trial and determination of controverted elections, and having ordered the same to be standing orders of the house, directed the speaker to send copies thereof to the sheriffs of the several counties, to be by them communicated to the chief officers of the several cities, corporations, and boroughs, sending members of parliament, in their respective counties.[6] The foregoing examples will be sufficient to give an idea of the manner in which the two houses avail themselves of the services of sheriffs and other officers for the dissemination of their orders.

SECTION IV. RENDERING ASSISTANCE TO THE OFFICERS OF THE HOUSE.

1062. It is the duty of the sergeant-at-arms and his assistants to execute the commands of the house, in taking offenders and others

[1] Comm. Jour. IX. 464.
[2] Comm. Jour. XI. 111; Same, LXVI. 3.
[3] Comm. Jour. IX. 672.
[4] Comm. Jour. XI. 111.
[5] Comm. Jour. LXVI. 444.
[6] Comm. Jour. XV. 551.

into custody, in summoning witnesses, and also in keeping order in the house itself, and in the lobby, and passages leading thereto; but, if there be occasion, the house may call in other officers to his assistance. Thus, when in the year 1678, the house of commons ordered Oates to be sent for to give in his testimony at the bar of the house, touching the plot and conspiracy mentioned in the king's speech, it was ordered, at the same time, that the sergeant-at-arms go with his messengers and bring Mr. Oates to the bar of the house; and all constables and other officers and persons whatsoever were required to be aiding and assisting him therein, if need require;[1] where the house had previously issued an order to the sergeant-at-arms to send for certain persons in custody, for a breach of privilege, one of whom refused admittance to the deputies of the sergeant, and spoke slighting and contemptuous words, touching the warrant; the house thereupon ordered, that the party in question be sent for in custody, as a delinquent; that the sergeant-at-arms be empowered to break open his house in case of resistance, and also to bring in custody all such as shall make opposition therein; and to call to his assistance the sheriff of Middlesex, and all other officers as he shall see cause, who were required to assist him accordingly;[2] where the house ordered certain books and pamphlets to be burnt by the hands of the common hangman, and directed the sergeant-at-arms to see that the order was executed, the sheriffs of London and Middlesex were also ordered to lend their assistance.[3] The house has several times ordered the sergeant-at-arms, to keep the stairs and passages to the house free from disturbance of lacqueys and footmen, to take into custody any lacquey or footman remaining or standing on the stairs, and, at the same time, directed the officers of the knight marshal to assist the sergeant in the execution of the order.[4] So, where in consequence of the presence of a tumultuous crowd of people, in the lobby, the yeas on a division were unable to go forth, and the sergeant-at-arms informed the house, that it was not in his power to clear the lobby; the speaker directed him to send for the sheriff and other magistrates of Middlesex and Westminster to attend the house immediately; who, attending accordingly, were directed by the speaker to use their utmost exertions to restore peace and good order; which they succeeded in doing, and the division took place.[5]

[1] Comm. Jour. IX. 519.
[2] Comm. Jour. VIII. 222.
[3] Comm. Jour. XI. 28, 224, 572.
[4] Comm. Jour. IX. 249, 318, 386; Same, VIII. 253.
[5] Comm. Jour. XXXVII. 961.

SECTION V. PRESERVATION OF THE PEACE IN THE PLACE WHERE THE PARLIAMENT IS SITTING.

1063. The existence of any external restraint, operating upon the two houses of parliament, is so inconsistent with the freedom and independence which are essential to the proper exercise of their functions, that, if continued for any length of time, it would become as revolutionary and destructive of the constitution (though in a different way,) as the forcible ejection of the members by a military force. Hence it is deemed, according to the law and usage of parliament, to be a high crime and misdemeanor, for any number of persons to come to either house in a riotous, tumultuous, or disorderly manner, for the purpose of hindering or promoting the passing of any measure there depending.[1] In order to protect themselves against any influences of this kind, the two houses are clothed with authority, which they have always exercised when occasion required, to call upon the magistrates and other peace-officers of the place where they are sitting; who are then especially obliged to restore order, and to preserve the public peace, by means of the exercise of their ordinary official functions.[2] Thus, in 1696. a tumultuous crowd of people coming into the Palace yard, and Westminster Hall, and passages towards the house of commons, and into the lobby of the house, the house ordered that the justices of the peace of Middlesex and Westminster, and Southwark, and members for the city of London, do go and endeavor to disperse the said multitude, and that the sheriffs and justices of the peace of London and Middlesex do immediately attend the house for the same purpose;[3] in 1699, on the occasion of a similar tumultuous assembling of persons about the house of commons, it was ordered, that the justices of the peace of Middlesex and Westminster do go forth and disperse the said riotous crowd, and that the justices of the peace of the city of Westminster do immediately attend the house and bring the constables with them; and they attending accordingly were called in, and, at the bar, the speaker, by order of the house, acquainted them with the said tumultuous riot; and that the house did expect, that they should go immediately and disperse the same, and give the house an account of what they did therein; and that they do commit such as they find most active in the said

[1] Comm. Jour. XI. 667; Same, XIII. 230.
[2] Lords' Jour. XXXII. 188.
[3] Comm. Jour. XI. 667.

riot, and take care to prevent any such riots for the time to come;[1] in 1714, the house of commons being informed, that a crowd of people had, for several days past, appeared together in a tumultuous and riotous manner, in the Palace yard, Westminster Hall, and the passages leading to the house; it was ordered, that the sheriffs of London and Middlesex, and the high bailiff of the city of Westminster, do take care to disperse any disorderly assembly of persons, crowding to the places above mentioned, and to prevent any such tumultuous resort for the future;[2] again, in 1771, on the occasion of the proceedings against Brass Crosby the lord mayor of London, the house was beset by a tumultuous crowd of people, who interrupted the members in their coming into the house, and similar measures were resorted to for dispersing the crowd and clearing the passages;[3] and lastly, when during the riots in 1780, the lobby of the house of commons was filled by a tumultuous crowd, which the sergeant-at-arms was unable to disperse, so as to enable the yeas to occupy it on a division, the speaker directed him to send for the sheriff and other magistrates of the county of Middlesex and city of Westminster to attend the house immediately; and, on their attending at the bar, informed them, that a tumultuous assembly of people had surrounded the house, and rendered it very difficult for the members to come into or go out of the house, which disorder had continued for many hours; that it was their duty to preserve the peace; and for that purpose they had authority to call forth, if necessary, the whole power of the county to their assistance; the speaker therefore directed them to use their utmost exertions to restore peace and good order.[4] Several occasions have occurred, on which similar proceedings have taken place in the house of lords.[5]

1064. Besides looking to the local magistrates for protection against those tumultuous and riotous assemblages, which are subversive of the freedom and independence of parliament, the two houses have for a long time been in the practice of availing themselves of the same authorities, for the preservation of order and quiet in the neighborhood of their place of sitting, and for securing a free and unobstructed passage for the members to and from the two houses.[6] In 1709, orders were first made in the house of com-

[1] Comm. Jour. XIII. 230.
[2] Comm. Jour. XVII. 661.
[3] Comm. Jour. XXXIII. 285.
[4] Comm. Jour. XXXVII. 901.
[5] Lords' Jour. XXXI. 206, 207, 209, 213; Same, XXXII. 147 b., 187 b.; Same, XXXVI. 142 b.
[6] Resolved, "that according to the known laws and usage of parliament, it is the undoubted right and duty of the peers of Great

mons requiring the constables and other officers of Middlesex and Westminster[1] to take care, that during the session of parliament, the passage through the streets between Temple Bar and Westminster Hall be kept free and open, and that no obstruction be made by cars, drays, carts, or otherwise, to hinder the passage of the members to and from the house; that the constables in waiting take care that there be no gaming or other disorders in Westminster Hall, and that there be no annoyance by chairmen, footmen, or otherwise, therein, or thereabouts.[2] These orders were renewed in succeeding sessions,[3] and are now regularly adopted at the commencement of every session.[4] Similar orders are made also in the house of lords, with respect to keeping the passages leading to the house free from obstruction.[5]

SECTION VI. RIGHT OF THE HOUSE OF LORDS TO CALL ON THE JUDGES TO GIVE THEIR OPINIONS ON QUESTIONS OF LAW.

1065. In the house of lords, the judges of the courts of king's bench and common pleas, 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 king's sergeant-at-law, attend, as assistants. This attendance, which was formerly enforced at all times, is now only occasional, when summoned by a special order. The principal purpose of the attendance of the judges is, to give their opinions on questions of law, when demanded of them by the house, with reference to all subjects there pending whether of a judicial or legislative character. They deliver their opinions, either separately, or by the mouth of one of their number, and either with or without reasons, according to circumstances. The usual course is, for the house, on motion, to order that certain questions be proposed to the judges, and that they be summoned to attend to give their answers at a particular time; which may be enlarged at the request of the judges, or for the convenience of the house; but, if, in the mean time, a prorogation takes place, the order is discharged, and must be renewed in the next session, if the opinions of the judges are

Britain, in parliament assembled, to give such orders as may from time to time be found necessary to disperse or suppress any force which shall obstruct their coming to, remaining in, or returning peaceably from, this house, or tend to interrupt the freedom of parliamentary proceedings." Lords' Jour. XXXII. 188.

[1] It is hardly necessary to remark that the parliament was sitting within the city of Westminster and county of Middlesex.

[2] Comm. Jour. XVI. 213.

[3] Comm. Jour. XVII. 3, 279, 476.

[4] Comm. Jour. LXXV. 6, 110.

[5] Lords' Jour. LXVI. 6, 7.

still desired.[1] There appears to be but a single exception to the questions to which answers may be demanded of the judges, namely, a question of privilege, in reference to which the judges declined to answer in Thorpe's case, in the 31 Henry VI., and to which they have never since been interrogated. The reasons given by the judges are thus expressed: "For it hath not been used aforetime, that the justices should in anywise determine the privilege of this high court of parliament; for it is so high and so mighty in this 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."[2] The principle, embodied in these reasons, namely; that privilege of parliament is what either house declares to be so, has been very strongly questioned, if not exploded, in modern times; and as the doctrine is now held, that the law of parliament is part of the law of the land, and cognizable on proper occasions by the courts of law; it may perhaps be doubted, whether, if the house of lords should now propound a question relative to the law of privilege, the judges would not feel themselves bound to answer.

SECTION VII. RIGHT TO REFER MATTERS TO PUBLIC OFFICERS.

1066. The house of commons exercises the right to refer a matter pending before it to some public officer, or board, for a particular purpose.[3] The same authority is exercised by the house of representatives in congress when it refers petitions to the investigation of the heads of departments or the attorney-general. This practice was much more common formerly than it has been of late years. A petition being referred in this manner to the attorney-general, on the 28th of January, 1820, with a request to that officer "to report his opinion thereupon" to the house, he declined complying with the request, and returned the petition and papers to the house of representatives, on the ground that it did not come within the duties of his office as prescribed by law, to act in the same relation of legal counsellor to the house, which he held towards the president and heads of the departments.[4] Since this communication, the practice of referring petitions to the attorney-general appears to have been discontinued.

1067. In these cases, the petitions, referred to public officers, are

[1] Hans. (1), VI. 167.
[2] Comm. Jour. X. 402.
[3] May, 511, 527; Comm. Jour. XCII. 356, 417, 519.
[4] Attorneys-General's Opinions, 242.

reported upon by them, and their reports are then referred, with the petitions to which they relate, to the appropriate committees, who consider and report thereon, in the usual manner. Petitions are also sometimes referred to the president of the United States;[1] but this reference apparently takes place, not that such petitions may be reported upon, but because they belong more properly to his cognizance; as for example, where a number of citizens presented a memorial to congress praying a remission of the punishment inflicted on William L. Mackenzie for a violation of the neutrality laws of the United States.[2]

CHAPTER SEVENTH.

OF PETITIONS.

SECTION I. OF THE RIGHT OF PETITION.

1068. It is chiefly by means of petitions, that the people, in their character of constituents, are brought into communication with the two houses of parliament, and especially with the house of commons, as their representatives. So far as the legislative body is elective, so far the constituents, by their votes for particular candidates, express their opinion of public measures and policy. In certain cases, also, and to a certain extent, and for particular purposes, they have the power to instruct their representatives. But neither of these modes of communication is adequate to all the occasions, on which it is desirable that the wishes of constituents should be made known to their representatives. Petitions alone enable constituents to resort to the representative body, whenever, in the judgment of any one or more of them, it is necessary or proper to do so, with reference to any matter either of a public or private nature, which is within the jurisdiction and functions of the legislature.

1069. A petition is an instrument in writing, addressed by one or more individuals to some public tribunal or authority, in which,

[1] J. of H. V. 560; Cong. Globe, VIII. 292. [2] Cong. Globe, VIII. 292.

on the ground of certain facts therein set forth, the petitioners request the official interference of such tribunal or authority, either for the particular advantage of the petitioners, or for the correction of some public grievance.

1070. When the object of a petition is the particular benefit of the petitioner, it is a private petition; when it is for the redress of some public grievance, in which the petitioner has no particular or individual concern, the petition is a public one.

1071. In both cases, a petition may emanate from a single individual; or it may be the act of as many persons as have a common interest in the subject, and are willing to unite together for the purpose of prosecuting it; or there may be as many separate petitions relating to the same subject, as there are individuals; or there may be several similar petitions, each signed by several persons.

1072. The right of subjects to petition their rulers for a redress of grievances, either public or private, is acknowledged as a fundamental principle of the English constitution, and has been uninterruptedly exercised from the earliest periods. The right to address the two houses of parliament in this manner is coeval with their existence; but especially have petitioners applied themselves to the house of commons, who, as the more immediate representatives of the people, have always, in the forcible language of Mr. Speaker Abbott, "opened their doors wide for receiving the petitions of all his majesty's subjects, with respect to grievances, whether real or imaginary."[1] This right rests on no written charter, like that of petitioning the crown; but, as was said by Mr. Fox, "No man could question the subjects' right to present petitions to their representatives; because, it was idle to suppose, that when a stipulation had been made by the bill of rights that the subjects should, in all cases, have a right to petition the crown, they had not an equal right to petition the house of commons, their own representatives."[2] The right of petition is stated in the following terms by Mr. Hatsell: — "To receive, and hear, and consider the petitions of their fellow-subjects, when presented decently and containing no matter intentionally offensive to the house, is a duty incumbent on them, antecedent to all rules and orders that may have been instituted for their own convenience. Justice and the laws of their country demand it from them."[3]

[1] Hans. (1), VIII. 529.

[2] Parl. Reg. XXIII. 113.

[3] Hatsell, III. 240. As to the right of petition, in general, see also the speech of the Hon. Robert C. Winthrop, in the house of representatives of the United States on the 23d and 24th January, 1844.

1073. There can be no doubt, that, in this country, the right of petition is as sacred, and as well established, as it is in England, even where it is not secured by constitutional provisions. But in all the American constitutions, except those of the States of Virginia, North Carolina, South Carolina, Georgia, and Louisiana, it is secured in the amplest manner, usually in the following terms contained in the constitution of Florida, namely: — "The people have a right, in a peaceable manner, to assemble together to consult for the common good; and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance."

1074. It is with respect to measures of a public character, that the right of petition has been deemed the most sacred, and has been guarded with the most care; as it is by this means only that constituents can express their opinions upon great national questions, and bring their opinions to bear directly upon the legislative power. Petitions of this description do not rest upon the testimony of witnesses for their facts; nor do they trust to the ability and eloquence of counsel for their arguments and illustrations. They are simply to be regarded as expressing the deliberate convictions of the petitioners, upon facts which are notorious or accessible to all, and founded in arguments and considerations which appeal to the reason and judgment of all.

1075. The legitimate effect, therefore, of their representations, depends upon two considerations, namely, the influence which popular opinion is entitled to have upon the acts of government, and upon the facts and arguments which petitioners bring forward in support of their opinions. These are interesting topics of inquiry, which, however, it would be out of place to consider in this treatise, any further than may be necessary to determine what proceedings ought to take place with reference to public petitions, in order that they may have their proper effect.[1] So far, then, as the first ground is concerned, it is important to know the number, the character, and the situation and circumstances of the petitioners; the degree of deliberation with which their opinions have been formed; the ability which they possess for judging of the subject; the means that have been resorted to for obtaining their signatures; the freedom or constraint with which they may have acted; and to have regard,

[1] Assuming that the object of government is the good of the people, it might be said, not less truly than paradoxically, that the more *popular* the character of the government, the less influence the popular opinion, as distinguished from the government, ought to have upon the representatives, and *vice versa*.

also, to the nature of the subject, as being one upon which discussion by an intelligent and conscientious body of representatives can throw much or little light. In regard to the second ground, — the facts and arguments adduced by petitioners, — they are of equal weight, and are consequently entitled to equal influence, whether the petitioners be few or many, and whatever may be their condition or circumstances.

1076. If the views above expressed are correct, it is manifest, that the right of petition on the part of constituents requires nothing more, as a matter of parliamentary duty, on the part of representatives, than that they should receive all proper petitions, and should allow the contents to be brought to their knowledge, in the fullest manner. If any thing further than this is demanded, — if it is urged, that the voice of the people, as expressed in their petitions, ought to prevail, and that the legislature ought to do whatever it is required by numerous bodies of petitioners to do, — then the deliberative faculty of the legislative body must necessarily be destroyed; for its duty would be to attend to the demands of the people, not for the purpose of weighing and considering them, but for that of granting them without any consideration or deliberation at all.[1] What effect the petitions of the people ought to have upon the deliberations and conduct of their representatives, is a question which does not belong to the subject of this treatise.

1077. It is only in the character of petitioners, that constituents are in strictness entitled to offer their opinions and views regarding public measures to their representatives. In a *petition*, the statements of the petitioners are received as the ground of the prayer which they make. A *memorial*, which is similar in its statements and allegations to a petition, but is unaccompanied by a prayer, is said to be objectionable in point of form, because it assumes to speak as an equal and to advise the legislature as to its duties, without any particular object in view; but such papers have nevertheless been received as petitions, when there was no other objection to them, but in point of form, and they contain language equivalent to a prayer.[2] A *remonstrance*, which may be regarded as a similar representation, unaccompanied by a prayer, and intended to express opposition to the passing of some act, or the adoption of some pending or contemplated measure, is equally objectionable in point of form, and for the same reasons. Papers with this title, when drawn up in respectful language, and amounting substantially

[1] Parl. Reg. XXXII. 388.

[2] Comm. Jour. LXVII. 398.

to a petition against some proposed or pending measure, have been received as petitions.[1] But, in general, it appears to be the usage, especially when the object is to call in question the proceedings of the house, to reject papers of this description.[2] A *protest* is similar in character to a remonstrance, but expressed in stronger language.[3] A *declaration* against any measure does not seem to be different from a protest or remonstrance.[4] Papers bearing any of these titles, if they contain a prayer, are received as petitions.[5] It may be observed in general, that the objections to remonstrances, protests, etc., are, for the most part, merely formal. The same statements, which they contain, may be put into the form of petitions, and are then receivable.[6] A paper expressing approbation of the proceedings of the house is equally objectionable with a protest or remonstrance, and is not receivable, unless it bears the form of a petition.[7]

1078. While the house is careful, on the one hand, to respect the right of petition, in whatever form it may be exercised, it is equally careful, on the other, to have due regard to its own honor and dignity; and, therefore, if the allegations of a petition turn out to be false, frivolous, groundless, vexatious, or malicious, the petitioners are liable to the censure and punishment of the house; of which, many examples are found in the journals.[8]

1079. The right of petition is not subject to any of the formal or technical rules as to parties, by which the proceedings in courts of law are governed. All persons, of whatever condition, and under whatever circumstances, — married women, infants, aliens, — may petition, provided only that they have sufficient understanding to know what they are doing; if they have not understanding enough to act for themselves, their guardians, if they have any, or

[1] Comm. Jour. XLVI. 388; Parl. Reg. XXIX. 63, 64. It appears from the debates, that the document here referred to was entitled by the parties a remonstrance; in the journal it is entered as a petition.

[2] Hans. (3), XL. 1360; Same, (3), LXV. 1225; Parl. Reg. I. 467, 473.

[3] Parl. Reg. XL. 228. The statement on page 225, that this protest was ordered to lie on the table as a petition, is a mistake; no such entry appears on the journal. See Comm. Jour. L. 87.

[4] Comm. Jour. LXXIV. 391.

[5] Parl. Reg. (2), XVII. 63.

[6] In those of the States in which the right of constituents to address their representatives by means of remonstrances is secured, the above-named formal obligations cannot of course apply.

[7] Hans. (3), LXIV. 423; J. of H. 25th Cong. 1st Sess. 83. Instruments, with all the objectionable titles mentioned above, and many others, are found inscribed on the journals of congress; but these entries afford no evidence of the contents of the petitions in question; but it may be stated generally, that the strict rule on the subject does not appear in all instances, to be applied in congress.

[8] Comm. Jour. XII. 146, 170, 628, 682; Same, XIII. 884; Same, XXII. 897; Same, XXXII. 855; Same, XXXVIII. 315.

their friends, if they have no guardians, may petition for them. In regard to proceeding on private petitions, the relation subsisting between the petitioner and others interested in the subject will, of course, be regarded. The petitions of foreigners may be received, provided they reside in England, and the subject of their complaint originated in the acts of British authorities,[1] or the prayer of their petition is within the jurisdiction of the house, as, for example, for naturalization. In those parts of this country, in which the institution of domestic slavery is established, the petition of slaves is not admissible.[2] But a petition purporting to come from people of color does not appear to be equally objectionable.[3]

1080. In the earliest periods of parliamentary history of which there are any authentic memorials, before the constitution of parliament had assumed its present form of two distinct branches, and while yet the modern distinction between judicial and legislative functions was hardly if at all perceived, the subjects were accustomed to present their petitions to the great councils of the nation, for the redress of their grievances, principally of a private character, which were supposed to be beyond the jurisdiction, or which it was feared, might be beyond the power, of the ordinary tribunals to redress.

1081. The mode of proceeding upon these petitions, as they were mostly for the redress of private wrongs, was judicial rather than legislative. Receivers and triers of petitions were appointed, at the commencement of each parliament, and proclamation was made, inviting all people to resort to the receivers. These were ordinarily the clerks of the chancery, afterwards the masters in chancery, and still later, some of the judges, who, sitting in a 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 sergeants at law. The petitions being examined by the triers, they resolved upon the proper disposition to be made of them; in some cases, the petitioners were left to their remedy before the ordinary courts; in others, their petitions were transmitted to the judges on the circuit; in others again, in which the law afforded no redress, they were submitted to the high court of parliament. In later times, and after the separation of the two houses, petitions continued to be received

[1] Hans. (3), XIII. 1115.
[2] Cong. Globe, IV. 175.
[3] J. of H. III. 550.

in the lords in the same manner, until the functions of receivers and triers became superseded by the immediate authority of the house, or by committees, whose office was similar.[1] Receivers and triers of petitions are still appointed in the house of lords, at the opening of every parliament, precisely as in the most ancient times, though they have long since ceased to exercise any of the functions of their office.

1082. In the reign of Henry VI. petitions begun to be addressed in considerable numbers to the house of commons alone. These petitions were now, in consequence of the extension of the remedial jurisdiction of the court of chancery, more in the nature of petitions for private bills, than for equitable remedies for private wrongs; 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] In the reigns of James I. and Charles I. — and especially after the establishment of the grand committees, as they were called, for grievances, courts of justice, trade, and religion, in the latter, — when the house of commons first began to turn its attention to public affairs, and petitions and complaints relating thereto were much more frequent than they had ever been before, petitions were presented directly to the committee and received and considered by them, without the previous intervention of the house. This practice continued through the commonwealth. On the restoration, it became the usage of both houses to receive petitions in the first instance, and to consider them, and only to refer the examination of them in particular cases to committees.[3]

1083. Before proceeding further with the subject of petitions, it will be useful to point out, with more distinctness, the difference between those which are private and those which are public. A private petition is one, which prays for some proceeding on the part of parliament, usually the passing of a bill, for the particular interest or benefit of any person or persons, public company, or corporation, municipal or otherwise, or of a parish, city, county, or other locality; or which prays that any such bill, when introduced, may not pass,

[1] May, 382.
[2] May, 382.
[3] May, 382.

or that the petitioners may be heard against it. All petitions, which have in view a measure of national import, or one in which the whole community is interested, are public petitions. Private petitioners are allowed to prove their statements by evidence, and to be heard by themselves or their counsel. Public petitioners have no such right. The former have in view some specific, definite, object relating to themselves. The latter merely express their opinion, including of course, their wishes in reference to some public measure. The weight and influence of a private petition depend upon the facts which it sets forth, and the evidence by which they are substantiated. The respect due to public petitions must, of course, depend not so much upon the statements of fact, and of argument, which they contain, as upon the number and the character of the petitioners. Private petitions, in ordinary times, and in countries where a proper judicial system is established and in operation, cannot reasonably be expected to exceed a very moderate number. Public petitions, especially in times of excitement, cannot be limited as to number or magnitude. It will be seen, hereafter, that this difference in the character of the two classes of petitions, has necessarily led to very important differences in the manner of treating them.

SECTION II. OF PETITIONS AS TO THEIR FORM.

1084. The several subjects, which require to be noticed with reference to the form of a petition, relate, *first*, to the material substance upon which, and the manner in which, a petition is drawn up; *second*, to the different parts of a petition, namely, the superscription or direction, the designation of the parties, the general allegation, and the prayer; *third*, to the signing; and *fourth*, to matters extraneous or annexed to a petition.

ARTICLE I. *As to the Material upon which, and the Manner in which, a Petition is to be written.*

1085. The material required for this purpose is either parchment or paper;[1] on one or more skins or sheets of which, but, if the latter, they must be so joined together as to form one whole,[2] the petition must be written in the English language;[3] or, if in any other,

[1] May, 384.
[2] Hans. (1), XXXIII. 215, 393.
[3] Comm. Jour. LXXVI. 173.

it must be accompanied with a translation, which the member presenting it states to be correct.[1] This rule is one which, of course, admits of occasional relaxation; but whether in those States where the language spoken by a portion of the inhabitants is not English, and where the laws, or legal proceedings, are published in two or more languages, it is applicable, may admit of some question.

1086. In the commons, it is an established rule, that a petition must be written and not printed[2] or lithographed.[3] Previous to the year 1656, it appears to have been allowable, either to present petitions in a printed form to the committee, who were then generally authorized to receive them; or for petitioners to cause their petition, immediately upon being presented, to be printed and distributed among the members of the committee.[4] In that year an order was made, that no private petition should be printed before being presented to the house.[5] Whether this order was deemed to be in force or not, after the dissolution of the parliament at which it was made, does not appear; but it seems certain, that it soon became the established practice of the house of commons to decline receiving any petition, either private or public, which was in a printed form;[6] and such is understood to be the established rule at the present time. In the house of lords, though the rule seems to be the same, it has not been so strictly observed; a printed petition, in favor of the Catholic claims being received in 1813, "but not to be drawn into precedent;"[7] and, again in 1837, another was received, on which occasion, Lord Lyndhurst said, that hundreds and thousands of printed petitions had been presented and received in that house on the subject of the abolition of slavery.[8]

1087. A petition must also be free from erasures and interlineations;[9] on the ground, that, where any such alteration appears on the face of the petition and is not explained, it is a circumstance of so equivocal a character, that, in point of form the petition can no longer be considered as that of the persons by whom it is signed.[10] But this circumstance is susceptible of explanation; and if it appears, that the alteration was made by the petitioners themselves, or with their knowledge and consent, — the member presenting the

[1] Comm. Jour. LXXVI. 189.

[2] Comm. Jour. LXXII. 128, 156, 280.

[3] In the legislative assemblies of this country, lithographed or printed petitions are constantly received without objection.

[4] *Lake* v. *King*, Saunders's Reports, I. 131. See Paragraph 357.

[5] Comm. Jour. VII. 427.

[6] Parl. Reg. XXXV. 372, 373.

[7] Lords' Jour. XLIX. 298 a.

[8] Hans. (3), XXXVII. 211.

[9] Comm. Jour. LXXXII. 562; Same, LXXXVI. 768.

[10] Hans. (1), XIII. 816; Same, (3), V. 1267, 1268.

petition so stating the fact to be, — such petition is to be regarded as that of the signers and may be received.[1]

ARTICLE II. *As to the several parts of a Petition.*

1088. Petitions are to be addressed to the house, in which they are to be presented;[2] if to the house of lords, the form is: *To the right honorable the lords spiritual and temporal in parliament assembled;* if to the house of commons: *To the honorable the commons [or knights, citizens, and burgesses] of the united kingdom of Great Britain and Ireland, in parliament assembled;*[3] and any essential variation from this form, as, to address a petition "to the upper house of parliament, denominated the lords spiritual and temporal, in parliament assembled,"[4] or to the lords spiritual and temporal and commons in parliament "assembled,"[5] or, "to the lords temporal" alone,[6] will be such an irregularity as to prevent the reception, or make it necessary to withdraw the petition.

1089. The second part of a petition is its title, or the designation which the petitioners give to it and to themselves, which should be in this form: *The humble petition of [the names or other description of the petitioners being here inserted] humbly sheweth.* It is irregular for the parties to entitle their proceeding a remonstrance, or protest, or memorial alone, because it can only be received as a petition; but it is not fatal to do so, because if the paper contains the other requisites of a petition, it may be received as such.[7] It is also irregular to entitle the paper "The petition" merely, omitting the word "humble," or to use the terms "respectfully sheweth," instead of "humbly sheweth," and this irregularity has, for the most part,[8] but not always,[9] made it necessary to withdraw the petition. In regard to the designation of the parties, if there is but a single petitioner, or some few only, the name and addition of each are usually given; if the parties are numerous, they commonly describe themselves in general terms, as inhabitants, freeholders, silk manufacturers and throwsters, parishioners, resident householders, work-

[1] Hans. (1), V. 1267, 1268.

[2] The legal designation of our legislative assemblies is given in the several constitutions; and they may be known so readily, that they need not be repeated in this place. A petition, which is addressed to both branches, may be considered as if addressed to either.

[3] May, 384.

[4] Hans. (1), 33, 300, 542.

[5] Lords' Jour. 44, 642 b., 644 a.

[6] Lords' Jour. 24, 122 b.

[7] P. M. Parl. Reg. I. 467, 473; Same, (2), XVII. 63; Same, XL. 228; Same, XXIX. 63, 64; Hans. (3), XL. 1360; Same, (3), LXV. 1223.

[8] Lords' Jour. 52, 635, 671; Hans. (3), 40, 815.

[9] Hans. (1), 37, 438.

men, members of a lodge of odd fellows [1] or of a political or other union of a particular place. If petitioners give themselves a designation to which they are not entitled, this is an irregularity, on account of which it may be necessary to withdraw the petition.[2]

1090. The *third* part of a petition, or the body of it, contains the general allegations or statements upon which the petitioners ask the interference of parliament. This part will be considered more particularly hereafter, when treating of petitions as to their substance; at present, one circumstance only will be alluded to, namely, the length of a petition, or the quantity of matter which it contains. A petition should contain a statement of all the material facts upon which the petitioner relies to substantiate his claim for relief, or to induce the house to the particular course which he desires to have taken; and, in making this statement, it is as much his interest, as it is his duty, to set forth the facts, without any unnecessary minuteness of detail, and in as brief and intelligible a manner as possible; otherwise the very impossibility of reading and considering the petition, consistently with the transaction of other public business of equal importance, will prevent it from being read or considered at all, or, at least, with that attention which the subject of it may perhaps deserve; and thus the right of petition may in some sort be defeated by the very excess of its exercise. The great length of a petition, however, ought not, perhaps, to be considered as an objection to its reception, so much as to the subsequent proceedings upon it; and, in every case, the house must be governed by a sound and wise discretion, as to the subsequent proceedings; on the one hand, not placing its own convenience in competition with the exercise of the right of petition; and, on the other, not sacrificing the rights or interests of one portion of its constituents for the sake of gratifying the humor, or treating with indulgence the ignorance or unskilfulness, of another.[3]

1091. The last part of the petition is the prayer, in which the particular object of the petitioner is expressed. This is essential, in point of form, to constitute a petition; and, without it a document cannot be received in that character.[4] A paper containing statements of facts however important, or arguments on any topic, however admirable they may be, is not entitled to the consideration of the house, unless the petitioner has some object in view, further

[1] Hans. (2), IV. 221.
[2] Hans. (1), X. 685.
[3] Parl. Reg. LX. 494, 495; Hans. (1), XL. 459; Same, XXXV. 204.
[4] May, 384; Hans. (1), VIII. 684; Same, (2), XIII. 567.

than the mere communication of information. The prayer also must be for something to be done or omitted by the house, in the way of its ordinary proceeding as a legislative body; it is not a proper prayer for the petitioner merely to ask the attention of the house to his statements.[1]

ARTICLE III. *As to the Signing of a Petition.*

1092. The general rule of parliament with reference to the signing of petitions, as expressed in a resolution of the house of commons, of November 14, 1689,[2] is, that "all petitions presented to the house ought to be signed by the petitioners, with their own hands, by their names or marks;"[3] to which there appear to be three exceptions, *first*, where a petitioner is unable from sickness to sign his name or mark,[4] in which case, another person may sign for him at his request or by his authority[5] or consent; *second*, where a petition is all in the handwriting of the petitioner, in which case, if his name appears in the body of the petition, it need not be signed at all;[6] and, *third*, where a petitioner, being out of the realm, has sent a full and legal authority to another to subscribe his name for him, in which case the petition may be signed in the usual manner by attorney.[7]

1093. When the names attached to a petition, except as above mentioned, appear upon inspection, as for example, where they are written by the same hand,[8] or are declared, not to be in the handwriting of the parties, whose names they purport to be, the petition is not receivable;[9] but if a petition, with names thus appended to it, has also one or more genuine signatures, it may be received as the petition of those by whom it is so signed.[10] In a case of this kind, it is necessary that the spurious signatures should be separated from the genuine, either before or after the petition is presented. The member, who has charge of such a petition, may, before offering to present it, detach the spurious signatures, if that can be done, and present it with such of the original signatures as remain annexed to the petition; or the spurious signatures may be erased,

[1] Hans. (2), XIII. 567.
[2] Comm. Jour. X. 285; Same, XXX. 499.
[3] Comm. Jour. XXXIV. 800.
[4] Hatsell, II. 189, note.
[5] Hans. (1), XI. 1, 2. See also Lords' Jour. LI. 507, 519; Comm. Jour. LXXXV. 541; Same, XCI. 325; May, 385.
[6] Hans. (1), XIX. 1148.
[7] Hans. (1), XXXV. 862; Parl. Reg. XXXII. 2. The rules stated in the above paragraph prevail also in congress.
[8] Comm. Jour. X. 285, 286.
[9] Hans. (1), XI. 33, 34.
[10] Hatsell, II. 189, note; Parl. Reg. XL. 449, 451; Hans. (1), XI. 1, 2; Same, 35, 36; Same, XX. 1366, 1367.

and the petition presented with such as are genuine, provided the genuine signatures are known or can be ascertained. But this course is hazardous without previous investigation and inquiry; inasmuch as the erasing of a genuine signature would destroy the petition as to such party, and the suffering of a spurious one to remain might prevent its reception.[1] If a petition, which appears to be irregular in this respect, has already been received, it may either be withdrawn, for the purpose of having the spurious signatures detached or erased, or it may be referred to a committee to inquire how it was signed; and if, upon the report of the committee, it appears that any of the signatures are not genuine, to cause them to be erased.[2]

1094. The rule above stated not only prohibits one person from putting the name of another to a petition, but also from putting his own as the agent merely, in any form, of such petitioner: thus a petition purporting to come from the creditors of a member, and signed by an individual describing himself as their agent, was not received;[3] a petition purporting to be from the master printers of Edinburgh, which was signed by eighteen persons describing themselves as a committee deputed by and signing on behalf of a great number of gentlemen, master printers of the city and vicinity of Edinburgh, being objected to as improperly signed, was withdrawn for the purpose of being put into a proper form;[4] a petition which was designated by the subscribers to it as that of petitioners on behalf of the western branch of the national union of the working classes of the metropolis was objected to and withdrawn.[5] Where, however, the parties, whose signatures are thus affixed to a petition on behalf of other persons, sign it also on their own account, or come within the description of the petitioners, as where a petition is signed by the chairman of a public meeting, on behalf of himself and the other persons there assembled,[6] or by a sheriff, in behalf of the freeholders and inhabitants of his county, at a county meeting,[7] such petition may be received as the petition of the individual by whom it is signed; and, so in the cases above mentioned, if the persons, by whom those petitions were severally signed, had signed for themselves as well as others, the petitions might have

[1] Hans. (1), XI. 34, 35.
[2] Parl. Reg. XL. 450, 451.
[3] Hans. (1), XXXIX. 134.
[4] Parl. Reg. (2), XVII. 441, 442.
[5] Hans. (3), VII. 683; Comm. Jour. LXXXVI. 872.
[6] Hatsell, II. 189, note; Parl. Reg. (2), XVII. 389; Hans. (3), IX. 594.
[7] Hans. (1), XXXV. 968, 969, 970.

been received as those of the several petitioners by whom they were signed.[1]

1095. The rule under consideration does not extend to the individuals composing any municipal or other corporation or chartered body which has a legal existence, and which must therefore be recognized in its aggregate capacity by parliament.[2] The petition of such a body should be signed by the proper officers, and authenticated by its common seal, if it has one,[3] otherwise by its officers only.[4] In all cases of this kind, the petition should be drawn up and signed by the legal name and style of the corporation or company.

1096. The house of commons, by a resolution agreed to June 2d, 1774, declared it to be "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."[5] Independently, however, of any express declaration to this effect, there can be no doubt, that the presentation of a forged petition, (and a genuine petition with some forged and some genuine signatures upon it must be considered as to the former a forgery,) is such an imposition and insult as must of necessity amount to a breach of privilege. The rule above mentioned, though broad and general in its terms, must doubtless be restricted to petitions which have been presented and received by the house; one which has merely been prepared, but not presented, or which has been offered and refused, or which has been presented and withdrawn, can hardly be considered as a breach of privilege. In cases of this kind, although the offence is a breach of privilege, the house does not proceed until a complaint of the forgery is made by some person or persons interested, usually in the form of a petition, which is presented to the house and referred to a committee. In one instance, a complaint was made by means of a letter addressed to a member and read by him to the house, upon which a committee was appointed,

[1] This is not a matter of indifference, as where a petition is so received, it cannot be considered in a parliamentary sense to express the meaning or views, or wishes, of the meeting at which it purports to have been agreed upon, but only of the individual by whom it is signed. Consequently any allusion to it in debate as expressing the sense of the meeting must, of course, be disorderly. In those of the States in which the people are secured by constitutional provision in the right of assembling themselves together to consult for the common good, it might be made a question, whether a petition emanating from such a meeting, and signed in behalf thereof by the chairman and secretary, ought not to be considered as the petition of the meeting. See, also, Cong. Globe, XI. 439.

[2] Hans. (3), VII. 683; Same, IX. 594.

[3] Parl. Reg. XLIII. 687.

[4] Hans. (2), XIII. 9.

[5] Comm. Jour. XXXIV. 800.

to whom the petition in question was referred.[1] In reference to this case, Mr. Speaker Manners Sutton, on a subsequent occasion, remarked, that, "the house," he believed, "was influenced by the consideration, that a letter had in some sort the effect of a petition, and inferred a responsibility; the house would exercise its discretion, but the practice was, to take care that the grievance complained of should be substantiated by the assurance and responsibility of some party aggrieved, and therefore to require something more than a mere statement."[2] In the case to which these remarks were particularly directed, the house had previously appointed a committee upon the statement of a member, that some of the signatures to a certain petition were forgeries, but without any complaint or petition from persons interested; thereupon a petition was presented from some of the persons, whose signatures were alleged to be forged, stating that the petition was genuine, that they had signed it, and offering to substantiate these facts by evidence; and a motion being then made, that these parties be heard before the committee, a debate ensued, which terminated in the committee being discharged, on the ground of the irregularity of the proceeding.[3] A similar rule, as to not proceeding unless a complaint is made in some form by parties interested, appears to prevail in the house of lords.[4] If the committee appointed to investigate a charge of forgery, reports that the offence has been committed, the offender is punished by commitment to one of the public prisons.[5]

1097. Where a petition consists of several skins of parchment, or several sheets of paper, attached together, it is an established rule in both houses, that the skin or sheet, upon which the petition itself is written, or upon which it terminates, should have at least one of the signatures upon it.[6] This rule is established in order to guard against the imposition of names being procured for one purpose, and attached to a petition for another; one name alone being deemed sufficient to entitle the petition to the respectful consideration of the house, and, if genuine, to furnish some security for the authenticity of all the other signatures.[7] The reason of this rule is fully and forcibly expressed in the following remarks made in

[1] Hans. (2), XXI. 22, 23.
[2] Hans. (3), XXII. 189.
[3] Comm. Jour. LXXXIX. 92, 108, 109, 116, 121.
[4] Lords' Jour. XL. 554, (a).
[5] Comm. Jour. LXXX. 445; Same, LXXX. 561, 582; Same, LXXXIV. 187.
[6] Comm. Jour. LXXII. 128, 144; Cong. Globe, XXIII. 575; Same, LXXVII. 127; Hatsell, II. 189, note; Hans. (1), XXX. 257, 258, Same, (1), XXXV. 94, 95; Same, 95, 96.
[7] Hans. (1), XXXV. 98.

debate in the house of commons, by the attorney-general, 1817:— "If petitions could be received, written with the signatures on one piece of paper, and the application upon another, what security had the house, that they were genuine? Might there not be a bureau in town for the manufacture of petitions, and another in the country for procuring signatures? And might not some demagogue join the operation of the two, without any authority from the persons whose names were employed? The house should be open to the grievances and representations of the people, but it should know whether the statement of those grievances and the prayer for relief really came from themselves, or were brought forward by persons who abused their confidence in order to influence the public discontent."[1]

1098. The signatures attached to a petition are generally preceded by these words, which follow the prayer: *And your petitioners, as in duty bound will ever pray;* but, this form is not indispensable.[2] A petition has no date.[3]

ARTICLE IV. *As to Matters extraneous to a Petition.*

1099. What has been stated under the preceding heads is all that in strictness relates to a petition; but, as it has sometimes been attempted to annex other papers and documents to a petition, usually in the form of evidence in support of its allegations, and to present the whole together; it is necessary to state the rule with reference to such extraneous matters. According to the parliamentary couse of proceeding, the way is to present a petition containing a statement of the facts upon which the petitioner's case depends, and to pray that the house would allow the petitioner to be heard with his witnesses and counsel to substantiate those facts; the house then has the option, upon such statement, to go into the case, or to dismiss it at once.[4] It is deemed to be irregular, therefore, to mix up the facts with the evidence, so as to compel the house to consider them both together in the first instance; or to call upon the house to read and consider the evidence, before it has determined to enter upon the inquiry. It is consequently an established rule, in both houses, that no petition can be received which has affidavits, letters, or other papers or documents attached to it; not even an affidavit of the genuineness of the signatures, or a

[1] Hans. (1), XXXV. 96.
[2] May, 384.
[3] Hans. (3), XXII. 185.
[4] Hans. (1), XXVII. 395.

statement giving additional reasons for the signatures of some of the petitioners.[1] Inasmuch, however, as the annexation of such papers is only objectionable in point of form, they may be separated from the petition, and the petition presented without them; but, in such a case, it will be for the member having charge of the petition to decide, whether it will be sufficient of itself without the papers annexed; if not, the preferable course is to withdraw the petition altogether in order that it may be put into a proper form or a new one prepared.[2]

1100. It is essential that the house should have some evidence of the genuineness of a petition or of the signatures to it, which is also a pledge to make good the allegations contained in it, before proceeding to entertain and consider it. This appears to have been anciently effected by the evidence of the petitioners themselves, or of other persons attending for the purpose at the bar, according to the practice as stated by Scobell: "That if the petitions be concerning private persons, they are to be subscribed, and the persons presenting them called in to the bar to avow the substance of the petition, especially if it be a complaint against any."[3] The statement of a member, that he knew the handwriting, subsequently came to be considered as equivalent to this evidence in order that petitioners might not be subjected to the necessity of coming from remote parts to prove their petitions; but at the same time, it was not allowed to prove the genuineness of a petition by the affidavits of witnesses taken in the country, and attached to the petition.[4] The practice, of calling in petitioners to own their petitions, prevailed for some time after the revolution;[5] but it has now for a long time been discontinued;[6] as has also the practice, if it ever prevailed, of a member's vouching for the genuineness of the signatures.[7] The rule, on this subject, which prevails in modern times, is thus stated by Mr. Speaker Abbott: "The house required of

[1] Comm. Jour. LXXXI. 82; Same, LXXXII. 41; Grey, VI. 38; Hans. (1), XXVII. 395; Same, XXXVIII. 662; Same, (2), XIV. 567; Same, (3), XXXVII. 835.

[2] Hans. (1), XXVII. 395; Same, XXXVIII. 662.

[3] Scobell, 87.

[4] Grey, VI. 36, 37, 38.

[5] Comm. Jour. X. 13, 35, 65, 70, 75, 81, 192, 285; Same, XIII. 518, 750, 764. In the senate of the United States at a very early congress, an address and memorial of citizens of Philadelphia was presented, and on motion a large and respectable committee of the petitioners being admitted on the floor of the house, the address was read. On the next day it was resolved, "that no motion shall be deemed in order, to admit any person or persons whatever within the doors of the senate chamber to present any petition, memorial, or address, or to hear any such read." J. of S. II. 480, 481.

[6] Cav. Deb. I. 74.

[7] In the house of lords, in 1775, Lord Camden vouched for the genuineness of a petition presented by him, on a doubt being expressed as to how the petition came into his hands. Parl. Reg. II. 133, 134.

members presenting petitions, that they should be able to say, that they believed the signatures to be authentic, but it had not been the practice to require absolute certainty on that point; a practice which would be attended with great inconvenience. God forbid, that the subjects of this country should be unable to have petitions presented, unless they came from the most distant parts of the kingdom, to give them into the hands of members, and prove their handwriting." [1]

SECTION III. OF PETITIONS AS TO THEIR SUBSTANCE.

1101. The first essential requisite to a petition, so far as its substance is concerned, relates to the language in which it is expressed; which should be decorous and proper in itself, and also respectful towards the house to which it is addressed, as well as its individual members, and to other coördinate bodies and authorities.[2] The observance of this rule is not inconsistent with the fullest and freest exercise of the right of petition; for there can be no grievance, public or private, within the power of the legislature to relieve, which may not be adequately complained of in courteous and decent terms.[3] And a breach of the rule is not only an insult to the legislative body, but to the whole constituency, including the petitioners, of which that body is the representative; tending rather to excite ill-feeling than to promote calm deliberation; and admitting of no answer, consistently with parliamentary forms, beyond the simple rejection of the offensive document.[4]

1102. In judging of the language of a petition, the following rules will be found useful; *first*, that if the wording of a petition is susceptible of more than one construction, that meaning is to be adopted, which is most favorable to the petitioners;[5] *second*, that the character of the petition does not depend upon the use of any particular expression, but is rather to be gathered from the whole tenor of the language;[6] *third*, that where offensive expressions are introduced into a petition, which are clearly irrelevant to the prayer

[1] Hans. (1), XVII. 314, 315, 316, 320. The rule, on this subject, laid down in the senate of the United States many years ago, was "that no petition was to be acted upon, unless signed or written in the presence of the member, or unless the handwriting was averred by the member presenting it." Reg. of Deb. III. 295.

[2] See also J. of C. IV. 670; J. of H. 15th Cong. 1st Sess. 320; Cong. Globe, VII. 245.

[3] Hans. (3), XL. 474, 475.

[4] Hans. (1), XXXV. 204.

[5] Hans. (2), XV. 970.

[6] Hans. (2), VI. 1233.

of it, this circumstance affords strong ground for concluding that the disrespect is intentional;[1] and *fourth*, that when the language of a petition is such, that, if spoken by a member in debate, it would be disorderly and unparliamentary, it is improper to be employed in a petition.[2] If the object of a petition, when judged of by these rules, appears to be simply to complain of a grievance, it ought to be received; if, without any such purpose, or using it as a mere pretext, the only intention of a petitioner appears to be to vilify and traduce the house, or to treat it with disrespect, his petition ought to be rejected.[3]

1103. The following are instances of disrespectful and offensive language addressed to the house itself, on account of which petitions have been refused or rejected: "that an arbitrary imprisonment (referring to the commitment of Sir Francis Burdett and Mr. Gale Jones by the house) of the subjects of this realm, during pleasure, for an alleged libel, not proved to be such, is an infringement both of the liberty of the press and of the person;"[4] that one vote of the house was "past all endurance," and another "a flagrant illegality;"[5] that, in committing Sir Francis Burdett the house had "usurped a power unknown to the law, and not warranted by the constitution;"[6] that the commitment of Sir Francis Burdett was "a violation of the personal security of the people of the land, and without law;"[7] that it is the universal conviction of the people, that the house of commons doth not, in any constitutional or national sense, represent the nation;[8] that boys were sent into parliament, who came solely to vote according to the dictation of ministers, and never heard an iota of the merits of the question;[9] that two hundred members of the house, naming them, were returned by borough influence, and calling on the house to expel them;[10] that the Jews were not the murderers of the Saviour, (which the petitioner offered to prove at the bar,) and did not deserve the persecution and exclusion to which they were subjected;[11] complaining of the great and unnecessary delay in passing the reform bill, and declaring that it was impeded by the upholders of corruption in the

[1] Parl. Reg. XXXV. 350, 357; Hans. (3), IV. 578, 579, 580.

[2] Hans. (3), VI. 536, 537, 538; Same, (3), XX. 634; Same, (3), XXXIV. 670. The converse of this proposition, namely, that whatever may be spoken in debate, may be stated in a petition, does not hold equally true. Parl. Reg. XXXV. 349.

[3] Hans. (2), VI. 1233.

[4] Hans. (1), XVII. 443, 454.

[5] Hans. (1), XVII. 1031.

[6] Hans. (1), XVII. 815, 818.

[7] Hans. (1), XVII. 885, 944.

[8] Hans. (1), XXXV. 82, 91, 93.

[9] Hans. (2), VI. 1370.

[10] Hans. (2), II. 479, 485.

[11] Hans. (2), XXV. 413.

honorable house, who, upon the most frivolous pretence, wasted the public time;[1] to impute motives to the house, which, from one member to another, would be disorderly.[2]

1104. There are also instances of offensive expressions, not particularly affecting, though addressed to, the house itself, on account of which petitions have been refused to be received, as disrespectful to the house; as, where certain petitioners, with an evident intention to make their petition a vehicle for scandal and abuse of the other house of parliament, prayed "that those charitable bequests, which had been hitherto roguishly absorbed by the clerical and lay aristocracy, should be appropriated to their proper uses;"[3] where the purpose of the petition is to throw ridicule on an act of parliament, the petitioners complaining "of the profligate expenditure of the public money in granting the queen £100,000 per annum, in the event of her surviving his majesty, and praying for a legislative enactment, by which the widow of every operative in the kingdom should receive £25 per annum, in case her husband should not die worth £100, and adding that they could not apprehend any objection to this, as those individuals had much better claims upon the nation for this small sum, as belonging to the productive classes, being in fact the only producers of wealth, than her majesty to the grant of £100,000;"[4] where a petition contained these expressions, "your petitioners do not deny that there is a rabble of the trades, as there is a rabble of the lords, and a rabble of aristocracy, but they do not say there is a rabble in your honorable house."[5]

1105. There is another class of cases, in which the language of a petition is improper, not because of its being offensive in itself or indecorous in its terms, but because the statements, of which it is the vehicle, are not proper to be made by petitioners. Thus, it is not allowable for petitioners to refer to any thing which may have been said by members in debate in the house,[6] either for the purpose of complaint,[7] contradiction,[8] or comment;[9] or to refer to the proceedings of a committee which has not yet reported;[10] or to complain of the mode in which the proceedings of the house are

[1] Hans. (3), VI. 536, 537, 538.
[2] Hans. (3), XX. 634.
[3] Hans. (3), XXXIV. 670.
[4] Hans. (3), VI. 292, 293, 294.
[5] Hans. (3), XL. 474, 475.
[6] Hans. (3), III. 1734, 1735, 1736; Same, (1), XL. 150, 151; Same, (2), 1136; Same, 970; Same, (3), LXIII. 192; Same, XXIV. 1287; Same, LIV. 462.
[7] Hans. (1), XL. 150, 151.
[8] Hans. (3), III. 1734, 1735, 1736.
[9] Hans. (2), 1136; Same, XV. 970; Same, (3), LXIII. 192.
[10] Hans. (2), X. 8, 9, 10.

conducted;[1] or to take notice of matters which they can only know by means of a breach of the privileges of the other house.[2]

1106. The second essential requisite to a petition is, that it should set forth a case in which the house has jurisdiction to interfere.[3] Thus, in reference to a petition presented in the house of lords, Lord Chancellor Eldon said: "The petition in fact demanded that they should interfere in a case which was open to judicial proceedings; that they should assume an original jurisdiction, contrary to the principles of the constitution;" and the petition was thereupon rejected.[4] So, where a petition was presented in the house of commons, complaining of a speech made by a member, in which the petitioner was charged with roasting the bible, the petitioner saying, at the same time, that being aware he could not complain of any thing that took place in the house, he merely meant to complain of what had been published as a part of its proceedings in the public prints, the speaker said, that "if the petitioner had to complain of the publication of any libel out of the house, that was not the place to come to for redress, but that there were other tribunals open to him for the purpose."[5] A petition being offered to be presented from inhabitants of Crete, complaining of their sufferings under the Turkish government in that island, and objection being made to the reception of the petition, the speaker, Mr. Manners Sutton, said, "that the object of the petitioners was to obtain the interference of the crown of Great Britain to protect them from the miseries under which they were at the present moment laboring; the petition did not appear to contain any matter which brought it within the jurisdiction of the house of commons."[6] So, where a petition was offered to be presented from Polish refugees, resident in London, praying the house to address the crown, in order to obtain its interference in the affairs of Poland, objection being made to its reception, Mr. Speaker Manners Sutton said: "The house might receive the petitions of foreigners residing in this country, when the subject of their complaint originated in the acts of British authorities; but he was of opinion that such a petition as that brought forward, could not be received." The petition was then withdrawn.[7]

1107. A *third* requisite is, that the petition should conclude with a prayer for such interference on the part of the house, or, in other

[1] Hans. (3), V. 1334; Same, XXIV. 1288.
[2] Hans. (3), VIII. 894.
[3] Parl. Reg. XXIII. 113.
[4] Hans. (1), XXXV. 173.
[5] Hans. (3), IX. 1275.
[6] Hans. (3), II. 654, 655.
[7] Hans. (3), XIII. 1115.

words, for such relief, as is within the power of the house. Thus, in reference to a petition presented in the house of lords, Lord Chancellor Eldon said, "that, in its present shape, the petitioner prayed for no legislative relief, but for proceedings in a court of law, which that house could not originate;"[1] where a petition was presented to the house of commons, in which the petitioner complained, that at a trial for libel, in which the petitioner was the prosecutor, the judge who presided refused to allow him to address the jury, but the petition did not pray for any specific relief, the house, on that ground, refused to order the petition to lie on the table;[2] where a petition was presented in the house of lords, relating to the then late melancholy occurrences in Kent, and praying for the appointment of a committee to investigate, and that till the report was made, all judicial proceedings might be suspended, Lord Brougham objected to the petition, "because it contained a prayer with which the house had no power to comply; if it complied with that prayer, it would be guilty of a breach of the law; it had no right to stay any judicial proceedings;" and the petition was thereupon rejected.[3]

1108. But where a petition, besides a prayer for relief which is not within the power of the house, prays also for that which is, the petition will be received; as, for example, where a petitioner set forth that he was imprisoned in the gaol of Edinburgh, at the instance of the clergy of that city, for arrears of an annuity tax, and prayed that he might be set at liberty, and also that the tax might be abolished, the petition was received, although the first part of the prayer was not within the constitutional power of the house.[4] If the prayer of the petition is within the power of the house to grant, the absurdity of it is no objection to the reception of the petition; as, for example, a petition being presented in the house of commons, praying the house to adopt some legislative enactment, to cause the canon law of the church of Rome to be fairly observed in Ireland, and the receiving of the petition being objected to, for the reason that the house could neither investigate the complaint, nor afford any practical relief, the petition was nevertheless ordered to lie on the table by the house, on the ground above

[1] Hans. (1), XXXIII. 215.

[2] Hans. (1), XL. 910.

[3] Hans. (3), XL. 803. A petition purporting to pray for the dissolution of the Union is admissible in the congress of the United States. J. of S. 31st Cong. 1st Sess. 136; Cong. Globe, XI. 168; Same, XIII. 55.

[4] Hans. (3), XXXIII. 326.

suggested, namely, that the relief prayed for was within the power of the house, though not likely to be afforded.[1]

SECTION IV. OF THE PRESENTATION AND READING OF PETITIONS.

1109. In order to bring a petition before the house for its consideration, it must be regularly presented and read; and until this is done, no order can properly be made respecting any petition, not even for its lying on the table.[2] It is necessary, then, before entering upon the proceedings which may take place with reference to petitions, to explain in what manner they are presented and received, and their contents made known to the house.

1110. The right of petition, on the part of constituents, implies a corresponding duty on the part of the representative body, to receive and consider their petitions. In order that petitions should be considered, they must in the first place be brought to the knowledge of the representative body. This may be done in two modes, either by the petitioners themselves or their agents presenting their petitions directly to the house, or by the members presenting them in the house.

1111. The first of these two modes, or a course equivalent to it, seems to have prevailed to some extent, but not to the exclusion of the other, from the time of James I. until some time subsequent to the restoration. During this period, and especially that part of it in which grand committees formed so important a portion of the parliamentary machinery, it appears to have been the practice, at least, in part, for petitioners to deliver their petitions directly into the hands of the appropriate committees. Sometimes, as in December, 1640, a general committee on petitions was appointed, whose business it was "to peruse all petitions that are come in, or to come in;" in order "to see what petitions are fit to be received, and to what committee they are fit to be referred, and to report to the house."[3] This practice — of petitions being delivered by the petitioners themselves, — fell into disuse probably, when the sitting of the grand committees was discontinued; and, at the present day, with two exceptions which will presently be stated, all petitions are required to be presented in the house by members.

1112. The principal mode, therefore, in which constituents are

[1] Hans. (3), XXXIV. 1042, 1043, 1044.
[2] Hans. II. 188.
[3] Comm. Jour. II. 50; Rushworth, IV. 97.

at liberty to approach the aggregate representative body, being through and by means of the individual members of that body; it is accordingly held to be one of the most undoubted duties of a member of parliament, when requested by any of his constituents, whether immediate or not, to offer to present their petitions, and to bring the contents thereof to the knowledge of the house of which he is a member. But, when a petition is thus offered or presented, and brought to the knowledge of the house, the duty of the member to whom it has been intrusted is discharged; he is not thereby committed to the support of any of the opinions advanced by the petitioners; the petition, if received, becomes the property of the house; and any other member has as much right, and is as much under obligation to make motions for the purpose of proceeding further upon it, as the member by whom it was introduced.[1]

1113. Two courses only seem open to be pursued with reference to the presenting and receiving of petitions, namely, either to allow all petitions to be presented in the first instance, and then, upon reading them, to determine whether they are proper or not to be received; or to determine beforehand, and without reading them, whether they are fit to be received. It might be said in favor of the first course, that, in no other way so well as by hearing a petition read, could the house determine upon its character. But, on the other hand, it is obvious, that if it were the duty of the house to hear all petitions read in the first instance that might be offered, its time, and the time of its constituents, might be completely wasted in listening to petitions, upon which it would be impossible to proceed, or which might be made the vehicle of insult and outrage towards the house or its members.[2] In view of the inconveniences by which this course would unavoidably be attended, it is the established practice in parliament to determine beforehand, and without reading a petition in the house, whether it is fit to be received.

1114. In order to enable the house to proceed in this manner, it is an established rule, that it is the duty of every member, when called upon by his constituents to present a petition, to read it through, or, in some other mode,[3] to become master of its contents, and to satisfy himself by inquiry or otherwise, in regard to all extraneous matters relating to it, so as to become possessed of all the facts upon which the question of its reception depends. If the

[1] Cav. Deb. I. 74; Parl. Reg. LXI. 379. See also Reg. of Deb. XII. Part II. 1961.

[2] Hans. (1), XXXV. 204.

[3] Hans. (1), VI. 185; Same, XXXV. 149, 152; Same, 151; Same, 154, 155; Same, 157, 158; Same, 205; Same, (3), III. 1734, 1735, 1736; Same, LX. 645.

result of this examination and inquiry is such as to satisfy the mind of the member, that the petition ought not to be received, according to the parliamentary rules above mentioned,[1] that is, if he would feel it his duty to give his vote against receiving it, if offered by another member, or if he would consider it disorderly in himself or any other member to use the language it contains in debate, it is his duty to decline offering it to the house. The petitioners may then put their petition into the proper form, or erase the objectionable passages, so as to entitle it to be received, and cause it to be presented by the same or some other member; or, without altering their petition, they may carry it to some other member, and have the same process repeated; if, on the other hand, the member is satisfied that the petition ought to be received, it is his duty, as already observed, to offer to present it to the house. If his mind is left in doubt, it is not his duty to decline presenting the petition, but to offer it to the house, with a special statement of the facts, upon which his doubts arise, and to leave it to the house to determine.[2]

1115. If a member on examination of a petition, which has been intrusted to him to be presented, finds passages in it so objectionable, that he can neither vouch for their decency and propriety himself, nor refer them specially to the house for its consideration, the only course which he can properly take is to decline presenting the petition. He has no right to erase, cut out, or alter, in any way, the objectionable parts; and by so doing, without the express consent or knowledge of the petitioners, the document would cease to be their petition.[3] The reasons for this rule were thus forcibly laid down by Mr. Speaker Manners Sutton: "If members were allowed to make erasures at their own discretion, there would be no possibility of drawing a line of distinction, as to what might, or might not, be altered, and petitions might be converted into supporting a wholly different object from that intended by their author. There was another objection to such a course, namely, that it would lead to the principle of causing members to adopt petitions as their own, instead of being merely channels of conveying petitions to the house, without committing themselves to their contents."

1116. A member having a petition to present, who has prepared himself beforehand, as above mentioned, and taken a proper time for

[1] Ante, 964.

[2] Hans. (1), II. 1043; Same, XXXV. 151; Same, 205, 206; Same, 206, 207; Same, (3), III. 1734, 1735, 1736; Same, LX. 645.

[3] Hans. (3), V. 1267, 1268; Same, VI. 7, 8, 9.

the purpose, should inform the house that he has such a petition intrusted to him to present; he should at the same time make a statement of the facts necessary to be known by the house, in order to enable it to determine whether the petition is a fit one to be received;[1] and he should then conclude with a motion that the petition be brought up to the table. This motion, however, may be made with equal propriety by any other member. It would seem, that the facts thus necessary to be stated by a member offering a petition should, in strictness, be all which relate to the question of reception, and upon which the decision of that question may depend in the particular case, namely, the names or general designation and description of the petitioners; the substance or a brief summary of the facts alleged; the prayer of the petition; that the member offering it believes the signatures to be genuine; if the petition is in a foreign language, that the translation by which it is accompanied is correct; if there are any erasures or interlineations apparent upon the face of it, that they were made by the petitioners themselves, or with their consent and knowledge; that in his judgment the petition is expressed in fit and decent language, and contains nothing intentionally disrespectful to the house; and that it is drawn up in the proper form.

1117. In practice, however, much of this strictness is dispensed with, in view of the confidence which the house reposes in its members, and for the purpose of facilitating the business. According to the ordinary course of proceeding, all that is required of a member offering to present a petition is, that he should state the substance and prayer of it, and that in his judgment it is couched in fit and decent language and contains nothing intentionally disrespectful to the house, and that he should be prepared, at the same time, to answer questions with reference to the other points above suggested, if the speaker or any member should think proper to make them the subject of inquiry. If the member entertains doubt with reference to some of those points, he should not wait to be interrogated, but should make his statement full at once.

1118. The only security, which the house can have against being insulted by the language of petitions, being the confidence which it reposes in its members, first, that they will faithfully read or otherwise obtain a knowledge of the contents of all petitions which they undertake to present; and, secondly, that they will truly inform the house of the opinions which they form of the language

[1] Hans. (1), XXVIII. 539; Same, XXX. 1007; Same, XVII. 220; Same, VIII. 684; Same, XXXV. 149.

of those petitions; it is an established rule, that no member is at liberty, except under extraordinary circumstances, to offer a petition to the house which he has not read,[1] and to the language of which he is not prepared to give his sanction, or in reference to which, he is not willing to state the views which he entertains.[2] If a member offers to present a petition, and, on being questioned as to the language in which it is composed, declares that he has not read the petition, or will neither say that in his judgment the language is decorous and proper, nor express the views which he entertains of it, such petition will be refused, or the member will be directed to withdraw it.[3] Where a member, on presenting a petition, insisted that he was not bound to form any opinion as to the language of it, and would not say, whether, in his judgment, it was intentionally disrespectful or not, whatever his opinion might be, the motion for bringing up the petition was negatived without a division.[4]

1119. If a member abuses the confidence thus reposed in him, either by negligently and carelessly allowing the house to receive a petition which is disrespectful or improper in its terms; or by wilfully stating that it contains nothing, which, in his judgment, is intentionally disrespectful to the house, in order to induce the house to receive it; such member thereby implicates himself in the language of the petition,[5] and becomes liable to the censure and punishment of the house.

1120. In making a statement of the contents and prayer of a petition, by way of introduction to the motion that it be brought up, a member cannot be called upon to read the petition, or any part of it;[6] nor can he, if he desires to do so, be permitted to read the petition itself;[7] though he may read particular parts, or notes or extracts of particular parts, if it be necessary to bring them to the knowledge of the house, as, for example, where the member wishes to present them specially to the house for its consideration.[8] If the petition is to be read in full, or as a petition, it must first be received by the house, and, upon the reading being ordered, be read by the clerk at the table.[9]

1121. When a member having a petition to present has thus

[1] Hans. (1), XXXV. 149, 152; Same, 151; Hatsell, II. 189, note.
[2] Hatsell, II. 189, note; Hans. (1), XXVIII. 539.
[3] Hans. (1), XXXV. 96.
[4] Hatsell, II. 189, note.
[5] Hatsell, III. 240, note.
[6] Parl. Reg. XXXV. 367, 368.
[7] Hans. (1), XXXV. 79; Same, (3), II. 342, 343; J. of. H. 24th Cong. 2d Sess. 182.
[8] Hans. (1), XXXII. 89; Same, (3), LXXIX; Same, II. 342, 343.
[9] Hans. (1), XXX. 1007.

made a statement of the facts, which, in his judgment, entitle it, or which he desires to bring, to the attention of the house, the proper motion (and the only one) to be made is, that the petition be brought up, or, in other words, received by the house. This motion is generally made by the member offering the petition, but may be properly made by any other member; and is to be seconded, proposed to the house, and considered in the same manner, and according to the same rules, with other motions.

1122. If, upon the introductory statement, and before the motion to bring up is made, it appears that the petition is clearly objectionable and not fit to be received, on account of some informality, or of some substantial defect, which is then pointed out by the speaker or other members, the petition may be withdrawn by the member, at his own pleasure, in order that the informality may be corrected, or a new petition prepared. The suggestion of the speaker or the opinion of experienced members, offered at this point in the proceedings, is usually followed; but the member may nevertheless persist in offering the petition, and may accordingly move that it be brought up. If such defect or informality is not discovered or alluded to, until after the motion to bring up has been made, seconded, and proposed, the petition and motion can then only be withdrawn in the usual manner.

1123. Inasmuch as the facts, upon which the question of receiving a petition is to be decided, are only to be derived from the statements of the member by whom it is offered to be presented; it is the established practice for members to put questions to him with reference to those facts, at all stages of the proceedings, and as well after as before the motion to bring up; and the member may be interrupted in his statement or speech for that purpose; but, when he has answered the inquiry put to him, he is then at liberty to proceed as before, unless, from his answer, it appears, that there is no longer any ground or occasion for proceeding.

1124. The member offering a petition, after making his introductory statement as above, may then proceed to address the house on all the topics embraced in it; either after making the motion to bring up, in which case, it must be seconded and proposed before he can speak, or upon the supposition that he will conclude his speech with that motion. The motion to bring up may be debated, and proceeded with, in the same manner as with other motions, according to the ordinary rules of debate. If this motion is decided in the negative, that is, if the house refuses to allow a petition to be brought up, it is as much rejected, as it would be upon a

motion to that effect. If the motion is agreed to, the petition is then brought up, and delivered in at the clerk's table, by the member offering it.

1125. The proceedings above described, in the presentation and reception of petitions, are those which take place in the house of commons, and involve the parliamentary principles which relate to this subject. In that assembly, the motion for the reception of a petition is, in form, that it be brought up, that is, from the bar, from which all such papers when presented to the house are brought. The practice in the two houses of congress, and in other legislative assemblies in this country, is in exact conformity with the principles above established. When a member has a petition to present, he prepares himself for the purpose, according to the principles stated, in such manner and to such an extent, as he thinks proper, or as the rules of the assembly to which he belongs require; and having thus prepared himself, and obtained the floor at a proper time, he makes such statement as he thinks proper, and thereupon offers to present the petition to the assembly. This offer is considered as an application to the assembly to receive the petition by general consent, and if no objection is thereupon made, the petition is accordingly received. If objection is made, for which no reason need be given, this raises the question of reception, as it is called.[1]

1126. The objection may be accompanied by the objector, or by some other member with a motion that the petition be not received; or the member offering to present the petition, or some other, may thereupon move, that it be received; or if no motion is in fact made, the offer to present, objected to, is considered as equivalent to a motion, on the part of the member offering to present the petition, that it be received, even although he declares that he does not make that motion, or expressly declines to make it.[2] The question before the assembly, therefore, and to be decided in the ordinary manner, is on the reception of the petition stated either in the negative or affirmative form, but generally in the latter.

1127. The question of reception may be preceded by an objection to the offer to present, on the ground of order, as, for example, that the petition is not in a proper form, or that it belongs to a class which is excluded altogether, by a special rule of the assembly, from being received,[3] and will only arise, in the event of the question of

[1] Cong. Globe, III. 176, 177, 298; Same, IV. 139; Same, 94; Same, VIII. 119; Same, XIV. 18; Jefferson's Manual, Sec. XIX.

[2] Cong. Globe, VIII. 119.

[3] J. of H. 26th Cong. 2d Sess. 95, 127; Cong. Globe, IV. 139.

order being overruled by the presiding officer of the assembly. If there is no question of order, or the question of order is overruled, the question of reception is then to be put, and is decided upon or otherwise disposed of by the assembly, like any other question. But until it is decided in the affirmative, the petition is not received by the assembly, nor in its possession. In the mean time, as, for example, if the question of reception is ordered to lie on the table,[1] the petition remains in the possession of the member offering to present it. Where a part only of a petition is objectionable as against order, but that part is so connected with the residue that if the latter is received and referred, it will be necessary to send the whole petition to the committee, in that case, the petition cannot be received.[2]

1128. The next regular step in the course of proceeding is the motion that the petition be read, which may be made by the same or any other member. This motion is essential, in order to bring the contents of a petition to the knowledge of the house; for, as has been already observed, it is irregular for the member offering a petition to read it in full, either in his introductory statement, or as a part of his speech. It is competent for members to address the house on this motion; which may be debated, and proceeded with, in the same manner as any other motion. If decided in the negative, that is, if the house refuses to allow the petition to be read, it is effectually rejected; if decided in the affirmative, the petition is read by the clerk at the table, and the contents of it are then fairly in the possession of the house. If, upon the reading, defects of form or substance should appear, which had been overlooked, or not alluded to, the member may still be permitted to withdraw the petition, for the purposes above mentioned.

1129. When a petition has thus been received (but not before) and read, and its contents brought to the knowledge of the house, it is then to be proceeded with, and considered by the house according to the various forms of parliamentary practice relative to petitions. These proceedings will form the subject of a succeeding section.

1130. It seems to have been usual, at an early period, for petitions to be presented by some of the members for the county to which the petitioners belonged; but this practice, if it ever prevailed,

[1] Reg. of Deb. XII. Part I. 833, 835, 836; Same, XIII. 60, 229; Same, XIV. 18; Same, Cong. Globe, IV. 79, 80; Same, VII. 47, 94; XVIII. 855.

[2] J. of H. 28th Cong. 1st Sess. 119.

and it probably never did prevail to the extent of becoming a rule, has long since ceased; petitioners now intrusting their petitions, if public, to those who agree with them in sentiment, and are willing to maintain their views, if necessary, and, if private, to those members who are willing and able to undertake the conducting of their business through the house. To the general rule, however, that every member is competent to present whatever petition may be intrusted to him, there appear to be two exceptions, which will be mentioned in the succeeding paragraphs.

1131. The first is, that no member is competent to present his own petition;[1] for the same reason that he is not allowed, as a member, to participate in any proceeding, in which he is personally interested; but must intrust his petition, like other petitioners, to some member to present. A member, thus interested, is entitled, of course, to be heard with reference to the subject of his petition, at the proper time, and in the same manner that members are heard with reference to subjects in which they are personally interested.

1132. The second exception is the speaker, who, although a member, is precluded by the office which he fills, from participating in the ordinary business of the house. It is consequently irregular to send a petition to Mr. Speaker, in order that he may take charge of and present it as a member. When a petition was thus sent to Mr. Addington, when speaker, to be delivered to the house, he declined doing so, and gave his reasons therefor to the house in the following terms: "The objection which he had to complying with this request, was solely on the point of regularity of the proceedings of the house. Had he (as speaker) received the petition in this manner, the question 'that this petition be now received or brought up,' could not be put. The check on improper petitions would thus be done away with, if he had made himself the channel of communication of petitions, or any other paper presented to him in this manner. It was true, that a vote of the house early in the session (one of the sessional orders) gave the speaker power to present papers under particular circumstances, to the house, but he thought that this instance would have exceeded the proper bounds of his power."[2] A further objection, not of so formal or technical a character, might also have been stated, namely, that if it was competent to the speaker to make a motion, either with or without

[1] Hans. (3), LIX. 475, 476. But see also J. of H. 32d Cong. 1st Sess. 73.

[2] Parl. Reg. XXXII. 2.

its being seconded, and thereupon to put a question, that the petition in his possession be received by the house, unless this motion were acquiesced in by the unanimous consent of the house, it would be necessary for the speaker to take such a part in the proceedings, as would not be competent to him in other cases.

1133. The reasons, assigned by Mr. Speaker Addington, as quoted in the preceding paragraph, for not delivering to the house a petition which was sent to him, seem to imply that he thought the petitioners expected, in this way, to get their petition before the house, without a vote on the question of reception; but it may be fairly presumed that if he could have otherwise presented the petition, consistently with the rules of order, he would have done so. In this country, petitions are often presented, and particularly in both branches of the congress of the United States, by the presiding officers; but in the senate of the United States, the twenty-fourth rule seems to sanction the practice by taking it for granted, and in the house of representatives, the twenty-fourth rule expressly provides, that "Petitions, memorials, and other papers addressed to the house, shall be presented by the speaker, or by a member in his place." A petition, presented by the presiding officer, is to be treated in precisely the same manner as if presented by any other member.[1]

1134. It was stated that, with two exceptions, all petitions were required to be presented by members; these exceptions are the petitions of the corporations of London and Dublin. The corporation of the city of London, by the indulgence of parliament, is entitled to the privilege of causing its petitions to be presented at the bar of the house, and to have them received without their contents being opened by a member, or in any other way, communicated to the house. This indulgence is confined strictly to petitions for the corporation of the city of London, signed by the town clerk; the corporate style of which is, "The lord mayor, aldermen, and commons, of the city of London, in common council assembled." Petitions from the livery of London, in common hall assembled, must be signed by those individual liverymen who approve of its contents, and must be offered by a member, like other petitions.[2] Petitions of the corporation of the city of London are presented at the bar by the two sheriffs, or by one only, if the other is a member of the house,[3] or is unavoidably absent,[4] from

[1] Reg. of Deb. X. Part I. 960, 1115, 1116.
[2] Hatsell, III. 231, note; Same, 237, note.
[3] Comm. Jour. LXXXIII. 279.
[4] Comm. Jour. XCII. 317, 436; Same, XC. 506; Same, LXXV. 213.

sickness or other cause. If the sheriffs are both members, or are both unable to attend, the petition may be presented by some (two) of the aldermen, and several (four) of the common council.[1] The mode of proceeding is as follows. The sheriffs attend in the lobby, with the petition, and cause the house to be informed of their attendance. A motion is then made, and a question put, that the sheriffs be called in. If this motion passes in the affirmative, the sheriffs are accordingly called in to the bar, where they present their petition, which is received by the clerk, and by him brought to the table of the house, without any motion or question made therefor, and the sheriffs then withdraw. When they are withdrawn from the bar, a motion is made, and the question put for reading the petition. If this motion is agreed to, the petition is read by the clerk; and the house, being thus made acquainted with its contents, proceeds to dispose of it in such manner as it thinks proper.[2] If only one of the sheriffs should attend, or if there should be any other variation from the usual course of proceedings, the reason of the absence of the other, or of the unusual course, should be communicated to the house by a member, before the question is put for calling in the persons in attendance, in order that a negative may be put upon that question, if there is any irregularity in the proceeding.[3] Petitions from the corporation of the city of Dublin are presented in the same manner by the lord mayor.[4] This privilege was first extended to the city of Dublin, at the request of the corporation, in 1813. No privileges of this sort are enjoyed by any individual or corporation in this country.

1135. It will be perceived, that, when petitions are presented in this manner, a question is to be made for calling in the persons in charge of the petition, and another for reading it, and, upon each of these questions a debate may ensue, and the proceeding be arrested; but, in general, the petition is allowed to be brought in and read. After the reading, the proceedings are the same as in regard to other petitions.

1136. It not unfrequently happens, that a single member has a large number of public petitions of the same character intrusted to him to present; in which case, it might be convenient both for such member and for the house, that the whole should be presented together as one petition. This is allowed by the indulgence of the house, if the member will undertake to say, that they are all in

[1] Hatsell, III. 237, note.
[2] Hatsell, III. 238.
[3] Comm. Jour. LIX. 292.
[4] Comm. Jour. LXVIII. 299, 212, 219.

substantially the same terms. If there are variations in them, they should be separately presented.[1]

1137. The rules which have thus been stated, relative to the presenting of petitions, belong to the practice of the house of commons. The proceedings in the lords are somewhat different. In the latter, as in the former, it is equally the duty of members to present petitions; and, as a preliminary proceeding, to make themselves acquainted with their contents, in order to see that they contain nothing impertinent, unbecoming, or improper.[2] If satisfied as to the fitness of a petition to be presented, the lord with whom it is intrusted is at liberty to present it, and to have it read by the clerk, without any question. But, in presenting it, it is his duty to open it, that is, to state its substance and prayer, before it is read;[3] if, upon this statement, the petition appears to contain matter, which renders it unfit to be received, the usual course is for the peer by whom it is presented to withdraw it;[4] if nothing of this kind appears, the petition is laid on the table and read. In opening a petition, the member may comment upon it, and upon the general subjects to which it refers; and a debate may thereupon take place, in the same manner as upon any other subject. No question being necessary for reading, no debate can properly take place on that subject.[5]

SECTION V. OF CERTAIN CLASSES OF PETITIONS, IN REFERENCE TO WHICH THE PRELIMINARY PROCEEDINGS ARE PECULIAR.

1138. Before entering upon the consideration of the proceedings which take place relative to petitions subsequent to their being received and read, it will be necessary to take notice of certain classes of petitions, in reference to which the preliminary steps differ in some respects from the ordinary course above described. These subjects will furnish the matter of this section. The several classes of petitions, alluded to, are the following:—1. Election petitions; 2. Petitions relating to or affecting an election case; 3. Petitions containing a charge against, or implicating the character or conduct of, members; 4. Petitions for public money; 5. Petitions against bills, for the levying of a tax or duty; 6. Private petitions; 7. Previous petitions. It is hardly necessary to remark

[1] Hans. (1), XXXV. 859, 860, 861; Same, 873.
[2] Parl. Reg. LX. 315, 316; May, 388.
[3] Lords' Jour. XIV. 22.
[4] Hans. (3), XIII. 1185, 1187, 1188.
[5] Hans. (3), XIII. 1185, 1187, 1188.

that what is said under the fourth and fifth heads has no direct application in this country.

ARTICLE I. *Election Petitions.*

1139. In the house of commons, a system of proceeding has been established by a series of statutes, enacted in the year 1770, and since, for the trial of controverted elections and returns, according to which cases coming within the statute description of election cases are required to be determined. Petitions relating to cases of this sort technically called Election Petitions are presented and delivered in at the table, as a matter of course, and without any question; subsequent proceedings are required to be instituted thereon according to the mode provided by the statutes; and no other mode of proceeding would be legally valid or have any legal effect upon the return or election thus brought in question. Petitions, referring to, or involving an inquiry into the merits of, an election, but which nevertheless do not possess the characteristic features of an election petition, cannot be proceeded with in that manner, but only according to the ordinary course of proceeding. Hence, it is sometimes a question of importance to determine, whether a petition, which has been put into the hands of a member to present, is or is not technically an election petition; if it is, it should be presented and proceeded with in that form; if not it should be presented in the usual manner.

1140. When, therefore, a petition has been presented as an election petition, and, on the attention of the house being called to its contents, it appears not to come within the technical description of an election petition, the practice is to allow it to be withdrawn, in order to be presented in the usual manner.[1] If an order has been already made for taking such petition into consideration on a given day, it would be proper previously to discharge the order; though allowing the petition to be withdrawn would doubtless be equivalent to a discharge of it. On the other hand, when a petition is offered to be presented, in the usual manner, and, upon examination of its contents, it appears to be an election petition,[2] or, in substance, an election petition,[3] it may be withdrawn, in order to be proceeded with, according to the statutes; or, if a petition is presented and read, in the ordinary course of proceedings, and, upon

[1] Comm. Jour. LXXXII. 317.
[2] Comm. Jour. LXXXII. 436.
[3] Comm. Jour. LXXXIV. 786.

the reading, it appears to be an election petition, and is within the time limited by the sessional order of the house, it may then be proceeded upon as such.[1] It is presumed, that if a petition, which has been proceeded upon in the usual course, should at any time be discovered to be an election petition, the house would at once vacate or rescind all orders and proceedings relating to it, and allow it to be withdrawn. Where a petition was presented and read, in the usual manner, and a doubt then arose whether it was not an election petition, the speaker, Mr. Manners Sutton, said: "If the house were clearly of opinion, that it was an election petition, the regular course would be to withdraw it, for the purpose of again presenting it in that form, to be taken into consideration in the usual way. If the house were not satisfied on the subject, the most judicious way would be to adjourn the debate, to give members an opportunity to look into the petition, and to make up their minds."[2] The debate was accordingly adjourned, and the petition ordered to be printed. On resuming the debate, the house resolved that it was an election petition, and made the usual orders.[3]

ARTICLE II. *Petitions relating to or affecting an Election case.*

1141. It is a general rule, that no discussion can be permitted to take place in the house, which may incidentally or directly affect the proceedings upon an election case, or prejudge it in the house, and thus tend to affect the committee with relation to any point involved in such case, until after the decision of the committee.[4] The same rule applies, and for the same reason, with regard to petitions involving inquiries into matters connected with the merits of an election. If a petition complaining of such election has already been presented and is pending, no other petition involving inquiries which may affect or prejudice the trial of such election can be received, until the election is determined.[5] If no election petition is pending, then, in order to prevent the receiving of a petition, which may affect or prejudice a case which may probably arise, such petition must appear to involve matter which can alone be tried by an election committee.[6] In the former case, the petition may be received, when the election has been determined; in the latter, it cannot be received at all, unless presented as an election

[1] Comm. Jour. LXXIV. 45, 46, 52, 53.
[2] Hans. (1), XXXIX. 149.
[3] Comm. Jour. LXXIV. 45, 46, 52, 53.
[4] Hans. (2), XVI. 1186.
[5] Hans. (3), I. 574.
[6] Hans. (3), VI. 642, 643.

petition.[1] In reference to petitions of this description, it is immaterial what the prayer is, provided only that the inquiries involved in them may have the effect above specified.[2] When a petition is offered to be presented, which, upon examination, appears to contain "matter for an election petition only," the course is to allow it to be withdrawn.[3]

ARTICLE III. *Petitions charging or implicating Members.*

1142. When a petition is to be presented, containing matter of charge against a member, or implicating in any manner his character or conduct, for the purpose of a parliamentary inquiry, it is necessary that such member should receive notice beforehand of the time when the petition is to be presented; in order that he may then be in attendance in his place, and have an opportunity of vindicating himself, if he sees fit, against the attack upon him, at the time when the charge is made. If a petition of this kind is offered, without such notice having been previously given, it should be withdrawn, until the notice is given.[4] This course of proceeding is analogous to what takes place, when one member makes a charge or complaint against another. The first step in that case is to move, that the member in question do attend in his place on a certain day; and both parties attending accordingly, the former prefers his complaint.

ARTICLE IV. *Petitions for Relief out of the Public Money.*

1143. It is an order of the house of commons, first adopted December 11, 1706,[5] and made a standing order June 11, 1713,[6] "that this house will receive no petition for any sum of money relating to public service, but what is recommended from the crown."[7] In consequence of the rule thus established, whenever

[1] Hans. (3), VI. 642, 643.

[2] Hans. (3), VI. 642, 643.

[3] Comm. Jour. XXXVI. 786. It was expressly decided by Mr. Speaker Onslow, that a motion to bring up could only be withdrawn by the unanimous consent of the house. Comm. Deb. VII. 309, 314; Comm. Jour. XXII. 79.

[4] Hans. (2), XVI. 151. See also J. of S. IV. 197, 263; Hans. (2), XVII. 302; Ann. of Cong. I. 55, 56; Hans. (3), XXXVI. 769, 855; Same, XXXVI. 761.

[5] Comm. Jour. XV. 211.

[6] Comm. Jour. XVII. 417.

[7] The uniform practice of the house of commons has applied this order not only to petitions for public money, or for money relating to public service, but to all motions whatever for grants of money, whether on public or private grounds. Hatsell, III. 195, 196. In one instance, the rule was applied to the receiving of a report. Comm. Jour. XCII. 478.

any petition is offered, which desires relief by public money, and a motion is made for bringing up the petition, before the question is put upon this motion, it is necessary that the recommendation of the crown (which, however, goes only to an inquiry by a select committee) should be signified by some member, authorized for the purpose; and, if the chancellor of the exchequer, or person usually authorized by the crown, declines to signify this recommendation, the house cannot properly receive the petition.[1] Under the denomination of petitions for money relating to public service, are included all petitions which pray directly or indirectly for an advance of public money;[2] for compounding any debts due to the crown;[3] for remission of duties payable by any person;[4] and for compensation for losses.[5] In many instances, however, petitions have been received, praying for compensation for losses contingent upon the passing of bills.[6]

1144. A petition, which states any distress, and prays to be relieved from the charity or munificence of the public, ought not, in point of form, either to prescribe the amount, or to mention the fund out of which that relief is to be granted. The prayer should be general; and it should be left open to the consideration of the house, what the nature of the relief shall be, and to what extent.[7]

1145. The rule above mentioned applies only to direct petitions for public money, and is not to be extended beyond the strict necessity of the case; and, therefore, although the prayer of a petition probably contemplates pecuniary aid, yet if the terms of it do not necessarily require so strict a construction, the recommendation of the crown does not seem to be necessary to the receiving of the petition.[8] When the interests of the crown are only indirectly concerned, its consent is equally necessary, but may be signified at any stage of the measure founded on the petition.[9]

ARTICLE V. *Petitions against Tax Bills.*

1146. The house of commons found it necessary, very soon after the revolution, to establish a rule, "that they would not receive any petition against a bill then depending, for imposing a

[1] Hatsell, III. 242.
[2] Comm. Jour. XC. 42, 487, 507; Same, 74.
[3] Comm. Jour. LXXV. 167.
[4] Comm. Jour. LXXX. 353.
[5] Comm. Jour. LXXXVII. 571; Same, XC. 487.
[6] Comm. Jour. XC. 136; Same, XCII. 469.
[7] Hatsell, III. 241.
[8] Hans. (2), I. 1037.
[9] Hans. (1), VIII. 465.

tax or duty:" upon the principle, that a tax generally extending in its effect over every part of the kingdom, and more or less affecting every individual, and in its nature necessarily and intentionally imposing a burden upon the people, it can answer no end or purpose whatever, for any set of petitioners to state these consequences to the house as a grievance;[1] and, upon the further ground, that, if the house were to receive such petitions, it would be impossible ever to pass a bill for a tax, inasmuch as so many different petitions would be presented against it, that it would be impossible to hear counsel separately upon them all, within the usual time of the duration of any one session of parliament,[2] and in the mean time, the nation might be undone for want of an immediate supply for the public use.[3] It is remarkable, that this rule was always nugatory as regarded petitions from the city of London, which, as has already been seen, are received by the indulgence of the house, without their contents being first made known.[4]

1147. The practice, under this rule, which has recently been abrogated, was always confined to petitions against a tax for the supply of the current year; and was never applied to petitions offered in a subsequent session, praying the repeal or reconsideration of the taxes imposed in a former session. No public service is delayed by receiving and considering such petitions; nor can the time of the house be better employed than in endeavoring to lighten the burdens of the people.[5] In 1842, when the practice of the house of commons relative to public petitions, which had been gradually introduced for the purpose of facilitating the proceeding upon them, was revised and reduced to the form of standing orders, an order was added, by which petitions against tax bills were put upon the same footing with other petitions of a public character and allowed to be presented and received in the same manner.[6]

ARTICLE VI. *Private Petitions and Previous Petitions.*

1148. By the standing orders of both houses of parliament, all private bills are required to be brought in upon petition;[7] and there is an order also made in each, at the commencement of every session,[8] limiting the time within which petitions for private bills are

[1] Hatsell, III. 233, 234. The foregoing rule was never adopted in any part of this country.
[2] Hatsell, III. 236.
[3] Comm. Deb. VII. 310, 311.
[4] Hatsell, III. 237, note.
[5] Hatsell, III. 235, note, 238.
[6] Hans. (3), LXII. 296, 307; May, 391.
[7] May, 486.
[8] Comm. Standing Orders, No. 104.

required to be presented; after the expiration of which, no petition will be received, except by special leave of the house. In consequence of the existence of this order, it is sometimes an important question to determine, whether a petition, which is offered to be presented, is or is not a private petition. On this question, as on others of a similar nature, the speaker gives his opinion, but it is for the house to decide. If the speaker's opinion is that the petition is a private one, the member presenting will withdraw it.[1]

1149. If a petition, which has been intrusted to a member to present, is a petition for a private bill, and the time for the presentation of such petition has elapsed, it is necessary, in order to obtain the permission of the house to present it, to present a petition, 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. On this petition being presented, leave may immediately be given or refused; or the petition may be referred to a select committee, and, upon their report, leave may be granted or refused, either immediately, or after further proceedings upon the report.[2]

SECTION VI. OF THE PRESENT PRACTICE WITH REGARD TO THE PRESENTATION OF PETITIONS.

1150. The right of petition, — being the only means by which the people have it in their power to concentrate and express their opinions relating to public measures in such a manner as to bring them directly to the knowledge of the legislature, — has been exercised for the last few years, to an extent wholly unprecedented in former times. In the five years ending in 1831, the number of public petitions presented to the house of commons, was twenty-four thousand four hundred and ninety-two; in the five years ending in 1843, the number presented was ninety-four thousand two hundred and ninety-two; and in the five years ending in 1848, was sixty-six thousand five hundred and one.[3]

1151. It has been seen from the statement above made as to the regular parliamentary course of proceeding in receiving petitions, that the presentation of a petition, even though no subse-

[1] Parl. Reg. LXII. 261.

[2] May, 532. In one case, leave was given, *on motion*, without any previous petition. See Comm. Jour. LVII. 259.

[3] May, 389.

quent proceedings were intended to be founded upon it, might, though it did not usually, or to any inconvenient extent, give rise to a debate; it being in the power of the member presenting a petition to speak at length if he chose, on the topics suggested by it, either as preliminary to or after making the motion that it be brought up, and also upon each and every one of the motions that might be subsequently made for the purpose of disposing of it.

1152. These two circumstances, namely, the vast increase in the number and variety of public petitions, and the unlimited and illimitable debate, in which it became the practice to indulge in presenting them, were found to create so many interruptions and delays to the progress of other public business in the house of commons, that it became absolutely necessary to make some attempt to reconcile if possible, the conflicting claims to the attention of the house to which they gave rise.

1153. It was at first attempted to provide a remedy for the inconvenience, by devoting more time to the receiving of petitions. For this purpose, it appears to have become the practice in the year 1830, for those members who had petitions to present, to attend each day in the house at ten o'clock in the morning; the names of the members of the house were then called in rotation by some one of them, and the names of all who did not answer, were struck out; the remaining names, being those of the members present, were then put into an urn and drawn out, one by one, and arranged in a list in the order in which they were drawn. At three o'clock the speaker attended, and as soon as a house was formed, proceeded to call the names as they stood on the list; and as they were called the members presented their petitions and addressed the house, if they thought proper, in the usual manner. At five o'clock, the public business, as it stood upon the order book, commenced; and when this was over, the petition list, if not previously finished, was again taken up and proceeded with until it was completed or an adjournment took place. If the petition list was not gone through with, the members who had not been reached attended again on some other day for the purpose of being put upon the list.

1154. At the commencement of the session in 1833, in order still further to facilitate the presentation of petitions, and the transaction of private business, morning sittings were established from twelve to three o'clock, at which twenty members only were re-

quired to form a house;[1] the public business commencing as before, at five o'clock, and forty members being still necessary to form a quorum for that purpose. At the same time, some restraint was put upon the liberty of speaking on the presentation of petitions, by the adoption of a resolution, which was introductory of important changes in this branch of parliamentary proceedings. By the resolution, it was provided, that when a member offered to present a petition, he should only be allowed to state the contents and prayer of it; the petition should then be brought up to the table by the direction of the speaker, and read by the clerk; and no member should be allowed to speak or put any question relative to such petition, unless it contained matter in breach of the privileges of the house, or was of such a nature, that, according to the rules and orders of the house, it could not be received.[2] The right of speaking on petitions was thus altogether taken away, except in the two classes of cases referred to, until after they had been received and read; leaving members still at liberty to speak on all the subsequent motions as before. This resolution was limited in its duration to the session, and, it is believed, was not renewed afterwards for more than a single session.

1155. Another important regulation was also subsequently introduced in the same session of 1833, with reference to public petitions. This was a resolution for the appointment at the commencement of each session, of a select committee, "to which shall be referred all petitions presented to the house, with the exception of such as complain of undue returns, or relate to private bills; and that such committee do classify the same, and prepare abstracts thereof in such forms and manner, as shall appear to them best suited to convey to the house all requisite information respecting their contents, and do report the same from time to time to the house; and that such reports do in all cases set forth the number of signatures to each petition; and that such committee have power to direct the printing *in extenso*, of such petitions, or of such parts of petitions, as shall appear to require it."[3] The functions of this committee, which has since been regularly appointed, seem to have superseded, in a great degree, the necessity of motions to print.

1156. The morning sittings continued to be held during the ses-

[1] This is the ground upon which Chancellor Kent states, (Kent's Commentaries, I. 234, note,) that in 1833, the number necessary to form a quorum in the house of commons had been reduced from forty to twenty.

[2] Comm. Jour. LXXXVIII. 10; Hans. (3), XXXVI. 437, 438.

[3] Comm. Jour. LXXXVIII. 95.

sions of 1833 and 1834, after which, not being found to be effectual, they were discontinued; nor, after the same period, does it appear, that the resolution of 1833, restricting debate, on petitions, was renewed. On the accession of Mr. Abercromby to the speakership in 1835, the house, upon his suggestion, reverted back to and adopted as a rule the ancient practice, in presenting petitions, according to which the member offering a petition usually confined himself to a statement of the contents and prayer, without undertaking to speak at length upon the subject of the petition. This became subsequently the established practice, with certain exceptions, in which the importance or urgency of the subject required a different course. In 1842, certain resolutions, embodying the understood and established practice of the house, relative to the presentation of public petitions, and the proceedings thereon, were agreed to and declared to be standing orders.

1157. The present practice of the house of commons, with reference to petitions, as regulated by these orders, and the antecedent usage of the house, is as follows. In the first place, it is required by an order of March 20, 1833, that every member presenting a petition to the house should put his name at the beginning thereof;[1] which is always printed with the petition, in the reports of the committee on public petitions.

1158. The members, who are desirous of obtaining precedence in presenting the petitions intrusted to them, 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 the speaker to take the chair; they then ballot for precedence, and their names are entered on a list accordingly.

1159. The time appropriated for presenting petitions is at the conclusion of the private business. At this time, the speaker calls the names of the members separately as they stand on the list, and they then present their petitions. When, however, petitions relate to any motion or bill set down for consideration, they may be presented 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 for proceeding on it has been read, and before any question has been proposed.[2]

1160. When a member offers to present a petition, not being a petition for a private bill, or relating to a private bill before the house, he is required to confine himself to a statement of the

[1] Hans. (3), LXXIV. 714, 715.

[2] May, 392.

parties from whom it comes, the number of signatures attached to it, the material allegations contained in it, and to the reading of the prayer of the petition.

1161. When a petition, on being offered to be presented, is thus opened to the house, it is the duty of the speaker, provided the petition contains nothing in breach of the privileges of the house, and is also proper, according to the rules and usual practice of the house to be received, to direct it to be brought to the table at once, and there read by the clerk, if required, without allowing any debate, or any member to speak, upon or in relation to such petition.

1162. If a petition so presented relates to any matter or subject, which the member presenting it is desirous of bringing before the house, and on which he states it to be his intention to make a motion, he may then give notice that he will make a motion, on some subsequent day, that the petition be printed with the votes.

1163. If any such petition complains of a present personal grievance, for which there is an urgent necessity for providing an instant remedy, the matter contained in it may be brought into immediate discussion, on its being presented.

1164. All other petitions, after having been ordered to lie on the table, are, without any question being put, referred to the committee on public petitions. The duty of this committee is to classify, analyze, and make an abstract of the petitions so referred to them, and, from time to time, report thereon to the house. The reports of the committee are printed twice a week, and point out, under classified heads not only the name of each petition and of the member by whom it was presented, 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, such petition is printed at full length in the appendix.[1]

1165. From the foregoing statement of the existing practice of the house of commons relative to public petitions, it seems clear, that while measures are taken to bring the popular voice as expressed by petitions to bear on the legislature, in the only manner in which it can be legitimately entitled to have any effect, that is, by the number and character of the petitioners, and the strength

[1] May, 391, 392.

and pertinency of their representations and arguments; no restriction is put upon debate, in any case, in which it is really necessary. It should be recollected, also, that the restricting of debate upon a petition does not restrict it upon the subject-matter of the petition. A petition is not, in itself, introductory to legislative measures. Every resolution or bill must commence with a distinct motion, which may be made without reference to any petition, but, in proposing which, a member is at liberty to enforce the claims of all petitioners, who have presented their views to the house.[1]

1166. In the house of lords, there has been no such increase in the number of public petitions, as has taken place in the house of commons, within the last few years; no inconvenience has arisen from the debates which have occurred on presenting them; and consequently no necessity has been felt for the introduction of any general system of classification and publicity.[2]

1167. The same causes which have induced the house of commons to adopt the above-described regulations, with regard to petitions, have also operated in this country, and have led to the establishment of certain rules in the house of representatives, in congress, by which it is provided that petitions shall not be debated, unless the house shall otherwise decide, on the day on which they are presented, and that members, having petitions or memorials to present, may hand them to the clerk, with an indorsement thereon of their names, and of the reference or disposition of the same. In the latter case, the petitions or memorials are to be entered on the journal, subject to the control and direction of the speaker. Whether the above or similar rules may become necessary, to facilitate the proceedings on petitions, in any other assembly, will of course depend on the pressure of the business which ordinarily comes before it.

SECTION VII. OF SUBSEQUENT PROCEEDINGS ON PETITIONS.

1168. The proceedings on a petition, subsequent to its presentation and reception, depend partly upon the subject-matter, and partly upon the feeling with which it is regarded by the house. If the subject is one upon which the house can act at once, and is ready to do so, it may proceed immediately with the consideration of it; otherwise, the petition may be ordered to lie on the

[1] May, 391. [2] May, 389.

table, either generally or until a specified time, or a future day may be assigned for its consideration. In the latter case, the petition is an order of the day for the day so assigned, and to be proceeded with and considered accordingly.

1169. When a petition is taken into consideration, whether presently, or at a future time assigned, if it alleges the existence of facts, which require to be investigated, the inquiry may be either by the house itself, or before a committee to whom the petition may be referred for the purpose. In both cases, the petitioners are to be heard, with their witnesses and evidence, together with parties adversely interested, if they desire it, in the manner already described in the fifth chapter of this part.

1170. If the hearing takes place before the house itself, it may be followed by proceedings proper for the immediate disposition of the matter, in the form of an order or resolution, according to the nature of the subject, expressing the opinion of the house, or directing, or permitting something to be done, as, for example, that a bill be brought in agreeably to the prayer of the petitioner.

1171. If the petition is referred to a committee, by whom the subject of it is heard and investigated, the committee proceeds with the investigation, and reports upon the matter, as in other cases; and, upon their report, the house institutes such further proceedings as may be necessary and proper.

1172. Petitions may be disposed of, as we have seen, by the house itself acting directly, and without the intervention of a committee; in which case, out of the great variety of motions that may be made for the purpose, those most usually adopted lead to the same disposition of the subject with the resolutions reported by a committee, and, therefore, require no further separate notice. But though petitions may thus be disposed of, the most common course is to refer them, in the first instance, to a committee. The form in which this reference takes place in parliament, and in this country when any form is made use of, requires the committee to examine the matter of the petition and to report the same, with its opinion thereupon to the house.[1] In general, petitions are referred in our legislative assemblies, simply, and without any words expressive of the committee's authority; in which case it will have the authority above mentioned, together with such additional power as may be specially conferred upon it, and such other as may belong to it by the rules and orders of the assembly.

[1] J. of H. I. 129.

1173. Under the authority above mentioned, or of that which results from the simple reference of a petition, a great variety of reports, depending, of course, upon the nature of each petition, may be made, but they may all be included in the three different classes of, first, reports in favor of granting the prayer of the petitioners; second, against granting the prayer; or, thirdly, declining to grant it, but without concluding the petitioners. These reports are considered and agreed to like other resolutions, and may be amended in such manner, as, for example, so as to substitute one for another, as the assembly may direct.

1174. If a resolution is agreed to for granting the prayer of the petitioners, and this is of such a nature that it can only be effected by passing a bill in their favor, the assembly may thereupon take the necessary steps for that purpose; or the committee may be authorized either specially or generally to report a bill at once. If a resolution is agreed to against granting the prayer of a petition, this is a regular judgment of the assembly upon the claim which effectually precludes its being opened or set up afterwards. If the assembly agrees to a resolution in the third form, it is usually expressed in these terms, namely, that the petitioners have leave to withdraw their petition. In this case the petition, although not granted, is not refused, but may be withdrawn and presented again.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART SIXTH.

OF THE FORMS AND METHODS OF PROCEEDING IN A LEGISLATIVE ASSEMBLY.

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FIRST DIVISION.

MOTIONS.

CHAPTER FIRST.

OF MOTIONS IN GENERAL.

SECTION I. INTRODUCTORY.

1175. THE judgment or will of any number of persons, considered as an aggregate body, is that which is evidenced by the consent or agreement of the greater number of them. In order to ascertain the existence of this consent or agreement in reference to any particular subject, there are two methods of proceeding, which may be adopted.

1176. The first which is also the simplest and most obvious, consists merely in the several members expressing their individual opinions on the subject before them, one after another, in such

manner as they may think proper, and continuing thus to express their various views, until some one opinion or judgment is seen to unite the suffrages of a majority. This mode is sufficient for all the purposes of a small body of men, — such as constitutes boards of directors, trustees, and the like, — but is wholly inadequate to the business of an assembly of any considerable magnitude.

1177. The other mode, which is alone practicable in a numerous assembly, consists in the submission of one or more propositions in the form of questions to the assembly, upon which the members express their opinions by a simple negative or affirmative; the proposition thus put to the question being adopted or rejected according as the votes of a majority are given in its favor or against it. In this mode of proceeding, the several propositions may be submitted and put to vote one after another, until some one is agreed to; or they may all, in the first instance, be announced, and then put to vote separately. This method, thus simply stated, however sufficient it might be for the purposes of an assembly convened for a special object, and to sit but for a short time, and with but limited powers, in order to be adequately adapted to the purposes of legislation in modern times, has been expanded into a system of rules by the application and use of which, the judgment of a deliberative assembly, in reference to every topic submitted to it, may, for the most part, be ascertained with precision, promptness, and facility.

1178. According to the system, which has thus become established, some one of the members begins by submitting to the others a proposition, in reference to the subject which he wishes to bring forward, or to that under consideration; this proposition is expressed in such a form of words, that, if assented to by the requisite number, it will purport to express the judgment or will of the assembly; it then forms a basis for the further proceedings of the assembly; and is assented to, rejected, or modified, according as it expresses or not, or may be made to express, the sense of a majority of the members. The different proceedings, which take place, from the first submission of a proposition, through all the changes it may undergo, until the final decision of the assembly upon it, constitute the subject of the rules of debate and proceeding in deliberative assemblies.

1179. In the British parliament, in which the system of parliamentary proceedings has been elaborated and perfected, by the practice of three centuries, many changes in the forms made use of have taken place, which will be pointed out in the course of the

work. In reference to the subject now under consideration, the change has been such as is indicated in the preceding paragraphs.

1180. In the earliest periods of the separate existence of the house of commons, as an organized body, the forms of proceeding made use of to ascertain the sense of the house seem to have been nothing more than the propounding of one or more questions for their simple assent or dissent.

1181. In subsequent times, when the commons had assumed more power in the State, and had begun to inquire into and investigate subjects originating with themselves, it became the practice when any topic was introduced, upon which the members expressed their several opinions, for the speaker, at the close of the debate, to frame a question or questions corresponding to the general tenor of the speeches on the one side and on the other, and to put those questions to the vote of the house.

1182. At a later period, this practice became somewhat modified; the speaker still framing the question, but not, in all cases, waiting till the close of the debate. The mode of proceeding is thus stated by Scobell:[1] "If the matter moved do receive a debate *pro et contra*, in that debate none may speak more than once to the matter; and, after some time spent in the debate, the speaker collecting the sense of the house upon the debate, is to reduce the same into a question, which he is to propound: to the end, the house, in their debate afterwards, may be kept to the matter of that question, if the same be approved by the house to contain the substance of the former debate." This mode of proceeding, which prevailed previous to the restoration,[2] continued to be used from that period, until it was laid aside, and the present system established, in the time of Mr. Onslow, who was speaker of the commons during the entire period of the reign of George the Second. It was attempted on one occasion, to be revived by Sir Fletcher Norton,[3] when first chosen speaker in 1770; and, although no notice was taken of the circumstance, at the time, in consequence of the thinness of the house; it was nevertheless animadverted upon in a subsequent debate, as putting a dangerous power in the chair; and the experiment was not repeated. Though this practice has long been discontinued, traces of it still remain in many of the forms of proceeding.

1183. In consequence of this change of practice, it became an established axiom, that the motion first introduced should be first

[1] Scobell, 22.

[2] Hatsell, II. 112; Grey, II. 235; Same, III. 165; Same, X. 94.

[3] Cav. Deb. I. 458, 473.

determined by a corresponding question, unless it was superseded for the time being, by some other motion or question of a previous nature before proceeding to any other business. This maxim would seem to imply, that every matter of business must be completely finished before another is introduced, so that the house should have but one matter pending before it at the same time; but in practice the operation of this principle is confined to the pending question; there can be but one question pending at the same time, though there may be, and always are, in every legislative assembly, numerous matters of business in various stages of progress, and all pending together. In the two houses of the British parliament, the tendency has been to dispose of pending business in the simplest manner, and by means of the fewest possible motions; while in this country, a greater variety and number of motions previous in their nature have been employed. In our legislative assemblies, it is usual not only to specify by rule, the particular motions which alone may be used for the disposition of other business, but also to designate the order in which they may be severally moved, and put to the question, so as to separate one from another, and be all pending at the same time.

1184. Every matter, which is the subject of consideration in a deliberative assembly, can only be determined upon a question put by the presiding officer, and resolved in the affirmative or negative, as the case may be;[1] and, according to the modern system of proceeding in parliament, every question is founded on a motion made by some member, in such form as he thinks proper, and seconded or approved by another member, in the same form.

1185. When a proposition is made by two members in this manner, it is the duty of the speaker to state it to the house in the precise terms in which it is moved; when thus stated, it becomes a question for the decision of the house; and must be disposed of by the house in one way or another, before it can proceed with any other business. In the lords, when a motion has been made, a question is proposed, "that that motion be agreed to;" but in the commons, a motion when seconded becomes itself the question without any such formality.[2]

1186. In this country, the rule of the house of commons generally prevails; every motion when seconded is propounded by the presiding officer as a question for the decision of the assembly. But a practice in this respect not dissimilar to that of the house of lords was formerly in use in both branches of congress, and per-

[1] May, 209. [2] May, 216.

haps elsewhere, by which a question was made, when a motion was introduced, whether the assembly would consider that motion or not.[1] This proceeding was called the question of consideration, and seems to have had the effect, in part, of the previous question. It is now seldom or never resorted to in practice, and the only trace of its existence is found in a rule of the house of representatives, that it shall not be put, unless it is demanded by some member, or is deemed necessary by the speaker.

SECTION II. NOTICE OF MOTION.

1187. Although it is thus the right of members to originate propositions, at their pleasure, for the consideration of the house; and any member, in possession of the house, may make any motion he thinks proper,[2] yet, in practice, this right is subject in the house of commons to some restriction as to the time of its exercise; it having been the custom for many years for members to give notice, one day at least beforehand, of the motions which they intend to make; and this usage has now become so firmly established, though without the sanction of any express rule, that, with some few exceptions only, the house of commons will not allow a motion to be made, unless notice has been previously given.[3]

1188. The principal object of requiring these notices is, by affording the members a knowledge of the subjects, which are to be brought forward for discussion,[4] to prevent the house from being surprised into the passing of votes, which it might be necessary afterwards to rescind;[5] and the practice has accordingly been found to conduce very much both to the convenience of the members, and to the transaction of the public business.[6]

1189. The reason, which lies at the foundation of this usage, suggests the exceptions, to which it is subject. Motions, which do not ordinarily meet with opposition, may be brought on by consent of the house, without any previous notice; but if any member objects, they cannot be pressed. Questions of privilege, also, and other questions in reference to matters suddenly arising, may be considered without previous notice.[7]

1190. In order to enable a member to give notice of a motion,

[1] The objection must be made, before the motion has been discussed, or the question of consideration will not be put. J. of H. 17th Cong. 1st Sess. 297.

[2] Hans. (3), IX. 594.

[3] May, 213.

[4] Hans. (2), XV. 195.

[5] Hans. (1), VI. 113; Same, 229, 230, 231.

[6] Hans. (3), XXVI. 590.

[7] May, 214; Hans. (3), XXX. 8.

where the subject is not regulated by any rules, he must obtain possession of the house, for that purpose, in the same manner as if he was going to make a motion; but if a member is in possession of the house for some other purpose only, as, for example, to explain, he cannot take that opportunity to give notice of a motion; nor can a notice of motion be regularly given by a member in the course and as a part of his speech, while addressing the house in debate.[1]

1191. When the practice of giving notice of motions was first introduced, members gave their notices in the same manner that they made motions, or participated in any of the other ordinary business of the house; but, within a few years, the mode described in the following paragraphs has been adopted in the house of commons, and is now established as the course of proceeding in giving notices in that house; in the house of lords the pressure of business is not so great as to require any strict rules in regard to notices.[2]

1192. When a member desires to give notice of a motion, and has fixed upon the most convenient time to bring it forward, he attends on some day at the meeting of the house; and, immediately after prayers, when the house has been made, enters his name on what is called the notice paper; which is placed upon the table, for the purpose of receiving the names of all who desire to give notice of motions. Each name on this paper is numbered; and, when the speaker calls on the notices, which he usually does at about half past four o'clock, the clerk puts all the names 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 on the notice-paper, is called. Each member, as he is called, rises and reads the notice which he is desirous of giving, and afterwards takes it to the table, and there delivers it fairly written out, and with the day named on which he proposes to make his motion, to the second clerk assistant, who enters it in the order book.[3]

1193. If a member desires to give more than one notice, at the same time, he must wait, before giving a second, third, etc., until the other names on the list have been called over;[4] but one member may give a notice for another, who is absent at the time,[5] (for if present members must act for themselves,)[6] by putting the name

[1] Hans. (3), II. 63, 64; Parl. Reg. XXII. 6.
[2] May, 210.
[3] May, 212.
[4] May, 213.
[5] Hans. (1), II. 439.
[6] Hans. (3), LXVIII. 1002.

of such member on the list, and answering for him when his name is called.[1]

1194. It is not necessary that the notice should comprise all the words of the intended motion; but if the subject only is stated in the first instance, the question, precisely as it is intended to be proposed, should be given in the day before that on which it stands in the order book, so as to be printed at length in the votes of the day on which it is to be made.[2]

1195. "No positive rule 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."[3]

1196. The form of giving notice of a motion is sometimes adopted for purposes wholly foreign from its proper object; as, where a member, under pretence of giving notice of a motion, expresses his opinion of some pending measure in terms of severity, contempt, or ridicule, which would be unparliamentary if used in debate, or where a member, in the form of a notice, introduces into the order book what in point of fact is a speech, for the purpose of having it printed with the votes. This is not an evil of much practical importance; nor is there perhaps any mode of preventing it; but, in resorting to this expedient, as a mode of expressing opinion, members should be careful not to give offence; as the house may for such a cause, direct the notice to be expunged;[4] or, in a grave case, might subject the member offending to the censure or other punishment of the house.

1197. The only object of a notice being to secure the house against surprise, every thing, in the form of argument or debate, at the time of giving it, either by the member himself, or by others,

[1] May, 213.
[2] May, 213.
[3] May, 213.
[4] May, 215; Hans. (3), XXIX. 304, 305, 306; Same, LXVI. 306, 307.

is irregular;[1] but, where a member merely stated the subject of his motion without stating the motion itself, and was called upon to explain, Mr. Speaker Addington said it would not be disorderly to suffer him to state the grounds of his motion.[2]

1198. At any time previous to the day fixed for the motion, it is competent for the member giving the notice to withdraw it altogether,[3] or to postpone it to a future day,[4] without giving any reason for his conduct;[5] consequently, neither can the member himself be permitted to address the house, nor can any debate be allowed to take place, on the occasion of such withdrawal or postponement.[6]

1199. When a member has given notice of a motion to be brought forward on a particular day, it is not contrary to strict parliamentary usage, for another member to give notice of a motion on the same subject, and to the same effect, for a previous day;[7] though, as it is understood to be the privilege of a member, who has undertaken a particular business in the house, not to have that matter taken out of his hands by another member, without his consent, such an interference might, under some circumstances, be a breach of parliamentary courtesy.[8]

1200. It is, however, contrary to the established usage, for a member to waive or withdraw his notice for a particular day, for the purpose of accelerating it, that is, bringing it forward on a day previous to the day originally fixed; although such an arrangement might be for the mutual accommodation of those members present who were interested in the subject; inasmuch as what might be thought by the members present a matter of convenience, might appear quite otherwise to those who were absent;[9] and, for the same reason, it is not competent for a member to bring forward a motion, of which he has given notice for a future day, by moving it as an amendment to another motion pending on a previous day.[10]

1201. In order to apportion the public business according to the convenience of the house, it is usual for the house of commons, at the commencement of each session, to set apart certain days on which the "orders of the day," or matters which the house has

[1] Parl. Reg. LXI. 209; Cong. Globe, IV. 80.
[2] Hans. (1), II. 110.
[3] Hans. (2), XVII. 578.
[4] Hans. (1), II. 110.
[5] Hans. (2), XVII. 578.
[6] Hans. (1), II. 110; Same, (2), XVII. 578; Same, (1), XXXII. 337; Same, XXXIII. 531.
[7] Hans. (3), XV. 390; Same, (1), V. 151, 152.
[8] Parl. Reg. (2), IX. 132.
[9] Hans. (1), XXIII. 394.
[10] Hans. (3), XXI. 225; Same, XXX. 8.

already agreed to consider on some particular day, shall be considered and disposed of, before proceeding upon motions of which notice has been given, and to reserve the other days of the week for the consideration of original motions, before proceeding with the orders of the day.[1]

1202. When, therefore, the time is proper for proceeding with notices of motions, that is, after the orders of the day have been disposed of, on those days on which orders of the day have precedence, and at the commencement of the sitting on those days, on which notices have precedence, the speaker calls on the members who have given notices of motions for that day, in the order in which they stand on the list, who thereupon proceed with their several motions, until they are all disposed of.[2]

1203. Each member, whose name is on the list, may, when he is called on, either make the motion of which he has given notice; or withdraw his notice for that day and renew it for another; or he may decline proceeding with it altogether; and, in the two latter cases, — as it is optional with the member to proceed or not, as he pleases, and as no other member has entitled himself to proceed by giving the requisite notice, — the house has no power to proceed with the motion.[3]

1204. If a member, who has given notice of a motion, is not present to respond to his name when it is called, his turn is lost, even although he should only have left the house for a few moments.[4]

1205. It is not strictly regular for a member, when he comes to make the motion of which he has given notice, to vary it materially from the form, which he has adopted in his notice; as, for example, where the notice was for a motion to hear counsel at the bar on a particular subject, and the motion as made was for the appointment of a select committee on the same subject;[5] but if the motion as made do not so far differ from the notice as to change the character of the debate, a variation in point of form merely would not seem to be material.

1206. If, at the time fixed by the notice, the motion is not made, (whatever may be the cause,) the notice is said to be dropped, and the motion cannot regularly be proceeded with by the member, as a matter of right, until revived by a fresh notice. In such a case,

[1] May, 210.
[2] Hans. (3), VIII. 698, 707.
[3] Parl. Reg. XXXII. 43.
[4] Hans. (3), LII. 1247.
[5] Hans. (3), LXXVIII. 717.

however, the house may, by consent, if they see fit, allow the motion to be made.[1]

1207. There is another restriction as to the time of making motions, to which allusion is made in the works on parliamentary law, and which consequently requires some explanation; though having the same general purpose in view with the modern usage as to notices, it appears to have been in a great measure if not wholly superseded, as to its practical operation, by the system of notices of motions, which has just been explained. With a view to prevent motions of importance from being made, after the house has proceeded on the particular business appointed for the day, and where such motions may be a surprise on those members who have left the house, orders have been adopted, from time to time, by the house of commons, prohibiting the making of any new motion after a certain hour; the effect of which orders was, that after the hour thus specified, no new motion could of course be made, without the special leave of the house. In 1695, this hour was fixed at one o'clock; in 1701, at two; in 1728, at four; and, in 1812, it was stated in debate, and not denied, to be at five o'clock.[2]

1208. This rule has been modified, since its first introduction, by a usage, which, when the orders of the day are proceeded upon, makes that circumstance equivalent to the arrival of the hour, after which no new motion can be made without special leave. On those days, therefore, on which the orders of the day are not proceeded upon, no new motion can be made after the hour fixed by the rule, without special leave, unless the member making it has entitled himself to do so by giving the requisite notice. On those days, however, on which the orders of the day are proceeded upon, so long as there remain any orders of the day not disposed of, it is not necessary to have leave to make a new motion, though it should be later than the hour; but, when the orders of the day have been all read and disposed of, no new motion can be made without leave, though it should be much earlier than the hour fixed by the rule. The new motions, which it appears may thus be made without regard to time, whilst the orders of the day are under consideration, must of course be such as by the rules of proceeding admit of being proposed by way of amendment to some one of the legitimate questions arising in the orders of the day.[3]

[1] Hans. (1), XXXII. 803.

[2] Hatsell, II. 183, 184, 185; Hans. (1), XXI. 124, 125.

[3] Hatsell, II. 183, 184, 185; Hans. (1), XXI. 124, 125.

1209. This rule admits of the same exceptions, as the usage requiring notices, namely, that questions of privilege, such, for example, as motions for writs to fill vacancies, — unopposed motions, and matters suddenly arising[1] may be brought forward after the hour limited.

1210. Whether any, and what notices of motion, may or must be given in a legislative assembly, will depend of course for the most part, on its peculiar character, and on the nature and extent of its business, and will be provided for, and regulated by its rules and orders. In both branches of congress, ten days' notice is required to be given, previous to bringing in a bill or resolution, which has been passed in one house and rejected in the other. In the lower house of congress, besides the preceding, notices are only required to be given of motions for leave to introduce bills. In these cases one day's notice, at least, is required to be given, either in the house, or by filing a memorandum thereof with the clerk, and having it entered on the journal. In some of the States notices are made necessary by constitution, to be given of certain specified motions. It is quite common, also, to provide by rule, in our legislative assemblies, that certain motions, when first made, shall lie, for a specified length of time, before they are considered. This is a sort of notice of motion.

SECTION III. MAKING AND WITHDRAWAL OF MOTIONS.

1211. When a member has entitled himself to make a motion, by giving previous notice of his intention in conformity with the usage already explained, and is called on by the speaker at the proper time, he is then and not before at liberty to rise and make his motion. In other cases, a member desiring to make a motion,[2] or to address the house, or indeed to make any communication whatever to it, — must, in parliamentary phrase, obtain the floor, or get possession of the house, for that purpose.

1212. In order to do this, the member rises in his place, and either merely presents himself to the notice of the speaker, or addresses him by his title, as "Mr. Speaker;" the latter thereupon points to the member, or calls him by his name; the member being thus recognized by the speaker, and pointed out by him to the house, as being entitled to their attention, is then at liberty to proceed and

[1] Hatsell, II. 183, 184, 185; Hans. (1), XXI. [2] Parl. Reg. (1), II. 34, 35. 124, 125.

make his motion. This can only be done, of course, when the house is unoccupied, or when the member in apparent possession of the floor has no right to occupy it.[1]

1213. A very common case, in which a member is in apparent possession of the floor, without a corresponding right to occupy it, occurs, when a member speaking suffers his allotted time to run out without resuming his seat; in which case any other member, having a right to speak upon the question, may interrupt the former and take the floor from him.[2] Another very common occurrence of this sort takes place, when the business, to which a member speaking is addressing himself, ceases, by lapse of time, to be any longer in order; or when the hour arrives, which is set apart for the consideration of certain other business, which is specially assigned for that time.[3] In all cases of this kind the member speaking may be interrupted, and the floor taken from him, by a motion to proceed with the business which is then in order;[4] but not to business, which, though in order, is not entitled to precedence over the first.[5]

1214. Whenever a member rises up and addresses the chair, even though he thereby interrupts another who is speaking in order, it is the duty of the presiding officer to recognize such member, and to give him the floor, at least to enable him to explain why he claims it, and proposes to address the assembly; for it may be, that he has something to communicate, which the assembly has a right to hear at once, or has some motion to make, which he has a right to make immediately, and in this way only can it be known, whether such member has not a right to proceed; and it is the duty of the member in possession of the floor, to yield it, and resume his seat, until this question is determined. To interrupt another member, while orderly speaking, without good grounds for the interruption, is itself a breach of order, as it is of decorum.[6]

1215. In making a motion, the member submits his proposition to the assembly directly, and not hypothetically or conditionally, for their present consideration and adoption, making use of apt words for the purpose. The usual form of making a motion is by the words, "I move," or by other equivalent terms. In seconding

[1] J. of H. 26th Cong. 1st Sess. 522, 248; Reg. of Deb. III. 1098; Same, VIII. Part 2d, 2547; Same, XII. Part 2, 2314; Cong. Globe, III. 265; Same, VIII. 242; Same, 426; Same, X. 422; Same, XI. 687; Same, XXI. 1243, 1681.

[2] Cong. Globe, XX. 485.

[3] J. of H. VIII. 503; Same, 32d Cong. 2d Sess. 155; Cong. Globe, VIII. 426.

[4] Cong. Globe, XXI. 1833.

[5] J. of H. 31st Cong. 1st Sess. 1336.

[6] Reg. of Deb. VIII. Part 3, 3874.

a motion, the member says, "I second" such a motion, or the motion of such a member. Other language of the same import is equally effectual. But it is not enough merely to announce an intention to make or second a motion, without making or seconding it accordingly.[1]

1216. If but a single member rises, he, of course, is called to by the speaker, and proceeds with his motion. If two or more rise at or about the same time, and present themselves all together to the notice of the chair, the member who, in point of fact, was first up, is entitled to proceed in preference to the others. The speaker, therefore, in such a case, calls upon the member, who, on rising, was first observed by him, or who, in his judgment, was first up; but, as it is impossible for the speaker to embrace all parts of the house in his view, at the same moment, it may sometimes be obvious to the house, that he has overlooked a member who has the best claim to be heard.[2] When this occurs, it is not unusual for members to express their disapprobation of the speaker's decision, by calling out the name of the member, who, in their opinion, is entitled to be heard; and, if the general voice of the house appears to give him the preference, the member called upon by the speaker usually gives way. The speaker may also in such a case inquire of the house, "which member was first up," or "which member should be heard," and determine the question by the voices. It is competent, likewise, for any member to call in question the speaker's decision; and to move that a particular member be heard; which motion is to be put and decided like any other question. It would seem to be the most proper course, however, where the speaker's decision is not acquiesced in, to put a question first on the name of the member announced by the speaker; and, if that question should be decided in the negative, then upon a name or names suggested by members.[3]

1217. In this country the legislative assemblies, almost invariably, provide by a special rule, as is the case in both houses of congress, that when two or more members happen to rise at once, the

[1] Hans. XXXIII. 55, 70, 71.

[2] "In case of doubt which person, out of a number, was up first, it is the province of the speaker to decide: that is to say, provisionally; for ultimately nothing can be decided but by the house. Upon each occasion, the race, if so one may term it, is renewed; by starting up second, on any occasion, a man does not acquire the right of being first heard upon a succeeding one." Bentham's Political Tactics, Works II. 347.

[3] May, 243; Hatsell, II. 105, 106; Hans. (1), XVIII. 719. When two or more members rise, and are up at the same time, for the purpose of addressing the house in debate, there are other rules, in certain cases, for determining the right of precedence, which will be noticed in their place.

speaker or president shall name the member who is to speak.[1] The rule of the senate adds, that in all cases, the member, who shall first rise and address the chair, shall speak first. The speaker's or president's decision in this respect is not final and conclusive, but like every other, may be called in question, and set aside on appeal.[2] The rule of the senate of the United States, with the addition above mentioned, is precisely the same, practically, with that stated as the rule of parliament in the preceding paragraph.

1218. When a member is rightfully in possession of the house, he cannot be deprived of it, without his own consent, unless some question of order, or of privilege,[3] or incidental to the proceedings, should arise; in which case, his right to proceed may be interrupted and suspended, until that question is disposed of. If the member in possession of the house should be speaking, he can only be interrupted by some other member rising, and, at the same time, stating that he rises, to a question of order, or privilege;[4] and then the speaker must give the latter possession of the house.[5] If the member in possession should not happen to be speaking at the time, another may obtain possession of the house, by rising and addressing the chair, in the usual manner. A member may also obtain apparent possession of the house, when another is so in fact, through the inadvertence or inattention of the speaker or other members.

1219. But, in none of these cases, can the member, thus getting temporary possession of the house, avail himself of it, to make any other motion than as above stated, or one relating to order or privilege; and if he attempts to do so, his motion will be wholly disregarded by the speaker, and the member having previous possession of the house will, notwithstanding, be directed to proceed. If a motion thus irregularly made should be stated to the house by the speaker, and proceeded upon as if it were regular and proper, the irregularity will be at once corrected, upon its being suggested, as a matter of order, to the speaker; and the business will then be directed to proceed precisely as if the motion had never been made.[6]

1220. Thus, where a member had risen to address the house, but,

[1] Cong. Globe, XI. 353, 914.

[2] J. of. H. 19th Cong. 2d Sess. 254; Same, 22d Cong. 2d Sess. 441; Same, 30th Cong. 2d Sess. 247; Cong. Globe, X. 372; Same, XI. 49; Same, XX. 261.

[3] Cong. Globe, VII. 209.

[4] Cong. Globe, XIII. 603.

[5] See also Reg. of Deb. VIII. Part 3, 3874.

[6] Parl. Deb. VI. 98; Hans. (3), XLV. 956. See also Cong. Globe, XI. 242; Reg. of Deb. V. 386.

before proceeding with his speech, another member rose and moved that the debate be adjourned, the speaker, upon his attention being called to the subject as a matter of order, said that the first was upon his legs, and in possession of the house, before the other moved the adjournment, and directed the former to proceed.[1] Two members having risen together, one of them was named by the speaker; but the other proceeded to move an adjournment of the debate, and the question thereon was put to the house; the fact being then stated to the speaker, as a matter of order, he disregarded the motion to adjourn, and directed the member whom he had first named to proceed.[2] A member speaking to order, another rose to order, but moved an adjournment; the irregularity being noticed, the latter gave way, and the former proceeded, no notice being taken of the motion to adjourn.[3]

1221. The same rule, it would seem, ought to apply, where, whilst one member is addressing the house, another is allowed by the courtesy of the member speaking to interrupt him so far as to make an explanation; the latter ought not to be permitted to take that opportunity to make a motion. But, if the explanation is deferred, as it regularly should be, until the member speaking has concluded his speech, there seems to be no reason why the member explaining should not at the same time make any motion which he might regularly make in the course of the debate.

1222. If the member, however, in possession of the house, is not himself entitled to keep possession, as where he rises and asks a question of another member, for the purpose of predicating a motion upon the answer, and the member interrogated, standing up to answer, takes the opportunity to make a motion, the motion appears to be regularly, though, it may be, under the circumstances, unfairly made.[4]

1223. According to the form of proceeding, when it was the custom for the speaker to frame a question from the debate, a motion made by any member in the house of commons could not be put to the question, until it had been "debated, or, at least, seconded and prosecuted by one or more persons standing up in their places;" and then the same might be put to the question, if the question were called for by the house, or their general sense known, on demand or inquiry by the speaker.[5] Agreeably to the practice as

[1] Hans. (3), IV. 789, 790.
[2] Hans. (3), XXXV. 359.
[3] Hans. (3), XLV. 956.
[4] Parl. Deb. VI. 98.
[5] Scobell, 21.

now established, it is only necessary that a motion made by one member should be seconded by another in order to entitle it to be put to the question.

1224. The seconding of a motion seems to be required, on the ground, that the time of the house ought not to be taken up by a question, which, for any thing that would otherwise appear, has no one in its favor but the mover. Whatever the reason of the rule may be, however, it does not appear to extend to the house of lords; in which it is competent for any lord to submit a question for the decision of their lordships without a seconder;[1] nor is it observed in practice, when the house of commons is in committee of the whole.[2] There are some exceptions, also, to the rule, which will be adverted to hereafter.

1225. The form of seconding is similar to that of making a motion. The seconder rises, and addresses or offers himself to the notice of the chair, and, being named or pointed to by him, and thus put in possession of the house, declares simply that he seconds the motion of such a member. In general, if a motion is not seconded, the speaker takes no notice of it whatever, and the business of the house proceeds, as if it had never been made.[3]

1226. If no one rises immediately and seconds the motion, it is customary for the speaker to inquire, "who seconds the motion," or "whether the motion is seconded;" and, if there is no response, he declares the motion not seconded, and takes no further notice of it.[4]

1227. If, when a motion is made, a member rises, and instead of seconding the motion, makes a new one, which is immediately seconded, the first motion falls for want of a seconder, and the other is regularly before the house;[5] but, if after the second motion is made, the first is seconded, the former falls for want of being seconded, and the motion first made is regularly before the house.

1228. If several members rise, at or about the same time, for the purpose of seconding a motion, the right of one of them to proceed in preference to the others must be determined in the manner already stated, where several members rise at the same time for the purpose of making a motion. But, if one member rises to second the motion, and another to make a different motion, it would seem to be most in conformity with the modern practice, for the speaker

[1] May, 216.
[2] May, 288.
[3] Scobell, 21; Hatsell, II. 120, n.; Parl. Reg. (2), X. 65.
[4] Hatsell, II. 120, n.; Parl. Reg. (1), X. 65; Hans. (3), II. 547.
[5] Comm. Deb. VII. 309.

to give the preference to the former, on the ground, that as the motion, unless seconded, falls to the ground of itself, it neither requires any other motion to be made in order to defeat it, nor can it stand in the way of any independent motion of a different character. It is competent for the house, however, to determine the question of priority in favor of the latter, and thus indirectly defeat the motion for the time being.

1229. As no subject can regularly be discussed, but upon a motion made and seconded, motions are sometimes made as well as seconded, for the purpose of giving the mover or seconder a right to address the house in reference to a particular matter, or of obtaining the decision of the house upon it in the negative of the motion; and, therefore, neither the mover nor seconder is under any obligation to vote for the motion which they bring before the house.[1]

1230. The rule, requiring motions to be seconded, admits of an exception in those cases, where the purpose of the motion is to carry into effect the orders or resolutions of the house; as, for example, where the house has ordered that a bill shall be read a second or third time on a given day, a motion on that day, that the bill be now read accordingly, need not be seconded.[2] In those cases also, where a motion is made for the purpose of carrying out one of the standing orders, as, for example, the order for the exclusion of strangers, the proceeding is not so much a motion, as a suggestion or taking notice of the fact that a breach of the order exists, and neither requires to be seconded nor even put to the question. In all cases of this description, where it is manifest that a breach of the standing orders exists, it is the right of every member to have them enforced without delay or debate.[3]

1231. When a motion is regularly made and seconded, or when it is made only, where seconding is not required, it is then the duty of the speaker to propose it as a question for the determination of the house; unless the motion is objectionable, either in point of substance or form, or in reference to the time when it is made. If a motion is objectionable in any of these respects, the irregularity may be pointed out by the speaker, or taken notice of by him of his own motion; and, in either case, being stated by the speaker to the mover and the house, the mover may then withdraw his motion, or modify it and present it in an unobjectionable form.

[1] Hans. (1), VII. 188; Same, XXV. 1138, 1140. But though a member may vote, he is not with us allowed to speak against his own motion. Cong. Globe, XXI. 1094, 1095.

[2] May, 353; Hatsell, II. 120, note.

[3] Hatsell, II. 120.

1232. If the mover, however, insists upon his motion as it is, it must be stated to the house by the speaker. It then belongs to the determination of the house, both as to the point of regularity and as to the subject-matter; though it is nevertheless competent for the speaker or any other member to take the sense of the house upon the preliminary question of regularity. In the former case, the question of the regularity of the motion is involved in the motion itself, and decided at the same time; in the latter, the two questions are separately presented. The irregularity of a motion may be pointed out as well after it has been stated to the house by the speaker as before; but in this case, it is no longer within the power of the mover to withdraw or modify it, but it must be determined by the house in the manner already described.

1233. When a motion has been made merely, but not yet proposed or stated by the speaker, the mover may withdraw, or modify it at his pleasure. This, consequently, is the time at which objections to motions, especially in point of form, are usually made, either by the speaker, or by other members; upon which the mover may either explain and insist upon his motion, as it stands, or he may withdraw it altogether; or, adopting the suggestions for amendment, may modify it at his pleasure; and this power of the mover may be exercised, as it seems, without reference to his seconder, if the motion has been seconded; though, of course, the seconder may withdraw his second, if he does not approve of the motion as amended; or, entirely independent of the mover, if he changes his mind before the motion is stated by the speaker.

1234. If a motion is unobjectionable, or not objected to, on any of the grounds above mentioned; or, having been objected to for some irregularity in point of form, has been put into the proper form by the mover; it then becomes the duty of the speaker to propose it to the house for its determination. In general, a motion is to be stated in the words in which it is moved,[1] or in which the house has agreed that it shall be stated; but, where the mover has evidently misapprehended the terms in which his motion ought to be framed, in order to accomplish the object which he has in view, it is the duty of the speaker to state it in the appropriate form. Thus, where a motion was made, that a resolution which had been debated and rejected by a great majority, should not be entered on the minutes, the speaker proposed the question to the house, "that the proceedings should be expunged," for the reason, that as the

[1] Parl. Reg. XXXIX. 218.

minutes of the proceedings were going on during the debate, and the resolution was therefore already entered, the only mode of accomplishing the object contemplated by the motion would be to expunge the entry of the resolution.[1] In another case, two members having risen to address the house, and one of them being called upon by the speaker, a motion was made in this form, that the member called upon by the speaker, "not being first up, do now speak;" but the speaker stated the question thus, that the other member, "being first up, do now speak."[2]

1235. When a motion has been stated by the speaker to the house, and proposed as a question for its determination, it is then in the possession of the house, to be decided or otherwise disposed of according to the established forms of proceeding, and is no longer in the power of the mover to withdraw or modify without the consent of the house. But with the leave of the house, a motion may be withdrawn, either by the mover, or at the suggestion of any member at any time before the question is fully put upon it, even if the debate has been adjourned.[3]

1236. In order that a motion may be withdrawn after being stated, the unanimous consent of the house must be given, upon a request or motion made for that purpose by the mover or some other member; though, as has already been seen, until a motion has been stated, it is entirely within the control of the mover to withdraw or modify at his pleasure.

1237. The usual form of proceeding in the withdrawal of a motion is for the mover, either of his own accord, or upon the suggestion of the speaker or some other member, to express a wish to withdraw his motion; if the seconder gives his consent,[4] the speaker then puts the question, that the motion be withdrawn; and if there is no dissenting voice, the motion is withdrawn accordingly. If any one member dissents, the motion cannot be withdrawn, but must be decided by the house.[5] It is not usual to put the question for withdrawing until the mover and seconder have given their consent, provided they are present to do so; but if they happen to be absent from the house at the time, so that their consent cannot be obtained, the question may nevertheless be put, and the motion withdrawn by the consent of the house.[6]

1238. If any other motion, as, for example, the previous ques-

[1] Hans. (3), XVII. 1281, 1324.
[2] Cav. Deb. II. 386.
[3] Parl. Reg. XXII. 631, 632; Hans. (1), XXXVII. 1072, 1079.
[4] Hans. (3), V. 1220.
[5] Parl. Reg. LXIII. 282.
[6] Parl. Reg. LXIX. 189, 190.

tion,[1] or an amendment,[2] is pending at the time in reference to a motion which the mover desires to withdraw, the consent of the mover and seconder of such second motion must also be obtained, before the question can be put for withdrawing the first. In this case, the question is put, in fact, upon withdrawing both motions at the same time, and will of course be negatived by the dissent of any one member, who wishes to decide the first motion either by itself, or by means of or connected with the second motion; but, though the first motion cannot be withdrawn without the second, the latter may be withdrawn, like any other motion.

1239. After a motion has been proposed by the speaker, and thus put into the possession of the house, the mover and seconder have no more control over it than any other member; nor is their presence in the house, any more necessary for considering or disposing of it, than the presence of other members; and, therefore, when a motion has been regularly stated, the fact of its having been moved cannot be called in question, merely because the mover is not present, at the moment, and cannot avow the motion to be his.[3]

1240. When a motion has been proposed by the speaker, it is no longer in the power of the mover to modify it, at his pleasure, as he may do before it has been stated; it can then only be altered by being amended, on motion and vote, in the usual manner;[4] unless the house give the mover leave to withdraw his motion, for the purpose of offering it in a different form;[5] or it is presumed, unless he should be allowed to modify it by general consent.

1241. It is deemed so essential in the legislative assemblies of this country, that the mover of a motion should possess the right of withdrawing it at pleasure, that it is generally provided by a rule, that a motion after it is in possession of the house may be withdrawn by the mover at any time before a decision or amendment.[6] The mover may modify his motion either at his own suggestion, or by adopting a modification or amendment suggested by another. The right to modify is a consequence of the right to withdraw and may be exercised whenever the latter is allowable,[7] except when the previous question has been moved, in which case,

[1] Hans. (1), XXXIV. 139.
[2] Hans. (2), XI. 913, 915, 918.
[3] Parl. Reg. XXIV. 76, 77; Same, XXV. 158, 159, 160.
[4] Parl. Reg. XVII. 107.
[5] Parl. Reg. XXV. 303, 313, 327, 328.
[6] This is the rule of the house of representatives of the United States. The rule of the senate provides that a motion may be withdrawn at any time before a decision, amendment, or ordering of the yeas and nays.
[7] J. of H. 30th Cong. 1st Sess. 196.

the mover of the proposition to which the previous question applies, may withdraw his motion altogether, but is not at liberty to modify it.[1] All cases, not coming within the rule of the particular assembly, as to the withdrawal of motions, either in regard to times or subjects, are governed by the rules above stated.

1242. In regard to petitions, memorials, and papers of that description, all motions relating to them stand, in this respect, upon the footing of other motions. Bills and reports and similar papers so long as they remain in the form of motions, are subject to the like rules. When, however, papers of this and the former description have been received by the house they can only be withdrawn with its consent obtained and evidenced in the usual manner.[2]

1243. Where a motion is withdrawn, either before it is proposed as a question, or at the suggestion of the mover, or by the leave of the assembly, it may be moved again.[3]

1244. When the paper, on which a motion is founded, has been received from the other branch, or is reported by a committee, or has passed into the possession of the assembly, it cannot be modified; inasmuch as there is no person in existence, as a member of the assembly, who has authority to suggest or accede to a modification.[4]

1245. The mover of a proposition may modify it so as essentially to change its character; in which case, all motions, predicated upon it as it stood originally may fall, and it will be no longer objectionable on the ground, that the judgment of the assembly has been already expressed upon it.[5] A modification is not allowable, where the effect of it would be to introduce a new instrument, as, for instance, a bill or joint resolution, contrary to the rules of the assembly.[6]

1246. If the mover withdraws his motion, upon a compact with some other member to renew it, the presiding officer cannot recognize or enforce any such compact; but will leave it entirely to the honor and opportunity of the member with whom the compact is made.[7]

1247. Under the rules applicable to this subject, the seconder of a motion may, it seems, withdraw his second.[8]

[1] J. of H. 26th Cong. 1st Sess. 1288; Same, 27th Cong. 1st Sess. 813; Same, 31st Cong. 1st Sess. 1395; Cong. Globe, XI. 471.

[2] See post, § 2339.

[3] Cong. Globe, XVII. 273; May, R. O. &c., 131.

[4] Cong. Globe, XXI. 835; Same, XXIII. 129.

[5] Cong. Globe, XVIII. 179, 180.

[6] J. of H. 32d Cong. 1st Sess. 679.

[7] Cong. Globe, VIII. 173, 174; Same, XI. 687, 916; Same, XVIII. 48.

[8] Lloyd's Deb. II. 5.

1248. When the mover of a proposition has a right to withdraw it, at his pleasure, he may do so at any time when he can obtain the floor for the purpose, whether a quorum is present or not; but when a motion is necessary for the purpose, this can only be made and acted upon, when a quorum is present.

1249. After a motion has been proposed, it is regularly to remain upon the table before the speaker; and, whilst under consideration, it is the right of every member, as often as he may desire, to look at it, or require it to be read, for information.[1] But no member has a right to inspect it as it lies on the table.

CHAPTER SECOND.

OF MOTIONS CONSIDERED WITH REFERENCE TO THEIR SUBSTANCE.

1250. It being the right of every member to propose any motion he may think proper, for the consideration of the house,[2] unless restrained by some express prohibition, or by considerations of public policy, or by the necessity of regularity and order in the proceedings, the subject of this chapter will be most conveniently treated in the negative form by showing what motions are objectionable.

1251. I. Motions in contravention of a statute are objectionable on that ground; although, as it is in the power of the two houses, to repeal the act, each of them may institute proceedings for that purpose; yet, whilst an act remains unrepealed, it is binding on the members collectively as well as individually. Thus, a motion made in the house of commons, contravening any of the provisions of the several acts regulating the trial of controverted elections, would be irregular. For a similar reason, in this country a motion is objectionable, which is in contravention of a constitutional provision, or of an act of the legislature made in conformity therewith.

1252. II. A motion, which is in contravention of any of the standing orders, is irregular,[3] for the reason, that it violates the laws

[1] Romilly, 274; Hatsell, II. 112.
[2] Hans. (3), LXIII. 1446.
[3] Parl. Reg. XI. 147, 485.

which the assembly has imposed on itself for its own government, and for the regulation of its proceedings; and although it can, if it sees fit, repeal any of its orders, yet, whilst an order is in force, it cannot be disregarded; and, therefore, no member is at liberty to make a motion repugnant to a standing order of the house.

1253. III. A motion, which contravenes a particular or special order of the house, is also objectionable for the same reason; although the orders of the house may be rescinded or discharged, at the pleasure of the house at any time. Thus, if the house order that a bill be read a second time on a particular day, a motion on some other day that it be then read a second time would be irregular, as contravening the order of the house for the second reading; but the house might, nevertheless, discharge or rescind the order for the second reading.

1254. IV. It is a rule, introduced in order to avoid contradictory decisions, to prevent surprises, and to afford opportunity for determining questions as they arise, that no motion shall be made or question proposed, which is substantially the same with one on which the judgment of the house has already been expressed during the session,[1] or which is still pending in the house or before a committee.

1255. If the motion proposed is the same in substance with that already determined, no mere alteration of the language will be sufficient to evade this rule. Thus, where a motion was made for a bill to relieve dissenters from the payment of church-rates, the form and words of which were different from those of a previous motion, but the object of which was the same in substance, and the speaker called the attention of the house to the point of order, the house agreed that the motion was irregular, and ought not to be proposed.[2] But when a motion for leave to bring in a bill has been rejected, although a second motion of the same substance cannot be entertained, it is competent to move for a committee of the whole, or a select committee, to consider of the laws to which the rejected bill referred; and this is an expedient often resorted to.[3] The rule may be evaded by framing the new motion, with such differences as to form and matter, as to be beyond the restriction, while the purpose in view is susceptible of being effected under it. But the rule cannot be evaded by renewing, in the form of an amendment, a motion which has already been disposed of.[4]

[1] May, 233.
[2] May, 234; Comm. Jour. XCV. 495.
[3] May, 234.
[4] Hans. (3), LXXVI. 1021; May, 234.

1256. The same rule applies, where the motion is inconsistent and interferes with a vote already passed; as, where the house having voted the cavalry for three months, and a motion was made for an address to the king, entreating him to consider of the benefits that would result from reducing the number of the cavalry now maintained, Mr. Speaker Addington suggested, that the motion was improper as interfering with the previous vote, and the house acquiesced in the suggestion.[1] So where a committee has been appointed for the consideration of a particular subject, as, for instance, a controverted election, a motion cannot be entertained by the house, which comprises any thing that may be inquired into by the committee.[2]

1257. So, where the purpose of the motion is to call upon the house to rejudge what it has already judged during the session, the motion is irregular;[3] as where a witness having been adjudged guilty of prevarication, and committed, and a member having given notice of a motion on the subject, and addressing the house in support of the motion, with which he intended to conclude, contended that prevarication could not apply to the evidence given by the witness, which he then proceeded to examine, the member was not allowed to go on, on the ground, that the purpose of his motion being to call upon the house to rejudge a question already decided, it was irregular.[4]

1258. For the same reason, that a question, which has been already decided, cannot be again proposed, it is irregular to renew a motion, which has been decided to be out of order, and therefore inadmissible.[5]

1259. But the rule does not apply to the different stages of a bill; the same proposition which has already been rejected in a prior stage, may be again moved in another.

1260. But, though a motion is irregular, which proposes a question already decided, it is nevertheless competent for the house to rescind a vote. This is allowed, in order that the discretion of parliament may not be too strictly confined, and its votes subject to

[1] Parl. Reg. LVIII. 326.

[2] Hans. (2), XVI. 1186.

[3] An instance is recorded in the Commons Journal, in the 19th Charles II. of leave being given to speak against an order of the day previous, which was followed by a discharge of the order in question, and the making of a new one on the same subject. Comm. Jour. IX. 20. At this time, it was customary for the speaker to frame the question from the turn of the debate; and it is probable, that in the proceeding referred to, the house permitted the order to be spoken against, that the debate might be followed by a question to rescind or discharge the order. In modern times, the same object would be reached by a direct motion to rescind in the first instance.

[4] Hans. (1), XIV. 113.

[5] Parl. Reg. LVIII. 326.

irrevocable error. In point of form, the rescinding of a vote is the matter of a new question; the form being to read the resolution of the house, and then to move that it be rescinded; and, thus the same question, which has been already resolved, is not again offered, although its effect is annulled.[1]

1261. When the resolution or vote stands in the form of an affirmative proposition, a motion to rescind it may be framed without difficulty; but, where it is in the negative, it may be difficult, in some cases, to frame a question for the purpose, without presenting the same question a second time. In such a case, the only mode by which a negative vote can be revoked, is by proposing another question similar in its general purport to that which has been rejected, but with sufficient variance to constitute a new question; leaving it to the house to determine whether it is or not the same question.[2]

1262. It seems to be immaterial, whether the motion, upon which the decision of the house has already taken place, is the same which is newly moved, or only an equivalent motion.[3]

1263. No order can be made in reference to a subject, which is not regularly before the assembly;[4] and, therefore, where a member read a series of resolutions, and then moved that they should be printed, Mr. Speaker Addington said, that, as the resolutions had not been regularly moved, no order could take place with respect to them.[5]

1264. The inconvenience, sometimes resulting from the practical application of the rule above stated, has led to the introduction into the parliamentary practice of this country of the motion for *reconsideration;*[6] which, while it recognizes and upholds the rule in its ancient strictness, yet allows a deliberative assembly, for sufficient reasons, to relieve itself from the embarrassment, which might attend the strict enforcement of the rule in a particular case; so that

[1] May, 233.

[2] May, 234.

[3] Hatsell, II. 116. As to equivalent questions, see post, § 1830.

[4] J. of H. 17th Cong. 1st Sess. 290; Reg. of Deb. III. 1142; Cong. Globe, III. 261; Same, VIII. 161; Same, XVIII. 799, 867; Same, XXI. 1431.

[5] Parl. Reg. XLIV. 108, 113.

[6] This motion, though parliamentary in its character, is entirely American in its origin, and one of the few motions known only in our legislative assemblies. The nearest approximation to it that I can find in the proceedings of the house of commons is contained in the ninth volume of the journals of that body, and inserted in the note to paragraph 1257. Neither does it depend for its existence on the rules and orders of any assembly in which it prevails, though it is commonly regulated by them. It appears to have been in frequent use in the congress of the confederation, though it is not mentioned in the rules and orders of that body; and it was in common use in the house of representatives of the United States before any rules on that subject were adopted.

it has now come to be a common practice in all our legislative and other deliberative assemblies, and may consequently be regarded as a principle of the common parliamentary law of this country, to reconsider a vote already passed, whether affirmatively or negatively.

1265. For this purpose a motion is made and seconded, in the usual manner, that such a vote be reconsidered, that is, that the subject of it be again considered by the assembly; and if this motion prevails, the effect of the vote in question is abrogated, and the matter stands before the assembly in precisely the same state and condition, and upon the same question, as if the vote, which has been ordered to be reconsidered, had never been passed. Thus, if an amendment by inserting words is moved and rejected, the same amendment cannot be moved again, but the assembly may, on motion, reconsider the vote by which it was rejected, and then the question recurs on the amendment, precisely as if the vote had never been taken upon it.

1266. It is usual in our legislative bodies, and in other deliberative assemblies of a permanent character, to regulate by a special rule the time, manner, and by whom, a motion to reconsider may be made; as, for example, that it shall be made only on the same or a succeeding day, or within a given number of days; by a member who voted with the majority; or at a time when there are as many members present as there were when the vote was passed; but, where there is no special rule on the subject, a motion to reconsider may be made at any time, or by any member, precisely like any other motion, and subject to no other rules.

1267. If the time is fixed in which a motion to reconsider must be made, and it is made accordingly, but the consideration of it is postponed to a subsequent day, at which time it is withdrawn by the mover, it is then too late to renew the motion.[1] The same result follows if, when a vote has been taken and declared in the affirmative or negative, it is afterwards ascertained upon a recount or otherwise, that the vote was incorrectly declared, and in fact passed the other way.[2]

1268. It is commonly provided also by the rule relating to this subject, that the motion to reconsider shall only be made by one who voted with the *majority* on the question to be reconsidered. If a member's right to make the motion is questioned on this

[1] J. of H. 27th Cong. 2d Sess. 1118, 1122; Cong. Globe, XV. 856.

[2] Cong. Globe, XXIII. 296; J. of H. 30th Cong. 1st Sess. 1080.

ground, the fact is to be ascertained by an inquiry of the member himself how he voted; and if before the motion has been decided, it is discovered that the mover had no right to make it, even though the time for such a motion has elapsed, all the proceedings with reference to it will be null. When no division of the house takes place, all the members present[1] are deemed to have voted with the majority, and may accordingly move a reconsideration.[2]

1269. The term majority means the prevailing party; and therefore when a question is lost by a tie vote, those who vote in the negative are alone entitled to move a reconsideration.[3]

1270. The motion to reconsider, though relating to the same subject already considered, is, in a parliamentary sense, a new one, distinct both from a motion to rescind the former vote, and from the subject of it.

1271. The first effect of this principle is, that the motion to reconsider is to be decided by the votes of a majority in the ordinary manner, though a different rule, requiring more or permitting less than a majority, is established for the decision of the question which it is proposed to reconsider.[4]

1272. The second effect of this principle is that the motion to reconsider is debatable, although the question which it is proposed to reconsider is not.[5] In the debate on the motion to reconsider, the merits of the principal question are usually brought forward and discussed, though it is plain that they are not involved, and that the question is whether the principal subject shall be again considered.

1273. The third effect of this principle is, that when one motion to reconsider has been made and decided, either in the affirmative or negative, or is still pending,[6] no other motion to reconsider

[1] J. of H. 29th Cong. 1st Sess. 1049, 1050; Reg. of Deb. XV. Part 2, 1515; Cong. Globe, XVIII. 400.

[2] Reg. of Deb. XI. Part 2, 1393; Cong. Globe, VIII. 359; Same, XI. 242, 452.

[3] J. of H. 26th Cong. 1st Sess. 211; Same, 30th Cong. 1st Sess. 1081.

[4] J. of S. V. 92; J. of H. 19th Cong. 1st Sess. 796; Same, 30th Cong. 1st Sess. 405. But see Cong. Globe, XX. 199.

[5] In view of the inconvenience that would be likely to result from allowing debate on a motion to reconsider a question which was not debatable, it has been several times decided in the house of representatives of the United States, that such a motion could not be debated, etc. Cong. Globe, VI. 145; Same, XX. 463; Same, XXI. 831.

[6] J. of H. 27th Cong. 1st Sess. 618, 619, 620; Same, 31st Cong. 1st Sess. 1397. It is an expedient often resorted to in the house of representatives in the congress of the United States, when it is desired to put a measure which has passed out of the reach of danger, for the friends of it to move a reconsideration, and then to pass an order, that that motion lie on the table. The bill or other measure does not cohere to the motion for reconsideration so as to lie on the table with it, but passes along through its regular stages as if

the same question is admissible; but if the question since its first reconsideration has been so altered by amendments, as to be no longer the same, it may again be reconsidered.[1]

1274. The fourth effect of this principle is, that though a motion for reconsideration may be made and discussed in the absence of the paper to which it relates;[2] yet if decided in the affirmative, it will be wholly ineffectual and inoperative until the paper in question is in possession of the house. The first step, therefore, after a vote to reconsider is to send to the other branch, or to the executive, for the paper in reference to which the vote to reconsider passes, or otherwise to bring it before the house. Possession of the paper may also be obtained before the motion to reconsider is made. In either case, the motion for the paper is incidental to the motion to reconsider.[3]

1275. It is a general principle with regard to reconsideration, that at a subsequent stage there can be no reconsideration of a preceding vote in relation to the same subject, without first voting to reconsider such subsequent vote;[4] thus, after a bill has been read a third time and passed, it is then too late for a motion to reconsider the vote ordering it to a second reading, or rejecting an amendment proposed at that stage, unless the second reading of the bill is first reached by reconsidering the preceding votes.

1276. It is a general principle, also, with regard to this matter, that there can be no reconsideration of an order, the execution of which has already commenced, as, for example, the previous question, while the main question is being taken,[5] though such order may be rescinded or discharged, if the nature thereof will admit of such a motion, as to so much of the same as remains unexecuted. Nor can a reconsideration take place in a committee;[6] or in committee of the whole;[7] or of an order of a preceding legislature.[8]

1277. When a motion to reconsider is decided in the affirmative,

that motion had not been made. The effect of this proceeding is, that no second motion to reconsider can be made, and the first cannot be got at; it cannot be taken up out of its order in which it is not likely to be reached during the session, without a vote of two thirds.

[1] J. of H. 27th Cong. 2d Sess. 1022; Cong. Globe, XIII. 741; Same, XXI. 1372, 1373; J. of H. 31st Cong. 1st Sess. 1397; Cong. Globe, XXI. 1771.

[2] J. of H. 26th Cong. 1st Sess. 1033; Same, 27th Cong. 1st Sess. 1125, 1131; Same, 29th Cong. 1st Sess. 657; J. of S. 30th Cong. 2d Sess. 137, 173, 291; Cong. Globe, VIII. 424; Same, XI. 242; Same, XII. 244.

[3] J. of H. 30th Cong. 1st Sess. 704.

[4] J. of H. 31st Cong. 1st Sess. 860, 861; Reg. of Deb. I. Part 1, 786; Same, III. 28; Cong. Globe, VIII. 231; Same, XXIII. 287.

[5] J. of H. 31st Cong. 1st Sess. 101.

[6] Cong. Globe, VIII. 419, 420.

[7] Cong. Globe, IX. 203; Same, X. 59; but see Same, VI. 423.

[8] Reg. of Deb. IV. Part 2, 2766.

the question or business to which it is attached, immediately takes the place to which it belongs in the general order of business in the assembly,[1] or goes over to the next day on which business of the same description is in order.[2]

1278. When a motion to reconsider prevails, it has a twofold effect; first, it entirely abrogates the vote passed on the question, which is thereby ordered to be reconsidered;[3] and, secondly, it again brings forward that question, to be discussed and decided in the same manner it was originally, for the consideration and determination of the assembly.[4]

CHAPTER THIRD.

OF MOTIONS CONSIDERED WITH REFERENCE TO THEIR FORM.

1279. A motion is a proposition made to the house by a member, which if adopted becomes the resolution, vote, or order, of the house. The form of a motion must consequently be so framed, and its language so expressed, that, if it meets the approbation of the house, it may at once become the resolution, vote, or order which it purports to be. In considering motions in reference to their form, it will be most convenient to treat of the subject affirmatively, by pointing out the several requisites as to form, which a motion ought regularly to possess.

1280. I. Motions are usually expressed in the affirmative, even where their purpose and effect are negative, although there is no strict rule which prohibits them from being put in the negative form. Thus, for example, the form of the previous question is, *that the main question be now put*, which is an affirmative proposition, though in parliament, the purpose of the mover is to obtain a decision of it in the negative, and the motion is said to be carried, when, in point of form, it has been rejected. So, where the purpose of a motion is the rejection of words from another motion or question, the parliamentary form in which it is proposed to the house is, that

[1] Cong. Globe, XX. 463.
[2] J. of H. 27th Cong. 1st Sess. 618, 619, 620.
[3] *Withington* v. *Harvard*, Cushing's Reports, VIII. 66.
[4] Cong. Globe, VIII. 410; Same, XXI. 832.

those words stand part of the question, which is an affirmative proposition.

1281. But though motions are not usually expressed in the negative, yet, when expressed affirmatively, and decided by the house in the negative, such negative decision is as much the judgment or decision of the house, as an affirmative decision would have been,[1] and so, it is presumed, that if a motion was allowed to be put in the negative form, and it should be decided negatively, the decision of the house would be considered as affirming the proposition.

1282. In the house of commons, where, in case of an equality of votes, the speaker gives the casting vote, there seems to be no other difference between putting a question negatively and affirmatively, than what results from the greater simplicity and regularity of the latter form. But, in the house of lords, in which the lord chancellor gives his vote with the other peers, and has no casting vote, and in which, in case of an equality of voices, the decision of the house is in the negative of the proposition submitted to it, a question, upon which the house is equally divided, will receive a decision the one way or the other, according as it is proposed in the affirmative or the negative. Thus, if the motion is proposed in the affirmative, and the house is equally divided, the decision is in the negative; but if the motion was proposed in the negative, and the same members should vote precisely in the same manner, and divide equally, the decision would be in the affirmative. In some of the American legislative assemblies, questions are frequently determined by an equality of voices.

1283. II. A motion must regularly be in writing. It is usually prepared beforehand, or written on the spot, by the member by whom it is proposed. If a member, however, who has occasion to make a motion, has not prepared it beforehand, and insists upon his privilege, he may dictate the words of his motion to the clerk, and have them written down by him. But it is not usual for members to receive the assistance of the clerk in this manner, unless they are laboring under some infirmity, which prevents them from writing their motions for themselves.[2] In this country it is usual to provide by a rule, either that all motions shall be submitted in writing, or that they shall be reduced to writing if demanded by the presiding officer or any member of the assembly. The latter is the form of

[1] On the 2d of April, 1604, it was laid down, as a rule in the house of commons (Comm. Jour. I. 162,) "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] Romilly, 273; Grey, III. 336; Parl. Reg. LXVI. 437; Hans. (1), XXII. 745, 746.

the rule in both houses of congress.[1] It is not usual, however, for the speaker to require those motions to be presented in writing, which are made for the purpose of disposing of other motions and questions, or which are made in the ordinary course of proceeding, such, for example, as motions to adjourn the house or the debate, for the previous question, or for reading the orders of the day.

1284. III. Every motion being an independent proposition, or a series of propositions relating to the same subject, it is a rule, that a member cannot make two or more separate motions at the same time.[2] It therefore seems irregular and unparliamentary to make what is ordinarily the matter of two motions the subject of one; yet this has been allowed in the house of representatives of the United States, even in cases in which one of the motions is not debatable,[3] or where one requires only a majority of votes for its determination, and the other a vote of two thirds,[4] and two questions must accordingly be taken on the proposition. In that body, also, nothing is more common than for the motion to reconsider, accompanied by a motion that that motion lie on the table, to be submitted at the same time. Another more unparliamentary proceeding, which is allowed in that assembly, is, for a proposition and the previous question upon it, to be both moved at the same time.[5]

1285. Where a member proposes a series of propositions relating to the same subject, that is to say, a string of resolutions, he first reads, and, if necessary, explains the whole series, and then moves the first. In this mode of proceeding, the first resolution tests the sense of the house; if adopted, the others follow as a matter of course; if rejected, there is no occasion to move them at all.[6]

1286. In general, it is true, that inconsistent propositions cannot be blended together for any serious purpose, and a motion would be objectionable in point of form, which should attempt to do so; yet the practice of coupling two heterogeneous propositions together, by means of an amendment, for the purpose of fixing

[1] This rule is complied with if a printed motion, or one partly in print is submitted. See Reg. of Deb. VI. Part 2, 1421.

[2] Hans. (3), XX. 436; J. of H. 26th Cong. 2d Sess. 483; Cong. Globe, XVIII. 1007.

[3] Cong. Globe, XV. 124, 125; Same, XVIII. 35.

[4] Cong. Globe, XV. 124, 125; Same, 407, 408; Same, 1164, 1165; Same, XVIII. 35.

[5] The propriety of this proceeding has often been called in question, but has been sustained by the house on the grounds of convenience and precedent. J. of H. 25th Cong. 2d Sess. 1303; Same, 26th Cong. 1st Sess. 1033; Same, 27th Cong. 1st Sess. 558; Same, 30th Cong. 1st Sess. 326; Cong. Globe, VI. 505; Same, VIII. 282, 283, 432, 436; Same, 494; Same, X. 154; Same, XI. 33; Same, XII. 123; Same, XIII. 324, 368; Same, XV. 84, 192, 237, 238; Same, XVIII. 179, 180.

[6] Hans. (3), XX. 436; Romilly, 277.

absurdity on the whole, is often permitted to take place as a method of taking the sense of the house on a particular question.[1]

1287. IV. A motion should not be so long and so minute in what it requires, as to render its adoption contrary to the usual custom of the house;[2] nor should it be argumentative and more in the style of a speech than of a motion;[3] nor should it contain any unnecessary provisions,[4] or objectionable words,[5] or be itself unnecessary;[6] nor be moved for the purpose merely of throwing ridicule or contempt upon some other motion.[7] So a motion is objectionable, which proposes something to be done, contrary to the orders of the house, as where a motion was made to bring up a petition praying for public money, which had not been recommended by the sovereign;[8] or where a motion was made to bring up a petition, which had erasures on it not made with the knowledge of the petitioners.[9]

1288. If the language of a motion is offensive either to the house, or to any member, the same proceedings may be had in relation to it, as are proper in the case of disorderly or offensive words used in debate;[10] and, for the same cause, a motion may either be refused an entry among the minutes, or if already entered, may be expunged.[11]

1289. In all these cases, the speaker calls the attention of the mover and of the house to the irregularity of the motion before stating it; whereupon the motion is usually withdrawn or so modified as to be no longer objectionable. But if the motion is of such a nature, that the objection cannot be removed, as in the two last-mentioned cases in paragraph 1233, the speaker refuses to receive or put the motion to the house, but treats it as a nullity.

1290. If a motion is not objectionable, in any of these respects, or if it is objected to, and the objection is not sustained by the house, it is the right of the mover to have his motion proposed in the very words, in which it is made;[12] and Lord Thurlow said he should consider any decision false, that was come to upon a question, the words of which had been altered from the original motion given in by the mover.[13]

[1] Parl. Reg. (2), XVII. 199.
[2] Parl. Reg. LVIII. 194, 195.
[3] Hans. (3), XVII. 1281, 1324.
[4] Hans. (3), XXV. 436.
[5] Hans. (1), VII. 872.
[6] Parl. Reg. LVIII. 194, 195.
[7] Hans. (3), LIII. 1391, 1392. See also Cong. Globe, XIV. 36.
[8] Parl. Reg. (2), VII. 261, 262.
[9] Hans. (3), V. 1267, 1268.
[10] Parl. Reg. XXXIX. 218.
[11] Hans. (3), XVII. 1281, 1324.
[12] Parl. Reg. XXXIX. 216.
[13] Parl. Reg. XXXIX. 218.

CHAPTER FOURTH.

OF MOTIONS CONSIDERED WITH REFERENCE TO THE TIME WHEN THEY ARE MADE.

1291. It being contrary to the course of the house, that any business should be laid aside, until it is determined by a question;[1] it is a rule, that, when a motion has been made, seconded, and proposed by the presiding officer, no other motion for the introduction of any new business can be regularly made, until the former has been decided by a question, or otherwise disposed of, according to the forms of the assembly;[2] and, consequently, a motion, which, in all other respects, is perfectly regular, may be objectionable if made during the pendency of another motion. This rule is applicable to subsidiary or secondary,[3] as well as to principal, motions.

1292. This rule is subject to several exceptions: *first*, in reference to all those motions, which, having for their object to dispose of a principal motion, such, for example, as a motion to amend, or commit, or for the previous question, must necessarily be put and decided before the question is taken on the first motion, unless they do not have the effect to supersede that motion altogether, in which case it is disposed of without their being first put to the question.

1293. A *second* class of exceptions consists of those motions which, though not made use of to dispose of the principal motion, arise out of and are incidental to that or other questions connected with it; as, for example, questions relating to order, motions for the reading of papers, for leave to withdraw a motion, etc.; which are of course to be put and decided before the questions which give rise to them.

1294. To the same class belong also those motions, which are

[1] Scobell, 29.

[2] Hans. (1), I. 1002, 1022, 1025; Romilly, 275; Scobell, 21, 22; Hatsell, II. 123; Comm. Deb. X. 293; Hans. (1), IV. 186, 190; Same, XXIII. 284; Same, (3), LXII. 1068; Parl. Reg. XXIV. 76, 77; Same, XXV. 158, 159, 160; J. of H. VII. 234; Same, 19th Cong. 1st Sess. 794; Reg. of Deb. III. 1099; Same, VIII. 950; Same, X. Part I. 1388; Cong. Globe. VI. 314, Same, X. 264, 405; Same, XVIII. 93; Same, XX. 492, 493.

[3] For a definition of these motions, see post, § 1443.

incidental to the course of business, as motions to adjourn, or to adjourn during pleasure, or that a particular member be allowed to address the house without rising, or in reference to some matter suddenly arising and requiring instant determination.

1295. A *third* class of exceptions to the rule above stated consists of what are called questions of privilege, or those which concern the rights and privileges of the house itself, or of its individual members; as, for example, when the proceedings are disturbed or interrupted, whether by strangers or members within the house, or by a mob without; or when a quarrel arises between members; or when the house is informed that one of its members is forcibly detained from his attendance. In all cases of this description, the subject requires the instant attention of the house, even though a member should be speaking, and supersedes all other business until decided by a question, or otherwise disposed of for the time being.

1296. In regard to the practical operation of the rule, that whilst a motion is pending, no other can be made, with the exceptions above stated, it is to be remarked, that when a new motion is declared by the speaker or the house to be irregular, as not coming within any of the excepted cases, the motion is not considered as made at all; so that when the pending motion is disposed of, the mover of the new one must then present his motion, if he thinks proper to proceed with it, in precisely the same manner as if it had never been moved; but, when the new motion comes within the exceptions and is thus entitled to precedence, it merely supersedes the first, for the time being, which revives and is before the house, in the same manner as before, when the second motion has been decided, unless it has itself been decided by the decision of the other.[1]

1297. A motion, which is in order when it is made, may cease to be so by the mere lapse of time, as where a particular time is set apart, by a rule, for the consideration of business of that description; in which case the business in question, with all the pending

[1] The terms in which this rule is expressed, in the works on parliamentary practice, clearly refer to the order of proceeding which was observed, when the members expressed their several opinions, in reference to any subject that was introduced, and the speaker afterwards framed or selected the question from the turn of the debate, or from the suggestions thrown out by the members in the course of their remarks. Hatsell states the rule thus: "The question, which is first moved and seconded, is to be put first," (Hatsell, II. 111); which is perfectly intelligible, if referred to a time, when the members made their several motions, and presented them all to the house, before any one was stated by the speaker. But, in modern times, it cannot be said that there is a question *first* moved, because in point of fact, no other or second is or can be moved, except as above stated.

motions connected with it, is suspended by the expiration of the time, until the next day on which such business is in order. Thus, where Monday of each week was devoted to the consideration of resolutions, it was held, that a resolution, introduced on that day, and debated until the expiration thereof, at twelve o'clock at midnight, ceased to be in order at that time, and then passed from the assembly until the next Monday.[1]

1298. But where the time fixed in a motion for the doing of a particular act expires whilst the motion is pending, so that the doing of the act becomes impossible, as where a resolution provided that debate on a certain topic should cease at two o'clock in the afternoon on that day, which hour elapsed whilst the resolution was pending, it was held that the latter did not thereby become objectionable in point of order.[2]

1299. When a motion has been proposed and decided, it cannot, as has already been seen, be moved a second time during the same session, and, if so moved, is objectionable in point of substance; but where a motion has not been decided, but only disposed of temporarily, it is only objectionable if renewed within the time, for which it is considered as disposed of, but not afterwards; as, where the proceeding in reference to a particular question is considered as precluding any further proceeding in relation to that subject, on the same day, no motion can be made relating to it on that day, though there may be afterwards. Thus, where a motion is withdrawn by the leave of the house, it cannot be renewed the same day;[3] so, where a petition is ordered to lie on the table, a motion cannot be received on the same day for referring it to a committee;[4] and so, where a motion has been suppressed by the previous question, it cannot be renewed on the same day.[5]

[1] J. of H. 31st Cong. 1st Sess. 577.

[2] J. of H. 29th Cong. 1st Sess. 1277; Cong. Globe, XV. 1223.

[3] Parl. Reg. XL. 173, 174.

[4] Hans. (1), VIII. 1002; Same, (2), V. 171, 172, 173.

[5] The principle seems to be, that an order of the house cannot be discharged or rescinded, on the same day on which it is made, nor any motion sustained, or order adopted, inconsistent therewith. This principle does not seem to prevail in our legislative assemblies.

CHAPTER FIFTH.

OF MOTIONS FOR THE DISPOSITION OF OTHER BUSINESS.

1300. A motion being proposed in the form, in which, if adopted, it will become the resolution, order, or vote of the house, the most simple mode of disposing of it is to submit it to the suffrages of the assembly, to be adopted or rejected, as it may think proper. But it is not always the case, that the house is ready to come to the vote immediately; it may wish to discuss the question on the one side and on the other, before voting upon it; it may wish to defer the consideration of it for the present, either for the purpose of getting more information, or because some other subject demands its instant attention; the form in which the motion is presented may not be satisfactory, and it may be necessary to amend it; or it may wish to get rid of the subject without coming to any vote upon it; or the subject may require a more deliberate and careful consideration than can conveniently be given to it in the house, acting according to its accustomed forms.

1301. In order to give expression to the different views of the members, and to effect such a disposition of a subject as may be satisfactory to the house, certain motions have been invented, and are now become established by usage, which are made use of by the friends and opponents of every motion, in reference to which a difference of opinion is entertained, for the purpose of promoting or defeating it. Those motions are the foundation of proceedings of different kinds: *first*, amendment; *second*, postponement; *third*, commitment; and *fourth*, suppression.

SECTION I. OF MOTIONS TO AMEND.

1302. The term amendment is used to denote any alteration which may be proposed or adopted, with a view to render a motion conformable to the sense or will of the house. According to the etymology of the word, it might be supposed that nothing could be considered as an amendment, which did not relate to, and purport to improve, the original proposition. But this would be far from conveying an adequate idea of what is meant by the term amend-

ment. A proposition may be amended, in parliamentary phraseology, not only by an alteration which carries out and effects the purpose of the mover, but also by one which entirely destroys that purpose, or which even makes the proposition express a sense the very reverse of that intended by the mover; and, in like manner, a motion, which proposes one kind of proceeding, may be turned into a motion for another of a wholly different kind, by means of an amendment; so, that, in point of fact, an amendment is equally effectual, and is often used to defeat a proposition, as well as to promote the object which the mover of that proposition has in view. The reason is, that in altering or amending a proposition, the form of words only, and not the sense or meaning of it, is regarded; any of the words moved may be left out; any other words may be inserted or added; and any words may be substituted in the place of other words contained in the motion. But, though the sense or meaning of a proposition is not regarded, in view of its susceptibility of being amended, there are nevertheless certain rules relating to amendments, which depend upon the substance of the proposition to be amended, and which it is therefore important to understand.

1303. It will be convenient, in considering the subject of amendments, *first*, to state the general rules applicable to them; *second*, to treat of them in reference to their substance; and *third*, in reference to their form; to which is added a *fourth* article, treating of the congruity of amendments as required by rule in some of the American legislative assemblies.

ARTICLE I. *General Rules applicable to Amendments.*

1304. All amendments, of which a proposition is susceptible, so far as form is concerned, must be effected in one of three ways, namely, by inserting or adding certain words; or by leaving out certain words; or by leaving out certain words and inserting or adding others. These several forms of amendment are subject to certain general rules, which are equally applicable to them all.

1305. FIRST RULE. When a proposition consists of several sections, paragraphs, or resolutions, the order of considering and amending it is to begin at the beginning, and to proceed through it in course, by paragraphs; and when a latter part has been amended, it is not in order to recur back, and make any amend-

ment or alteration of a former part. In this case, the presiding officer usually gives notice of his progress, in order to afford an opportunity for amendments in a subsequent part; for, otherwise, if the latter should be proceeded with and adopted, it would put it out of the power of the house to adopt any amendment in any preceding part of the proposition as it stands.[1]

1306. SECOND RULE. Every amendment, which can be proposed, whether by leaving out, or adding, or leaving out and adding, is itself susceptible of amendment; but there can be no amendment of an amendment to an amendment; such a piling of questions one upon another would tend to embarrass rather than facilitate the expression of the will of the assembly; and, as the line must be drawn somewhere, it has been fixed by usage after the amendment to the amendment.[2] The object, which is proposed to be effected by such a proceeding, must be sought by rejecting the amendment to the amendment, in the form in which it would be proposed, and then moving it again in the form in which it is proposed, and then moving it again in the form in which it is wished to be amended, in which it is only an amendment to an amendment; and, in order to accomplish this, he who desires to amend an amendment should give notice, that, if rejected in the form in which it is presented, he shall move it again in the form in which he desires to have it adopted.[3] Thus, if a proposition consists of A B, and it is proposed to amend by inserting C D, it may be moved to amend the amendment by inserting E F; but it cannot be moved to amend this amendment, as, for example, by inserting G. The only mode, by which this can be reached, is to reject the amendment in the form in which it is presented, namely, to insert E F, and to move it in the form in which it is desired to be amended, namely, to insert E G F.

1307. THIRD RULE. Whatever is agreed to by the house, either adopting or rejecting a proposed amendment, cannot be afterwards altered or amended. Thus, if a proposition consists of A B, and it is moved to insert C; if the amendment prevails C cannot be afterwards amended, because it has been agreed to in that form;

[1] It would seem to be proper, therefore, where the notice above mentioned is not given, that a motion to amend in a prior part should take precedence of a motion to amend.

[2] An amendment to an amendment of an amendment, or as it is called, an amendment in the third degree, is objectionable; (Reg. of Deb. VIII. Part 2, 2410; Cong. Globe, XII. 346; Same, XVII. 319; Same, XVIII. 735;) and an amendment from the other branch appears to be no exception to this rule. (Cong. Globe, XXI. 1178; Same, XX. 564; Same, XII. 303.)

[3] Jefferson's Manual, Sec. XXXIII.

and, so, if it is moved to leave out B, and the amendment is rejected, B cannot afterwards be amended, because a vote against leaving it out is equivalent to a vote agreeing to it as it stands.

1308. FOURTH RULE. Whatever is disagreed to by the assembly, cannot be afterwards moved again. This rule is the converse of the preceding. Thus, if it is moved to amend A B by inserting C, and the amendment is rejected, C cannot be moved again; or, if it is moved to amend A B by leaving out B, and the amendment prevails, B cannot be restored; because, in the first case, C, and, in the other, B, have been disagreed to.

1309. FIFTH RULE. The inconsistency or incompatibility of a proposed amendment with the proposition to be amended, or with an amendment which has already been adopted, though it may be urged as an argument for its rejection by the house, is no ground for the suppression of it by the speaker as against order.[1] This principle admits of an exception in those assemblies in which it is provided by rule, that no subject different from that under consideration shall be admitted under color of amendment.

1310. SIXTH RULE. Motions to amend, as well as principal or original motions may be withdrawn or modified by the mover, at his pleasure, before being proposed to the house, and, afterwards, or where there is no rule on the subject, by leave of the house, expressed by an unanimous vote.[2] An amendment, which is withdrawn by the mover, either of his own authority or by leave of the house, may be offered again by him, or renewed by some other member.[3]

ARTICLE II. *Amendments considered with reference to their Substance.*

1311. As the house is not necessarily obliged to consider a proposition, merely because it is regularly moved and seconded, it is consequently in its power to substitute a different proposition for the one moved, and this may be done by means of an amendment. Thus, where the motion pending was for the house to go into a committee of the whole, on the four per cent annuities acts, and a motion was made to amend, so as in effect to substitute therefor a motion for certain papers connected with the passing of a decree by the government of Portugal materially affecting the commercial

[1] Jefferson's Manual, Sec. XXXV.
[2] May, 216.
[3] May, R. O. etc. 131.

relations of that country with Great Britain, and the amendment was objected to, on the ground, that it had no relation whatever to the subject of the motion, the speaker said, that, according to the forms of the house, and the law of parliament, there was no necessity that the amendment should be akin to the question.[1]

1312. It is immaterial whether the proposition first submitted, or that submitted by way of amendment, is an original motion, or a motion relating to the course of proceeding; thus, if a motion is made that a particular order of the day be now read, or that the speaker do leave the chair, an original proposition of any kind may be moved upon such motion by way of amendment; and, so, if a resolution is moved expressive of the opinion of the house on a certain subject, a motion that a particular order of the day be now read may be made as an amendment.

1313. In the house of commons, the right to substitute one subject for another, by means of an amendment, has been restricted in reference to motions for reading any of the orders of the day, in consequence of the practical inconvenience which often resulted from the public business being thwarted and obstructed by substantive motions, which had no connection with the orders of the day, being brought forward as amendments upon them. In order to remedy this inconvenience, and at the same time, to give the house the means of deciding to which order of the day it would give the preference, it is now provided by a standing order, that, on a motion for reading an order of the day, one amendment and one only shall be moved upon it, that amendment being either that the other orders of the day be now read, or that some particular order of the day be taken into consideration.[2]

1314. This right is also restricted when the house is in committee of the whole, having a particular subject under consideration, which has been referred by the house to the committee. In this case, the power of the committee being derived wholly from the vote of the house; it is authorized only to consider the subject referred to it; and, consequently, is not at liberty to admit of the introduction of any other subject, by way or in the form of amendment.

1315. Upon the same principle of parliamentary law, namely, that, in amendments, the form of words only and not their sub-

[1] Hans. (3), XXIII. 785; Same, XXXVIII. 174, 190. In our legislative assemblies, as will be seen hereafter, an exception to this rule commonly prevails.

[2] Hans. (3), L. 389, 390; Same, LIV. 1173.

stance is concerned, which allows of the substitution of one subject for another by way of amendment, this form of proceeding is frequently resorted to by the opponents of a motion, to defeat it, sometimes by rendering the proposition so absurd, that its original friends are obliged to unite with its enemies in voting against it, and sometimes by reversing the proposition, and then adopting it in a sense the very reverse of what it originally bore.

1316. Thus, in the British house of commons, January 29, 1765, a resolution being moved, "That a general warrant for apprehending the authors, printers, or publishers of a libel, together with their papers, is not warranted by law, and is in high violation of the liberty of the subject:" it was moved to amend this motion by prefixing the following paragraph, namely: "That in the particular case of libels, it is proper and necessary to fix, by a vote of this house only, what ought to be deemed the law in respect of general warrants; and, for that purpose, at the time when the determination of the legality of such warrants, in the instance of a most seditious and treasonable libel, is actually depending before the courts of law, for this house to declare, that a general warrant for apprehending the authors, printers, or publishers of a libel, together with their papers, is not warranted by law, and is in high violation of the liberty of the subject." The amendment was adopted, after a long debate, and then the resolution as amended was immediately rejected without a division.[1]

1317. But sometimes the nature of a proposition is changed by means of amendments, with a view to its adoption in a sense the very opposite of what it was originally intended to bear. The following is a striking example of this mode of proceeding. In the house of commons, April 10, 1744, a resolution was moved, declaring, "That the issuing and paying to the Duke of Aremberg the sum of forty thousand pounds sterling, to put the Austrian troops in motion in the year 1742, was a dangerous misapplication of public money, and destructive of the rights of parliament." The object of this resolution was to censure the conduct of the ministers; and the friends of the ministry, being in a majority, might

[1] This mode of defeating a measure, however, is not always successful. In 1780, Mr. Dunning having made a motion, in the house of commons, "that, in the opinion of this house, the influence of the crown has increased, is increasing, and ought to be diminished," Mr. Dundas, lord-advocate of Scotland, in order to defeat the motion, proposed to amend, by inserting after the words, *in the opinion of this house*, the words, *it is now necessary to declare that*, etc. But this amendment, instead of intimidating the friends of the original motion was at once adopted by them, and the resolution passed as amended. Comm. Jour. XXX. 70.

have voted directly upon the motion and rejected it. But they preferred to turn it into a resolution approving of the conduct of ministers on the occasion referred to; and it was accordingly moved to amend, by leaving out the words "a dangerous misapplication," etc., to the end of the motion, and inserting instead thereof the words, "necessary for putting the said troops in motion, and of great consequence to the common cause." The amendment being adopted, it was resolved (reversing the original proposition) "That the issuing and paying to the Duke of Aremberg the sum of forty thousand pounds, to put the Austrian troops in motion, in the year 1742, was necessary for putting the said troops in motion, and of great consequence to the common cause." [1]

1318. Motions to amend are subject to the same rules as original motions, in reference to their substance, namely, that no motion to amend can regularly be made, which contravenes the provisions of law, or the standing or special orders of the house, or which is substantially the same[2] with a proposition on which the judgment of the house has already been expressed during the same session; or which it has under consideration.

1319. In the application of the last-mentioned rule to the case of amendments, when the house has agreed that certain words shall stand as 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 favor; and, in the same manner, and for the same reason when the house has agreed to add or insert words in a question, its decision cannot regularly be disturbed, by any amendment of those words; though, in both cases, amendments of the words may be made, if proposed at the proper time.[3]

1320. In the application of the same rule, it is also considered, that when the latter part of a proposition consisting of several paragraphs has been amended, this is equivalent to the agreeing to every preceding part of the same proposition; the natural order of considering and amending a proposition being to begin at the beginning, and to proceed through it in course by paragraphs, with suitable pauses in the reading to allow of motions to amend.

1321. In the application of the same rule, it is further considered according to the modern practice, that a motion, which has been withdrawn, may be made again during the same session,[4] though

[1] Comm. Jour. XXIV. 652.

[2] Where two propositions have been voted upon separately, an amendment, embodying the two, presents a different question. Cong. Globe, XXI. 1281.

[3] May, 229.

[4] May, R. O. etc. 131.

it is otherwise incorrectly laid down, that the withdrawal of a motion to amend by the leave of the house is so far equivalent to a judgment upon it, that the same amendment cannot be moved again,[1] which, of course, does not apply to amendments withdrawn by the mover before being stated to the house.[2]

ARTICLE III. *Amendments considered with reference to their Form.*

1322. Amendments, as to their form, are effected in three different modes: *first*, by leaving out a part of the words of the motion; *second*, by adding or inserting other words; and, *third*, by leaving out certain words for the purpose of and inserting other words. To these must be added several other proceedings, which, without in strictness belonging to either of these forms, have for their purpose the amendment of a proposition, namely: *fourth*, the division of a proposition into two or more questions; *fifth*, the filling of blanks purposely left or made; *sixth*, the uniting together of two or more propositions; *seventh*, the separation of one proposition into two or more; *eighth*, the transposition of the several parts of a motion; and, *ninth*, the numbering of paragraphs and inserting of formal words. These several topics will be considered in their order.

1. *Amendments by leaving out Words.*

1323. A proposition, whether consisting of a single paragraph or several, may be amended by leaving out a part of the words of which it is composed. When it is proposed to amend in this form, — that is, by a motion to leave or strike out certain words, — the question is always stated in parliament, not whether those words shall be left or struck out, but whether they shall stand as part of the motion; so that the mover and those who agree with him vote against the question as stated on his motion, and those who are opposed to the amendment, vote in favor of the question.

1324. This form of proceeding on a motion to leave out words, seems to be derived from the practice which prevailed at the period when it was the business of the speaker to frame the question from

[1] Parl. Reg. XXI. 347, 351, 353, 361.

[2] In Hans. (3), LXXX. 432, 798, 854, it appears, that a resolution, which was moved and withdrawn, was moved again on a subsequent day, and passed. But it does not distinctly appear whether the motion was withdrawn by the mover, before it had been stated to the house, or afterwards, and with the leave of the house.

the debate. It seems that although the question was framed by the speaker from the turn of the debate, and might therefore be presumed to be in accordance with the wishes of the house, any member was still at liberty to offer his reasons against it, either in whole or in part, and that the question itself might be laid aside by general consent. But without such general consent, neither the question itself, nor any part of it, could be laid aside or omitted; and although the general debates might run against a part of the question, thereby indicating the sense of the house, that it ought to be omitted, and authorizing the speaker to do so, yet, if any member, before the question be put without that part, stands up and desires that such words or clause stand in the question, before the main question is put, a question is to be put, whether those words or such clause shall stand in the question.[1]

1325. But, though this form of proceeding had its origin in a practice which is now out of use, it is founded in good reason; the question is thus taken in the same manner on a part as on the whole of the principal motion, which would not be the case, if the question was stated on striking or leaving out; inasmuch as the question on the principal motion, when it comes to be stated, will be on agreeing to the motion, and not on leaving out or rejecting it. Besides, in the house of lords, where the chancellor has no casting vote, and an equal division is equivalent to a negative, the same question would be decided differently according to the manner of stating it; if stated on the words standing, the question would be decided in the negative by an equality of votes, and the words would consequently be omitted; whereas, if the question were stated on striking out, an equal division would retain the words. If, therefore, when it is proposed to amend by omitting words, the question is stated on striking out and decided in the negative by an equal division, and the entire motion, on being put to the question, is then decided in the negative, by an equal division, the same words are both retained and rejected by precisely the same vote.

1326. In the legislative assemblies of this country, after some diversity of practice, occasioned probably more by the taste and fancy of presiding officers than by any considerations of fitness, the question on leaving out words is always stated, not whether those words shall stand as part of the question, but whether they shall be struck out. The effect of a decision in this form is precisely the same.

[1] Scobell, 22, 23.

1327. If an amendment is proposed by leaving out a particular paragraph or certain words, and the amendment is rejected, that is, if, on the question that the words proposed to be struck out stand as part of the motion, it is decided that the words shall stand, it cannot be again moved to leave out the same words or a part of them; but it may be moved to leave out the same words with others or a part of them with others, provided the words so proposed to be left out do in fact constitute a different proposition from that already decided.

1328. If an amendment by leaving out is agreed to, it cannot be afterwards moved to insert the words left out or a part of them in the same place; but it may be moved to insert the same words in another place, or the same words with others, or a part of them with others, in the same place, provided these propositions are substantially different from a motion to insert the same words or a part of them in the same place.

1329. When it is proposed to amend by leaving out a particular paragraph or certain words, the amendment proposed may be amended in three different ways, namely, by leaving out a part only of the paragraph or words proposed to be left out, or by inserting or adding other words, or by leaving out and inserting.

1330. The effect of voting on a proposed amendment by leaving out being, as already stated, that if the words are left out, they cannot be reinserted, and, if retained, they cannot be amended; it is necessary that those who desire to retain the words, should amend them, if any amendment is requisite, by making their motions for that purpose, and this they have a right to do, before the question is taken on the motion to leave out.[1]

1331. As an amendment must necessarily be put to the question before the principal motion, so the question must be put on an amendment to an amendment, before it is put on the amendment; but, as this is the extreme limit to which motions may be put upon one another, there can be no precedence of one over another among amendments to amendments, which must consequently be put to the question in the order in which they are moved.

[1] Jefferson's Manual, XXXV. It is provided by rule in the house of representatives of the United States, that a motion to strike out being lost shall preclude neither amendment nor a motion to strike out and insert.

2. *Amendments by inserting Words.*

1332. This is the second form in which amendments may be made; and when an amendment is proposed in this form, if it prevails, it cannot be afterwards moved to leave out the same words or a part of them; but it may be moved to leave out the same words, with others, or a part of the same words, with others; provided these propositions are substantially different from the first. On the other hand, if the amendment is rejected, it cannot be moved again to insert the same words or a part of them in the same place; but it may be moved to insert other words in the same place,[1] or the same words in a different place, or the same words with others, or a part of the same words with others, in the same place, provided these are really different propositions from that already decided.

1333. When an amendment is proposed by the insertion or addition of certain words, the proposed amendment may itself be amended in three different ways, namely, by leaving out a part,[2] or by inserting, or by leaving out and inserting; and, if any amendment of words proposed to be inserted is necessary, those who are in favor of the motion should make the needful amendments, as they have a right to do, before the question is taken; because, if it is rejected, it cannot be moved again, and, if adopted, it cannot be amended.[3]

1334. There is no precedence of one over another in motions for amendments to amendments by inserting, any more than in motions to amend amendments by leaving out.

3. *Amendments by leaving out and inserting.*

1335. This form of amendment is a combination of the two preceding; and, when moved, is treated precisely like those two motions and put consecutively to the question, first, to leave out the words objected to, and, second, to insert the others proposed in their place.[4]

[1] See Comm. Jour. LVI. 209, where several successive motions to insert different words in the same place, were made and negatived.

[2] See Comm. Jour. XXX. 70.

[3] Jefferson's Manual, Sec. XXXV.

[4] It is immaterial whether the motion is, to strike out certain words and insert others in their place, or to strike out certain words in one place, and add or insert words in another place.

1336. When this motion is made, the question is first proposed, that the words moved to be left out stand part of the question; and, if this question is decided in the negative, that is, that the words be left out, then another question follows, that the words proposed as a substitute be inserted in the place of the words so left out.

1337. If the first question is decided in the affirmative, all amendment or alteration of the words thus agreed to is precluded in the same manner as if the motion had been simply to leave out the same words.[1] Nor can a motion be then made to leave out for the purpose of inserting the same, or even different words; the words of the original motion being already agreed to as they stand.

1338. If the first question is decided in the negative, and the words are accordingly left out, then, on the second question, the words proposed as a substitute are to be treated and may be amended, in the same manner as on a motion simply to insert; and, if rejected altogether, other words may be proposed; or the proposition may be left as amended only by the leaving out.

1339. Where the question on words being left out is stated on their standing as part of the question, the motion to leave out and insert could not, without much awkwardness and inconvenience, be proposed as a single question; but where the motion is stated in the other form, one question only is commonly put, unless it is divisible on the demand of a member, or is divided by order of the assembly, in which case it may be put, and with the same effect, as two questions.

1340. Where this question is put in the parliamentary form, or is put in the other form, as divided, it has precisely the same form, and is attended with the same effect and operation, as the two motions to leave out and insert taken consecutively. Where it is taken as a single proposition, the proceeding may be more complicated, inasmuch as the friends of the words proposed to be left out, and the friends of the words proposed to be inserted, having the right to amend those words respectively, questions for amending both sets of words must be taken, before the question is proposed on striking out and inserting.[2] A motion to amend by striking out certain words and inserting others being negatived will not preclude a motion to strike out the same words, and to insert others of a tenor

[1] It appears, in the house of representatives of the United States, to be held otherwise, in virtue of a special rule. Cong. Globe, XV. 1115, 1116.

[2] Jefferson's Manual, Sec. XXXV.

different from those first proposed; or to strike out different words, and insert the words first proposed; or to strike out the same words, and insert nothing. These are different propositions, and others may be imagined.

1341. When it is moved to amend by striking out certain words and inserting others, the manner of stating the question is, first to read the whole passage to be amended, as it stands; then the words proposed to be struck out; next, those to be inserted; and lastly, the whole passage as it will stand when amended. The question may then be taken, either singly, or as divided according to the practice of the assembly.[1]

4. *Division of a Proposition into two or more Questions.*

1342. The mover of a proposition, as has already been seen, is at liberty to submit it in such form as he pleases, provided only that it is expressed in parliamentary language. Hence it sometimes happens, that a motion consists of several different parts, in reference to which different opinions are entertained; but which, nevertheless, as the motion stands, must be voted upon together; so that a member, who approves of a part of the motion, but not of the residue, must, if he votes at all, vote against his inclination and judgment, as to one or another part of it.

1343. When a motion is complicated in this manner, there are two modes of proceeding, with a view to enable members to vote upon the parts separately, namely, to move that the proposition be amended by leaving out a part of the words composing it, or that it be separated and divided into as many questions, each to be voted upon by itself, as the mover thinks proper, or as there are different and distinct parts to the motion.

1344. The first method has this advantage over the other, that when the motion to amend is made and seconded, members have then an opportunity of expressing their sentiments directly and at once upon the several parts of the motion, as they are presented by the amendment; and this method is ordinarily sufficient, where the motion is only susceptible of a division into two parts; but where it consists of more than two parts, the other form of proceeding is more simple and effectual.

1345. The second mode has this advantage over the first, that

[1] Jefferson's Manual, Sec. XXXV.; Hatsell, II. 80, 87.

where the motion consists of more than two parts, it is at once divided into as many questions as there are parts; though as this is done only in pursuance of a previous vote, it is not in the power of any two members, by this mode, to bring the house to vote directly upon the different parts of the motion, but only to a vote upon the motion that the question be divided.[1]

1346. When a motion is made for dividing a question, the motion should state the manner in which the mover proposes that the division should be made; and, if this is not satisfactory to the house, the motion may be amended, like any other motion for an amendment. If the motion prevails, the question accordingly becomes a series of questions, to be separately considered and voted upon, as so many independent propositions, in the order in which they stand.

1347. It is usual in the legislative assemblies, and in other deliberative bodies, in this country, to provide by a special rule, that every complicated question, which is susceptible of division, in point of form, shall be divided by the presiding officer, and put to the vote in its several parts, upon the demand of a single member. When there is such a rule, the member calling for the division states, in the first instance, into how many and what parts and in what order he requires the division to be made, and the division is made accordingly, unless the member is overruled by the presiding officer, or the assembly. When there is no such rule, a division can only take place, by means of a motion and question for that purpose, under the common parliamentary law.[2] This motion or suggestion is incidental to the general course of business, and may be made at any time after the question is stated, and before it is taken.

1348. In all cases, both where a division is moved for, and where it is demanded, it is for the presiding officer, subject, of course, to be overruled by the assembly, to decide, whether the proposition in question is susceptible of the division moved or called for or not.[3] A motion, in order to be divisible, must comprehend points so distinct and entire, that if one or more of them is taken away, the others may stand entire and by themselves; but, a qualifying paragraph, as, for example, an exception or a proviso, if separated from the general assertion or statement to which it belongs, does not contain such an entire point or proposition.[4]

[1] Appendix, XII.
[2] J. of H. 27th Cong. 1st Sess. 132.
[3] Jefferson's Manual, Sec. XXXVI.
[4] But see J. of H. 26th Cong. 2d Sess. 311.

1349. The rule of the congress of the confederation was, that if the question in debate contained several points, any member might have the same divided; and the rule of the house of representatives of the first congress under the constitution was, that any member might call for the division of a question, where the sense would admit of it. Under these rules, the practice seems to have been, to regard rather the substantial meaning of a proposition, than the form of words in which it was expressed. In many cases, a proposition was held to be divisible in which some of the members, if adopted, would require the addition of formal or technical words by the clerk, to make them into distinct propositions. In others, again, propositions were held to be divisible, the second member of which was a mere qualification of the first, and recorded on the journal to have failed, of course, without a question, in consequence of the failure of the first. The rule above mentioned is now applied with more strictness, and it is accordingly held, that, in order to be divisible, a proposition must not only contain distinct points, but each of those points must be expressed in distinct words, so as to stand by itself. A motion to commit with instructions,[1] which, according to the old practice, might be divided, and the question put first on the commitment, and second on the instructions, is not, at the present day, divisible; the instructions not constituting a distinct point, which can stand of itself, in case the commitment fails.

1350. When a proposition is thus divided it becomes a series of propositions, to be considered and discussed, like separate motions in the order[2] designated in the motion or question on which the division takes place, or if it designates no order then in the order in which they stand in the original proposition; and as each member is taken up for consideration, it may be further divided if divisible, until the original proposition is divided into all the distinct propositions, into which it is susceptible of being divided. Thus if the proposition A B C D is moved, and divided into two members A B, and C D, and the first member is taken up for consideration, it may be further divided, if divisible, into A and B, and when the first member of the original division is disposed of, and the second one C D, is taken up, that may be further divided, if divisible, into C and D.

1351. The divisibility of a motion is to be determined at the time when a division is called for, and not with reference to the

[1] Cong. Globe, XXI. 1754, 1756.

[2] Cong. Globe, XX. 319, 320.

state of the motion at the time it was made. Thus, if the proposition A B C D is moved, which is then divisible into three parts only, namely, A, B, and C D, and is divided accordingly; the first and second members of which being considered and adopted, the third is taken up, that member, which was originally indivisible, having become divisible by the adoption of A and B, may now be divided into C and D.[1]

1352. When a division takes place, each member of it, from that time forward, becomes and is treated and disposed of as a separate motion; and the motions then moved on the original proposition, and pending, are separately applicable to each member of it. Thus, if the proposition A B C D being pending, a motion is made that it be ordered to lie on the table, and then a division of the principal motion is called for, and it is divided accordingly into A, B, C, and D, the motion to lie on the table coheres to each member of the motion, and is the first question to be put upon each when it is taken up in its order for consideration.

1353. It is common in this country, to provide, that certain motions, particularly the motion to strike out and insert, shall not be divisible. This provision of course applies as well to motions as suggestions for a division.

5. *Filling Blanks.*

1354. It often happens that a proposition is introduced with blanks purposely left to be filled by the house, either with times and numbers, or with names or other provisions analogous to those of the proposition itself. These blanks are filled in the order in which they occur, when the proposition is under consideration. Blanks of the latter description give rise to motions to amend which do not differ from other amendments, but which are proceeded with in the same manner, and governed by the same rules as motions to amend by inserting.

1355. Blanks to be filled with times or numbers are also treated in the same manner, when only one proposition is offered; but when it is desired that several different times or sums should be voted upon, they are not offered as amendments of one another, but are considered as original motions, to be made and decided before the principal question. In a proceeding of this kind, the members make their several propositions, which are then put to the question,

[1] Cong. Globe, XXI. 1754, 1756.

one after another in their order, beginning with the least sum or longest time, as the case may be, and so on to the greatest sum or shortest time, or until the house comes to an agreement upon some one of the times or sums mentioned. This order of taking the question is in conformity with an ancient rule, that "where there comes a question between the greater and lesser sum, or the longer and shorter time, the least sum and the longest time ought first to be put to the question."[1]

1356. This rule evidently had its origin in that period of parliamentary history, when it was the custom for the speaker to frame the question from the turn of the debate, and was doubtless intended to control his discretion as to the question, so as to secure to the house the freest exercise of its constitutional power in regard to the burdens to be imposed upon the people. The reason of the first part of the rule, that the least sum is to be first put to the question, is, "that the burdens imposed upon the people might be as easy as possible." The reason of the other part, that the longest time is to be put first, relates to the mode in which subsidies, the ancient manner of granting aids to the crown, were given. The custom was, to give so many subsidies, to be levied in such a time; and the longer, that is, the further off, the time was in which the subsidy was to be collected, the easier for the subject.[2] This rule, though originally introduced into parliament with reference merely to the burdens to be imposed upon the people in the way of taxes, and therefore applicable in modern times only to the committees of supply and of ways and means, is now understood to be general in its application to other committees, and other subjects.[3] But it does not extend to the proceedings of the house on the report from a committee where amendments are proposed in the common form,[4] nor to other proceedings in the house.[5]

1357. In the legislative assemblies of this country, the rule as to filling blanks prevails, and is usually observed not only in committee of the whole, but in proceedings in the assembly itself. The order to be followed in putting sums and times to the question is fixed by a special rule, which usually requires the largest (instead of the least) sum, and the longest (that is the furthest off) time, to be first put to the question. This is the rule in both branches of

[1] Comm. Jour. IX. 367.

[2] Hatsell, II. 111, note; Same, III. 173, 184, 185.

[3] May, 289.

[4] Hatsell, III. 184, note.

[5] An instance occurs in Comm. Jour. XXXV. 370, where two motions to adjourn the debate appear to have been pending at the same time, the nearest of which was put to vote and was carried, although the other was first made.

congress. It is immaterial whether the blank is left or first created for the purpose.

6, 7, 8, 9. *Addition, — Separation, — Transposition, — Numbering of Paragraphs, — Formal Words.*

1358. When the matters contained in two separate propositions may be more properly united together in one, the mode of proceeding is, to reject one of them, and then to incorporate the substance of it with the other by way of amendment.[1]

1359. So on the other hand, if the matter of one proposition would be more properly distributed into two, any part of it may be struck out by way of amendment, and put into a form of a new and distinct proposition.[2]

1360. In like manner, if a paragraph or section requires to be transposed, a motion may be made and a question put for leaving it out where it stands, and another for inserting it in the place desired.[3]

1361. The numbers prefixed to the several sections, paragraphs, or resolutions which constitute a proposition, are merely marginal indications, and no part of the text of the proposition itself; and, if necessary, they may be altered or regulated by the clerk, without any vote or order of the house.[4]

1362. Formal words, also, made necessary by amendments, may be added by the clerk without any vote; thus, where the word "that" was the only word remaining of a motion as originally made, the residue being added by way of amendment, the word "resolved" was prefixed as a matter of form.[5]

ARTICLE IV. *Of the Congruity of Amendments as required by Rule in this Country.*

1363. The inconsistency of a proposed amendment with the proposition to be amended, either in idea or in words, is, as has already been seen, no objection to it in a parliamentary sense, or as a matter of order. It is true, that if a motion, whether in the

[1] J. of H. VIII. 624, 651; Same, 26th Cong. 2d Sess. 279.

[2] It might be more convenient to refer the subject-matter of this and the two preceding paragraphs to a committee with instructions. See, also, J. of H. VII. 188; Same, VIII. 159; Same, 24th Cong. 1st Sess. 1050; Cong. Globe, XIII. 538.

[3] J. of H. III. 333.

[4] J. of H. 29th Cong. 1st Sess. 1029.

[5] Hans. (3), LVIII. 667, 673.

form of an amendment, or of an original proposition, is the same with one upon which the judgment of the house has already been expressed, either in the affirmative or negative, or which is still pending, it is objectionable on that ground; but the converse of this principle is not true, except in virtue of a special rule to that effect, and it is ordinarily no objection to a proposed amendment, that it is inconsistent with the measure to be amended. This is very commonly, though not universally, the case in the American legislative assemblies; as, for example, in the house of representatives, but not in the senate, of the United States.[1]

1364. In the congress of the confederation, the first legislative body of a general character ever assembled in this country, and which was the immediate precursor of the congress of the United States, under the constitution, it was a very common practice, by means of amendments, to separate and remove from before the assembly topics originally moved and under debate. In this way the consideration of important and interesting measures was sometimes postponed, and others brought forward without due notice or preparation. A remedy for the inconvenience which resulted from this practice, was first attempted in the code of rules adopted by congress in the year 1781. The fifteenth rule is in these words, "No new motion or proposition shall be admitted under color of amendment as a substitute for the question or proposition under debate, until it (the latter) is postponed or disagreed to." Under this rule, which continued in force until the organization of the government under the constitution, new propositions might still be introduced as amendments; but the question was first to be put and taken on postponing or disagreeing to the propositions originally made.

1365. The house of representatives of the first congress, which assembled under the constitution, on the 4th of March, 1789, adopted a code of rules for the conduct of its business, among which is the following: "No new motion or proposition shall be admitted under color of amendment, as a substitute for the motion or proposition under debate." This rule, as a remedy for the evil in question, was insufficient in two respects; in the first place, the new proposition or motion, although introductory of a new subject, was not objectionable, unless it was offered as a substitute; and, in the second place, it was objectionable, if offered as a substitute, although it introduced no new subject; thus precluding

[1] Cong. Globe, XX. 466, 629.

even amendments of form, provided they were offered as substitutes. This continued to be the form of the rule until it was changed in 1822 and expressed in its present terms.

1366. This rule, adopted in March, 1822, reaffirmed by every succeeding congress, and extensively adopted in other legislative assemblies, is as follows: "No motion or proposition, on a subject different from that under consideration, shall be admitted under color of amendment." Under this rule, the new proposition is not objectionable, unless it is on a subject different from that under consideration; and in that case, it is inadmissible, even though it is not offered as a substitute. In determining whether a proposed amendment comes within this rule, the inquiry relates to the subject-matter, and not to the proposition; the former may remain the same, while the latter is changed or even reversed. Thus, a resolution that the prayer of a particular petition ought to be granted may be amended by inserting the word "not" before "ought;" the subject remaining the same, but the resolution being thereby reversed. Generally speaking, there can be little or no difficulty in determining whether a proposed amendment relates to the same or another subject. It is immaterial whether the amendment applies directly to the measure in question, or indirectly through the medium of instructions to a committee.[1] The following decisions under this rule will show how it is applied in practice.

1367. Thus, on a resolution, "that the committee on manufactures be vested with authority to send for persons and papers," it is not in order to amend by striking out all after the word resolved, and inserting a resolution "that it is expedient to amend the present existing tariff,"[2] etc. So, on a bill making an appropriation for fortifications and ordnance, it is not in order to amend instructions on committing, by adding thereto a provision relating to the disposition of the proceeds arising from the sale of the public land.[3] So, on a bill further to extend the time for locating original military land warrants and returning surveys thereof, it is not in order to move an amendment that such warrants may be located upon any lands of the United States which may then be subject to private entry.[4] So, where it was moved to recommit a bill relating to judicial salaries with instructions to inquire into the expediency of raising the salaries of district judges, it was held to be inadmissible to amend the instructions so as to inquire into the

[1] Cong. Globe, XXIII. 523, 526.
[2] J. of H. 20th Cong. 1st Sess. 103.
[3] J. of H. 27th Cong. 1st Sess. 223.
[4] J. of H. 30th Cong. 1st Sess. 737.

expediency of equalizing the salaries of the marshals and district attorneys.[1] So, on a resolution for the supply of the members with stationery, it is not in order to ingraft an amendment proposing additional compensation to persons in the employment of the house.[2]

1368. Where it is proposed by means of an amendment to change a particular into a general provision, the case appears to be attended with more difficulty. Thus, it is not in order to amend a bill for the relief of a single individual, by turning it into a general provision of law;[3] on the contrary, where a bill was under consideration granting the right of way, and making a grant of lands to the State of Michigan, it was held admissible to amend it by adding thereto a provision for a similar grant to other States for sundry railroads therein.[4] But the rule seems to be now well established, that in a bill for the relief of a single individual, it is not in order to amend, either by inserting a provision for the relief of another individual, or of certain other individuals, or by the insertion therein of a general provision,[5] that is to say, by turning a private into a general bill.

1369. In the following cases, the distinction taken by the house is more shadowy. A bill being pending, proposing to the State of Texas, the establishment of her northern and western boundaries, the relinquishment of all territory derived by her exterior to the said boundaries and of all her claims upon the United States, it was moved to amend the same by adding thereto two new sections providing territorial governments for the territories of New Mexico and Utah. This amendment, being called in question as not germane to the bill, was held admissible by the speaker, on the ground that the subject of the bill was the territory acquired by the United States from Mexico, and that all propositions affecting that territory were germane to the bill. This decision was sustained by the house on appeal, and a similar decision made the next day was acquiesced in. But subsequently, a bill being pending for the admission of the State of California into the Union, and an amendment being moved thereto, providing a territorial government for Utah, which was objected to as not germane to the bill, the latter was sustained by the speaker on the ground above mentioned. On appeal, the decision of the chair was overruled.[6]

[1] J. of H. 30th Cong. 2d Sess. 382.
[2] J. of H. 31st Cong. 1st Sess. 1510.
[3] J. of H. 31st Cong. 1st Sess. 784.
[4] J. of H. 31st Cong. 1st Sess. 967.
[5] Cong. Globe, XXIII. 312, 523, 526.
[6] J. of H. 31st Cong. 1st Sess. 1333, 1415.

SECTION II. OF MOTIONS TO POSTPONE.

1370. A proposition being made to the house for its adoption, the house may either proceed at once to consider and act upon it, or may assign some future time, either on the same or a subsequent day, for its consideration. In the former case, the proposition may be either accepted, or rejected, or otherwise disposed of, at the time; or, if necessary after a partial consideration, may then be postponed for further consideration to a future day. In the latter case, the subject subsides until the time fixed for its consideration, when it is considered and acted upon, and then either accepted, or rejected, or again further postponed for consideration.

1371. The postponement of a proposition sometimes takes place for the convenience of the house; sometimes in virtue of a special rule relating to the particular subject; sometimes in consequence of the different stages, through which it must pass, each on a different day, before it can be adopted; in all which cases, the proceeding is conducted by the friends, or, at least, by those who are not the opponents, of the measure; and the time, to which the subject is postponed, is fixed at a reasonable and convenient day, facilitating, or, at least, not obstructing, its adoption.

1372. This is also a mode of proceeding made use of by the opponents of a measure to defeat it; and, when a postponement is moved with this view, the time fixed is a day beyond the usual and probable duration of the session. A motion to postpone to a day beyond the session, though moved to defeat the proposition in question, is, in a parliamentary point of view, the same as a motion to postpone to a day within the session, — is governed by the same rules, — and if it prevails, attended with the same parliamentary result.

1373. When a proposition, either on its original introduction into the house, or on passing one of its stages, or after having been partly considered at any time, is thus assigned for consideration on a particular day, by an order of the house, the subject so assigned, or perhaps more properly, the order for its consideration on the day fixed, is called the order of the day for that day. If, in the course of business, as commonly happens, several orders are made for the consideration of different subjects on the same day, they are called the orders of the day. The orders thus made are registered, under the date of each day, in a book kept for the purpose, called the order

book, which is constantly on the table of the house, for the inspection and information of the members.

1374. The effect of an order to postpone a subject or to assign it for consideration on a future day is, in general, to remove it from before the house, until the day assigned. If the postponement has taken place, on the motion of those who are opposed to the measure, and the day assigned is beyond the session, the postponement is equivalent to a rejection. But, in order to explain the subject fully, it will be necessary to consider what is the operation of such an order; 1, on the day on which it is made; 2, between that day and the day assigned; 3, on the day assigned; 4, after the day assigned, to which will be added, 5, an explanation of the motion to postpone according to parliamentary usage in American legislative assemblies.

1. *Effect of an Order for Postponement, on the Day on which it is made.*

1375. On the day, on which the order of postponement is made, that order cannot be rescinded or discharged, nor any other order made, or proceedings take place inconsistent with the former order; it being a general rule, that every order of the house whether affimative or negative must stand as such during the day on which it is made.[1]

2. *Effect of, between the Day of the making of the Order and the Day assigned.*

1376. During this period, the operation of the order is to postpone the consideration of the subject of it, until the day assigned, so that whilst the order remains in force, it cannot be regularly considered until that time.[2] The order itself, in the mean time, may be considered, and either discharged without being renewed, or it may be discharged and renewed for a day subsequent to that originally assigned.[3] But it cannot be discharged and renewed for a day previous,[4] except under peculiar circumstances; as, where on some complaint or other proceeding against a member, an order

[1] Hans. (1), VIII. 1002; Same, (2), V. 171, 172, 173; Parl. Reg. XLIV. 230.

[2] See also J. of S. I. 408; J. of H. 31st Cong. 1st Sess. 406; Cong. Globe, XV. 124.

[3] Parl. Reg. XXVIII. 414; Same, XLIV. 230.

[4] Hans. (1), XVIII. 755, 756, 757, 758; Same, IX. 845, 846; Same, VII. 518.

having been made for his attendance in his place, on a particular day, the order was discharged at his request and for his convenience, and renewed for a day previous to that originally fixed.[1] When an order is discharged, without being renewed, the subject of it remains in precisely the same situation, as when the order was made, and, if renewed, the proceeding must commence at that point.

3. *Effect of, on the Day assigned.*

1377. A subject, which is thus assigned for consideration on a particular day, is thereby to a certain extent made a privileged question for that day; although it is still within the power of the house, if it pleases, to proceed with other business on the same day, even to the entire exclusion of the matter which is the order of the day. It does not result from the fact of an order being made for the consideration of a particular subject on a day assigned, that no other business can be attended to on that day, or even that the subject assigned shall be first considered. If, therefore, on the day assigned, and before proceeding with the order of the day, any other subject is moved and seconded, it may be proceeded with and disposed of, if the house acquiesces, before the order of the day is taken up; but, inasmuch as the subject of the order of the day has been assigned for consideration on that day, and is thus entitled, so far as a previous determination of the house can entitle it, to a preference over other subjects, it is competent for any member,[2] when a motion is made to introduce any other subject, or while such other topic is under consideration, to move that the house proceed with the order of the day; and this motion will take precedence of the question first made, and must be first put and decided. If the motion for the order of the day is determined in the affirmative, the subject first introduced is suppressed for the day, and the house proceeds with the order of the day; if in the negative, the subject of the order of the day is suppressed for the day, and the house proceeds with the business first introduced. A subject may be postponed to a particular day, merely, without being made an order of the day for that day.

1378. If there are several orders of the day, the house may either proceed with them all, or with any one in particular. When the house votes to proceed with the orders generally, they are to be gone

[1] Hans. (1), XXI. 1092.

[2] Parl. Reg. XLIV. 230.

through with in course as they stand in the order book. Where they are proceeded with separately, no one is entitled to any preference over the others; and therefore, a motion to proceed with a particular order cannot be superseded by a motion for any other or for the orders generally.[1] Where one or more of several orders of the day have been gone through with, those that are left still constitute the orders of the day.

1379. In order to proceed with the orders of the day, on the day assigned, a motion must be made, either that the order of the day, if there be but one, or the orders of the day generally, if there are several, or that a particular order, if it is desired to proceed with one only out of several, be now read. If no such motion is made during the day, the orders drop, that is, become inoperative in consequence of the time assigned passing by without their being executed. If the motion is negatived, the same result follows, in point of fact; because the motion for the orders cannot be made again on the same day,[2] and by the expiration of the day without their being proceeded with, they drop of course.

1380. On this motion being made, any member who wishes merely to postpone the subject or subjects of it, may effect his object by moving to amend by leaving out the word "now," to insert the day to which he desires the postponement to take place. A similar motion to amend may be made use of to defeat the motion for the present reading of the order or orders, by fixing upon a time for the postponement beyond the probable and usual duration of the session. If the motion to amend is made in the first instance, for the purpose of postponement merely, and, on the question being put, that the word "now" stand part of the motion, that word is left out, and the other part of the motion, namely, to insert the time, is then put, the amendment is open to be amended by substituting for the day proposed a day beyond the session.

1381. If the motion for present reading prevails, then the order of the day, if there is but one, or the particular order moved, or the first of the orders, in course, if there are several, is then read. The order being read, the business thereby assigned is brought to the knowledge of the house, and must either be proceeded with, laid aside, or further postponed to a time within or beyond the session. If the order is to be proceeded with, the appropriate motion, as indicated by the subject or terms of the order, is then to be made and seconded. If no such motion is made, the order drops; if

[1] May, 218.

[2] Parl. Reg. XLIV. 230.

made, the subject is then considered and disposed of. If the business is not to be proceeded with, but laid aside, then as soon as the order is read, a motion must be made that it be discharged. If this motion prevails, the business remains precisely where it was before the order was made, and may either be renewed for a future day or suffered to subside.

1382. But the opponents of the measure when the order of the day is discharged may defeat it beyond the possibility of revival, by renewing the order for, that is, postponing the subject to, a day beyond the session. If the motion to discharge the order should not be carried, the business may then be proceeded with as before mentioned. If the subject of an order of the day is to be further postponed, a motion should be first made to discharge the order, and, if this motion prevails, then a second motion to renew it for a future day. In all these cases, where a motion is made to renew the order for a future day, by those who are in favor of proceeding with it, those opposed may propose amendments fixing the time of postponement at a day beyond the session.

1383. After the subject of an order has been proceeded with it may be further postponed, by its friends, to a day within, or by its opponents, to a day beyond the session, by means of a motion to adjourn the debate. If this motion prevails, the order for adjourning the debate to the day fixed is an order of the day for that day; and, when the business is resumed on the day to which it stands postponed, it is taken up at the precise point, where it was left on the adjournment.[1] The adjourned debate being considered, in a parliamentary point of view, as a continuation of the original debate, and as making a part of it, on resuming, the motion may then be withdrawn or suppressed by the previous question.[2] A motion to adjourn the debate is not regular, on the question that the order of the day be read;[3] nor until the subject of it has been proceeded with; but nothing more is necessary, than that a motion should be made and a question proposed, it need not be actually debated.

4. *Effect of, after the Day assigned.*

1384. If, for any cause, an order of the day is not proceeded with on the day assigned, it becomes what is called a dropped order; the subject of it is then in the same position that it was in

[1] If the motion does not prevail, the debate proceeds as before.

[2] Hatsell, II. 111, n.

[3] Hans. (3), XVI. 463, 464, 465.

before the order was made; and, if renewed at all, the proceeding must commence at that point.[1] The most common cause of the order's dropping is that no house is formed on the day assigned, or that before proceeding with the orders, the house is adjourned for want of a quorum. Sometimes, the orders, or a part of them, drop for want of time to consider them; but, in such a case, it is usual to discharge all that are not proceeded in, and to renew them for a future day. Where the orders drop for want of a quorum on the day assigned, it is not unusual to take them up on the next day, without any further notice, or any renewal of them; though, in strictness, it would be necessary to commence the proceedings anew, at the point where they were at the time the orders were severally made.[2]

5. *Of the Effect of the Motion to postpone, according to Parliamentary Usage in this country.*

1385. By means of the system of orders of the day, which has been explained in the preceding paragraphs, the principal business of a legislative assembly may be, and that of the two houses of parliament is, in fact, transacted. Business of every kind, when introduced, if not then entered upon, or completed, is postponed and made the order of the day for a future day; orders of the day are proceeded with, and either completed or postponed to a future day; orders not proceeded with are renewed, and dropped orders are revived, for a future day. In this round of proceeding, every thing is considered and disposed of in a legislative assembly, according to its wishes. In this country there are two forms of postponement in common use, both of which are effected in a different manner from that employed in parliament, and one of which, in form, at least, is peculiar to our legislative assemblies. These are postponement to a day certain, and indefinite postponement. In parliament the first is effected by discharging the order for the consideration of a subject on one day and renewing it for another; and the nearest proceeding to the second, which could take place according to the forms of parliament, would be to discharge the

[1] By a rule recently adopted in the house of commons, it is provided, that "all dropped orders of the day are to be set down, in the order book after the orders of the day for the next day on which the house shall sit;" and it is freqnently entered in the earlier journals of the house of representatives of congress, in a general form, at the end of each day's proceedings, that the orders of the day not disposed of are continued to the next or some succeeding day.

[2] Parl. Reg. (2), XVII. 144; Same, LVII. 202, 203.

order for its consideration on a particular day without renewing it at all. The motions for indefinite postponement, and for postponement to a particular day, are made, put to the question, and entered on the journal in that specific form. Instead of two motions, one to discharge and the other to renew the order, the motion is simple and direct, that the consideration, or further consideration (as the case may be) of the matter in question be postponed to a particular day. A similar form is used when the motion to postpone indefinitely is made. Postponement to a day certain is attended here with the same effect as in parliament, except that when it is moved to postpone to a day beyond the legal duration of the assembly, the motion cannot be entertained as a motion for indefinite postponement, for such alone is its legal effect, but it is not in order.[1]

1386. The motion to postpone indefinitely is of American origin, and peculiar to the legislative assemblies of this country, in which it is used, as an adverse motion, to reject or suppress, and with the same effect.[2] In the house of representatives in congress, it is provided by a rule, that when a question is postponed indefinitely, it shall not be acted upon again at the same session.

SECTION III. OF MOTIONS TO COMMIT.

1387. One of the proceedings, made use of for the purpose, or in the course, of an orderly and appropriate disposition of a motion, was stated to be a commitment, or, in other words, a reference of the subject to a committee. The nature and functions, as well as the different kinds, of committees, and the manner in which they are appointed, will be treated of hereafter. In this place, it is sufficient to observe, that besides certain topics, which are required by standing rules or the established course of proceeding to be first considered by a committee, and which, therefore, when brought before the house by way of motion, must regularly be referred to a committee; and, besides the commitment, which takes place as one stage of the proceedings in the passing of bills; it sometimes becomes necessary to refer a proposition to a committee, either for the purpose of further inquiry with regard to the subject-matter of it, or of some collateral subject, or for the purpose of putting the proposition into a more satisfactory form, or for the purpose of

[1] Cong. Globe, XXI. 1459, 1671.

[2] This motion first occurs in the house of representatives in congress in the year 1806, (J. of H. V. 262); but is afterwards in constant use.

amendment in some particular, which cannot conveniently be effected by an amendment proposed and made in the house. If the subject has already been once in the hands of a committee, a subsequent reference of it, either to the same or a different committee, is denominated a recommitment.[1]

1388. Where this form of proceeding is desired or requisite, it may be effected either by a simple reference of the motion or proposition to a committee, to be then or at some future time appointed; or the proposition may be withdrawn for the purpose, and a motion substituted for the appointment of a committee on the subject;[2] or a proposition for a committee may be moved as an amendment to the original proposition.[3] Whatever may be the form of the proceedings, the subject so committed is disposed of until the report of the committee.[4]

SECTION IV. OF MOTIONS TO SUPPRESS.

1389. When a motion is made and pending, which it is desirable to suppress for the time being, without coming to any decision upon it, either in the affirmative or negative, and without so far entertaining it with favor, as to assign any time for its future consideration, this object may be effected in four different ways; *first*, by an adjournment of the house; *second*, by means of the previous question; *third*, by proceeding to the orders of the day; and *fourth*, by means of an amendment.

ARTICLE I. *Adjournment.*

1390. As it always must necessarily be within the power of the house to bring its sittings to a close for the day, (for otherwise, it would seem that it might be kept sitting against its will and for an indefinite time,) a motion to adjourn may be made at any time, with one exception, namely, when the question of adjournment has just previously been put and decided in the negative. If this motion, therefore, is made and seconded, whilst any other question is pending, it takes precedence of such question, and, if decided in the affirmative, that question is of course, interrupted and superseded, without being decided either in the affirmative or negative.

[1] Jefferson's Manual, Sec. XXVIII.
[2] Hans. (2), I. 1050.
[3] Hans. (2), IV. 1409; Same, LXIV. 633.
[4] For references of bills see Parl. Reg. XLIV. 422; Comm. Jour. LI. 59; Parl. Reg. XLVII. 512; Comm. Jour. LII. 592.

1391. It being a rule, that when any matter of business is pending, it must first be disposed of, before any other business can be undertaken, it follows, that, in order to entitle a motion for an adjournment to take precedence of any other question, it must be made simply to break up the sitting, and, therefore, in the simplest form, namely, "that this house do now adjourn." If made in any other form, as, to a particular day, or for any specified time, (in which case, it has some other purpose than merely to break up the sitting,) it will not take precedence of the question pending, and therefore cannot be put in that form, unless first moved as an amendment to the original question, and substituted therefor by the vote of the house. For the same reason, a motion simply to adjourn, if made as an independent motion, when any other question is pending, is not susceptible of amendment, by the addition of time or place, or in any other manner; because, if so amended, it would then have some other purpose in view than to break up the sitting, and would consequently become irregular and disorderly as an independent motion.

1392. The motion to adjourn simply,[1] from its very nature, takes precedence of all other motions,[2] though it is commonly provided by rule, in this country, that it shall have such precedence, and shall be decided without debate. In our practice this question is always in order, when the member who makes the motion is himself in a situation to make any motion, and may be taken by yeas and nays; and a motion for that purpose is the only one, not even a question of order, or an appeal,[3] that can be allowed to intervene before the question is taken.

1393. If the motion to adjourn is resolved in the affirmative, the pending question is thereby suppressed,[4] with all other business for the day, and removed from before the house, so that if renewed at all, it must be brought forward in the same manner as if it had never been before made; if decided in the negative, the original question revives, and the debate is resumed at the point where it was interrupted by the motion to adjourn.

1394. The question of adjournment being one, in which the

[1] It is not in order to reconsider a vote on a motion to adjourn. J. of H. 29th Cong. 1st Sess. 1089.

[2] A motion to adjourn is in order, after the assembly has voted, but before the decision has been announced. J. of H. 26th Cong. 1st Sess. 266. So it is in order, during the pendency of a question of order, which a member, in rightful possession of the floor, was interrupted to raise. Cong. Globe, III. 265.

[3] Cong. Globe, XXI. 384.

[4] This effect is usually counteracted in our practice by a special rule.

element of time exists, so that a motion made to adjourn at one time is not the same motion as a motion to adjourn made at another time, the question of adjournment may be moved repeatedly upon the same day; but, as there must be some lapse of time between the two motions in order to render them different, and this lapse of time can only be denoted by some parliamentary proceeding,[1] for otherwise nothing would intervene to change the situation of the house, it is a rule that after a question of adjournment has been resolved in the negative, a second motion to adjourn cannot regularly be made, until some intermediate question has been proposed; as, for example, suppose the pending question to be, that a particular bill be now read a second time, and the question of adjournment thereupon moved and negatived, a second motion to adjourn cannot be immediately made, but, if an amendment is first proposed, as to leave out the word "now," for the purpose of inserting "this day six months," the question of adjournment may then be moved. It is sufficient for the purpose, after one question has been put and carried against an adjournment, to move thereupon that an entry upon the journals (supposed relevant) be read, and then the question of adjournment may be repeated.[2]

1395. In order to avoid any infringement of the rule above explained, it is a common practice in parliament, 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 former supersedes the pending 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

[1] The rule, as to the intervening business, the doing of which is necessary to the validity of a second motion to adjourn, or of any other motion, into which the element of time enters, after a former motion of the same sort has been decided in the negative, is commonly expressed in the language above given; and it seems to be supposed, at least, in this country, that, in order to constitute business of this description, it must be such as would properly require to be entered on the journal. There can be no doubt that the occurrence of any business, which is, in fact, entered upon the journal, is sufficient. But it is manifest that this is not the test; for the intervention of many matters of business, as, for example, the speaking of a member in debate, which are quite sufficient for this purpose, are not entered on the journal at all. The true test, undoubtedly, is, that if any parliamentary proceeding takes place, whether it is of a nature to be entered upon the journal or not, the second motion is regular; and that if the proceeding is not of a nature to go upon the journal, or is a part only of another proceeding, the clerk ought to enter it upon the journal, in order to show that the motion is regular.

[2] Hatsell, II. 109, n.; Same, 209, and note; J. of H. 27th Cong. 2d Sess. 774; Same, 31st Cong. 1st Sess. 1092; Cong. Globe, XXI. 1347.

the question which they are prepared to support. This distinction should always be borne in mind, lest a result should follow 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.[1]

1396. The house may also be adjourned, in the midst of a debate, or other proceeding, without any motion or vote for that purpose, whenever the number of members present falls below the number requisite to form a house, namely, forty in the commons, and three in the lords. When this happens, and notice is taken of the fact by the speaker or any member, or it becomes known to the house by the numbers on a division, the speaker must then immediately adjourn the house; and an adjournment, caused in this manner, has the same effect of suppressing a question, as a formal question put and carried to adjourn.[2]

1397. The effect, which an adjournment of the house would have upon the question pending at the time, is counteracted to a great extent, if not altogether, in our legislative assemblies by a provision which is frequently inserted in the rules and orders of each, that the unfinished business in which the assembly was engaged at the time of its last adjournment, shall have the precedence in the orders of the day.

ARTICLE II. *Orders of the Day.*

1398. In assigning its business for consideration on a future day, the house may either fix upon the day merely, or may also assign some particular hour on that day. In the former case, the whole of the day assigned is set apart for the consideration of the motion in question, but the particular part of it which may be taken for that purpose depends, in each case, upon the vote of the house.

[1] May, 217, 218.

[2] In those of the American legislative assemblies in which a less number than a quorum is authorized to adjourn, the presiding officer must wait for a motion. In the mean time business is suspended, but is renewed again on the appearance of a quorum.

Where the hour as well as the day is fixed, the speaker, on the arrival of that hour, interrupts all other business, and announces that fact to the assembly. He then waits for a motion, which is to a certain extent a privileged one, to proceed with the business thus assigned. The assignments of the first kind are called the order, or orders of the day; the others are denominated special assignments or orders.

1399. A subject or question, which, by an order of the house, has been assigned for consideration on a particular day, or, in other words, for the consideration of which a particular day has been assigned and set apart, is thereby so far made a privileged question for that day, that a motion to proceed to the consideration of it on that day is entitled to take precedence of and supersede any other question of the same nature.[1] If, therefore, on a day assigned for the consideration of a particular subject, any other question is moved, a motion may be made for reading the order of the day; and this motion will take precedence of, and must be decided before proceeding further with, the other.

1400. If the motion is decided in the affirmative, the house proceeds with the order of the day immediately, and the original question is accordingly superseded until after the order of the day has been disposed of, when it may again be moved; if, in the negative, the original question revives, the order of the day is superseded, and as the subject of it cannot be proceeded with on that day, it is equivalent to a discharge of the order.[2]

1401. Where there are several orders of the day, the motion for reading them, in order to supersede a pending question, must be for reading the orders generally, and not for reading a particular order; and, when the house is actually engaged upon one of the orders of the day, a motion for reading the orders generally is not admissible, for the purpose of suppressing the question under consideration, because the house is already doing that, which the motion, if carried, would oblige them to do.[3]

1402. This mode of suppressing a question cannot, of course, be resorted to, when there is no order of the day, or when the orders of the day have been all disposed of; but where there are several orders of the day, and some of them are disposed of, on separate motions, those remaining may be moved for as the orders of the day.

[1] A question of privilege or a special order would supersede the order of the day.

[2] Parl. Reg. LXIV. 230.

[3] May, 218.

1403. It should be observed, that an order of the day, although it generally specifies some particular thing to be done, with regard to the subject of it, is an authority for doing at the same time, whatever properly relates to the same subject.[1] Thus, where there are several orders of the day, the first of which is for the commitment of a bill to a committee of the whole house, the house may not only go through the commitment of the bill, but may proceed to pass it, under the same authority, before proceeding to the next order of the day.

ARTICLE III. *Previous Question.*

1404. A third method of superseding and suppressing a question already proposed, is by moving what is called the previous question. Any motion, which gives rise to a question previous in its nature to another question to which it relates, may properly be denominated a previous question, as, for example, a motion to amend, or to adjourn; but this term *previous*, in parliamentary proceedings, has been long exclusively applied to a motion, which is intended to obtain a decision of the house, as to the propriety or expediency of then entertaining, or, in other words, of temporarily suppressing the subject or question to which it is applied. It is said to have been introduced for the purpose of suppressing subjects of a delicate nature, relating to high personages, or which might call forth observations of a dangerous tendency.

1405. Though this is the proper function of the motion for the previous question, and it belongs appropriately to the class of motions used for the purpose of suppressing the subjects to which they are applied, and though it is still used principally for that purpose in the two houses of the British parliament, yet it has received so great an extension in legislative practice in this country, and is applied, for the most part, as we shall see hereafter, to such different purposes, that an adequate idea of this important portion of parliamentary machinery can scarcely be obtained, without treating separately and at some length, of the previous question, as used in the two houses of parliament, and as practised upon in the legislative assemblies of this country.

[1] J. of H. VIII. 502; Cong. Globe, XIII. 283.

1. *Of the Previous Question according to the Common Parliamentary Law.*

1406. At the time when this motion first came into use, (something more than two hundred years ago,) it was the practice for the speaker to frame the questions, which were put to the house, from the turn of the debate, as well as to receive them from individual members. The state of the debate, which gave occasion to the putting of the previous question, and the nature of the motion itself, are thus described by Scobell, who wrote his treatise during this period: — "If, upon a debate, it be much controverted, and much be said against the question,[1] any member may move that the question may be first made, whether that question shall be put, or, whether it shall now be put; which, usually, is admitted at the instance of any member, especially if it be seconded and insisted on; and if that question being put, it pass in the affirmative, then the main question is to be put immediately, and no man may speak any thing further to it, either to add or alter."[2]

1407. At the present day, the previous question is moved and seconded like any other motion, without regard to the state or turn of the debate. It differs, however, in this respect, from other motions, that it is moved by the name which it bears, (the term *previous* being now exclusively appropriated to it in parliamentary proceedings,) and not in the terms in which it is proposed to the house; though there is no other reason than merely usage, why it should not be moved in the latter form. The motion usually made is the previous question; the question stated and put to the house is, "that the main question be now put."

1408. When this motion was first introduced, the question was put in this form, "that the main question be put?" and, if resolved in the negative, the main question was suppressed, and could not again be moved for the whole session. The form of the question was afterwards changed (it is said on the suggestion of Sir Harry Vane) to that which it now bears, namely, "that the main question be *now*[3] put?" and the operation of it, if resolved in the negative, is to suppress the main question for the day only.

1409. The purpose of this motion being to suppress the ques-

[1] That is, against the subject or form of it.

[2] Scobell, 27, 28.

[3] The insertion of this word into the terms of the question, by whomsoever it was suggested, was greatly to the advantage of the reformers of that day, and against the court party.

tion to which it is applied, by coming to a resolution or vote, that that question shall not be put, it would seem most appropriate that the question should be so framed, that a decision of it in the affirmative should produce the desired result. But this is not the case; the terms of the question are so expressed, that the mover and those who vote with him vote against the motion; and the motion is said, in common language, to be carried, though, in point of form, it has been decided in the negative. This apparent inconsistency results probably from the fact, that the question received its form at a time when it was not moved by a member, but framed by the speaker from the turn of the debate.

1410. If the previous question is decided in the negative, namely, that the main question shall not now be put, the effect of this decision is, that the same question cannot be moved again the same day, but may be on any subsequent day. If the question is materially changed, so as to become in fact a different question, it may be moved again the same day; but, if altered in form or words only, without being essentially and substantially altered in matter, it cannot be moved until a subsequent day.[1] The suppression of a question for the day, by means of the previous question, seems to result from the general principle, that an order of the house cannot be rescinded or discharged on the day on which it is made.

1411. It seems that a motion is to be deemed the same as one already suppressed by the previous question provided it was a part of and included in the motion so suppressed; thus, a motion having been made in the house of commons that a message be sent to the lords, desiring that leave should be given to three of the lords, naming them, to attend and be examined as witnesses before a committee of the house of commons, which motion was suppressed by the previous question; and a similar motion being then made for a message in similar form, desiring the attendance of one of the lords named, the speaker, Sir John Cust, said, "that as the house had determined not to put the question on all the three lords, it would be disorderly to put it on one singly."[2]

1412. If the previous question is moved and carried in the negative, confessedly for the purpose of introducing the same (main) question, with essential alterations and amendments, the moving of such new and amended question does not seem to be irregular: because the rule of not putting again a question against which the previous question has been carried in the negative, must always

[1] Hatsell, II. 116.

[2] Cav. Deb. I. 81, 82.

be explained, in the observance of it, by the nature and turn of the debate, and the sense which the house puts on the word "now," in their arguments upon the previous question.[1]

1413. If the previous question is resolved in the affirmative, no alteration of the main question can then take place by way of amendment, nor can any further debate be suffered to intervene; but the main question must be put immediately and in its existing form.[2] The previous question may be suppressed by an adjournment of the assembly.[3]

1414. The previous question cannot be put upon an amendment,[4] because the question on the amendment being that certain words be inserted or added, or, that certain words stand part of the question, the decision of this question only determines that the words of the motion shall or shall not be added, inserted, or stand in that particular place, and has therefore all the effect of a previous question.[5]

1415. Nor can the previous question be put upon any of the other merely subsidiary motions which are used like the previous question itself for the suppression of other original motions. Thus it cannot be applied to the motions to postpone or to commit, or that a motion be ordered to lie on the table. Nor on the other hand, can any of these motions be put upon the motion for the previous question.[6]

1416. It has been held, that the previous question was improper in a question of privilege; as, in the case of Mr. Wilkes, whose petition having been presented, complaining of his detention in the king's bench prison, notwithstanding he had been elected a member of the house of commons, a motion was made, that it do lie on the table, and it being suggested that this motion might be suppressed by the previous question, it was said by leading members at once, and not denied, that such a course would be irregular.[7]

1417. When a question has been moved and seconded, and proposed from the chair, and the previous question has been moved and seconded and also stated from the chair, it is not in order

[1] Hans. (3), LXIV. 261; Hatsell, II. 124.
[2] Hatsell, II. 122 and note; Lex. Parl. 292.
[3] May, R. O. etc. 124.
[4] Comm. Jour. XXXII. 834; J. of S. III. 27; J. of H. VI. 61.
[5] Hatsell, II. 116.
[6] Jefferson's Manual, Sec. XXXIII.
[7] Cav. Deb. I. 48. It has been decided in the house of representatives of the United States, that the previous question is as much applicable to a personal charge against a member, as to any other question. Cong. Globe, VIII. 532; Same, XI. 345; Same, XIII. 578; Same, XVII. 359, 360.

then to move to amend the main question, without first withdrawing the previous question.[1]

1418. The effect, therefore, according to the common parliamentary law, of moving the previous question is threefold: *first*, as soon as it is moved and seconded and proposed from the chair, no other motion relating to the main question is admissible, unless the previous question is first withdrawn; *second*, if resolved in the negative, the main question, both in substance and form, is suppressed for the day, which is ordinarily considered as equivalent to a defeat; and *third*, if resolved in the affirmative, the main question must then be put immediately, without further debate, amendment, or delay. In the mean time, the debate is continued as before. Hence, it happens that, when the previous question is moved and seconded, the adversaries of the measure, instead of being confined in the debate to its merits, as would otherwise be the case, have the advantage of all objections which can be urged against the proposition itself, against the time when it is brought forward, and against the form in which it is moved; and this is an advantage of which they cannot be deprived, so long as a single member objects to the withdrawal of the previous question.[2] In our legislative assemblies the merits of the main question are not allowed to be discussed, on the motion for the previous question.

1419. The peculiar character of this motion has caused it to be variously characterized, according to the temper and disposition of members, and its operation upon motions in which they were interested. On the one hand, it has been called "a sort of parliamentary trick,"[3] "a mere subterfuge to evade the material question,"[4] and the member moving it has been charged with "skulking behind a previous question."[5] On the other hand, it has been considered as a very proper proceeding for the disposition of a question, to which members "could neither give a direct affirmative or negative;"[6] Lord Chancellor Loughborough said of it, that the real meaning of the previous question was, "that when a mo-

[1] Hatsell, II. 122.

[2] In parliamentary language, the previous question is said to be carried when it is decided in the negative; the object of the mover and of those who vote with him, being to suppress the main question. The term *amendment* is sometimes used to signify a motion which takes precedence of and supersedes another, as, for example, a motion to adjourn. In Hans. (1), II. 557, Mr. Speaker Abbott said, "that it was only in the case of an amendment by the previous question, that the rejection of the amendment precluded further debate."

[3] Comm. Deb. VIII. 43, 44.

[4] Parl. Reg. XXXIX. 192, 193.

[5] Parl. Reg. (2), X. 27.

[6] Parl. Reg. XI. 332.

tion was made that was not fit for discussion, the previous question was moved to get rid of it altogether, and prevent altercation upon a subject that did not admit of argument;"[1] Mr. Fox gave it as his opinion, "that when the house did not approve of a proposition, or did not wish to go immediately into it, nothing was more proper than to move the previous question, which did not preclude a subsequent discussion of the same subject, if any member should think it necessary to bring it forward;"[2] and Mr. Grey said, "that the adoption of the previous question was nothing more than a postponement of the debate, and did not by any means preclude the house from subsequently taking any step in the same question which they might think expedient."[3]

1420. But the previous question may be decided in the affirmative, as well as in the negative, that is, that the main question shall now be put; in which case, that question is to be put immediately, without any further debate, and in the form in which it then exists. This operation of the previous question, when decided affirmatively, has led to the use of it for the purpose of suppressing debate on a principal question, and coming to a vote upon it immediately; and this is ordinarily the only object of the previous question, as made use of in the legislative assemblies of the United States.[4] The operation of a negative decision is different in different assemblies; in some, as for example, in the house of representatives of congress, it operates to dispose of the principal or main question by suppressing or removing it from before the house for the day; but in others, as in the house of representatives of Massachusetts, and in the house of assembly of New York, (in the former by usage only, and in the latter by a rule,) the effect of a negative decision of the previous question is to leave the main question under debate for the residue of the sitting, unless sooner disposed of, by taking the question, or in some other manner.

[1] Parl. Reg. XXXIX. 192, 193.

[2] Parl. Reg. LV. 641.

[3] Parl. Reg. LV. 641.

[4] Mr. Jefferson (Manual, § 34) considers this extension of the previous question as an abuse. He is of opinion, that "its uses would be as well answered by other more simple parliamentary forms, and therefore it should not be favored, but restricted within as narrow limits as possible." Notwithstanding this suggestion, however, the use of the previous question, as above stated, has become so firmly established, that it cannot now be disturbed or unsettled.

2. *Of the Previous Question as used by Legislative Assemblies in the United States.*

1421. In the legislative assemblies of the United States, while the parliamentary character of this motion has been recognized in theory, as stated in the preceding paragraphs, it has been practically turned to a very different purpose, and has been used for many years past principally for the suppression of debate, on the topic under discussion. In the earlier history of our legislative assemblies, and down to the present century, the previous question was made use of for its legitimate parliamentary purpose of suppressing those subjects upon which the assembly did not wish to come to a direct vote. But while this object could be effected as well by various other motions, which were in constant use, there was one purpose equally if not more desirable, that of stopping debate, which the peculiar character of the motion for the previous question enabled it alone of all the parliamentary motions in use to accomplish. This motion has accordingly been laid hold of and used almost exclusively for this purpose in most of our legislative bodies since the commencement of the present century. But this practice, though very general, has not been universal. Thus the previous question was in common use in the congress of the confederation, and from that body it descended to the two houses of congress under the constitution; but in the two branches of that body, it has met with a different fate; in the senate of the United States, after being used a considerable time for its parliamentary purpose, it has been abolished altogether for many years,[1] while on the other hand in the house of representatives, it has gradually assumed and been adapted to its present character, of a motion for stopping debate.

1422. The parliamentary form of the motion has been preserved, notwithstanding its awkwardness, and the apparent incongruity of requiring those who are in its favor to vote against it. In the congress of the confederation, a remedy for the inconvenience seems to have been attempted by rule; that body having adopted in 1778, among their rules and orders, the following, namely: "The previous question (that is, that the main question be not now put) being

[1] The rules and orders of the senate of the United States contain a rule, prescribing all the different motions which may be applied to a subject under debate, but the motion for the previous question is not among them. See also J. of S. 31st Cong. 1st Sess. 482; Cong. Globe, XV. 553.

moved, the question from the chair shall be, that those who are for the previous question say *aye*, and those against it *no*, and if there be a majority of ayes, the main question shall not be then put, but otherwise it shall." In the rules and orders of the house of representatives of the United States, and the provision appears to be copied frequently in the rules and orders of other legislative assemblies, the form of the previous question is fixed as it now prevails in parliament. In this form, those who are in favor of the motion obtain their object by an affirmative vote.

1423. In this country, the motion for the previous question is regulated in two somewhat different manners;[1] first by the common parliamentary law, as stated in the preceding paragraphs; and secondly, by the same law, as variously modified to a greater or less extent by the rules of each particular assembly. The common parliamentary law is the rule of each assembly, until it adopts rules of its own, and when they are adopted, it prevails in all respects in which they are deficient.[2] In order to make this important proceeding intelligible, it is proposed in the first place to recapitulate, briefly, the rules which govern this subject, when it is regulated only by the common parliamentary law, and secondly to state more at length the practice which prevails, in the use of the previous question, in the house of representatives of the United States. The rules, which from time to time have been adopted in this assembly, having been extensively copied into the rules of other assemblies, it is probable, that a statement of the former will embrace all the particulars in which the practice of legislative assemblies in this country is different from the common parliamentary law.

1424. According to the common parliamentary law, the motion for the previous question may be made, to suppress any other original motion, but it cannot be put upon an amendment or any of the merely subsidiary motions, as to commit or postpone. It is subject to the same rules with other motions, and is moved, seconded, and stated from the chair, in the same manner. When stated as a question, it may be debated like any other, but the merits of the main question, are not in strictness open. If decided in the negative, the decision precludes the taking of the same or any similar question, the same day; if decided in the affirmative, the main, or principal question is then to be immediately put, without any further debate, alteration, or delay.

[1] J. of H. 26th Cong. 1st Sess. 88; Reg. of Deb. X. Part 3, 3473; Cong. Globe, VIII. 65.

[2] Cong. Globe, XXIII. 542.

1425. The peculiar operation of this proceeding, in the lower house of congress, depends principally upon the rule of that body relating to the order and precedence of motions, and upon the rules relating to this motion in particular. The latter will be stated as they occur. The former is as follows: — "When a question is under debate, no motion shall be received, but to adjourn, to lie on the table, for the previous question, to postpone to a day certain, to commit or amend, to postpone indefinitely; which several motions shall have precedence in the order in which they are arranged."

1426. The word *question*, in this rule, refers only to original questions, and not to questions of amendment[1] or merely subsidiary motions which may be suppressed by various other means, but to which the previous question is not applicable; and a subject is held to be sufficiently under debate to come within the operation of the rule, when it has been stated from the chair as a question for the decision of the house; but a practice also prevails, which is contrary both to the spirit and letter of the rule; this practice consists in allowing the mover of an original proposition, to which the previous question is applicable, to accompany it, in the same breath, and before it is stated from the chair, with a motion for the previous question. This anomalous and unparliamentary proceeding has been frequently called in question, and as frequently sustained on the ground of usage and convenience.[2]

1427. The previous question is put in its parliamentary form, namely, "Shall the main question be now put," which is also prescribed by a rule of the house. It cannot, therefore, be moved or stated in any other form; nor does it admit of any amendment. Parliamentary usage, as well as the rule above mentioned, both confine the motion to the present time.[3]

1428. When the previous question is moved, it then becomes the duty of the speaker to ascertain whether it is seconded or not by the requisite number of members.[4] This number, which was first fixed, and so remained for many years, at one fifth of the members present, is now fixed at a majority of those present. If the speaker ascertains that the requisite number is in favor of putting the motion, and on this question the yeas and nays are not

[1] See ante, § 1414.

[2] See ante, § 1284, note.

[3] Jefferson's Manual, Sec. XXXIII. It appears that the previous question has been moved, excepting certain individuals from its operation; but the validity of the motion in this form was not objected to. Cong. Globe, XV. 456.

[4] Cong. Globe, XI. 799.

admissible,[1] it then becomes the duty of the speaker to take the sense of the house upon the question. The number necessary to second this motion is attended with this convenience, that, inasmuch as the motion cannot be put unless a majority of the members present is in its favor, there is but little danger of a negative decision of the previous question itself.[2] When the previous question is moved, the speaker immediately proceeds to ascertain whether it is seconded, and if so, to put it to the house; unless he is interrupted by some question claiming precedence, such, for example, as the motion to adjourn, or to lie on the table, or to reconsider;[3] in which case the proceedings on the previous question are suspended altogether, by a decision of it in the affirmative, or for the time only during which it is pending, if decided in the negative; if interrupted by an incidental question, the proceedings on the previous question revive, as soon as the former is disposed of, whether decided in the affirmative or negative. The incidental motions, which most usually intervene to suspend proceedings on the previous question, are for reconsideration, which, it is declared, by a rule of the house "shall have precedence of all other questions, except a motion to adjourn." The motion for the previous question, being moved, seconded, and stated from the chair, was, until 1805, debatable within narrow limits, that is to say, as to the expediency or propriety of putting it, without opening the merits of the main question, but since that year, debate has not been allowable on the previous question, and by a rule more recently made, "all incidental questions of order, arising after a motion for the previous question, and pending such motion, shall be decided, whether on appeal or otherwise, without debate." The prohibition of debate is so strictly observed, that, when the previous question is pending, it is not even allowable to call for the reading of a document, relating, as, for example, the report of a committee,[4] to the principal question, and which would otherwise come within the rule as to the reading of papers; and the only exception it admits is, that where the measure under consideration

[1] J. of H. 19th Cong. 2d Sess. 254; Cong. Globe, XX. 264; Same, XXI. 1568. This question cannot be reconsidered by itself; Cong. Globe, IV. 235; but is reconsidered when the motion for the previous question is so; Cong. Globe, XII. 38.

[2] It has sometimes happened, that the previous question has been seconded by a majority, but not ordered.

[3] Cong. Globe, VIII. 446, 447; Same, XI. 783.

[4] J. of H. 23d Cong. 1st Sess. 726; Same, 27th Cong. 1st Sess. 1002; Same, 29th Cong. 2d Sess. 547; Reg. of Deb. X. Part 4, 4435. See also Cong. Globe, IV. 206; Same, XIII. 107.

is reported from a committee, the member reporting the measure is allowed to open and close the debate, according to the rule in his favor, notwithstanding the pendency of the previous question.[1]

1429. When the previous question is called or moved, it, at once, supersedes and cuts off all motions then made, which stand subsequent to it on the list above mentioned, and prevents their being made in future, provided the motion is seconded. If there is no second, the motions then pending revive, or they may be moved, as before. If the motion for the previous question is seconded by the requisite number, it is immediately to be put to the house.

1430. If the previous question passes in the negative, the effect of the decision is the postponement of the main question from that to the next sitting day, or to a day or time when such business is again in order; when the subject again comes, or is brought up, the motion for the previous question is still the pending question, and must be again put to the house, and so on as often as the decision is in the negative.[2]

1431. The first effect of a decision of the previous question in the affirmative, namely, that the main question be now put, is, that the main question is to be taken as it then stands, without any further amendment,[3] debate,[4] or delay, the motions for which are no longer in order. This last proposition admits of two exceptions in practice, which are contrary to the spirit if not the letter of the rule first above mentioned, namely, the main question may then be further postponed by being laid on the table,[5] or by an adjournment,[6] and is immediately to be put when the subject is again before the house, but in no other way can the question be postponed.

1432. The principal effect of a decision of the previous question in the affirmative is, that the house is thereby brought to a direct vote, first, upon certain enumerated motions, if then pending, and secondly, upon the main or principal question. These enumerated motions are; 1. A motion to commit, which may be either to commit, or to recommit, and with or without instructions; 2. If the

[1] Cong. Globe, XI. 250.

[2] J. of H. 27th Cong. 3d Sess. 12.

[3] J. of H. IX. 75; Same, 26th Cong. 1st Sess. 1296.

[4] J. of H. VII. 611. This was decided in 1811; the house had previously decided, in 1807 and again in 1808, on the former occasion, reversing the decision of Mr. Speaker Varnum, that the main question might be debated, after the previous question had been decided in the affirmative.

[5] J. of H. 30th Cong. 1st Sess. 175; Cong. Globe, XIII. 332. See Cong. Globe, IX. 174, 175.

[6] Cong. Globe, XIII. 349. In parliament, an adjournment is admissible after the previous question has been affirmed. May, R. O. etc. 124.

motion to commit does not prevail, then amendments previously reported by a committee, and pending amendments, that is, amendments which have been moved during the debate. Motions to amend the amendments belong to the same class of motions with the amendments themselves, and are put to the question accordingly. When the question has been put upon these motions, or such of them as are pending, it is then to be put[1] upon the main question.

1433. The previous question being general in its form, "Shall the main question be now put," without specifying the subjects to which it is applicable, it often becomes important where several questions are connected with the same subject-matter, to know what intermediate questions are cleared off by it, and what is, in point of fact, the main question. Ordinarily the first question moved or presented on a given subject is the main question; and where there are no debatable questions, there can seldom be any doubt on this subject; so when the subject under consideration is one, which passes through regular stages, the main question is always that which, if it passes in the affirmative, will carry the subject of it forward to its next regular stage, whatever may be the first motion or other question made in reference to it. Thus, where a bill, having been read a second time, is before the house for consideration, the main question is on committing it to a committee of the whole house, if it ought to be committed to that committee, whether any motion is made to that effect or not, and whatever other intermediate question there may be pending, otherwise the main question is on the engrossment and third reading of the bill; so where a bill, having been engrossed, and read a third time, is before the house for consideration, the main question is on its passing; so where a bill having passed, the title is announced, the main question is on agreeing to the title. In all other cases, the first question moved is generally the main question; these questions may all be divided, if the same will admit of division.

1434. The previous question, like other motions, may be withdrawn by the mover, and may be reconsidered,[2] but it cannot be withdrawn after it has been seconded, without the vote of a majority of the house;[3] and it cannot be reconsidered while it is in the course of execution, that is to say, after the house has begun to

[1] J. of H. 27th Cong. 1st Sess. 244, 245, 246, 247, 248, 249; Cong. Globe, XX. 582.

[2] Cong. Globe, XII. 38; Same, XXI. 381; Same, XIII. 501.

[3] J. of H. 21st Cong. 2d Sess. 252.

take, and while it is in the course of taking, the different classes of questions above mentioned, all of which collectively are sometimes said to constitute the main question.

1435. The operation of the previous question lasts only until the questions above mentioned, including the main question, have been taken, and does not extend to the next stage in the progress of the same measure. Thus, if a bill, which has been read a second time, is under consideration, and the previous question is moved, the main question is on ordering the bill to be read a third time, and when that question is taken and decided, the previous question ceases to operate, even though the bill should be carried forward immediately through its remaining stages. If desired, the previous question must be renewed at every one of the stages of the bill. So, when a motion to reconsider is taken under the operation of the previous question, and is decided in the affirmative, the previous question has no operation upon the question to be reconsidered; if the influence of the previous question is desired on that question, it must be moved again.

1436. After the previous question has been moved, the main question may be withdrawn by the mover, in the same manner as if the previous question had not been moved, at any time before a decision or amendment, but it cannot be modified, after the previous question has been decided in the affirmative.[1]

ARTICLE IV. *Amendment.*

1437. It has already been seen in treating of the subject of amendments, that this form of proceeding, unless restricted by a special rule, may be adopted, not only for the purpose of carrying out and effecting the object of a proposition, by improving the terms in which it is expressed, but also of defeating it, by changing it into a proposition of a different character, or by substituting another and a different proposition in its place. When an amendment of this description is moved, it may be regarded as a motion to suppress, whether that be the primary or principal object of the motion or not, because, if it is agreed to, it is clear that the original or main question is suppressed without any opinion being expressed upon it, further than as it may be negatived or otherwise qualified by the proceedings on the amended question. Amendments of this kind may be made in any of the forms by

[1] Cong. Globe, XI. 471.

which amendments are usually made, as by leaving out, by inserting, or adding, or by leaving out and inserting, according to the form of the proposition, and the nature of the amendment proposed.

1438. Amendments for the purpose of defeating and thus suppressing a motion are of three kinds, *first*, those by which a proposition relating to a different subject is substituted for the one originally moved; *second*, those by which the original proposition is rendered so absurd and ridiculous, or so changed in meaning, or so impracticable, that it is at once rejected by the votes of all parties; and, *third*, those by which the original proposition is reversed, or changed into its opposite, and in that form adopted.

1439. An example of the first form occurs, when, on a motion that a particular order of the day be read, an amendment is proposed by leaving out all the words of the motion except the word "that" at the beginning, and substituting therefor a motion that some other order of the day be read. Examples of the second and third forms have already been given.

1440. Where a question was so altered by amendments, as to bear a sense different from what the mover intended, the house of commons gave leave, that in this instance only, the common form of the entry should be altered; a memorandum being also made of the reasons, in order to prevent the proceeding from being drawn into a precedent, in a case where the same reasons should not exist.[1]

CHAPTER SIXTH.

OF THE ORDER, SUCCESSION, AND PRECEDENCE OF MOTIONS.

1441. It is a general rule, relating to parliamentary proceedings, that, when a question is regularly before the house, for its consideration, upon a motion duly made and seconded and proposed from the chair, that question must be forthwith disposed of, either for the time or permanently; and that until such disposition of it, no other motion or question can regularly be made or arise so as

[1] Hatsell, II. 118.

to take the place of the former and be first acted upon, unless it is either, *first*, a motion relating to and connected with the preceding question, and intended for the purpose of disposing of that question, or of assisting the house in its consideration; or, *secondly*, a motion relating to and connected with some subject which is deemed to be of paramount importance; or, *thirdly*, a motion relating to the general course and order of proceeding.

1442. All these different kinds of motions take the place of the principal motion or main question, as it is sometimes called, and are to be first put to the question; and, among themselves, also, there are some which, in like manner, take the place of all the others. Some of these questions merely supersede or take the place of the principal question, until they have been decided; and, when decided, whether affirmatively or negatively, leave that question as before. Others of them also supersede the principal question until they are decided; and, when decided one way, dispose of the principal question; but, if decided the other way, leave it as before. These several motions will now be stated, and the relation which they bear to the principal question and to one another explained, in the *first three* of the succeeding sections; to which is added a *fourth* concerning the order, succession, and precedence of motions as established by rule in this country. A *fifth*, concerning the general course and order of business in a legislative assembly, will conclude the first division of this part.

SECTION I. OF MOTIONS RELATING TO AND CONNECTED WITH THE QUESTION PENDING.

1443. Motions coming under this head are of two kinds, namely, *first*, subsidiary, or, as they may also be called, secondary, by which terms are denoted those motions which are made use of to dispose of a principal motion or question, either for the time being, or permanently, in the manner most consonant to the wishes of the house; and *second*, by incidental motions or questions which arise out of, or occur in consequence of the pendency of, some other question, which, to them, stands in the relation of, a principal question.

ARTICLE I. *Subsidiary Question.*

1444. The subsidiary or secondary motions in common use are the following, namely, to amend, to commit, for the previous ques-

tion, to lie on the table, and for postponement, all of which, except the motion to lie on the table, have been previously considered.

1445. Motions to *amend*, being previous in their nature to the motion or question which it is proposed to amend, take precedence of or supersede that question; because, in whatever form the nature of the amendment may require the question to be taken, the substantial question first decided is, whether the motion in its original form, or as amended, shall be the question before the house, and not whether the original motion shall be adopted.

1446. Motions to *commit*, or if the subject has already been in the hands of a committee, to recommit, whether moved as amendments, or as independent motions, equally take precedence of the motions to which they are applied. In the latter case, also, they may be moved after and take precedence of motions to amend;[1] but the motion to commit, if decided in the negative, cannot be renewed.

1447. Motions to *postpone*, both indefinitely and to a day certain, whether moved as amendments, or in the form of an adjournment of the debate, take precedence of the motions to which they relate. Motions to postpone, as well as to commit, like other motions, cannot be made a second time.[2] The subject can only be reached again, if at all, by a motion to reconsider.[3]

1448. The *previous question* also takes precedence of the question upon which it is moved. This motion has already been considered, both according to the common parliamentary law, and according to the usual practice upon it in this country. In neither case can it be moved a second time, in reference to the same subject. Where reconsideration is allowable, the motion for the previous question may, whether decided in the affirmative or negative, be reconsidered.

1449. The motion to *lie on the table* is a subsidiary motion, which supersedes and disposes of the motion to which it is applied for the time being. It may specify the time, or be expressed in general terms.[4] In the former case, if the motion prevails, the subject of it is disposed of for the time specified; in the latter, for the day only on which the order is made.[5] This motion is proper when the assembly has something else before it which claims its present attention, but is willing to reserve to itself the power of

[1] Jefferson's Manual, Sec. XXXIII.; Scobell, 46.
[2] Cong. Globe, XVIII. 382, 383.
[3] Cong. Globe, XX. 517.
[4] J. of C. X. 160; J. of H. VI. 477; Same, VIII. 353; Ann. of Cong. I. 791.
[5] Hans. (1), XVII. 318.

proceeding to consider the subject at a more convenient opportunity.[1] In general, whatever adheres to the subject of this motion, goes on the table with it, as, for example, where a motion to amend is ordered to lie on the table, the subject, which it is proposed to amend, goes there with it. But this rule does not apply to propositions which are independent of the motion laid on the table, though connected with it; thus, where a motion to amend the journal,[2] or the question on the reception of a petition,[3] or a motion to reconsider[4] a vote by which a bill has been passed through one of its stages, or an appeal from the decision of the presiding officer on a question of order, is laid on the table, neither the journal, nor the petition, nor the bill, nor the question of order, goes on the table with the motion to amend, or to reconsider, or the appeal; the journal stands as if no motion to correct it had been made; the bill may pass through its remaining stages; the petition is not thereby received; and the decision of the presiding officer stands as the decision of the house. According to the practice of legislative assemblies in this country, a motion laid on the table may be proceeded with at any time, even on the same day on which the order is made.

1450. A distinction is to be made between the speaker's table and the table of the house. The latter only is the subject of the order in question, to lie on the table. Whatever is under the present consideration of the assembly, or may be so, whenever it is proceeded with, is on the speaker's table.[5]

1451. This motion, if decided in the negative, may be renewed, whenever any new business intervenes,[6] or when the motion is, in the mean time, so changed, by modification or amendment, as to become a different one;[7] if decided in the affirmative, the subject is thereby disposed of, for the time being, and can only be brought before the assembly again by moving to rescind or discharge, or to proceed with the consideration of the subject, or by motion to reconsider.

1452. All these motions, except the motion to adjourn the debate, being equal among themselves, when any one of them is regularly moved, seconded, and proposed from the chair, no one of the others

[1] Jefferson's Manual, Sec. XXXIII.
[2] J. of H. 26th Cong. 1st Sess. 28.
[3] Cong. Globe, IV. 7980; Same, VII. 47.
[4] See the journals of the house of representatives in congress, passim. But see Cong. Globe, III. 244.
[5] Cong. Globe, XXI. 1019.
[6] J. of H. 32d Cong. 2d Sess. 234; Reg. of Deb. XII. Part 2, 2179; Cong. Globe, VI. 355; Same, XII. 387; Same, XV. 479.
[7] J. of H. 30th Cong. 1st Sess. 250, 251, 252.

can be regularly moved until the first is disposed of or withdrawn. The motion to adjourn the debate may be made while any of the others is pending; and, if resolved in the affirmative, the main question and all other pending questions connected with it are adjourned accordingly. The same result as to pending motions follows from a postponement in any form, whether it takes place specifically or in consequence of some other proceeding, as, for example, an adjournment of the assembly or lapse of time.

1453. It is a general rule, with certain exceptions which will be immediately mentioned, that subsidiary or secondary motions cannot be applied to one another; as, for example, if a motion to amend, commit, or postpone a principal question is moved, the previous question cannot be made use of to suppress that motion; or, if the previous question is moved, it cannot be moved to postpone, commit, or amend, that motion.[1] The reasons for this rule are; 1. It would be absurd to separate the appendage from its principal; 2. It would be a piling of questions one on another, which, to avoid embarrassment, is not allowed; 3. The same result may be reached more simply by negativing the motion which it is thus attempted to dispose of by another secondary motion; and, 4. None of the reasons, which sometimes render it desirable to get rid of a question without deciding it, can ever apply to any of these merely formal motions.[2]

1454. The exceptions to the rule are, that motions to commit, amend, and postpone, may be amended, for the reason, (as stated by Mr. Jefferson,) "that the useful character of amendment gives it a privilege of attaching itself to a secondary and privileged motion;" and, consequently, where such effect can be obtained by means of an amendment, any of the preceding motions may be disposed of by way of amendment. A motion to commit may be amended by the addition of instructions; motions to amend may be variously amended, and motions for postponement may be amended

[1] It has accordingly been held in the lower house of congress, that a motion to lie on the table, or to reconsider an order to lie on the table, (J. of H. 27th Cong. 3d Sess. 334; Cong. Globe, XII. 256; Same, XXIII. 749,) cannot be suppressed by a motion to lie on the table, (J. of H. 27th Cong. 3d Sess. 211; Cong. Globe, XI. 452;) that a motion to commit cannot be suppressed by a motion to postpone indefinitely, (J. of H. VII. 75,) that a motion for the previous question, (J. of H. 29th Cong. 2d Sess. 252,) or a motion to postpone to a day certain, (Reg. of Deb. IX. Part 2, 1760,) or indefinitely, (Cong. Globe, XXI. 1322, 1678,) cannot be ordered to lie on the table; that a motion for the previous question cannot be applied to a motion to postpone indefinitely (Reg. of Deb. IX. Part 2, 1757); and that a motion to lie on the table cannot be postponed, (Cong. Globe, XV. 1080,) or amended, (Cong. Globe, IV. 80).

[2] Jefferson's Manual, Sec. XXXIII.

as to one day instead of another, or to a special, instead of an indefinite time.[1]

1455. The previous question, however, cannot be amended; the nature of it not admitting of any change. Parliamentary usage has fixed its form, *Shall the main question be now put?* that is, at this present time; and, as the present time is but a single point, it cannot admit of any modification; and to change it to the next day or any other moment is without example, as it would be without utility.[2]

ARTICLE II. *Incidental Questions.*

1456. Incidental questions are those which arise out of and are connected with (though they do not necessarily dispose of) other questions, to which they relate, and which, for the time being, they supersede. It would, of course, therefore, be difficult, beforehand, to enumerate all the motions of this description, which might arise under any circumstances. The following, however, are those which most usually occur, *first*, questions of order; *second*, questions for reading papers; *third*, questions on leave to withdraw motions; *fourth*, questions on suspending or dispensing with a rule; and *fifth*, that the pending question, when taken, be taken by yeas and nays.

1. *Questions of Order.*

1457. It is the duty of the speaker of the house of commons to enforce the rules and orders of the house, in all its proceedings, and this without question, debate, or delay, in all cases, in which the breach of order, or the departure from rules, is manifest. It is also the right of every member, taking notice of a breach of order, to insist upon the enforcement of it in the same manner. In the house of lords, the lord chancellor, or speaker, has no more power, in this respect, than any other peer.

1458. But, though no question can be made as to the enforcement of the rules and orders, when there is a breach or manifest departure from them, so long as any member insists upon their enforcement; yet questions may and do frequently arise, as to the fact of there being a breach of order, or a violation of the rules, in a

[1] Jefferson's Manual, Sec. XXXIII.

[2] Jefferson's Manual, Sec. XXXIII.

particular proceeding, or as to what the rule or order is, or what the form of proceeding shall be, in a particular case; and these questions must be decided, before a case can arise for the enforcement of the rules. Questions of this kind are denominated questions of order.

1459. When any question of this nature arises, in the course of any other proceeding, it necessarily supersedes the further consideration of that subject, until it is itself disposed of;[1] then the original motion or proceeding revives, and resumes its former position, unless it has been itself disposed of by the question of order.[2]

1460. The presiding officers of the American legislative assemblies, whether members or not of the bodies over which they preside, have the same authority in this respect with the speaker of the house of commons; and it is usually made their duty, also, by a special rule of their respective assemblies, to decide all questions of order, subject to an appeal to the assembly.

1461. In parliament the speaker's decision is not conclusive; but a question may be framed contrary thereto by any two members, one to move and the other to second his motion, for the decision of the house.[3] This is a very uncommon proceeding,[4] but until it takes place, the speaker's decision cannot be called in question or departed from; it stands as the judgment of the house. In our assemblies, it is a common proceeding, and bears the name of an appeal. The question is not taken, however, on sustaining or reversing the decision of the chair, which is entirely abrogated by the appeal, but whether the decision of the chair shall stand as the judgment of the house.[5] This is the substance of the question, which is always put upon an appeal, though the form is sometimes changed.

1462. Questions of order, for the decision of the presiding officer, arise in two different manners, both relating to the business before the assembly, either as to its general course, or to the particular matter then under consideration. The presiding officer, sometimes, and especially in regard to the general course of business, voluntarily expresses a statement of his opinion; and, sometimes, he does so, more frequently, perhaps, in relation to the particular matter then under consideration, at the suggestion of an individual member. Sometimes, also, especially in doubtful matters, either under

[1] Cong. Globe, X. 297.
[2] See an example, Comm. Jour. XXXII. 834.
[3] Comm. Jour. I. 369.
[4] Appendix, XIII.
[5] J. of C. X. 45, 48; 356, 357.

his general authority,[1] or in virtue of a special rule,[2] he puts questions of order, in the first instance, directly to the house.

1463. It then becomes important, in certain cases, especially when the question arises on the suggestion of an individual member, to determine what are questions of order, for the decision of the presiding officer; and, herein, no other general rule can be laid down, than that a question of order, always, whatever other effect it may have, is one which affects the present state of the business of the assembly; but the present effect of a motion, as to its subject-matter;[3] or its prospective operation, as a matter of order, on the business of the house;[4] or whether the assembly is dissolved or not by the lapse of time;[5] is not a question of order. The presiding officer's opinion, on a point of order, may be revised and corrected, at any time when the subject is before the assembly;[6] but it is irregular to raise one point of order upon another, so that there may be two questions of order pending at once.[7]

1464. When, therefore, the presiding officer of an assembly is called upon by any individual member (and no seconder is necessary) to give his opinion as to a matter of order arising, or which the member supposes to have arisen, as well as in those cases in which the presiding officer volunteers his opinion, he gives it at once, either with or without reasons, as he thinks proper, and proceeds to direct the assembly accordingly.[8] Before, however, giving his opinion, the presiding officer may take the opinions of other members, at his pleasure, not in the shape of debate, on the question; but when he rises up to speak all the other members must at once resume their seats and be silent.[9] In the opinion given by the presiding officer, he may either decline deciding the point of order, as, for example, for some of the reasons above mentioned,[10] or he may decide it, either in the affirmative or negative. If the opinion is acquiesced in, it stands as the judgment of the assembly, and is to be enforced or executed accordingly; but any member, who obtains the floor for that purpose,[11] may appeal from it, and if the

[1] May, 264; Cong. Globe, VIII. 226.

[2] In the senate of the United States, there is a rule that "the president may call for the sense of the senate on any question whatever."

[3] J. of H. 32d Cong. 1st Sess. 611, 679; Cong. Globe, XX. 532.

[4] Cong. Globe, XXII. 1749.

[5] Reg. of Deb. XI. Part 2, 1658.

[6] J. of H. 31st Cong. 1st Sess. 1404; Same, 32d Cong. 1st Sess. 611; Reg. of Deb. IV. Part 2, 2291; Same, Part 1, 5; Cong. Globe, XVII. 253, 290.

[7] Reg. of Deb. VIII. Part 3, 3874; Cong. Globe, VIII. 65.

[8] Reg. of Deb. IV. Part 2, 2294.

[9] May, 264.

[10] J. of H. 32d Cong. 1st Sess. 611.

[11] Cong. Globe, IV. 221.

appeal is seconded as it must generally be,[1] and allowed, it then entirely abrogates the decision of the presiding officer, and refers the point of order to the decision of the assembly itself, whose decision thereof furnishes the rule to be pursued afterwards.[2]

1465. The opinion of the presiding officer, on a point of order, is considered as acquiesced in, and an appeal therefrom not seasonably taken, when any parliamentary proceeding[3] is allowed to take place afterwards; as, for example, where the mover of an amendment, which was adjudged to be out of order, not knowing of the decision, suffered another member to obtain the floor and to address the assembly, for some moments, before he claimed his appeal;[4] and, so, where the clerk has commenced calling the roll, and five members have answered to their names, it was held to be too late to question the decision of the presiding officer on a point of order.[5]

1466. An appeal may involve an inquiry of *fact*, that is, the rule being clear, whether a case exists within it, or of *law*, that is, the fact being indisputable, whether it comes within any such rule as is alleged;[6] it may be placed under the operation of the previous question;[7] and the question thereon may be taken by yeas and nays,[8] and divided if divisible.[9] An appeal may be withdrawn,[10] at the pleasure of the mover, and, being withdrawn, may be renewed by him or some other member; and the decision thereon may be reconsidered. An appeal may be debated[11] as a question before the assembly; although the proceeding out of which it arises is not debatable;[12] and the motion, which gives rise to it may be modified,[13] or withdrawn;[14] in which latter case, the appeal, of course, falls.

1467. If an adjournment of the assembly takes place, while an appeal is pending, the appeal is not thereby suppressed, but goes over to the next day, with the business to which it belongs, as the unfinished business of the day, on which the adjournment takes place.[15] So, where the hour,[16] or the day,[17] on which the business,

[1] This will depend, of course, upon the rules of each assembly.
[2] Cong. Globe, III. 315; Same, VIII. 246.
[3] Cong. Globe, XV. 178.
[4] Cong. Globe, XII. 243.
[5] Cong. Globe, XXI. 1749.
[6] Cong. Globe, XVIII. 941.
[7] Cong. Globe, VIII. 247; Same, X. 154.
[8] Cong. Globe, XIV. 369.
[9] J. of H. IV. 152.
[10] J. of H. VII. 76; Same, 26th Cong. 1st Sess. 126; Reg. of Deb. XI. Part 1, 965.
[11] Reg. of Deb. XII. Part 2, 2536.
[12] Reg. of Deb. XII. Part 2, 1970.
[13] Cong. Globe, XV. 359.
[14] Reg of Deb. VII. 404; Cong. Globe, XIII. 256.
[15] J. of H. IV. 152; Same, 26th Cong. 1st Sess. 673.
[16] Cong. Globe, X. 301.
[17] Cong. Globe, IX. 124.

giving rise to an appeal, is in order, expires, the appeal goes over, with that business, to the next hour or day, on which that business is in order; a similar result follows from the postponement, in any form, of the subject to which an appeal is attached; and, when taken in committee of the whole, if the committee rises and sits again during the pendency of the appeal, the latter revives, whenever the business, to which it belongs, is again brought forward in the committee.[1] The question on an appeal may be taken directly; or the appeal, if the motion for that purpose is not first withdrawn,[2] may be ordered to lie on the table.[3] In this latter event the motion is an independent one, and if it prevails, nothing but the appeal itself will be laid upon the table, and the matter, whatever it may be, which gives rise to it, proceeds as before.[4]

1468. It may be urged, as an objection, against an appeal, on the ground of order, that it presents the same question, which has already been decided by the assembly, and acquiesced in as a point of order. In these cases, the presiding officer, especially when the identity of the question is not apparent, or when the question is a new one, generally overrules the objection, on the ground, that, being a matter of opinion only, about which members may differ, it will be best to submit the question at once to the assembly.[5] But two different questions of order, in reference to the same general subject, may be brought forward consecutively;[6] and although the same question cannot regularly be made a second time, yet if a motion is objected to as not in order, on one ground, which is overruled by the presiding officer, it is then competent to the same or another member, to object to the motion as not in order, on a different ground.[7] It is, of course, immaterial, in this respect, whether the decision is made by the presiding officer alone, and acquiesced in, or by the assembly on appeal; and whether the objection is taken before the presiding officer, or on appeal.[8]

1469. It may be urged, in the second place, as an objection, in point of order, against an appeal, that there is another appeal pending, and under consideration, in reference to the same general subject, though not to the same point of order;[9] but if the first

[1] Cong. Globe, XV. 359.
[2] Cong. Globe, VIII. 246, 247.
[3] Cong. Globe, X. 301; Same, XI. 133; J. of H. 24th Cong. 1st Sess. 885.
[4] J. of H. 26th Cong. 1st Sess. 530; Cong. Globe, VIII. 246.
[5] Cong. Globe, VIII. 247, 395.
[6] Cong. Globe, X. 154.
[7] J. of H. 32d Cong. 1st Sess. 146, 785.
[8] Cong. Globe, XIV. 369.
[9] Reg. of Deb. IV. Part 1, 5; Cong. Globe, XVII. 290; Same, XXI. 94.

appeal is disposed of, as for example, by being laid on the table, the second is in order.[1]

1470. A third objection, in point of order, to an appeal, is, that it is raised on, or grows out of, another appeal;[2] that is to say, if, during the consideration of a point of order on appeal, a question of order arises, the decision of the latter by the presiding officer must be submitted to without appeal; for appeals cannot be piled upon one another, any more than there can be a division upon a division. In this case, the second question of order cannot be made the subject of an appeal, by the withdrawal[3] or other disposition of the first.

1471. The presiding officer, if there is any rule of the assembly to that effect, may require an appeal to be reduced to writing, and submitted to him in that form.[4] The question is stated for the determination of the assembly in the same manner with the question on any other motion; and, on this question, if debatable, the presiding officer may participate in the debate like any other member. Where an appeal is not debatable the presiding officer is only at liberty to give his opinion of the point of order, submitted on the appeal, with the reasons on which it is founded.[5] In all cases, he may decide the question, and if he pleases may sustain his own decision by means of his casting or other vote.[6]

2. *Reading Papers.*

1472. It is, for obvious reasons, a general rule, that, where papers are laid before the house for their consideration in reference to which a motion is made, any member has a right to have such papers read through once[7] at the table, before he can be compelled

[1] J. of H. 24th Cong. 1st Sess. 902.

[2] Cong. Globe, X. 154; Same, XVII. 573.

[3] Cong. Globe, XVII. 573.

[4] Cong. Globe, XI. 176.

[5] Cong. Globe, XXI. 832; Same, XXIII. 512.

[6] J. of H. I. 229; Reg. of Deb. VIII. Part 3, 3295. In the senate of the United States, in which the question on an appeal is stated in common form, "Shall the opinion of the chair stand as the judgment of the house," and the principle is admitted and practically applied, that where there is an equality of voices the decision is in the negative, it is said (J. of S. 26th Cong. 1st Sess. 523; J. of S. 32d Cong. 1st Sess. 651;) that on an appeal, a majority of the votes is necessary in order to reverse the decision of the presiding officer, and that in the case of a tie vote, the decision is sustained. But unless there is some custom in that body (there is no rule to that effect) which sanctions this departure from the ordinary rule, it is difficult to see upon what ground it rests. The same principle has been recently asserted, and apparently abandoned, in the house of representatives of the United States. Cong. Globe, XXI. 1607, 1608.

[7] J. of H. 25th Cong. 2d Sess. 943. The extent, to which this rule may be carried, was forcibly illustrated by a recent proceeding in the house of representatives at Washington. A motion being under consideration in that body, to reconsider a vote, whereby it

to give his vote upon them,[1] but, when they have once been read to the house, they are then, like every other paper that belongs to the house, to be moved for to be read; and, if the matter is disputed, it must be decided by taking the sense of the house.[2] In regard to papers of this description, therefore, if any member insists upon their being read, and any other member wishes to have the reading dispensed with, or suspended if it has already been commenced, the latter must first move a suspension of the rules, to enable him to move that the reading be dispensed with or suspended, and if a suspension takes place, then to make a motion accordingly for the purpose in view.[3]

1473. Besides papers of the description above referred to, which, in fact, make a part of the question before the house, there are other documents of a public nature, accessible to everybody, as acts of parliament, journals of the house, proclamations and papers, private or official, received or ordered by the house,[4] etc., which members desire to have read for the information of the house, either with reference to some question then pending, or for the purpose of laying a foundation for further proceedings; and, in all such cases, as well as in reference to papers, involved in a pending question, which have already been once read, the reading must be on motion and vote.

1474. The reading of a paper, not regularly before the assembly, which sometimes takes place for its information only, is in consequence of general consent, and not in virtue of the rule above mentioned.[5] Nor is the reading of a paper in order after the previous question has been moved.[6]

1475. The practice of the house of commons, in reference to the reading of papers, not coming within the rule above laid down, is, that if any member moves for an act of parliament, a journal or paper, to be read, which the house sees is really for information, and not for affected delay, and no member objects to it, the speaker directs it to be read without putting a question; but, if any mem-

accepted, and ordered to be deposited in the library, a copy of Raymond's Political Economy, a member threatened if his colleague was not suffered to proceed, to call for the reading of the entire volume, and his right to have the same read by the clerk, at the table, was admitted by the speaker. The reading did not take place. Cong. Globe, VIII. 483.

[1] Reg. of Deb. X. Part 3, 2870; Cong. Globe, VI. 329; Same, VIII. 494; Same, XI. 248.

[2] Hatsell, II. 164, 165.

[3] J. of H. 32d Cong. 1st Sess. 405, 1117.

[4] This class of papers being equally in the possession of the house, for its consideration, with those mentioned in the preceding paragraph, the distinction between them is, that some motion is made in reference to the latter.

[5] Cong. Globe, VIII. 210; Same, XI. 162; Same, XIII. 61.

[6] Cong. Globe, XIII. 374.

ber objects to it, the speaker must take the sense of the house by a question, upon this difference of opinion, as upon every other; no member having a right, as has been sometimes supposed, upon his own motion, only, to insist upon having any such paper read, without the house having any power to interfere to prevent him.[1]

1476. In all cases, where the reading of a paper is the subject of a motion, as it may be, when some other question is pending, the former motion takes precedence of the principal question to which it is incidental, and must first be decided.[2]

3. *Withdrawal of a Motion.*

1477. It has already been seen, in another part of this treatise, that when a motion is regularly made, seconded, and proposed from the chair, it is then in the possession of the house, and cannot be withdrawn by the mover, except in virtue of a special rule, without the leave of the house, first obtained for the purpose, and for which the unanimous consent of the house is necessary. Hence, when the mover of a question wishes to modify it, or to substitute a different one in its place, or to prevent the house from coming to a decision upon it, this can only be done by a motion for leave to withdraw it, and the sense of the house being ascertained by a question. If there is no rule which authorizes a member to withdraw or modify his motion, and objection is made to its being done by general consent, the member may then move a suspension of the rules to enable him to withdraw or otherwise dispose of his motion. If he has a right to withdraw at pleasure, he must as in other cases first obtain the floor for that purpose. Bills and other documents, which have been received by the house, may be withdrawn at any time by the ordinary major vote. Proceedings for the withdrawal of a motion, bill, or other document, supersede the pending question, for the time being; if decided in the affirmative, the motion to which they relate is thereby removed from before the house; if in the negative, the business proceeds as before.

[1] Hatsell, II. 163, 164.

[2] It seems, that an incidental question may be disposed of, by any of the ordinary subsidiary motions, in some cases, without carrying with it the principal motion, but this must be determined by the nature of each question.

4. *Suspension of a Rule.*

1478. When any contemplated motion or proceeding is irregular, by reason of the existence of some order of the house, either standing or otherwise, by which it is prohibited, such motion cannot be made, or, if made, cannot be entertained by the speaker, without a suspension of the rule or order, which renders it irregular. Sometimes a suspension of the orders is moved as a preliminary step, before the proposed motion or proceeding is brought forward;[1] sometimes it is moved after the motion has been made and objected to as irregular; and sometimes a suspension of the orders takes place virtually, without being moved, but only by the adoption of the motion or proceeding, in question, which, in fact, involves a suspension of the orders.

1479. When this proceeding becomes necessary, in order to the admission of some other motion, having a reference to a proposition then under consideration, a motion to suspend the orders supersedes the original question for the time being, and is first to be decided.

1480. Where a rule or order contains a provision, permitting the house, on any occasion, that, in their judgment, may justify a departure from the rule, to do so,[2] the order may, as it seems, be dispensed with according to its terms, or by a vote of the majority in the usual manner; but, where the rule is absolute, and contains no such provision, it can only be departed from, or set aside in the particular case, by general consent, that is, by an unanimous vote.[3]

1481. In all those cases, except as above mentioned, where a suspension of the orders is not moved as a distinct motion, but is virtually involved in some other motion or proceeding, which is alone put to the question, such motion can only prevail by general consent.

1482. In the British parliament, from the practice of which the foregoing principles are derived, the suspension of a rule for a particular purpose is an extremely rare proceeding. In our legislative assemblies, on the contrary, it is of frequent occurrence, and, for

[1] Hans. (3), L. 157.

[2] Parl. Reg. XIX. 5; J. of H. 26th Cong. 1st Sess. 612; Reg. of Deb. IV. Part 2, 1722.

[3] Parl. Reg. IX. 102.

the time being, supersedes, of course, the business then in hand, or the general course of business; if moved with reference only to a subject then before the assembly, it is incidental to that business only; if there is no other subject then before the assembly, and the motion is made for the purpose of introducing some new matter, as, for example, a bill or resolution, the motion is incidental to the general course of business; but, in both cases, the motions to suspend the rules are regulated in the same manner, and will be explained together.

1483. The motion to suspend the rules is usually preceded by a member's requesting the general consent of the assembly to the doing of a particular thing. If no one objects, (and any thing whatever may be done by general consent,) the assembly is deemed to assent, and what is desired is allowed accordingly.[1] If objection is made, then the member moves that the rules be suspended for the specific purpose which he has in view.

1484. This motion may be made at any time, when a motion is in order, and for any purpose;[2] it may be either for the suspension of a particular rule or of the rules generally;[3] and, if made in the latter form, and it prevails, it will operate to suspend all the unwritten as well as the written, rules, (except the rule allowing of a suspension,) which govern the assembly, and are opposed to the doing of the thing which the mover desires to do.

1485. This motion may be occasioned by a lapse of the time within which certain business is in order, for the purpose of continuing the discussion thereof;[4] for the purpose of throwing open particular days otherwise devoted to the consideration of a certain class of subjects;[5] for the purpose of reading a bill more than once on the same day;[6] for the purpose of going into committee of the whole at a particular time;[7] for the purpose of admitting the presentation of resolutions;[8] for the purpose of receiving reports;[9] for the purpose of a personal explanation;[10] and, generally, for the pur-

[1] J. of S. V. 92.

[2] J. of H. 29th Cong. 1st Sess. 364. See also Cong. Globe, XVII. 439; Same, XX. 188.

[3] Cong. Globe, XV. 343; Same, XVIII. 1029.

[4] J. of H. 20th Cong. 1st Sess. 137, 1403; Same, 656, 657; Same, 23d Cong. 2d Sess. 656; Cong. Globe, XIII. 352; Same, XIV. 124.

[5] J. of H. 21st Cong. 1st Sess. 687; Same, 23d Cong. 1st Sess. 631; Cong. Globe, VIII. 452.

[6] J. of S. 14th Cong. 2d Sess. 41; Same, 15th Cong. 1st Sess. 404; Cong. Globe, VIII. 504; Same, XII. 371.

[7] J. of H. 27th Cong. 1st Sess. 855; Cong. Globe, VIII. 431.

[8] J. of H. 27th Cong. 1st Sess. 169; Same, 31st Cong. 1st Sess. 1092, 1096.

[9] Cong. Globe, XV. 236.

[10] Cong. Globe, XV. 729.

pose of transacting any of the ordinary business of the assembly which would not otherwise be in order;[1] or it may be limited as to time, as, for one hour,[2] or one day,[3] or until a particular member has finished his speech, and then to enable another to make a motion;[4] or limiting the duration of the time which members may occupy in debate.[5] If the motion to suspend applies to a joint rule, which it does not unless particularly specified, the concurrence of both houses is necessary.[6]

1486. If the assembly is engaged in the consideration of other business, at the time, a motion to suspend the rules for a particular purpose, is in order, provided there is then no motion pending for the suspension of the rules;[7] or provided the motion for the previous question is not pending,[8] though it is otherwise if the main question has been ordered;[9] or provided the assembly is not already acting under a special order, to the establishment of which a suspension of the rules was necessary;[10] or provided the assembly is not already engaged, in acting under a suspension of the rule.[11]

1487. If a motion to suspend the rules for a particular purpose is decided in the negative, there can be no reconsideration of the vote.[12] Nor is any second motion to suspend the rules for the same purpose in order on the same day;[13] unless the motion is varied in its terms,[14] or is for a different time;[15] or unless some intervening business takes place;[16] but a second suspension for the same purpose is in order on a different day;[17] and a vote to suspend the rules may be reconsidered.

1488. This motion cannot be amended[18] nor can it be laid on the

[1] J. of H. 22d Cong. 2d Sess. 385; Same, 23d Cong. 2d Sess. 656; Same, 24th Cong. 1st Sess. 472; Same, 1213; Same, 2d Sess. 204; Same, 30th Cong. 1st Sess. 956; Reg. of Deb. X. Part 2, 2783; Cong. Globe, XV. 123, 231.

[2] J. of H. 29th Cong. 1st Sess. 1235; Cong. Globe, XIV. 123.

[3] J. of H. 21st Cong. 1st Sess. 679.

[4] J. of H. 23d Cong. 1st Sess. 631.

[5] Cong. Globe, XV. 342.

[6] J. of H. 18th Cong. 1st Sess. 139; J. of S. 18th Cong. 2d Sess. 241; J. of H. 20th Cong. 2d Sess. 383, 388; J. of S. 21st Cong. 2d Sess. 214; J. of H. 24th Cong. 1st Sess. 1210–1217; Reg. of Deb. VI. Part 2, 1139; Cong. Globe, XII. 371; Same, XIV. 278.

[7] Cong. Globe, VIII. 487; Same, XIII. 617,664.

[8] J. of H. 24th Cong. 1st Sess. 591; Reg. of Deb. X. Part 3, 3473; Cong. Globe, XIII. 446, 447; Same, XVIII. 439.

[9] J. of H. 31st Cong. 1st Sess. 1550; Cong. Globe, XI. 824; Same, XVII. 401.

[10] J. of H. 31st Cong. 1st Sess. 1096; Cong. Globe, XVII. 401, 439; Same, XVIII. 639.

[11] Cong. Globe, XI. 58, 142; Same, XII. 317; Same, XV. 67, 790; Same, XXI. 1225.

[12] Cong. Globe, XXIII. 182, 227.

[13] Cong. Globe, VIII. 89, 257, 268.

[14] Cong. Globe, VIII. 89.

[15] Cong. Globe, VIII. 432.

[16] Cong. Globe, VIII. 268; Same, XXIII. 753.

[17] Cong. Globe, VIII. 93.

[18] Cong. Globe, XX. 319, 320; but see J. of H. 24th Cong. 1st Sess. 1217; Cong. Globe, XI. 121, 387.

table[1] or postponed indefinitely;[2] but the previous question may be put upon it;[3] it may be taken by yeas and nays[4] and it may be taken as divided, if divisible.[5] If the assembly adjourns during its consideration, it is not suppressed by the adjournment, but goes over to the next day, as the unfinished business of the preceding day, or to the next day on which business of the same description is in order.[6] A suspension of the rules may take place without any of the previous formalities which are necessary when it is proposed to alter the rules.[7] On this motion the bill or resolution, which it seeks to introduce, cannot be read, but by its title only;[8] nor can any order be made concerning it until it is before the assembly.[9]

1489. If this motion, being made for the purpose of introducing some new business, is decided in the affirmative, the same is to be introduced in the ordinary manner,[10] and it will then be open, like every other paper of the same description, to amendment, modification, rejection, and discussion.[11] Such a decision will authorize the introduction of the same resolution mentioned in the motion, by another person than the mover, and even though the latter withdraws the resolution or refuses to submit it;[12] but it will not authorize the introduction of a different bill,[13] or of two resolutions instead of one.[14]

1490. When a given subject is allowed to be introduced, under a suspension of the rules for the purpose, and it is introduced accordingly, such suspension is an authority to do, in the accustomed methods of proceeding, whatever may properly relate to that subject. Thus, if authority is given under a suspension of the rules, to introduce a resolution on a particular subject, which is introduced and received accordingly, it may not only be introduced, but considered and finished.[15]

1491. This motion, unless it is otherwise provided in the rules themselves, is decided by the ordinary major vote. Thus, in the

[1] Cong. Globe, XV. 1135; but see Same, 51.
[2] Cong. Globe, VIII. 120.
[3] J. of H. 24th Cong. 2d Sess. 187.
[4] Cong. Globe, VII. 38; Same, VIII. 431, 432.
[5] Cong. Globe, XX. 319, 320.
[6] Cong. Globe, XXIII. 145.
[7] J. of S. 21st Cong. 2d Sess. 214; J. of H. 22d Cong. 2d Sess. 126; Same, 29th Cong. 1st Sess. 364; Cong. Globe, VIII. 504.
[8] Cong. Globe, XX. 515.
[9] Cong. Globe, XIII. 446, 447.
[10] J. of H. 30th Cong. 2d Sess. 330; Cong. Globe, XIII. 446, 447.
[11] Cong. Globe, VI. 369; Same, XX. 188.
[12] J. of H. 23d Cong. 1st Sess. 631; Reg. of Deb. X. Part 3, 4136.
[13] Cong. Globe, III. 300; Same, XXI. 1727.
[14] Cong. Globe, XI. 574.
[15] Cong. Globe, VIII. 94, 336; Same, XII. 292. But see J. of H. 27th Cong. 2d Sess. 763, 764.

rules of the house of representatives of the United States, a provision is inserted, that the rules shall not be suspended, but by a vote of two thirds; while the joint rules are silent on the subject. The consequence is, that the rules of the house can only be suspended by a vote of two thirds, but the joint rules may be suspended by the concurrent votes of a majority of each branch.[1]

1492. A suspension of the orders can only take place in reference to a proceeding to be instituted, or a motion to be made, during the current session: thus, where a motion was made in the house of commons that the promoters of a certain railway might be allowed to bring in a bill in the next session, on giving the notices required in reference to other bills, and that the standing orders relating to the deposits of capital on railways be dispensed with for the purpose, the motion was objected to, (and appears to have been waived by the mover,) on the ground, that "it would be for that session of parliament to inquire whether the proper notices had been given, and whether the proper deposits had been made, and whether, in fact, the standing orders had been complied with; and if that were not the case, then would be the time to endeavor to induce the house to accede to the proposition now made."[2]

5. *Of taking the Question by Yeas and Nays.*

1493. It is provided in almost all the American constitutions, that the yeas and nays of the members of our legislative bodies, on any question pending before them, shall be taken and recorded in their journal, on the demand of a certain number of the members present, or of a certain proportion of their number; but no mode is therein pointed out for ascertaining whether that form of taking the question is demanded by the requisite number. This is left to be done by putting the question, on the demand of a single member, in the ordinary manner. The motion for this purpose is incidental to the ordinary course of proceeding.

1494. The practice in demanding or moving for the yeas and nays is the same, whether they are moved for under this provision, or where they are only provided for by the rules and orders of the assembly in which they are proposed to be taken. They may be demanded by a single member, and it then becomes the duty of the presiding officer to ascertain whether the requisite number is in favor of the demand. This method of voting may be applied

[1] Cong. Globe, XII. 374; Same, XIII. 695; Same, XIV. 394. See Same, XX. 529.

[2] Hans. (3), LV. 14.

to all *questions*, whether subsidiary or principal, which are before the assembly for its determination, but not to matters which are not strictly questions; as, for example, to a motion for the yeas and nays, or, where more than one member is required, whether the requisite number is in favor of a demand for the previous question,[1] or to a motion to reconsider a demand for the previous question.[2]

1495. The yeas and nays may be ordered, when a quorum is not present on all questions which may be taken without a quorum, but not on others;[3] and may be moved for after a question is proposed, not only during the voting on it in any other form, as, for example, while the negative vote is taking,[4] or while the vote is announcing,[5] or before it is announced,[6] but even after the decision is announced, provided the house has not passed to other business.[7] If the yeas and nays are ordered to be taken on a motion which is subsequently withdrawn, and afterwards renewed, there must be a new motion and vote for taking the question by yeas and nays.[8]

1496. A motion for the yeas and nays can only be made once in reference to the same question.[9] If decided in the negative, it is not in order to move a second time that the question be taken in that manner.[10] If decided in the affirmative, the order may be discharged or rescinded by the revising of the vote by which the yeas and nays are required to be ordered. In both cases, the matter may be reached again by a motion to reconsider.[11] This motion is itself to be decided by the ordinary major vote; but, if decided in the affirmative, it gives rise at once, to the motion for the yeas and nays, to be decided according to the rule established for that purpose.[12]

1497. When a question is ordered to be taken in this manner, it is open to debate until the clerk has begun to call the roll and one member at least has answered to his name, when further debate is precluded;[13] none but members who are within the bar, that is to say, within the house, when the question is stated, have a right to give their votes upon it;[14] and any member who has already an-

[1] J. of H. 19th Cong. 2d Sess. 254; Cong. Globe, XX. 260, 261, 262; Same, XXI. 1568.

[2] J. of H. 26th Cong. 1st Sess. 1288.

[3] J. of H. 32d Cong. 1st Sess. 651, 652, 727; Same, 2d Sess. 87, 145; Cong. Globe, XIV. 330.

[4] Cong. Globe, XI. 883; Same, XIV. 121.

[5] Cong. Globe, XV. 420.

[6] Cong. Globe, XI. 741; Same, XIII. 482.

[7] J of H. 32d Cong. 2d Sess. 194, 195; Cong. Globe, XXI. 277.

[8] Cong. Globe, VIII. 393.

[9] Cong. Globe, XX. 623, 624.

[10] Cong. Globe, XIV. 88; Same, XV. 303, 304.

[11] Cong. Globe, XX. 623, 624; J. of H. 30th Cong. 1st Sess. 405; Cong. Globe, VIII. 420.

[12] J. of H. 30th Cong. 1st Sess. 405.

[13] J. of H. VI. 446; Same, 17th Cong. 1st Sess. 216, 217; Reg. of Deb. IV. Part 2, 2479; Cong. Globe, XXI. 1686.

[14] J. of H. 19th Cong. 1st Sess. 796.

swered to his name may, at his own request, be called again[1] and change his vote, and back as many times as he pleases,[2] at any time before the decision is announced.[3] The yeas and nays cannot be taken in committee of the whole.[4]

SECTION II. OF MOTIONS RELATED TO, OR CONNECTED WITH, SOME SUBJECT WHICH IS DEEMED TO BE OF PARAMOUNT IMPORTANCE.

1498. The second class of questions, which, when they arise, take the place of other pending questions, for the time being, consists of those which relate to, or are connected with some subject which is deemed to be of paramount importance, either in itself considered, or in virtue of some previous vote or proceeding of the house. Questions of this class are of two kinds, namely, motions or questions relating to the rights and privileges of the house, or of its individual members, and those relating to the orders of the day, and other matters of business. The first are called questions of privilege; the latter privileged questions.

1. *Questions of Privilege.*

1499. The very existence of a legislative assembly, to say nothing of its power of acting with freedom and efficiency, depends so entirely upon the maintenance of what are denominated its privileges, and of the privileges of its individual members, that all questions relating to these subjects are deemed of paramount importance, and are allowed to supersede for the time being any other question which may then be under consideration. When, therefore, any question of this kind arises, as, for example, when members are attacked with force and violence, either within the precincts of the house, or on their way thither; or are obstructed in entering the house, either by violence or insult; when the proceedings of the house are disturbed or interrupted, either by members or strangers; when the freedom of debate and proceeding is attempted to be overawed by mobs or armed force without; or when a personal quarrel takes place between two or more members, within the house; in all such cases, the house will proceed, at once, laying aside, or rather suspending, without any vote, all other business, to consider the matter in which their privileges are involved; and, if necessary to bring the subject before the house, a member speaking may even be interrupted in his speech, in the

[1] Cong. Globe, X. 55.
[2] Cong. Globe, XXI. 171.
[3] J. of H. V. 71; Cong. Globe, XIII. 325, 326.
[4] Cong. Globe, XIII. 618.

same manner, as if he had been guilty of a breach of the orders of the house.

1500. When a member brings forward a question of this kind, either in the shape of a verbal or written complaint, upon which he proposes to predicate some motion or resolution for the consideration of the house, or in the form of a motion, or resolution which he submits at once for the consideration of the house, it is for the presiding officer to decide,[1] in the first instance, whether the member's statement, in whatever manner it is brought forward, involves a question of privilege, and as such is entitled to supersede other business.

1501. But though a question of privilege is thus allowed to supersede all other business for the time being, it does not follow that no other business is to be done, until the matter of privilege is finally settled and determined. This would, in many cases, do more to impede, than to facilitate, the business of the house. It is only necessary, therefore, when a breach of privilege occurs, and is taken notice of by the house, or is brought to its knowledge, that the house should proceed to such immediate measures as it may think proper, in order to vindicate itself or its members, or to remove all obstructions to its freedom of proceeding. When this has been done, whether the matter of privilege is thus settled, or only temporarily disposed of, the business thereby interrupted revives, and is resumed at the precise point where it was broken off.

1502. It will be obviously impossible, though the leading cases give rise to no doubt, to describe beforehand, except in the most general and comprehensive terms, all the questions of this kind, which may arise in a legislative assembly; but some of the most important of those, which have occurred in the house of representatives of the United States, will serve to give an idea, perhaps an adequate one, of cases of this description. These cases will now be briefly mentioned, first, those in the affirmative, and then those in the negative.

1503. It has accordingly been decided, in that assembly, that the following subjects, among others, may be entertained therein, as matters of privilege, that is to say: — Questions relating to the right of members and delegates to be qualified, including, of course, their credentials,[2] namely, members who are duly returned but were not present at the organization of the house,[3] members entitled to seats by the determination of a controverted election,[4] and mem-

[1] J. of H. 29th Cong. 1st Sess. 723, 724, 725; Same, 2d Sess. 136; Cong. Globe, XVII. 115, 187, 400, 401; Same, XVIII. 653; Same, XX. 110; Same, XXI. 1678.

[2] Cong. Globe, X. 83.

[3] J. of H. 31st Cong. 1st Sess. 190; Cong. Globe, X. 349, 350; Same, XI. 1.

[4] Ante, 475.

bers returned to fill vacancies;[1] questions affecting the right of members to their seats, whether existing in the shape of charges contained in a petition;[2] or in resolutions reported by the committee on elections, or otherwise, and pending in the house;[3] questions relating to the character or conduct of members, as, for example, resolutions to censure or expel a member;[4] the right of a member to defend himself against the charge in a petition lying on the table;[5] the report of a select committee for investigating certain charges against a member;[6] a complaint of one member against another for a supposed insult in the house, for words used by the former, in debate;[7] and in considering and returning the letter of a public officer containing injurious reflections upon a member for words used by him in debate;[8] questions relating to the conduct of persons in the employment of the house, as, for example, a resolution to dismiss one of its printers for charging a member with falsehood;[9] or to expel a reporter from the house for giving a false and scandalous account of a debate;[10] questions relating to the general or aggregate privileges of the house, as, for example, the remonstrance of a foreign diplomatic agent, to one of the heads of departments on the passing of a certain bill of congress;[11] a common report that members had been threatened by a mob;[12] a resolution for correcting the journal when it is not made up according to the facts;[13] and the correction relates to some matter then pending before the house;[14] a false account in a public newspaper, of what took place in the house on a certain occasion;[15] a report, lying on the table, concerning a personal conflict between two members;[16] whether the journal of the house has been printed by its direction, according to the requisitions of the constitution;[17] the report of a committee charging a witness before them with contumacy;[18] questions relating to an impeachment;[19] and to the report of a committee appointed to investigate the conduct of the secretary of the treasury in reference to a certain matter.[20]

1504. On the other hand, it has been decided by the same

[1] Cong. Globe, VI. 416; Same, XI. 1; Same, XVII. 339.
[2] Cong. Globe, VIII. 119.
[3] J. of H. 31st Cong. 2d Sess. 119; Cong. Globe, VIII. 517, 551; Same, XVII. 187, 527; Same, XXI. 1678.
[4] Cong. Globe, XI. 168.
[5] Cong. Globe, XI. 161, 162.
[6] Cong. Globe, XXI. 1789.
[7] Cong. Globe, XIII. 277.
[8] Cong. Globe, XII. 101; Same, 102
[9] J. of H. 29th Cong. 1st Sess. 223, 224; Cong. Globe, XV. 178.
[10] J. of H. 29th Cong. 2d Sess. 320.
[11] J. of H. 27th Cong. 1st Sess. 320.
[12] J. of H. 30th Cong. 1st Sess. 712; Cong. Globe, XVIII. 653.
[13] J. of H. 31st Cong. 1st Sess. 1266.
[14] J. of H. 32d Cong. 1st Sess. 146.
[15] Cong. Globe, XIII. 194.
[16] Cong. Globe, XIII. 577, 578.
[17] Cong. Globe, XV. 32.
[18] Cong. Globe, XX. 242.
[19] J. of H. 27th Cong. 3d Sess. 159; Cong. Globe, XII. 144, 145.
[20] Cong. Globe, XXI. 1019.

assembly, that the following subjects are not entitled to be entertained therein, as matters of privilege, namely: — Questions relating to a member's having forfeited his right to a seat, in consequence of his acceptance of a disqualifying office, such member having resigned his seat in the house;[1] whether a public officer has failed or refused to furnish information, as directed by an order of the house;[2] unless such failure or refusal is in derogation of the honor or dignity of the house;[3] calling upon a public officer to furnish information forthwith;[4] cognizance of a charge of corruption of the other branch made therein by a member of the same;[5] proceeding with the election of a clerk, the house having already assigned a time for the election of that officer;[6] devolving the duties of door-keeper temporarily upon the sergeant-at-arms;[7] the election of a door-keeper and postmaster of the house;[8] a proposition to alter the journal when the same is correctly made up;[9] the report of a committee authorized to report forthwith;[10] asking to be excused from serving on the committee;[11] explaining a charge in a public newspaper against a member;[12] concerning the mileage and pay of the claimant of a seat at a former congress;[13] requesting information of the president as to the conferring of disqualifying offices upon certain members;[14] a personal explanation.[15]

1505. As the precedence, to which questions of privilege are entitled, is derived from the nature of the subject, and not from the form of the motion, these questions supersede not merely the motion pending, at the time, but the subject to which it relates, and all questions connected with or incidental to it, and pending at the same time.

1506. It is immaterial what the evidence is, on which a complaint for a breach of privilege is founded, provided it satisfies the member making such complaint. The rule, on this subject, was laid down in the following terms, in the house of representatives of the United States, by Mr. Speaker Winthrop: — "If a member rose and stated a breach of privilege committed on himself or a fellow-member, whether arising upon facts within his own knowledge, or reaching him by rumor, whether growing out of debate in this house, or of circumstances which happened a thousand miles

[1] J. of H. 29th Cong. 2d Sess. 136, 436.
[2] J. of H. 29th Cong. 2d Sess. 229; Cong. Globe, XVII. 252, 253, 254.
[3] Cong. Globe, XVII. 401.
[4] J. of H. 29th Cong. 2d Sess. 333.
[5] J. of H. 29th Cong. 2d Sess. 594.
[6] J. of H. 31st Cong. 1st Sess. 228.
[7] J. of H. 31st Cong. 1st Sess. 456.
[8] J. of H. 31st Cong. 1st Sess. 806.
[9] J. of H. 31st Cong. 1st Sess. 1266.
[10] Cong. Globe, VIII. 236.
[11] Cong. Globe, XI. 222, 229.
[12] Cong. Globe, XIII. 139.
[13] Cong. Globe, XV. 821.
[14] Cong. Globe, XVII. 187.
[15] Cong. Globe, XX. 108.

distant, the chair decided, that, upon the allegation being made, it was for the house to take up the question, and determine whether such a breach of privilege had occurred as to require its interposition, and whether there was sufficient ground for its being entertained as a question of privilege."[1]

2. *Privileged Questions.*

1507. Questions of this description, are those to which precedence is given beforehand, over other questions of the same nature, by some general or special order of the assembly. The first and most numerous class of cases of this kind, the origin and nature of which have already been explained, at least, in part, consists of the orders of the day. When the consideration of a subject has been assigned for a particular day, by an order of the house, the subject so assigned is called the order of the day for that day. If, in the course of business, as commonly happens, there are several subjects assigned for the same day, they are called the orders of the day.

1508. A question, which is thus made the subject of an order for its consideration on a particular day, is thereby made a privileged question for that day; the order being a repeal, as to this special case, of the general rule as to business. If, therefore, any other proposition, with the exception of a question of privilege or some other privileged question, entitled to precedence, is moved, or arises, on the day assigned for the consideration of a particular subject, a motion for the order of the day will supersede the question first made, together with all subsidiary and incidental questions connected with it, and must be first put and decided; for if the debate or consideration of that subject were allowed to proceed, it might continue through the day, and thus defeat the order.

1509. But this motion, to entitle it to precedence, must be for the orders generally, if there is more than one, and not for any particular order; if decided in the affirmative, the first question is suppressed, and the orders must be read and gone through with in the order in which they stand; if in the negative, the resolution of the house is a discharge of the orders, so far as they interfere with the consideration of the subject, then before it, and entitles that subject to be first disposed of.

1510. Besides the privileged questions above mentioned, which

[1] Cong. Globe, XVIII. 653.

are each the subject of a special order, a legislative assembly may provide by a general rule or order, that certain classes of questions, when they arise, shall be privileged in a particular manner. An instance of a privileged question of this kind is furnished by the rules and orders of the house of representatives in congress,[1] in regard to the motion to reconsider, which is thereby declared to take precedence of all other questions, except a motion to adjourn.

1511. Orders of the day, according to the present practice, are, in general, the only privileged questions; if, however, any peculiar order should be adopted, in regard to a particular business, either as to the time or the manner of considering it, that question would become a privileged question, agreeably to the terms of the order. Thus, on the 5th of December, 1640, in the house of commons, a particular day was "peremptorily appointed for the debate of the subjects' property in their goods;" and it was at the same time ordered, that no other business whatever should then precede that business, and that the speaker should "put the house in mind of this order so soon as he should be in his chair."[2] So, during the proceedings in the house of commons on the reform bill, Lord Althorp gave notice, that in consequence of the length of time that had been occupied by the debate in the committee of the whole on the bill, he should move that on such days as the committee is appointed for, that order of the day should take precedence of all business whatever, including petitions. This motion was not persisted in, but no objection appears to have been made to it as irregular.[3]

1512. In the two houses of congress, besides orders of the day, which are established in virtue of the common parliamentary law, and privileged questions, which are made so by a general rule, orders of the above description are occasionally made, which have the effect, under the name of special orders or assignments, to override or take precedence of all other business whatsoever.[4] Orders of this kind may be made in the manner agreed upon, and pointed out in the rules, or by the ordinary major vote. In the house of representatives, it is provided by a rule, that the order of business as established by the rules, shall not be changed except by a vote of at least two thirds; and, in that assembly, a special order, (which, to have the effect above mentioned, must necessarily change the

[1] Cong. Globe, XX. 466.
[2] Rushworth, IV. 85, 99.
[3] Hans. (3), V. 89.
[4] J. of C. IV. 609; J. of H. 15th Cong. 1st Sess. 167; Same, 23d Cong. 1st Sess. 785.

established order of business,[1] and operate to suspend the rules relating to business,[2]) made for that purpose, requires a majority of two thirds;[3] if made by a majority only; the order so made will only have precedence over other business of the same class not made special.[4] Of two special orders, for the consideration of different topics at the same time, the one first made is entitled to precedence over the other.[5] The business, which is thus made the subject of a special order, is to be proceeded with at the appointed time, and may be finished by doing whatever may be necessary to that end, under the order.[6]

1513. On the arrival of the time set apart for the consideration of a special order, the business then in hand is not thereby suspended, as a matter of course,[7] but the presiding officer may, if necessary, interrupt the member speaking, and announce the arrival of the time assigned for the consideration of the special order.[8] He then waits for a motion relating to it, either to proceed with, or to postpone; inasmuch as the assembly cannot be constrained, by any resolution previously taken, to proceed with a particular matter at a given time, and may not then be in a situation to go on with the business in question. But whether announced by the presiding officer or not, any member[9] on the arrival of the time may move, and if necessary, may take the floor from a member for that purpose, to proceed with, or to postpone, the special order. If proceeded with, it may, if necessary, occupy the rest of the daily sitting. If postponed, as it may be, by the ordinary major vote,[10] either before[11] or after[12] its consideration is entered upon, it comes up as the special order, and not merely as a subject postponed,[13] at the time to which it is postponed.

1514. If a special order is dropped, that is, not proceeded with at all, (and its friends have the residue of the sitting for the day to move it in,) it is not thereby dissolved,[14] but comes up again in the

[1] J. of H. 27th Cong. 3d Sess. 355; Cong. Globe, XII. 338.

[2] J. of H. 31st Cong. 1st Sess. 1096, 1112; Cong. Globe, IV. 77.

[3] J. of H. 23d Cong. 1st Sess. 785; Cong. Globe, IV. 77.

[4] Cong. Globe, VIII. 121.

[5] Cong. Globe, VIII. 325.

[6] Cong. Globe, XIII. 283.

[7] Cong. Globe, XI. 935.

[8] J. of H. 20th Cong. 2d Sess. 182; Same, 31st Cong. 1st Sess. 1096, 1112; Cong. Globe, XI. 935; Same, XIII. 224; Same, XV. 1164, 1165.

[9] J. of H. 24th Cong. 1st Sess. 882; Cong. Globe, VIII. 587.

[10] J. of H. 29th Cong. 1st Sess. 1170.

[11] J. of H. 20th Cong. 2d Sess. 182; Same, 29th Cong. 1st Sess. 1170; Reg. of Deb. IX. Part 2, 1756; Cong. Globe, XV. 1164, 1165; Same, XVII. 382, 383.

[12] Cong. Globe, XIII. 122.

[13] Cong. Globe, VIII. 114.

[14] J. of H. 27th Cong. 386.

order of time;[1] and when proceeded with, and while it is executing, no other business,[2] not even a suspension of the rules,[3] is in order. If finished before the time for adjournment arrives, the business thereby suspended revives again and proceeds as before; if unfinished at the time of an adjournment, and no other disposition of the matter is made, it will go over, by means of the adjournment, as the unfinished business of the day, on which the adjournment takes place, and as such it is entitled to take precedence of another special order[4] for that day.

1515. The questions, above described, will take precedence in the following order. When the time arrives, for proceeding with the orders of the day, according to the rule or the custom, or the particular order of the assembly, they will be entitled to precedence, in the manner above described, over ordinary business. Merely privileged questions will take such precedence, among themselves, as they are entitled to by the rules of the assembly creating them; but, in general, when one privileged question is under consideration, it cannot be displaced to make way for another of the same kind.[5] Both these must give place to a special order when the time arrives for its consideration. All these, however, are mere matters of business, and must yield to a question of privilege. The motion to adjourn, from its very nature, though it is commonly so provided by a rule, takes precedence of them all, and must be first put to the question.

1516. The presiding officer is not precisely bound, except in virtue of some rule of the assembly, as to what bills or other matters shall be first taken up, but is left to his own discretion, unless the assembly, on a question, decide to take up a particular subject; a settled order of business, however, is necessary for his government, and to restrain individual members from calling up favorite measures, or matters under their special patronage, out of their just turn. It is useful, also, for directing the discretion of the assembly, when it is moved to take up a particular matter to the prejudice of others having a prior right to its attention, in the general order of business.[6] But this depends entirely upon the nature of each assembly, and upon the character and importance of its business. In every assem-

[1] J. of H. 26th Cong. 1st Sess. 253.
[2] J. of H. 31st Cong. 1st Sess. 254, 333.
[3] Cong. Globe, XVII. 439.
[4] Reg. of Deb. XI. Part 1, 919; Cong. Globe, VIII. 121.
[5] J. of H. 32d Cong. 1st Sess. 969; Cong. Globe, XXI. 1535.
[6] Jefferson's Manual, Sec. XIV.

bly, the business of which is considerable, an order of business is indispensable. In the house of commons this is established partly by custom, and partly by rule. The distinction is there recognized between private and public business. In both houses of congress, there is an established order of business. In the house of representatives, particular days, and particular hours of each day, are devoted to the consideration of particular classes of business. The same general purpose is further promoted in that assembly by variously restricting debate. This subject will be considered at length in the fifth section of this chapter.

SECTION III. OF MOTIONS RELATING TO THE GENERAL COURSE AND ORDER OF PROCEEDING.

1517. Motions connected with the general course of business and proceeding, when moved in reference to any pending matter, imply a necessity for their immediate determination, and consequently supersede or interrupt the subject under consideration at the time, and are to be first put to the question.

1518. The most important motion of this description is the motion to adjourn, which of necessity takes precedence of all other pending questions, and may be made and put at any time, except immediately after the same motion has been made and negatived.

1519. A motion of this kind, which was in use when the sittings of parliament were confined to the daytime, was, that candles be brought in, which, of course, required an immediate determination. At that time, it was the invariable custom to bring every debate to a close with the sitting for the day on which it took place; so that the motion for candles was sometimes looked upon as equivalent to a motion to prolong the debate, and was not always determined, without discussion and division. In more modern times, however, it seldom happens that the debate on any question of importance is concluded on the same day; and the sittings of both houses now take place almost wholly in the night time; and in the house of commons it is a standing order, first adopted in 1717, "that when the house, or any committee of the whole house, shall be sitting, and daylight be shut in, the sergeant-at-arms do take care that candles be brought in without any particular order for that purpose." [1]

[1] May, 222.

1520. It would be obviously impossible, from the very nature of motions of this description, to enumerate all that might occur; the following are some of the more common, and will serve to give an idea of the general character of the whole, namely: that messengers from the other house, having been announced, be called in; that a particular member be first heard, where two or more rise at or about the same time, and the speaker's determination as to which of them shall speak, is not acquiesced in; that a particular member withdraw on a matter arising or being brought forward which affects him personally; that a member be allowed to speak sitting; that a question be divided, either on the suggestion of a member, or on motion;[1] that a member be allowed to speak a second time in the same debate; and that there be a call of the house. To the same head belong, also, resolutions exonerating the speaker from a charge of partiality,[2] or impugning his conduct,[3] or charging the clerk with misconduct[4] in regard to a particular matter then under consideration.

SECTION IV. OF THE ORDER, SUCCESSION, AND PRECEDENCE, OF MOTIONS, AS ESTABLISHED BY RULE IN THIS COUNTRY.

1521. In many of the American legislative assemblies, it is the practice, by a special rule, to specify both what motions shall be used, and the order in which they are to be moved, for the disposition of the business before the assembly. The rule of the house of representatives of the United States, which has been extensively copied in other legislative bodies, is as follows: "When a question is under debate, no motion shall be received but to adjourn, to lie on the table, for the previous question, to postpone to a day certain, to commit or amend, to postpone indefinitely; which several motions shall have precedence in the order in which they are arranged." In the particular application of this rule, the following points are to be observed.

1522. I. A subject is sufficiently under debate to come properly within this rule, when it has been proposed from the chair as a question for the decision of the house.

1523. II. The motions enumerated in the rule are understood and applied in their common parliamentary sense, and do not admit of any other meaning or extent. Thus the first three, namely,

[1] Comm. Jour. XXXII. 707.
[2] Hans. (1), X. 1160 to 1170.
[3] J. of H. 31st Cong. 1st Sess. 713, 716, 738.
[4] J. of H. 26th Cong. 1st Sess. 1242. See, also, Cong. Globe, XII. 244.

to adjourn, to lie on the table, and for the previous question, may be made in their simplest form, and do not admit of any amendment or alteration; the motion to postpone to a day certain may be amended so as to substitute one day for another; the motion to commit may bear the form of recommitment, and be accompanied or not with instructions; the motion to amend is susceptible of alteration by amendment; but the motion to postpone indefinitely, is already in its simplest form, and will not admit of any amendment.

1524. III. These motions, except as is stated in the preceding paragraph, cannot be applied to one another, and, therefore, a motion to amend cannot be ordered to lie on the table, or be indefinitely postponed, by itself, but coheres to the motion which it is proposed to amend, and may be ordered with it to lie on the table, or to be postponed.

1525. IV. When one of these motions is made, none of those which stand behind it on the list can any longer be made, while it is pending, and it supersedes for the time being all those which are then made, and must be first put to the question. If this motion should be decided in the negative, the next preceding pending motion is to be put, and so on until some one prevails, or the principal question is put. Thus, if a question is pending, which it is moved to postpone indefinitely, and then a motion is made to amend, this latter motion supersedes the former, and is itself superseded by a motion that the principal question be ordered to lie on the table. When this motion is made, none of those standing behind it can be made, but it may itself be superseded by that which stands before it on the list. The pending questions are then to be taken in the same order in which they were moved: first, the motion pending to lie on the table; if that is negatived, then, second, the motion to amend; and if that is negatived, then, third, the motion to postpone indefinitely; and if this does not prevail, then, lastly, the principal question.

1526. V. The motion for the previous question is an exception in one respect to this proceeding: if decided in the affirmative, the main question is to be taken at once; if in the negative, the main question is suspended for the day, so that in whichever way it is decided, it disposes of the main question for the time being, and leaves no other question to be taken.

SECTION V. OF THE GENERAL COURSE OR ORDER OF BUSINESS IN A LEGISLATIVE ASSEMBLY.

1527. An established order of business is so necessary in every assembly, to the orderly despatch of what comes before it, that such an order prevails to a greater or less extent in every assembly; and, in some, it gives rise to a very complicated and artificial system of procedure. The order of business established by each assembly will, undoubtedly, be peculiar to itself. The systems adopted by the two most important and celebrated legislative bodies in the world, the house of commons in England, and the house of representatives of the United States in this country, which are very different from each other, are respectively as follows.

1528. In the house of commons, "The house proceeds each day with, 1. Private business; 2. Public petitions; 3. Giving notices of motions; 4. Motions for leave of absence; 5. Unopposed motions for returns; 6. Orders of the day and notices of motions as set down in the order book.[1]

1529. According to the present established order of business in the house of representatives of the United States, at the hour fixed for the daily meeting of the house, the speaker takes the chair, and, as soon as a quorum appears, causes the journal of the preceding day to be read. Committees are then called upon for reports, the call being commenced where it was left off on the preceding day, except on each alternate Monday, and on Fridays and Saturdays. One hour is devoted in this way, and it is then in order to move to proceed to the business on the speaker's table, which being decided affirmatively, that business is disposed of accordingly. Several days often intervene between motions to proceed with the business on the speaker's table. The motion to go into committee of the whole on the state of the Union is in order at any time, and is sometimes submitted immediately after the journal is read, but usually after one hour has been devoted to the reports of committees; and this motion being agreed to, the house generally remains in committee of the whole until just before the adjournment for the day. On each alternate Monday, the regular order of business, as soon as the journal is read, is the calling of the States for resolutions. But motions to suspend the rules, being only in order every Monday, the day is usually consumed in the consideration of such

[1] May, R. O. etc. 101.

motions, to the exclusion of the regular order of business, unless, as often happens, the house resolves itself into the committee of the whole. Fridays and Saturdays are set apart for the consideration of private business, and usually, if there are no private bills on the speaker's table, or special order, the house resolves itself into a committee of the whole on the private calendar. The business on the speaker's table, when proceeded with, is taken up in the following order: 1. Messages and other executive communications; 2. Messages from the senate, and amendments proposed by the senate, to the bills of the house; 3. Bills and resolutions from the senate on their first and second reading; 4. Engrossed bills, and bills from the senate on their third reading; 5. Bills of the house, and from the senate on their engrossment; and, when those are disposed of, 6. Orders of the day.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART SIXTH.

OF THE FORMS AND METHODS OF PROCEEDING IN A LEGISLATIVE ASSEMBLY.

SECOND DIVISION.

ORDER IN DEBATE.

1530. THE rules for the conduct of debate, which constitute the subject of this division of the sixth part, divide themselves into two branches, namely: first, those which are to be observed by members addressing the house; and, second, those which regard the behavior of members who do not engage in the debate.[1] The latter branch is of comparatively small extent. The former, under which alone the subject of order in debate is usually comprehended, embraces three general inquiries, namely: first, what constitutes a debate; second, when and under what circumstances a member may address the house; third, what may or may not be said by a member, or introduced by him into his remarks, in addressing the house. The

[1] May, 248.

first inquiry relates, also, to the members who are to speak, and, to the personal deportment of members in speaking. The second is embraced under the three rules, that a member can speak only to a question; not more than once; and not after the question is put to the house. The rules, which form the subject of the third inquiry relate to the topics to be introduced; to the sources from which a member speaking is to derive the matter of his remarks; the preservation of order and decorum among the members; the preservation of harmony among the several branches; regularity of proceeding; to the respect due from the members to the assembly; and to the respect due to existing laws and institutions. The necessity of enforcing these rules leads naturally to the inquiry as to the proceedings with reference to disorderly or unparliamentary language.

1531. The foregoing analysis suggests the propriety of considering the several subjects which fall into this division under the following heads, which will each form the matter of a distinct chapter, namely: — I. What constitutes a debate, and herein of the members who are to speak, and of their personal deportment while speaking; II. Of the rule that no member is to speak, unless to a question already pending, or to introduce a question; III. Of the rule that no member is to speak more than once to the same question; IV. Of the rule that a question is open for debate until it is fully put on both sides; V. Of the rules relating to relevancy in debate; VI. Of the rules relating to the sources from which the statements, introduced by a member in debate, are derived; VII. Of the rules relating to the preservation of order, decency, and harmony among the members; VIII. Of the rules relating to the preservation of the harmony and independence of the several branches of the legislature; IX. Of the rules relating to regularity of proceeding; X. Of the rules relating to the respect due from the members to the house to which they belong, to its powers, acts, and proceedings, and to the government and laws of the country; XI. Of proceedings with reference to disorderly or unparliamentary words, or irregularity in debate; XII. Rules for the conduct of members present in the house during a debate.

CHAPTER FIRST.

WHAT CONSTITUTES A DEBATE, AND HEREIN OF THE MEMBERS WHO ARE TO SPEAK, AND OF THEIR PERSONAL DEPORTMENT WHILE SPEAKING.

1532. When a motion is regularly made and seconded, and proposed[1] as a question from the chair, "every member is then at liberty to debate with freedom upon it, and to agree or disagree to it, as he may think reasonable" and proper.[2] But, though the latter part of this principle is universally true, as every member may agree or disagree to whatever question is put to the house; the former admits of an exception in regard to those questions, which require unanimous consent. Questions of this description, as, for example, on giving leave to withdraw a motion,[3] are not properly debatable, at least on the part of the negative; for if any one member objects, the question is as effectually negatived, as if a majority of the members were opposed to it; so that debate on that side would be a mere waste of time.

1533. The term *debate*, in its strictest sense, is applicable only to what is said on the one side or the other of a question which the house is to decide by a vote.[4] In a broader sense, it embraces every thing which is said in the house by members, whether upon a question pending, or in reference to any other proceeding, matter, or business whatever. The rules of order, by which the speaking of members is regulated, together with the exceptions to those rules, having relation to debate in its broadest signification, the subject

[1] Cong. Globe, VIII. 150.

[2] Comm. Deb. VIII. 201.

[3] Hans. (1), XIX. 437.

[4] In the rules and orders of the legislative assemblies of this country, debate is variously restricted. Sometimes it is precluded as to certain motions, without regard to the subject; sometimes it is prohibited as to certain topics, without regard to the manner in which they arise; and sometimes the restriction is attached to certain topics, provided they arise in a particular manner. All these different kinds of restrictions are found in the rules and orders of the lower branch of congress. In that body, motions to adjourn, to fix a day to which the house shall adjourn, to lie on the table, and for the previous question, all questions relating to the priority of business to be acted upon, and all incidental questions of order arising after the previous question is moved, are to be decided without debate.

of order in debate is now to be considered in the most extended as well as the narrowest sense of the term.

1534. It is not necessary, in order to render words disorderly, that they should be uttered in debate, strictly so called; if used in any parliamentary proceeding, as in making a motion, or answering a question, or stating a fact, or even in reading from a book or paper,[1] they are equally subject to the animadversion of the house, as disorderly. All language, not addressed to the house, in a parliamentary course, must be considered as mere noise and disturbance.

1535. When a member desires to address the house, either in reference to a pending question, or for any other purpose, he must first obtain possession of the floor, in the manner already adverted to, when considering the subject of motions. If one member only rises to speak, he, of course, is to be heard. If two or more rise at about the same time, and claim the attention of the house, the general rule, as to which of them shall speak, assigns the preference to him who was first up, to be determined by the speaker or the house. In the application of this rule, however, there are certain excepted cases in which one member has a right to proceed in preference to others, and certain other excepted cases, in which, by the indulgence of the house, though not as a matter of right, it is customary to assign the preference on other grounds. The excepted cases of the first kind occur, when the subject, to which a member rises to speak, is one of paramount importance, as a matter of privilege, or a question of order; in which cases, he is entitled to be heard in preference to other members. These cases must not be confounded with those where a member merely rises to propose a motion which takes precedence of the motion originally made, in which case he is not entitled of course to preference over other members. The excepted cases of the latter kind are those of, 1st, the original mover of a proposition, on its being first debated; 2d, a new member on his first rising to address the house; and, 3d, on resuming an adjourned debate, the member who last rose to speak when the debate was adjourned. These classes of cases, though established with peculiar reference to the practice of the two houses of the British parliament, embrace substantially the grounds upon which preferences are usually allowed in awarding the floor in our legislative assemblies, and will constitute the matter of the first section of this chapter, which will be concluded with a second sec-

[1] Hans. (3), XVI. 217. See also Reg. of Deb. IV. Part I. 1420.

tion concerning the general deportment of members in speaking. There are also other grounds upon which preferences are allowed, irrespective of the peculiar character of the parties.

SECTION I. OF THE GROUNDS UPON WHICH PREFERENCES ARE ALLOWED IN ASSIGNING THE FLOOR TO PARTICULAR MEMBERS.

EXCEPTION I. *The original Mover of a Proposition on its being first debated.*

1536. In the house of lords, it was said by Lord Bathurst, in the year 1733, that "when any lord makes a motion, upon which there follows any order or resolution, and a day is appointed for taking that order or resolution into consideration, it has always been the custom, out of complaisance to the lord who made the motion, to hear him first; because it is to be expected that he has something to say, or some further motion to make, in consequence, or in explanation, of the motion he had made;"[1] and, on another occasion, in 1781, the lord chancellor (Thurlow) observed, "that it was always customary, when any bill was brought into that house, for abrogating an old law, or enacting a new one, for the person who moved the order of the day, if the bill had not been previously debated in some former stage, to assign his reasons, (that is, the necessity, expediency, or policy, of the alteration,) for wishing to change the law, in the particular instance."[2]

1537. In the house of commons, a similar usage appears to prevail: thus, where on the order of the day for the second reading of a bill being read, a motion was made that the bill be now read a second time; and a member rose to oppose the motion, the speaker (Mr. Abbott) "suggested the propriety of first hearing the member who brought in the bill in support of it as being consonant to practice in cases where there was a difference of opinion entertained;" and this course was accordingly adopted.[3]

1538. According to the practice which prevails in our legislative assemblies, the mover of a proposition having obtained the floor for that purpose, and having submitted his proposition, is entitled to retain possession of the floor, until his motion is seconded and stated by the chair; and then to proceed with a speech or

[1] Lords' Deb. IV. 139.
[2] Parl. Reg. XIX. 185, 190.
[3] Parl. Reg. LXXII. 265.

make a motion, or do whatever else can only be done by a member in possession of the floor, unless he voluntarily relinquishes it, or does some act indicative of his intention to abandon the floor.[1] Thus, where the mover of a proposition, although he had remained standing whilst the clerk was reading it, did not claim the floor until after another member had addressed the chair, made a motion, and the question thereon had been stated, it was held on appeal, that the first had thereby lost his right to the floor;[2] so, where one having the right to the floor, instead of claiming it, turned from the speaker, and walked up the aisle, whereupon another member was recognized as entitled to the floor, the former was held thereby to have lost it;[3] and so where a member having a right to the floor, instead of claiming it, when the subject was first introduced, did not do so until several members had risen, and a modification of the pending resolution had taken place, it was held that he had lost his right to the floor;[4] but resuming one's seat merely, whilst the clerk is reading his proposition, unless it is done with an intention to abandon the floor, and suffering another to address the chair, before the claim is renewed, is not ordinarily supposed to be equivalent to such an abandonment.[5]

1539. The reporter of a measure, from a committee, is entitled to the floor, not only as the mover of a proposition, to make his report and take the initiatory steps for its consideration, but also subsequently to give the measure in question, a bill, for example, such disposition as the committee may have directed.[6] The same privilege belongs also to the member upon whose motion a committee, as, for example, the committee of the whole, is discharged from the further consideration of a given measure, and the same is thereby brought directly before the house.[7] On the other hand, a member is not entitled, as a matter of course, to the floor, on a bill or other measure ordered to be reconsidered, even though the reconsideration takes place for the purpose of enabling the mover to make a specific amendment, which is read to the house for information.[8]

1540. If the subject thus introduced is not at once considered,

[1] J. of H. 31st Cong. 1st Sess. 1336; Cong. Globe, XX. 238, 261.

[2] J. of H. 24th Cong. 1st Sess. 749; Cong. Globe, XX. 389.

[3] J. of H. 29th Cong. 1st Sess. 366, 641.

[4] Reg. of Deb. XII. Part 2, 2178, 2179.

[5] J. of H. 21st Cong. 1st Sess. 758. But see Cong. Globe, X. 212.

[6] J. of H. 27th Cong. 3d Sess. 211.

[7] J. of H. 30th Cong. 2d Sess. 247; Cong. Globe, XX. 260, 261.

[8] J. of H. 26th Cong. 1st Sess. 246; Cong. Globe, VIII. 153, 155.

but goes over to some future day, whether by mere lapse of time, or by adjournment of the house, or by postponement of any kind, whenever it is brought forward again, the same persons will be entitled to the floor, and to proceed in the same manner, as if the business had been proceeded with when it was originally introduced. If the mover of the proposition chooses, he may waive his privilege in the first instance, and close the debate.[1]

1541. Whether, and to what extent, the right to the floor will be restrained, extended, or regulated, by custom or rule, in any particular assembly, must, of course, depend upon the size, the amount of business, and the degree of competition which exists among the members, of each assembly. In the house of representatives of congress, it is provided by rule, that a member, reporting the measure under consideration from a committee, may open and close the debate; and this privilege is so strictly regarded, that it even overrides the previous question. In the same body, also, it is provided by rule that the mover, proposer, or introducer of the matter pending shall be permitted to speak in reply, after every member choosing to speak shall have spoken.

EXCEPTION II. *A new Member, on his first rising to address the House.*

1542. It is a common courtesy in both houses of parliament, when several members rise at once, for those who have before addressed the house in debate, to give way to a new member who has not yet spoken. If several new members should happen to claim the attention of the house at the same time, the point of precedence could only be settled by an application of the ordinary rule. In our legislative assemblies, though new members are always treated with courtesy and kindness, and with some degree of indulgence,[2] there is no custom or rule in their favor as to the time or manner of speaking.

[1] Cong. Globe, XI. 192.

[2] Cong. Globe, III. 264.

EXCEPTION III. *The Member who rose last to speak, when the Debate was adjourned.*

1543. It appears to be the usual practice in the house of commons, on resuming an adjourned debate, to give the preference, in addressing the house, to the member who rose the last to speak when the debate was adjourned. According to the practice in our legislative assemblies, a member who is speaking, and gives way to another to move an adjournment of the house, or a postponement, or that the committee of the whole rise, which takes place, is entitled to the floor to proceed with his debate when the subject is again brought forward.[1] The same effect is produced where the member speaking, not having finished his speech, himself makes the motion to adjourn, or to postpone, or that the committee rise. So, the floor being unoccupied, the member upon whose motion an adjournment or postponement takes place, or the committee rise,[2] will be entitled to the floor upon renewing the debate.

EXCEPTION IV. *Members entitled to the Floor on grounds of Preference, irrespective of their peculiar Character.*

1544. In the foregoing cases, the floor is adjudged to one member in preference to others, on the ground of the peculiar character in which the former addresses the house. There are others, also, in which the grounds of preference do not depend upon the peculiar character of the member to whom the floor is assigned, but because the member or members competing for the possession of the floor are not in a proper situation to claim it. The principal cases of this description are those in which the member addressing the chair remains sitting and does not rise from his seat at all;[3] where the member rises from the area in front of the chair, or from one of the aisles, and not from a seat,[4] though it is not necessary that he should occupy his own, but any seat is sufficient for the purpose;[5] or where a member, having already spoken in the debate, cannot be permitted to speak again or to make a motion[6] so long as any

[1] J. of H. 24th Cong. 1st Sess. 749; Reg. of Deb. IX., I. 462; Cong. Globe, III. 264; Same, VIII. 290; Same, 510.

[2] Cong. Globe, XVI. 773.

[3] J. of H. 29th Cong. 1st Sess. 802, 803; Same, 32d Cong. 2d Sess. 405.

[4] Cong. Globe, VIII. 68; Same, XIII. 677.

[5] Cong. Globe, VIII. 150; Same, XI. 353.

[6] Cong. Globe, XIII. 385; Same, XVIII. 519.

other member desires to speak; but in all these cases, the floor must be claimed when the irregularities take place; and in the last, motions are often made and leave granted to the members in question to proceed without the special leave of the house.[1]

1545. In these cases, it is not customary for any order of the house to be made, or any question to be proposed; the fact which entitles the member to indulgence being brought to the knowledge of the house by some member, or suggested by the speaker, the member is then allowed to proceed.

1546. Anciently, the right of one member in the house of commons to speak in preference to another in debate on a bill, might be determined by the rule agreed to June 6, 1604,[2] "that if two stand up to speak to a bill, he against the bill, (being known by demand or otherwise,) to be first heard;" but it is doubtful whether this rule would not now be treated as obsolete.[3]

1547. A member who is in possession of the floor may yield it to another on request for a temporary purpose, and upon a compact that it shall be restored to him whenever that purpose shall be accomplished. If the floor is yielded for a motion to postpone or adjourn,[4] or that the committee rise,[5] and no adjournment or postponement takes place, or the committee refuses to rise, the floor is to be restored to the member originally in possession of it, whose right thereto will be recognized and enforced by the speaker or chairman. The same is true, if a member in possession of the floor yields it for the purpose of explanation; but if relinquished for any other purpose, as, for the making or withdrawal of a motion or amendment, the making of a report, or the reading of a speech, — such yielding is held to be unconditional, the compact therefor cannot be recognized or enforced by the speaker, and the floor is free to any other member.[6]

1548. When a member in possession of the house has concluded his remarks and resumed his seat, it is then competent for any other member to entitle himself to address the house by rising and presenting himself to the notice of the speaker, and obtaining possession of the house in the manner already described. At the conclusion of every speech, the question pending is open to debate as

[1] Reg. of Deb. Part 1, 1337; Same, III. 802.
[2] Comm. Jour. I. 232.
[3] May, 243.
[4] Reg. of Deb. IV. Part 3, 300.
[5] Cong. Globe, XXI. 964.
[6] Reg. of Deb. III. 1045; Same, V. 371; Same, IX. Part 1, 462; Cong. Globe, III. 264; Same, VI. 487; Same, VIII. 131; Same, 173, 174, 290; Same, IX. 103; Same, XI. 687; Same, XIII. 644; Same, XV. 78; Same, XVI. 199; Same, XX. 239; Same, XXI. 1437; Same, 1459; Same, 1535; Same, 1687; Same, XV. 14.

before, until every member has spoken who desires to speak; nor does the circumstance that a member has previously risen to address the house entitle him to any preference over others; but whenever an opportunity occurs for addressing the house, all the members stand upon the same footing of perfect equality as when the debate commenced.

SECTION II. PERSONAL DEPORTMENT OF MEMBERS IN SPEAKING.

1549. The rules of order, applicable to debate, relate chiefly to the time when and the circumstances under which a member may speak, or to what may or may not be said by a member in addressing the house. There are some rules, however, relating to the personal deportment of a member while speaking, which, though already treated of in another place, require to be briefly adverted to in this connection.

1550. I. In both houses, it is a general rule, that a member, in addressing the house, is to speak from his place, and not from any of the passage ways, or at the table.[1] The place of a member is that part of the house where he has his seat, and in which he gives his vote; which, in the commons, is the seat occupied by him for the time being, and, in the lords, the bench appropriated to the rank of nobility to which he belongs. In the latter house, the rule appears never to have been strictly enforced, on account of the greater inconvenience which would result from such an enforcement; the members being allowed to speak from any of the seats indiscriminately, or from the table, if they have papers to read.[2] In the commons, the rule only requires that a member should speak from some seat, in the house or the gallery.[3] In the legislative assemblies of this country, although the seats of members therein are usually assigned for the whole session, the same principles prevail.[4]

1551. II. In both houses, it is a rule, that, when a member addresses the house in debate, he is to stand up in his place and speak uncovered. The first part of this rule, which is founded in the respect due from the members to the assembly, admits of an

[1] Hatsell, II. 108; Hans. XV. 178; Same, (3), XLI. 1294, 1295.
[2] Hans. (3), XLI. 294, 295.
[3] Hatsell, II. 108.
[4] J. of H. 29th Cong. 1st Sess. 802, 803; Same, 32d Cong. 2d Sess. 405; Reg. of Deb. VIII. Part 3, 3910; Cong. Globe, VIII. 68; Same, 150; Same, XI. 353; Same, XIII. 677; Same, XI. 282.

exception only 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 acquiescencé of the house.[1] This indulgence may be either special, for some particular occasion, or general, whenever the member desires to speak. When a member, who is sick or infirm, is rising to speak, and another wishes to move that he be indulged to speak sitting, he entitles himself to make the motion for that purpose, by rising to order.[2] In the commons, another exception to the rule occurs, when a question arises whilst the house is dividing; in which case, the members are allowed by the speaker to speak sitting, and covered, in order to avoid even the appearance of a debate.[3]

1552. III. In the house of lords, when a member speaks, he addresses his speech "to the rest of the lords in general."[4] In the commons, a member when speaking addresses the speaker alone, and it is irregular for him to direct his speech to the house in general, or to any party in it, or to any individual member.[5] The difference between the two houses in this respect, may perhaps be attributable, at least in part, to the fact, that the presiding officer of the lords is not necessarily, and frequently is not in fact, a member of the body over which he presides. In this country, the practice of the house of commons, in this respect, is generally, if not universally, observed. Members in speaking address themselves to the presiding officer alone by the title of his office, as Mr. Speaker, or Mr. President.

1553. IV. It is a general rule, in both houses, that a member, in addressing the house, is to do it orally and not by means of a written discourse; for the reason, as stated by Mr. Fox, "that, if the practice of reading written speeches should prevail, members might read speeches that were written by other people, and the time of the house be taken up in considering the arguments of persons who were not deserving of their attention."[6]

[1] Hatsell, II. 107; Romilly, 269, 270. When Mr. Pitt made his famous speech, in 1793, against the peace, he was permitted, on account of his infirmities, to speak sitting. See also the cases of Lord Wynford, Lord's Jour. LXIV. 167, and of Mr. Wynn, 9th March, 1843, Hans. (3), LXVII. 658. On a former occasion, May 6, 1842, Hans. (3), LXIII. 208, 209, the latter gentleman declined the indulgence. When the Hon. Samuel W. Dana, senator from Connecticut, took his seat in the senate of the United States, on the 9th of April, 1818, it was unanimously agreed to suspend in his favor, the rule providing that a member, when he speaks, shall address the chair, standing in his place. J. of H. 15th Cong. 1st Sess. 340.

[2] Hans. (3), LXIII. 208, 209.

[3] A quaker is allowed to speak covered.

[4] Lords' S. O. No. 14.

[5] Hatsell, II. 107; May, 240.

[6] Hans. (1), VII. 188, 207, 208.

1554. But though this has always been the rule, it appears, in the earlier periods [1] of parliamentary history to have been frequently dispensed with, as a matter of "common courtesy;" [2] and, in modern times, members have been occasionally indulged with reading their speeches.[3] On the occasion of the charges brought forward in the house of commons, against the earl of St. Vincent, in the year 1806, the member by whom they were introduced, having thought proper to read nearly the whole of his very long speech, on concluding it, Mr. Speaker Abbott said, "that the house had not judged it necessary to interrupt the honorable gentleman, and therefore he had not interfered lest in him it might seem ungracious; he begged, however, to inform the honorable gentleman, that such an indulgence was wholly inconsistent with the order and usage of parliamentary proceeding; and he hoped, therefore, that the circumstance of its having been suffered to pass now would not be pleaded as a precedent to justify a similar occurrence hereafter." [4]

1555. The rule, however, does not preclude members from the use of written notes, for the purpose of enabling them to state the elements or results of numerical calculations, or to aid their memory in calling to mind the facts, or in arranging the matters, which they propose to introduce in their speeches.[5]

CHAPTER SECOND.

OF THE RULE THAT NO MEMBER IS TO SPEAK, UNLESS TO A QUESTION ALREADY PENDING OR TO INTRODUCE A QUESTION.

1556. It is essential to the efficient proceeding of a deliberative assembly, that its discussions should be conducted in such a manner, and directed to such questions, that, when concluded, the judgment, opinion, or will, of the assembly, in reference to the topics

[1] "In ancient times, but a few persons spoke in the house, and their speeches were ready penned. The powder and shot was ready made up into cartridges; ready cut and dried, and a man had then time to think; but now we speak on a sudden, and therefore would have some grains of allowance given." By Sir Wm. Coventry, March 2, 1676. Grey, IV. 172.

[2] Grey, I. 158, 159.

[3] Hans. (1), VII. 188, 207, 208.

[4] Hans. (1), VII. 188, 207, 208.

[5] Hans. (1), VII. 188, 207, 208. See also Reg. of Deb. IX. Part 2, 1492, 1521.

discussed, may be ascertained with certainty, and expressed with authority. Hence, it is an established rule of parliamentary practice, and one that should always be strictly observed,[1] that no member is to address the house, unless it be to speak to a question already pending, or to introduce a question.[2]

1557. In the earlier periods of parliamentary history, it was the practice for members to address the house, in reference to any topic which they might think proper to introduce, or which might already have been introduced by other members, without any motion; after some time spent in this manner, the speaker then framed a question from the turn of the debates, or from the suggestions of the several members who spoke, and stated it to the house; and a question being thus regularly proposed, for the determination of the house, the members who afterwards addressed the house were confined to that question. This form of proceeding was done away with in the time of Mr. Speaker Onslow, and the present practice established, according to which no debate is allowed but upon a question proposed or to be proposed for the determination of the house. A trace of the ancient practice, however, still remains, in the rule which allows the member who makes a motion to introduce it by a speech, and the seconder of a motion to accompany it by a speech, before the motion is proposed as a question from the chair. But, in order to entitle the mover to proceed in this manner, he must either announce when he rises, or it must be in some other way made known to the house, that he intends to conclude with a motion.[3]

1558. When a member who has given previous notice of a motion rises and addresses the house, it is sufficiently understood, or taken for granted, that he intends to conclude with a motion, and he is usually suffered to proceed without any formal announcement of his intention. But if a member who has given no such previous notice, or whose intention is not made known in some other way, rises to address the house when there is no question before it, he may be interrupted by the speaker or any other member, on the ground that there is no question before the house. If, on being so interrupted, the member states that he intends to conclude

[1] May, 244.

[2] "The bishop of *St. Asaph* said, that a conversation had continued for a considerable time, without any motion, and a conversation in that house, without a motion, is a conversation about nothing." Hans. (1), II. 854. "The speaker said there must be a motion before the house to authorize debate." Reg. of Deb. VII. 683. See also Cong. Globe, III. 261.

[3] "The speaker then interfered, as there was no question before the house." Hans. (1), XII. 658.

with a motion, he is entitled to proceed; if he states that he does not so intend, he cannot be allowed to go on.

1559. If a member, addressing the house when there is no question before it, and being allowed to proceed without interruption, in the confidence on the part of the speaker and the members, that he will conclude with a motion, resumes his seat without making one; or, if a member having given previous notice of a motion, and being allowed to address the house on the strength of such notice, concludes his speech by withdrawing the notice instead of making the motion; or, if a member addressing the house, and on being interrupted, declaring his intention to conclude with a motion, finishes his speech without making one; or, if a member being allowed to address the house, either upon the implied or express understanding that he will conclude with a motion, makes one which is trifling and unimportant in itself, or irrelevant to the speech for which it serves as the pretext; in all these cases, if the failure of the member to redeem his pledge, proceeds from inadvertence merely, or from a want of familiarity with the practice of parliament, the irregularity, though liable to be remarked upon, is usually overlooked; but if it proceeds from a design wilfully to infringe upon the rules of debate, or to abuse the confidence of the house, such conduct might subject the offending party to animadversion and censure, and even to punishment.

1560. The seconder of a motion, to entitle himself to proceed, has only to announce that he rises for that purpose; though, in practice, this is hardly necessary, as, if a member, after a motion is made, rises and addresses the house in its favor, it must, of course, be seen at once, or taken for granted, without being formally announced, that he intends to second it.

1561. But though a member may thus introduce his motion, or second one already made, by a speech, before the motion is proposed to the house, and consequently before there is any question pending; it is nevertheless competent for a member to make a motion, or to second one, and to suffer it to be regularly proposed as a question before addressing the house; and, in this case, the mover and seconder appear to stand upon the same footing with regard to speaking as the other members, and have no right to be heard first in the debate,[1] unless they first obtain possession of the house.

1562. The effect of this principle may be abrogated by a special rule implying that a motion shall not be debated until it is regularly

[1] Parl. Reg. XXII. 249, 250, 366.

stated from the chair. Thus, there is a rule in the house of representatives in congress, first adopted in that body in 1789, which provides that "when a motion is made and seconded, it shall be stated by the speaker; or being in writing, it shall be handed to the chair, and read aloud by the clerk before debated." This rule does not appear to have received an authoritative exposition until the 29th of May, 1812. On that occasion Mr. John Randolph having risen and stated to the house that he meant to submit a proposition for consideration, proceeded to discuss at large the relations between this country and Great Britain, and between this country and France; when Mr. John C. Calhoun, afterwards vice-president of the United States, interrupted him on a question of order, and submitted to the chair whether Mr. Randolph was at liberty thus to proceed without stating his proposition and its being seconded. The speaker, Mr. Henry Clay, thereupon decided "that Mr. Randolph was bound to state his proposition, which ought moreover to be seconded, announced from the chair, and reduced to writing if required, before he proceeded to debate it." This decision being appealed from by Mr. Randolph was affirmed by the house, and Mr. Randolph, before proceeding, submitted his proposition, which was seconded and announced from the chair.[1] Of course, where a motion is not allowed to be debated until it has been seconded and proposed from the chair, the seconder must take his chance for addressing the house with the other members.

1563. When a motion is made and seconded, whether accompanied by speeches on the part of the mover and seconder or not, it is then, in the regular course of proceeding, to be proposed by the speaker to the house as a question for their determination. If a motion is not seconded, — unless it be one which does not require seconding, — it falls of course, and is no further proceeded with; when seconded, or if it does not require seconding, it is then open to objection and debate, as to its form, or its subject-matter, or the time of its introduction; if unobjectionable in these respects, — or, being objected to, if sustained by the house, or rendered unobjectionable by the mover, — it is then to be proposed to the house; and, when so proposed, and not before, it is open for debate as a question to be determined by the vote or resolution of the house.

1564. To the rule under consideration, namely, that no member is to speak, unless there is a question pending, or to be introduced by the member himself, there are certain exceptions, which will

[1] J. of H. VIII. 355, 356. See also J. of H. 17th Cong. 1st Sess. 297.

now be explained. The excepted cases, which are not so much of strict right, as of the indulgence and courtesy of the house, consist, first, of cases in which the rules are expressly suspended in favor of a particular member; second, of questions to and answers by ministers or persons connected with the administration of the government; third, of questions and answers of particular members concerning business which they have in charge; and fourth, of questions to the speaker concerning the general course and order of the business of the house. In this country, persons officially connected with the administration or executive part of government being carefully excluded by most of our constitutions, from being members of the legislative bodies, the practice of obtaining important information concerning public affairs by means of questions put directly to ministers, does not, of course, prevail here.

1565. In our legislative assemblies, and particularly in the house of representatives of the United States, whenever a member conceives his character or conduct likely to be misunderstood in consequence of publications in newspapers or otherwise, and thinks it of sufficient importance to be set right with his fellow-members, he asks permission of the house to make a personal explanation. If there is no objection, the member proceeds; if any objection is made, the member then moves that the rules be suspended in order to enable him to make a personal explanation concerning a particular matter. The rules being suspended accordingly, the member then proceeds with his explanation. In giving it, he is not liable to be called to order for irrelevancy, provided he adheres to the subject which he undertakes to explain.[1] He is only bound to abstain from personality.[2] Permission on the part of one member to make a personal explanation sometimes leads to a similar indulgence on the part of another.[3]

1566. I. The house may dispense with the rule, on some special occasion, in favor of a particular member, and allow him to speak, when there is no question pending or to be introduced. This indulgence may take place either tacitly, by simply allowing the member to proceed without interruption, or, expressly, by a vote beforehand granting him leave to speak, either at his own request or that of the speaker or some other member. In the former case, the member speaking is liable to be interrupted at any

[1] J. of H. 27th Cong. 1st Sess. 680; Same, 29th Cong. 1st Sess. 721; Same, 30th Cong. 1st Sess. 345; Cong. Globe, XV. 732.

[2] J. of H. 30th Cong. 1st Sess. 345; Cong. Globe, XV. 732.

[3] J. of H. 29th Cong. 1st Sess. 985, 986; Same, 721.

time by any other member objecting to his further proceeding; in the latter, whether the leave is granted by a formal vote upon a motion made for the purpose, or by the tacit acquiescence of the house, on the suggestion of the speaker, or some other member, the member speaking is entitled to proceed without interruption.

1567. The indulgence of speaking when there is no question before the house is usually confined to cases, in which the member has some complaint to make, or some explanation to give, relating to himself; and, on these occasions, the house is usually indulgent, though the member concerned does not intend to bring the subject before the house in any other manner. When a member is allowed to speak for any of these purposes, by the indulgence of the house, he ought not to go into general arguments or to indulge in any remarks which may lead to debate or provoke reply, but to confine himself to giving the explanation which he has undertaken to give of his conduct or words, or to justifying himself against the imputations of which he complains; and, so long as he confines himself within these limits, he is entitled, if he has the express leave of the house to speak, or is generally allowed, if the indulgence is merely the acquiescence of the house, to proceed without interruption.

1568. II. A second class of exceptions has arisen from the practice which has long prevailed, and is now established in both houses, of putting questions to ministers or persons in office, concerning any measure pending in parliament, or other public event,[1] or the intentions or policy of the government,[2] and of receiving the answers or explanations of the persons so interrogated.[3] This deviation from the strictness of the general rule of order has been at all times allowed, as a means of obtaining for the house material information which might throw light upon the business before it, and serve to guide its judgment in its future proceedings.

1569. 1. The purpose of inquiries of this description being to obtain information for the use of the house, it is the common practice for members to inform the gentleman of whom they are about to ask a question, what is the subject of it, in order that he may be prepared to give the required information.[4]

1570. 2. Questions of the kind now under consideration can only be put to members, who are either ministers, or who hold some official position in the government, and not to members who are

[1] May, 245.
[2] Hans. (3), LXIII. 491.
[3] May, 245; Parl. Reg. (2), X. 49, 102, 103.
[4] Hans. (3), XXXVIII. 1108.

merely invested with some civil, military, or naval office, unconnected with administrative functions; thus, where a member was requested to state his opinion, as a naval officer, of a certain experiment recently tried, the speaker, Mr. Shaw Le Fevre, interposed, and reminded the member by whom the question was put, that the member to whom it was directed, "not holding any official position in the government, was not called upon to answer any question of the nature of that put to him, unless it pleased him to do so."[1]

1571. 3. The questions, which may be put to ministers, and which, by the practice of the house, it is their duty to answer, ought regularly to be such, the answers to which will afford information to the house, relating to some pending measure, or to some public event connected with the administration, or to enable the house to form an opinion of the policy of the government;[2] but, to put inquiries to ministers, for the mere purpose of being able to contradict an idle rumor;[3] or as to the mere news of the day, equally accessible to everybody, as, for example, "whether the French troops had taken military possession of the citadel or town of Mons;"[4] or as to the supposed official character of an article in a newspaper;[5] or as to the truth of a rumor appearing in a newspaper, of a ministerial measure in contemplation, as, for example, "that the title of king consort was about to be conferred on Prince Albert;"[6] is wholly irregular; and, in all such cases, ministers are at liberty to answer or not, as they, in their discretion, may think most expedient and proper.

1572. 4. According to the strict rule of order, no individual member of the house has a right to put a question to any other member; he may move the house, that such a question be put by the speaker; and, if the house gives its permission, the question may be put accordingly. But, in practice, it is found most convenient to dispense with this formality; and questions are ordinarily put by one member directly to another; being supposed, however, to be put by the house through the chair, at the suggestion, or on the motion, of such member.[7]

1573. In putting his question, it is the duty of a member to express himself in a respectful manner,[8] and to confine himself to stating it as a dry, simple query,[9] with merely such an explanation

[1] Hans. (3), LXXVI. 1177.
[2] Hans. (3), V. 1212, 1213.
[3] Hans. (3), LXXVII. 529, 530.
[4] Hans. (3), V. 1212, 1213.
[5] Hans. (1), XL. 591, 592, 593.
[6] Hans. (3), LXXVII. 529, 530.
[7] Hans. (1), XXXV. 155, 156, 157.
[8] Hans. (1), XV. 602, 603.
[9] Hans. (3), II. 554.

of the facts and circumstances, out of which it arises, as may be necessary to render it intelligible to the house;[1] but, he is not at liberty to comment on the subject of it;[2] nor, in stating the facts and circumstances, by way of explanation, to go into them at length;[3] or to present them in such a manner, as to raise an argument and lead to debate.[4]

1574. When the answer to a question has been given, it is irregular for the member asking the question, or for any other, to comment upon the answer, or upon the subject thereby introduced to the house; the necessary consequence of which would be to engage the house in a debate, when there was no question before it.[5] If it is desired to carry the subject further, the practice is, to give notice of a motion relating to it, for a future day, or, to make such a motion immediately.[6]

1575. 5. When a question, which is unobjectionable, has been put to a minister or other official person, in a proper form and manner, the member so interrogated is bound to answer it, provided the information demanded is within his knowledge, and can be communicated consistently with the public interest. In giving his answer, the member should confine himself to the points stated in the question, with such an explanation only, as will render the answer intelligible,[7] and avoiding all comment or explanation which may lead to debate or provoke reply. The answer, when given, is inserted on the journal, as a matter of course, and without any motion or vote.[8]

1576. III. A third class of exceptions consists of questions put to particular members, and of the answers given thereto, relating to measures, of which, according to the course of parliamentary proceedings, they are considered to have especial charge, as, for example, members who have introduced bills, or who have given notices of motion.[9] Questions of this description are supposed to be put in the same manner as questions to ministers; are founded in a similar reason of public convenience; and are governed by the same rules, as to the form in which they are to be put, and the manner in which they may be answered. There is no similar obligation,

[1] Hans. (3), LXIX. 574.
[2] Hans. (1), IX. 191, 193.
[3] Hans. (3), II. 554.
[4] Hans. (3), VII. 263, 264.
[5] Hans. (1), XXXIX. 69.
[6] Hans. (1), XVI. 739.
[7] May, 245.
[8] Hans. (1), XV. 602, 603.
[9] May, 245; Hans. (3), XXVIII. 31. See also Cong. Globe, VIII. 172; Same, X. 248; Same, XI. 565; Same, XXIII. 215.

however, on the part of the member interrogated, to answer;[1] nor is the answer, when given, to be entered on the journal.

1577. Questions to members should relate only to the course of proceeding, which they have adopted, or propose to adopt, in reference to the measures which they have in charge; and the answers should in like manner be confined to the course of proceeding, without being allowed to diverge into the general subject; thus, where a member, who had given notice of a motion for a future day, was inquired of by another member, whether it would not be better to postpone his motion, and, in his answer, was proceeding at some length on the subject itself, he was interrupted to order, and the speaker (Mr. Manners Sutton) said, that the member, "having been asked to postpone the motion, he certainly was at liberty to state whether he would acquiesce in or refuse that request, and his reasons for so doing; but, in going beyond that, and in entering on an argument in reference to the general subject, he certainly rendered himself liable to the comment of the honorable member."[2]

1578. The subjects above suggested are the only ones in reference to which questions are allowed to be put by one member to another and answered. Attempts have been made, from time to time, to interrogate members with reference to other matters, but without success. Thus, where a member, having first read from a newspaper, the proceedings of a certain society, at a public dinner, at which certain members were present, then proceeded to inquire, whether those members avowed one of the resolutions, passed at the meeting, he was interrupted to order, and, the speaker said, that "it was certainly quite new in the proceedings of parliament, for members to be questioned in that house, about what passed at tavern dinners."[3] So, where a member, having first called the attention of another member to certain observations, which the latter had made respecting him in the course of a previous debate, then called upon that member either to retract the charge, or to state the grounds on which he had made it, and the member so interrogated was proceeding to reply, the speaker (Mr. Manners Sutton) interfered, and "expressed his doubts, whether, according to the orders or forms of the house, such a question should be put or answered."[4] In another case, where a member, alluding to a

[1] Hans. (3), LXXVI. 1177.
[2] Hans. (3), XIII. 305.
[3] Hans. (1), XX. 746.
[4] Hans. (2), XII. 1814, 1815.

statement made on a former occasion, by another member, in reference to a petition presented by the former, "that it had been drawn up by a cowardly and malignant demagogue," proceeded to ask that member, whether he had ascertained the real authors of that petition, and, if he had, whether he intended those terms to apply to those individuals, — the speaker said, that "he thought the question which was put by the honorable member most irregular."[1] It is equally irregular, for a member to take up a newspaper, and to call upon another member, whose speech is there reported, either to deny or adopt that publication.[2]

1579. IV. Questions relating to the business and proceedings of the house, addressed by members to the speaker, constitute the last class of exceptions to the rule now under consideration. Questions of this nature, to be admissible consistently with order, should relate to matters in reference to which it is the duty of the speaker to inform the house.[3] Thus, the speaker may be inquired of, as to the proper mode of carrying up an address;[4] as to whether an instruction to a committee, which a member had given notice of his intention to move, could be moved consistently with the forms of the house;[5] as to the course of proceeding, which a member proposes to pursue in a particular case, and whether it would or would not be regular;[6] as to the extent and meaning of a rule of order laid down by the speaker on a former occasion;[7] as to whether a system of proceeding, in common use, was strictly in order.[8]

1580. In all cases of this kind, it is competent for other members also to express their opinions. If this should lead to debate, upon a mere hypothetical point of order, the speaker would feel it to be his duty to put a stop to it, on the ground of there being no question before the house, when the conversation had gone as far as was necessary for the purpose of explanation.[9]

1581. It seems to be the duty of the speaker, to take it for granted, that whoever addresses the house will do it in order; and he may well presume therefore that a member speaking, when there is no question before the house, will conclude with a motion,[10] or otherwise bring himself within order.

[1] Hans. (3), XIII. 424.
[2] Hans. (3), XXXVII. 1318. See also Cong. Globe, IV. 169.
[3] Hans. (1), XXIII. 283; Same, (3), LXXIV. 216; Parl. Reg. XXVI. 26. See also Cong. Globe, XXI. 68.
[4] Hans. (1), XXIII. 283.
[5] Hans. (3), LXXIV. 107.
[6] Hans. (3), LXI. 661, 662.
[7] Hans. (3), LXI. 661, 662.
[8] Hans. (3), LXIII. 491.
[9] Hans. (3), LXXIV. 107.
[10] Parl. Reg. LXII. 200.

CHAPTER THIRD.

OF THE RULE THAT NO MEMBER IS TO SPEAK MORE THAN ONCE TO THE SAME QUESTION.

1582. It is considered essential to the despatch of business in a legislative assembly, and is accordingly established as a rule, that no member shall speak more than once to the same question.[1] This rule seems to be founded in the principle, that when each of the members has given his opinion, the question is in fact decided; and it is contrary to order to discuss a question which is already decided. To this rule, there are certain exceptions, some of which are of right, and others of the indulgence of the house. Before taking notice of the exceptions, it will be necessary to explain the rule, *first*, by considering what is understood by a speaking, and, *secondly*, what is understood by the same question.

SECTION I. WHAT IS UNDERSTOOD BY A SPEAKING.

1583. A question being proposed from the chair, or otherwise arising in some less formal manner, every member is at liberty to express his opinion upon it by rising and addressing the house. When a member rises for that purpose, and obtains possession of the house, he may address it at any length and in whatever manner he pleases, provided he confines himself within the rules of order; and, consequently, whatever he says with reference to the question, — whether consisting of his own thoughts, or of something extraneous which he introduces as a part of his speech, — whether within the rules of order or not, — or whether much or little, — relevant or otherwise, — constitutes a speaking. If, having so risen, and being so entitled to speak, he says but little, or is irregular and disorderly in what he says, and then resumes or is compelled to take his seat, it is fair to presume, either that he has nothing more to say, or nothing that is proper for the house to hear; and he is accordingly

[1] Hatsell, II. 105, 106. It is common in the legislative assemblies of this country to regulate by a special rule the times of speaking, both in general, and as to particular questions, and to provide, also, that certain questions shall be taken without debate. Where there is no special rule on the subject, the parliamentary rule above stated prevails.

deemed to have availed himself of his right to address the house on the question before it.

1584. The following are examples of the application of the rule, and will serve to illustrate what is meant by a speaking:— Where a member, in asking a question, (which he had a right or was allowed by the house to ask,) followed up his question with an observation, he was precluded from speaking again, on the ground that he had already spoken;[1] where a member, who had spoken to the question, rose a second time, and was proceeding to read a passage from a petition which was the subject of discussion, he was stopped by the speaker (Mr. Manners Sutton), who informed him that it was not competent for him to do so, he having already addressed the house, and the passage was thereupon read by another member, who had not before spoken;[2] where a member, addressing the house and being interrupted by a violent coughing and cries of question, abruptly terminated his speech with a motion to adjourn, which he afterwards proposed to withdraw, the speaker (Mr. Manners Sutton) informed him, that he might do so, with the permission of the house, but he could not again speak.[3]

1585. It seems that, according to the strict rule, where a member rises and makes or seconds a motion, without addressing the house at the same time, such moving or seconding is equivalent to a speaking, and precludes the member from afterwards speaking in the debate. The rule was thus stated in express terms by Mr. Speaker Manners Sutton, with reference to a member's seconding a motion,[4] and it is difficult to distinguish, in this respect, between the mover and the seconder of a motion; but the speaker added, that though the strict rule was unquestionably so "it was sometimes the custom of the house to allow, as a matter of courtesy, a gentleman who had seconded á motion to speak at a future period."[5] Such seems now to be the general practice both in relation to the mover and seconder of a motion.[6] In this country, it is held, that a member, who has spoken in the debate, and is not at liberty to speak again, may, nevertheless, rise for the purpose, and make any motion in relation to the matter in question, which is in order at the time.[7]

[1] Hans. (3), XXXV. 641, 642.
[2] Hans. (2), XVI. 1217.
[3] Hans. (3), II. 538.
[4] Hans. (2), IV. 1013.
[5] Sir Francis Burdett, seconded Mr. Wardle's motion for an inquiry into the conduct of the duke of York, without speaking; then three other members spoke; then Sir Francis Burdett spoke without objection. Hans. (1), XII. 187, 192.
[6] May, 247.
[7] J. of H. 24th Cong. 1st Sess. 83.

SECTION II. WHAT IS UNDERSTOOD BY THE SAME QUESTION.

1586. A motion, made, seconded, and proposed from the chair, becomes a question for the decision of the house; a question may also arise in a less formal manner, as, for example, when a point of order occurs, without any motion being made, or question proposed; but, in whatever manner a question may arise, when it is regularly before the house, every member has a right to express his opinion upon it, until it is disposed of, either permanently or for the time being.

1587. It frequently happens, while a question is pending and under discussion, that some other question, — subsidiary, incidental, or privileged, — arises or is formally moved; in which case, the question, first moved, called sometimes the main, that is, primary, or principal question, is superseded or suspended for the time being, by the new question. When this proceeding takes place, — as soon as the new question arises or is formally proposed, — that is the question to which members must speak and every member is at liberty to speak to it, notwithstanding he may have spoken to the former.

1588. If the new question is of such a nature, that the decision of it either way does not involve a decision of the main question; — when the former is decided, the latter revives and the debate upon it proceeds in the same manner as if it had never been interrupted: those who spoke to it before the intervention of the new question, are not at liberty to speak again; and those who have only spoken to the new question are then at liberty to speak to the main question, in the same manner as if the former had never been moved. An example of this occurs, where an amendment is moved; which, of course, supersedes the original question, until it is decided. While the amendment is pending, the main question cannot be spoken to; when it is decided, — whether agreed to or rejected, — the original question revives and may be spoken to as before.

1589. If the new question is one, which, if decided one way, carries with it a decision of the principal question, but, if decided the other way, allows the main question to revive; as soon as the new question is moved, it may be spoken to as well by those who have already spoken on the main question as by those who have not; but, when decided, if the decision does not also involve that of the main question, the latter may then be spoken to, by all who

have previously spoken only on the secondary question. An example of this occurs, when during the pendency of any question, an adjournment of the debate is moved. Whilst this latter motion is pending, every member may speak to it, though he may have already spoken to the original question. If decided in the affirmative, the original question is disposed of, by being postponed, until the day to which it is adjourned; if in the negative, the original question revives, and may be spoken to as already stated. The previous question is an exception to this rule; because, if decided in the negative, the main question is suppressed, and if decided in the affirmative, it must be immediately taken, without any further debate being allowed.

1590. Where the debate on a question is adjourned to a future day, and then resumed, the resumed debate is considered merely as a continuation of the original debate; those who have previously spoken on the question, though on a former day, not being at liberty to speak again; while those who have not previously spoken may speak, however many times the debate may have been adjourned and resumed.[1] It is immaterial in what manner the continuation of the debate takes place, as by lapse of time, adjournment of the house, postponement of the subject, as well as by adjournment of the debate.

1591. The word *question*, in the rule, that no member shall speak more than once to the same question, is to be taken in its strict technical sense of a question submitted to the decision of the house, and not as synonymous with the subject of that question; for, when a question is submitted to the house, every member has a right to speak to that question, notwithstanding he may have already spoken on the subject of it, on some former occasion, and notwithstanding the house may have already expressed an opinion on the same subject. Hence, it is a principle of parliamentary practice, that, when, by the forms of proceeding, the same subject is submitted to the consideration of the house more than once, the question presented on each occasion is a new and different one, and open to debate, precisely in the same manner as if the subject of it had never been discussed in any other form. Thus, each stage of a bill gives occasion to a new and different question, though the subject remains the same; as, for example, a motion for leave to bring in a bill presents a different question from a motion that the bill be read a first or second time; and a motion for commitment

[1] Parl. Reg. XLIV. 487; J. of H. 24th Cong. 1st Sess. 83.

of a bill gives rise to a different question from a motion that the bill pass. So, where resolutions for an address are discussed and agreed to, and a committee appointed to draw it up, when the address is reported, and a motion made for agreeing to it, the question presented is a different one from agreeing to the resolutions, although the subject is the same, and the language, *mutatis mutandis*, the same.

1592. A member, who has already spoken to the question, has the same right to make a new motion, as if he had not spoken,[1] and to introduce his motion by a speech, without being taken down to order on the ground of his having before spoken.[2] But, in this case, it is irregular and disorderly for a member to use his right as a mere pretence for making a second speech to the same question; as, where a member, having already spoken, and being allowed to proceed in a second speech, on his saying that he should conclude with a motion, concluded with moving that certain parts of the journal be read, the speaker (Sir John Mitford) said, that "it was not usual to put the question, nor to make motions for reading extracts from the journals, unless something was to be done upon it; he feared, therefore, that he had not been regular in allowing the honorable gentleman to make a second speech." [3]

1593. The foregoing rule is subject to an exception in regard to motions for amendment; which, if moved by a member, who has already spoken, cannot be introduced by a speech.[4] The propriety of this exception being called in question by Mr. Pitt, and the opinion of the speaker, Sir John Mitford, called for, he said, that "it certainly was not strictly customary to allow a gentleman to go over the whole ground of his former speech, because he meant to conclude with an amendment, — that much trouble would be saved to the house by preventing persons who had once spoken in debate,[5] and explained, proposing amendments to motions, that no possible inconvenience would arise, as this did not preclude any other gentleman from proposing the intended amendment, — and that, in his mind, this would be the most regular and orderly method." [6] This opinion was acquiesced in by the house. At a subsequent period, Mr. Speaker Abbott gave it as his opinion, in general terms,

[1] J. of H. 24th Cong. 1st Sess. 83.

[2] Hans. (1), I. 819.

[3] Parl. Reg. LX. 365, 366. See further, on this subject, Same, LIX. 337.

[4] Parl. Reg. LX. 86, 87; Hans. (1), IV. 546, 547.

[5] Mr. Pitt's question referred to the case of a member, who had spoken and *explained*, and the same qualification is here inserted by the speaker. It is clearly immaterial.

[6] Parl. Reg. LX. 86, 87.

that by the rules of the house, a member could not make a second speech to move an amendment.[1]

1594. The rule, which precludes a member from speaking more than once to the same question, is subject to certain exceptions, which are of right, namely: 1, to explain; 2, to make a statement of fact; and, 3, when the house is in committee of the whole; and, also, to certain others, which are due to the indulgence of the house, namely: 4, in certain cases to reply at the end of a debate; and, 5, when the rule is dispensed with on some particular occasion.

1595. I. When a member, who has already spoken, conceives himself to have been misunderstood in some material point of his speech, as, for example, when his language is misquoted,[2] he is allowed to speak again, for the purpose of explaining himself, in reference to the part so misunderstood.[3] In the lords, it is an ancient order, "that none may speak again to explain himself, unless his former speech be mistaken, and he hath leave given to explain himself;"[4] in the commons, the privilege of explanation is allowed, without actual leave from the house.[5]

1596. The right of explanation is, for obvious reasons, limited to a statement of the words actually used, when a member's language is misquoted or misconceived, or to a statement of the meaning of his words, when his meaning is misunderstood. It is not in order, therefore, for a member, under pretence of explanation, to state what he was going to say but did not;[6] or to give the motives which operated in his mind to induce him to form the opinion which he expressed;[7] or to explain the language of another member;[8] or to explain his own conduct;[9] or to explain the character and conduct of another person;[10] or to go into new reasoning or argument;[11] or to reply to the speech of another member.[12]

1597. The proper time for explanation is when the member

[1] Hans. (1), IV. 546, 547. Perhaps the exception would be confined to the case of a member's undertaking to make a second speech on the same question, under the pretence of moving an amendment; and that a member, who had already spoken, might be allowed to introduce an amendment by a speech, provided he kept strictly to the amendment, without entering again upon the main question. Perhaps, however, the meaning may possibly be, that a member who has spoken to a question is not allowed to move an amendment.

[2] Cav. Deb. I. 465.

[3] Hatsell, II. 105; Hans. (3), XII. 923.

[4] May, 246.

[5] May, 247.

[6] Hans. (1), I. 814, 815.

[7] Hans. (1), XXIX. 409.

[8] Hans. (1), XXVI. 515; Same, (1), XLI. 167.

[9] Hans. (3), LXVI. 885.

[10] Hans. (3), XXXVIII. 13.

[11] Parl. Reg. XXV. 22; Hans. (1), I. 814, 815.

[12] Hans. (1), LXVI. 885.

speaking has concluded his remarks; until which time, the member misrepresented or misunderstood has no right to explain.[1] It is, however, the constant course, in order to prevent the founding of an argument upon a misrepresentation, which is perhaps involuntary, to allow a slight interruption of the member speaking, for the purpose of correcting the error.[2] But this can only take place with the leave of the member speaking, who, being in possession of the house cannot be interrupted but by a call to order, or with his own consent.[3] If, therefore, for convenience, or by courtesy, an opportunity is allowed a member to correct any misunderstanding of a member addressing the house, the indulgence is to be thankfully received; but, though it is an ordinary courtesy of the house to allow a misrepresentation to be instantly corrected, as often saving time, and further misrepresentation, it cannot be demanded as a right by any member, under any circumstances.[4]

1598. When a member rises to explain, and obtains possession of the house for that purpose, either temporarily interrupting the member speaking, or at the close of his speech, it is his duty to make his explanation in the manner already suggested, and then resume his seat. If, in explaining, or after he has made his explanation, or without undertaking to explain at all, he proceeds to advert to matters not necessary or proper for the purpose of explanation, or endeavors by new arguments and statements to strengthen what he had before said, or makes an attack upon the person or speech of another member, he may be called to order by the house, or by some member, or by the speaker, and will be directed by the latter to confine himself to simple explanation.[5]

1599. Whatever a member says in explanation, — whether relating to the words or the meaning of his speech, — is to be taken as true, and not afterwards called in question. The words, which he states himself to have used, are to be considered as the words actually used; and the sense in which he says they were uttered as the sense in which they are to be taken in the debate.[6]

1600. When a member speaking yields to an interruption for the purpose of explanation, he does not thereby conclude his speech, so as not to be able to resume it, on the conclusion of the explanation;

[1] Hans. XXVII. 121, 122; Cav. Deb. I. 465; Hans. (1), IV. 159; Same, XLI. 164; Same, (3), VIII. 113, 114; Same, XXXVI. 551; Same, XXXVII. 1170, 1171.

[2] Hans. (1), XLI. 167; Same, (3), VIII. 113, 114.

[3] Hans. (1), XLI. 167; Same, (3), XXXVI. 551.

[4] Hans. (1), XLI. 167.

[5] May, 247.

[6] Hans. (2), XXI. 393.

but when the member explaining has finished his explanation, the member speaking becomes again entitled to the floor, unless he has relinquished absolutely, and resumes his speech and proceeds precisely as if he had been interrupted to order and allowed to proceed.

1601. There seems to be no reason, why a member, who is allowed by the indulgence of the member speaking to interrupt him for the purpose of explanation, should not be allowed to explain himself as often as he is misunderstood. But if he waits, according to the rule of order, until the member speaking has concluded his speech, he would not probably be allowed to speak more than once in explanation.

1602. II. A second exception to the rule as to speaking but once to the same question is admitted, when a member, who has already spoken, desires to inform the house of a fact.[1] A petition being presented, praying the expulsion of a member, a motion was made to reject the petition, and the debate thereon was adjourned; on resuming the debate, a member who had previously spoken rose to address the house a second time; his right to speak being called in question, he said "he thought it was incumbent on him to state to the house, before it came to any decision on the subject, that he was in possession of certain facts from an official source, which would entirely set aside the allegations of those who had signed the petition;" the speaker (Mr. Manners Sutton) thereupon declared, "that if the member, who wished to address the house, did so with the intention of communicating to the house information derived from official documents, which would controvert any previous statement made to the house, he had an undoubted right to make such a statement, before the house could be called upon to decide the question before it."[2]

1603. When a member avails himself of his right to address the house a second time, for the purpose of stating a fact, he should, of course, confine himself to the statement which he is entitled to give, with such observations only, by way of explanation, as may be necessary to render it intelligible.

1604. III. A third exception, in which the right of a member to address the house more than once on the same question is admitted, occurs when the house is in a committee of the whole. This

[1] Hatsell, II. 105; Grey, III. 357, 416; Hans. (3), XVIII. 510, 555. See also Ann. of Cong. I. 1261, 1268; Cong. Globe, XI. 462.

[2] Hans. (3), XVIII. 510, 555.

will be more fully explained in connection with the proceedings of committees.

1605. IV. It is the ordinary courtesy of the house, though not of strict right, to allow the member, who introduces a motion, to speak a second time, by way of reply.[1] This privilege is conceded only to the mover of a distinct and original proposition, on its first introduction to the house. It does not belong to a member who moves the reading of or proceeding with an order of the day, as that a bill be read a second time;[2] nor to the mover of an instruction[3] to a committee of the whole house;[4] nor to the mover of an amendment,[5] although the original motion is a merely formal one, as that the speaker do now leave the chair, and the amendment is the real subject of the debate.[6]

1606. The privilege of reply can only be exercised once, in answer to all the objections brought forward against the motion. The member entitled to it should therefore wait, before speaking, until all the members opposed to his motion have spoken; if he does so, it is not customary (perhaps not in order) for other members to renew the debate;[7] but if he speaks in reply, in the course of the debate, other members are not thereby precluded from speaking;[8] and thus the member may in fact deprive himself to some extent of his privilege of reply, by exercising it prematurely.

1607. The term *reply* denotes the extent of the privilege; it is not that of speaking at large to the question; but is limited to points immediately applicable to the motion.[9] If a member, therefore, in his reply, goes beyond the proper limits, and introduces new matter, other members are at liberty to speak to the question.[10] So, where the mover is allowed by the house, to speak a second time, in the course of the debate, when he is not in fact entitled by the ordinary courtesy of the house to reply, — as where the motion is for an amendment, or for an instruction to a committee of the whole, — the question is still open for debate.[11]

[1] Parl. Reg. XII. 127; Same, XXXII. 93, 94; Same, XLIX. 126; Hans. (1), XVI. 744.

[2] Hans. (1), III. 641.

[3] "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." May, 247.

[4] Hans. (2), II. 344.

[5] Hans. (1), XXI. 1289, 1290; Same, (3), VIII. 724, 725.

[6] Hans. (3), XXXVIII. 13; Same, (3), XLIV. 98, 383, 443.

[7] Hans. (2), II. 344; Same, (3), XI. 284.

[8] Parl. Reg. XXXII. 93, 94.

[9] Parl. Reg. XXXII. 93, 94.

[10] Hans. (3), XI. 284.

[11] Hans. (2), II. 344. The extent to which replies are allowed, as a matter of right, must depend, of course, upon the rules of each assembly. Those of the house of representatives in congress, are given in a preceding paragraph, § 1541.

1608. V. In addition to the excepted cases, already enumerated, in which a member is entitled of right, or is allowed by the ordinary rules of courtesy, to speak a second time, the house may, at its pleasure, make an exception on any special occasion, by dispensing with its rule, in favor of some particular member, or of some particular proceeding.[1] This indulgence usually takes place, without any formal motion or vote, but by the tacit acquiescence of the house; the member to whom the indulgence is accorded being allowed, on the suggestion of the speaker,[2] or of some member,[3] or at his own request,[4] to proceed without interruption.

1609. The following are examples of the kind of indulgence alluded to: — On resuming an adjourned debate, "which had been principally adjourned in order to afford time for a further consideration," the house, on the suggestion of the speaker, dispensed with the rule in favor of those members who had already spoken in the debate on a previous day;[5] on resuming an adjourned debate, the member who introduced the question, having previously spoken, was allowed, at his own request, to speak again;[6] under the peculiar circumstances of the case, members were allowed to reply when, by the ordinary rules of courtesy, they were not allowed to do so;[7] so, it is usual, where a personal appeal is made to a member who has already spoken, to allow him to answer it;[8] or, where a personal charge is brought against a member,[9] or his conduct is arraigned [10] in debate, to allow him to speak a second time to justify or defend himself; but, in all these cases of special leave, the member indulged is bound to confine himself strictly within the terms of the permission given him.[11]

[1] Hatsell, II. 106; Same, 233, note; Comm. Deb. XII. 305; Parl. Reg. XXVII. 322.

[2] Parl. Reg. XXVII. 322; Hans. (3), LXVI. 885.

[3] Comm. Deb. XII. 305; Cav. Deb. I. 427; Parl. Reg. XXXV. 550.

[4] Parl. Reg. XXXV. 550; Hans. (3), XXVIII. 663.

[5] Parl. Reg. XLIV. 487; Same, XXVII. 322.

[6] Parl. Reg. XXX. 78; Same, XXXV. 550; Hans. (3), XXVIII. 663.

[7] Hans. (1), XIX. 723, 724, 725; Same, (3), VIII. 724, 725.

[8] Hans. (1), XXXII. 1221.

[9] Hans. (3), XXXII. 820.

[10] Hans. (3), XLVI. 885.

[11] Hans. (3), XLVI. 885.

CHAPTER FOURTH.

OF THE RULE THAT A QUESTION IS OPEN FOR DEBATE UNTIL IT IS FULLY PUT ON BOTH SIDES.

1610. When members no longer rise to address the house on the question before it, and the debate appears to be concluded, it is then the business of the speaker to put the question, in order to obtain the decision of the house upon it. If, in consequence of irresolution, or the belief that others are to speak, or for any other cause, members who desire to speak suffer the question to be put before they rise in their places, they are nevertheless entitled to be heard and to move amendments, etc.;[1] it being a fundamental rule, "that the house cannot be concluded in any thing, so long as any gentleman stands up to speak, that respect is had to the gentleman that stands up, to suppose that possibly he may say something to give new light into the matter coming to the question so as to change the whole thing, it is not known what a gentleman will say till he speaks."[2] The right to speak is so sacred, and the exercise of it at the pleasure of every member so important to the freedom of debate, that the speaker may even be interrupted while in the act of putting the question,[3] on the same principle that a member, whilst speaking, may be interrupted by another member rising to order, or for the purpose of calling the attention of the house to a matter in which its privileges are immediately involved. The limit, beyond which it is no longer allowed to speak to a question, is when the question has been fully put, which implies that the voices have also been given, — that is, when, in point of fact, the question has been decided, — and nothing remains but for the speaker to ascertain and declare the vote.[4]

1611. When a question is put in the form in which it is to be taken by *consent*, — that is, where the speaker merely inquires whether it is the pleasure of the house that such a thing should be done, and, no one dissenting, declares it to be so ordered, — the question is open for debate until the speaker's declaration.

1612. When a question is put in the usual form, in which it is

[1] May, 241; Scobel, 23, 24; Romilly, 274.

[2] By Sir William Coventry. Grey, V. 143, 144.

[3] Scobell, 23, 24; Romilly, 274.

[4] May, 241.

to be taken by the *voices*, — that is, where the speaker first calls for the voices of those in the affirmative, and then for the voices of those in the negative, and then declares for the one side or the other, according to his judgment of their relative numbers, — the question is open for debate until the voices in the negative have been given.[1]

1613. When a question is taken by a *division* of the house, — that is, where the members on each side go by themselves and are counted by tellers appointed for the purpose, — the question is open for debate until the numbers which are the result of the division, have been announced from the chair.[2]

1614. When a question is taken by the voices, and the speaker has declared that the ayes have it, or the noes have it, as the case may be; if his decision is called in question, that is, if any member rises and says that the noes have it, or the ayes have it, contrary to the opinion expressed by the speaker; this entirely does away with the effect of the speaker's decision, and makes it necessary to ascertain the sense of the house by a division. The question is then again open for debate[3] until the numbers which are the result of the division have been announced.

1615. When a question is taken by yeas and nays, according to the practice in this country, the question is open for debate until, after having been stated by the speaker, the clerk has proceeded to call the roll, and one member at least has answered to his name.[4]

1616. If a member rises to speak whilst the question is yet open for debate, but is not observed by the speaker at the time, his right to speak will be admitted, whenever the fact of his having risen in time is brought to the knowledge of the house, and the question will be again opened for debate in the same manner as before, even though it may have been taken in the mean time, and the result declared by the speaker.[5]

[1] May, 241; Scobell, 23, 24; Romilly, 274.
[2] Hans. (1), XI. 572.
[3] Parl. Reg. V. 157.
[4] J. of H. VI. 446; Same, 17th Cong. 1st Sess. 216, 217.
[5] May, 241; Hatsell, II. 102, n.; Debates in Commons, 27th January, 1789.

CHAPTER FIFTH.

OF THE RULES RELATING TO RELEVANCY IN DEBATE.

1617. The rules of order relating to debate, which have thus far been considered, have reference to the times when, and the circumstances under which, a member may address the house; those which follow relate to what may or may not be said by a member, or introduced by him into his remarks, in addressing the house.

1618. If it is essential to the despatch of business in a deliberative assembly, and to its efficient proceeding, that there should be no speaking but to a question, it is not the less so, that whatever is said in debate should have reference to that question. Hence, it is an established rule, that every member who speaks should speak to the question.[1] This rule requires to be explained in reference, *first*, to the question itself, and, *secondly*, to the manner of speaking to it.

SECTION I. AS TO THE QUESTION ITSELF.

1619. The question, to which a member in possession of the house is bound to speak, is that which was last proposed from the chair, which is thus immediately pending, and which, according to the course of parliamentary proceedings, is next to be taken; thus, if, during the pendency of any question, a motion is made to amend that question, or for the previous question, or to adjourn the house or the debate, and the question is proposed on such motion, the question so proposed is the question immediately before the house, to which members rising afterwards must address themselves.

1620. As every member, when a question is pending, has, in general, the same right to introduce a motion with a speech, as he has to introduce an original motion in that manner, it is competent to any member, in the course of a debate, to rise and address himself to a question which he intends to introduce, provided that question is one which may then regularly be moved.

1621. If a point of order, arising in the course of a debate, is

[1] See also Cong. Globe, III. 261.

made the subject of a formal motion and question, the rules already stated are applicable; if no such formal motion or question is made, every member may speak to a point of order, either already suggested, or which he himself proposes to suggest.

1622. If a member, rising to speak, mistakes the question, through inadvertence, or ignorance, or misapprehension, he may be interrupted by the house, or by the speaker, whose duty it more particularly is to do so, and be set right; after which, he may proceed, addressing himself to the question.[1]

1623. It frequently, indeed almost continually, happens, that when a question is pending, and under discussion, another question is moved upon it, which, for the time being, supersedes or suspends the first. When this takes place, the secondary or last moved question becomes the question immediately before the house, and is that to which members in speaking must address themselves. As the main question is then suspended, and cannot be spoken to, it is often very important to know, how far it is involved in, and open to discussion, under the secondary question; inasmuch, as by the disposition of the latter, the former is frequently disposed of, at the same time, either temporarily or finally.

1624. There are some secondary questions, which necessarily involve the main questions upon which they are moved; inasmuch as a decision of them one way includes a decision of the main question; and when questions of this description are moved, the merits of the main question are open for discussion.

1625. A motion to adjourn the house is a secondary motion, the decision of which one way involves a decision of the main question; as, if carried in the affirmative, the main question is suppressed for the time being; and consequently, on a motion to adjourn, the merits of the main question, that is, the question pending and upon which the adjournment of the house is moved, are open to discussion, on the ground of the present importance and urgency[2] of that question.[3]

1626. A motion to adjourn the debate is also a secondary motion, the decision of which one way, that is, in the affirmative,

[1] Grey, IX. 39.

[2] Hans. (3), LXII. 219.

[3] It seems that "Considerable laxity had, until recently, prevailed in allowing irrelevant speeches upon questions of adjournment, which were regarded as exceptions to the general rule: but since the commencement of the session of 1849, a stricter practice has been enforced, and Mr. Speaker has called upon members to confine their observations upon such motions to the question properly before the house, namely, whether the house should adjourn or not." May, 244.

involves a decision of the main question, which is thereby postponed for a time. In this motion, therefore, the main question is clearly involved, and may be spoken to on its merits.[1]

1627. The previous question is a motion of the same kind, the decision of which either way involves to a certain extent the decision of the main question. If the previous question is carried in the affirmative, the main question must be taken immediately, without further debate, or opportunity for amendment, and subject to all the objections, either as to time or as to form, which can then be urged against it, which objections may be fatal; on the other hand, if the previous question is carried in the negative, the main question is thereby suppressed for the day; so that whichever way the previous question may be decided, the decision of it involves, or at any rate affects, the decision of the main question. On the previous question, therefore, the merits of the main question are open to discussion.

1628. There are other secondary questions which do not necessarily, but may or may not, according to their form, involve the main questions upon which they are moved. Motions to amend are of this description; if it is moved to amend in such a form, that, if the motion is carried in the affirmative, the effect of it is to suppress the main question as originally moved, the merits of that question are clearly involved in the question of amendment; if made in such a form, that, if decided either way, the main question remains as before, then the merits of that question are not involved in the question of amendment.

1629. A motion to amend, by leaving out all but the formal or technical words of the main question, for the purpose of inserting a different motion, is a motion of the former description, as if resolved in the affirmative, the words of the motion as originally made are suppressed, and which consequently involves in its decision a decision of the main question.

1630. A motion to amend, by leaving out certain words either simply or for the purpose of adding other words, may or may not involve the merits of the main question, according to the effect which the amendment will have upon it, if it should be adopted. The same may be said of motions to amend by inserting or adding words. In determining how far the main question is involved in amendments of this character, it seems proper to inquire, whether, after the question is taken on the amendment, the main question

[1] Parl. Deb. III. 164; Hans. (3), LXII. 153, 174.

will be open for discussion as before; and according as it will or will not be so open, to consider it involved in or independent of the secondary question.

1631. The following case affords an illustration of this rule. A resolution reported by the committee of supply being under consideration, it was moved to amend by reducing the sum granted; a member thereupon rising and objecting to the resolution generally, he was called to order by Mr. Addington, who had been speaker, on the ground, that it was not open to him to object generally to the resolution, after the motion for amending it; and the speaker, Sir John Mitford, said, "that the member would have an opportunity of opposing the whole of the resolution, when the question was put upon the resolution generally." [1]

1632. The foregoing application of the rule as to relevancy is derived entirely from the practice of the British parliament, where it prevails exclusively. In this country, in which the use of subsidiary or secondary questions, for the disposition of other questions, is much more common, than it is in parliament, the tendency has undoubtedly been to prevent the debate on these motions, from branching out into the merits of the main question, although the latter are somewhat involved, at least on one side. Thus, it has been held in congress, that the merits of the main question are not open for discussion, on the question of discharging the committee of the whole; [2] on postponing to a day certain; [3] on questions to recommit, [4] to commit, [5] or refer; [6] on motion for a call of the house; [7] on motion for leave to introduce a bill; [8] on motion for the previous question under the common parliamentary law; [9] on motion to make a bill a special order; [10] on the question that a committee have leave to send for persons and papers. [11]

1633. On the other hand, it has been decided in the same assembly that the merits are open for discussion on a motion to postpone indefinitely; [12] on passing a bill; [13] on filling blanks; [14] and on resolutions of inquiry. [15] On questions of amendment; [16] and on

[1] Parl. Reg. LXI. 258.
[2] Reg. of Deb. II. Part 2, 794, 2371; Cong. Globe, III. 249, 253.
[3] Reg. of Deb. II. Part 2, 2510; Cong. Globe, III. 245.
[4] Reg. of Deb. IV. Part 1, 544.
[5] Reg. of Deb. VI. Part 2, 757, 865; Same, IV. Part 2, 1965, 1966.
[6] Reg. of Deb. X. Part 2, 2618; Cong. Globe, III. 366.
[7] Reg. of Deb. VI. Part 2, 1037.
[8] Cong. Globe, VIII. 178; Same, 415.
[9] Cong. Globe, X. 53, 59.
[10] Cong. Globe, IX. 101.
[11] Cong. Globe, XIII. 356.
[12] Cong. Globe, IV. 88.
[13] Cong. Globe, IV. 125.
[14] Reg. of Deb. II. Part 2, 2612.
[15] Reg. of Deb. III. 788, 789.
[16] Reg. of Deb. III. 880; Same, IV. Part 1, 869; Same, IX. Part 2, 1662; Same, IV. Part 1, 871, 874.

questions to print;[1] the merits of the main question are open or not according to circumstances. Questions to reconsider,[2] and questions to instruct a committee,[3] do not generally open the whole subject, but only according to the nature of each motion.

SECTION II. AS TO THE MANNER OF SPEAKING TO THE QUESTION.

1634. In regard to the question itself, there can seldom be any difficulty in applying the rule as to relevancy, and in compelling members to observe it. But, when the question is not mistaken, and a member is professedly speaking to that which is before the house, it is often a matter of extreme difficulty, in the first place, to decide whether he is or is not wandering from the question; and, secondly, if need be, to restrain the debate within the proper limits.

1635. This difficulty is partly inherent in the nature itself of the subject, which makes it difficult, if not impossible, to decide beforehand, in what manner a question may or may not be pertinently treated; in part, also, it lies in the danger there would be of infringing upon the freedom of debate if, on every occasion, a member could be obliged in advance, to explain the relevancy of every topic which he proposed to introduce into the debate; and partly in the difficulty there frequently is in perceiving the relevancy of a topic, which a member introduces into his speech, until he has concluded what he had to say on that topic.

1636. Much, therefore, must be left to the judgment and discretion of the members, as to the topics which they introduce, and the manner in which they treat them, when addressing the house; and much left to the patience, forbearance, and good feeling of the house itself. It is to be considered, on the one hand, that members, who desire to possess or retain any influence with the house, will seldom trespass in this respect, without at the same time becoming so obviously disorderly, by personalities or otherwise, as clearly and unequivocally to subject themselves to the animadversion of the house; and, on the other hand, that the house will seldom be harsh in its judgment, or severe in the application of its rules, where it is manifest that the member speaking is honestly addressing himself to the question, and sincerely desirous to inform the house of what he deems important to its decision.

[1] Reg. of Deb. IV. Part 2, 1490; Same, X. Part 4, 4273, 4274.

[2] Reg. of Deb. XII. Part 2, 1990; Cong. Globe, V. 86; Same, VI. 145; Same, XVIII. 514; Same, XX. 517.

[3] Cong. Globe, III. 262.

1637. The rules relating to relevancy in debate, therefore, though established with a view to their enforcement by the house, as well as for the direction and government of the members individually, are much more effectual in the latter than in the former mode of their operation. It is in the power of the members, and it is undoubtedly their duty, to observe these rules with strictness; if they fail to do so, it then becomes the duty of the speaker and of the house, to endeavor to restrain them for the future, within the proper limits of order; and, also, as far as may be, to do away with the effect of any irregularity, which may have been committed before it could be prevented, or which may have passed at the time without notice, or was perhaps considered of so trivial a character as to be deserving of no attention.

1638. In the earlier period of parliamentary history, members were at liberty to address the house, without a question being first proposed, until from the turn of the debate, a question had been framed by the speaker, and proposed to the house; after which, those who spoke were required to speak to the question. At this period, when, it may be presumed, a greater laxity of debate was allowed, than is now in theory, at least, regarded as proper, it seems to have been referred to the house itself, to determine whether a member speaking should be required to confine himself to the question; the rule being, as stated by Scobel:[1] "That if any man speak impertinently, or beside the question in hand, it stands with the orders of the house, for Mr. Speaker to interrupt him, and to know the pleasure of the house, whether they will further hear him." The rule remains substantially the same, since the introduction of the modern practice, which precludes all speaking but to a question already pending or to be introduced by the member speaking; but without the qualification, referring it to the decision of the house, whether the member interrupted by the speaker, or otherwise called to order, shall be permitted to proceed. The house may and often does indulge a member in this respect; but, in general, the speaker's judgment is acquiesced in. The rule, as to relevancy in debate, cannot be better expressed, than in the words of Mr. Speaker Cornwall, "that no matter introduced into a debate, which the question before the house cannot decide upon, is regularly debatable."[2]

1639. When a member speaking in debate wanders from the question, and introduces irrelevant topics, or treats the subject impertinently, the house may either allow him to proceed without in-

[1] Scobel, 31, 32, 33.

[2] Parl. Reg. (2), IX. 466.

terruption, or he may be interrupted to order; if interrupted by the house generally, or by any member, the speaker then gives his opinion upon the point of order, either sustaining the call, or sustaining the member; if the former, he acquaints the member wherein he is disorderly, and that he must speak to the question; if the latter, he directs the member to proceed; sometimes, however, where the circumstances of the case seem to require it, reminding him of the question, and stating to him the line of remark which he is at liberty to pursue. The speaker may also call a member to order, without the intervention of the house, or of any other member. The duty of the speaker is performed when, upon a member's being called to order, and as often as the call is repeated, he states the rule, and admonishes the member to proceed in order; if, notwithstanding the call to order, the offence is repeated, and tolerated by the house, no blame can be imputed to the speaker.[1]

1640. If a member, professedly speaking to the question, and not under any misapprehension as to its terms or subject, addresses himself to some other topic, not embraced in the question, he is clearly out of order, and cannot be allowed to proceed; unless upon the ground of an exception specially made in his favor, or unless his case comes within some exception resulting from a general or particular usage of the house.

1641. 1. In every case, it is competent for the house to dispense with its rule, in the manner already stated, and thus create an exception, for the special occasion, in favor of a particular member.

1642. 2. Where the member, on being interrupted, states that it is his intention to conclude with a motion,[2] or where that fact is already known to the speaker or understood by the house.[3]

1643. 3. Where the deviation from order, of which the member complained of is guilty, is one, which has been tolerated by the house, in other members, until it has become the practice.[4]

1644. 4. Where the member has deviated from the question merely in answer to other members, who had deviated from it before him.[5]

1645. 5. Where the topics commented upon by the member, who is interrupted to order, have been suffered by the house to be

[1] The authority of the presiding officer, in this respect, is usually the subject of a special rule.

[2] Hans. (3), XXIX. 696.

[3] Hans. (3), XXVII. 325.

[4] Hans. (3), IV. 1251; Same, LXIII. 512.

[5] Parl. Reg. VII. (2), 154; Parl. Reg. XXV. 309, 311.

introduced into the debate, and commented upon by other members.[1]

1646. 6. Where the observations of the member, who is interrupted to order, are in explanation of expressions used by him on a former occasion, and which have been adverted to by other members in the debate.[2] But this will not justify a member in going from the question, for the purpose of correcting a misrepresentation of any thing he may have said on a former occasion, not adverted to in the present debate.[3]

1647. In all those cases, however, in which a member is allowed, by the special indulgence of the house, in his favor, to speak to topics not strictly relevant to the question, (and this includes all the above-named classes of exceptions except the *second*,) such member is bound to confine himself strictly to the topic, in reference to which he is so indulged, and not to treat it in such a manner, as to lead to or provoke further debate.[4]

1648. If a member, without addressing himself to any other topic, than the question before the house, or one which is clearly embraced within its terms, pursues a line of remark, the relevancy of which is called in question, it is often extremely difficult to decide, whether he shall be allowed to proceed or not. On the one hand, a just regard to the privileges and dignity of the house demands that its time should not be wasted in idle and fruitless discussions; on the other, freedom of debate requires, that every member should have full liberty to state, for the information of the house, whatever he honestly thinks may aid it, in forming a judgment upon any question under its consideration. The rule, therefore, as to the relevancy of remarks made in debate, should have in view the preservation of the privileges and dignity of the house, so far as that can be accomplished, without infringing upon the freedom of debate; and this seems to be attained by the only rule on this subject, which can be collected from the records of parliamentary experience; namely, that a member, speaking in debate, is entitled to proceed, unless in the judgment of the speaker and of the house, it is clear, that his observations are not applicable to the question.

1649. An example or two, of the application of the rule, will be useful, by way of explanation. A petition being presented, in the house of commons, April 22, 1831, in favor of the reform bill, and

[1] Hans. (1), I. 801.
[2] Hans. (1), XI. 755.
[3] Hans. (1), VII. 1182, 1183.
[4] Hans. (1), I. 801; Same, XI. 755.

a motion made that the petition be brought up, a member addressed the house upon that question, and, in the course of his speech, said: "The question was, whether that parliament was to be dissolved, and the members sent back to their constituents, because they had pronounced an opinion that the English representation should not be reduced." Being called to order, on the ground that there was no question before the house, on which they could be addressed in that manner, the speaker, Mr. Manners Sutton, said: "The question arising out of the petition was parliamentary reform. The question for him to decide was, whether or not the observations of the member speaking had a proper application to that question; not whether he had strictly adhered to what was contained within the four corners of the petition, but whether the general tenor and scope of his speech did not come within the subject-matter introduced to the house by a petition on the subject of reform; and he (the speaker) must say, that according to his opinion of the rules and orders of that house, he could not see, that the observations of the member were not applicable to it."[1]

1650. So, where a member, addressing the house on the subject of a petition complaining of distress, was called to order, on the ground of the irrelevancy of his remarks, the speaker, Mr. Manners Sutton, said, that "when a petition was on the table, complaining of distress, it was very difficult to say, what members should not speak of, as occasioning that distress. He could not therefore support the member in rising to order."[2]

1651. In another case, where a petition had been presented for the better observance of the Lord's day, and a member, in speaking upon it, took occasion to make some remarks upon two petitions of a similar description presented the day before, and upon the motives of the petitioners, the member was called to order on the ground, that it was disorderly to impute motives to the petitioners, whose petition was presented on a former night, and was not then before the house. The speaker, Mr. Manners Sutton, said, that "with respect to the reference to a petition presented on a former day, if it were on the same subject as the present petition, he could not say, that applying motives to those petitioners was disorderly. In all these matters, a good deal must be left to the good-sense, the good feeling, the taste, and the propriety of honorable members themselves."[3]

[1] Hans. (3), III. 1812, 1817, 1818.
[2] Hans. (3), I. 1329.
[3] Hans. (3), XVI. 292.

1652. If, when a member is called to order, on the ground of the irrelevancy of his remarks, all that can be said is, that it does not appear in what manner his remarks are applicable to the question, the member will be allowed to proceed; the speaker sometimes reminding him of the terms of the question, or informing him under what circumstances his remarks would or would not be in order. Thus, a member being called to order on the ground that the member interrupting him could not see in what manner the circumstances he was mentioning could apply to the question before the house, the speaker, Mr. Manners Sutton, said, "that he took it for granted, that the member would bring his observations to bear upon the motion before the house, and that he meant to make some proposition for the consideration of the house." The member thereupon remarking, that the facts to which he had alluded called for serious consideration, the speaker reminded him of the terms of the question, and allowed him to proceed.[1] In another case, where a member was called to order on similar grounds, Mr. Speaker Abbott said, "he conceived, that the member's observations were not strictly applicable to the question; but he was always delicate in interfering on such occasions, as it was difficult to know whether the member would not conclude with something that would bring him within order." So, again, a member being called to order, and inquiry made of the speaker, whether the arguments of the member, with respect to the monarchy and the house of lords, had any thing to do with the question before the house,[2] the speaker said, that "if the member made the supposition alluded to for the purpose of reviving a discussion, which had already been terminated, he was out of order; but if he considered his supposition pertinent to the question before the house, he was quite in order." [3]

1653. Where the subject of a motion immediately pending and under consideration is the same with, or involved in, the subject of another matter also pending but not then before the house, — the two having different purposes in view, — it is not competent to a member addressing the house on the former, to enter into the merits of the latter, notwithstanding the subject is the same. Thus, where a member, having moved for certain papers relating to slaves imported into the West Indias, was proceeding to remark that these papers would show, that the king was entitled to a duty on all such slaves, and that consequently before any proceeding could

[1] Hans. (3), XVIII. 89.

[2] "Any argument, however bad and absurd, does not therefore become disorderly." Mr. Speaker Addington, Parl. Reg. XXXVIII. 366.

[3] Hans. (3), XXXII. 803.

take place in reference to the bill before the house, to abolish the trade, his majesty's consent must first be obtained, he was interrupted to order, on the ground that he could not, consistently with order, preface a motion for papers, by a long speech on the merits of a bill, which he would have another opportunity of discussing, and, thereupon, the speaker, Mr. Abbott, "begged leave to remind the member how far he was in order, and how far not. Any reasons, showing the propriety of his motion, were certainly in order; but to comment upon or discuss the question (to which that motion related, namely, the bill to abolish the slave-trade) was out of order and a transgression of the rules of the house."[1]

1654. Where the remarks of a member are strictly relevant to the subject of the question, but are extended into a wider range than seems necessary, the member will nevertheless be allowed to proceed, unless restrained by the house. Thus, where, on a motion for the production of a paper relating to the volunteer force, a debate on the general subject ensued, and a member rose to order, and objected that if the motion was merely for the production of papers, it was wrong to go into the subject of it (the volunteer force) at such length, the speaker, Mr. Abbott, said, that "the motion had certainly branched out into a more general range, than such a motion seemed to require; but, it was in the discretion of the house, to permit or to restrain such extraneous proceedings; he did not feel warranted in interfering to check it before, nor did he now."[2]

CHAPTER SIXTH.

OF THE RULES RELATING TO THE SOURCES FROM WHICH THE STATEMENTS INTRODUCED BY A MEMBER IN DEBATE ARE DERIVED.

1655. It is the right of every member, (and it may also be said to be his duty,) in addressing the house upon any subject before it, to give his own opinion, and also to state any facts or circumstances, which, in his judgment, may assist the house in forming an opinion upon the question.[3] The facts and circumstances,

[1] Hans. (1), II. 613, 614.
[2] Hans. (1), VI. 847.
[3] Hans. (3), XLVI. 158, 159.

which a member is thus at liberty to state, are not governed by any rules analogous to the rules of evidence, which prevail in the ordinary courts of justice. Whatsoever may help an individual member to form his opinion may also aid other members in forming theirs; and may therefore be stated, unless objectionable on some of the grounds, known and established in the law of parliament.

1656. The facts and circumstances, stated by a member in debate, so far as relates to the weight to which they are entitled, in consideration of the sources from whence they are derived, are of two kinds, namely; those which lie within his own knowledge, either personal, or resting in belief, and those which depend upon the authority of others. Facts and circumstances of the first kind, resting upon the personal responsibility of the member himself, may be stated at his pleasure; those of the second kind, resting upon the authority of others, may be introduced by the member, and made a part of his speech, provided they come from competent and proper sources.

1657. There is also a third kind, which do not belong exclusively within the personal knowledge or belief of the member, nor are introduced on the authority of extraneous sources, but are equally within the knowledge of, and accessible to, all the members. Facts and circumstances of this description are those which are found upon the journals of the house; or which are contained in papers and documents, in its possession, as petitions and other documents of the like nature, reports of committees, minutes of evidence taken at the bar of the house, and papers produced by order of the house and laid before it from public offices, or otherwise; or which exist in the public records, as, for example, acts of parliament. In considering the subject of the present chapter, it will be convenient to notice, *first*, statements made by members of their own knowledge, or belief; *secondly*, those derived from the records, etc., of the house itself, or other public records; and *thirdly*, those resting upon extraneous authority.

SECTION I. STATEMENTS MADE BY MEMBERS OF THEIR OWN KNOWLEDGE OR BELIEF.

1658. Facts and circumstances, lying within the personal knowledge of the member stating them, or resting in his belief, are stated on his individual responsibility as a member. If truly stated, — so far as his personal knowledge is concerned, — or honestly stated, —

so far as they depend upon his belief, — his responsibility as a member is fully acquitted; but, if untruly, or dishonestly stated, he will be subject to the animadversion of the house, and even to punishment, if the house should think proper to inflict it.

SECTION II. MATTER INTRODUCED FROM THE JOURNALS OR PAPERS OF THE HOUSE, OR OTHER PUBLIC RECORDS.

1659. In introducing matter of this description into his speech, it is usual for the member to request the reading of what he so desires to make a part of his speech, by the clerk or other proper officer, at the table; and herein, the rule appears to be, that whenever a member, addressing or about to address the house, desires that an extract from the journals, or a part or the whole of any document regularly in the possession of the house, as, for example, any paper ordered to lie on the table, or in the files of the house, or under consideration at the time, may be read, it is to be read by the clerk, as a matter of course, and as making a part of the member's speech.[1] Where any matter of this kind, which a member desires to introduce as a part of his speech, has been printed by order of the house, for the use of the members, it is equally competent to a member to read it himself, as to have it read at the table.

1660. Where a paper or document of the kind above referred to has been ordered to lie on the table, it seems, that the only mode, in which a member can regularly avail himself of the contents of it, in his speech, is by having it openly read at the table, unless it has been printed, in which case he may call the attention of members to it, by reading it himself. In the time of Mr. Speaker Onslow, Sir Robert Walpole addressing the house in debate, and attempting to take into his hand a petition which had been ordered to lie on the table, or to read the petition as it was lying on the table, and being called to order, the speaker gave his opinion as follows: "It is undoubtedly required by the orders of the house, when petitions are ordered to lie on the table, that they should lie upon the table, and that any member, who is desirous of any further satisfaction, should move that they be read by the clerk, that every member may have the same opportunity of understanding and considering them, and that no one may be excluded from information by the curiosity or delays of another."[2]

[1] Grey, IV. 106; Same, IX. 216. [2] Comm. Deb. XII. 495.

SECTION III. MATTER INTRODUCED FROM EXTRANEOUS SOURCES.

1661. In introducing matter of this description into his speech, the member himself reads it to the house from a document, either printed or written, in his possession at the time; and, it seems, that unless the paper, if proper to be used, is so far before the house, as to be then in the possession of the member speaking, he cannot quote [1] from or refer to it.[2] This subject has been much considered, at different times, with reference to printed documents, and more especially newspapers.

1662. According to the strict rule of parliamentary practice, as recognized and stated by Mr. Speaker Manners Sutton, February, 1821, and which seems to have been generally enforced, until within a few years, it was not in order for any member, in the course of his speech, to read any statement from a printed paper without the leave of the house.[3] By the terms of the rule, every thing printed,— books, pamphlets, reviews, newspapers, and publications of every description, — were embraced within it, except only those things which had been ordered by the house to be printed. Attempts were frequently made, however, notwithstanding the rule, to read from books, and especially from newspapers, in debate, and sometimes with success. In regard to newspapers, reading from them has been generally held to be irregular, because, in the particular case, it would infringe upon the well-established rule, that no allusion shall be made to a previous debate; but occasion has also been taken, at the same time, to animadvert upon the aggravation of the irregularity, by referring to a previous debate, in the report of it published in a newspaper. Mr. Speaker Grenville, in 1789, after remarking, that "nothing could be much more disorderly than for any member to allude to what had passed in debate on a former day," added, "but it was most disorderly to make what appeared in a newspaper the subject of debate in that house." [4] Mr. Speaker Addington, in 1795, adverting to the irregularity of referring to a former debate, said "it was an aggravated irregularity to refer to a printed account in a newspaper." [5] Mr. Speaker Abbott, in 1812, interrupting a member, who offered, with the permission of the house, to read an extract from a newspaper, said, "it was rather a

[1] Hans. (3), XLIV. 450.
[2] Parl. Reg. LXV. 500.
[3] Hans. (2), IV. 922, 928.
[4] Parl. Reg. XXV. 406, 407.
[5] Parl. Reg. XLIII. 527, 528.

novel thing to introduce newspapers, and make references to them."[1] Lord Chancellor Eldon, also, in the same year, took occasion to remark, that "in the course of thirty years' parliamentary experience, he had never witnessed any thing so monstrous and disorderly as the production of a newspaper in that house."[2] The reason why newspapers were thus peculiarly obnoxious was, that the publication of the debates and proceedings was a breach of the orders of the house. Reading from printed books, containing accounts of parliamentary proceedings, does not seem to have been regarded with so much severity. In 1794, Mr. Speaker Addington allowed the debates on the traitorous correspondence bill, in 1722, to be read from a printed volume, "drawing the distinction between questioning the words of a member now of the house, whose words might thus be misrepresented, and reading speeches of members long since dead."[3] In regard to reading from printed documents or books matters not connected with parliamentary proceedings, the rule, as above stated by Mr. Speaker Abbott, does not appear to have been rigidly enforced; and, on that occasion, the speaker, after stating the rule, added, that it had not been strictly insisted upon, and the member proceeded to read the extract to which he had referred.[4] In 1832, a member addressing the house for the purpose of bringing forward a motion on the subject of flogging in the army, and reading at considerable length from a pamphlet on the subject, he was called to order on the ground, that, though he might read statements of facts, yet, when he proceeded to read not facts but arguments, he was exceeding the usual limits allowed to members in quoting from published works; and Mr. Speaker Manners Sutton, said, "it was difficult to say, precisely, what should be the limits to which any gentleman might proceed, in reading extracts from a printed document, as a portion of his speech; the matter must depend upon the feelings of the house, and the discretion of the member, though he would undoubtedly govern himself according to what he perceived to be the sense of the house on the subject."[5]

1663. The foregoing extracts show, that the practice of parliament, in regard to reading from books and papers, was neither in accordance with the rule as admitted in theory, nor so uniform and consistent with itself, as to become the foundation of a new rule on

[1] Hans. (1), XXI. 191.
[2] Hans. (1), XXII. 54, 55.
[3] Parl. Reg. XXXVIII. 279, 280.
[4] Hans. (2), IV. 922, 923.
[5] Hans. (3), XIII. 884.

the subject. In the year 1840, however, a proceeding took place in the house of commons, which has had the effect to put newspapers on the same footing with all other printed books and documents, and to settle the practice in regard to reading extracts from printed publications generally. A member, in the course of his speech, proceeding to read an extract from a newspaper, which he had cut out for the purpose,[1] he was interrupted by the speaker, Mr. Shaw Lefevre, who laid down the rule of the house, that it was not competent to any member to read a newspaper in the house. A conversation thereupon ensued upon the rule of order as thus laid down, in which the leading members of all parties participated, and in which they concurred in opinion, that no distinction was to be made between newspapers, on the one hand, and pamphlets, reviews, and books, on the other, and that the recent practice, as to a member's making an extract, whether printed or written, from any printed publication, a part of his speech, had been to leave the matter to his own discretion.[2] In consequence of the opinions thus expressed, Mr. Speaker made no further objection, and the member proceeded to read without interruption the extract to which he had referred.

1664. It may now, therefore, be considered as the recognized practice of parliament, at least, in the house of commons, to allow a member in the course of his speech to read such passages or extracts, whether printed or written, from printed papers of every description, as well as from books, pamphlets, reviews, or newspapers, as he may think proper to introduce, provided such extracts are otherwise unobjectionable; and, it is presumed, there is no longer any distinction, in this respect, between private letters or other documents in manuscript and printed papers. To the rule, as thus broadly expressed, there are certain exceptions, which are now to be stated.

1665. I. It is not in order for a member to read the contents of any paper, which in its nature is not receivable by the house; thus, where a member, in debate on a bill for raising a revenue, having stated, that he had received a petition from some of his constituents, to present to the house against certain of the provisions of the bill; that he was aware that he could not present any petition against

[1] This seems to have been done, in order to avoid the appearance of reading from a newspaper; but the speaker said, as had been before held, "that there was no difference between a slip and a newspaper."

[2] Hans. (3), LII. 1063, 1064, 1065.

a tax bill,[1] and, therefore, that he would read the petition as a part of his speech; the speaker, Mr. Abbott, "submitted to the judgment of the member, whether it would be competent to any member, according to established usage, to read a petition, which he was not permitted to present. Such a proceeding did not appear as at all consonant to the substance of the order, which precluded the admission of such a petition." The member, thereupon, merely stated the circumstances of the petitioners;[2] which it was competent for him to state in the debate,[3] although the petitioners themselves could not be permitted to bring them to the knowledge of the house by a petition. How far it might be competent for a member to state the substance of a paper, which, by the rule, he could not read to the house, would depend upon the nature of each particular case. If the paper was objectionable, on account of its form merely, the contents might undoubtedly be stated; if, on account of the nature of the contents, then neither the substance nor the language ought to be received.

1666. II. Where the question pending, and in reference to which the paper is proposed to be read, is the production of the paper itself, it cannot be read: thus, where a member rose to move for the production of a paper, and, to sustain his motion, was proceeding to read certain passages from the paper itself, the speaker, Mr. Abbott, informed him, "that it was not regular to read to the house that which he was asking the house to order to be produced. It was the same as with a petition of which a member might state generally what was the scope and nature, but it was not allowed to be read, even at the table, until the permission of the house was received."[4] In this case, it would undoubtedly be competent for the member to state the substance of the paper.

1667. III. Where the paper, proposed to be read, is one which the house has refused to order the production of during the then present session, it cannot be read: thus where a member, in debate, read from a printed despatch of the East India Company which had been published, the opinion of the directors, on a particular subject, and was called to order, on the ground, that it was irregular to refer to opinions which were not before the house, the speaker, Mr. Abbott, decided, "that if this parliament had refused [to order] the document, which the member was quoting, it would

[1] This restriction on the right of petition is now removed. Comm. Jour. XCVII. 191.
[2] Hans. (1), II. 1060.
[3] Parl. Reg. (2), X. 116, 117.
[4] Hans. (1), XII. 1043.

never consent to receive that indirectly, which it had directly refused. But, if the paper had not been refused by this parliament, he was of opinion, that the member was perfectly in order, when he made use of it in the course of his argument." [1]

1668. IV. Letters and other communications, whether written or printed, emanating from persons out of the house, and referring to, commenting on, or denying, any thing said by a member, or expressing any opinion as to any proceeding, within the house, cannot be read by a member in debate. The only occasion, upon which any such communications could be brought before the house would be in moving for a committee on the subject, or in examinations before such a committee.[2]

1669. V. Where the language of the document is such as would be disorderly and unparliamentary, if spoken in debate, it cannot be read. Thus, where a member was proceeding to read quotations from a written or printed document, couched in language which was unfit for publication, and which seemed to excite a very general feeling of disgust in the house, and was called to order, the speaker said, "that though the member was only stating facts," (he had justified himself on that ground,) "it was always necessary to use parliamentary language. No language could be orderly in a quotation, which would be disorderly if spoken. The passage read was certainly of that nature, and therefore he must request the member not to read any more of the offensive passages." [3]

CHAPTER SEVENTH.

OF THE RULES RELATING TO THE PRESERVATION OF ORDER, DECENCY, AND HARMONY, AMONG THE MEMBERS.

1670. The rules, embraced in this branch of order in debate, relate, I. To the manner in which the individual members are to be designated; II. To their exemption from being personally

[1] Hans. (1), X. 700.
[2] Hans. (3), LXI. 141; Same, 661, 662; Same, LXIV. 261.
[3] Hans. (3), XVI. 217.

addressed or appealed to; and, III. To their exemption from being personally remarked upon, or, in other words, to personality in debate.

SECTION I. AS TO THE MANNER IN WHICH THE INDIVIDUAL MEMBERS ARE TO BE DESIGNATED.

1671. In order to guard as much as possible against the excitement of all personal feeling, either of favor or of hostility, by separating, as it were, the official from the personal character of each member, and having regard to the former only in the debate, it is an established rule, that no member is to refer to another in debate by his name, but to describe him by his seat, or as the member who spoke last, or last but one, or on the other side of the question, or by some other equivalent expression. In the house of peers, 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 "honorable or right honorable gentleman the member for York," or the "honorable and learned member who has just sat down." A member, who belongs to the profession of the law, is designated as "honorable and learned;" one who belongs to the naval or military service, as "honorable and gallant."

1672. The terms made use of for this purpose, though established by practice, are not the only ones that may be employed; and, of course, other equivalent terms may be resorted to, provided they are respectful; but, if ironical, as where a member was designated as "*honorable* and *religious*,"[1] they will be disorderly. The rule is confined to members only, and does not include petitioning candidates.[2]

1673. But though it is irregular to mention a member by his name, it does not seem to be so, to refer to him by the name of his family, or that of his ancestors, in the way of historical allusion; thus, when Sir James Mackintosh, in debate, alluded to "a right honorable gentleman who bears the name of York, and in whose veins the blood of Somers flows," and Mr. Charles Yorke rose to order, Mr. Speaker Abbott observed, "that he understood the

[1] Hans. (1), XXXVI. 1291.

[2] Hans. (1), VIII. 90.

honorable and learned gentleman to speak historically, not with an intention to name any member." [1]

SECTION II. AS TO THE EXEMPTION OF MEMBERS FROM BEING PERSONALLY ADDRESSED OR APPEALED TO, IN DEBATE, BY OTHER MEMBERS.

1674. Freedom of debate implying not only liberty to state what a member thinks proper for the information of the house, but also to take his own time for doing so, and to refrain from making any statement at all, unless he thinks proper; it is held to be an infringement of this freedom, for one member to put questions or to make personal appeals to another, in the course of debate.[2] Such appeals are, however, sometimes made, and, if the irregularity is waived on the part of the house, and the member interrogated sees fit to answer, he is at liberty to do so; but if he declines or refuses, — standing on his rights as a member, — it is not in order to argue or predicate any statement upon such refusal.[3]

1675. The following are examples of the irregularity alluded to, namely: where a member, in debate, called upon another who had previously spoken to explain some part of his speech; [4] where a member, having first stated that another member, in the course of a speech, had called a certain periodical publication, seditious trash, and had since written to the editors praising and encouraging the publication, then asked the member, whether he denied that he had done so; [5] where a member, having first called the attention of another member to certain observations of the latter respecting him, in a former debate, called upon the member either to retract the charge contained in those observations, or to state the grounds on which he made it; [6] where a member, in the course of his speech, having made some remarks upon the duke of Wellington, another member rose, as he said, to order, and de-

[1] Hans. (1), XXXII. 983. It has been decided in the house of representatives of the United States, that it is not disorderly for a member in debate to read the names of present members of the house, from the printed journal of a former house. Reg. of Deb. XII. Part 2, 2281, 2284. See also Cong. Globe, XI. 55.

[2] Mr. Speaker Abbott observed, that it had been determined in more instances than one, that no member had a right to examine another, except in a committee of inquiry. Hans. (1), XII. 297. See also Cong. Globe, V. 26.

[3] Cav. Deb. II. 239; Same, 241; Parl. Reg. XI. 16; Hans. (3), V. 200; Same, XII. 918; Same, XXXVII. 1318; Same, LXIII. 424; Same, (2), XXI. 742.

[4] Parl. Reg. XI. 16.

[5] Hans. (3), V. 200.

[6] Hans. (2), XII. 1314, 1315.

manded, whether the member meant to say, that the, etc.;[1] where a member, having first read from a newspaper a report of the remarks made by another member, called upon that member to say, whether he denied, or adopted the publication;[2] where a member expressed a hope, that a certain member, whom he saw in his place, would be present at a particular discussion, in order that he might become sensible of the scandalous manner in which he had misrepresented the opinions and the objects of the emigration committee.[3]

SECTION III. AS TO THE EXEMPTION OF MEMBERS FROM BEING PERSONALLY REMARKED UPON, OR, IN OTHER WORDS, AS TO PERSONALITY IN DEBATE.

1676. It is a rule, as we have already seen, that every member, in speaking, is to confine himself to the question; it is consequently disorderly to speak to any other topic; it is doubly so to digress from the question, for the purpose of attacking the person of another member; for, besides the waste of time, resulting from such a digression, a personal attack upon a member cannot but tend to a disturbance of the harmony, order, and decorum, which ought to prevail in a deliberative assembly. "The regard due to the dignity of the house," says Mr. Speaker Onslow, "ought to restrain every member from digressing into private satire; for, in proportion as we proceed with less decency, our determinations will have less influence."[4] "The freedom of debate," says Mr. Speaker Abercrombie, "can never be better secured than by honorable members' conducting it with temper."[5] "Personal altercations," says the earl of Sandwich, "always impede public business, — answer no one substantial or beneficial purpose whatever, — and are only productive of ill humor."[6] "Hence," says Mr. Speaker Addington, "there is no rule better established in the house, than that *qui digreditur a materia ad personam* is disorderly, that whatever wanders from the subject in debate, and is converted into a personal attack, is contrary to order."[7]

1677. The rule, therefore, relating to personal reflections occurring in debate, may be stated thus, namely: that it is doubly disorderly

[1] Hans. (3), XII. 918.
[2] Hans. (3), XXXVII. 1318.
[3] Hans. (2), XXI. 742.
[4] Comm. Deb. XII. 299.
[5] Hans. (3), XXVIII. 15.
[6] Parl. Reg. IV. (L.), 144.
[7] Parl. Reg. XXXVIII. 367.

for any member, in speaking, to digress from the question before the house, and to attack any other member, by means of opprobrious language, applied to his person and character, or to his conduct, either in general, or on some particular occasion, and tending to bring him into ridicule, contempt, or hatred, with his fellow-members, or to create ill blood in the house.[1]

1678 Personality in debate is thus an offence both against the individual member attacked, and against the house itself, which subjects the offender to animadversion and censure at the pleasure of the house; unless, upon proper apology, explanation, or retraction, the house is satisfied; and though the house will always have regard to the feelings of the member attacked, it is not competent for him to waive the irregularity: thus, a member having made some strong personal allusions to Mr. Pitt, and being called to order by Mr. Speaker Addington, Mr. Pitt said "he was willing to waive the point of order so far as he was personally concerned, for nothing the honorable gentleman could say could possibly offend him;" but the speaker said, "it could not be supposed that he had interrupted the honorable member on any idea of what might be the personal feelings of any gentleman, but because he thought he was going beyond the established rules of debate."[2]

1679. The whole law of parliament on this subject is admirably summed up and expressed in the following standing order of the lords: "To prevent misunderstanding, and for avoiding of offensive speeches, when matters are debating, either in the house, or at committees, it is for honor's sake thought fit, and so ordered, that all personal, sharp, or taxing speeches be forborne; and whoever 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 full satisfaction."[3]

1680. "It is impossible," says Mr. Hatsell, "to lay down any

[1] See, also, concerning the subject of this section, J. of H. IV. 64; Same, VII. 188; J. of S. 23d Cong. 2d Sess. 161; J. of H. 24th Cong. 1st Sess. 360; Ann. of Cong. 8th Cong. 2d Sess. 1115; Reg. of Deb. III. 1046; Same, IV. Part 1, 1192, 1193; Same, 1456; Same, VIII. Part 3, 3876; Same, IX. Part 2, 1920; Same, X. Part 2, 27, 28; Same, Part 3, 3760, 3765; Same, XII. Part 2, 2317, 2318, 2539, 2540, 2541; Same, VII. 475; Same, VIII. Part 1, 660; Same, Part 2, 2340, 2548; Cong. Globe, XIII. 570; Same, XV. 523.

[2] Parl. Reg. XXXVIII. 290.

[3] Hans. (3), XIX. 357.

specific rules, in regard to injurious reflections uttered in debate against particular members, or to declare beforehand what expressions are or are not contrary to order; much depends upon the tone and manner, and intention, of the person speaking; something upon the person to whom the words are addressed, as, whether he is a public officer, or a private member not in office, or whether the words are meant to be applied to his public conduct, or to his private character; and something upon the degree of provocation, which the member speaking had received from the person he alludes to; and all these considerations must be attended to at the moment, as they are infinitely various and cannot possibly be foreseen in such a manner, that precise rules can be adopted with respect to them."

1681. Some idea, however, perhaps an adequate one, of the law and practice of parliament with relation to personal attacks, may be obtained, by considering them as divided into the two classes of offensive remarks concerning the character or acts of a member, and remarks imputing improper motives to him for his parliamentary conduct, and by giving some examples of each by way of illustration.

1682. The following are instances of offensive expressions, attacking the person or conduct of a member, which have been considered disorderly, namely: one member saying of another that he could expect no candor from him;[1] speaking of a member's affecting to deplore the distresses of the country;[2] saying that the observations of a member in the house were insulting to his constituents, to the house, and to the country;[3] speaking of a member's habit of uttering libels in the house;[4] saying that a certain member had called another an impertinent fellow;[5] charging a member with being guilty of gross misrepresentations,[6] or with having acted basely or from base motives;[7] saying of a member, that when allusion was made to certain unhappy transactions, he was observed indulging in a smile unworthy of a man;[8] saying that the house had a right to know whether a member meant what he said, or knew what he meant;[9] reiterating a statement as made by a member, which the member has already explained or denied;[10] making allusion to steps to be taken elsewhere to call in question a statement

[1] Hans. (1), XXXIII. 505.
[2] Hans. (2), IV. 243.
[3] Hans. (3), III. 1152, 1153.
[4] Hans. (3), III. 1194.
[5] Hans. (3), XXVIII. 502.
[6] Hans. (2), VIII. 410.
[7] Hans. (3), XXVII. 120.
[8] Hans. (3), IV. 561.
[9] Hans. (2), IV. 240.
[10] Hans. (1), II. 315; Same, (3), LXI. 53.

made by a member in the house;[1] saying there was some degree of novelty in a member's mode of attack against a report originating from thirty-one members, to whose character for honor and integrity, he would not do any injury by comparing it with the quarter from which the attack was made.[2]

1683. There are some epithets, which are considered as conveying a personal charge, and as being disorderly, or otherwise, according to the sense in which they are used, of which the following are examples: where a member, in debate, declared the statement of another to be *false*,[3] and was called to order, his explanation, that he used the word in its parliamentary sense, and not offensively as to the veracity of the member, whose statement he thus impugned, was admitted as satisfactory;[4] where a member, in debate, made use of the word *indecent*, and was called to order, the speaker, Mr. Abbott, observed, that, "if he had understood the phrase used to be applied personally, he should have thought it highly disorderly; but as simply descriptive of any proposition that might be submitted to the house, it did not appear to him to offend against the laws of parliamentary debate;"[5] where a member said he protested against the tone and language, which another had *dared*[6] to use, and was called to order on the ground, that it was not in order to apply the word *dare* to any remark made by a member, the speaker, Mr. Manners Sutton, said, "that, undoubtedly, if the word *dare* were to be interpreted in the sense in which the member objecting took it, it would be quite disorderly; but the house would allow him to say, that the term was one, which was frequently used in debate, without any offensive intention on the part of the member using it."[7]

1684. The following are examples of offensive remarks, imputing improper motives to members for their parliamentary conduct: — a member saying that he could not conceive of another member's opposing the measure before the house, upon any principle, but that of obstructing the defence of the country;[8] questioning the sincerity of a member's professions as to the grounds upon which he acted;[9] saying that what another member had said in debate must

[1] Hans. (3), LIX. 1006.
[2] Parl. Reg. XXXVIII. 367; Same, (2), XV. 87.
[3] See also Reg. of Deb. XII. Part 2, 2539, 2540, 2541.
[4] Hans. (1), XXII. 1012; Same, (3), VI. 656, 659. See also J. of S. 23d Cong. 2d Sess. 161; J. of H. 30th Cong. 1st Sess. 348.
[5] Hans. (1), XXII. 1012.
[6] See also Reg. of Deb. X. Part 2, 2728.
[7] Hans. (2), VII. 1394.
[8] Parl. Reg. LI. 231, 232.
[9] Parl. Reg. XXVII. 527, 528.

be considered not so much addressed to parliament as to certain persons in another place;[1] imputing to members, that they entertained views contrary to the just discharge of their public duties, as where a member said, that he trusted his amendment would meet with the support of those who came there to benefit the country, — he did not hope for much from those who came there to benefit themselves.[2]

1685. In considering, however, and determining upon, the character of words of this description, a distinction must be attended to, between the effect or operation of a measure, and the intention of a member in opposing or advocating it. Thus, where a member was called to order for saying, "that no person could agree with the measure pending, without being alike an enemy to the monarch and the monarchy itself," the speaker, Mr. Manners Sutton, in giving his opinion, "drew a distinction between an effect prospectively imputed to be the result of a motion, by way of argument, and a motion ascribed to an individual as intending to produce that result; the latter would be highly disorderly, the former, in his opinion, not so;"[3] and, on another occasion, where a question was made, as to whether it was disorderly to say, that "the opposition, in despair of being able to get into office, are determined to break down the means of administering the affairs of the country," the speaker, Mr. Manners Sutton, said, in the first place, "that to impute a despair of obtaining office to anybody was an imputation which did not come within the prohibition of the orders of the house, but, the remainder of the phrase, if uttered there, would be strictly unparliamentary, and most disorderly. To impute an unworthy, much less an unconstitutional motive to any honorable member, in the exercise of his public duty, was certainly unparliamentary. But then, again, if the imputation were levelled only at the tendency of measures, and not at the intentions of the individuals who had originated them, the case would be different."[4]

1686. The utmost freedom of debate being necessary and therefore allowable as to public measures, and, of course, with relation to the conduct of ministers and other official persons,[5] a distinction has been made between remarks applied to the official character and conduct of members in office, and remarks applied to members in their individual character; the latter only being considered dis-

[1] Hans. (1), XXXV. 723.
[2] Hans. (2), VI. 69, 70.
[3] Hans. (2), IV. 200.
[4] Hans. (2), VI. 1174, 1176.
[5] Hatsell, III. 74.

orderly. According to Mr. Speaker Cornwall, when gentlemen's public conduct is to be adverted to in debate, the rule is, "to mix the measure with the man, and thus form a fair and tenable ground for animadversion; but to take the character of a member in the abstract, and make that the integral subject of discussion, was extremely irregular, and in the highest degree disorderly."[1] In accordance with the rule, as thus stated, Mr. Speaker Addington held it disorderly to say, in reference to the traitorous correspondence bill, "that these conspiracies had no existence but in the foul imaginations of ministers;"[2] so, where a member, being called to order, for questioning the sincerity of a member's professions, justified his remarks on the ground, that when he talked of a member's sincerity as a public man, holding a public argument, and did not advert to any part of his private character, he conceived he was strictly in order, Mr. Speaker Addington answered, "that to question in that manner went to a question of the motives on which the member acted, and nothing could be more unparliamentary."[3]

1687. It is scarcely necessary to observe, in reference to offensive expressions and disorderly remarks, that when the meaning is plain, it is wholly immaterial what form of words may be used, or however mysterious and disguised the language may be; thus, where a member, after expressing himself in terms of severity of another, added, "that when he spoke of that member's conduct, or adverted to his sentiments, he would state nothing which he would not justify on every occasion, and in every place," the speaker, Mr. Manners Sutton, said, that "however mysterious the language was, he could know what meaning it was intended to convey, and he was sure that the house would see the propriety of his interfering, as the words, in his opinion, conveyed a meaning, which would tend to invade the order of the house."[4]

1688. Words, which are plain and intelligible, and convey a direct meaning, are sometimes used hypothetically or conditionally, upon the idea, that, in that form, they are not disorderly. But this is a mistake. If, notwithstanding their being put hypothetically or conditionally, they are plainly intended to convey a direct imputation, the rule is not to be evaded by the form in which they are expressed. Thus, where a member, being called to order for personal remarks, justified himself by saying that he was wholly misun-

[1] Parl. Reg. XXIII. 395.
[2] Parl. Reg. XXXVIII. 367.
[3] Parl. Reg. XXVII. 527, 528.
[4] Hans. (2), VI. 518.

derstood, he had put the case hypothetically, the speaker, Mr. Manners Sutton, said, "the honorable member must be aware, that putting a hypothetical case was not the way to evade what would be in itself disorderly." [1]

1689. In regard to words conditionally or hypothetically applied, where that form is not adopted for the mere purpose of evading the orders of the house, the rule is laid down in the following terms by Mr. Speaker Abercrombie: "I always understood that terms only conditionally applied were not such as called for the interposition of the chair; thus, I recollect one of the oldest members of this house using this phrase without reproof: 'I state in answer to the honorable gentleman in the strongest terms that can be hypothetically put, that what he has said is false.' When a hypothetical form is once adopted, the chair is not required by his office to interfere. I shall never hesitate, however, when called upon, to express the strongest opinion, that the use of such language is extremely inconvenient, and inconsistent with the freedom as well as with the decorum of debate." [2]

1690. A personal attack, by one member upon another, in debate, is an offence against the house, in the person of one of its members; which, on account of the respect due from every member to the character and dignity of the house,[3] as well as the importance of preserving regularity in the debates,[4] calls for the prompt interference of the speaker;[5] in order that any irregularity, into which a member may have been betrayed in the warmth of debate, may be rectified, and that any expressions, which may be disrespectful to the house, or painful to the feelings of individual members, may be explained, apologized for, or retracted.[6]

1691. The proper time for interference is when the offensive expressions are uttered, and not afterwards;[7] and it may take place, either on the speaker's voluntary motion,[8] or on the call to order of the member assailed,[9] or of some other member,[10] or the general call of the house.[11]

[1] Hans. (3), VIII. 722, 723.

[2] Hans. (3), XXVIII. 15. See also Reg. of Deb. VIII. Part 3, 3882, 3883; Cong. Globe, XI. 777.

[3] Parl. Reg. XXXVIII. 367; Hans. (2), VI. 69, 70.

[4] Hans. (2), VI. 69, 70.

[5] Comm. Deb. XII. 299; Parl. Reg. XXIII. 395; Same, XXXVIII. 367; Hans. (2), VI. 69, 70; Same, 518.

[6] Hans. (2), XVI. 470.

[7] Parl. Reg. XXV. 371; Same, XXVI. 26.

[8] Parl. Reg. XXXVIII. 290; Hans. (2), XXI. 742; Same, (3), III. 1152, 1153; Parl. Reg. XXVII. 527, 528.

[9] Parl. Reg. LI. 231, 232; Hans. (2), IV. 518, 519; Same, VII. 1394.

[10] Parl. Reg. XXXVIII. 367; Hans. (1), XXXVI. 1291; Same, (2), IV. 243.

[11] Hans. (1), X. 757; Same, (2), IV. 613; Same, (3), III. 1194; Same, VI. 656, 659.

1692. It would not, perhaps, be practicable, to lay down any very precise and definite rules, as to the occasions on which the duty of the speaker requires his interference; but, from the language of eminent and experienced speakers,[1] it may be gathered, that, where subjects are brought under consideration, in which members feel deeply interested, or where members are speaking under the excitement of great warmth of feeling, in which circumstances, expressions are likely to escape them in the heat of debate, which, though personal and offensive in their terms, are not perhaps intended to be personally offensive, — it is not the duty of the speaker to nicely measure and weigh every expression that may chance to be used; or to lay hold of particular expressions and give them a meaning with which they were not intended to be applied, and in which they possibly may not have been understood; or, by interfering in a trifling matter, to give it more importance than it deserves; or to understand equivocal expressions in an offensive and personal sense; or, in general, to interfere at all, unless he feels strongly that some personal disrespect is intended.[2]

1693. When a member is indulging in a line of remark, which, though apparently personal and disorderly, is of such a nature, that it may be explained by something to follow, it is entirely consistent with the speaker's duty, to wait and give the member an opportunity to conclude his sentence in such a manner as to explain what would otherwise, and taken by itself, be offensive and disorderly.[3]

1694. When the speaker is called upon by the house generally, to interfere, or when some member rises and calls the member speaking to order, the speaker first delivers his opinion upon the point of order; if, in his judgment, the member is not disorderly, he directs him to proceed; if, on the contrary, he sustains the call to order, he then either simply informs the member, that he cannot proceed in the same manner, or, if he thinks the occasion requires it, calls upon him to retract, explain, or apologize. If the speaker himself interferes, in the first instance, he at once explains the reason of his interference, and proceeds as already stated.

1695. In calling upon a member to explain, or apologize, the speaker sometimes accompanies the demand with remarks calculated to allay heat, and restore harmony; such, for example, as that "the gentleman must have heard imperfectly or misunderstood

[1] Hans. (1), XII. 812; Same, (3), XXXIV. 532; Same, IV. 561; Same, XXVII. 120.

[2] When the member attacked is not present in the house, it seems to be the speaker's duty to interfere at once. Grey, II. 407.

[3] Hans. (2), IV. 243; Same, (3), III. 1194; Same, (2), VIII. 410; Grey, IV. 128.

those expressions which he so warmly condemns;"[1] that "the gentleman had allowed language to escape him — unintentionally no doubt, — in the heat of debate, which he was sure he would be anxious to explain;"[2] that "he was sure the honorable member could not mean to impute to any gentleman in that house, a premeditated and deliberate intention to use expressions such as those he had described;"[3] "that he was sure the member, having so offended would discharge his duty by apologizing for the offensive expressions he had used;"[4] or that "he was quite sure the honorable member did not mean to express what his language would imply."[5]

1696. When the speaker thus takes notice of any expression as personal and disorderly, and tending to introduce heat and confusion, and calls upon the offending member to explain, it is the duty of the latter immediately to explain or retract the offensive expressions, and to apologize to the house for the breach of order, in terms large and liberal enough both to satisfy the house, and the member of whom the offensive expressions were used.[6] The speaker's demand usually produces the required explanation, at once; if not, the speaker then repeats the call for explanation, and informs the member, that if he does not immediately respond to it, it will become the duty of the chair to name him to the house; if the member should still refuse, the speaker would then name him to the house; upon which proceedings would immediately ensue for the purpose of censuring or punishing such member for his disorderly conduct.[7]

1697. The opinion of the speaker, as to the point of order, and his demand of explanation, if he sees fit to make one, are usually acquiesced in; though it is undoubtedly competent to the house to revise the one, or refuse its sanction to the other, at its pleasure.

1698. The proceedings above described are chiefly intended to check disorder in debate, and to prevent misunderstanding and strife among the members. Another more formal mode of proceeding, which is equally applicable to all offences, committed in the use of disorderly words, and which may of course be adopted in reference to the class of offences now under consideration, is to have the words complained of first taken down in writing, and entered among the clerk's minutes. This mode of proceeding, the

[1] Comm. Deb. XII. 299.
[2] Hans. (3), III. 1152, 1153.
[3] Hans. (3), II. 401.
[4] Hans. (3), XXVII. 120.
[5] Hans. (3), XXXI. 474.
[6] Hatsell, II. 234, note.
[7] Hans. (3), XXII. 115, 116, 117, 118.

principal purpose of which is the censure of the offending member; as well as that which takes place, when, in consequence of the apology demanded being refused, or the offended member's declining to express his satisfaction, the house takes measures to prevent the quarrel from being carried further; will be treated of at length in another place.

1699. The subject of the present chapter cannot be more appropriately concluded than with the following judicious and sensible remarks of Mr. Hatsell:[1] "The difficulty which often occurs, of obtaining an apology for words spoken in debate, especially when the offending person thinks he had sufficient provocation for using the expressions objected to, ought to be a warning to the *house*, and particularly to the *chair*, to interfere at first; and not to permit any expressions to pass from any member unnoticed, which, being applied by any other member as personally offensive to himself, may draw forth further words of heat and contumely,[2] till, at last, confusion arises, — different members take a warm and eager part in the dispute, — and besides the time that is lost in composing the differences, the house of commons exhibits a scene of indecency and disorder, not very becoming to their character as gentlemen, much less as one of the component parts of the great council of the nation assembled in parliament."

1700. What is said *by* the speaker,[3] or *of* him,[4] is no exception to the rule relating to personality in debate; and the same proceedings may take place in relation thereto, so far as they are practicable, as in the case of disorderly words spoken by or of a member; the speaker putting the question, in the same manner.

[1] Hatsell, II. 234, note.

[2] "In all my parliamentary experience, I have never found a question of disorder mitigated or simplified by being elongated, and the discussion on it protracted." By Mr. Speaker Manners Sutton, Hans. (3), V. 1088.

[3] Comm. Jour. XXXII. 707, 708.

[4] Hans. (1), X. 1160, 1170.

CHAPTER EIGHTH.

OF THE RULES RELATING TO THE PRESERVATION OF THE HARMONY AND INDEPENDENCE OF THE SEVERAL BRANCHES OF THE LEGISLATURE.

1701. According to the constitution of the legislature, it is essential to the due and efficient performance of its functions, that the several branches, of which it is composed, should stand upon a footing of the most perfect equality, with respect to each other, and that they should, in every respect, be entirely independent each of the other.[1]

1702. In order to the preservation of these essential privileges of equality and independence, it is important, that neither branch should encroach upon the other, by undertaking any matter of business, which the constitution has confided exclusively to such other branch; or interfere in any matter depending before it, so as to preclude, or even influence, that freedom of debate or of action, which is essential to a free council; or claim, and, much less, undertake to exercise, any control or authority over the persons of the members or officers of the other.[2]

1703. Hence, it is a general rule, that neither of the two houses can properly take notice of any bill, or other matter, depending in, or of votes given, or of speeches made, by the members of the other, until the same are communicated, or otherwise promulgated, in the usual and parliamentary manner.[3] The same rule is applicable, of course, to the sovereign or executive, so far as he is a branch of the legislature.

1704. This rule proceeds upon the understanding, and takes it for granted, that the proceedings and debates of each house are known only to its own members, and within its own walls; and that they cannot regularly be made known but by itself, or taken notice of elsewhere, except with its own consent. But this understanding, though still true in a parliamentary sense, and therefore implied in all that relates to the rules of order, is, at the present day, a mere fiction. The proceedings and debates of both houses are published daily and read by all the members of both, and, in

[1] Hatsell, III. 67.
[2] Hatsell, II. 356; Same, III. 67.
[3] Hatsell, II. 356.

fact, are well known to everybody, who will take the trouble to become acquainted with them.

1705. In consequence of this regular publication of the debates, there is a strong temptation constantly presented to members, to disregard the 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." [1]

1706. In order to render the rule, as above stated, fully intelligible in its practical application, it will be necessary to consider it in a threefold point of view, namely: First, as forbidding all expressions concerning the other house, or its members, or the sovereign, which, if uttered with reference to the house, of which the speaker is a member, would be disorderly; second, as forbidding all reference to, or introduction of the proceedings or debates of the other house, for the purpose of commenting on them, either by way of answer, explanation, commendation, discussion, or animadversion; and, third, as forbidding the introduction of, or reference to, the proceedings of the other house, or the opinion of the sovereign, for the purpose of influencing the determination of the house, of which the speaker is a member.

1707. I. All allusions and expressions, concerning the other house, its members, or proceedings, or concerning the sovereign or his acts, which, if used with reference to the house, of which the person speaking is a member, would be disorderly, are unquestionably offences against the house, in which they are uttered, whether spoken with or without reference to any particular act or proceeding. Mr. O'Connell's ironical description of Lord Brougham,[2]

[1] May, 251.

[2] "Mr. O'Connell (in debate on the address): It is not difficult to conclude, that the person (if any such there be) capable of such conduct, must be one of the worst judges that ever existed, and though he may combine the ludicrous character of court jester with the gravity of a judge, and be so unfit for his situation as to be deprived of it, — not by an adverse party, — but got rid of as an incumbrance by his own friends. They could not allow him any longer to remain in an office, for the performance of the duties of which he exhibited a total disqualification. They had replaced him by an excellent person, but nothing could diminish the contemptuous no-

for which he was called to order by Mr. Speaker Abercrombie, on the ground of "the very great inconvenience which must arise from having a war carried on between the two houses, — in disguise, it was true, — but still very intelligibly," is an instance of a personal attack upon a member of the other house.[1] The parliamentary experience of the same gentleman also furnishes an example of an attack upon the sovereign in his legislative capacity, when he characterized the king's speech, at the opening of the session in 1833, as "brutal and bloody." Being called to order, and justifying himself on the ground, that, as the speech was the act of ministers and not the personal act of the sovereign, he had a right to speak of it in terms of severity, the speaker, Mr. Manners Sutton, "put it to the honorable and learned member, whether if order and decency were to be preserved in the public debates of the house, they could possibly be preserved consistently with the employment of such language, whether applied to the speech of the king's ministers, or to a speech just delivered by his majesty himself in person."[2]

1708. In reference to offences of this description, Mr. Hatsell lays down the following rules for the government of the speaker and of the house: — "If there is any breach of the rules of decency and gentlemanly decorum, if public reprehension and accusation degenerate into private obloquy and personal reflections, it is the duty first of the speaker, and, if he neglects that duty, then of the house itself, to interfere immediately, and not to permit expressions to go unnoticed or uncensured, which may give a ground of complaint to the other house of parliament, and thereby introduce proceedings and mutual accusations, between the two houses, which can never be terminated without difficulty and disorder."[3]

1709. If an offence of this kind should be committed, of so aggravated a character as to deserve censure or punishment, it can only be taken cognizance of by the house in which it is committed; and the nature and mode of redress, or punishment, if punishment is necessary, must be determined upon and inflicted by it; each house having exclusive jurisdiction over the persons of its members, for all parliamentary offences committed within its walls.[4] That house may, of course, either take up the matter spontaneously, or

tion entertained of him by his own party. A judge of that description must have been the ridicule of the bar and the terror of clients, one who mistook rapidity for the due administration of justice, and who made decrees, which served not as examples to be imitated, but as landmarks to be avoided by all future chancellors." Hans. (3), XLV. 138, 139.

[1] Hans. (3), XLV. 138, 139.

[2] Hans. (3), XV. 162.

[3] Hatsell, III. 74.

[4] May, 250, 251.

upon the complaint of the other, or of the individual member assailed.[1]

1710. II. It is irregular also to refer to or introduce the proceedings or debates of the other house, though there is no question pending at the time,[2] for the purpose of making them the subject of comment, whether in the way of answer, explanation, commendation, discussion, or animadversion, and whenever any such allusion is made in any form in which it can be brought within the control of the house, as disorderly, it is immediately checked by the speaker; though, perhaps, the matter itself might with strict regularity be introduced into the debate, were it not for the impropriety of referring for it to the other house.

1711. The following are instances, — taken at random, — in which references of this kind have been checked as irregular: where a member said he was astonished to hear that a particular clause in a bill was the production of a noble lord;[3] where a member said "he thought it likely that this day would not pass without a motion being made by a noble lord in another place;"[4] where a member said, "he had read the argument of a noble earl in another place on this subject," etc.;[5] making the clauses of a bill in progress through the other house the subject of discussion;[6] where a member "congratulated the house and the country on the patriotic, open, and manly declaration made last night by an individual, a most illustrious member of the upper house;"[7] where a member attempted to read the minister's speech, in the lords, from a newspaper, beginning with the words, "my lords;"[8] where a member said, "that he saw, in a publication of that morning, expressions attributed to a noble lord, which he believed and hoped he had never made use of — the marquis of Londonderry was reported to have stated, in a public place," etc.;[9] where a member said, "that a certain individual had stood up in his place, in another house, to stigmatize the people of Ireland;"[10] referring to the majority by which a bill had passed in the other house, and commenting on the constitution of that majority;[11] where a member said, "that a noble lord, in another place, had thought proper to make the interests of a mighty people, and the captivity of Don Carlos, the subject of merriment."[12]

[1] Hatsell, III. 67; May, 251.
[2] Hans. (3), XLI. 204.
[3] Parl. Reg. VII. (2), 190.
[4] Hans. (1), XXVII. 178.
[5] Hans. (1), XXXVI. 1183.
[6] Hans. (2), X. 72; Same, (3), LXIX. 670.
[7] Hans. (2), XIII. 172.
[8] Hans. (3), II. 25.
[9] Hans. (3), III. 937.
[10] Hans. (3), XXXIV. 268.
[11] Hans. (3), XLIII. 360.
[12] Hans. (3), LXXVI. 1568.

1712. The rule above stated admits of an exception in regard to matters, which appear on the votes of the commons, after they have been communicated to the lords, or on the journals of the lords, after they have been communicated to the commons, and have accordingly become matters of history: thus, where a member in the debate on a motion respecting the omission of the queen's name from the liturgy, was interrupted on the ground that it was irregular to remark on the motives which had influenced members of the other house of parliament, the speaker, Mr. Manners Sutton, said, "that the distinction, as to the remarks made upon the other house of parliament, was this: — At the end of every session, the journals of the house of lords were communicated to the house of commons, as the votes of the commons were regularly communicated to the lords. As soon as the journals of the lords were so communicated, they became matter of historical record, and whatever appeared upon the face of them could be remarked upon."[1]

1713. In regard to referring to or discussing measures pending in the other house, though it is not in order to go into the details, as, for example, to advert to and discuss the clauses of a bill;[2] yet, where the measure is of a public character, the subject of it may be alluded to and discussed, in connection with the intentions, real and supposed, of the government, as to such a measure;[3] nor is it irregular, in the house which passes a bill, or agrees to some measure, which is sent to the other for concurrence, to inform that house, that the bill or measure in question has received the unanimous approbation of the house from which it is sent, by inserting the words *nemine contradicente* or *nemine disentiente*, in the indorsement authenticating it;[4] and it is not irregular, in the house sending a bill or other measure, to remind the house to which it is sent,[5] that it is pending in that house.

1714. It is considered, and with reason, so important, that each branch of the legislature should act with entire independence, that it is regarded as irregular and disorderly, to attempt to promote or oppose any measure, by stating the proceedings in reference to the same or a similar measure, in the other branch; as, for example, to say, that "if the gentleman, who made the motion, had been informed of what had passed in the house of lords the preceding day, he never would have made that motion, as he knew no bill

[1] Hans. (2), IV. 213.
[2] Hans. (2), X. 72; Same, (3), LXIX. 670.
[3] Hans. (3), XV. 882, 885.
[4] Parl. Reg. XV. 238.
[5] J. of H. 23d Cong. 2d Sess. 530; J. of S. 23d Cong. 2d Sess. 239; Reg. of Deb. XI. Part 2, 1662.

could pass without the lords;"[1] that "he should bring in just such another bill with the amendments, and then gentlemen who meant to oppose it should recollect, that it had passed that house without even a division, and that it had passed the house of lords without any, or with very little opposition;"[2] or, to speak of the large majority by which this bill had been carried, in the other house of parliament.[3]

1715. III. It is also highly irregular to introduce the name of the sovereign in debate, for the purpose of influencing the determination of the house, for two reasons, first, because the sovereign cannot be supposed to have a private opinion, apart from and independent of the responsible advisers of the crown, and therefore the private opinion of the sovereign is of no more account than that of any other individual; and, secondly, because the sovereign, acting under and with the advice of the constitutional and responsible advisers of the crown, cannot participate in any such manner in the functions of legislation.

1716. The legislative power of the sovereign is defined with admirable force and clearness in the remonstrance of the lords and commons addressed to Charles I. 16th December, 1641, in which they declare: — "That it is their ancient and undoubted right that your majesty ought not to take notice of any matter in agitation and 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; and that every particular member of either house hath free liberty of speech to propound or debate any matter, according to the order and course of parliament; and that your majesty ought not to conceive displeasure against any man for such opinions and propositions as shall be in such debate; it belonging to the several houses of parliament respectively to judge and determine such errors and offences, which, in words or actions, shall be committed by any of their members, in the handling or debating any matters there depending."[4]

1717. In accordance with the constitutional doctrine here laid down, the commons, on the 17th Dec. 1783, resolved: — "That it

[1] Cav. Deb. I. 448.
[2] Hans. (1), II. 1087.
[3] Hans. (3), XLIII. 360.
[4] Hans. P. H. II. 978.

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

1718. It is, therefore, an established rule, which is strictly adhered to, in spirit as well as in letter, in both branches, that no member shall introduce any mention of the name of the sovereign, in debate, in such a manner as to interfere with the freedom of debate, or for the purpose of influencing the determination of the house, or the votes of the members, in reference to any matter pending in parliament.[1]

1719. The rule, however, is not to be construed so strictly as to exclude the statement of a fact, in which the name of the sovereign may be concerned, provided the fact is one, which is proper to be communicated to the house, and which the member is authorized to communicate. The following instances, in which the name of the sovereign was allowed to be introduced, will serve to explain the limitation of the rule as above stated. In the debate, February 24th, 1729, on the foreign loan bill, the purpose of which was to prevent loans to foreign princes, — the commitment of the bill being opposed, — Sir Robert Walpole stated, "that he had the king's leave to declare, that there was at this time a subscription on foot, for the service of the emperor, and money was raising for his use, and that the view of the bill was to prohibit such loans and assistance to that potentate." When he sat down, Mr. Wortley Montague complained that the minister had introduced the name of the king to "overbear their debates;" whereupon, Sir Robert Walpole explained, "that he had not brought in the name of the king to influence gentlemen or to overbear the debates; 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; that he had mentioned the positive assurances, which were received not as a message from the king, but by his majesty's leave, — not by his command, but only by his permission." And thus the matter appears to have ended, upon the explanation given by the

[1] Comm. Deb. VII. 58; Parl. Reg. XIII. 414, 415; Same, XVI. 112; Hans. (2), II. 278; Same, XIII. 208, 209; Same, XVII. 1030.

minister, without any opinion being expressed by the speaker, or by the house.[1]

1720. 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. These expressions being objected to, the speaker (Mr. Shaw Lefevre) gave 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 honorable 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 endeavor 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 honorable 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 honorable baronet's advice, because any personal act or declaration of the sovereign ought not to be introduced into that place;" to which Sir Robert Peel added, "that he had merely confirmed on the part of her majesty, by the advice of the government, the declaration made by the former sovereign."[2]

1721. The rule admits of an exception, where the subject under consideration has direct reference to the sovereign in his public capacity, from the necessity of the case; as, for example, in the debate, July 6, 1820, on a motion for referring the papers relating to the queen to a secret committee. In this debate, a member having said, "That the queen's opponent was the king; he, who

[1] May, 253; Comm. Deb. VII. 58.

[2] May, 253, 254. It seems hardly necessary to observe, that what is said in the foregoing chapter concerning the sovereign, is applicable in this country to the executive branches of our several governments. See, concerning the harmony which ought to exist between the two houses, Lloyd's Deb. I. 290; Cong. Globe, VI. 203: concerning allusions in one branch to what is said or done in the other, Reg. of Deb. IV. Part 1, 669, 670; Same, XII. Part 1, 414; J. of S. V. 92; J. of H. 19th Cong. 1st Sess. 374; Reg. of Deb. VII. 372; Same, IX. Part 2, 1759; Same, XI. Part 1, 1234; Same, Part 2, 1657; Same, XII. Part 2, 2264; concerning reflections upon the executive, J. of H. VI. 445: and concerning the interference of the executive in the business of legislation, the debates on the president's protest; Reg. of Deb. X. Part 1, 12, 28, 485, 525, 1317; Part 2, 1406, 1421, 1432, 1450, 1434; Cong. Globe, XI. 973; and on Mr. Benton's expunging resolution, J. of S. 23d Cong. 2d Sess. 200; Same, 24th Cong. 2d Sess. 83, 111, 123, 124; Reg. of Deb. XI. Part 1, 510; Same, 414. The authority of the executive branch in this country, to interfere in matters of legislation, depends, in part, upon custom or usage, but chiefly upon constitutional provisions. It is confined, for the most part, to the statement of facts, and the presentation of papers, before any act of legislation, and the approval or disapproval of bills.

was, not absolute master of their lives and property, but the grand source of distinction and honor, and often of property; who had a direct and positive influence where her majesty was to be tried; who held the means of reward, titles, orders, and ribbons;" and being called to order, the speaker (Mr. Manners Sutton) said — "He felt this to be a very difficult question. It was evident it was impossible, on this occasion, to exclude what was excluded on every other occasion. But where the introduction was necessary, still greater caution ought to be used. It was highly improper to impute direct influence to the king in either house of parliament, but he was aware that the same thing could be conveyed by putting it hypothetically."[1]

1722. Another exception to the rule occurs, where the measure under consideration is one, in which the crown has a distinct interest; as, in grants of money in certain cases, and in bills relating to the royal prerogatives, the hereditary revenues, or the personal property or interests of the crown; in reference to which it is necessary, at some stage of the proceedings, to have the consent or recommendation of the sovereign; which is signified verbally through some one of the ministers, who is also a member of the house.[2]

CHAPTER NINTH.

OF THE RULES RELATING TO REGULARITY OF PROCEEDING.

1723. I. The first rule, to be mentioned under this head, is, that no member, in speaking, is to refer to any thing said or done, in a previous debate, during the same session.[3] One reason of this rule is, that it is a wholesome restraint upon members, to prevent them from renewing a debate which has already been brought to a close, and which might otherwise be interminable; and there would be

[1] Hans. (2), II. 278.

[2] May, 335.

[3] Mr. May says, — "on a question already decided by the house," — but this cannot be strictly true in any other sense than that if the debate has been brought to a close in any manner, either temporarily or finally, either with or without a question, it cannot be referred to, May, 249; Comm. Deb. XI. 376, 377; Parl. Reg. XLIV. 206, 207; Hans. (2), XIII. 129, 130; Same, (3), XL. 829; Same, LIII. 473; Same, LXXVIII. 137, 138; Same, XXVII. 121, 122; Same, XIII. 1408; Reg. of Deb. XII. Part 1, 414.

little use in the rule prohibiting the same question or matter from being brought forward a second time, in the same session, after having once been decided, if, without being moved, its merits might be discussed again and again.[1] Another reason for it is founded in the good-sense and justice, which prohibit all explanation of words uttered in debate, unless an explanation is demanded at the time, so that the member, whose words are complained of, may have an opportunity to retract them, or to explain their real meaning, while the words themselves and the circumstances attending the speaking of them are still fresh in his recollection and in the minds of the house.[2]

1724. In the application of this rule, it is immaterial whether there is a question pending or not,[3] or whether the member, whose words are referred to, is present or absent,[4] at the time the reference takes place, or whether the speaking of the words referred to was in a debate, strictly so called, or on some less formal occasion, as, for example, in giving an answer to a question; nor is it material for what purpose the reference is made, whether for that of explaining,[5] or of demanding an explanation,[6] or for the purpose of commenting upon,[7] or of answering or replying to,[8] arguments used on a former occasion; but it is an aggravation of the irregularity to refer to or quote the words of a former debate, as published in a newspaper.[9]

1725. If the occasion, on which the reference is made, is not a continuation of that, on which the words referred to were used, as, for example, where a debate is adjourned, the latter must be considered as a previous debate, within the meaning of the rule; so, every succeeding stage of a bill, or other matter, presenting as it does a new and different question, gives occasion to a new debate.

1726. In regard to the particular words or expressions made use of on a former occasion, the rule seems to be strictly enforced, all reference thereto being considered disorderly;[10] but, in respect to the subject-matter of a debate, it is the practice of the house to allow great latitude; the speaker not deeming it his duty to watch strictly every violation of the letter of the rule, but leav-

[1] May, 249.
[2] Parl. Reg. X. 160.
[3] Hans. (1), XXXIV. 1260.
[4] Hans. (2), XIII. 129, 130.
[5] Hans. (1), XXXIV. 1260.
[6] Hans. (2), XIII. 1408; Parl. Reg. XVII. 382; Same, LII. 47; Hans. (1), XXXIV. 1260; Same, (3), XXXVII. 1323; Same, 1328.
[7] Hans. (3), LIII. 473.
[8] Parl. Reg. LIX. 131; Same, LXII. 146; Hans. (2), VIII. 574.
[9] Hans. (3), LIII. 473; Same, LXXVIII. 137, 138.
[10] Hans. (2), XIII. 129, 130; Same, (3), XL. 829; Same, XXVII. 121, 122.

ing the matter to be regulated by the general sense of the house, and taking from them the hint how far the rule may be relaxed in each particular case.[1] It would, however, be considered disorderly, to go into a formal reply to arguments used on a former occasion, in reference to another subject,[2] or to reply directly, in one stage of a bill, to the observations of another member, made in a former stage;[3] though in such cases, it is undoubtedly competent to go into arguments on the general measure.[4]

1727. It is, of course, within the discretion of the house, in reference to this rule, as well as to others, to make particular exceptions on such occasions as they think proper. An indulgence of this kind is usual, it seems, "where a member has a personal complaint to make;"[5] and, on one occasion, the speaker (Mr. Manners Sutton) said: "It was most certainly irregular to refer to a former debate; but, as he had not interfered in the allusion of one honorable member, which was irregular when it was made, he was at a loss to see how he could now interfere, to prevent another honorable member, who conceived himself alluded to in his absence, from giving that explanation respecting himself, which he deemed relevant."[6]

1728. The rule also admits of an exception, not from the indulgence of the house, but of right, where the words adverted to are themselves the subject of a new and independent motion,[7] or constitute the reason upon which such a motion is founded.[8]

1729. II. A second rule, belonging to the class now under consideration, relates to the proceedings of committees (other than committees of the whole); which cannot, in general, be attended to, or introduced, in debate, until regularly brought before the house, by the report of the committee, or in some other parliamentary way.[9]

1730. While a committee is in being, and in the discharge of its functions, all incidental reference to it, or its proceedings, is disorderly; as, where a member in debate said that "it was painful to any person attending the Carlow committee now sitting, to witness the interminable disputes as to residence;" and, being called to order, the speaker (Mr. Shaw Lefevre) said that "no honorable

[1] Hans. (2), XIII. 129, 130.
[2] Parl. Reg. LIX. 131; Same, LXII. 146; Hans. (1), XIX. 723, 724, 725.
[3] Hans. (2), VIII. 574.
[4] Hans. (2), VIII. 574.
[5] Hans. (3), LIX. 485; May, 249.
[6] Hans. (2), VI. 944.
[7] Parl. Reg. LIX. 131.
[8] Hans. (3), VII. 387.
[9] It is not in order to refer in the house to arguments used in the committee of the whole, or *vice versa*, Cong. Globe, V. 144; Same, XIV. 372.

member was at liberty to refer to the proceedings of an election committee, before it had reported to the house;"[1] so, when a member, in debate, attempted to state what had taken place in a committee, "a difficulty having arisen, in consequence of an honorable member having asked to be admitted," and was called to order, on the ground, "that no member had any right to state what had occurred before a committee, until that committee had made its report," the speaker confirmed the doctrine as thus laid down.[2]

1731. Where, however, a motion is made, relative to the committee itself, or its proceedings, the rule admits of an exception; thus, where a committee on a private bill had brought its proceedings and its existence to a close, before making a report, by an adjournment without day, and a motion was made, that the committee be revived and proceed with the business referred to it, a discussion ensued as to the extent to which the proceedings of the committee could regularly be stated or introduced as a ground for the motion, in which the speaker (Mr. Manners Sutton) said, "it was difficult to lay down a strict rule, as to the statements which might be made of transactions in a committee," but that if it was necessary to read from or introduce the minutes of their proceedings, "the regular course was first to move the house, that the minutes be produced;" and it was agreed, that every member who had attended an open committee might state in his place what had occurred there, and that what had occurred in the committee might be stated, to lay a ground for the production of the minutes, though the minutes themselves could not be read until regularly before the house.[3]

1732. When the report of a committee has been made, it is irregular, even though the report itself is under consideration, to allude to or introduce the committee or their proceedings in debate, except so far as they appear in the report itself, unless there is a motion made, or to be made, that the report be recommitted: the report of the committee appointed to inquire into the state of the impeachment against Governor Hastings having been brought up and read, and a motion made thereupon, one of the members of the committee proceeded to make some remarks upon the committee and its proceedings, but the speaker (Mr. Addington) called him to order, and informed him, "that he could not regularly state to the house any thing upon the subject of the report, that was

[1] Hans. (3), XLVIII. 993.
[2] Hans. (3), LXIV. 737.
[3] Hans. (2), X. 10, 11.

not in the report itself, unless he intended to move for its recommitment."[1]

1733. But where there is a motion to recommit a report, as above stated, or where a motion is made relative to the proceedings of a committee, after it has reported, statements may then be made, and matters introduced, extrinsic to the report: thus, where a member, having given notice of a motion to call the attention of the house to the proceedings of a select committee which had made its report, was proceeding to read a question put by a member of the committee (the member himself speaking) which had been expunged by a vote of the committee, and was called to order, the speaker (Mr. Shaw Lefevre) said: "If he understood the question rightly, it was, whether the honorable member could read that part of the examination taken before the committee which was expunged, and therefore did not make a part of the report. That course might certainly be an inconvenient one, but he was bound to say, that he thought the honorable member quite in order in adopting it."[2]

1734. Where a committee makes a report upon some incidental matter or question, the same rules apply; and nothing can be stated with reference to the report so made, but what appears in the report itself, although included in the other proceedings of the committee: thus, where an election committee had reported on the case of a witness, for refusing to give evidence before the committee, and a motion was made, that the witness be brought to the bar, to be interrogated by the speaker, as to whether he would persist in refusing, etc., a member of the committee was proceeding to make a statement of what had transpired before the committee, but was called to order by the speaker, "who reminded him, that the committee had not yet made its report; and that it was contrary to the rules of the house for the proceedings of a committee to be referred to, until its report had been laid upon the table;"[3] so, in the debate, on the case of a witness, for refusing to obey the speaker's warrant, to produce certain papers before an election committee, a member of the committee was not allowed to mention the kind of documents respecting which the summons of the speaker was supposed to have been disobeyed, or the situation in which the committee stood, on the occasion of a vote, on the ground,

[1] Parl. Reg. XXXV. 592.
[2] Hans. (3), LV. 602.
[3] Hans. (3), LXII. 1056.

that no such reference or statement could be made, until the committee had reported.[1]

1735. III. A third rule, relating to regularity of proceeding, is that which prohibits all remarks, in debate, tending to prejudice the minds of members on the subject of a controverted election, which is already before the house, or expected to come before it; even though the remarks may be in themselves relevant to the question in reference to which they are made, as, for example, where the motion is for an exchange of lists of contested votes.[2]

CHAPTER TENTH.

OF THE RULES RELATING TO THE RESPECT DUE FROM THE MEMBERS TO THE HOUSE TO WHICH THEY BELONG, — TO ITS POWERS, ACTS, AND PROCEEDINGS, — AND TO THE GOVERNMENT AND LAWS OF THE COUNTRY.

1736. The offences against order in debate, which are the subjects of the rules embraced in this chapter, not only imply a great want of respect in the persons by whom they are committed, towards the body of which they are members, and are therefore virtual if not actual contempts, but they are also calculated to degrade the legislature and its members, and the existing institutions of the country, in the estimation of the people. They are never necessary, for the most radical reform, in the power of the legislature, can be effected without resorting to such means; they tend as strongly as words of heat and anger towards individual members to produce altercation and recrimination; and they should be as promptly suppressed as any offences whatever against the peace, dignity, and harmony of the legislature.

1737. I. All reflections on the house itself, as a political institution, or as a branch of the government, are disorderly;[3] as, for a

[1] Hans. (3), LXII. 1179, 1180. See, as to allusion to proceedings of committee not reported on, J. of H. 31st Cong. 1st Sess. 393; Reg. of Deb. IV. Part 2, 1830; Cong. Globe, XXI. 214, 215; to show that report was irregular, Reg. of Deb. XI. Part 2, 1435; or on a motion to recommit it, Cong. Globe, III. 249, 253; or to make comments upon it, if the chairman has alluded to it in the way of explanation; and generally, Cong. Globe, VIII. 209, 210.

[2] Hans. (1), XXIV. 844; Same, (3), VII. 377.

[3] Parl. Reg. XV. 302.

member of the house of commons to speak of the house of lords, as "the superior house of parliament,"[1] or of the house of commons, as "the inferior branch of the legislature,"[2] or as "not now the commons of England in parliament assembled,"[3] or as "falsely denominating itself the commons house of parliament;"[4] or to say of the house of commons, "he greatly feared, that, in reputation, that house had not a leg to stand upon."[5]

1738. It is also an offence against the house itself, for a member to use any profane, obscene, or indecent language, such as is unfit for the house to hear, or for any member to utter, although not directed against or reflecting upon the house itself, or any of its members.[6]

1739. II. It is also disorderly, in debate, to question any of the acknowledged and indubitable powers of the house, as, for example, its power to commit in cases of breach of privilege.[7] This principle, though established with particular reference to the power of commitment, is equally applicable to any of the other acknowledged powers of the house.

1740. III. It is irregular to reflect upon, argue against, or in any manner call in question, in debate, the past acts or proceedings of the house, on the obvious ground, that, besides tending to revive discussion upon questions which have been already once decided, such reflections are 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;[8] and it seems, that reflecting upon, or questioning the acts of the "majority" is equivalent to reflecting upon the house.[9]

1741. The following are examples of irregularity, in reflecting upon or questioning the acts and proceedings of the house, namely, where one member excused another under the condemnation of the house;[10] where, on an order having been made for the attendance of Mr. Wilkes, *at the bar*, after he had been expelled the house, a member said, that in his opinion, Mr. Wilkes ought to attend *in his place;*[11] where a member said he intended to argue against a resolution of the house, passed during the session;[12] where a mem-

[1] Parl. Reg. (2), XII. 397.
[2] Hans. (1), XVI. 15.
[3] Hans. (1), XV. 338, 339.
[4] Hans. (1), XXXV. 317.
[5] Hans. (1), XV. 338, 339.
[6] Hans. (3), XVI. 217.
[7] Hans. (2), IV. 1168.
[8] Hatsell, II. 234; May, 250, note.
[9] Comm. Deb. VIII. 32, 33; Parl. Reg. XXI. 357.
[10] Grey, III. 248.
[11] Parl. Deb. VI. 103.
[12] Cav. Deb. I. 371.

ber said, that though such a proceeding might be consistent with order, he was sure it would be considered by the country as disgraceful and contemptible;[1] where a member said, that "if a committee was appointed, he wished it to consist, not of party men, as on the late occasion, but of proper people," the speaker deeming this language equivalent to speaking of committees appointed by the house, as if they were the nomination of an individual;[2] saying that a motion in the house is refused by power.[3] In the house of representatives of the United States, it has been decided, that it is irregular in a member to charge a portion of the house "with an endeavor to drive through a bill at all hazards, and without due consideration,"[4] or with a design to "defeat a bill by indirection;"[5] or to say that "the people should know the flagrant violation of their rights that had been committed by the house."[6]

1742. IV. It seems from the following decision of Mr. Speaker Abbott, that there are cases, in which a member may be disorderly, by uttering reproaches against the existing government, for the purpose of bringing it into disesteem. A member saying, in debate, that a fact had come to his knowledge of a bill accepted by government having been dishonored, and being called to order, for making an observation which tended to discredit the government, the speaker said, "He would deliver his opinion on the subject, which the house would support and confirm, if right; if wrong, of course, it would be discountenanced. His opinion was, that if a member of that house cast any reproach on the existing government of the country, under the general charge of insolvency, or otherwise, to excite disesteem towards it, he was disorderly. That was his judgment, and whether it was correct or erroneous, the house would judge."[7]

1743. V. It is, lastly, irregular and disorderly to speak in disrespectful or abusive terms of an act of parliament, — especially if it is one which is political in its character, — such remarks imputing discredit to the legislature, by which the act was passed, and having a tendency moreover to bring the institutions and laws of the country into contempt. It is, consequently, disorderly to say of any existing laws, that they ought to be forcibly resisted;[8] or to describe certain laws as "tyrannical and diabolical;"[9] or to say of

[1] Hans. (1), II. 695.
[2] Hans. (1), IV. 738.
[3] Comm. Deb. VIII. 201.
[4] Reg. of Deb. X. Part 3, 3760.
[5] Reg. of Deb. X. Part 3, 3765.
[6] Reg. of Deb. X. Part 4, 4274.
[7] Parl. Reg. LXII. 124.
[8] Parl. Reg. XLV. 83.
[9] Parl. Reg. XLVII. 721.

the laws enacted by parliament, that the inhabitants of Ireland were not bound by them.[1]

1744. The preceding rules relate only to remarks made, or language used, incidentally, in the course of debate, respecting the house, or its powers, acts, or proceedings, or the government or laws of the country; but they do not prohibit the introduction of any or all of these topics, and their orderly discussion, upon pertinent and proper questions regularly moved; thus, the constitution of the house of commons may be discussed on a question of parliamentary reform; the power of the house to commit may be submitted as a question by itself;[2] the acts and proceedings of the house may be argued against upon a motion to rescind them;[3] the administration of the government may be called in question upon a proper occasion; and, nothing is more common than to speak in terms of the utmost severity and freedom of statutes, upon the question of their repeal or modification. In all these cases, however, the language used should be temperate, decorous, and respectful; not falling below the importance of the subject, on the one hand; nor, on the other, exceeding the just limits of orderly debate.

1745. The principle, stated in the preceding paragraph, applies equally to bills and other measures, which have not yet passed, and which may be commented upon with equal severity and freedom. The following language, which was uttered in congress in January, 1811, has probably been since many times repeated. A bill "to enable the people of the territory of Orleans to form a constitution, and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," being under consideration in the house of representatives of the United States, Mr. Quincy, one of the members from Massachusetts, was called to order for using, in debate, the following expressions: — "If this bill passes, it is my deliberate opinion, that it is, virtually, a dissolution of this Union, that it will free the States from their moral obligations; and that, as it will then be the right of all, so it will be the duty of some, definitely to prepare for separation, amicably if they can, violently, if they must." The speaker decided that the above language from the semicolon to the end was out of order, but on appeal to the house, his decision was reversed.[4]

[1] Hans. (1), XXXV. 869.
[2] Hans. (2), IV. 1168.
[3] Grey, III. 248.
[4] J. of H. VII. 481.

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[1] Hans. (1), XXXV. 369.
[2] Hans. (2), IV. 1168.
[3] Grey, III. 248.
[4] J. of H. VII. 481.

CHAPTER ELEVENTH.

OF PROCEEDINGS WITH REFERENCE TO DISORDERLY OR UNPARLIAMENTARY WORDS, OR IRREGULARITY IN DEBATE.

1746. Exception may be taken to a member speaking, or proceeding with his speech, in debate, for two purposes, *first*, to prevent him from committing a breach of order; or, *secondly*, to correct a breach of order when committed. Exception may also be taken to the language used by a member in debate, either for the purpose of requiring the words which give offence to be explained, retracted, or apologized for, or for the purpose of censure or punishment of the member using them. Proceedings against a member, for the purpose of censure or punishment for the use of disorderly words, belong to another part of this treatise. The other topics above indicated are now to be treated of in connection with the subject of order in debate.

SECTION I. OF PROCEEDINGS TO PREVENT OR CORRECT IRREGULARITY IN DEBATE.

1747. The duty, which devolves upon the speaker, as the servant of the house,[1] to take care that all decency and order shall be observed,[2] is one of the first in importance of his official duties;[3] which, however difficult,[4] irksome,[5] painful,[6] and embarrassing,[7] the performance of it may be, is nevertheless essential to preserve the dignity of the house,[8] to secure the equal rights of all parties and members,[9] and to facilitate the business of the house.[10]

1748. In the performance of this duty, while the speaker will bear in mind on the one hand the difficulties which he would be obliged to encounter, if he should feel bound to interfere, on every

[1] Cav. Deb. II. 315.
[2] By Mr. Speaker *Onslow*. Comm. Deb. VII. 267.
[3] Hans. (2), VI. 69, 70.
[4] Hans. (2), VI. 944.
[5] Parl. Reg. XXV. 309, 311.
[6] Hans. (3), XXXIV. 532; Same, (2), VI. 69, 70.
[7] Parl. Reg. XLIV. 206, 207.
[8] Comm. Deb. XII. 299; Hans. (2), VI. 69, 70.
[9] Hans. (2), VI. 69, 70.
[10] Parl. Reg. XV. 302.

trifling deviation from order that might take place,[1] and the inconveniences that would result to the progress of the business of the house, if he should watch strictly for every violation of the letter of its orders,[2] and will therefore regard rather the convenience of the house, than the strictness of order, in matters of doubt,[3] or of trifling importance;[4] he will not be unmindful, on the other hand, of the importance of observing the laws and regulations of the house, in their substance and spirit, in order to preserve the dignity of the house, and to carry on the business of the public, with that celerity and regularity, which are absolutely necessary to the due performance of legislative duty.[5]

1749. It is peculiarly the duty of the speaker to interfere in the first instance for the preservation of order, when, in his judgment, the occasion demands his interference. In such a case, therefore, the judgment of the speaker being formed, he at once interferes, and enforces the order of the house. But, though the speaker should refrain from interfering, either because the occasion is not one which, in his judgment, makes it necessary to do so, or because he does not so soon perceive the breach of order, or because he is willing to give a member, who is on the point of transgressing, an opportunity to retrieve himself,[6] it is the right of any member, notwithstanding, to rise up and call to order, if, in his judgment, the occasion demands the interference of the house.

1750. When a member thus calls to order, it is his duty in the first place, to state wherein he apprehends the member speaking is disorderly; then the speaker expresses his opinion upon the point of order raised, either immediately, or after hearing the question spoken to by other members, including the member calling, as well as the member called, to order; and either sustains the call to order, or sustains the member in the line of remark or course he was pursuing, or in the use of the words to which objection was made.

1751. When the speaker is thus called upon to interfere upon the point of order, or when he interferes of his own motion, his duty only requires him, in the first instance, to state to the house what the rule of order is, in reference to the matter in question, and to declare, at the same time, whether the member is, or is not in order, in the course which he is pursuing or attempting to pursue,

[1] Hans. (2), VI. 944.
[2] Hans. (2), XIII. 129, 130.
[3] Hans. (2), XIII. 129, 130.
[4] Hans. (3), XXVII. 120.
[5] Hans. (3), XXVI. 907.
[6] Hans. (2), VIII. 410.

or in using the language complained of as disorderly. The opinion of the speaker, when thus declared, is entitled to very great weight,[1] and is ordinarily received as conclusive; but it remains, notwithstanding, for the house to sanction it by its acquiescence;[2] and unless so sanctioned, it is entitled to no more consideration than that of any other member. The speaker, in giving his opinion, sometimes adds such expressions as these: that "it is for the house to decide whether the member shall go on or desist;"[3] or, that "the house will support and confirm his opinion, if right; if wrong, of course it will be discountenanced;"[4] or, that "this is his judgment, and whether it is correct or erroneous, the house will judge;"[5] or, that "whenever he attempts to enforce the order, and the house overrules him, (as they undoubtedly have the power to do whenever they please,) it is not to be imputed to him as a neglect of duty."[6]

1752. When the speaker's opinion is thus pronounced, it is deemed to be acquiesced in, and to make an end of the question, as a matter of course, unless something is done to overrule it. The speaker cannot be called upon to revise it, nor can it be called in question by any member, nor is any member at liberty to argue against it; but if any member doubts its authority or correctness, his only course is to take the sense of the house upon it by a question.[7] This is a most uncommon proceeding, of which there are but few examples in all the recorded experience of parliament.[8] It is not, however, by any means extraordinary, for the opinion of the speaker to be virtually overruled, — or, perhaps, more properly speaking, for the rule of the house, as laid down by the speaker, to be dispensed with for the particular occasion, — by a tacit acquiescence of the house in the course of proceeding, which, according to the speaker's opinion, is disorderly; as, for example, where a member, being called to order, and adjudged out of order by the speaker,[9] is

[1] Parl. Reg. LIX. 256; Same, LX. 365, 366.
[2] Hans. (1), XXI. 191; Same, VII. 825.
[3] Hans. (1), XXI. 191.
[4] Parl. Reg. LXII. 124.
[5] Parl. Reg. LXII. 124.
[6] Parl. Reg. (2), IX. 65.
[7] Hans. (3), LXIII. 424. In some cases, a different proceeding in point of form seems to have been allowed, for the purpose of calling in question the speaker's opinion. Hans. (3), LII. 1063, 1064, 1065. In others, a remark of the speaker, before being called upon for his opinion, has been commented upon. Hans. (1), IX. 325, 326, 327. In others, again, a remark of the member called to order, in explanation or justification, has been received without objection. Hans. (2), IV. 213; Parl. Reg. XXVII. 527, 528; Hans. (3), VIII. 722, 723; Same, LIII. 473; Same, (1), XXXV. 369; Hans. (1), XXIV. 1260; Parl. Reg. XXI. 464.
[8] It is quite common in our legislative assemblies, to appeal from the decision of the chair, on these as well as other points of order.
[9] For speaking second time.

nevertheless suffered by the house to proceed as before. If the opinion of the speaker is acquiesced in, it then becomes an order of the house, to be enforced in the same manner as the other orders.

1753. The speaker, in giving his opinion upon the point of order, not unfrequently takes occasion to explain the grounds of it, for the instruction of the house, when he thinks the matter of sufficient importance;[1] or to state, for the benefit of the member, how far he is in order, and how far not so,[2] or in what manner he may proceed in order;[3] or to explain, in justification of himself, why he had not interfered, or why he had not interfered sooner;[4] and also to make any suggestions which he may deem useful, either to preserve the dignity, or promote the convenience of the house.[5]

1754. The opinion of the speaker either sustains the point of order, or the member speaking, or refers the question to the decision of the house. In the first case, the member cannot proceed, in the course so decided to be objectionable, but is entitled to proceed, if he pleases, in order; in the second case, the member is entitled to proceed as before;[6] in the third, the member proceeds or not, according to what appears to be the sense of the house.[7]

1755. In sustaining the call to order, according to the strict rule of the house, the speaker sometimes suggests the propriety of an indulgence to the member, either on account of the particular circumstances of the case,[8] or because indulgence has been usual in similar cases,[9] as, in a matter of privilege,[10] or in the case of a personal complaint by,[11] or of a personal appeal to a member,[12] or of the mover of a motion to reply;[13] or informs the house, that the rule had not been strictly insisted on;[14] or that similar practices had grown into general use;[15] or that of late a practice had arisen of

[1] Parl. Reg. LXI. 258; Hans. (1), II. 613, 614; Same, (3), I. 1329; Same, (2), II. 25; Same, (2), IV. 1168; Parl. Reg. XXXV. 592; Hans. (3), III. 718.

[2] Hans. (1), II. 613, 614.

[3] Parl. Reg. LXI. 258.

[4] Hans. (1), XLI. 814; Same, XV. 218, 219; Parl. Reg. VII. (2), 154; Same, XXV. 309, 311; Same, LXIII. 788; Hans. (2), IV. 243; Same, (3), III. 1194; Same, (2), VIII. 410; Same, (3), XXVII. 120; Parl. Reg. XLIV. 206, 207; Hans. (2), XVII. 1030; Parl. Reg. LVI. 337; Hans. (2), VI. 944; Same, (1), IV. 177.

[5] Parl. Reg. XXV. 309, 311; Hans. (3), XV. 882, 885.

[6] Parl. Reg. LXIII. 673, 674; Hans. (1), XXXIII. 919; Parl. Deb. XXXVIII. 368.

[7] Parl. Reg. LXII. 16, 17.

[8] Parl. Reg. XXVI. 278, 280; Hans. (1), I. 801; Same, (3), XXXII. 820; Same, (1), I. 814, 815; Same, (3), VIII. 724, 725.

[9] Hans. (2), IV. 1013.

[10] Hans. (3), XX. 6.

[11] Hans. (3), LIX. 485.

[12] Hans. (1), XXXII. 1221.

[13] Parl. Reg. XII. 127; Same, XXXII. 93, 94.

[14] Hans. (2), IV. 922, 923.

[15] Hans. (3), IV. 1251.

deviating from the rule;[1] or that a rigid adherence to the rule was sometimes not required;[2] or that it had become the common practice of the house to disregard the rule;[3] or, that, one member having been indulged, the like indulgence should be extended to another;[4] or that the house may, if they think proper, dispense with the rule in the particular case.[5] In cases, where suggestions of this sort are made, especially if they express also the wishes or opinion of the speaker, they are usually adopted and sanctioned by the house, either by a tacit acquiescence in the course suggested, or by some informal manifestation of opinion. This, however, is not always the case; the house sometimes sustaining the strict application of the rule, as laid down by the speaker.[6]

1756. In sustaining the member, the speaker sometimes disaffirms the supposed rule of order, upon which the call is predicated, as, for example, where a member was called to order, for mentioning in debate the name of a petitioning candidate;[7] and, sometimes, the fact alleged as the act of disorder, as, for example, where the speaker said he did not understand the words objected to as conveying the idea imputed to them, or that they were used in an offensive sense.[8] Sometimes, also, when allowing a member to proceed, he takes occasion to remind him of the terms of the question;[9] or cautions him as to the extent to which his remarks may be allowed.[10]

1757. It sometimes happens, that the speaker, instead of expressing his opinion on either side, merely intimates a doubt, whether the member can proceed consistently with order;[11] or asks instruction of the house upon the point suggested;[12] or refers the question to the discretion or feeling of the house;[13] or expresses his opinion hypothetically, that is, that if the member intended or said some particular thing, he was, or was not in order.[14]

1758. It seems to be an established principle in parliamentary practice, that, when a member rises and addresses the house, it is

[1] Hans. (3), LXIII. 512.
[2] Hans. (1), VII. 825.
[3] Hans. (3), XXVII. 121, 122.
[4] Hans. (2), VI. 944.
[5] Parl. Reg. LXII. 16, 17; Hans. (1), XV. 154; Same, XVI. 739; Same, (3), II. 538; Same, XXXII. 820; Same, (1), I. 814, 815.
[6] Parl. Reg. LXII. 16, 17.
[7] Hans. (1), VIII. 90.
[8] Hans. (1), XXXII. 983; Same, XXVIII. 108; Same, (2), VII. 1394; Same, IV. 240.
[9] Hans. (3), XVIII. 89.
[10] Hans. (1), XI. 755; Same, XXXVI. 1183.
[11] Hans. (2), XII. 1314, 1315.
[12] Hans. (1), VII. 188, 207, 208.
[13] Hans. (3), XIII. 884; Same, (1), VI. 847; Same, (2), IV. 518, 519; Same, XIII. 129, 130.
[14] Hans. (3), XXXII. 803; Same, II. 401; Same, (2), XIII. 208, 209; Same, (1), X. 700.

order, and prevented from proceeding;[1] so, where a member, in the course of a speech, proposed to read a letter, the subject of which he stated, he was informed by the speaker that he could not do so consistently with order.[2]

1760. In like manner, if it is apparent, from what a member is saying, or has already said, that if he goes on he will commit a breach of order, he may be interrupted and prevented from proceeding;[3] thus, where a member, in the course of his speech, said, that another member "was reported to have said, the other evening, and he believed did say," the speaker (Mr. Shaw Lefevre) rose to order, and said "he thought it was his duty to interfere, on this occasion, because he was sure that if the honorable gentleman went on, he would transgress one of the rules of the house."[4]

1761. When, however, it is not apparent, but only highly probable, from what a member proposes, or from what he has said, or is saying, that if he proceeds, he will be guilty of a breach of order, it is then for the discretion of the speaker and of the house to decide, from the tone and manner of the person speaking, and the circumstances of the case, as well as the words used, whether to interrupt the member, or to allow him to proceed. If, in such a case, it were the purpose of the member to say what would be a breach of order, the interruption would be proper; if otherwise, then the strong probability, from the circumstances, that he would have done so, had he not been interrupted, would be a sufficient justification for the interruption; and the interruption itself would be a salutary admonition to him to proceed in order.

1762. A member, in the course of his speech, having made use of the following language, "for no man living could believe, that a prince of the house, which sat on the throne by virtue of the revolution of 1688, should promulge to the world that, happen what would, when he came to fill another situation, if all —" a member here rose to order, "to prevent his honorable and learned friend from continuing a course of observation, in his present heat of temper, which he was satisfied, he would, in his cooler moments, regret." The speaker, Mr. Manners Sutton, thereupon, — first intimating that he had refrained from interfering, because as the member speaking had himself correctly defined the order of the house on taking up the subject which had occasioned the present interruption, it was his (the speaker's) business to expect that he

[1] Parl. Reg. LXII. 200. See also Hans. (1), VI. 143.

[2] Hans. (3), LXI. 141; Same, LXIV. 261.

[3] Grey, III. 120.

[4] Hans. (3), LII. 318.

would not depart from what he had laid down, — said, "that if the inference drawn by the member calling to order was correct, if his anticipation of what was coming from the gentleman speaking was right, there could be no question, that the latter would be out of order, and the further proceeding in the course which he had announced would be most disorderly."[1]

1763. Where a member is called to order, and checked, before giving utterance to any thing actually disorderly, the proceeding is strictly for the purpose of preventing a breach of order; where the objectionable words are actually uttered, and the member is called to order, the proceeding is to correct the irregularity and also to prevent its recurrence; and in both cases, where the call to order is made in good faith, and for the real purpose of preserving or enforcing the order of the house, it is a justifiable proceeding, even though the decision of the speaker should pronounce it a groundless one; but, where the call is made wantonly, and without sufficient cause, it is itself in the highest degree disorderly.[2]

1764. The difficulty of precisely knowing beforehand, in most cases, what a member intends to say,[3] is such, that proceedings in reference to disorderly words usually take place after the words have been spoken, and have in view only to correct the error, and to prevent its recurrence. In many cases, however, it is known what topics a member intends to speak to, or what general line of argument he means to pursue, from his own declaration; and, in others, it is possible to form a sufficient judgment, from what a member has already said, or is in the act of saying, as to what he intends or is about to say, in order to justify and require proceedings to prevent the member from committing a breach of order. Cases of the former description have already been sufficiently considered; those of the latter require now to be explained.

SECTION II. OF PROCEEDINGS TO COMPEL A MEMBER TO EXPLAIN, RETRACT, OR APOLOGIZE, FOR DISORDERLY WORDS.

1765. It has already been seen, that where disorderly words are used, which are of a character to give offence to the house itself, or

[1] Hans. (2), XIII. 208, 209.

[2] Hans. (1), XIV. 368; Grey, III. 120.

[3] Mr. John Horne Tooke, being interrupted and called to order, in the course of his speech said, — "I entreat the house to consider, that unless the brains and minds and understandings of man are formed exactly alike, it is impossible for one man to say what another man intends to utter; it, therefore, is impossible for another to say what I am going to utter; hence it is generally a little difficult, until a man has got to the end of his proposition, to judge well whether he is in order or not." Parl. Reg. LIX. 326.

to any of the members, it is the speaker's duty to interfere, and compel the offending member to explain, retract, or apologize for, his language. In some cases, however, the speaker does not feel it to be his duty to interfere, either because he does not immediately perceive the personal or offensive application of the words, or because he thinks the matter of trifling importance, or because he does not deem the language unparliamentary. It is nevertheless competent for any member, — either the member attacked, or any other, — to interfere, and take measures for the purpose of obtaining the authority of the house to compel the offender to retract or explain his words. When the speaker calls upon a member to explain his language, he does it in the name, and by the authority, and with the implied sanction, of the house.[1] The proceedings of a member, with the same view, are intended to obtain the same requisition of the house, upon the member, in express terms, which the speaker assumes impliedly to exist, when he demands an explanation. Before, however, any direct vote of the house can take place, in reference to an explanation or retraction of the words, the words themselves must be reduced to writing and properly authenticated, as having been spoken by the member. The words are to be taken down by the clerk, at the table, so as to become a part of his minutes; in order, that, being so taken down, the house may be in a capacity to give its judgment upon them, whether they are or are not disorderly; for, it is clear, that no question can be moved upon them, nor the sense of the house taken, until the words objected to form part of the minutes of the house.[2] This proceeding will now be explained.

ARTICLE I. *As to the Time when the Complaint for disorderly Words must be made.*

1766. Anciently, it seems to have been allowable to take notice of words spoken in debate, for the purpose of censure, at any time during the session. At a later period, it was established as a rule, that exception should be taken the same day, and before the offending member had gone out of the house; the member offended being entitled to move, that the former should not leave the house until he had given satisfaction, in what was by him spoken; and, if the proceeding was omitted that day, "it could not be recalled

[1] Hans. (3), XXII. 115, 116, 117, 118. [2] Rushworth, I. 593.

afterwards, in order to avoid mistakes, and out of a willingness, rather to pass by, than to take occasion of, offence."[1]

1767. In more modern times, the same reasons have led to a still further limitation of the time, within which the complaint must be made, and it is now the rule and practice, "that if any other person speaks between, or any other matter intervenes, before notice is taken of the words which give offence, the words are not to be written down, or the party censured."[2] According to the rule, as thus stated, the member speaking may be interrupted in his speech, and the words complained of, at the moment they are uttered; and they must be complained of, before any other speaks, or any other matter intervenes; but the rule does not specify at what point of time, between the speaking of the words, and the intervention of other business, if the member should continue speaking, the complaint must be made. From the manner, however, in which the rule is stated by distinguished speakers,[3] as well as from the reason upon which the rule is founded, it seems necessary that the interruption should take place immediately on the speaking of the words,[4] or at all events, that it will be too late to notice them, if the member is permitted to continue his speech, for any length of time, without interruption.[5]

ARTICLE II. *As to the Mode of Proceeding for obtaining the Order of the House to take down the Words, and taking them down and verifying them.*

1768. The member, who thinks proper to complain of words spoken, rises to order, and, first stating the words to which he takes exception, exactly as he conceives them to have been spoken, complains of them as disorderly, and desires or moves that they may be taken down; which it is the duty of the clerk, at the table to do, if it should be the sense of the house, that is, the opinion of a majority, that the words ought to be taken down. The sense of the house may be indicated either formally or in an informal manner.

[1] Scobell, 81.

[2] Hatsell, II. 269, note; Lex. Parl. 281.

[3] Parl. Reg. XXII. 340; Same, XXV. 371; Same, XXVI. 26.

[4] This appears to be the rule in the house of lords, Hans. (3), XLVIII. 321.

[5] May, 259. Perhaps, therefore, the rule may be thus stated: the words *may* be noticed the moment they are uttered; they *must* be noticed before any other matter intervenes; if complained of *after* the intervention of other matter, the speaker will put a stop to the proceedings, as a matter of order; if *between* these two points, the house will decide, on the motion to take down the words, both as to their being disorderly, and as to whether they have been seasonably noticed.

The latter is the mode as described by Mr. Hatsell. The former is indicated by Mr. Speaker Addington, in stating the form of proceeding.

1769. In the mode stated by Mr. Hatsell, the speaker assumes what the sense of the house is, or judges of it by such indications as it may see fit to give, without a formal question being put and decided by a vote. This manner of proceeding is thus described:— "The speaker then may direct the clerk to take the words down; but if he sees the objection to be a trivial one, and thinks there is no foundation for their being thought disorderly, he will prudently delay giving any such direction, in order not *unnecessarily* to interrupt the proceedings of the house. If, however, the call to take down the words should be pretty general, the speaker will certainly order the clerk to take them down, in the form and manner of expression, as they are stated by the member who makes the objection to them." The words are then a part of the minutes in the clerk's book; and when read to the member who was speaking, he may deny that those were the words he spoke; and if he does, the house must decide by a question, whether they were the words or not? If he does not deny that he spoke those words, or when the house has itself determined what the words were, then the member may either justify them, or explain the sense in which he used them, so as to remove the objection of their being disorderly; or he may make an apology for them.[1]

1770. According to the other method alluded to, the member complaining of the words and stating them as before, submits a motion that they be taken down, on which the speaker may proceed as already explained; or the motion being seconded and debated, is put to the question, and decided in the ordinary manner. "If one member *only*," says Mr. Addington, "moves for the words of any other member to be taken down, it cannot be done. But, if it should be the opinion of a *majority* of the house, that the words ought to be taken down, then it becomes the duty of that member who first desired the words to be taken down, to state them himself, as he understood them, in writing, in order that they may be fairly submitted to the house in the form of a motion. The member who spoke the words, has a right to peruse them when thus put into writing, and to state what he apprehended he had actually said, if he differed with those put down. He had also a right to give his explanation to the house; and, if there was a dif-

[1] Parl. Reg. (2,) XIII. 69.

ference in the opinion of members respecting the words spoken, and those put down in writing, it then becomes a question for the house to determine."[1] If the member denies using the words written down, a question is to be put to the house, whether these were the words used or not. In deciding this question, no debate or amendment can be allowed, nor can the process be repeated. If decided in the negative, there is of course no further question of order before the house.[2]

1771. The words being taken down, and the member himself admitting, or the house, on question, deciding that the words are truly taken down, and the member having justified, explained, or apologized; if the member's justification, or explanation, or apology, is thought sufficient by the house, no further proceeding is necessary. But if any two members still think it necessary to state a question, so as to take the sense of the house upon the words, they can do so by making and seconding such a motion as they think proper. When this is done, the member must withdraw before the question is stated, and then the sense of the house must be taken. The same proceedings take place when the member offers no justification, apology, or explanation.[3]

ARTICLE III. *As to subsequent Proceedings.*

1772. When, in consequence of a member's refusal to justify, apologize, or explain, or of his failing to do so, to the satisfaction of the house, the proceeding has assumed the character of a personal charge against him, for the purpose of censure or punishment, it comes more properly under another part of this treatise.[4]

[1] Parl. Reg. XLVI. 599.

[2] Reg. of Deb. XII. Part II. 2269.

[3] Hatsell, II. 273, note. For the proceedings where words used by the speaker are complained of, see Comm. Jour. XXXII. 707, 708, the case of Sir Fletcher Norton. See also the Cavendish Debates.

[4] The proceedings of each legislative assembly, in this country, varying more or less from those of the common parliamentary law, as above stated, are commonly regulated by a special rule.

CHAPTER TWELFTH.

RULES FOR THE CONDUCT OF MEMBERS PRESENT IN THE HOUSE DURING A DEBATE.

1773. The rules for the conduct of debate, which have thus far been considered, relate to members addressing the house; those which remain to be noticed, relate to the deportment of members present in the house during a debate, but not engaged therein. These rules require the members, I. To keep their places; II. To enter and leave the house with decorum; III. Not to cross the house irregularly; IV. Not to read books, newspapers, or letters; V. To maintain silence; VI. Not to hiss or interrupt.[1]

1774. I. The standing order of the lords requires them "to keep their dignity and order in sitting, as much as may be, and not to move out of their places without just cause, to the hinderance of others that sit near them, and the disorder of the house; but when they must cross the house, to make obeisance to the cloth of estate."[2]

1775. 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.[3]

1776. II. In the lords, a member entering 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]

1777. 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]

1778. III. In the lords, the order already mentioned relates in part to the manner of crossing the house; and it is especially irregular to pass in front of a peer who is addressing the house. 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

[1] Another ancient rule, "that no member do take tobacco," Mr. May says is unworthy of a place in the text. May, 259, note b.

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

[3] Comm. Jour. XII. 496; Same, XIX. 425.

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

[5] C. J. VIII. 264.

between the chair and the mace, when the mace is taken off the table by the sergeant. When members cross the house, or otherwise leave their places, they should make obeisance to the chair.[1]

1779. IV. Members are not to read books, newspapers, or letters in their places. This rule, however, must now be understood with some limitation; for, although it is still regarded as irregular to read newspapers,[2] 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.[3]

1780. V. In both houses, it is required of members to observe silence. In the lords, it is ordered, "that if any lord have occasion to speak with another lord in this house, while the house is sitting, they are to go together below the bar, or else the speaker is to stop the business in agitation."[4] 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."[5]

1781. VI. Any noise or disturbance, as by hissing or other interruption while a member is speaking, is highly disorderly. In the house of commons, January 22, 1693, the following rule, which is only declaratory of the order of the house, on this subject, was adopted as a standing order: — "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[6] incur the displeasure and censure of the house."[7]

1782. The foregoing rules, relating to the observance of decorum, among the members present in a legislative assembly, though expressed in the form of special orders, are nevertheless evidence of the common parliamentary law, and are in force here with such

[1] May, 260. This rule, however, Mr. May remarks, is not observed, when a member is speaking from the third or any higher bench from the floor.

[2] See ante, § 1664.

[3] May, 261; Comm. Jour. IV. 51.

[4] Lords' S. O. 20.

[5] Comm. Jour. II. 135.

[6] Cong. Globe, XI. 498.

[7] Comm. Jour. II. 66; Same, I. 152; May, 22.

alterations and additions as may be found necessary in each assembly. The regulations relating to the observance of decorum, generally, of which the above constitute a part, have already been stated,[1] and are commonly established in the rules and orders of each assembly.

[1] See also ante, § 373.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART SIXTH.

OF THE FORMS AND METHODS OF PROCEEDING IN A LEGISLATIVE ASSEMBLY.

THIRD DIVISION.

OF ASCERTAINING THE SENSE OF THE ASSEMBLY IN REFERENCE TO ANY QUESTION BEFORE IT.

1783. ALL the proceedings, which have thus far been described, have only had for their object to bring a proposition into a form to be put to the question; that is, a form in which the sense, will, or judgment of the house, in reference to the subject under consideration, can be expressed by a simple affirmative or negative; it being clear, that no proposition can receive the consent of the house, or of the greater number of the members, unless it is in such a form as to be simply affirmed or denied. The subject of this division is treated of, in four chapters, namely: I. Of the right and duty of members to vote; II. Of the different modes of taking a question; III. Of the question thus taken; IV. Of the addition or disallowance of votes.

CHAPTER FIRST.

OF THE RIGHT AND DUTY OF MEMBERS TO VOTE.

1784. As the members of the house are also members of the body politic, and connected with their fellow-citizens in all the ordinary relations of life and of business, it may, of course, sometimes happen, that they are themselves personally interested in the questions that come before them in their capacity of legislators. When this is the case, decency requires that members so situated should not sit as judges, and, by their suffrages, decide their own case; but justice also requires, that their interests should not be compromised without their being heard. It is a rule, therefore, that, when a member is personally concerned in a question, — either as involving his character and conduct, — his right as a member, or his pecuniary interest; he is first to be heard in his place, if he desires it, and is then to withdraw from the house, during the debate and until the question is decided.[1]

1785. The precise time when a member is to withdraw is not in all cases the same; it depends entirely upon the application of the principles above stated, to the particular circumstances of each case. The member is entitled to be heard; but he cannot be heard until he knows what is alleged against him; and he ought at all events to withdraw before the debate commences. In practice, therefore, the time at which a member should withdraw is determined by the nature of the subject-matter in which he is concerned, or of the charge against him. When this is contained in, or founded upon, reports, petitions, or other documents, or words spoken and taken down, which sufficiently explain the charge against the member, or the subject in which he is personally interested, it is usual to have such paper read, and for the member to be heard in his place, and then to withdraw before any question is proposed.[2] But if the charge or subject-matter is only contained in the question itself, the member is entitled to have the question proposed, and is then to be heard, and to withdraw after the question has been proposed, and before the debate, properly speaking, has commenced.[3]

[1] See also ante, § 656, as to preliminary and collateral questions.

[2] Hatsell, II. 170, 171, note.

[3] May, 264, 265.

1786. It does not seem sufficient, however, that there should have merely been some report, or some other proceeding in the house, in order that a member should be heard upon the same, and then withdraw; the rule appears to apply only to the case of a report, or other previous proceeding, which contain a direct and pointed accusation.[1]

1787. Where the charge against a member is one, in reference to which witnesses are examined, — as, for example, where articles of impeachment are exhibited against a member, and witnesses are thereupon examined, — the member is to be heard in his place, and withdraw after the examination of the witnesses.[2]

1788. If a member should neglect or refuse to withdraw at the proper time, the house will order him to withdraw. Thus, in the lords, Lord Pierpoint, in 1641, and Lord Herbert of Cherbury, in 1643, were commanded to withdraw; and, in the commons, in 1715, it was ordered, upon question and division, "that Sir Wm. Wyndham do now withdraw." [3]

1789. The duty of the members of our legislative assemblies to vote in all questions that may arise therein, is commonly expressed by a rule in affirmance of the common parliamentary law, and another rule providing "that no member shall vote on any question in the event of which he is immediately and particularly interested," and sometimes it is added, "distinct from the public interest." Concerning the rule, as thus expressed, and its practical application, three remarks are to be made: first, that it does not change the rule of the common parliamentary law, as above laid down, but merely confines the interest in the question which excludes from the right of voting to pecuniary; second, it provides no means, any more than the common parliamentary law, of enforcing its own execution, and, notwithstanding the rule, members may vote or not, as they please;[4] and third, it does not apply to merely preliminary or incidental questions, on which interested members are allowed to vote.[5]

1790. If a member, whose duty it is to withdraw, should notwithstanding be suffered to remain in the house, and to vote on the question, either from inadvertence, or because his interest in it is not known or pointed out, his vote may be disallowed by the house, on a motion made and question proposed for that purpose; and, in such a case, the question on the motion to disallow the

[1] Hatsell, II. 172, note.
[2] Hatsell, IV. 260, and note.
[3] May, 265.
[4] Cong. Globe, XX. 84.
[5] J. of H. 27th Cong. 1st Sess. 1283; Cong. Globe, VIII. 531.

vote, is within the rule requiring a member to withdraw.[1] The member should withdraw, in such a case, before the question is proposed.[2]

1791. In determining whether a member is so personally concerned in a question as to make it necessary for him to withdraw, there can be little or no difficulty in cases where his character or conduct is involved, or where his right to his seat is concerned. But, in cases of a supposed pecuniary interest, — though the rule is sufficiently plain, — its application in particular cases is often attended with great difficulty. The rule is thus stated by Mr. Hatsell: "Interest in a question pending in the house, is good cause for disallowing a vote; but such an interest must be a direct pecuniary interest, belonging to a separate description of individuals, and not such as also belongs to all the citizens, arising out of any measure of state policy. Generally speaking, it applies only to private bills, or bills relating to individuals, such as estate bills, inclosure bills, canals, joint-stock companies, &c., wherein only the individual profit or loss is concerned, and, on like grounds to subscribers to the loyalty loan; but does not apply to questions of interest arising out of public measures, such as tax bills, colonial regulations, domestic trades, and the like."[3] Questions of interest are further considered in the fourth chapter of this division, in which the subject of the allowance or disallowance of votes is treated of.

CHAPTER SECOND.

OF THE DIFFERENT MODES OF TAKING A QUESTION.

1792. In order that any proposition may become the act, or express the sense, judgment, opinion, or will of the house, it is necessary that it should receive the assent of a majority of the members, or of such other number as may be agreed upon, or otherwise fixed, beforehand; which may be manifested in two ways, namely, either by no one objecting to the proposition, — in which case, the sense of the house is ascertained by their common

[1] Hatsell, II. 169, note.

[2] May, 284; Comm. Jour. LXXX. 110; Same, XCI. 271.

[3] Hatsell, II. 169, note. See May, 281.

consent, — "the thing being sufficiently declared when no man contradicts it;"[1] or by a majority, or the requisite number, of the members declaring themselves in its favor; in which case, the sense of the house is ascertained by a question put and determined. Where the sense of the house is ascertained by taking a question, the course is, in the first instance, for the members to answer *aye* or *no;* and the speaker to decide, by his ear, which side is the greater. If his decision is not satisfactory, then measures are to be taken, by means of dividing the house, to ascertain the exact number on each side. Hence, in parliament, there are three modes of ascertaining the sense of the house, in reference to any proposition submitted to it, namely, by *consent*, by the *voices*, and by a *division*. These several modes of proceeding, as they are practised in the house of commons, with the points of difference between them and the analogous proceedings in the lords, will be stated. The foregoing being in use here, with some other methods and usages which are peculiar to this country, the latter will be treated of separately.[2]

SECTION I. OF TAKING THE SENSE OF THE HOUSE BY THEIR COMMON CONSENT.

1793. When this mode is adopted, the question is not put for those who are on the one side or on the other to declare themselves, but simply, Is it the pleasure of the house that such a thing should be done? And if no member dissents, then the thing is ordered, without putting the question in any other form. If, in any such case, objection should be made, even by a single member, the question should be put in the usual form; and perhaps it might be proper in some cases, where no motion had in fact been made, for the speaker to require one to be regularly made and seconded, before putting the question. This mode of taking the question is exclusively adopted where the affirmative requires the unanimous assent of the members present; in which case, the objection of a single member is as effectual to defeat a proposition, as the vote of a majority on ordinary occasions. But in this case, the objection must be made with the same formality as a motion; and can only be withdrawn in the same manner. It is scarcely necessary to

[1] Grey, V. 129.

[2] The different modes of taking a question, which have already been mentioned in the second part, (ante, § 382 to 411,) are here again alluded to in connection with the practical questions to which their application gives rise. The paragraphs in which these modes are described are referred to.

observe, that where a question is taken in this manner, objection must be made, if at all, when the question is put; and that if made afterwards, especially if the supposed vote has already been acted upon, or the assembly has passed to any new business, it will then come too late.

SECTION II. OF TAKING THE SENSE OF THE HOUSE BY THE VOICES.

1794. This mode is commonly practised where a motion is regularly made and seconded, and proposed from the chair as a question; and is invariably resorted to, where the question has given rise to debate. In the latter case, when the debate is closed, which is known by members ceasing to rise, or by cries of question, or in some other, and perhaps more irregular, manner, as well as when no debate has taken place, it is the duty of the speaker to put the question to the house for its determination; which is done in the manner already described.[1] Sometimes the speaker, not being able to decide as to the majority, by the sound of the voices, puts the question a second, or even a third time, before declaring his opinion. The question is stated, or intended to be, distinctly by the speaker; but, in case it should not be heard, it may be stated again. The decision of the speaker is the judgment of the house, and will stand as such, unless upon a division, (which will be presently described,) and an enumeration of the numbers on each side, it should be ascertained that he was mistaken in his opinion.

1795. When the question is put, all those members, and they only who are then properly in the house, are allowed and may be compelled to vote; every member thus present, is supposed to give his voice on the one side or the other; and the subsequent proceedings, in dividing the house and numbering those who vote on either side, take place for the sole purpose of ascertaining what members thus gave, and the manner in which they gave, their voices. The voice which a member gives, is his vote; so, that if a member gives his voice with the ayes, and, on a division, goes with the noes, and this fact is brought to the notice of the speaker, he will direct the member's vote to be counted with the ayes. But where a member answers with one party, in confusion or through mistake, when he intends to vote with the other, he has a right to retract any such declaration erroneously made, and to divide and

[1] See ante, § 384, 385.

be counted with the side with which he intended to answer in the first place.[1] The point of time to which all the proceedings refer, which take place for the purpose of ascertaining the number of members voting on each side, being the putting of the question in the manner described, it seems important before proceeding to describe the process of division, to define the limits of what is technically called "the house," in order to determine what members are in the house at the time the question is put. As to the other qualification of the right to vote, namely, being rightfully in the house, it is sufficient to say, that all the members present, and not under obligation to withdraw, on the ground of being personally concerned in the question, are rightfully present, and may vote whether they have been present at the debate or not, and even if they have but just come in before the question is put.

1796. For the purpose of determining upon the right of members to vote, the house consists of the room or chamber, in which the members sit with the speaker in the chair, the clerk at the table, and the other officers attending, for the transaction of the business of parliament, and which is technically denominated "the house," or "the body of the house," together with all the rooms, places, and passages adjacent thereto, and to which there is no other avenue than through the house. Mr. Hatsell, in allusion to the chamber of the house of commons, as it existed in his time, speaks of a place called Solomon's porch, and a room called the speaker's room, or the speaker's little chamber, and of the galleries, as within the house, there being no access to them but through the house; and of a room called the speaker's chamber, and of the lobby, as not being within the house, they being accessible from without as well as connected with the house. According to Mr. Hatsell, members who were in Solomon's porch, or the speaker's room, were in the house; those who were in the lobby,[2] or in the speaker's chamber,[3] were not.

1797. If the speaker, being doubtful of the majority of the voices, puts the question a second time, before declaring his opinion, a member who comes into the house between the first and second putting of the question, is not deemed to be within the house at the putting of the question, and is not entitled to vote;[4] this proceeding being nothing more than a measure adopted by the speaker to enable him to determine (not the question, for that has

[1] Hans. (1), XXXVII. 1107.
[2] May, 268.
[3] Hatsell, II. 187, note.
[4] Hatsell, II. 187.

already, in fact, been determined, but) in what manner the voices were given, when the question was first put.

SECTION III. OF TAKING THE SENSE OF THE HOUSE BY A DIVISION.

1798. The house may acquiesce in the opinion of the speaker, that the ayes have it, or the noes have it, in which case the question is said to be resolved in the affirmative or negative, as the case may be, according to the supposed majority on either side; but it is the right of any one member to dispute the fact, and to have a division of the house, provided he demands it within the proper time, that is, before any new motion is made, or other parliamentary proceeding commenced, or any member, not in the house when the question was put, has come in,[1] in either of which cases it is too late to have a division; and provided also that voices were given on both sides; for it is not competent for the party, with whom the speaker declares, to dispute his decision, and if there are no voices on the other side, there is, in fact, no other party to the question.[2]

1799. If any member, therefore, after the speaker has declared that, in his opinion, the ayes or the noes have it, as the case may be, stands up and declares that he doth believe that the ayes or the noes have it, contrary to the speaker's opinion, then the speaker is to give direction for the house to divide. This is the formal mode; but a division sometimes also takes place upon the irregular call of several members at once, that the ayes or the noes have it contrary to the speaker's decision.[3] When a division has been called for, it must go on, provided two members can be found for tellers on each side, unless all the members agree to waive it before any go forth.[4]

1800. When a division is demanded, all the members, who were in the house, when the question was put upon which the voices were given are not only permitted but compellable to vote, and, consequently, are not at liberty to withdraw from the house;[5] and, on the other hand, no members, who were not then in the house, can be permitted to vote, or to enter the house for that purpose.[6] As soon, therefore, as a division is ordered, the speaker immediately gives directions to the sergeant-at-arms, to clear the house of

[1] By Mr. Onslow, Hatsell, II. 194, note.
[2] Hans. (3), XVII. 194.
[3] May, 224.
[4] Hatsell, II. 194, note.
[5] Hatsell, II. 196, note; Same, 195.
[6] Hatsell, II. 177, note.

strangers, and to shut the doors.[1] It is the established practice, that strangers must be withdrawn before a division can take place, though the question may be put and the voices given, while they are present.

1801. The speaker then appoints two members, on each side, as tellers, to count the house;[2] but, if, on naming the tellers, it appears that there is but one member on one side of the question, and consequently, that two tellers cannot be appointed on that side, the division cannot go on, and the speaker declares on the other side.[3] If there are two tellers, the division must go on and be reported though on one side the return of the members should be none.[4]

1802. The tellers being appointed, the speaker directs the house to divide, which is effected in the manner described in the second part.[5]

1803. It is a part of the duty of the tellers to see that every member votes, in the division, who was in the house when the question was originally put, and to prevent any member from voting, who was not then in the house. If, therefore, they discover any members, in the places and passages, within the house, but not within the body of the house, who do not retire with the members, it is their duty to bring such members forward, and to compel them to vote. Such members if they were not in the body of the house, or in the gallery when the question was put, are entitled to have the question stated to them,[6] and are then inquired of by the speaker on which side they vote; whereupon they answer with the ayes or the noes, and are then directed to withdraw into the lobby appropriated to the side on which they vote. Members who are in the body of the house, or in the gallery, when the question is put, are not entitled to have it stated to them.[7] At the time, when the division was effected by one party's remaining in the house, and

[1] Hatsell, II. 200, note.

[2] Hatsell, II. 239; Scobell, 26, 27.

[3] Hatsell, II. 201. This principle, which may exist where the question is taken by tellers, cannot, of course, prevail, where the question is taken by yeas and nays. On two occasions, in the lower house of congress, it is recorded, that there was only one in the affirmative, (J. of H. VII. 89, 353); and in one of them, (J. of H. VII. 353), that the mover voted in the negative. On two occasions, in the same assembly, it is recorded, that the vote was unanimously in the negative, (J. of H. IX. 139; Same, 27th Cong. 1st Sess. 477;) among the nays, if they voted at all, the movers must have been included.

[4] Hatsell, II. 199, 200, 201. If all, that intend to go forth, go out before the speaker appoints tellers for that side, he must call for two of them to come back into the house to be tellers; and so also if the door be shut. The like for one teller, if only one teller has been before appointed. Hatsell, II. 200, note.

[5] See ante, § 390, 391.

[6] Hatsell, II. 187, note.

[7] Hatsell, II. 195, note.

the other going into the lobby, members who were in the body of the house, or in the gallery, when the question was put, and from inattention, or any other circumstance, neglected to go forth, until after the door was shut, had no option where they would be told; but were obliged to be told with the party who remained in the house, although they were thus made to vote contrary to their known and avowed inclination.[1] In regard to others, who were not in the body of the house, or in the gallery, but in some of the adjacent passages or rooms,[2] they were entitled to have the question stated to them, as above mentioned, and to go out or remain as they pleased.[3] Since the adoption of the new mode of dividing, all who come forward or are compelled to vote, after the members have withdrawn, must, of necessity, withdraw into which of the lobbies they please.

1804. It seems, that when the mere statement of the formal question would not be sufficient to inform the member of what the question in fact was, — as, for example, when it relates to some paper or document, — in such case, the member may also demand to have that paper read to him, before he can be compelled to vote upon it, if he has not already heard it read; or he may be inquired of by the speaker, whether he has heard that paper read; and if he answers that he has not, that then it must be read to him before he is asked how he votes on the question. Thus, where on the question that a petition be rejected, the tellers brought forward a member to vote, who, on having the question stated to him, said he voted for the rejection of the petition, and the speaker was thereupon requested to ask him whether he had heard the petition read, and the member objected, the speaker (Mr. Abbott) declared that it must be answered, and put it to him accordingly, the member answering that he had not heard it, it was read to him, and he persisted in his vote.[4]

1805. When both parties have returned into the house, and have been told, the tellers on either side come up to the table and report the numbers to the speaker, in the manner already stated[5] in a preceding part.

1806. It is the duty of the speaker to vote only when the numbers are equal; and he is not permitted to vote at any other time, except when the house is in committee of the whole; in which

[1] Hatsell, II. 195, note.
[2] As in the speaker's room, or Solomon's Porch, Hatsell, II. 196.
[3] Hatsell, II. 196.
[4] Hans. (1), XXXV. 316.
[5] See ante, § 392.

case, he votes with the other members, and the chairman gives the casting vote. In the performance of this duty, the speaker or chairman is at liberty to vote, like any other member, according to his conscience, and 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 at the same time, to explain his reasons, which are entered on the journals.[1]

1807. When a division takes place in the house,[2] and the tellers are counting the members, it is the duty of the latter to maintain perfect silence, in order that the tellers may not be interrupted; for, if there is any mistake made, or the tellers are not agreed, they must begin and tell again. For the same reason, no member should remove from his place, when they have begun telling; nor can any member be counted standing or sitting on the steps, or in the passage ways, or in the area in front of the chair, but only in his seat.[3] If, in announcing the numbers to the speaker, there should be any mistake, it may be corrected by the tellers, if they are agreed.

1808. If the tellers should be unable to agree upon the numbers;[4] or if any mistake should occur, which the tellers could not correct; or if any irregularity should be discovered, as, for example, that a stranger had divided and been counted with the members on one side;[5] there is no alternative but another division, if any member demands it.[6] If members vote, who are not entitled to do so, either because they are not in the house, when the question is put, or because they are personally concerned in the question, their votes may be disallowed afterwards, and the numbers corrected accordingly. If members, who are entitled to vote, are prevented from doing so, by the decision of the speaker, it is presumed that his decision in this respect may be revised, and the votes of such members allowed.

[1] May, 275. Mr. Speaker Seymour, giving his casting vote with the ayes on a question of adjournment, "jestingly said, he would have his reasons for his judgment recorded, namely, because he was very hungry." Grey, II. 177. The most remarkable occasion, perhaps, on which a speaker's casting voice was ever given, was when Mr. Speaker Abbott gave his vote for the impeachment of Lord Melville, on the 8th of April, 1805. The previous question having been moved, and the numbers on the division being equal, the speaker declared himself with the ayes, on the ground, that the original question was then fit to be submitted to the house. Comm. Jour. LX. 202.

[2] The mode of dividing, when the house is in a committee of the whole, has been already sufficiently described. (See ante, § 400.) It gives rise to no peculiar questions.

[3] Hatsell, II. 198.

[4] May, 275; Hatsell, II. 201.

[5] Parl. Deb. VI. 58.

[6] Parl. Deb. VI. 58.

1809. If any question arises, in point of order, during a division, and before the numbers are declared by the speaker,[1] the speaker must take upon himself to decide it "peremptorily;" for as it cannot be decided by the house, without having a division upon a division, there is no other practical way of settling the question, without great delay and inconvenience; and, in such a case, therefore, the determination of the speaker must be implicitly submitted to, until the division is over and the result declared. The decision may then be revised by the house, and, if irregular or partial, may be corrected either by altering the numbers, or by a new division. Thus, where a division had taken place, and the tellers had reported the numbers sixty-four to twelve, notice was then taken by a member, that a particular member was not in the house when the question was put; the speaker thereupon inquired of the member alluded to, "whether he was in the house and heard the question put?" The member answered that he was in the speaker's chamber; upon which the speaker said that his vote must be disallowed, and immediately reported the numbers sixty-four to eleven.[2] So, where a division having taken place, objection was made to the numbers reported by the tellers, on the ground, that certain members, who voted with the ayes, were personally interested; but it was decided that they were not so interested as to preclude them from voting for the repeal of a public act, and the question was thereupon declared to be resolved in the affirmative.[3]

1810. It is the duty of the speaker, also, to give all directions that may be necessary, for conducting the proceedings on a division, in a proper manner,[4] as well as to decide all points of order that may arise.[5] Thus, where, on occasion of a division, and whilst strangers were withdrawing from the gallery, several members came in from the rooms above stairs; and the irregularity being taken notice of by the tellers, and complaint made to the speaker; the speaker, though the division was actually made, and the members who were to go out were withdrawn into the lobby, ordered them all to come back into the house, and then stated, what he apprehended to be the rule of the house, namely, that such members as were not present in the house, and did not hear the

[1] Hans. Parl. Hist. III. 48, 49; Hans. (1), XXXV. 316.

[2] Hatsell, II. 187, note. So, when notice was taken, that a certain member, whose name was recorded in the affirmative, was not in the house when the question was taken, his name was thereupon erased by unanimous consent. Cong. Globe, IV. 217.

[3] Comm. Jour. LXIX. 455.

[4] See a most remarkable instance, Comm. Jour. XXXVII. 901.

[5] Hatsell, II. 195, note.

question put, had no right to vote; thereupon, after a conversation on the subject, the speaker stated the rule again, and all the members, who were under the predicament described, withdrew; and the division went on, without counting those members who had come down from above stairs.[1] So, where, after the house had been cleared, and the doors closed, three members forced the door and entered the house a second time, after having been directed to withdraw, the speaker gave peremptory orders to the sergeant-at-arms to exclude them from the house.[2]

1811. For the purpose of forming a determination upon questions arising in the course of a division,[3] in reference to which there cannot be any debate, the speaker or other presiding officer allows members to express their opinions sitting in their seats, with their hats on, to avoid even the appearance of debate; but this cannot be done without the speaker's leave, and must cease at his pleasure.[4]

1812. When, in the course of a division, a question arises as to the right or duty of a member to vote, depending on the fact of his being in the house or not, when the question was put, the practice is for the speaker to inquire of the member whether he was present in the house when the question was put? If he answers that he was, the speaker directs him to vote; if he answers that he was not, the speaker declares that he cannot vote; if the member answers specially as to the precise place where he was, when the question was put, the speaker decides that he has or has not a right to vote, according to the speaker's judgment as to whether the place specially designated by the member, is or is not within the house.[5]

1813. If, on a division, members should mistake the question, and divide on the wrong side; or, if the tellers, through mistake or design, should misrepresent the numbers; and the sense of the house is thereupon regularly declared; — it seems, as laid down by Lord Mansfield, that the matter cannot be put right, and the declared sense of the house set aside.[6] The house of commons, however, on a late occasion, allowed a mistake of tellers to be corrected the day after the vote was declared. "On the 19th of February, 1847, notice was taken that the number of the noes reported by the

[1] Hatsell, II. 195, note.

[2] Hans. (3), XLVII. 2, 3, 4.

[3] According to our practice, though the presiding officer will allow the pending question to be open for debate after a division has commenced, he will not allow any new motion to be made, or question to be raised, whilst it is going on.

[4] Hatsell, II. 199. See also ante, § 1809.

[5] Hatsell, II. 198, note, 199, note.

[6] Parl. Reg. II. 168, 169.

tellers on a previous day, did not correspond with the printed lists; and the tellers for the noes being present, stated that the number had been reported by them by mistake. The clerk was ordered to correct the number in the journal."[1] But, according to the practice of our legislative assemblies, a member may change his vote as many times as he pleases; and it is our constant practice to alter the decision of the assembly as recorded in the journal, to make it correspond with a previous correction of the votes.[2]

1814. It being necessary in order to a division, that the question should be first put and taken by the voices, — the object of the division being, as already stated, merely to ascertain who gave their voices, and how they gave them, — it sometimes happened, when a division was not expected, and the question was put and taken by the voices, before the house was cleared of strangers, and the doors closed, and then a division was called for, that many members in the rooms above and adjacent to the house were prevented from voting, because they were not present in the house when the question was put, although they might be present before the division actually commenced. This inconvenience did not occur, when it was known or expected that a division would be called for; for, in that case, the speaker directed the withdrawal of strangers before putting the question, and thus gave members time to come in and vote. In order to remedy the difficulty, which sometimes occurred when a division was not expected, Mr. Green, chairman of committees of the whole in the year 1843, gave notice, that, unless he should be otherwise directed by the house, it was his intention, after he had put the question in the first instance, to put it again as soon as the gallery was cleared; and to allow members, who might then be present, to take part in the division.[3] This suggestion seems to have been acted upon, and the practice to have become established accordingly. When, therefore, a division is not expected, and the speaker or chairman puts the question, before directing the house to be cleared and the doors closed; and upon the voices being given, and the result declared by the speaker, a division is then called for, the speaker thereupon directs the house to be cleared, and puts the question a second time after the doors are closed; and thus, members coming in between the first and second putting of the question, are enabled to vote.

1815. Another practice has also been recently introduced into the

[1] Comm. Jour. CII. 134.
[2] Post, § 1549 n.
[3] Hans. (3), LXVI. 420.

house of commons, which, in connection with that already adverted to, very much facilitates the assembling of the members in the house, for the purpose of a division, namely, the ringing of a bell when a division is about to ensue. When it is known, therefore, beforehand, that a division will be called for, the speaker, as soon as the debate is closed, and, in other cases, as soon as a division is called for, gives the order that "strangers must withdraw," and, at the same instant, the door-keepers shout, "clear the gallery," and ring a bell, which communicates with every part of the building. This "division bell," as it is called, is heard in the lobbies, 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 in excluding strangers, have time to reach their places.[1]

1816. "It is a very unparliamentary proceeding," says Mr. Hatsell, "to divide the house for the sake of a division only; whereas the old rule, and practice too, were, that the house should be divided only when the speaker's determination upon the voices was wrong, or doubtful, and thought to be so, by the member calling for the division, as the words then used imply; for, when the speaker has declared for the ayes or the noes, upon the cry, the member who would have the division, says, "the contrary voice has the question."[2]

SECTION IV. OF THE DIFFERENCES BETWEEN THE TWO HOUSES IN THE MODE OF TAKING THE QUESTION.

1817. It remains now to take notice of some differences which exist between the two houses, in the mode of taking the question by the voices, and upon a division; there being no essential difference between the two, where the matter is determined by consent. The question is taken, in the first instance, and the house divided, in the house of lords, in the manner already stated.[3]

1818. One of the most important differences between the two houses, giving rise to a corresponding difference between them, in the mode of proceeding in taking a question, is the right of peers to appoint other peers to vote for them in their absence; which is

[1] May, 268.

[2] Hatsell, II. 199, note, as to whether a mistake of the presiding officer, in declaring the result of a vote, can be corrected. See Parl. Reg. (1), II. 160 to 169.

[3] See ante, § 401.

called making or giving their proxies. In order, however, to entitle a peer to exercise this right, he must obtain the king's leave to be absent from his place in parliament. The standing orders of the house in reference to proxies provide, that no lord shall be capable of receiving above two; that proxies from a spiritual lord shall be made to a spiritual lord, and from a temporal lord to a temporal lord; that if a peer, having given his proxy, sits again in the house, his proxy shall be thereby determined; that proxies may be used in preliminaries to private causes, but not in giving judgment; that no proxy shall be made use of in any judicial cause, although the proceedings are by way of bill; that a lord, having a proxy and voting, shall give a vote for the proxy, in case proxies are called for. Proxies are to be entered with the clerk, but not on the same day on which the peers giving them have been present in the house; if entered after three o'clock, they cannot be used the same day; and they cannot be used at all when the house is in a committee of the whole.[1]

1819. "The most usual practice," says Mr. May, "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."[2] 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 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.[3]

1820. Another point of difference, which requires to be adverted to, between the two houses, in respect to their proceedings in the taking of a question, results from the right of peers to protest against any vote from which they dissent. In addition to the power of expressing his opinion by his vote, every peer is at liberty to record his dissent, with the reasons or grounds of it, in the form of what is called a "protest," entered on the journals and signed by him. Every one who dissents, is, of course, free to express his

[1] May, 278, 279.
[2] Hans. (3), X. 1044.
[3] May, 279.

dissent in his own way; but it is customary, where several lords concur in the same opinions, for all of them to sign the same protest. Any peer may, however, sign a protest, with others, for some of the reasons given, specifying which; or, for certain of the reasons given, and for others peculiar to himself which he particularly sets forth. According to the standing order of the house, all peers, who shall make protestation or enter their dissents to any votes, are required to "cause their protestation or dissents to be entered into the clerk's book, the next sitting day, 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." If a protest, or any part of it, or any of the reasons, are disrespectful to the house, or, in any respects improper to remain upon the journal, they may be ordered to be expunged.[1]

SECTION V. OF SOME USAGES AND METHODS IN THE TAKING OF QUESTIONS, WHICH ARE PECULIAR TO THIS COUNTRY.

1821. Instead of taking the question, in the first instance, by the voices, as ascertained in a preceding section, a method, very commonly practised in this country, particularly in the Eastern States, is that already described in a former part,[2] by the show of hands, in which the speaker decides by the eye, which party makes the greater show, and, according to the result, declares that it is or is not a vote, so that the ayes or noes have it. There is no parliamentary difference between this and the former mode; they may be both employed indifferently.

1822. If the speaker's decision is doubted or questioned, then he is to ascertain, in such manner as he may think proper, or as may be provided by the rules and orders, the members voting on each side respectively, and announce the result.

1823. The method of taking the question by yeas and nays in the manner already described,[3] does not make one step of a series, but is a substantive motion, which is not resorted to as a matter of course, but may be moved for as a substitute for any or all the others.

1824. In taking a question in this manner, the clerk calls over the names of the members, as they stand arranged on the roll of the

[1] Lords' Jour. XLII. 82; May, 280. Protests are in partial use with us. See ante, § 410.

[2] Ante, § 403.

[3] See ante, § 407.

house, and notes the answer of each; he then calls over the names of those who have voted, first those in the affirmative, and then those in the negative, in order that members may see that their votes are correctly recorded; he then calls the names of the absentees, and of such members present, as may have their names suggested, or may themselves suggest their own names, to him, for that purpose, and having completed the call he proceeds to ascertain the numbers, and hands them to the speaker, who thereupon gives his casting, or other vote, if he votes at all, and announces the decision of the house.

1825. The point of time, to which the right of voting is referred, as above stated, according to the common parliamentary law, is the being in the house at the time the question is put, and this is the point of time, unless otherwise regulated in each assembly by a special rule. In the house of representatives of the United States, the general rule requires members to be present within the bar of the house when the question is put; but when the yeas and nays are taken, and any member asks leave to vote, the speaker is directed to inquire of him whether he was within the bar when his name was called. Until the calling of the roll is completed, and the decision of the house announced, members have a right to be called again and change their votes, and during this period of time, also, absent members, if allowed, as they may be, if no one objects, come in and vote with the others. If they do not apply until afterwards, they can only be permitted to record their votes by leave of the house, on motion and vote, in the ordinary manner. The same rule applies to other votes, which by the orders of the house are not receivable. Votes, accidentally omitted, may be entered at any time.

CHAPTER THIRD.

OF THE QUESTION THUS TAKEN.

1826. Every question, which is propounded to a legislative assembly, for its determination, and voted upon in any of the manners above described, receives its decision according to the preponderance of the votes, which, unless some other rule is expressly

prescribed, as there usually is in each assembly, in reference to particular questions, is ordinarily effected by a majority. In those cases where the rules or customs of any assembly allow a vote to remain on an equal division, the decision, as neither side preponderates, is necessarily in the negative. In many cases, it is provided, either by a constitutional requisition, or by rule, that particular questions, in order to prevail, shall require more, or admit of less, than the ordinary majority in their favor.

1827. Where more than the ordinary majority is required, as it is, for example, under most of our constitutions, to take the initiatory steps, by passing resolutions for that purpose, for their amendment, and for the passing of certain classes of bills; all questions for amending such resolutions and bills, except amendments from the other branch, and all incidental or preliminary questions thereon, short of the final question, are determinable by the ordinary majority.[1] The same is the case where it is required by rule, that certain classes of questions shall not be adopted, unless a proportion greater than a majority is in their favor. All amendments of such questions require only a major vote.[2]

1828. According to the practice in our legislative assemblies, therein agreeing with the ancient rule and practice of the house of commons,[3] a member may change his vote, after he has once given it, provided he does so, by communicating the change to the tellers, if the vote is taken in that manner, before they announce the result,[4] or, if taken by yeas and nays, have his name called again before the decision of the assembly is announced, though the numbers may be declared.[5] The same principle seems applicable to oral suffrage and all other forms of voting,[6] except by ballot.

1829. When the numbers on the one side and on the other of the question, are thus ascertained, and the speaker's casting vote given, if necessary,[7] the decision of the assembly is thereupon announced accordingly, by the presiding officer, either in the affirmative or negative as the case may be, of the words of the motion. The decision, thus pronounced, is the judgment of the house, not only upon the proposition itself, but upon its equivalent.[8]

[1] J. of S. III. 314; Lloyd's Deb. II. 179; J. of H. V. 160, 294; Same, VII. 531.

[2] Cong. Globe, XVIII. 639; Same, VII. 131; Same, XIII. 503.

[3] May, 225; Comm. Jour. I. 303.

[4] Cong. Globe, XXI. 186.

[5] J. of H. VII. 342; Same, 20th Cong. 2d Sess. 357; Same, 29th Cong. 2d Sess. 494; Same, 31st Cong. 1st Sess. 1266; Cong. Globe, VIII. 494, 531; Same, XI. 667; Same, XIII. 320; Same, XV. 529; Same, XVII. 572.

[6] Cong. Globe, XXI. 186.

[7] J. of H. 20th Cong. 2d Sess. 357.

[8] Cong. Globe, XI. 782.

1830. Questions are said to be equivalent, when the negative of the one amounts to the affirmative of the other, and leaves no alternative.[1] Thus, in amendments, which furnish the most frequent examples of equivalent questions, the negative of striking out certain words amounts to the affirmative of agreeing to the same words.[2] So, on a motion to agree or disagree with the other branch in its amendments of a bill, a vote in the affirmative, on either of these motions, inasmuch, as on either the amendments in question may be amended, is exactly the equivalent of a negative of the other, and no alternative remains.[3] So, on a motion to recede from a disagreement with an amendment of the other branch, it has been held, in congress, that a vote in the affirmative is equivalent to an agreement to the amendment;[4] and that a vote in the negative of the same question is equivalent to a vote to insist on the disagreement.[5] So, if a motion is made to disagree to or reject an amendment reported by a committee of the whole house, and this motion passes in the negative, the decision is equivalent to an agreement to the amendment.[6] So, where an amendment of the other branch was referred to a committee of the whole house, who reported their disagreement thereto, and on the question to concur in this report it was decided in the negative, the non-concurrence was held to be equivalent to a vote to agree to the amendment.[7]

1831. So, if the question, on passing a bill to its next regular stage, is decided in the negative, such vote is equivalent to a rejection, and may be so entered by the clerk;[8] the same effect is produced, when the enacting clause,[9] or the whole bill,[10] is struck out; and, on the other hand, if, on a question of rejection a bill is retained, this vote may be considered as equivalent to a vote passing a bill to its next stage.[11]

1832. In whatever way, and at whatever time, whether by allowance or disallowance of votes as stated in the next chapter, or in some other manner, the apparent numbers of the members, voting on a division, are changed, thereby changing the result of the vote, not only are the changes of the individual votes to be noted on the

[1] Jefferson's Manual, Sec. XXXVIII.
[2] Jefferson's Manual, Sec. XXXVIII.
[3] Jefferson's Manual, Sec. XXXVIII.
[4] Reg. of Deb. III. Part 2, 2647. This point has been otherwise decided. J. of H. 20th Cong. 1st Sess. 695; Same, 27th Cong. 1st Sess. 444, 445.
[5] Cong. Globe, X. 407.
[6] J. of H. 21st Cong. 1st Sess. 292, 610.
[7] J. of H. 17th Cong. 2d Sess. 391.
[8] See the Journals of the H. of R. generally.
[9] J. of H. 21st Cong. 1st Sess. 493.
[10] J. of H. VIII. 236, 540.
[11] Jefferson's Manual, Sec. XXXVIII.

journal, but a change of the decision takes place, as of the day on which the voting occurred, and with the same effect as if it had been correctly announced on that day.[1] All subsequent proceedings in reference to the vote in question, and predicated upon the idea that it was correctly declared, are, of course, wholly null and ineffectual.[2]

CHAPTER FOURTH.

OF THE DISALLOWANCE OR ADDITION OF VOTES.

1833. It has been seen, that, whilst a division is taking place, it is within the functions of the speaker to compel a member to vote, or to prevent him from voting, without debate or delay; his determination, in this respect, being subject to the future revision of the house. So, when a member has actually voted, if exception is taken to his vote at any time before the members on the division have been declared by the speaker, although reported by the tellers to him, the case is in like manner within the speaker's summary jurisdiction, as to all matters and questions arising in the course of a division. When, however, the speaker has declared the respective numbers, which are the result of any division, the question is thereby resolved according to such declaration; and the numbers can only be altered by the house, upon motion and vote, in the ordinary manner of proceeding, resolving that certain votes be allowed or disallowed. Cases are frequent, in which votes received have been disallowed; very rare, in which votes refused have been allowed.

[1] J. of H. 20th Cong. 2d Sess. 357; Same, 26th Cong. 2d Sess. 32; Same, 27th Cong. 1st Sess. 447; Same, 30th Cong. 1st Sess. 1079, 1080, 1081; Same, 175, 176; Same, 31st Cong. 1st Sess. 1436; Same, 2d Sess. 171; Reg. of Deb. XI. Part 2, 1521, 1522, 1523; Cong. Globe, IX. 17; Same, XI. 925, 926; Same, XXII. 350; Same, XIII. 315; Same, XV. 856; Same, XXI. 1786.

[2] J. of H. 30th Cong. 1st Sess. 1079, 1080, 1081; Reg. of Deb. XI. Part 2, 1521, 1522, 1523; Cong. Globe, XXI. 1786.

SECTION I. OF THE ALLOWANCE OF VOTES REFUSED.

1834. There seems no good reason, why votes, improperly refused, should not be afterwards allowed on motion, as well as that votes improperly received should be disallowed. One case only, however, has been noticed, in which a proceeding analogous to the allowance of votes improperly refused took place. January 10th, 1647, a division having taken place, and the tellers being unable to agree upon the numbers, the house divided again, and all who were not present at the first telling were required to withdraw. The tellers reported the numbers to be thirty-three on each side; one member, who was present and told on the first division, but did not come in upon the second telling, until the numbers were given in and reported by the speaker, was desired to be counted; a debate arose, whether he should or not, as he did not come in until after the report was made; and the house divided again on this question; but, before it was told, the noes yielded, and that member being added to the yeas, made their number thirty-four.[1]

1835. In the following case, it seems to be doubtful whether the proceeding was intended for the purpose of compelling members to vote, or of allowing votes not given to be counted if necessary for the decision of the question: — On the 28th of May, 1623, it is entered in the journal of the commons, that the bill for York house being thirdly read, "after a very long debate, the question being put, and the voice doubtful, the house divided," and tellers were appointed. "Seven being returned into the committee chamber, and refusing to give voice one way or the other, were sent for, and their names taken, and the resolution stayed till those which had gone out, returned. With the noes 143, with the yeas, 168, 25 difference."[2]

SECTION II. OF THE DISALLOWANCE OF VOTES RECEIVED.

1836. The disallowance of votes usually takes place, when, after the declaration of the numbers by the speaker, it is discovered that certain members who voted were not present when the question was put, or were so interested in the question, that they ought to have withdrawn from the house.

[1] Hans. Parl. Hist. III. 48, 49.

[2] Comm. Jour. I. 714.

1837. I. It has already been seen, that when it is ascertained that members have improperly voted, on a division, who were not in the house when the question was put, if this takes place, before the numbers are declared by the speaker, such votes are disallowed by him at once, and not included in the numbers declared. If the fact is not ascertained until after the numbers are declared, it is then necessary, that there should be a motion and vote of the house for their disallowance; and this may take place, for any thing that appears to the contrary, at any time during the session, and has in fact taken place after the lapse of several days from the time the votes were given.[1]

1838. II. Votes have also been disallowed, after the numbers have been declared, on the ground, that the members voting were interested in the question; and, in reference to this proceeding, there is no time limited within which it must take place.

1839. There seems to be very little doubt or difficulty, commonly, in determining what interest disqualifies a member from voting, or would give rise to the disallowing of votes if given. The case of members voting on questions concerning their own pay is an exception from which no principle can properly be derived. It has invariably been decided, of course, that this was not such an interest as would disqualify; either because it was a case of necessity, or because all the members were equally concerned in interest.[2] Five leading cases have occurred in the British parliament at different periods, which embody the law on this subject, and deserve to be mentioned accordingly.

1840. The first of these cases occurred on the 12th of June, 1604, and is thus recorded: — A bill for the establishment of divers manors and lands of Edward, late duke of Somerset, being offered to the question of commitment by Mr. Speaker: "Moved, that Mr. Seymour, a member of the house, and a party, might go forth, during the debate: which was conceived to be agreeable with former order and precedent in like cases, and was so ordered." "And Mr. Seymour went presently forth at the door."[3]

1841. The second of these cases, which occurred on the 4th of February, 1664, is thus recorded: — A bill for settling the differences between Great and Little Yarmouth, being reported by the committee with amendments which were read and agreed to, the question being put, that the bill with the amendments, be en-

[1] May, 267, 268.
[2] Cong. Globe, IX. 208.
[3] Comm. Jour. I. 237.

grossed, the house was divided, and the yeas went out. The yeas were eighty-one in number, and the noes eighty. "But Sir Robert Paston, a member of the house appearing to be somewhat concerned in point of interest; and having presented a bill with his petition thereto annexed, and being numbered with the yeas, and the question thereupon arising, whether, by the orders of the house he should not have withdrawn; and Sir Robert to avoid engaging the house in a debate, freely offered to withdraw; and that no advantage should be had by his being told with the yeas; and the voices being then equal, Mr. Speaker declared himself to be with the yeas: and so it was resolved in the affirmative, that the said bill be engrossed." [1]

1842. The house of commons having determined in December, 1796, that towards raising the supply granted for the current year, the sum of eighteen millions of pounds should be raised by annuities, passed an act for that purpose, by which it was provided that any contributor to the said sum should be entitled, for every one hundred pounds contributed and paid, to the principal sum of one hundred and twelve pounds and ten shillings in annuities, at the rate of 5 per cent. a year, irredeemable unless with the consent of the proprietors thereof, until the expiration of three years from the period at which the existing annuities, at the rate of 5 per cent. should be redeemed and paid off, or the interest payable thereon reduced.[2] The subscribers to the loan, having very soon discovered that they were liable to incur a considerable loss from the subsequent depression of the funds, the minister moved, on the 30th of May following, that they should be allowed a further sum of five pounds in every hundred, which would amount in the whole to an annuity of sixty or seventy thousand pounds.[3] The speaker, being appealed to, said, that in his opinion, the subscribers to the loan had a direct pecuniary interest in the measure in question, which would disqualify them from voting thereon, unless they declared their intention not to profit by the bonus proposed to be given to them. The resolution was opposed, on the ground, that the loan was a speculation, on which the subscribers entered with the usual expectation of gain or loss, as on any other speculation, and was carried in the affirmative by thirty-six to thirty-five votes. Motions were thereupon made that the votes of two of the members whose names appeared on the list of subscribers, and who had voted for

[1] Comm. Jour. VIII. 594.
[2] Comm. Jour. LII. 181.
[3] Ann. Reg. Part XXXIX. 143.

the resolution should be disallowed. The members in question were thereupon heard in their defence, and both having formally disclaimed all intention of profiting by the measure, which the speaker was of opinion was sufficient to qualify them as voters, whether their determination was expressed before or after the division, the motions to disallow their votes were decided in the negative.[1] This is known as the case of the subscribers to the loyalty loan.

1843. The fourth of these cases, which occurred on the 4th of July, 1800, arose out of a bill to incorporate "The London Company for the manufacture of flour, meal, and bread." That bill being in its third reading, and variously amended, a further amendment was proposed to be made to the bill by leaving out the word "ten," in order to insert the word "five" instead thereof, in that part of the bill which declares that no dividend of the profits of the said undertaking shall exceed in the whole ten pounds per centum per annum on the amount of the sum subscribed, and the question being put, that the word ten stand part of the bill, the house divided, and it was resolved in the affirmative, forty-seven yeas to sixteen noes. Notice being then taken that a member who voted in the last question with the yeas, was named in the bill as one of the persons who had agreed to become a subscriber to the said undertaking, and a motion being made, and the question proposed, that the vote of such member be disallowed, he was heard in his place, and stated that he had paid no money towards this plan, but that he intended to subscribe to it, conceiving it would be for the public benefit, and then withdrawing, it was resolved that his vote be disallowed. Similar proceedings took place in regard to four other members, who all agreed that the house having come to the resolution above mentioned, they would make no objection to the disallowance of their votes, and their votes were disallowed accordingly.[2]

1844. The last of the cases alluded to above was that of the gold coin bill, pending in parliament in 1811, and which was as follows. An act passed in the lords, "for making more effectual provision for preventing the current gold coin of the realm, from being paid or accepted for a greater value than the current value of such coin; for preventing any note or notes of the governor and company of the Bank of England from being received for any

[1] Comm. Jour. LII. 632; Parl. Reg. XLVII. 684, 687.

[2] Comm. Jour. LV. 732.

smaller sum, than the sum therein specified; and for staying proceedings upon any distress by tender of such note." This bill, which was introduced to remedy some of the evils growing out of a suspension of specie payments and a depreciation of paper-money, was sent to the commons for concurrence, and was there read a first and second time. A motion was thereupon made reciting that it appears to the house that in consequence of an act for protecting the Bank of England from payment of its lawful creditors in specie, the profits of that corporation have increased to an enormous degree; that besides increasing their dividend upon their capital stock from seven to ten per cent., they have at different times divided amongst themselves upwards of six millions of money; and that in addition to such profit, the price of their stock has by the advantages of increased issues of paper and non-payment of creditors been increased from one hundred and eighteen pounds a hundred, to two hundred and thirty-six; that under such circumstances, a bill is now pending in this house, giving a fixed legal value in the coin of these realms to the paper to be issued by the Bank of England, however indefinite such issues may be, and protected as the bank is from payment of its creditors in specie, by means whereof the issues and the profits of the bank may still be further and greatly increased; that various members of this house, are members likewise of the corporation of the Bank of England, and proprietors of bank-stock; and that it is the opinion of this house, that such members have a direct interest in passing this bill into a law, and that their votes in favor of the same ought to be disallowed. This motion was decided in the negative.[1] The speaker (Mr. Addington) in giving his opinion, said: "The rule was very plain. If they opened their journals, they would find it established two hundred years ago, and then spoken of as an ancient practice, that a personal interest in a question disqualified a member from voting. But this interest, it should be further understood, must be a direct pecuniary interest, separately belonging to the persons whose votes were questioned, not in common with the rest of his majesty's subjects or on a matter of state policy. So it was, that on the canal bill, a person whose name is down as a subscriber could not vote."[2]

1845. Another case, which may be mentioned under this head, occurred in the house of representatives of Massachusetts, on the 19th of February, 1840, while Mr. Speaker Winthrop presided in

[1] Comm. Jour. LXXVI. 463. [2] Hans. (1), XX. 1011.

that house. A bill to increase the capital stock of the Boston and Sandwich Glass Company being under consideration, it was moved to amend the same by making the stockholders for the time being liable in their private capacity for the debts of the corporation, and this amendment having been rejected, a motion was made to disallow the votes of three members who were stockholders in the corporation, and voted against the amendment. Mr. Speaker Winthrop, adverting to two previous decisions of his own, first, that bank directors who were members might be on the committee on the memorial of the banks on the subject of the suspension of specie payments; and second, that members who were stockholders in the Western Railroad Corporation could not be excluded from voting in favor of the bill for granting the credit of the State in aid of the enterprise in which that corporation was engaged, decided in an elaborate opinion, which was sustained by the house on appeal that the votes of such stockholders could not be excluded.

1846. It seems from the foregoing and other cases, first, that when a question is pending, the right or duty of a member to vote on that question may be brought forward by himself or any other member and settled by the house before that question is taken; secondly, that if any question of this kind is made after the division has commenced and before the decision of the house is announced, the speaker is to decide it peremptorily as a question of order, subject to the future revision of the house; third, that parties named in the bill, either individually or collectively, are excluded from voting thereon, whatever their interest may be; fourth, that members who are not named as parties must be shown to have a direct pecuniary interest in a bill, in order to preclude them from voting upon it; fifth, that if this interest is one which can be disclaimed, it is sufficient to do so either before or after a division, in order to justify voting on the question; and sixth, that the interest of a member, which will exclude him from voting, must be separate and distinct, and not merely enjoyed by him in common with his fellow-citizens.

1847. Since the foregoing decisions in the house of commons have been pronounced, others have taken place in that body, which confirm the principles stated in the preceding paragraphs.[1] Decisions have also occurred there, that it is not sufficient to disqualify a member from voting against a bill, that he has a direct pecuniary

[1] May, 281, 282, 283, 284.

interest in a rival undertaking.[1] In two of these cases, the member, whose vote was in question, was a proprietor in a similar company already established.[2] In another case, which was the second reading of a bill for the incorporation of a railway company, an objection was taken to one of the tellers for the noes, as being a landholder upon the line, whose property would be injured; but a motion for disallowing his vote was withdrawn.[3]

1848. When any question is made, as to the disallowance of a vote, the member himself is inquired of as to the fact alleged as the ground of the disallowance; and, after the motion has been made, and before it is proposed, he should be heard in his place, and then withdraw.

1849. If, in consequence of the allowance or disallowance of votes, the majority is thereby changed, and the decision of the house is reversed, all the subsequent proceedings become null and void.[4]

[1] Comm. Jour. LXXX. 110; Same, CI. 808; Same, C. 486.
[2] Comm. Jour. LXXX. 110; Same, CI. 808.
[3] Comm. Jour. C. 486.
[4] Ante, § 1832.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART SEVENTH.

OF COMMITTEES AND THEIR FUNCTIONS.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART SEVENTH.

OF COMMITTEES AND THEIR FUNCTIONS.

1850. COMMITTEES form a most important, and, in modern times, an indispensable, part of the machinery of parliamentary procedure. They are of three kinds, namely, select committees, consisting of a small number of members specially named, committees of the whole, consisting of all the members of the house, and joint committees which are composed of members of each house sitting and acting together.

1851. Select committees are appointed for a great variety of purposes, which it would be impossible to enumerate in detail; but, which may be all embraced under the three general heads of obtaining information for the use of the house, as to matters-of-fact; of performing acts required by the house to be done; and of forming and expressing opinions on matters referred to their consideration. In other words, the functions of select committees, — as of the house itself, — are to inquire, to think, and to act.[1] By means of committees of this description, a legislative body consisting of many members is enabled to do many things, which, from its numbers, it would otherwise be unable to do; to accomplish a much

[1] Committees are sometimes said to be the *eyes and ears* of the house: for certain purposes, also, they are its *head and hands.*

greater quantity of business, by distributing it among the members, than could possibly be effected, if the whole body were obliged to devote itself to each particular subject; and to proceed, in the preliminary stages of a measure, with that degree of freedom, which is essential to its being properly matured.

1852. Committees of the whole house, being composed of all the members, possess none of the advantages which result from the employment of a small number of persons, selected with express reference to the particular purpose in view; and, at the present day, the principal advantage, which appears to result from the consideration of a subject in a committee of the whole house, rather than in the house itself, consists in the liberty which every member enjoys in such a committee of speaking more than once to the same question.

1853. Select committees, and committees of the whole, though in many respects governed by the same rules of proceeding, yet differ from one another in so many essential particulars, that it will be necessary to consider them separately. Joint committees, though presenting very little that is peculiar, will constitute the matter of a distinct division of this part.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART SEVENTH.

OF COMMITTEES AND THEIR FUNCTIONS.

FIRST DIVISION.

SELECT COMMITTEES.

1854. The subject of this division is considered in the eight following chapters: — I. Of the different kinds of select committees; II. Of their appointment; III. Of their power and authority; IV. Of their forms of proceeding; V. Of instructions to committees; VI. Of the intermediate proceedings in the house between the appointment of the committee, and previous to its report; VII. Of the report; VIII. Of making the report and of proceedings thereon.

CHAPTER FIRST.

OF THE DIFFERENT KINDS OF SELECT COMMITTEES.

1855. All committees, which are composed of a certain number of members, specially named, or of certain classes of members, as, all the lawyers, or the members for certain counties, the individual not being specially named, are select committees, as distinguished from those which consist of the whole house. They are, however, known by different appellations, having reference either to the subjects committed to them, or to the peculiar powers with which they are invested, or to the constitution of the committee.

1856. I. A committee, which is appointed beforehand, for the consideration of all subjects of a particular class, arising in the course of the session, is denominated a standing committee. The committee of privileges, and that on printing, in the house of commons, are standing committees. By the system of rules and orders which prevail in our legislative assemblies, it is usually provided that each one shall be assisted in its business, by one or more standing committees, corresponding in number to the size and importance of each assembly. They vary greatly, of course, in different legislative bodies. In the house of representatives in congress, the rules and orders provide for the appointment of twenty-eight standing committees at the commencement of each session, and of six others at the commencement of the first session, to continue during the whole of the ensuing congress.

1857. II. The term, select committee, is usually applied to designate a committee appointed to consider a particular subject, on the occurrence of the occasion for its appointment, as where a committee is appointed to consider a petition or memorial, or to make inquiries into a particular subject. Select committees are sometimes turned into standing committees by subsequent references to them, relating to the same subject.

1858. III. When a select committee is appointed of certain members specially named, with authority to any others, who think proper, to participate in the business, — as where certain members are named, and it is then added, that all who come are to have voices, — the committee is called an open committee. A committee of this description might, therefore, if the whole house should

see fit to attend, be equivalent to a committee of the whole, as to the number of its members. But it would differ from a committee of the whole in this respect, that, in order to enable the committee to proceed, it would be necessary that all the members specially named, or as many of them as were fixed for the quorum of the committee, should attend. This form of appointment, formerly in very general use, has been resorted to but seldom, of late years, on account of the great inconveniences to which the irregular attendance of members on committees so constituted[1] gave rise.

1859. IV. A secret committee, or, as it is generally called, a committee of secrecy, is a select committee, which, by the express direction of the house, conducts all its proceedings in secret.

1860. V. Besides the above, which are the more general appellations given to committees, the term *previous* is sometimes applied to a committee, in order to distinguish it from the committee to which a bill is referred in the regular course of proceeding;[2] the phrase, *above stairs*, is used to denote a select committee as distinguished from a committee of the whole;[3] and a committee to investigate any subject, and report the facts to the house, especially if the subject relates to the conduct of any person in a public office, is usually called a committee of inquiry.[4] It is usual, also, to designate select committees by names derived from the subjects referred to them; as, for example, the select committee on shipwrecks,[5] or on the working of the poor-law system in Ireland.[6]

CHAPTER SECOND.

APPOINTMENT OF SELECT COMMITTEES.

1861. In order to the appointment of a select committee, it is necessary, in the first place, that the house should resolve, on motion, that a select committee be appointed for the purpose in view.

[1] Parl. Reg. XXVII. 13, 14; Same, XLI. 384.
[2] Parl. Reg. XVIII. 167, 169, 171.
[3] Hans. (1), XXVIII. 485; Parl. Reg. XXVII. 12.
[4] Hats. III. 36, note; Hans. (3), XXX. 795, 796, 799, 1452; Same, (1), XXIX. 637.
[5] Hans. (3), LXVII. 117.
[6] Hans. (3), LXXIV. 1188, 1200; May 14, 1844.

Having come to this resolution, the next thing in order is to fix upon the number of which the committee shall consist;[1] then, the mode in which the committee shall be appointed; and, lastly, the time of its appointment. These particulars may all be embraced in the motion for the committee; but it is a more orderly proceeding to move them separately; or, at all events, to move for the committee in a distinct motion, for if this fails, the others are of course unnecessary; and, they may be all moved immediately in their order, and the committee appointed, unless there is some order, resolution, or vote, with which such a proceeding would be inconsistent. How far any such restrictions exist will be presently seen. The motion for the committee, being debated and decided like any other motion, requires no further notice; the points proper to be considered are, *first*, as to who may be of a committee; *second*, as to the number of which a committee is to consist; *third*, as to the time; and, *fourth*, as to the manner of the appointment of a committee. Where the rules and orders of any particular assembly provide for the appointment of standing committees, such appointments ought regularly to be preceded by a resolution to that effect.

SECTION I. AS TO WHO MAY BE OF A COMMITTEE.

1862. It appears to have been an ancient rule of the house of commons, that no member who spoke against the body or substance of any bill, or other thing proposed in the house, should be of a committee for that business;[2] but this rule, so far as it relates to the appointment of committees by name, must necessarily have been subordinate to the convenience of the house; and, in fact, it appears to have been disregarded, whenever the convenience of the house required the appointment of members so situated.[3] The rule seems also quite as much intended to operate upon the members themselves, and to restrain them from taking a part in the business of committees to which they are opposed, under the general provision, that all who come to the committee have voices; though they might, without impropriety, be present at the committee.[4]

1863. It is an established rule of parliamentary law, that every member who is returned of record, is immediately eligible to ap-

[1] Hans. (1), XXVI. 404.
[2] Comm. Jour. II. 14.
[3] Comm. Jour. II. 14.
[4] Grey, VI. 373.

pointment on a committee, even before he has been qualified by taking the oaths at the clerk's table; that, whilst he continues a member, in fact, his eligibility remains, notwithstanding he may have declared his intention to secede from the house, or may be opposed to the matter referred to the committee; and that he cannot discharge himself from his obligation as a member to obey the commands of the house, by declining or refusing to serve on the committee, or be discharged from the committee in any other manner than by a vote of the house for that purpose. When members of a committee die or resign, or otherwise cease to be members of the house, or they have a right to decline serving, or are excused by the house, at their own request or otherwise from serving on the committee, their places on the same are to be filled up, on motion and resolution for the purpose, in the same manner that the committee was originally appointed.

1864. Members who are personally interested in the matter referred to the consideration of a committee, ought not, of course, to be appointed. If appointed, they should take no part in the proceedings; and should, as soon as possible, be discharged from further attendance, and others substituted in their places.

SECTION II. AS TO THE NUMBER OF MEMBERS.

1865. The number, of which a select committee of the house of commons ought regularly to consist, in the earlier periods of parliamentary history, does not appear to have been fixed by any general rule. As many members were named as the house thought proper; and this appears to have been the only limit. It is said by Rushworth, that the grand committee for privileges and elections "had wont to consist of forty members;" but that, on the occasion of which he was then writing, the clerk, Mr. Elsing, having inadvertently taken down forty-seven names, the house refused to reduce the committee to forty, and allowed the whole to stand. In the statement of forty as the usual number of which the committee of privileges and elections had been wont to consist, the learned collector appears to have been mistaken; for, in several of the parliaments of James I. and Charles I., the committees of privileges consisted of more than double that number. In later times, it is said that the number of members for a select committee was fixed at twenty-one. If so, it was a rule frequently departed from; for

the journals contain abundant examples of committees composed of a larger, and often of a smaller, number of members.

1866. It is now settled in the house of commons, by a rule recently adopted, "that no select committees shall, without previous leave obtained of the house, consist of more than fifteen members; that such leave shall not be moved for without notice; and that in the case of members proposed to be added or substituted, after the first appointment of the committee, the notice shall include the names of the members proposed to be added or substituted." [1]

1867. Previous to the adoption of this rule, members might be added at any time to a select committee, unless the number of which it was to consist had been previously fixed by a resolution of the house; in which case, the number could not be increased, though vacancies occurring in the committee might be filled, and new members might be substituted in the place of others discharged from further attendance.[2] The number of every committee is now fixed either expressly by the resolution of the house, or tacitly by the rule. In our legislative assemblies, it is usual to provide beforehand, by a special rule, unless otherwise directed in a particular case, of what number such committees shall consist. If the number is not thus regulated beforehand, it is to be fixed by the house itself, on motion and vote, immediately after the resolution for the appointment of the committee.[3]

SECTION III. AS TO THE TIME OF APPOINTMENT.

1868. A rule, recently adopted in the house of commons, provides "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." [4] Before the existence of this rule, the members of a select committee might be moved for, and the committee appointed, immediately upon the passing of the resolution for its appointment. Now this can only be done, in cases coming within the rule, provided notice has been given of the names intended to be proposed on the committee, one day at least previous to the resolution for its appointment.

1869. This rule, like all others of the same character, is neces-

[1] May, 297; Comm. Jour. XCI. 30; Same XCII. 8.

[2] Hans. (1), XXXVI. 899, 906.

[3] Cong. Globe, XII. 240.

[4] Comm. Jour. XCIII. 221; May, 297.

sarily subject to an exception in cases in which, the privileges of the house being concerned, delay is not admissible.

SECTION IV. AS TO THE MANNER OF APPOINTMENT OF A SELECT COMMITTEE.

1870. In the selection of members for service on committees, there seem to be four principal methods, which may be adopted, either simply, or in some modified form, namely, *first*, the names of members to compose the committee may be moved and put to the question, in the same manner with other propositions; *second*, the committee may be chosen by ballot; *third*, it may be appointed by the speaker, or other members selected for the purpose, either absolutely, or subject to the approval or rejection of the house; and *fourth*, the members of the committee may be designated by lot. The last of these methods was formerly practised in a modified form, in the appointment of election committees, but is now laid aside. The third mode is applicable in the British parliament, particularly to the appointment of election committees as now constituted, and of committees on private bills; and in this country, usually to all select and standing committees. These three, being the methods most usually practised, will now be described. Besides these, there is the method sometimes practised of oral or *vivâ voce* suffrage, which will be shortly described.

ARTICLE I. *Appointment of a Select Committee on Motion.*

1871. When no other method has been resolved on by the house, the regular mode for the appointment of a committee is, by moving the names of the members to compose it, and putting them to the question, in the ordinary course of proceeding. Anciently, the practice seems to have been, for the members of the house to call out names for the committee, and for the clerk to take them down as they struck his ear, without any formal motion or question, until the requisite number had been obtained.

1872. It afterwards became the established practice for the member, upon whose motion a committee had been ordered, to move the names of the members to compose it, — being, of course, of his own selection; his own name being among them, and perhaps the first named on the list. If he felt any delicacy in moving his own name, the motion might be made by some friend; as, on

the occasion of the appointment of the committee to prepare articles of impeachment against Lord Melville, which had been ordered on the motion of Mr. Whitbread, that gentleman was first appointed one of the committee, on the motion of Lord Temple, and then on the motion of Mr. Whitbread, the other members of the committee (Lord Temple being one) were appointed.[1]

1873. When committees are appointed on motion, the practice is, for the member who moves the names to read over his list in the first place, and then to move each of the names separately, — the form of the motion being, that such a member be of the committee. On this motion it is competent for those opposed to the particular member named, not only to vote in the negative of the motion, but also to move an amendment of it by leaving out the name of the member moved, for the purpose of inserting that of some other member. So, those who are opposed to the appointment of the committee may, on this motion, move an amendment by leaving out all except the first words of the motion, in order to insert a motion that the order of the day for the appointment of the committee be read, for the purpose of being discharged;[2] or, an amendment may be moved, by leaving out all except the first words of the motion, in order to insert a motion for choosing the committee by ballot.[3] Where this method of appointing a committee is adopted, the members are necessarily chosen by absolute majorities.

1874. The moving of the names of members to constitute a committee, which is conceded by parliamentary usage to the member upon whose motion the committee has been granted, is, of course, a matter of courtesy, and not of right; every other has the same right to move the committee; and some one would doubtless be found to do so, if necessary to prevent the appointment of improper persons, or if the list made out and moved by the mover should be rejected by the house.

1875. If the measure, in reference to which a committee has been ordered, should be taken out of the hands of the mover and his friends, who, in such an event, would no longer desire to proceed with the business, the moving of the committee devolves upon the successful party; as, on the occasion of the defeat of the ministry, on the motion for an address in answer to the queen's speech,

[1] Hans. (1), V. 618.

[2] Hans. (3), LXXIV. 1188, 1200; May 14, 1844.

[3] Hans. (1), IV. 426, 430, 647, 648.

Aug. 1841, by the adoption of the amendment moved by the opposition, lord John Russell suggested that the committee should be named by the honorable gentleman, who had moved the amendment, and, thereupon, Mr. Wortley moved the names of the members for the committee.[1]

1876. When a committee has been thus appointed, it may be afterwards enlarged, by the addition of other members appointed in the same manner;[2] or members originally appointed may be discharged from further attendance;[3] or members may be discharged and others appointed in their room.[4]

1877. In regard to the discharge of members from further attendance on a committee, which is the same thing in fact, as rescinding the order for their appointment;—though the house may undoubtedly exercise such control over their own members as they may think proper;—it was said by Mr. Speaker Manners Sutton, on a proposition to discharge a member from a committee, on the ground that he could not attend, for the purpose of substituting another, "that he could not find any trace of such having been the practice; he did not perceive that any member had been left out, except it was by absolute parliamentary disqualification, or physical impossibility of attendance; as to any other disqualification of attendance, there was, so far as his knowledge extended, no account of any case having arisen."[5] In Sir Joseph Jekyl's case, who was appointed on a committee, before he had taken the oaths, it was decided by the house, on a division, that he was not thereby disqualified from serving on the committee, and the house accordingly refused to discharge him and substitute another;[6] nor is it any disqualification of a member, that he declines serving;[7] or that he has declared his intention to secede from the house;[8] or that he was a member of the administration, in which the abuses are alleged to have taken place, which it was the business of the committee to investigate.[9] It is a compendious form of this mode of appointing a committee, for the house to resolve, on motion, that the committee consist of all the lawyers of the house,[10] or of all the members who are of the privy council,[11] or of all the members for certain counties or places,[12]

[1] Hans. (3), LIX. 450.
[2] Parl. Reg. XL. 462, 500, 501.
[3] May, 298.
[4] Hans. (3), XLIII. 1230, 1234.
[5] Hans. (1), XXXVII. 200, 201, 202, 203, 204. See also Cong. Globe, XV. 95, 124.
[6] Comm. Deb. VI. 19, 20; Hans. (1), XXXVII. 200, 201, 202, 203, 204. See also Cong. Globe, XXI. 1464.
[7] Hans. (3), XLIII. 1230, 1234.
[8] Parl. Reg. I. 314.
[9] Hans. (1), IV. 511, 517, 536.
[10] Romilly, 303; Comm. Jour. I. 326.
[11] Comm. Jour. 169, 172.
[12] Comm. Jour. 326; Romilly, 303. See also J. of C. II. 269.

or of all the members that have spoken, or that a select committee of a former session, or one which has already discharged its functions, be revived, for the purpose of constituting the committee.[1] It is equally competent, of course, to constitute a part of the committee in this manner;[2] the residue being appointed in the usual way. Where a select committee is revived, if any of the members have vacated their seats, or have become disqualified, other members may be substituted in their places.[3]

1878. In the house of commons, certain rules have been lately introduced, which require that every member, intending to propose a select committee, or to move the addition or substitution of members on a committee already appointed, shall give previous notice of the names intended to be proposed by him.[4] By another rule also, which is not imperative, it is 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.[5]

1879. The practice of allowing the mover of a proposition himself to nominate the committee for its consideration, may seem at first sight to be liable to great abuse, as amounting in point of fact to the exercise of a sort of patronage.[6] But it must be recollected, that the house, by adopting the resolution for the committee, has signified its willingness that the subject should be so considered or investigated; that the member nominating the committee must be supposed to feel as strong an interest in the proper consideration of the subject as any one, and also to possess or to be willing to obtain the knowledge necessary to enable him to decide upon the qualifications of the members whom he selects; that if improper persons should be proposed, the house has it in its power to reject them and substitute others; and, lastly, that if the proposed investigation is of a political character, and opposed to the tactics of the party in power, or if the list of members does not contain a proper proportion of the members of that party, the government have it in their power to take the matter into their own hands.

[1] Parl. Reg. I. 314; Hans. (1), XXXVI. 899, 906. See also J. of C. VIII. 4; Same, IX. 6; J. of S. 70, 85.

[2] Hans. (1), XXXVI. 899, 946.

[3] Parl. Reg. I. 314.

[4] May, 297; Comm. Jour. XCI. 30; Same, XCII. 8; Same, XCIII. 221.

[5] May, 297; Hans. (3), XXXIX. 1023, 1024, 1025, 1026; Same, XLIII. 1126.

[6] Hans. (3), XXXIX. 1023, 1024, 1025, 1026.

ARTICLE II. *Appointment of a Select Committee by Ballot.*

1880. When this mode of proceeding is to be adopted in the house of commons, the house, having first resolved that the subject in question be referred to the consideration of the committee, and having also resolved upon the number of which the committee shall consist, next resolves, "that the committee be chosen by way of balloting." The time for the balloting is then fixed by an order, "that the members of the house do, upon [a day named, at a given hour,] prepare lists to be put into glasses, of [so many] persons' names to be the said committee."

1881. On the day, and at the time, mentioned in the order, the order, on motion, is read; and the sergeant-at-arms then receives direction, by an order of the house, "to go with the mace into Westminster Hall, and into the court of requests, and places adjacent, and summon the members there to attend the service of the house." On his return, the clerk and clerk assistant go on each side of the house with glasses, to receive from the members, except the speaker, the lists of persons' names to constitute the committee. When they have received the lists, they bring them up to the table, and a committee, nominated by the speaker, is then appointed to examine the lists, and report to the house, upon which of the persons balloted for, to the requisite number, the majority falls. The committee is usually directed to withdraw immediately into the committee chamber.

1882. When the scrutineers, as the members of the committee are denominated, have examined the lists, they report by one of their number, usually the first named, the names of the requisite number of persons upon whom the majority of votes has fallen, together with the number of votes received by each, and the speaker announces the result. The majority necessary to an election is not an absolute majority of all the persons voting, but only a plurality; and if there are several persons, who all have the same number of votes, and the whole would make more than the number fixed for the committee, the speaker gives a casting vote for the election of the requisite number. Thus, if on a balloting for thirteen members, it should appear that twelve were elected by majorities, and that the next highest number of ballots given in was received by three or more persons, the speaker could then give his casting vote, as in other cases, for one of the three.[1] Whether in any of the legisla-

[1] Comm. Deb. XIII. 216, 217; Comm. Jour. XXIV. 154.

tive assemblies of this country, an absolute majority is required, or a bare plurality is permitted, in the election of committees, must, in the absence of any rule on the subject, depend upon the general law or usage of the particular State to which such assembly belongs. Sometimes it is provided by a special rule, that after one or two unsuccessful attempts to elect by absolute majorities, at succeeding trials pluralities only shall be requisite.

1883. If the scrutineers are in doubt as to whether a particular vote should be allowed or not, they include it in the report, and state the fact, leaving it to the determination of the house; in which case, if the house do nothing in reference to the subject, the proceeding of the committee is thereby sanctioned.[1]

1884. When an election takes place by ballot in any of our legislative assemblies, a committee is usually appointed, who collect and make a list of the votes given in which they report to the presiding officer, who thereupon determines and declares the result, first giving his casting vote, if necessary, or voting as required by the rules of the assembly.

1885. A balloted committee, the number of which is fixed by a resolution of the house, is no more susceptible of enlargement, than a committee appointed on motion, and for the same reason.

1886. If vacancies occur, from any cause, in a balloted committee, they must be filled in the same manner in which the committee was originally appointed; inasmuch, as the house having come to a resolution, that the committee be chosen by way of balloting, no other method can be resorted to without violating the order of the house.

1887. In regard to discharging any of the members of a balloted committee, from further attendance upon it, on account of some parliamentary disqualification, or physical impossibility of attending, it does not appear, that a balloted committee stands upon a different footing from a nominated committee; for two reasons, *first*, that the ordinary mode of proceeding seems to be the only appropriate one; and *secondly*, that the question presented by a motion for the discharge of a member on the grounds mentioned, is wholly different from that which arises on the election of a member.

1888. The discharge of a member, however, by motion and vote, in the ordinary course of proceeding, might give rise to great inconvenience; inasmuch as if the number of votes by which a member

[1] Comm. Jour. XXII. 39.

had been elected should be less than an absolute majority, as it might frequently be, it would be in the power of those who voted for other candidates, and therefore against him, to annul his election by discharging him from the committee.

1889. When it is proposed to discharge one member from a balloted committee, for the purpose of substituting another, the proceeding is objectionable in reference to both parts of it, on the ground that, by the order of the house, the committee is to be appointed by ballot. It is objectionable as to the discharge, because it is not proposed, upon the ground of any disqualification, but merely because the mover prefers the one member to the other, for the committee; and it is objectionable, as to the substitution of the new member, because every member of the committee ought, by the order of the house, to be appointed by ballot.[1]

ARTICLE III. *Other Modes of Appointment.*

1890. Besides the modes of appointing committees above described, such others may of course be adopted, in special cases, as the house may at any time think proper; as, for example, where two members were appointed by nomination, and the others were chosen by ballot,[2] or where twenty-one members were chosen by ballot, and each of two members nominated by the house, was allowed to strike off four from that number.[3]

1891. When select committees are appointed, whether occasional or standing, the members thereof are doubtless required to take notice of their appointment as such, as of other proceedings of the house of which they are members, and proceed with the bills referred to them; but the clerk ought regularly to furnish each one with a certified copy of the record of his appointment. When a select committee is appointed, it is ordinarily enough if the names of all the members appear in one certificate. Papers referred to a committee, may be delivered by the clerk to any member of it; but

[1] Hans. (1), IV. 511, 517, 536; Same, XXXVII. 190; Same, 200, 201, 202, 203, 204. April 30, 1805, on the report of the scrutineers being read for the committee on the 10th Naval Report, Mr. Whitbread moved, that the name of Lord Castlereagh be struck out, and that of Mr. Baker substituted in its place. This motion was debated at length, without any objection being made to it in point of order, but was negatived. Hans. (1), IV. 511, 517, 536. Feb. 6, 1818, a similar motion being made, Mr. Speaker Manners Sutton declared it to be irregular, on the ground "that the putting one name in the room of another, would be, in a manner, jumping over several of the principal orders; and first, that one that the committee be appointed by ballot." Hans. (1), 200, 201, 202, 203, 204.

[2] Comm. Jour. LXXXVIII. 144, 467; May, 298.

[3] Comm. Jour. LXXXVIII. 160, 475; May, 298.

it is usual to give such papers to the first named, or to whomsoever else acts as chairman of the committee.[1]

1892. Of all the infinite variety of methods which may be adopted and practised in the appointment of committees, two only need be mentioned, particularly, as peculiar to the legislative assemblies of this country. The first of these, which prevails very extensively with us, and is in more frequent use than any other method, is the appointment of committees, both permanent and occasional, by the speaker. This it is which makes the presiding officer so much of a political functionary, and leads generally to a political struggle for the possession of his office. It need hardly be observed, that in the appointment of committees, the principles of party are preserved, and that, in general, while all parties are duly represented, a controlling influence is given to the predominating party in the constitution of every committee.[2] In exercising the duties of his office in this respect, the speaker is not obliged to proceed immediately, but may take such time as he may think proper for the election and appointment of a committee. The only other method, which is occasionally practised with us, is that of the *vivâ voce* or oral suffrage. In making an election by this mode, the clerk calls the roll of the house, and a committee or tellers receive and report the result of the votes.

CHAPTER THIRD.

POWER AND AUTHORITY OF SELECT COMMITTEES.

1893. The functions of committees, in reference to the subject-matter referred to their consideration, and the powers conferred on them for the performance of the duties with which they are charged, emanate directly from the house of which they are members, and depend entirely upon the authority originally vested in them, and such particular instruction as they may subsequently receive.

1894. The appointment of a committee usually comprises two things, *first*, the subject referred to the consideration of the com-

[1] Jefferson's Manual, § XXVI.

[2] Appendix, XIV.

mittee; and, *secondly*, the powers with which the committee is invested for the discharge of its duties. Hence, the powers of a committee relate either to the matter about which, or to the manner in which, its functions are to be exercised.

SECTION I. OF THE POWERS WITH WHICH COMMITTEES ARE INVESTED, TO ENABLE THEM TO DISCHARGE THE DUTIES OF THEIR APPOINTMENT; OR, IN OTHER WORDS, OF THE INCIDENTAL POWERS OF COMMITTEES.

ARTICLE I. *As to the Time of Sitting.*

1895. The time for a committee to assemble, in the first instance, is always fixed by the house; otherwise the members would have no authority to meet as a committee. But, having once met, agreeably to the order of the house, if a committee should be unable to finish the business at that meeting, it may adjourn to another time, and so on until the business is finished. If it should previously adjourn without day, there must then be a new order for it to assemble and proceed.[1] According to the practice which prevails here, it is not usual for the time of the first meeting of a committee to be appointed by the house. The committee meets at some time when the house is not in session, on the requisition of the member who acts as chairman, or of some other member duly authorized,[2] in one of the rooms appropriated to the use of committees.

1896. It is an expedient sometimes resorted to by committees, with a view to dispose of the business referred to them, to adjourn without day, or to a day beyond the session.[3] This course, though irregular, as it is the duty of a committee to report, may and commonly does receive the sanction, or, at least, the acquiescence of the house; otherwise the committee may be directed by the house to reassemble and proceed with the business.

1897. Members of committees being as much bound as other members to attend the service of the house, it is a rule, that committees are not to sit whilst the house is sitting, without the express leave and direction of the house;[4] and, therefore, when it is found

[1] Elsing, Harl. Misc. V. 213.

[2] In the house of representatives of the United States, it is provided by rule, that it shall be the duty of a committee to meet on the call of any two of its members, if the chairman be absent, or decline to appoint such meeting.

[3] Parl. Reg. XII. 395; Hans. (3), XXXII. 501, 506; Same, (2), X. 13.

[4] Hans. (3), XIX. 381.

necessary that a committee should meet or sit whilst the house is sitting, there is always an express order to that effect.[1] Sometimes the authority is limited to a particular period, or to certain hours on each day.[2] Sometimes a committee is directed to withdraw immediately in order to discharge the duties of its appointment, and sometimes a general authority is given either in the order for the committee's appointment, or by some subsequent order, to sit whilst the house is sitting.

1898. With a view to the enforcement of this rule, it is provided by a sessional order, in the house of commons, "that the sergeant-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."[3] In pursuance of this order, committees are nominally adjourned when the speaker takes the chair; but the custom appears to be, notwithstanding, to complete the examination of a witness, if one should be under examination at the time, although it may last half an hour or an hour; the only check upon this practice being, that no division can take place in the committee after the chair of the house is taken by the speaker; so that if an occasion should arise for the committee to divide, the committee at once adjourns.[4] Leave is sometimes obtained, in urgent cases, on the meeting of the house, for a committee to sit, until a certain specified time.[5]

1899. It is another rule relating to the sitting of committees, the reason of which is not, perhaps, equally apparent,[6] that they cannot regularly sit during an adjournment of the house, for a longer period than till the next sitting day.[7] If, therefore, an adjournment takes place suddenly, and without any order being made in reference to the sitting of committees, in the mean time, all committees which stand adjourned to any time, or have been ordered to meet during the interval, will be without day, and cannot sit without a new order for that purpose. Hence, when an adjournment takes

[1] Hans. (3), XIX. 381.

[2] Jour. of House, III. 157, 511; Same, V. 120; Same, VII. 289; Same, VIII. 177, 553, 585; Same, IX. 485; Cong. Globe, VIII. 158; Same, XI. 547.

[3] May, 304.

[4] Hans. (3), XXXVII. 189.

[5] May, 304.

[6] The reason of the rule probably is, that, when the house adjourns from one day to the next sitting day, which is deemed to be a continuance, the functions of members continue during the interval; but that when it adjourns for a longer period, which is a recess, the functions of the members cease in the mean time. For the same reasons, committees have not been considered as authorized to sit in the recess.

[7] May, 303; Parl. Reg. LXIII. 613; Hans. (1), XXXV. 1309.

place, as is usual, from Friday until Monday, leave is given to committees to sit on Saturday.[1]

ARTICLE II. *As to the Place of Meeting.*

1900. The place for the assembling and sitting of a committee, is always fixed by the house; and the members cannot meet elsewhere as a committee. But it sometimes happens that a committee, in the prosecution of its business, finds it necessary to meet at some other place; as, where there is occasion to examine records, or other things not conveniently susceptible of removal; and, in such cases, unless the committee has been previously authorized to adjourn from place to place, it must obtain the special leave of the house for that purpose.[2] In our legislative assemblies it is not usual to fix upon the place, any more than the time, for the first meeting of a committee. The committee meets at the place specified in the call; and it is presumed that it may adjourn from place to place, without the special leave of the house in the prosecution of the duties of its appointment.

ARTICLE III. *As to sending for Persons, Papers, and Records.*

1901. When the object, or one of the objects, of a select committee, is the investigation of facts, it may, without any express authority for the purpose, examine all witnesses that may appear, and all papers that may be brought before it, and all records to which it can obtain access in the prosecution of its inquiries; but without express authority a committee cannot compel the attendance of witnesses, or the production of papers; and hence, whenever it is deemed necessary in the first instance, or becomes so afterwards, leave is given to a committee "to send for persons, papers, and records."

1902. By virtue of this authority, any witness may be summoned, by an order signed by the chairman, to appear before the committee, and to bring with him all such documents as he may be directed to bring for the use of the committee. Any neglect or disobedience of the summons will be reported to the house, and the offender will be dealt with in the same manner as for a similar contempt to the house itself.[3] The proceedings relating to the sum-

[1] May, 237; Parl. Reg. LXIII. 613; Hans. (1), XXXVI. 1309.

[2] Romilly, 304, note 1. May, 299.

moning, and compelling the attendance of witnesses, are treated of in another place.

1903. Obedience is as much due to the summons of the committee as to the order of the house; and the proceedings of parties in obeying it will be equally justifiable, and they will themselves be equally entitled to protection, as if they were acting in obedience to a warrant from the speaker. Thus, where a select committee, appointed to investigate certain complaints respecting the prison of Lincoln Castle, with power to send for persons, papers, and records, having found it necessary to examine witnesses who were on the spot during the transactions in question, and entertaining doubts whether the warrant which they might issue to the sheriff, directing him to bring up the bodies of those under his charge, would be sufficient to protect him against actions of escape, thought it proper to suspend all further proceedings, until they could obtain advice and assistance from the house, and made a special report accordingly: — the house entertaining no doubt, recommitted the report.[1]

ARTICLE IV. *As to Reporting from Time to Time.*

1904. In the ordinary course of proceedings, it is the duty of a committee to make its report, when it has gone through with and completed its business. It is sometimes convenient, however, that a committee should be authorized to report from time to time, especially where a committee is engaged in an examination of witnesses, whose evidence is to be laid before the house. In such cases, the committee is to exercise its discretion, as to reporting from day to day, or from time to time, and as to the best division of the evidence for the purpose of reporting it to the house.[2] This authority gives power to a committee to report not only upon the subject originally referred to it, or upon the general subject of its appointment, but also upon matters occasionally referred to it.[3]

[1] Hans. (1), XXIII. 883.

[2] Hans. (3), XXXIII. 190.

[3] J. of H. 21st Cong. 2d Sess. 413; Same, 27th Cong. 1st Sess. 204, 206; Same, 30th Cong. 1st Sess. 1288; Same, 31st Cong. 2d Sess. 267, 394; Same, 32d Cong. 1st Sess. 195, 196.

SECTION II. OF THE POWERS OF COMMITTEES AS TO THE SUBJECTS REFERRED TO THEM.

1905. The functions of select committees, in reference to the subjects referred to them, are exceedingly various. The most common authority conferred on them is expressed in the usual form of the order for the reference of a petition to a select committee, namely: "that the said petition be referred to the consideration of a committee, and that they do examine the matter thereof, and report the same, with their opinion thereon," (or "as it shall appear to them,) to the house." The appropriate functions of the standing committees, if not indicated by their names merely, are usually set out at length in the rules and orders for their appointment.

1906. The rules, relating to the power of committees, in respect to the subject-matter referred to them, are two: — I. A committee is not at liberty to entertain any proposition, or go into any inquiry, which does not come within the direct purposes for which the committee is appointed, as expressed or clearly implied in the authority conferred upon it, or which is not grounded upon some paper which is referred to the consideration of the committee.[1] II. When a subject is referred to a committee, to consider the matter thereof, and to report its opinion thereupon to the house, the committee is authorized to recommend any measure connected with and growing out of the subject so referred.[2]

1907. These rules are founded in the clear and indisputable principle of parliamentary law, that a committee is bound by, and is not at liberty to depart from, the order of reference; a principle, which is essential to the regular despatch of business; for, if it were admitted, that what the house entertained, in one instance, and referred to a committee, was so far controllable by that committee, that it was at liberty to disobey the order of reference, all business would be at an end; and, as often as circumstances should afford a pretence, the proceedings of the house would be involved in endless confusion and contests with itself.[3]

[1] Parl. Reg. XXII. 258. See also J. of H. 32d Cong. 1st Sess. 785.

[2] Parl. Reg. LX. 391, 395, 396.

[3] Parl. Reg. XII. 382.

CHAPTER FOURTH.

FORMS OF PROCEEDINGS IN SELECT COMMITTEES.

1908. Committees are regarded as portions of the house, limited in their inquiries by the extent of the authority given them; but governed in their proceedings by the same rules, which prevail in the house,[1] and which continue in full operation in every select committee.[2] It is upon this principle, that the practice appears to be founded, of consulting the speaker, in reference to points of order and the forms of proceeding, by select committees.

1909. I. A select committee is presided over by a chairman appointed by itself, who has and exercises, within the limited authority conferred on the committee, the same powers and duties as the speaker of the house. It is attended by a clerk, and, if necessary, by a shorthand writer appointed by the clerk of the house, to which the committee belongs, and it keeps minutes of its proceedings.

1910. It is competent, of course, for a legislative assembly to fix upon the member of a committee who shall act as chairman; and this is in fact done in all our legislative bodies, by a long continued usage, sanctioned to a greater or less extent by a special rule or order in each assembly; and subject to the right of the committee when assembled and organized, to choose a chairman for itself. Committees with us are appointed in three principal ways. When chosen by ballot, members are arranged according to the number of votes; when appointed by the speaker the order in which they are named is the order of arrangement, and when chosen by oral suffrage, they are arranged in the order of the votes given for each. When the number of votes given for two or more is equal, those members are usually arranged in the order in which they happen to be voted for. The first-named member of a committee acts as its chairman; the second-named, in the absence of the first takes the chair of the committee, and so on to the last. If any member of the committee is excused by the house from further service thereon, or in any way ceases to be a member, his place is supplied in the

[1] Hans. (3), XXXII. 501, 502, 503, 504.

[2] Hans. (2), XI. 912, 914.

same manner in which he was originally appointed; and such new member becomes the chairman, if he takes the chairman's place, unless otherwise ordered by the house.

1911. II. A committee cannot proceed to business, unless the requisite number to constitute the committee is present. This number is fixed by the house, in reference to each particular case; if not so fixed, it would be necessary for all the members of the committee to attend.[1] Three are generally a quorum in committees of the upper house; in the commons, the usual number is five; sometimes, however, three, and occasionally seven, or any other number which the house may direct. On two occasions, in the house of commons, where the investigations partook of a judicial character, the house named a quorum of five, but, at the same time, directed the committee to report the absence of any member, on two consecutive days.[2] When the quorum of a committee is not fixed by the house, it is understood with us that a majority of a committee constitutes a quorum for proceeding.[3]

1912. If after proceeding to business, the number of members present should be reduced below the quorum, or if any member should leave the room, where there was no number fixed for the quorum, the business of the committee would not necessarily be interrupted, unless notice should be taken by a member that the requisite number was not present. But no question could be decided by a vote, without a quorum; as, in that case, the irregularity appearing on the minutes would be obvious. In these particulars the practice is the same as in the house.

1913. III. In the prosecution of the business referred to them, committees proceed by motions, resolutions, and votes; and, in all their proceedings, with certain exceptions, which will be presently mentioned, the rules by which they are governed are absolutely the same with those by which the house is governed in analogous proceedings.

1914. The exceptions to the rule are, that, in committees, a member may speak more than once to the same question;[4] that a committee has no authority to punish one of its members or other person, for any offence committed against it, as by disorderly words or contemptuous conduct, — as, for example, when a witness refuses to testify, or prevaricates, — but can only report such offence to the house for its animadversion; and that, in practice, it is not

[1] Scobel, 47, 48.
[2] May, 298.
[3] Jefferson's Manual, Sec. XXVI.
[4] Scobel, 35, 36.

considered necessary that a motion should be seconded, though there is no rule to this effect, and it is difficult to see any sufficient reason why a seconding should not be required as well in committees as in the house.

1915. Another exception, which is peculiarly American, is, that no reconsideration of a vote can take place in a committee, either select or of the whole. This principle, however convenient it may be, seems to be founded in a somewhat too literal and stringent an application of a familiar doctrine of the common parliamentary law.[1]

1916. IV. Questions are determined in select committees by the voices and by divisions, in the same manner as in the house to which they belong. In the lords' committees, the chairman votes like any other peer; and if the members on a division are equal, the question is negatived. In the commons, the practice is similar to what takes place in the house on divisions; the chairman voting only when the numbers are equal, and then giving the casting vote.[2]

1917. According to the constitution of election committees, as originally established by the Grenville act, the chairman voted with the other members in the first instance, and then, in case of an equality of numbers, gave a casting vote. But this privilege was peculiar to election committees, which were regulated as to their proceedings entirely by statute, and did not extend to any others. It appears, however, that a notion at one time prevailed, to some extent, that the chairman of every select committee had the same right; but, upon the subject being brought before the house by the chairman of a select committee who had so voted, Mr. Speaker Abercrombie gave his opinion, which was acquiesced in by the house, that the chairman of a select committee could only vote when the committee was equally divided, in which case, it was his duty to give a casting vote.[3] The house very soon afterwards came to a resolution "that according to the established rules of parliament, the chairman of a select committee can only vote when there is an equality of voices."[4]

1918. V. Committees have the same authority as the house itself, in regard to the exclusion of strangers from the committee room. When a select committee of the house of lords is taking the examination of witnesses, strangers are rarely allowed to be

[1] Jefferson's Manual, Sec. XXVI.
[2] May, 303; Comm. Jour. XCI. 214.
[3] Hans. (3), XXXII. 501, 502, 503, 504.
[4] Comm. Jour. XCI. 214.

present; in the commons' committees, the presence of strangers is generally permitted. When committees are deliberating, it is the invariable practice to exclude all strangers.

1919. Members of the house to which a select committee belongs stand upon a different footing. In the house of lords, all the lords are entitled to attend the select committees, and may speak, but they are not allowed to vote, and are bound to give place to those of the committee, though of a lower degree.[1] Members of the house of commons are also entitled to be present at select committees. If the committee is an *open* one, they have a right not only to be present, but to take a part in the proceedings; being, in fact, members of the committee. If the committee is *select*, without being open, other members may attend and be present at the examination of witnesses, and at other proceedings of the committee, until it comes to deliberate;[2] but they have no right to attend for the purpose of addressing the committee, or of putting questions to the witnesses, or of interfering in any manner whatever in the proceedings.[3] Whether members can be excluded from the committee room, when the committee is proceeding to deliberate, is a question which appears to be still unsettled.[4] If the committee is one of secrecy, all the proceedings and inquiries through out are conducted with closed doors; and it is the invariable practice for all members not on the committee to be excluded from the room.[5]

1920. VI. The members of a select committee having themselves no other than a delegated authority, derived from the house of which they are members, which authority is delegated entire to each and every member of the committee, it is not competent to the committee to divide itself into sub-committees, among whom to apportion or delegate its own functions, any more than it is competent to the committee to fix the number of its members necessary to constitute a quorum.[6] It does not seem, however, to be incompatible with this principle, for a select committee to avail itself of the services of its members, individually, or in the form of sub-committees, for the doing of many things connected with the business of the committee, which do not involve a delegation of authority.

[1] May, 300.
[2] Scobel, 49; Hatsell, IV. 135, note. See also Comm. Jour. I. 849.
[3] Hans. (3), LXXIII. 725, 726.
[4] See May, 300; Hans. (3), LXXVIII. 305, 306.
[5] May, 302.
[6] Hans. (1), XXXIX. 776, 777.

CHAPTER FIFTH.

OF INSTRUCTIONS TO COMMITTEES.

1921. The order, by which the appointment of a select committee is directed, specifies the authority conferred upon the committee, as to the subject-matter, and contains, or is accompanied by other orders which contain, the powers with which the committee is clothed for the performance of its duties. It is also competent to the house, afterwards, to enlarge the authority of the committee, either as to the subject-matter, or its incidental powers, by means of what are called instructions.

1922. Instructions may be given to a committee, at any time after the adoption of the order for its appointment, although the members have not yet been named; but it is too early to move instructions on the motion for the appointment of the committee;[1] any alteration or enlargement of the powers proposed may then be effected by amendments of the motion for the committee.

1923. The proper object of an instruction to a committee, as to the subject-matter referred to it, is to enlarge its powers; that is, to bring within the scope of the authority already conferred upon it, matters not originally coming under the order of reference. An instruction, therefore, which merely affirms the existing powers of a committee, is unusual, and irregular, as being wholly unnecessary. Thus, where a committee had been appointed to inquire into the state of the poorer classes in Ireland, and the best means of improving their condition; and a motion was made, that it be an instruction to the committee to inquire how far the statute of the 43 Elizabeth might be made applicable to the poor of Ireland; the speaker, Mr. Manners Sutton, said, "that the committee already had power to extend their inquiries to that point; and it was unusual to give an instruction to it to do that which it already had the power to do."[2]

1924. An instruction, which proposes to direct a committee absolutely to do or not to do a particular thing, which is already within its powers to do or not to do, as it may think proper, is irregular; on

[1] Hans. (3), XXXI. 147, 153, 155, 163.

[2] Hans. (2), XXIII. 202, 222.

the ground, it is presumed, that such an instruction would be repugnant to the reference, as the effect of it would be, in fact, to withdraw from the consideration of the committee so much of the power originally conferred upon it, and to decide upon that matter in the house. Thus, where it was proposed to instruct the committee on a bill, that it should not entertain a certain proposition, which was evidently within the scope of the bill, the speaker, Mr. Shaw Lefevre, said, "The rule of the house was simply this, that no person could move an instruction to a committee to do that which could be done without an instruction. If the proposition was within the scope and title of the bill, it was quite competent for the mover to introduce it in the committee, either by moving an amendment to some clause, now in the bill, or by a new clause, and then it would not be competent for him to move an instruction for that purpose."[1]

1925. The reason of the rule above stated does not seem to apply to an instruction, by which a committee is directed absolutely to do something which is not within the scope of its authority; and, in fact, instructions of this description are among the most common. An instruction to a committee not to do a particular thing, not within the scope of its appointment, would only be a direction to it not to transcend its authority.

1926. There are consequently but two forms of instruction to a committee in reference to the subject-matter, namely, that it be an instruction to the committee that it has power to do a particular thing, or that it do a particular thing, which is not within the authority already conferred upon it.

1927. Whenever it becomes necessary to enlarge or add to the incidental powers of a select committee, it is done by way of an instruction; as, for example, that it be an instruction to the committee that they have power to report from time to time, or to adjourn from place to place, or to send for persons, papers, and records.

[1] Hans. (3), LXXIV. 107.

CHAPTER SIXTH.

OF OTHER INTERMEDIATE PROCEEDINGS IN THE HOUSE WITH REFERENCE TO COMMITTEES.

1928. Committees may, at any time after their appointment to consider a particular matter, and before their report upon it, be discharged by the assembly from the further consideration of the same. They may also, as has been seen in the last chapter, be instructed in reference to it. But besides instructions to committees, there are frequent occasions on which proceedings take place in the house with reference to committees, after the order of reference, and before the final report.

1929. Occasions of this sort occur when special reports are made from committees, with reference to disorders committed therein, or to the use of disorderly words; or to some contempt of the committee's authority, as where a person summoned as a witness refuses to appear, or to testify, or prevaricates in his testimony; or when intermediate measures become necessary in the prosecution of the business referred to the committee, as when the committee desires the instruction of the house in reference to the form of proceeding; or when a committee is remiss in proceeding or making its report; or when a committee has adjourned without day, or to a day beyond the session, without reporting; or when it becomes necessary to fill vacancies in the committee, or to enlarge it by the appointment of additional members; in all these cases, there is ground for further proceedings in the house.[1]

[1] An order of the committee of privileges and elections not being complied with, and complaint thereupon made in the house, the order was there renewed. Comm. Jour. XV. 71. See also Same, XVI. 277, 291, 324, 325; Same, XVII. 519, 527, 539, 542. See also the cases of Nathaniel Rounsavell, J. of H. VIII. 278, 279, 280; Reuben M. Whitney, Same, 24th Cong. 2d Sess. 367; Ritchie & Sengsteck, Same, 31st Cong. 1st Sess. 1318, 1336, 1343, 1344, 1345.

CHAPTER SEVENTH.

OF THE REPORT.

1930. The great purpose for which committees are appointed being, the taking of such measures with reference to the subject-matter referred to their consideration, that when their acts and proceedings are agreed to, they become the acts and proceedings of the house, it is consequently the duty of committees both to proceed under the authority given them, and to report their doings to the house.[1]

1931. A committee having assembled at the time and place appointed for it to meet, and having organized itself by the choice of a chairman and clerk, or by the choice of the latter only, where it acquiesces in the chairman appointed by the house, it is then ready to proceed with the business referred to it, or with such other business as it may have to do, and for this purpose it possesses substantially the powers vested in the house of which it is a part, as a deliberative body, and proceeds in substantially the same manner. But it also adopts many forms of proceeding, according to circumstances, which are peculiar to itself, and which bear only a general analogy to ordinary parliamentary proceedings.

1932. Where a committee, whether select or of the whole, is proceeding upon a paper before it, either submitted to it by one of its own members, or referred to it by the house, the orderly course requires that the paper should first be read at length by the clerk, for the information of the committee, and then by the chairman, by paragraphs, pausing at the end of each, to give opportunity for amendments therein to be moved, and to put questions for amendment, if proposed. If the paper or papers before the committee originate with itself, and consist of resolutions on distinct and independent subjects, a question is put on each separately, for agreeing to it as amended or unamended, and no final question on the whole. But if the resolutions relate to the same question, and are parts as it were of the same whole, then a question is to be put on the whole. Thus, if it is a bill, draft of an address, series of resolutions, or other paper originating with the committee, no question is put, as the committee passes through the paragraphs, on agreeing

[1] Parl. Reg. XII. 395; Hans. (3), XXV. 963.

to each separately, they being parts of one whole, but this is reserved for the close, when a question is put on the whole for agreeing to it as amended or unamended. If the paper before the committee is one which has been referred to it, the committee proceeds through it by paragraphs as above stated, putting questions of amendment if proposed, but no final question on the whole; because all parts of the paper, having been adopted by the house, stand, of course, unless altered or struck out by a vote of the house itself. Even if the committee is opposed to the whole paper, and cannot make it acceptable by amendment, they cannot reject it, but must report it back to the house without amendment, and there make their opposition.[1]

1933. The natural order, in considering and amending any paper, is to begin at the beginning, and proceed through it by paragraphs; and this course is so generally adhered to, that when a latter part of a paragraph has been amended, it is not in order to recur back, and make any alteration in a former part. This rule is doubtless conducive to the regular proceeding of numerous assemblies; but in those which are smaller, and especially in select committees, its observance may conveniently be dispensed with or disregarded.[2] This order of proceeding admits of a single exception, when by a vote of the assembly, the preamble, if the paper before the committee has any, is postponed for consideration until the other parts of the paper have been gone through with in the manner above mentioned.[3]

1934. If a committee, therefore, without proceeding with or completing the business referred to its consideration, adjourns without day, or to a day beyond the session, — which is a course occasionally taken by committees with a view to dispose of the business before them, and which, though irregular, is sometimes allowed as a convenient course,[4] — the committee may be directed by the house to reassemble, and proceed with the business referred to its consideration.[5] A committee if remiss in reporting may be ordered by the house to report,[6] or to report *instanter*.[7]

1935. When a committee has gone through with the business referred to it, and has agreed upon a report to be made to the house, the duty of preparing the report is devolved upon some

[1] Jefferson's Manual, Sec. XXVI.
[2] Jefferson's Manual, Sec. XXVI.
[3] Scobel, 50; Grey, VII. 431.
[4] Parl. Reg. XII. 395; Hans. (2) X. 13.
[5] See Hans. (2), X. 8, 9, 10.
[6] J. of H. 25th Cong. 2d Sess. 976.
[7] J. of H. 27th Cong. 2d Sess. 199. In this latter case, time must be allowed the committee to assemble in their room, and to agree upon and prepare their report.

one of the members, usually the chairman, by whom it is prepared accordingly, and submitted to the committee for their consideration. When the report is agreed to by the committee, the chairman or some other member is directed to present it to the house; and the committee having thus performed its functions, adjourns without day and is dissolved. But the committee can only act when together, and not by separate consultation, and consent, nothing being the report, but what has been agreed to in committee actually assembled.[1]

1936. The report of a committee, both in its form, and as to its substance, ought to correspond with the authority of the committee.[2] If it does not, it will either be recommitted, disagreed to, or directed to be withdrawn. If the business of a committee involves an inquiry of fact, it should report the facts, or the evidence; if the opinion of the committee is required, it should be expressed in the form of resolutions;[3] if the duty of the committee requires it to do a particular thing, it should report the doing of the thing; if the preparing of an address or other paper is the subject of the committee's authority, it should report the paper in the form required. If a paper, other than a petition or memorial or paper of that description, is referred to a committee, either select or of the whole house, the report thereon is, that the committee agrees or disagrees to the paper in question, or agrees to it with an amendment; if amendments already agreed to are referred with the paper, they make a part of it; if not already adopted, they are either agreed to or disagreed to, or agreed to with amendments; but if the paper referred to a committee, is one to the contents of which the house has given its sanction, the committee cannot, by its report, either directly or indirectly, recommend the destruction of what the house has so adopted. In the latter case, the only proper course is to report the measure in question, either with or without amendment, as a committee, and oppose it individually in the house. If a committee, being equally divided in opinion, finds itself unable to determine the matter referred to it, it may refer the matter back to the determination of the house;[4] or it may report a statement of the facts, and thereupon ask to be discharged from the further consideration of the subject.[5] This, however, is a

[1] Jefferson's Manual, Sec. XXVI.; Cong. Globe, XI. 939.

[2] Parl. Reg. LX. 391, 395, 396.

[3] Comm. Jour. XII. 687.

[4] Hatsell, IV. 192, note.

[5] J. of C. VI. 107; J. of S. II. 381; J. of H. 19th Cong. 1st Sess. 591; Cong. Globe, XXI. 1378.

contingency which can only occur, where the chairman votes with the other members, and not where he merely has a casting vote.

1937. The report of a committee is, of course, supposed to be prepared and drawn up by the committee or some of its members, and not by any other person; but whether it is so or not is entirely immaterial, provided the report receives the sanction of the committee, and is presented by its order. Thus, where a member stated that he had a communication to make to the house, relative to the drawing up of the report of a certain committee, and was proceeding to state facts and circumstances tending to show, that the report was not drawn up by any member of the committee, but by the agent of the petitioners; he was interrupted to order, by another member, who inquired whether he had any motion to make, and the speaker (Mr. Manners Sutton) said, "that even a motion would not relieve the house from its difficulty; any discussion as to who drew up the report was improper; the committee presented the report to the house, and they were responsible for it; he never knew that it was of any consequence to inquire who did or did not draw up a report of the kind, inasmuch as the house always placed its confidence in the committee which presented the report." [1]

1938. Where the subject referred to the consideration of a committee involves an investigation of facts, — the committee being directed to examine the matter thereof, — it is the duty of the committee, in the first place, to report so much of the evidence,[2] or such a summary of it,[3] as it may think proper, for the purpose of presenting the matter "as it appears to them," together with such resolutions of opinion, as it has come to, and as it judges the house ought to come to, upon the matter as presented by the facts and evidence reported.[4]

1939. Resolutions of opinion, merely, upon evidence not reported, are not resolutions at all according to the received meaning of parliamentary language. The grounds of the resolutions, as well as the resolutions themselves, should be reported; otherwise it cannot be known what grounds of assent or dissent the committee had for its proceedings; nor can the house have any other ground for agreeing or disagreeing with the committee, in the resolutions reported, than its confidence in the judgment and integrity of the

[1] Hans. (3), XXII. 712; J. of H. 32d Cong. 1st Sess. 785.
[2] Hans. (3), XIII. 8.
[3] Hans. (3), XXXVIII. 191.
[4] Parl. Reg. XI. 488.

committee; resolutions so reported are mere resolutions of opinion, unaccompanied by facts or evidence.[1]

1940. The conclusions of a select committee are sometimes expressed in the form of resolutions, which are not of a proper character to be agreed to and to become the resolutions of the house. Resolutions, that, in the opinion of the committee, the petitioners have fully proved all the facts alleged in their petition, or that the committee is of opinion, that the house be moved for leave to bring in a bill, etc., are of this kind, but it has no authority to report any thing which requires a suspension of the rules.[2] In such cases, no motion is made for agreeing to the resolutions; such agreement being both unnecessary and incongruous; but such other motions are made, as the circumstances of the case require.

1941. In reporting evidence, a committee is, of course, to exercise its own judgment as to whether the whole of the evidence shall be reported, or only certain portions of it, or whether the evidence shall be reported in full, or only a summary of it, according as the committee may judge necessary, in order to present the grounds of its resolutions to the house.[3] If the evidence, as reported, should not be deemed sufficiently full or complete, the house may, on motion, order the minutes of the evidence to be reported.[4]

1942. If a committee presents its report in the form of a continuous statement, without resolutions, it cannot regularly be read as a series of resolutions, and proposed to the house to be agreed to as such; but it is competent to any member to move a series of resolutions, drawn up in conformity with, and in the exact terms of the report of the committee.[5] A continuous report is the proper form, where the committee reports facts or evidence; its opinion, if proper to be agreed to by the house, is expressed in the form of resolutions. Both these forms generally exist in the same report.

1943. It is competent to a committee, appointed to consider any subject, and to report its opinion thereon, to report that leave ought to be given for bringing in a bill; but, in such a case, the committee should state its opinion in parliamentary language, namely, that a *bill be brought* in, and not that a bill *should pass*.[6] The usual form is, to resolve that the house be moved, or to direct the chairman to move the house, that leave be granted to bring in a bill.

[1] Parl. Reg. XI. 488.
[2] Cong. Globe, XXI. 1825.
[3] Hans. (3), XIII. 8; Same, XXXVIII. 191.
[4] Hans. (3), XXXVIII. 191.
[5] Hans. (3), XXXIII. 71.
[6] Parl. Reg. XLVII. 414.

1944. In regard to clerical form, — a matter by no means unimportant, — a report should be clearly and legibly written with ink, and not in pencil, and without any material erasures or interlineations. If presented in a foul state, the house will order it to be recommitted, or withdrawn, in order to its being written out in a proper manner.[1] It is not probable that any report of a merely formal nature would be required to be made in writing, but every one, at least, which requires the action of the house, or is to remain on its files, should be prepared in that manner.[2]

1945. Besides the report, properly so called, relating to the subject-matter referred to a committee, it is frequently necessary for a committee to make a special report, in reference to some matter incidentally arising, relating to the powers, functions, or proceedings, of the committee. Such reports are similar in point of form, and are proceeded upon in the same manner as the principal report of the committee. A report from an election committee, that one of the sitting members in the case before the committee had been guilty of bribery and corruption;[3] a report from a select committee, that parts of the evidence taken by it had been published improperly;[4] a report from a select committee, requesting the instructions of the house, as to the authority of the committee, or the proper course for it to proceed;[5] are examples of incidental or special reports.

1946. When a committee is authorized to report from time to time, and the subject-matter referred to its consideration is one which admits or requires more than a single report, the committee is at liberty to make as many reports as it may think proper, and at convenient intervals as it makes progress in the business referred to its consideration.

1947. Besides reports, properly so called, committees frequently direct their chairman to make motions in the house, either in reference to the subject-matter referred to the committee, or to some incidental matter connected with or growing out of the principal subject. The direction frequently given to the chairman of a committee, to move the house that leave be granted for bringing in a bill, is an example of the former. A direction to move for leave to send for persons, papers, and records, or, that the committee may report from time to time, is an example of the latter. Motions of

[1] Hans. (1), XVII. 1, 6, 8, 10.

[2] Cong. Globe, XV. 564. But see Lloyd's Deb. II. 257, 258; J. of House, 31st Cong. 1st Sess. 1011, 1012.

[3] Hans. (3), I. 1042, 1043.

[4] Hans. (3), XXXVII. 1305.

[5] Hans. (1), XXIII. 883.

this kind require previous notice,[1] and are considered in every respect in the same manner as other motions.

1948. A committee, as we have seen, has no other authority than to do as it is ordered by the house, or to report its opinion upon the subject referred to it, but it has no authority, unless expressly conferred upon it, to report for the consideration of the house, any act of legislation, as a bill, or joint resolution. It is a common practice, however, in this country, to authorize a committee to report by "bill, or bills, or otherwise." This authority is either conferred by the order for the appointment of the committee, or by some subsequent order, or more commonly by a standing order. In these cases, where a committee reports a bill, the bill may be either the report, or an addition to the report. In either case, the reception of the report of the committee is equivalent to the reception of the bill of the house, in the same manner as if presented by its order.

1949. Where the functions of a committee are not merely clerical, or the paper before it does not originate with itself, it has no authority to erase or add to the paper before it, but must set down its amendments even where directed by the house to make them in its report; but with this exception, the committee has full power over the paper committed to it, if any, though they cannot change the title or the subject.[2]

CHAPTER EIGHTH.

OF MAKING THE REPORT AND PROCEEDINGS THEREON.

1950. When a report is to be made from a committee, the chairman, or other member charged with the duty of making it, rises in his place, and addressing the speaker, and being responded to by him, informs the house, that he is directed by such a committee, to report the matter to the house; and thereupon reads, or is supposed to read the report in his place; he then appears and takes his seat at the bar, with the report and other papers in his hand. The

[1] Parl. Reg. LX. 391, 395, 396. Cong. Globe, XI. 319, 324.

[2] Jefferson's Manual, Sec. XXVI.

speaker, seeing him there, inquires what he holds in his hand? The member answers that it is the report of such a committee. Thereupon a motion is made, or supposed to be made, either by the member himself, or by some other, and a question put, that the report be brought up to the table, or, in other words, that it be received.[1]

1951. Where the reporter from a committee, who may either be the chairman, or some other member directed by the committee, reports a series of resolutions, or other papers originating with the committee, he reports it in a clean draft, with all the amendments, if any, which have been adopted, duly written in; but where he reports amendments to a bill or other paper, which is referred by the house to the committee, in making the report, he reads the amendments with the coherence in the papers, and opens the alterations, and the reasons for the amendments, until he has gone through with the whole. He then delivers in the bill or other paper at the clerk's table, when the amendments are read by the clerk, without the coherence, whereupon the papers lie, till the house at its convenience proceeds with the business.[2]

1952. On the question of bringing up the report, it is competent to any member to object to receiving the report on the ground of any irregularity, either of form, as, for example, that the report is full of erasures and interlineations,[3] or, of substance, as, for example, that it is not within the powers of the committee;[4] or to go into a general debate of the subject-matter; but it is not in order to move to amend the report; it must either be received or rejected, as it is;[5] and no motion, except for recommitment,[6] can be made in relation to it, until it has been received.[7]

1953. The practice in this country, in making a report, is somewhat different. There is no formality of going to the bar and bringing up reports from thence. Whenever the chairman or other member of the committee is ready to report, he obtains possession of the house, or is called to by the speaker, for the purpose, and announces that he has a report from such a committee. He thereupon proceeds in his place to read the report in question. If the report is objected to by anybody, either on the ground of form, as not being properly prepared, according to the orders of the house, or of substance, as not being within the jurisdiction of the

[1] See Com. Jour. XV. 102, 189.
[2] Jefferson's Manual, Sec. XXVII.
[3] Hans. (1), XVII. 1, 6, 8, 10.
[4] Parl. Reg. (2), XXI. 505.
[5] Hans. (3), XV. 524.
[6] Hans. (1), XVII. 1, 6, 8, 10.
[7] Parl. Reg. LXV. 153.

committee, this raises the question of the reception. If the objection is on the ground of order, a question is presented in the first instance for the presiding officer to decide. If the ground of order is overruled, or the report is suffered to proceed notwithstanding, or a suspension of the rules takes place, then the question of reception is to be put to the house or supposed to be so, and if decided in the affirmative, the report is accordingly received and further proceedings had thereon. If the objection is not one of order, the question of reception is to be put at once to the house.

1954. If this question should be decided simply in the negative, of which there are instances,[1] it is not apparent what the precise effect of the decision would be, — whether the committee would be discharged,[2] and the matter there stop, — or whether the refusing to receive the report would be equivalent to a recommitment; but, at all events, if the decision were upon the ground of an informality in the report, it would undoubtedly be followed by a recommitment.

1955. If the question is decided in the affirmative, the chairman then brings up the report, and delivers it in at the clerk's table. The next step, in the regular course of proceedings, is, for a motion to be made, usually by the reporter, and a question put, "that the report be now read." On this question, the same proceedings may take place as on the former motion, that the report be brought up. But, according to the practice in modern times, this question is only supposed to be put, being, in point of fact, omitted, and the report read, without a question. If the question of reading should be made, and decided in the negative, it does not appear that any other motion could be made with reference to the report, but to recommit it. No other motion, it seems, could be made in the regular course of proceeding, without first reading the report.

1956. The proceedings with reference to a report are the same, whatever the form of it may be, until it is brought up and read and the house has proceeded to take it into consideration. After this point, the proceedings may be different according as the report concludes or not, with resolutions or other propositions, which are reported for the purpose of being acted upon and agreed to by the house. The proceedings, if any, which take place between the

[1] Comm. Jour. XV. 189.

[2] If this were the final report of the committee which had adjourned without day, the committee would be *functus officio*, unless revived.

bringing up and the consideration of the report, are also the same, without regard to the form of the report.

1957. When a report is brought up and read, there are several courses of proceeding which may be adopted:—1. No motion whatever may be made in reference to it, in which case, it remains to be taken into consideration afterwards, whenever the house may think proper; 2. It may be ordered, on motion, to lie on the table, either generally, in which case, no other order can regularly be made in reference to it, on the same day, or specially, until some specified time, in which case, no order can be made till that time; 3. A motion may be made for taking it into consideration on a future day. This motion may be so framed, by naming a day beyond the session, as to amount, if it is carried, to a defeat of the measure; or if the day named be within the session, it may be amended into a day beyond the session; and, in either case, the motion may be amended, so as to become a motion for present consideration; 4. A motion may be made for the recommitment of the report; or, 5. If neither of these courses is pursued, the house may proceed with the consideration of the report. The manner of proceeding may then be different, as already observed, according as the report contains or not resolutions or other propositions, for the consideration of the house.

1958. If the report does not conclude with or contain any resolution or other propositions, for the consideration of the house, or such only as do not require to be agreed to by the house, it does not appear, that any further proceedings in reference to it, as a report, are necessary. It remains in the possession and on the journals or files of the house, as a basis or ground for such further proceedings, as may be proper or necessary. Resolutions of opinion may be moved upon it; or a motion for leave to bring in a bill may be predicated upon the facts stated in it; or it may be referred to another committee for their consideration; or it is presumed, it may be amended. Reports of this description contain a statement of the facts, or of the evidence merely relating to the subject of inquiry, and are not accompanied by any resolutions or other propositions, for the consideration of the house. A resolution, that, in the opinion of the committee, petitioners have fully proved the facts set forth in their petition,— or, that the house be moved that leave be granted for a bill to be brought in,— are not resolutions, which require to be agreed to, in that form, by the house.

1959. If the report concludes with or is accompanied by resolutions or other propositions, which are proper or necessary for the

consideration and adoption of the house; or if it consists of such resolutions or propositions alone, as is the case with the reports of committees of the whole; — the report being brought up and read, and thus brought before the house, there are several different ways of proceeding with it which may be adopted, namely, the *first*, *second*, *third*, and *fourth* of the courses already indicated; or, *fifth*, it may be proceeded with, in which case, the appropriate motion is, that the report be read a second time.

1960. The motion for reading the report a second time may be simply negatived, in which case, it is competent for the house to dispose of the report in either of the ways above mentioned; or it may be amended, by substituting for present reading a motion for the second reading within or beyond the session, and in this form agreed to or negatived; or, lastly, the motion may be agreed to, in which case, the resolutions are read in their order; and, as each resolution is read, a motion may be made, that the house agree to it; or, 2, that the resolution be amended; or, 3, that it be recommitted; or, 4, that it be postponed, that is, give place to those subsequent to it.

1. If the resolution is agreed to, it then becomes the act of the house, and a ground for further proceedings, according to its nature; if disagreed to, there is an end of the matter.

2. If the resolution is amended, or the motion to amend is rejected, either of the other motions may then be made.

3. The effect of a recommitment will be presently stated. If the motion to recommit is negatived, any of the other motions above enumerated, not already put and negatived, may be made.

4. If a motion to postpone is carried, the resolution so postponed may be afterwards considered, or suffered to remain.

1961. When any one of these motions is made and pending, any of the others may be substituted for it, by way of amendment; thus on the motion for agreeing to the first resolution, it may be moved to amend the motion by leaving out all but the word "that," in order to insert a motion for a recommitment, or amendment, or postponement.

1962. On all the motions above mentioned, which affect the whole report, as for example, that it lie on the table, or that the resolutions be read a second time, it is in order to enter into debate of the whole subject embraced in the report;[1] and it is strictly regular, on any such motion, to make objections to a sing

[1] Parl. Reg. (2), XVIII. 415, 416.

resolution, for the purpose of showing that it ought to be amended, or recommitted, or rejected.[1] On the other hand, on all questions which relate to the resolutions individually, as, for example, on the motion, that a particular resolution be agreed to, it is not strictly regular to go into a general line of argument, as to the whole report; but the debate should be confined to the particular resolution under consideration.[2] These rules, however, must always be qualified, in their application, by the general rules relating to relevancy in debate.

1963. It is in order, at any time, before resolutions are agreed to, to recommit the whole, or any one or more of them.[3] But, if this motion is made whilst any other motion, as, for example, a motion that the report lie on the table, is pending, the motion to recommit must be considered and put as an amendment to the motion pending.[4]

1964. The effect of a recommitment, for any cause, is to undo all that has previously been done in the house, with reference to the report, and to throw back the subject into the hands of the committee for their revision or completion, or for whatever other purpose the recommitment may be ordered, as for the purpose merely of revision,[5] or of being taken into a new draft;[6] though, of course, it does not impose upon the committee any obligation to go again over the whole matter, or to reëxamine the witnesses already fully and properly examined. A recommitment generally takes place for some cause, which sufficiently indicates to the committee what they are expected to do, and, hence, it is not usual for instructions to be given on recommitment; but the committee are to gather from the sense of the house in their proceedings what method they are to pursue.[7] When a report is thus recommitted, the committee, with all its powers, appears to be thereby revived; and it is only necessary to appoint a time for the committee to sit. The report made by a committee upon recommitment is sometimes called an amendatory,[8] or a revisionary report.[9]

1965. It is, of course, competent for the house, at any time before the resolutions are agreed to, to adjourn the debate, or to

[1] Parl. Reg. XVII. 214; Same, XLIII. 632; Same, LVI. 658.
[2] Parl. Reg. LXII. 122; Same, LVI. 658.
[3] Parl. Reg. XIX. 195, 230; Hans. (1), V. 163.
[4] Hans. (1), XVII. 171, 175.
[5] J. of C. VI. 208.
[6] J. of C. VI. 128.
[7] Parl. Reg. XIX. 195, 230; Hans. (1), V. 163.
[8] J. of H. II. 127; Same, IV. 132; Same, VII. 78.
[9] J. of H. I. 704.

order the report to be taken into further consideration, on a subsequent day.

1966. Resolutions, reported by a committee, and agreed to by the house, are grounds for the house to proceed upon, without any further investigation.[1]

1967. It is hardly necessary to observe that a report may be dealt with in parts; thus, a part of a report may be ordered to lie on the table,[2] or a part of it recommitted,[3] disagreed to,[4] or agreed to.[5] The whole report, being under consideration, must, of course, be disposed of in some regular parliamentary manner.

1968. According to a practice begun in congress about thirty years ago, and now prevailing in all our legislative assemblies, though it is not known to the parliamentary law of Great Britain, the views of those members of a committee, who do not concur in the report, are allowed to be presented to the house to which such committee belongs. These documents, under the somewhat incongruous name of *minority reports*, may emanate from any one or all, or any two or more, of the members of the minority of the committee, and may be presented when the report is made, or afterwards, or even before. They are received by the courtesy of the house, expressed by the ordinary vote of a majority,[6] and usually receive the same destination with the report; that is, they are printed, postponed, and considered in the same manner. But they are not, in any parliamentary sense, reports, nor entitled to any privilege as such; and their only effect is, in the first place, to operate upon the minds of members as arguments, and, secondly, to serve as the basis for amendments to be moved on the resolutions, or other conclusions, of the report. If they contain or recommend a bill, it is read not as a bill, but as a part of the report, and for the information of the house.[7]

[1] Parl. Reg. (2), XVIII. 23.
[2] J. of H. I. 281.
[3] J. of C. IV. 415.
[4] J. of H. I. 194, 381.
[5] J. of H. I. 451.
[6] Cong. Globe, VIII. 257.
[7] J. of H. 24th Cong. 1st Sess. 561; Cong. Globe, XI. 248; Same, 815; Same, XXI. 1345.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART SEVENTH.

OF COMMITTEES AND THEIR FUNCTIONS.

SECOND DIVISION.

COMMITTEES OF THE WHOLE.

1969. COMMITTEES of the whole house are composed of all the members, and sit in the house, while the house is sitting.[1] Select committees, as has already been seen, consist of a small number of members only, who sit apart from the house, though in rooms belonging to the house, while the house is not sitting. These differences in the constitution of the two kinds of committees are accompanied by corresponding differences in their nature, functions, and proceedings. While, therefore, as committees, they possess many points of resemblance; as bodies differently constituted and for different purposes, they present many points of dissimilarity. These differences will appear in what is now to be said of committees of the whole.

[1] Appendix, XV.

CHAPTER FIRST.

APPOINTMENT OF A COMMITTEE OF THE WHOLE.

1970. In order to the appointment of a committee of the whole, it is necessary that the house should resolve, first, that a particular subject be referred to the consideration of a committee of the whole house, and also, that on a day named, or forthwith, it will resolve itself into a committee of the whole house upon, or to consider of, that subject. The latter resolution is equivalent both to the naming of the members to constitute a select committee, and to the order directing the time and place of their meeting.

CHAPTER SECOND.

SITTING OF A COMMITTEE OF THE WHOLE.

1971. A committee of the whole, besides being constituted of all the individual members, is also to be formed by an act of the house itself.[1] It is, consequently, not competent for the members to assemble themselves together at the time appointed and to proceed as a committee; but the house must be regularly met and sitting, at the time appointed, in order that it may then resolve itself into the committee, agreeable to its previous resolution. According to the practice of the senate of the United States, that body is not always formed into a committee of the whole, but merely resolves that a particular matter pending therein shall be considered as in a committee of the whole. In this case, no chairman is appointed, but the matter in question is considered as in a committee, and afterwards reported upon to the senate, and proceeded with accordingly. This is what Mr. Jefferson speaks of as a quasi-committee.

[1] Jefferson's Manual, Sec. XXX.

1972. An order, for the appointment of a committee of the whole, may be rescinded or discharged at any time after its adoption; in which case, the matter referred to its consideration immediately resumes its place, which it would otherwise have occupied in the business of the assembly.[1]

1973. The house being regularly met and sitting, on the day appointed for the committee to sit, the course of proceeding, for resolving into the committee, is, in the first place, to move that the order of the day for going into the committee be read, and this motion being decided in the affirmative, and the order read accordingly, a motion is then to be made, that the speaker do now leave the chair. If this motion is carried, the speaker leaves the chair of the house, and the chair of the clerk, which is the chair of the committee, is taken by some member, and the house is then resolved into the committee.

1974. At the same time, that the speaker leaves the chair, the sergeant-at-arms removes the mace from the table, and places it under the table, where it remains, while the house is in committee. If the resolution of the house is for going immediately into the committee, the motion for the speaker to leave the chair follows at once.

CHAPTER THIRD.

CHAIRMAN AND CLERK OF THE COMMITTEE.

1975. When the speaker leaves the chair, some one of the members is called by the house to take the chair of the committee, and if no other member is named, the member so called takes the chair as a matter of course; but if there is any opposition to such member, that is, if any other member is called to the chair, the speaker thereupon resumes the chair of the house at once, and the house proceeds, upon nomination, to appoint a chairman for the

[1] Where a committee of the whole, to whom a bill had been referred, and to whom also another bill has been afterwards referred, was discharged from the consideration of the first-named bill, it was held, that the committee was thereby dissolved. J. of H. 15th Cong. 1st Sess. 277.

committee.[1] A chairman being thus appointed, the speaker again leaves the chair of the house, and the former takes the chair of the committee.

1976. When the house of commons is in committee of the whole, — the chairman then occupying the chair of the clerk, — it has always been the practice for the clerk assistant, alone, and not the clerk, to act as clerk of the committee, and to make out its reports.[2]

1977. The proceedings of a committee of the whole, like those of other committees, are not recorded on the journal of the house, according to the ordinary course of parliament. But, on the 23d of February, 1829, the house of commons assented to a suggestion of the speaker, that the proceedings in committee ought to be entered on the journal, and arrangements were accordingly made for that purpose; since which time, the proceedings of that house in committee are regularly recorded.[3]

1978. In the house of commons, the member, who is appointed to the chair, when the house is resolved into a committee of supply, on the first occasion for resolving into that committee, is considered as the chairman of committees during the session, and takes the chair generally whenever the house resolves itself into a committee of the whole.[4] In the house of lords, a chairman of committees is appointed, at the commencement of each session, in pursuance of a standing order, whose duty it is to take the chair, in all committees of the whole house, unless the house shall otherwise direct.[5]

1979. The duties of the chairman of a committee of the whole in the commons are analogous to those of the speaker, whilst the house is sitting, and, in the house of lords, to those of the lord chancellor; to receive motions, put questions, announce the result of divisions, and, generally, to conduct the proceedings and to pre-

[1] Comm. Jour. XIV. 455. In this country, it is common to provide, by a special rule, that the speaker or other presiding officer shall appoint the chairman of committees of the whole.

[2] Hatsell, II. 273, 274; May, 295. It is from this circumstance, says Mr. Hatsell, that the office of clerk assistant is much the most laborious of the two, as the principal business of the house of commons is generally carried on in committees.

[3] May, 294.

[4] May, 415.

[5] May, 286. The duties of chairman of committees are deemed so important, in the house of commons, that from the time of the revolution until the commencement of the present century, the member by whom they were discharged received an annual salary; and since the latter period he has received compensation for his services, in the form of a grant of money, at the end of every session. Hans. (1), VIII. 230, 231. By a standing order of the 4th Aug. 1853, the chairman of the committee of ways and means is appointed to take the chair of the house, as speaker *pro tempore*, during the unavoidable absence of the speaker.

serve order in the committee, as its presiding officer; and, on the rising of the committee, to make its report to the house, together with such motions as the committee may direct him to make.

1980. The duties of the chairman of committees of the house of commons make it necessary that the person who holds it should be prepared with a full knowledge of the business of the house, and all its public duties; that he should be acquainted with and explain its orders, when in a committee; and that he should attend from the sitting of the house to its rising. To discharge these duties requires time, attention, ability, and a great deal of personal labor.[1]

CHAPTER FOURTH.

DUTIES OF THE SPEAKER AND OTHER OFFICERS OF THE HOUSE, WHILE THE HOUSE IS IN COMMITTEE OF THE WHOLE.

1981. As a committee of the whole can only sit while the house is sitting, — being in fact the house itself sitting in committee, — it is necessary that the speaker should be constantly present in the committee, and take official notice of its proceedings, in order to resume the chair of the house, whenever the committee shall see fit to rise and report; or, to resume it without any direction of the committee, when any public business shall arise in which the house is concerned,[2] or when notice is taken, and it appears, that a quorum of the committee is not present; or in case any sudden disorder should occur, which the committee, as such, would have no power to suppress. For the same reason, the other officers of the house, — the sergeant-at-arms, clerk, etc., — should also be present, in order to resume their functions, the moment the chair is taken by the speaker. It is for this reason, also, that the chairman of the committee does not occupy the chair of the house, but that of the clerk, at the table. It is thus in the power of the speaker, whenever the exigency requires it, to take the chair at once, and

[1] Haus. (1), VIII. 230, 231.

[2] In our legislative assemblies, the speaker resumes the chair informally to receive a message from the other branch or from the executive, if one is announced whilst the house is in committee. When in the chair of the house, he may be detained there by the intervention of other business.

resume the house. The following are examples of proceedings of this description.

1982. If any doubt should arise in the committee, as to a point of order, or other proceeding, which the committee cannot agree upon, or which may appear to be beyond their province to decide, the course is to direct the chairman to leave the chair, report progress, and ask leave to sit again, for the purpose of obtaining the instruction or direction of the house in reference to the matter in question. Thus, on the 2d March, 1836, a debate having concluded in committee, the chairman stated, that before he put the question, he wished to have the opinion of the committee as to the manner in which the committee should be divided, in case of a division; and it being the opinion of the committee, that 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."[1]

1983. If any public business should arise in the commons, in which the house is concerned, as if the house should be summoned to attend the queen or lords commissioners in the house of peers, or if the time has arrived for holding a conference with the lords, the speaker resumes the chair at once, without any report from the committee.

1984. So, also, if any sudden disorder should occur, by which the honor and dignity of the house are likely to be affected, the speaker would be justified in resuming the chair immediately, without waiting for the ordinary forms. The following is an instance of this proceeding, which occurred in one of the parliaments of Charles II., during the speakership of Sir Edward Seymour. "On the 10th May, 1675, a serious disturbance arose in a grand committee, in which bloodshed was threatened; when it is related that 'the speaker very opportunely and prudently rising from his seat near the bar, in a resolute and slow pace, made his three respects through the crowd, and took the chair.' The mace having

[1] Comm. Jour. XCI. 104; May, 290.

been forcibly laid upon the table, all the disorder ceased, and the gentlemen went to their places. The speaker being sat spoke to this purpose: 'That to bring the house into order again, he took the chair, though not according to order.' No other entry appears in the journal than that 'Mr. Speaker resumed the chair;' but the same report adds, that though 'some gentlemen excepted against his coming into the chair, the doing it was generally approved as the only expedient to suppress the disorder.'" [1]

1985. A similar case has occurred more recently in the house of commons. "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 sergeant to do his duty. When the member had been removed by the sergeant, the house again resolved itself into the committee." [2]

1986. The house has also been resumed on account of words of heat or dispute between members.[3]

CHAPTER FIFTH.

PROCEEDINGS ON GOING INTO A COMMITTEE OF THE WHOLE.

1987. A committee of the whole being usually appointed by a previous resolution, that the house will, on a certain future day, resolve itself into a committee of the whole, for the consideration of the subject in question,—which resolution is thus an order of the day for the day assigned,—when that day arrives, and the house is sitting, the first step is for a motion to be made, that the order of the day, for going into the committee, be read. If no such motion is made, or if made and negatived, the order drops; in which case, the reference of the subject to a committee of the

[1] Grey, III. 129; May, 291.

[2] Comm. Jour. LXV. 134; May, 292. The same practice prevails here. See J. of H. 25th Cong. 2d Sess. 1012, 1013, 1014; Same, 26th Cong. 1st Sess. 814; Same, 27th Cong. 1st Sess. 488, 846, 847; Cong. Globe, VI. 422; Same, VIII. 343.

[3] Comm. Jour. X. 806; Same, XI. 480; Same, XLIII. 467; May, 292.

whole remains a subsisting order of the house, to be carried into execution at such other time as the house may think proper. If the motion is decided in the affirmative, the order is read, and the business which it contemplates is thus brought under the consideration of the house. The order being read, the house may either, 1, drop it; 2, discharge it; 3, postpone it; or, 4, proceed with it.

1988. I. If the house does not think proper to proceed with the business at that time, or to fix upon any future day for its consideration, the course is to let the order drop, without making any motion in reference to it. The business then stands precisely as if the house had resolved to refer the matter to a committee of the whole, and had stopped there, without appointing any time for resolving into the committee.

1989. II. If the house thinks proper to withdraw a subject from the consideration of a committee of the whole, the course is to move that the order be discharged. If this motion is decided in the affirmative, the subject is then in the same predicament as before the order was made.

1990. III. If the house thinks proper to proceed with the order, but not until some future day, the course is to renew the order for such future day as may be agreed on, by a motion for that purpose. If this motion is decided in the affirmative, the business is then in the same situation as if the time so resolved upon had been originally resolved upon for going into the committee.

1991. IV. If the house thinks proper to proceed with the order, the course is to move, that the speaker do now leave the chair; and if this motion is decided in the affirmative, the speaker leaves the chair, and the committee proceeds with the business referred to it. But, upon this motion, it is still in the power of the house to drop the order or to postpone it to a future day. If the motion is decided in the negative, that is, that the speaker do not now leave the chair, and no further motion is made, the order drops. The effect of this is, that the house cannot resolve itself into the committee on the same day; and that the business stands in the same position, as if no order had been made for the appointment of the committee; but the order may be renewed at any time for a future day. The committee may also be postponed on this motion, without first deciding it in the negative, by means of an amendment. The motion being, "that the speaker do now leave the chair," a motion may be made to amend by leaving out all the words of the motion except the word "that," in order to insert the words "the house

will," on such a day, "resolve itself into the said committee."[1] This amendment may be so worded, either originally or by means of an amendment, as to postpone the committee to a day beyond the session; in which case, the measure is defeated altogether.

1992. When the order of the day for going into the committee has been read, and before the motion is made that the speaker do now leave the chair, the proper time occurs for moving instructions to the committee, and for referring petitions and other papers connected with the subject, to its consideration. If the motion for the speaker to leave the chair is first made, it must be withdrawn before a motion to instruct or refer can be made, unless the latter is put as an amendment, that is, that all the words of the motion but the word "that," be left out, in order to insert the instruction or reference as a substitute. This is the proper time, also, when there is to be a hearing before the committee, for the witnesses and counsel to be called in.[2]

1993. When the motion has been put and agreed to, that the speaker do now leave the chair, it is not in order for any member to speak; either addressing himself to the speaker, before he has left the chair,[3] or to the clerk after he has left it.[4] When the house has resolved itself into the committee, and the chairman has taken the chair, he proceeds to lay before the committee the business referred to it.

CHAPTER SIXTH.

OF THE PROCEEDINGS IN COMMITTEE OF THE WHOLE.

1994. The general rule, in regard to the forms of proceeding in committees, both select and of the whole, is, that they are regulated by the same rules, in substance, by which analogous proceedings of the house to which they belong are regulated.[5] Business proceeds therein by means of motions and resolutions; questions are

[1] Hans. (3) IX. 675.
[2] Parl. Reg. (2,) XVII. 152.
[3] Hans. (3), LX. 647.
[4] Hans. (1), XV. 302, 303.
[5] It is provided, by a rule, in the house of representatives of the United States, and the same, or a rule analogous to it, is very commonly inserted in the rules and orders of other legislative assemblies, that, "The rules of proceedings in the house shall be observed in a committee of the whole house, so far as they may be applicable."

put and taken; divisions take place and the rules of proceeding and debate are observed; in substantially the same manner, as in the house. Committees of the whole differ, in many respects, from the house. The differences, between the proceedings of committees of the whole and those of select committees, on the one hand, and those of the house, on the other, will appear in what follows.

SECTION I. QUORUM.

1995. A committee of the whole house consisting of all the members, the rule as to the number necessary to be present, in order to make a house, has been extended to committees of the whole. If, therefore, it should appear, at any time, that the number of members present is less than a quorum, (to be ascertained in the same manner as in the house,) that is, in the commons, forty, and in the lords, three, the chairman must immediately leave the chair of the committee, and the speaker resume that of the house. The chairman, then, by way of report, for he can make no other, informs the speaker of the cause of the dissolution of the committee. When the speaker is thus informed of the want of a quorum in the committee, he immediately proceeds in the same manner to determine whether there is a quorum then present in the house. If a quorum should appear to be present, the house may immediately, (and this is the usual course,) resolve itself again into the committee and proceed with the business. If a quorum should not appear to be present, the speaker adjourns the house, in the same manner, as when the number of members present falls below forty during the sitting of the house.[1]

SECTION II. AUTHORITY OF THE COMMITTEE.

1996. A committee of the whole, like other committees, deriving its authority solely from the resolutions and votes of the house, is, in like manner, confined within the powers delegated to it, and cannot consider any other matters than those which have been regularly committed to it, or in any other manner, than it is authorized, by the house.

[1] May, 292. In our assemblies, the same rule prevails as to the necessity of a quorum, and the number of members to constitute it in committee of the whole. If on resuming the house, a quorum does not appear to be present, the speaker either adjourns the house, or waits for a motion to that effect, as in other cases.

1997. It is a consequence of this principle, that a motion for the previous question is not admissible in committee of the whole; inasmuch, as if the subject of a motion is not within the authority of the committee to consider, it may be suppressed on the ground of order; and, if within its authority, the consideration of it ought not to be suppressed at all.[1]

1998. It is a consequence of the same principle, that a committee of the whole cannot punish any of its members, or any other person, for disobedience to its orders, disregard of its authority, or disorderly conduct or words, in its presence; nor can it determine upon the form of proceeding which it ought to pursue when any question arises; in all which cases the matter should be reported to the house, to be determined upon or proceeded with there.[2]

1999. At the period when the grand committees for trade, grievances, courts of justice, etc., which were in fact committees of the whole house, were in use, the power to appoint subcommittees was considered as incident to them;[3] but since these committees have been laid aside in practice, now nearly two hundred years, it has been held to be an established principle of parliamentary law, applicable alike to all committees, that, possessing only a delegated power themselves, they cannot delegate it even to their own members as a subcommittee.[4] A committee of the whole may, however, by way of report, direct their chairman to move the house for the appointment of a select committee, with such powers as may be deemed necessary to take a particular subject into consideration.[5]

SECTION III. MAKING MOTIONS, AND SPEAKING IN COMMITTEE OF THE WHOLE.

2000. It is a rule, practically observed in committees of the whole, that a motion need not be seconded; but this rule has never been distinctly declared or recognized, as such; the propriety of it is sometimes questioned; and it is quite certain, that there is as much reason for requiring a motion to be seconded when made in committee, as when made in the house.[6] It is the custom, how-

[1] May, 289.

[2] May, 296; Hans. (3), XXXIV. 656; Hatsell, II. 270, 271, note; Comm. Deb. VI. 161. See also J. of H. 24th Cong. 1st Sess. 1209; Cong. Globe, III. 484.

[3] Rushworth, IV. 19.

[4] Hans. (1), XXXIX. 776, 777.

[5] Parl. Reg. XLII. 81. See also Hans. (1), XII. 651. See also Lloyd's Deb. 131; Ann. of Cong. I. 122; Cong. Globe, XV. 32.

[6] Hatsell, II. 112, note.

ever, as before remarked, to put a question on the motion of a single member.[1] It may be mentioned here that there can be no motion made in committees of the whole to lie on the table,[2] or to postpone indefinitely, or to a day certain. The only postponement that can take place is, to transpose the order of considering by paragraphs.[3] Neither can a committee of the whole entertain any matter of privilege,[4] or order any questions pending therein to be taken by yeas and nays.[5] Nor is it competent for a committee of the whole to reconsider a vote.[6] This, like the same principle in regard to select committees, stands upon a somewhat narrow interpretation of a common principle of parliamentary law.

2001. In committees of the whole, the rule that no member shall speak more than once to the same question, does not hold; every member may, therefore, if he can obtain the floor, speak as many times as he thinks proper, or as may be necessary, fully to explain his views in reference to the topic under consideration; and this constitutes the main difference between the proceedings of a committee and those of the house. It is by means of this facility of speaking that the details of a bill, or other measure, are subjected to the most minute and thorough examination, at the least expense of time; for, when a member can speak only once, he cannot safely omit any argument which he may be called upon to present under any circumstances; but when he is at liberty to speak as many times as he pleases, he may confine his remarks to such points only as arise or are suggested, without taking up any time with those in reference to which no question is made.[7]

2002. In regard to the personal deportment of members, whether addressing the committee, or otherwise, while the house is in committee, — as, for example, the manner and place of speaking, addressing the chair, observing silence, etc., — the same rules prevail as in the house.

2003. It is an ancient order of the house of commons, "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 more peculiarly applicable to the committees of supply and of ways and means; but is generally observed in committees upon bills, and other committees of the whole house. It creates an exception to the general

[1] May, 288. See Parl. Reg. XII. 354, 357, 359, 363.
[2] Cong. Globe, XXIII. 645.
[3] Cong. Globe, VIII. 285; Same, IV. 203.
[4] Cong. Globe, XXI. 1425.
[5] Cong. Globe, XIII. 618; Same, VIII. 285.
[6] Cong. Globe, VI. 423; Same, X. 305.
[7] May, 289.

rule, by which it is the duty of the chairman to put the question upon each motion separately, and in the order in which they are moved; and makes it his duty in the cases referred to, whichever sum or time may be first moved, to put the smaller sum or the longer time first to the question. The rule evidently had its origin in that period of parliamentary history, when it was the practice for the question to be taken by the speaker, or framed by him, from the turn of the debate, rather than from the motion of any particular member; and it was doubtless intended to control the speaker, in the exercise of his discretion, as to the question to be proposed, so as to secure to the house the freest exercise of its constitutional power, in regard to the burdens to be imposed upon the people; the object of the rule being, "that the charge upon the people may be made as easy as possible."[1] Though the purpose of the rule has therefore ceased, the practice has been found to be convenient; inasmuch as it sometimes enables the committee to dispose of two or more propositions, by the taking of one question; as, if the smaller sum is resolved in the affirmative, the point is settled at once, and no question is put upon the greater; and, if in the negative, the greater sum is generally agreed to without further opposition. In this manner a direct negative of the larger sum is avoided, when the majority of the committee are averse to it; and it has been assigned as one of the merits of the rule, that the discourtesy of refusing to grant a sum demanded by the crown is thereby mitigated. The reason of the first part of the rule, namely, as to the sum, is obvious. The reason of the other part, as to the time, requiring the longest time to be first put, had reference to the ancient mode of granting subsidies, which were rendered a lighter burden 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

[1] Mr. May remarks, upon the reason given for the rule, that "how that desirable result can be secured by putting one question before the other, is not very apparent; for if the majority were in favor of the smaller sum, they would negative the greater when proposed." (May, 421.) But it seems very clear, taking into consideration the period when the rule was introduced, in connection with the practice to which it evidently refers, that it lies at the foundation of the great constitutional right of the commons to be the exclusive judge both of the amount and of the time of payment of every tax which they granted. The speaker usually, if not always, belonged to the court party; and having the right, in virtue of his office, to present which question he pleased out of several before the house at the same time, he would always of course put that which was most favorable to the sovereign; and the members, many of them, might not dare, or at any rate, might be very unwilling, to vote against the larger sum, when distinctly proposed as a question by the speaker, who would nevertheless avail themselves of the privilege afforded them by the forms of parliament, to negative the larger by voting for the lesser sum.

ways and means, whenever the time, at which a tax shall commence, is under discussion; for the most distant time being most favorable to the people, the question for that time is first put from the chair.[1]

SECTION IV. FORMAL MOTIONS.

2004. A committee of the whole, having no power, as such, either to adjourn its own sittings, or to adjourn a debate to a future day, but only to rise and terminate its sitting, on the same day, certain formal motions, different from any that take place in the house, are made use of for the purpose of disposing of the business before the committee.

2005. If the matter referred to the committee is of such a nature that it does not admit of being reported upon in parts, and the committee has not concluded the consideration of it, at the usual time for the adjournment of the house, the proper course is, for the committee, on motion, to direct the chairman "to report progress, and ask leave to sit again." This is followed by a motion "that the chairman do now leave the chair;" which being carried, the chairman leaves the chair, — the house is resumed, — and the chairman makes the report as directed by the committee. The former motion, being equivalent to a motion for an adjournment of the debate, in the house, supersedes whatever motion may be pending at the time, except a motion that the chairman do now leave the chair; which, being equivalent to a motion to adjourn, in the house, supersedes all others. The debate, however, on the question pending, continues as before;[2] precisely, as in the house, the debate continues on the main question, after a motion made to adjourn, or to adjourn the debate.

2006. When the committee has gone through with the business referred to it, the proper course is, for the committee, on motion, to direct the chairman to report the resolutions or other proceedings to the house, and then to direct the chairman to leave the chair.

2007. If the business of the committee is such as to admit of being reported upon, from time to time, in part, — which is usually the case with the committees of supply and of ways and means, — the proper course is for the committee, on motion, to direct the

[1] May, 358, 421. There is generally a rule, in our assemblies, concerning the filling of blanks, similar to the above; but it usually gives precedence to the largest, instead of the least sum.

[2] See also ante, § 2002.

chairman to report the resolutions, or other proceedings of the committee, if there are any to report, at the end of each sitting, and, at the same time, to ask leave for the committee to sit again.

2008. If the committee wish to dispose of the business referred to it, by proceeding no further in the matter, a motion may be made, "that the chairman do now leave the chair;" which, if carried, prevents the making of any report, and supersedes the business of the committee, as an adjournment of the house supersedes a question pending.[1] This course of proceeding, though not regular, is not unfrequently resorted to, under the peculiar circumstances of a case, as the most convenient mode of disposing of the matter. In this case, however, the order of reference still remains a subsisting order, and the house may at any time be again resolved into the committee.

2009. It is a rule, in committee, that motions to report progress, and that the chairman do leave the chair, being of the nature of motions to adjourn the debate and to adjourn the house, if negatived, cannot be immediately renewed, but only after the intervention of some other proceeding.[2] Hence, it is usual, when the house is in committee, to move alternately, "that the chairman do report progress," and "that the chairman do now leave the chair," for the same purpose that motions to adjourn the house, and to adjourn the debate, are alternately made in the house.

2010. It has been stated, that when a committee has directed its chairman to report, either a progress, in the matter referred to it, or the resolution or other proceedings of the committee, a motion then follows, that the chairman do now leave the chair. The interval between these two motions is the proper time for instructing the chairman, if necessary, to report to the house any disturbance, or extraordinary occurrence, which may have happened in the committee, which has not already been reported, and which may be thought of importance enough to be reported to the house.[3]

[1] May, 293; Cong. Globe, XI. 341.
[2] Cong. Globe, VI. 371.
[3] Hans. (2), X. 318, 319.

CHAPTER SEVENTH.

OF THE REPORTS OF COMMITTEES OF THE WHOLE.

2011. The reports of committees of the whole, made to the house, are usually in the form of resolutions, expressive of the opinion of the committee, as to the subject referred to it; sometimes, however, they are in the form of a direction from the committee to its chairman, to inform the house of some fact, or to make a particular motion; and, sometimes, as, for example, when the committee reports resolutions, and, at the same time, directs the chairman to move for leave to sit again, both these forms are combined.

2012. In respect to their substance, also, reports are of two kinds, namely, those which relate to some occasional or incidental matter, occurring in the course of a committee's proceedings, and those which relate to the subject-matter referred to the committee.

2013. Reports of committees of the whole differ from those of select committees, in one important particular, as to their substance, namely, that, in all cases, where the subject of reference to a committee involves an investigation of facts, as well as the expression of an opinion, it is the duty of a select committee to report the evidence or facts, which they find, as well as the resolutions of opinion, to which they have agreed upon the facts;[1] but, when such an investigation is carried on by a committee of the whole, the committee simply reports resolutions; inasmuch, as it would be the merest pedantry of form to say, that the members of the house could not know in that capacity facts which had come to their knowledge sitting as a committee.

SECTION I. RESOLUTIONS.

2014. A committee of the whole usually reports, in reference to the subject-matter referred to it, in the form of resolutions, which receive the consideration of the house, and are agreed to or disagreed to, in the same manner as resolutions reported by a select committee, or moved by an individual member.

[1] Parl. Reg. XI. 488.

SECTION II. DIRECTION TO MOVE THE HOUSE OR TO STATE A FACT.

2015. This form of report is adopted when the committee is of opinion, that the object can be most conveniently, and may with propriety, be accomplished in that manner. When the chairman is thus directed to make a motion, he reports accordingly and makes the motion, as directed by the committee. The motion is then treated in the same manner, as a motion emanating from an individual member. It also requires notice to be given in the same manner.[1]

2016. When the chairman is merely directed to make a statement to the house of some fact, without submitting any motion, the duty of the chairman is discharged by the simple statement as directed; this being done, it is for the house, on motion of the members individually, to take such measures in reference to the matter of the statement as may be deemed necessary and proper.

SECTION III. SPECIAL REPORTS.

2017. Whenever any thing occurs, in the course of the proceedings of a committee, which makes the immediate intervention of the house necessary or desirable, the proper course is for the committee to rise and report that matter to the house. Such proceedings take place thereupon as may be deemed necessary, and then the house resolves again into the committee. If the matter is one which does not require or admit of the immediate interference of the house, the committee makes a report upon it at the same time, with the report on the matter referred.

2018. Occasions of this kind occur when a witness refuses to attend, or to testify, or prevaricates, or when a witness is tampered with, while in attendance upon the committee; or where any question arises in the committee, as to the form of proceeding, which ought to be adopted; or where it becomes desirable to enlarge the powers of the committee by further instructions. In these cases, the report may be in such form as may be deemed most convenient; though, in the last-mentioned case, it is usual merely for the committee to report progress, — then, on motion, to receive the necessary instruction, — and then for the house to resolve itself

[1] See ante, 1947.

again into the committee. Reports of this kind are usually received at the time and taken into consideration immediately.

2019. It seems, that if a breach of privilege occurs, while the house is in a committee, it cannot be decided upon by the committee, but the house must be resumed, and all other matter suspended, until the question of privilege is settled.[1]

SECTION IV. REPORT ON THE SUBJECT-MATTER REFERRED TO THE COMMITTEE.

2020. When the committee has gone through with the consideration of the subject referred to it, and has agreed upon the result, its report is usually presented to the house, in the form of resolutions, expressive of the opinion of the committee, as to the subject-matter referred to it, or as to the proper course to be taken in the house with reference to such subject. Sometimes, however, the report is in the form of a direction to the chairman to move the house, that leave be granted for a bill to be brought in, or that a select committee be appointed for a particular purpose.

CHAPTER EIGHTH.

OF MAKING THE REPORT, AND PROCEEDINGS THEREON.

2021. The form of reporting from a committee of the whole, in the house of commons, is as follows. The committee having first agreed upon a report, the chairman is directed to leave the chair. On this, the chairman leaves the chair, the speaker takes the chair of the house, and the chairman, addressing himself to the speaker, from his place in the house (for the purpose of making the report, the chairman usually takes a position near the steps of the speaker's chair) informs the house, that the committee of the whole, to whom such a subject was referred, having considered the same, has directed him to make a report thereon, at such time as the house shall see fit to receive it. The house then, on motion, or-

[1] Parl. Reg. XI. 188.

ders that the report be immediately received, in which case, he makes the report in his place, or near the chair, or that it be received on some future day named.

2022. At the time appointed for receiving the report, (the order of the day for receiving it being first read, if a future day has been appointed,) the chairman appears with it at the bar of the house, and, upon being called to by the speaker, states that he has such a report. A motion is then made, or supposed to be made, and a question put, that the report be now brought up. This motion may be decided in the negative, in which case, it is competent to the house, to fix upon another time, either within or beyond the session, for receiving the report, or to let the matter drop without any further proceeding, or to recommit the report to the committee. The motion may be amended, by leaving out "now" and inserting some other day, either within or beyond the session, and agreed to in that form; or it may be simply agreed to, in which case, the report is brought up to the table. When the report is brought up, a motion is made or supposed to be made, and a question put, for the reading of the report. If the report consists of resolutions, they are then to be proceeded with, — that is, read and considered, — in the usual manner; if it is in any other form, such proceedings then take place, as the nature of the subject requires.[1]

CHAPTER NINTH.

OF SOME PARTICULAR COMMITTEES.

2023. Committees of the whole owe their origin to the grand committees, as they were called, which played so important a part in parliamentary proceedings, during the reigns of James I. and Charles I., and which were, in fact, standing committees of the whole house. These committees generally sat, like the select committees of more modern times, in the afternoons, after the adjourn-

[1] It is scarcely necessary to add, that in our practice, the ceremony of making the report from the bar is in all cases dispensed with, and that the chairman reports from his place in the house. The form of a report upon a bill, as well as the proceedings upon such report, will be stated in the next part.

ment of the house, and at other times when the house was not in session. Sometimes, however, the house, while sitting, was turned into a grand committee, for a particular purpose; and this proceeding seems to have given rise to committees of the whole as they are now constituted.

2024. These grand committees, from the character of the subjects, which they were appointed to investigate, came at length to be denominated the grand committees for religion, trade, courts of justice, and grievances. They were appointed at the commencement of each session, and were directed by the house to sit on certain days, in each week, during the session. But, in fact, these committees, though regularly appointed, existed only in name from the time of the Restoration, — never having been called upon to sit for the consideration of any matter referred to them, from that time, — and they were wholly laid aside in 1832, at the beginning of the first session of the reformed parliament.

2025. The ancient committee of privileges is also analogous to a grand committee, consisting of certain members, specially nominated, of all knights of shires, gentlemen of the long robe, and merchants in the house; and, "all, who come are to have voices." This committee is not appointed to sit, unless there is some special matter to be referred to it, as was the case in 1847.[1]

2026. The only committees of the whole house, which, in modern times, possess the character of permanent or standing committees, are the committees of supply and of ways and means. These committees are the parliamentary machinery, by means of which the house of commons chiefly exercises its political or constitutional functions. In order to make their proceedings intelligible, it will be necessary to state very briefly, the constitutional functions of the several branches of the legislature.

2027. 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 those demands; and provide by taxes, and by the appropriation of other sources of the public income, the ways and means to meet the supplies granted by them. Thus, the crown demands money, the commons grant it, and the lords assent to the

[1] Comm. Jour. CIII. 139, *West Gloucester Election.*

grant. But the commons do not vote money, unless it is required by the crown; nor impose or augment taxes, unless they are 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.

2028. In addition to the necessity of a recommendation from the crown, prior to a vote of money, the house of commons has interposed another obstacle to hasty and inconsiderate votes, which involve any public expenditure, by a resolution of the 18th February, 1667, and now made a standing order, "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, namely: "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]

2029. In compliance with 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 manner described in the following paragraphs.

2030. On the opening of parliament, the king, in his speech from the throne, addresses the commons; demands the annual provision for the public services; and acquaints the house that he has directed the estimates to be laid before them. The first business of the commons, on returning to their house, is to consider of and agree to an address, in answer to the king's speech; and this being done, they order the speech to be taken into consideration on another day. When that day arrives, the house proceeds to take the speech into consideration, and it is again read by the speaker.

[1] Comm. Jour. IX. 52. [2] Comm. Jour. XV. 367.

A motion being then made that a supply be granted to his majesty, the house, in conformity with the rule above mentioned, resolves, that, on some future day, it will go into committee to consider of that motion. On the day appointed, the committee sits, the royal speech is referred to it, and the committee agrees to a resolution, "that a supply be granted to his majesty;" which, being afterwards reported, is agreed to by the house.

2031. The general question in favor of a supply being thus determined, the house appoints another day, on which it will resolve itself into a committee "to consider of the supply granted to his majesty," or, as it is commonly called, "the committee of supply." The function of this committee being to consider of the sums of money needed for carrying on the government, and being thus obliged to consider the estimate of the expenses of the different departments of the government for the current year, the next business of the house is to order those estimates to be laid before it, and to address the crown to give directions to the proper officers for that purpose. The day for the sitting of the committee is, of course, fixed with reference to the receiving of the estimates, or some of them, in the mean time.

2032. The estimates for the navy, army, and ordnance departments, are required by a resolution of the house of commons, whenever parliament assembles before Christmas, to be presented before the 15th January, then following, if parliament is then sitting, or within ten days after the opening of the committee of supply, when parliament does not assemble till after Christmas. The estimates for civil services are usually presented somewhat later in the session.

2033. When the estimates have been presented, printed, and circulated among the members, the sitting of the committee of supply begins. The committee does not go through with the entire business referred to it, namely, "to consider of the supply granted," before reporting; but from time to time reports such resolutions as it has agreed to, and at the same time directs the chairman to move for leave for the committee to sit again; this being granted, and the time fixed for the next sitting, the committee is thus kept "open," until it has gone through with its whole business.

2034. On the day appointed for the first sitting of the committee, the order of the day being read for the house to be resolved into the committee, the estimates and accounts then received are referred to the committee, and the house resolves itself into the committee, in the manner already described. In the committee, the

member of the administration representing the department for which the supplies are required, after explaining to the committee such matters as may satisfy them of the correctness and propriety of the estimates, then proceeds to propose each grant in succession, of a sum of money named, for the object specified in the estimate. The order in which the several estimates are to be granted, the members by whom the grants are to be proposed, the days of sitting of the committee, and the days assigned for receiving its reports, are all matters the regulation of which is conceded, as a matter of course, to those members who represent the government.

2035. When the first report of the committee of supply has been received by the house, and the resolutions reported agreed to, namely, that certain sums be granted to his majesty for the objects specified in the estimates that have been considered by the committee, a day is then appointed for the house to resolve itself into a committee "to consider of ways and means for raising the supply granted;" or, as it is briefly denominated, "the committee of ways and means." This committee reports from time to time, like the former, and is kept open in the same manner, and is ordered to sit, by the house, according to the state of the business before it, and the convenience of the house.

2036. "As the committees of supply and ways and means continue to sit during the session, are presided over by the same chairman, are both concerned in providing money for the public service, and are governed by the same rules and usage, it will be necessary to distinguish their peculiar functions, before a more detailed account is given of the forms of procedure which apply equally to both. The general resemblance between these committees has sometimes caused a confusion in regard to the proper functions of each; but the terms of their appointment define at once their distinctive duties. The committee of supply considers what specific grants of money shall be voted as supplies demanded by the crown for the service of the current year, 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 determines in what manner the necessary funds shall be raised to meet the grants which are voted by the committee of supply, and which are 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." [1]

2037. "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.[2] 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 burdens 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." [3]

2038. The resolutions of the committees of supply and ways and means are reported on a day appointed by the house, but not on the same day as that on which they are agreed to by the committee. When the report is received, the resolutions are twice read and 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 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 reserved for the Appropriation Act, at the end of the session. If it is proposed to amend a resolution on the report, the amendment can only effect a diminution of the proposed burden, and not an increase. If the latter is desired, the proper course is to recommit the resolution; as an addition to the public burdens can only be made in committee.[4]

2039. It must always be borne in mind, that the house can entertain any motion for diminishing a tax or charge upon the people;

[1] May, 417.

[2] Or sometimes the first lord of the treasury, if a member of the house of commons.

[3] May, 419.

[4] May, 422.

and bills are frequently brought in for that purpose, without the formality of a committee. Obstacles are opposed to the imposition of burdens, but not to their removal or alleviation; and this distinction has an influence upon many proceedings not immediately connected with supply. For instance, the blanks left in a bill for salaries, tolls, rates, penalties, etc., are filled up in committee; but on the report, the house may reduce their amount. If, however, it be desired to increase them, the bills should be recommitted for that purpose. So, also, if a clause proposed to be added to a bill enacts a penalty, which the house, on the report of the clause, desire to increase, the clause ought to be recommitted.[1] Any bounties, drawbacks, or allowances, involving payments out of the revenue, have usually been proposed in committee; but if an allowance were merely in the form of a deduction from the amount of a proposed duty, it might be entertained by the house." [2]

2040. When the supplies for the service of the year have all been granted, the committee of supply discontinues its sittings, but the financial arrangements are still to be completed by votes in the committee of ways and means. That committee authorizes 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 generally 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." [3]

2041. There is only one other name, of a general character, by which a committee of the whole has been known in modern times, namely, a committee on the state of the nation; into which both houses of parliament, on extraordinary occasions, as in the house of commons, during the war in 1778, and in both houses, during the illness of George III., have resolved themselves. The functions of this committee are thus somewhat sneeringly described by Lord Chancellor Loughborough, in his speech in the lords, on a motion that the house resolve into a committee to take into consideration

[1] See May, 361.
[2] May, 422.
[3] May, 425.

the state of the nation: "The only effect of entertaining such a motion was to furnish a theatre for the introduction of every particular topic that could be urged, and to enable the mover to travel over all the scenes of public affairs, past, present, and to come; to touch upon all possible subjects, and to abstain from inquiry upon every one." [1]

2042. Committees of the whole constitute a part of the ordinary parliamentary machinery, in all our legislative assemblies, in which they are in frequent use, though for the most part only occasionally, and not under any particular name. In the second branch of congress they are provided for by rule, under the names of a committee of the whole, merely, and a committee of the whole on the state of the Union, and rules established for going into them to the exclusion of other business. In the latter, debate is, of course, unrestricted except to the state of the Union. The proceedings in the committees above described, of supply, and of ways and means, have been the fruitful precursors, in this country, of constitutional and parliamentary provisions. The committee of ways and means in the house of representatives of the United States, is a select committee consisting of nine members.

[1] Parl. Reg. LIX. 512.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART SEVENTH.

OF COMMITTEES AND THEIR FUNCTIONS.

THIRD DIVISION.

JOINT COMMITTEES.

2043. BESIDES select committees, and committees of the whole, of each house, there are joint committees, composed of members of both houses; for the appointment of which concurrent resolutions of the two houses are necessary. Committees of this description exist in parliament but in name only; for though there have been several instances of their appointment, in former years; yet, for 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 witnesses were sworn at the bar of the house of lords,[1] and that one inquiry, common to both houses, could be conducted preparatory to any decision of parliament. But the power possessed

[1] Comm. Jour. II. 502; Same, V. 647, 655.

by the commons of outvoting the lords — their right to meet their lordships without the respectful ceremonies observed at conferences, and their share in the privilege of taking the evidence of sworn witnesses, naturally rendered a joint committee distasteful to the house of lords, by whom no power or facilities were gained in return."[1]

2044. 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;"[2] 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.[3] And similar proceedings were adopted, upon the inquiry into the state of Ireland in 1801, which was conducted by secret committees of the lords and commons communicating with each other.[4]

2045. Besides serving in the manner above mentioned as a medium of communication between the two branches, of which a legislative body is composed, joint committees seem to be employed with us in two different manners, neither of which has any thing corresponding or analogous to it in the present proceedings of parliament. According to the first of these methods, a committee of each branch is appointed by a separate, though concurrent vote of each, to whom the same subject is referred, and who make the same report in both branches. These committees are confined for the most part to matters of form, state, and ceremony, and are not applied to the ordinary business of legislation. In Massachusetts, and in some others of the Northern States, joint committees, consisting of unequal numbers of the two branches, are appointed by a concurrent act; are employed about the ordinary business of legislation; constitute one homogeneous committee; and make their report indifferently in either branch. These committees, as to their

[1] May, 328.
[2] Comm. Jour. XLIX. 619.
[3] Comm. Jour. XLIX. 620.
[4] Comm. Jour. LXVI. 287, 291; May, 329.

form and authority, and modes of proceeding, do not differ from the common select committees of a single branch, except that every vote, in relation to them and their proceedings, must be concurrent. The former committees are very sparingly, the latter very abundantly, used.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART EIGHTH.

OF THE PASSING OF BILLS.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART EIGHTH.

OF THE PASSING OF BILLS.

HISTORY OF THE PRESENT FORM OF STATUTES, AND THE MODE OF PASSING THEM.

2046. The principal and most important business of a legislative assembly is embraced in the making of laws. To this end, almost all its other functions are subsidiary, and almost all its proceedings directed. In order to the making of a law, the three branches must concur in the same proposition, or series of propositions, embodied in a particular form; which, before being agreed to, is denominated a bill, and, afterwards, becomes an act or statute. The proceedings, which relate to the introduction of these propositions, and to the agreeing upon the terms in which they are expressed, are collectively denominated the passing of bills.[1]

2047. In order to the passing of a bill, the propositions of which it is composed, reduced to writing in the proper form, are first introduced and agreed to in one house; the bill is then sent to the other house, where it is considered in the same manner as in the

[1] Where a legislative body consists but of a single branch, its acts are usually denominated "ordinances" by which name the acts of the old congress of the confederation are known. The same appellation is given to the acts of inferior legislative bodies, though consisting of more than one branch, as, for example, to the acts of a city council.

house in which it originated; and there it may be either agreed to in the form in which it is sent, or with amendments and alterations, which are afterwards assented to by the house from which it emanates. Being agreed to in both branches, it is then presented to the king, who either assents to or rejects it altogether. With one or two unimportant exceptions, which will be noticed hereafter, bills may originate indifferently in either house; but, with a single exception only, which will also be noticed in another place, the crown has no power whatever to originate bills.

2048. The present method of enacting laws in parliament, according to which the terms of an act are first agreed upon by the two branches, and are then assented to or rejected, but not modified, by the crown, appears to have been finally established about the close of the reign of Henry VI. Previous to this period, though the right of the house of commons to participate fully and equally with the king and lords in the functions of legislation had been recognized, the commons appear only in the capacity of petitioners, representing the people of England in the statement of their grievances, and praying for relief. To the petitions of the commons, in this behalf, answers were given by the crown, the lords and prelates assenting, granting them in full, or only partially, or ingrafting new matter upon them, or rejecting them altogether, according to the pleasure of the sovereign. The petitions and answers were then entered on the rolls of parliament, not in any technical form of language, but according to the circumstances of each case. At the end of each parliament, those of the petitions which had been assented to in any form, together with the answers, were digested and drawn out by the judges into the form of statutes, which were entered on the statute roll, and became acts of parliament.[1]

2049. This form of proceeding, which, considering the illiterate character of the age when it commenced, was probably the best, if not the only mode, in which the commons could participate in the making of laws, was nevertheless subject to inconvenience, and liable to abuse. The crown had the power, by giving a qualified

[1] Dwarris, Part I. 22-28. It is doubtless true that this practice was attended with the advantage, that the statutes were skilfully prepared by competent persons; a fact to which Sir Edward Coke in the preface to the first part of his reports, alludes, almost in terms of regret, at the discontinuance of the practice. "If," says he, "acts of parliament were after the old fashion penned, and by such only as perfectly knew what the common law was, before the making of any act of parliament concerning that matter, as also how far forth former statutes had provided a remedy for former mischiefs and defects discovered by experience, then should very few questions in law arise, and the learned should not so often and so much perplex their heads to make atonement and peace by construction of law between insensible and disagreeing words, sentences, and provisos, as they now do."

assent, to defeat the wishes of the commons, whilst seeming to grant their petitions. It was also difficult for the judges, even with the best intentions, to digest the petitions and answers, — especially after the lapse of some time, — into acts really expressive of the legislative will. But, above all this method afforded an opportunity to corrupt and unprincipled judges, in subservience to the crown, to falsify the record which they were intrusted to frame, by additions and alterations, which rendered the act materially different from the petition of the commons.[1]

2050. In order to guard against these inconveniences, it was provided in the 8th of Henry IV. at the request of the commons, that certain of the commons' house should be present at the engrossing of the parliament rolls. But, it does not appear, that the evil was remedied by this precaution. In the second year of Henry V. the commons again represented, that, as they were assentors as well as petitioners, statutes should be made according to the tenor of the writing of their petitions and not altered, to which the king assented. Subsequently, during this reign, and doubtless with a view to prevent a continuance or repetition of the mistakes and abuses alluded to, the statutes appear to have been drawn up by the judges before the end of the parliament. In the following reign, an effectual remedy was hit upon by the commons, and applied, namely, the introduction of bills in the full and complete form of acts of parliament, according to the modern custom, which were passed in a manner approaching that of the present day.[2]

2051. This substitution of statutes, complete in point of form, in the place of the old petitions, which became fully established about the end of the reign of Henry VI. was not only effectual to remedy the evil in question, but also had the effect to introduce a new and most important principle into the constitution, namely, that the crown had power only to approve or reject altogether the identical propositions agreed to by the lords and commons, but had no power to alter, amend, or qualify them, in any manner whatsoever.[3] It is worthy of remark, that, notwithstanding this change, the form of a petition is still retained in acts of parliament.

[1] Dwarris, Part I. 29.

[2] Dwarris, Part I. 30, 32, 33.

[3] "Perhaps the triple division of our legislature may be dated from this innovation. For, as it is impossible to deny, that while the king promulgated a statute founded upon a mere petition, he was himself the real legislator, so I think it is equally fair to assert, notwithstanding the formal preamble of our statutes, that laws brought into either house of parliament in a perfect shape, and receiving first the assent of lords and commons, and finally that of the king, who has no power to modify them, must be deemed to proceed, and derive their efficiency, from the joint concurrence of all the three." Hallam, Middle Ages, II. 123, note 3.

2052. In this part, which is devoted to the manner of passing bills, it will only be necessary to consider them either as public or private; all bills of every description belonging to one or the other of these two classes, so far as relates to the proceedings by which they become acts or laws. In addition to the forms and proceedings, which are applicable to bills generally, there are some which are peculiar to private bills, and which make it necessary to consider them separately. The subject of passing bills will therefore be treated of under two divisions: — in the *first* of which, every thing relating to the passing of bills, except what is peculiar to private bills, will be considered; and, in the *second*, those forms and proceedings which are peculiar to the latter. In those of our legislative assemblies, in which there are any differences in the method of proceeding between public and private bills, it is always a question of order merely, for the presiding officer to determine whether a given bill shall proceed as a public or private one.[1] These differences, which in some assemblies do not exist at all, vary much in those in which they prevail, and are all probably embodied in the highly artificial system which is established in parliament, and which constitutes the second division of this part. That division has, of course, no other authority here than what belongs to the principles it contains.

[1] Cong. Globe, XII. 183; Same, XIII. 636.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART EIGHTH.

OF THE PASSING OF BILLS.

FIRST DIVISION.

PUBLIC BILLS.

2053. In treating of the passing of bills, it will be most convenient to pursue the order of the proceedings which regularly take place, from their introduction into one house, until they receive the royal assent, after having passed through the other; at the same time taking notice of those proceedings which may occur out of the regular course, and by means of which the passing of a bill may be defeated. Those proceedings which may take place here, on the approval of the executive, and by means of which a bill may be passed, notwithstanding the objections of the latter, will be noticed under the head of Royal Assent.

2054. Pursuing this order in the arrangement and treatment of the several subjects embraced in the passing of public bills, this division will be considered in the following chapters: — I. Preliminary; II. Introduction of the subject of a bill into the house; III. Intermediate proceedings; IV. Authority for the introduction of a bill; V. Drawing of a bill; VI. Presentation and reception

of a bill; VII. Different stages of a bill; VIII. First reading and order for second; IX. Second reading and order for commitment; X. Instructions to committees; XI. Commitment; proceedings in committee; amendments; XII. Report of committee and proceedings thereon; XIII. Engrossment and third reading; XIV. Passing; XV. Amendments between the two houses; XVI. Authentication of bills between the two houses; XVII. Communications between the two houses relative to the passing of bills; XVIII. Of bills which are required to be commenced in one house in preference to the other; XIX. Of the rule which precludes the same question from being twice presented during the same session, in its application to bills; XX. Proceedings with reference to bills out of the ordinary course of passing; XXI. Communications between the two houses relative to the reasons or grounds for the passing of bills; XXII. Of the royal assent or approval by the executive; XXIII. Of several miscellaneous matters connected with the passing of bills.

CHAPTER FIRST.

INTRODUCTORY.

2055. A bill, as has already been stated, is a proposition, or series of propositions, expressed in a particular form of words, purporting to be an authoritative declaration of the will of the legislative power; and which, when agreed to by the different branches of that power, becomes a law. The effecting of this agreement is what is meant by the passing of a bill; and the form in which the proceedings are conducted, with a view to this end, constitute the system or method of passing bills in a legislative assembly. The great purpose of all these forms is to enable the assembly to ascertain what its will is, in reference to a given topic of legislation, with freedom, intelligence, and deliberation; and, when ascertained, to express it promptly and readily, and in the form of words best adapted to the purpose.

2056. In considering what should be the course in passing a bill, two modes of proceeding occur to the mind, either of which, at the first view, seems calculated to effect the object. Each individual member might be allowed to introduce any bill, whether of a public

or private nature, which he desired to have considered, in the form which he thought the best, and the most likely to meet the approbation of the house. This mode, however adequate it might be with reference to a bill containing but a single proposition, or to one of extreme simplicity in its provisions, would clearly be attended with inconvenience in the case of a bill consisting of many propositions, complicated in its structure, and comprising a number of details; inasmuch as it is obvious that a single member, or a few, acting without any previous communication with the house, would find it difficult, if not impossible, in very many cases, to frame a bill of that description, so as to be acceptable, both as to matter and as to form, to a numerous assembly. The other mode of proceeding alluded to, namely, that of the house itself framing the bill, would be attended with inconveniences of a different kind; such, for example, as the difficulty of going into the consideration of minute details in a large body, but not less desirable to be avoided. Each of these modes of proceeding, however, is attended with some advantages. A bill, of few provisions, and simple in its structure, may safely be intrusted to be framed by a single member, and the time of the house thereby saved; whilst on the other hand, the principles upon which a bill of complicated and various structure is to be framed, as they can only, so they can most readily, be determined by the house itself. In the system which the experience of three centuries has established in the legislative assemblies of England and of the United States, the inconveniences have been avoided, and the advantages saved, of these opposite modes of proceeding.

2057. The principal thing to be observed, with regard to the proper form for a bill to have, is, that it should be as nearly as possible in that form in which, if agreed to at all, it may ultimately receive the sanction of the house; or in which, if not immediately acceptable, it may most readily be amended, so as at last to be brought into the requisite form; and, to this end, the various preliminary proceedings which take place are directed. These proceedings are usually more or less elaborate and extended, in each particular case, according to the nature of the subject-matter, the information possessed by the house with reference to it, the form necessary to be given to the bill, and to other circumstances of a like character. Where the nature of a contemplated bill is such that no preliminary steps, or very few, are necessary to be taken, with a view to its introduction, the forms of proceeding admit of its being brought forward at once; where, on the contrary, either

the subject or the form of a bill requires that it should be more thoroughly considered, or more carefully prepared, or that it should receive the attention of the house previous to its introduction, there are forms and methods of proceeding adapted to that end.

2058. In order to the introduction of a bill, however, in any form, the authority of the house is necessary. The different modes in which this authority is conferred, are so connected with the preliminary proceedings above alluded to, that, before undertaking to present the latter, it will be necessary to go into some explanation of the former. The authority of the house, for this purpose, is conferred in two modes, *first*, by an order giving leave to bring in a bill for a specific purpose, and appointing a member or members to prepare and bring it in; and *second*, by appointing a committee to consider a given subject, with authority, if they think proper, to prepare and bring in a bill relative thereto.

2059. I. In the earlier periods of parliamentary history, it appears to have been the practice in both houses, for the members individually to offer such bills for the public good, as they thought proper. "Any member of the house," says Scobel, "may offer a bill for public good, except it be for imposing a tax; which is not to be done but by order of the house first had. If any public bill be tendered, the person who tenders the bill must first open the matter of it to the house, and offer the reasons for the admitting thereof; and, thereupon, the house will either admit or deny it."[1] According to the same author, "A private bill, that concerns a particular person, is not to be offered to the house till the leave of the house be desired and the substance of such bill made known, either by motion or petition; nevertheless the speaker hath had liberty to call for a private bill to be read every morning."[2] The practice of introducing bills by individual members, still prevails in reference to public bills in the house of lords; in which any peer is at liberty to present a bill, unless it be a private one,[3] and have it laid on the table.[4]

2060. In the house of commons, the offering of bills by individual

[1] Scobel, 40, 41.

[2] Scobel, 41.

[3] Lords' Jour. LXIII. 281.

[4] May, 345; Lords' Deb. III. 28, 99; Hans. (1), III. 24; Same, (3), XIII. 1188. In a debate in the house of lords, July 2, 1832, Lord Holland said, that every peer had a right to bring in a bill without leave of the house; and related the following anecdote in confirmation of his statement: "In the year 1784, a noble peer, in order to put to the test the right of any noble lord to bring into the house any bill that he pleased, brought in a bill containing a caricature print of Mr. Fox and Lord North; and a question arose, whether he had a right to introduce and lay on the table a bill of that kind, and it was decided that he could." Hans. (3), XIII. 1188. See also Parl. Reg. (2), XIV. 16.

members, without previous leave, has been long discontinued;[1] and, according to the modern practice, no member is at liberty to offer a bill until leave has been first granted by the house;[2] nor, when leave has been granted, can a bill be presented but by the members or one of the members, named in the order.[3] This change was not established by any express general order or rule, but by a gradual usage, introduced probably in consequence of the inconvenience, resulting from the old method.[4] At first, it was usual merely to order that leave be given to bring in a bill, without naming any member or members by whom it was to be brought in; afterwards, a recommendation was added to the order, to a particular member to take charge of the business; at length, it became the constant usage, and is now indispensable,[5] to name one or more members to prepare and bring in the bill. According to the present practice of the house of commons, therefore, instead of presenting or offering to present a bill, the only motion which can properly be made is, that leave be granted to bring in a bill for such or such a purpose, or with the particular title mentioned. Sometimes the motion is framed in such a manner, that instead of giving leave to bring in a bill, the house orders one to be brought in; the effect of which is the same.[6]

2061. II. Another form, in which the introduction of a bill is authorized, is where a committee is appointed to consider a given subject, with authority, if it thinks proper, to prepare and bring in a bill relative thereto.[7] This form of proceeding does not appear to have been much, if at all, used of late years; for the reason probably, that, in regard to public bills, the preliminary proceedings of the house render it unnecessary to confer upon a committee a

[1] Comm. Deb. VII. 262.

[2] May, 271.

[3] Comm. Jour. XXXIII. 255.

[4] In February, 1667, there is the following entry in the Journal of the Commons, (vol. IX. 52): "A bill for frequent holding of parliaments was read. Ordered, that the person who brought in the bill do withdraw it. Ordered, that no bill of this nature be tendered to the house, but by leave of the house, and order obtained, after ten of the clock in the morning."

[5] Comm. Jour. XXXIII. 255.

[6] In the 6th George II., a member having moved for leave to bring up a bill which he held in his hand, a debate ensued as to the order of proceeding, at the close of which Mr. Speaker Onslow informed the house, that the usual method of proceeding in the house of commons, as to the bringing in of bills, was first to move for leave to bring in a bill for such or such purposes, and that being agreed to, the house then ordered some of their own number to prepare and bring in the bill; that thongh this was the usual method, there was a precedent, from which it appeared, that the solicitor-general (afterwards Lord Hardwicke) moved for leave to bring up such a bill, which was granted, and he immediately brought up the bill. Upon this statement being made, the motion to bring up was waived, and the question put in the usual form. Comm. Deb. VII. 261, 267.

[7] Comm. Jour. IX. 18, 296, 298; Same, XII. 74; Same, XIII. 655.

power, which the house is generally unwilling to delegate; and, in regard to private bills, which are always drawn by the parties or their agents, the other mode is the most appropriate.

CHAPTER SECOND.

OF THE INTRODUCTION OF THE SUBJECT OF A BILL INTO THE HOUSE.

2062. The introduction of a bill, as has been seen, must be always preceded by the introduction of the subject in some form or other. This may take place in any of the forms in which business is ordinarily introduced; some of the principal of which will now be mentioned.

SECTION I. PETITION.

2063. A petition is one of the most common and usual modes of introducing the subject of a bill, especially a private bill, to which it is now requisite by the orders of both houses of parliament,[1] though formerly private bills appear to have been sometimes introduced on motion.[2] When a petition has been brought up and read, and laid on the table, a motion may then be made for leave to bring in a bill conformably thereto,[3] or the petition may be proceeded upon in such other manner as may be necessary, with a view to the introduction of a bill.

SECTION II. ADDRESS OR MESSAGE.

2064. Communications from the crown, as a message, either verbal[4] or written, to one or both the houses, or an address from the throne, to the two houses together, form a second mode, in which the subject of a bill is often introduced.

[1] May, 514.
[2] Comm. Jour. X. 313, 323, 447, 795.
[3] Parl. Reg. III. 148, 170; Comm. Jour. XXXV. 447; Parl. Reg. XIV. 169, 171.
[4] Comm. Jour. XVI. 512.

SECTION III. READING OF SOME DOCUMENT OR RECORD.

2065. A third mode, which is of very frequent occurrence, is the reading, on motion, of some document or record, which, by the practice of parliament, is considered as bringing the subject-matter before the house, and laying the foundation for a motion for leave to bring in a bill relating thereto. This mode of proceeding undoubtedly had its origin at a period anterior to the invention of printing, or, at all events, before it had become as now the general practice to print almost every paper or document of public interest. This mode of introducing a topic to the attention of the house, as the ground of a motion, is still practised; but it is hardly necessary to observe, that the actual reading is in general dispensed with; the paper or document being read short, that is, by a few of the first words, or, which is the same thing, entered in the journal as read.

2066. This form of proceeding may be resorted to, with reference to every document or record, which is of a public nature, and of which parliament is bound to take official notice; as, for example, an act,[1] or part of an act,[2] of parliament, which is the constant practice, when it is intended to move for the repeal, amendment, extension, or revival of such act; so of resolutions, either of the house itself[3] or of both houses.[4] When a document is of a public nature, but not one of which the house is bound to or can take official notice, as, for example, a proclamation of a local character, the course is first to cause a copy of the document to be laid before the house from the proper authorities.[5]

2067. This form of proceeding is also proper, with regard to every document or paper, which is regularly in the possession of the house, whatever its character may be; as, for example, any entry in the journal of an order, resolution, or other proceeding of the house, whether of the same or of a former session, royal speeches or messages, reports of committees, minutes of evidence, accounts and returns, petitions previously received. When the reading has taken place, it is then competent for the house to proceed upon the subject in such manner as may be thought proper.

[1] Comm. Deb. XIII. 229.
[2] Comm. Deb. X. 290, 292.
[3] Comm. Deb. VIII. 268; Same, XIV. 199; Parl. Reg. I. 12; Same, LVI. 659.
[4] Parl. Deb. V. 204.
[5] Hans. (1), VI. 598, 599.

SECTION IV. MOTION.

2068. A fourth mode of introducing the subject-matter of a bill is by a direct motion,[1] in the first instance, with reference to it; as, for example, a motion that leave be granted to bring in a bill,[2] or heads of a bill,[3] for the particular purpose; or that the subject be referred to a committee to consider and report, with or without authority to prepare and bring in a bill; or that the house resolve itself into a committee for the consideration of a particular subject, or of heads for a bill;[4] either then or at some future time; or that the house then come to a resolution respecting the subject.[5]

CHAPTER THIRD.

OF THE INTERMEDIATE PROCEEDINGS BETWEEN THE INTRODUCTION OF THE SUBJECT AND THE INTRODUCTION OF A BILL.

2069. Upon the introduction of the subject-matter, in some one of the modes above mentioned, the house may proceed at once to make an order giving leave to bring in a bill, or directing one to be brought in, and appointing a member or members for that purpose. But it is very common, also, for intermediate proceedings to take place, by which the house expresses its opinion to a greater or less extent, with reference to the subject-matter, before authorizing the introduction of a bill.

SECTION I. DEBATES OF THE HOUSE.

2070. Where, upon the introduction of the subject, in any form, a debate takes place, a bill may be ordered, or leave may be given,

[1] Which the mover may preface by a statement of facts; Parl. Reg. (2), XV. 249; Same, XVIII. 546; Same, XIX. 41; Same, XXIV. 8, 87; or make without any preface; Parl. Reg. (2), VII. 259.

[2] Parl. Reg. VII. (2), 259.

[3] Parl. Reg. 142.

[4] Comm. Deb. XI. 297.

[5] A motion for leave to bring in a bill may be referred to a committee of the whole. Comm. Jour. XXXIII. 667, 713.

or a committee appointed,[1] to bring in a bill, upon the debates of the house.[2] Frequent instances of this proceeding are to be met with in the earlier journals of the house of commons. Thus, where a bill was tendered by a member, on behalf of the creditors of the grocers' company, on which a debate ensued, which was adjourned and resumed, it was ordered, that leave be given to bring in a bill, on the debates of the house, to enforce the company of grocers to pay their debts;[3] where a petition was presented and read, and a motion made that leave be given for a bill, on which there was a debate, leave was granted, and it was also resolved by the house, that a bill be prepared and brought in upon the debates of the house;[4] where a bill previously introduced was read, and a debate arose, the house resolved that leave be given to bring in a bill relating to the same general subject, on the debates of the house;[5] where, upon the report of an address, the address was negatived, the house immediately resolved that a bill for the same purpose be brought in upon the debates of the house;[6] where a royal speech was taken into consideration and read, it was ordered, that a bill be brought in, upon the debates of the house, to make the militia more useful;[7] where a motion was made for leave to bring in a bill, on which a debate ensued, leave was given to bring in a bill upon the debates of the house.[8]

2071. This practice evidently originated at the time, when it was the custom for the speaker to frame the question from the turn of the debate. It supposes, that the opinions of the house, with reference to the subject-matter, are sufficiently known, for the purpose of framing the bill, from the observations of the members, and the manner in which they are received by the house, without any formal expression thereof in the form of resolutions. It does not appear, that this mode of proceeding is at all in use in the British parliament at the present time; though something equivalent to it takes place, when a bill or other matter is recommitted after a debate upon it, but without any specification of the purpose of the recommitment, which is supposed to be sufficiently known from the course of the debate.

[1] Grey's Deb. I. 421; Same, II. 96; Same, III. 10, 18.
[2] Comm. Jour. XIX. 741.
[3] Comm. Jour. IX. 195.
[4] Comm. Jour. IX. 738.
[5] Comm. Jour. IX. 182.
[6] Comm. Jour. X. 449.
[7] Comm. Jour. XII. 484.
[8] Comm. Jour. XIII. 416.

SECTION II. HEADS; ARTICLES; RESOLUTIONS.

2072. Another proceeding, by which the house expresses its opinion more distinctly than by the turn of the debates, takes place, when, upon consideration of the subject, it agrees upon heads for a bill,[1] or upon articles, or votes, or comes to resolutions expressing its opinions, upon which it gives leave for or orders a bill.[2] This mode of proceeding is in frequent use, though the opinions of the house are now expressed in the form of resolutions alone; the terms heads, articles, votes, being, in fact, the same.

SECTION III. COMMITTEE.

2073. A third course, which is the most frequent in modern times, is to refer the subject to a committee to be considered and matured, before its consideration by the house. The committee may be either select, or of the whole house, according as either may be best adapted to the nature of the subject. A select committee may be authorized, at the same time, to prepare and bring in a bill; but this is not according to the present practice. The authority usually conferred upon a select committee is to examine the matter referred to them, and to report the same as it shall appear to them, or with their opinion thereupon. The report of the committee, under this authority, is sometimes a mere statement of the facts, without any expression of opinion; sometimes their opinion merely; and sometimes a statement of the facts, together with their opinion thereupon; according as the nature of the subject renders one or another of these courses most expedient and proper.

2074. When the subject referred to a committee only requires a statement of the facts to be reported, — as, where it is the constant usage of parliament to pass a bill of a particular description, upon certain facts being proved, of which various instances might be given, — the report of the committee merely states the facts, and it is for the house, upon such a report being made, to decide whether the facts proved are sufficient and satisfactory, and, thereupon, to make or refuse an order for the introduction of a bill. The facts may be presented either in the form of a statement or narrative, or

[1] Comm. Jour. IX. 552; Grey, IV. 334, 339; Com. Deb. XII. 48, note.

[2] Scobel, 44, 45.

in that of resolutions, according to the nature of the case. When the latter form is adopted, the practice is to read the resolutions and agree to them in the usual manner.

2075. When the subject referred to a committee is one which only requires it to express an opinion, — as, for example, where a committee is appointed "to inspect and inquire what laws are expired, or are near expiring, and to report their opinion" which of them ought to be revived, continued, or discontinued, the opinion of the committee is reported in the form of a resolution or series of resolutions.[1] The usual course of proceeding with reference to resolutions thus reported, requires that they should be read twice and agreed to by the house, before any further proceeding is predicated upon them. When agreed to, the house may then give leave for or order a bill to be brought in accordingly.[2] In some cases, committees have reported "heads for a bill," instead of resolutions.[3] This is a difference in form only, the propositions thus denominated being in substance resolutions, and proceeded with in the same manner.[4]

2076. The opinion of a committee, to whom a petition is referred, is sometimes expressed in a simple form; as, for example, that the petitioners are fit to be relieved by an act of parliament;[5] that a bill, as the petitioner desires, is just and reasonable;[6] that such a bill as is prayed for would be of good use and service to the public;[7] that the quakers (petitioners for relief) ought to be relieved according to the prayer of their petition.[8] A report in this form does not require to be read or agreed to like a resolution; it is to be followed up, if the house are of the same opinion with the committee, by an order for leave to bring in a bill, agreeably to the prayer of the petition.[9]

2077. The expression of the committee's opinion is sometimes accompanied by a direction to the chairman, or to some other member of the committee, to move the house that leave be granted to bring in a bill; in which case, the house is moved accordingly.[10] The direction that the house be moved for leave to bring in a bill,

[1] Comm. Jour. IX. 728, 729.

[2] In the earlier journals, there are instances, in which this course was not thought necessary to be pursued; in one case, instead of the resolutions being read a second time, and agreed to, the report was recommitted to the same committee to prepare a bill or bills accordingly. Comm. Jour. IX. 728, 729.

[3] Grey, II. 72; Same, IX. 72.

[4] Comm. Jour. IX. 445; Same, XII. 532, Same, XVII. 490, 496.

[5] Comm. Jour. IX. 136, 149, 150.

[6] Comm. Jour. X. 592, 597, 614.

[7] Comm. Jour. X. 544, 546.

[8] Comm. Jour. X. 764.

[9] Comm. Jour. X. 734.

[10] Comm. Jour. X. 544, 546, 592, 597 614; Same, XI. 376, 424.

is sometimes expressed in the form of a resolution, and may be regarded and agreed to as such;[1] but this does not appear to be necessary as a preliminary step.[2] A very common form of report, from a committee of the whole, is to direct the chairman to move the house, that leave be granted to bring in a bill; in which case, the report is made by informing the house of the direction of the committee, and making the motion accordingly.[3]

2078. There is a third class of cases, in which the nature of the matter referred requires the committee to make a statement of the facts, and, at the same time, to express an opinion thereupon. In these cases, the statement of facts and of opinion is made in such of the modes respectively above described, as are most appropriate to the particular case; as, for example, a detailed account of the facts and the opinion of the committee expressed thereon in the form of resolutions;[4] or a statement of the facts, with a recommendation of a bill, in some of the forms mentioned above;[5] or with a direction to the chairman to move for leave to bring in a bill;[6] or with both such recommendation and direction.[7]

2079. There are four classes of bills, in reference to which the standing orders of the house of commons require that preliminary proceedings should take place in a committee of the whole house, namely, 1, bills relating to religion, or the alteration of the laws concerning religion;[8] 2, bills relating to trade, or the alteration of the laws concerning trade;[9] 3, bills for the expenditure of public money;[10] and 4, bills for the laying of any public aid or charge upon the people.[11] In all these cases, it is necessary that the subject-matter should first be considered in a committee of the whole house; upon whose resolutions bills may be ordered to be prepared and brought in.[12]

2080. In the construction and application of the standing orders, the order concerning religion has usually been held to be applicable only to religion in its spiritual relations, doctrines, professions, and observances, but not to the temporalities or government of the church, or other legal incidents of religion; that the order concerning trade applies not only to trade generally, but also to any par-

[1] Comm. Jour. IX. 682.
[2] Comm. Jour. XI. 28, 36; 29, 47; 48, 65; 51, 72.
[3] May, 346.
[4] Comm. Jour. X. 127, 128, 169, 176; Same, X. 789, 818.
[5] Comm. Jour. IX. 136, 149, 150.
[6] Comm. Jour. XI. 365, 366, 420.
[7] Comm. Jour. X. 544, 546.
[8] Comm. Jour. XIV. 211; Same, XXXIII. 678, 714.
[9] Comm. Jour. XIV. 211; Same, XXXIII. 678, 714.
[10] Comm. Jour. XV. 367; Same, XVI. 605.
[11] Comm. Jour. IX. 52.
[12] May, 346.

ticular trade, if directly affected by a bill; and that the order concerning taxes or charges upon the people, though it applies strictly and without exception to all bills that directly impose a charge upon the people, does not extend to bills authorizing the levy or application of rates for local purposes, by local officers or bodies representing the rate payers.[1]

CHAPTER FOURTH.

OF THE AUTHORITY FOR THE INTRODUCTION OF A BILL.

2081. When the house, either upon the introduction of the subject, or after the intermediate proceedings above described, has determined upon authorizing the introduction of a bill, this is effected in one of the two modes already described, namely, by an order giving leave to bring in a bill, or directing a bill to be brought in, and naming one or more members to prepare and bring it in, or by the appointment of a committee for that purpose.

SECTION I. LEAVE OR ORDER TO BRING IN A BILL.

2082. The most usual form of authorizing the introduction of a bill is an order or resolution, that leave be given to bring in a bill for a purpose specified, and naming one or more members to prepare and bring it in. Sometimes, however, instead of leave being given, the form of the order is absolute, that a bill be brought in. This difference appears to be one of form only, at least so far as the preparation of the bill is concerned; the most that can be said being, that, in the one case, the members named are authorized, and in the other required, to bring in the bill.

2083. The members thus named do not appear to constitute a committee; they are not so denominated in the order; and they have none of the usual powers of a committee, as to their time of meeting, the number requisite to a quorum, etc., conferred upon them. The authority, under which they act, seems to be individual; it is not limited as to time, but by an express order, and it

[1] May, 347, 348, 349.

may be executed by any one of them, either with or without the concurrence of the others.[1] The duty required of them being simply ministerial, that is, to prepare a bill for a particular purpose, they have no discretion except as to the selection of the terms in which its provisions are to be expressed. When a bill is presented in pursuance of an authority of this kind, the entry in the journal is, that one of the members named presented the bill, pursuant to order, and not as reported from or by the direction of a committee.

2084. In order to the making of this motion, notice must be given in the usual manner.[2] When made, it is subject to be debated and amended, and to be proceeded with generally like other motions. As a motion, it must conform to the orders of the house, consequently, a motion for leave to bring in a bill of the same title with one already introduced, is not admissible; inasmuch as it would conflict with the rule, which precludes the introduction of the same question a second time.[3] Nor can leave be given to bring in a bill, providing for compensation out of public money, or relating to trade or religion, etc.; inasmuch as such bills are required by the orders of the house to be first considered in a committee of the whole house.[4]

2085. In framing this motion, the same accuracy is not necessary as in the case of a resolution or other proceeding of that nature; it being sufficient if the motion indicate the general purpose of the bill proposed.[5] On making the motion, it is usual for the mover to explain the objects of the bill, and to give reasons for its introduction; but, unless the motion is opposed, it is not customary to go into any lengthened debate upon its merits, especially if the subject has already been sufficiently debated.[6] When, however, an important measure is thus brought forward, it is not unusual to take the opportunity to discuss it at length; and this course is necessary, where there is danger of a negative being put upon the motion; in which case the question could not be again brought forward.[7]

2086. The most usual proceeding with reference to a motion of this sort is, to amend it so as to enlarge,[8] restrain,[9] or modify,[10] the

[1] There are numerous instances to be found in the journals, where a member was added to those formerly named to prepare and bring in a bill, and immediately thereupon presented the bill according to order.

[2] May, 345.

[3] Parl. Reg. LVI. 130.

[4] Parl. Reg. LXIII. 97, 98.

[5] Parl. Reg. (2), X. 205, 207.

[6] Parl. Reg. XVIII. 280, 289, 294, 295, 296.

[7] May, 345.

[8] Comm. Jour. XXXIX. 368; Same, XLI. 389.

[9] Comm. Jour. XXXV. 451; Same, LXX. 62.

[10] Comm. Jour. LXXI. 431.

subject of, the proposed bill.[1] The motion may also be amended, so as to substitute a select committee to inquire in the place of leave for a bill;[2] or the motion itself may be referred to a committee of the whole.[3]

2087. If the motion is agreed to, and the order made accordingly, the next step is the appointment, on motion, of certain members (usually the mover and seconder with others) to prepare and bring in the bill; which appointment is generally made immediately, though members may be added afterwards,[4] or the appointment may be omitted altogether until some future day; but, if not made at all, the order remains unexecuted and ineffectual.[5]

2088. When the order has been made, it cannot afterwards be changed, or modified, by way of amendment. It is the usual and constant practice, however, to instruct the members appointed to bring in the bill to make provision therein for matters not contained within the terms of the order.[6] Such instructions, as they do not change or discharge the order, may be made on the same day on which the order is made,[7] as well as at any time afterwards.

2089. The order may be discharged, either in whole, or in part, like any other order of the house, on any day after that on which the order is made, but not on the same day; and it is only by means of discharging the order in part, or discharging it altogether and renewing it in some other form, that any change can be made in its terms. Thus, the order may be discharged in part, either as to the subject-matter,[8] or as to one or more of the members appointed to bring in the bill:[9] or, it may be discharged altogether, and other proceedings instituted with reference to the subject-matter of it; as, for example, where the order is founded on the report of a committee, the report may be recommitted;[10] or, where it is predicated on a petition, the petition may be referred to a committee;[11] or a committee to whom a particular bill is committed may be authorized, by way of instruction, to report it as an amendment to that bill;[12] or the members appointed to prepare and bring in some other bill may be instructed to make provision therein for the

[1] Parl. Reg. LXII. 447, 448.
[2] Comm. Jour. LXXI. 351, 352.
[3] Comm. Jour. XXXIII. 667, 713.
[4] Comm. Jour. XXXIV. 208, 212, 214, 261.
[5] Comm. Jour. XXXIII. 255.
[6] Comm. Jour. XL. 297; Parl. Reg. (2), XVI. 17.
[7] Comm. Jour. XII. 359, 484.
[8] Comm. Jour. XXXIV. 183; Same, XXXV. 744, 762; Same, XXXVII. 844; Same, XXXVIII. 200; Same, XL. 915.
[9] Comm. Jour. XXXV. 822.
[10] Comm. Jour. XXXVI. 895.
[11] Comm. Jour. XXXIX. 177.
[12] Comm. Jour. XXXVI. 856.

subject of the order;[1] or, the order may be discharged altogether, and renewed in part;[2] or renewed with additional matter;[3] or renewed in a modified,[4] amended,[5] enlarged,[6] or restricted,[7] form. In like manner, when the members appointed to bring in a bill have been instructed to make a particular provision therein, the order for the instructions may be discharged, and other members appointed to prepare and bring in a bill as to that matter.[8]

2090. When it is desired to have the subject of a bill, for which leave has been granted, made into two, the course is to make a supplementary order, that the gentlemen appointed to bring in the bill, have leave to bring in a bill or bills,[9] or to discharge the order, and renew it for a bill or bills;[10] and, on the other hand, when it is desired to unite into one two bills, which different sets of members or committees have been appointed to prepare and bring in, the course is to direct the two, or to authorize them, if they see fit, to meet and prepare one bill for the purposes of both.[11]

SECTION II. COMMITTEE TO PREPARE AND BRING IN A BILL.

2091. It has already been stated, that a committee may not only be appointed to examine and report upon a matter referred to it, but, at the same time, also, it may be authorized to prepare and bring in a bill relative to the subject so referred. Where this course is pursued, the power of the house, to decide upon the expediency or propriety of a bill relative to the subject in question, is delegated, in the first instance, and for the time being, to the committee; and the committee is furthermore charged with the duty of preparing and bringing in a bill, if they should think proper. It is not infrequent, also, after the house has resolved upon a bill, or at the same time that it resolves upon a bill,[12] to order the appointment of a committee, in the usual manner, to prepare and bring it in. When this is the case, the committee is appointed in some one of the usual modes; the members named are called a com-

[1] Comm. Jour. XXXVI. 884, 889.
[2] Comm. Jour. XXXVII. 40; Same, XLI. 809; Same, XLII. 706.
[3] Comm. Jour. XXXVII. 125, 166.
[4] Comm. Jour. XXXVIII. 900, 1048; Same, XLI. 877, 913; Same, XLIII. 302.
[5] Comm. Jour. XXXIV. 203; Same, XLII. 696.
[6] Comm. Jour. XXXVIII. 514; Same, XLII. 751; Same, XLIII. 159.
[7] Comm. Jour. XL. 852; Same, XLIII. 271; Same, XLIV. 369, 423.
[8] Comm. Jour. XXXI. 199; Same, XXXV. 762.
[9] Comm. Jour. LVII. 233.
[10] Hans. (1), II. 128; Parl. Reg. LXII. 200; Comm. Jour. LIX. 189, 206.
[11] Comm. Jour. XIII. 865, 866; Same, XIX. 361.
[12] Comm. Jour. IX. 297.

mittee; they have such of the usual powers of a committee, — as to time of meeting, quorum, etc., as may be deemed necessary, conferred on them;[1] and, when a bill is presented in pursuance of such authority, it purports to come from the committee.[2] It is of course necessary, when a committee is appointed for the purpose of preparing a bill, that the members should act in the form of a committee, and not individually; and, it is scarcely necessary to observe, that a committee for this purpose may be instructed in reference to the duties of their appointment, in the same manner as other committees. Committees, as we have seen, having no power, as incidental to their appointment, to report any thing more than their own opinion, concerning the subject referred to them, and not any act of legislation, for the consideration of the house to which they belong, however strongly they may be impressed with its necessity or propriety; this power being conferred on them in particular instances, and occasionally, either on the appointment of the committee, or afterwards; it has now come to be the general practice in our legislative assemblies to provide, by a standing rule, that all committees, whether permanent or occasional, may report by "bill or bills or otherwise." In these cases, therefore, committees may report, at once, as embodying their opinion, a bill or other act of legislation, which is entitled to be received and considered, in the same manner as if presented to the house by its special order. This power has sometimes been assumed.

CHAPTER FIFTH.

OF THE PREPARATION OR DRAWING AND THE DIFFERENT PARTS OF A BILL.

2092. A bill, when introduced into the house, should be as nearly as possible in that form, in which, if agreed to at all, it may receive the sanction of the house; or, in which, if not immediately acceptable, it may most readily be amended, so as at last to be brought into the requisite form. This is the purpose in view in all the proceedings which have thus far been described. But these

[1] Comm. Jour. XII. 12, 359, 484, 583.

[2] Comm. Jour. IX. 814.

proceedings are only directory. It remains for the members selected to prepare the bill to execute the will of the house, so far as it has been made known. The drawing of a bill, — setting aside its importance as regards the character of the law which it may ultimately become, — is a matter of no trifling concern, with reference to its passing. It has been truly observed, that, " When a bill is hastily brought in, it generally requires mature deliberation, and many amendments in its progress through the two houses, which always take up a great deal of time: Whereas, when it is maturely considered, and fully concerted, before being brought in, the first draught of the bill is generally so perfect, that it requires but few amendments; and the rapidity of its progress always bears a proportion to the maturity of its first concoction." [1]

2093. In order to render the subsequent proceedings intelligible, it will be necessary to state and describe the several parts of a statute, considered in a parliamentary sense, that is, with reference to their form only. The different parts, of which a statute may consist, and most of which are essential to its existence, are, 1, the title; 2, the preamble; 3, the statement of the enacting authority; 4, the purview or body of the act, divided into its separate clauses; 5, the provisos; 6, the schedules; and, 7, the date or day of its receiving the royal assent. Of these different parts, which may, properly enough, be found in every statute, the third and fourth only are indispensable. The title may be prefixed, if omitted; the preamble is frequently dispensed with; there is often no occasion for a proviso, or a schedule; and a date may be supplied; but without an enacting clause and a subject-matter there can be no statute; and neither of these is of any force or validity as a statute without the other.

SECTION I. TITLE.

2094. The title of an act is the short statement prefixed to it of the purpose or object which it has in view. In a legal sense, " it is true, that the title of an act of parliament is no part of the law or enacting part, no more than the title of a book is part of the book; for the title is not the law, but the name or description given to it by the makers." [2] In a parliamentary sense, however, the title, though a formal, is nevertheless an essential and impor-

[1] By Sir Charles Wager, Comm. Deb. XI. 116, 117.

[2] By Holt, C. J. *Wills* v. *Wilkins*, Mod. Rep. VI. 62.

tant, part of a bill. It is usually indicated by the member or members, by whom the bill is drawn and presented; but, if a bill is introduced without any title, one may be put to it by the clerk of the house in which it is presented.

2095. The description of a bill, in the order by which leave is given to introduce it, is considered as indicating the title of the bill; so far, at least, that when a bill is pending, an order cannot properly be made for leave to present another with the same title; though the title may be so general in its terms, that different and even contradictory provisions might be comprehended under it.[1] The title should consequently be as precise as the nature of the subject will admit; and, in the house of commons, there are standing orders, with reference to certain classes of bills, which require that the precise duration of every new temporary law should be expressed in the title, and that in bills for the revival or continuance of acts, the title should enumerate the several acts to be revived or continued, by the year, chapter, and day of passing.[2]

2096. The title of the bill presented must agree with the description of the bill in the order of leave. Thus, where leave was given to prepare and bring in a bill to amend an act with reference to the time of commencing certain prosecutions therein directed to be brought, and a bill was presented to amend the said act (but without specifying in what particulars) notice was taken that the title of the bill presented did not agree with the order of leave, and the bill was thereupon withdrawn.[3]

2097. In the house of commons, the title, by which a bill is introduced and read, remains the title through the whole proceedings, and is not susceptible of alteration or amendment, until the bill has passed; unless the house should direct that one bill should be divided into two, or that two should be combined in one, in which case, a corresponding change must necessarily be made in the title. When a bill has passed in the commons, the title is read by the speaker, and a question put, "that this be the title of the bill." The title may then be amended, if necessary, or so altered, as to make it conformable to amendments, to which the bill may have been subjected since its introduction. In the house of lords, the original title of a bill may be amended at any stage at which amendments are admissible.[4]

2098. It is a consequence of the practice of the house of com-

[1] Parl. Reg. LVI. 130.
[2] Comm. Jour. LIII. 84, 85.
[3] Comm. Jour. XLVIII. 242, 340.
[4] May, 365.

mons not to change the title of a bill, until after it has passed, that, when a bill is referred to a committee, the committee cannot, without special instruction for the purpose, make any amendment, alteration, or addition, which is not within the title; the authority of the committee being restricted to proceeding upon a bill with that title.[1]

2099. The title of a bill has been deemed of so much importance, in some of the States, that it has been made in them the subject of constitutional enactment. Thus, the constitutions of New Jersey, Maryland, Virginia, Kentucky, Louisiana, Ohio, Indiana, Michigan, Iowa, and California, provide, generally, that no law shall embrace more than one subject, which shall be expressed in its title; that of Texas, that no law shall pass containing any matter different from what is expressed in its title; those of New York, Illinois, Missouri, and Wisconsin, contain the same restrictions confined to private or local laws; and those of Maryland, Virginia, Louisiana, Ohio, and California, provide also, that no law shall be revised, or amended, by reference to its title merely, but the act revised, or the section amended, shall be reënacted and published at length. The constitution of New Jersey contains a statement of the reason on which its provision as above is founded, namely, to avoid the improper influences which may result from intermixing in one and the same act, such things as have no proper relation to each other; and the constitution of Indiana declares, that if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof.

SECTION II. PREAMBLE.

2100. The preamble of an act is the recital, by way of introduction, or inducement to the enacting part, of the reasons on which the enactment is founded. The preamble of a public statute recites the inconveniences which it proposes to remedy, — as, that doubts exist as to what the law is, — or that some form of offence has been of frequent occurrence which it is necessary to punish with additional severity; or the advantages which it proposes to effect, — as that it is expedient to revise, consolidate, and bring into one, all the statutes relating to a given subject. The reasons, upon which a public statute is passed, are not generally of such a nature that

[1] May, 358.

they can be defined with perfect precision, or enumerated in full; hence, there may be reasons for the passing of an act, which are not given in the preamble; those which are given may be aside from the real occasion of the law; and when doubts are alleged, it may be, that no reasonable or well-informed person ever entertained any.[1] The preamble of a private act sets forth the facts upon which it is founded; and as these are the whole inducement for the enactment, it is necessary, that they should be fully and truly stated, and, as will be seen hereafter, substantially proved or admitted. According to the practice, therefore, which prevails in parliament, although the preamble may sometimes be omitted in public statutes, yet it is always inserted in private bills, and must be proved, in order to entitle the promoters of the bill to proceed. With us, it is not customary to set forth in the preamble of a private bill a summary of the evidence upon which it rests; and the employment of a preamble probably depends for the most part, both in public and private bills, upon the taste of the individual draftsman. For the purposes of amendment, the preamble is considered as a part of the bill to which it is attached.

SECTION III. STATEMENT OF THE ENACTING AUTHORITY.

2101. The statement of the enacting authority, or, as it is called in the constitutions of the several States, the enacting style, follows immediately after the preamble, and is followed directly by the body of the act. In ancient times, this was expressed in the form of a petition to the king, which is still occasionally retained, but with the addition of a declaration of the advice and consent of the two houses. The modern style is as follows: MAY IT THEREFORE PLEASE YOUR MAJESTY THAT IT MAY BE ENACTED; AND BE IT ENACTED BY THE KING'S MOST EXCELLENT MAJESTY, BY AND WITH THE ADVICE AND CONSENT OF THE LORDS SPIRITUAL AND TEMPORAL AND COMMONS, IN THIS PRESENT PARLIAMENT ASSEMBLED, AND BY THE AUTHORITY OF THE SAME. This form is only used at the beginning of an act; each succeeding clause, where the act consists of more than one, commencing with the words, *And be it enacted*, or *And be it further enacted*, only.

2102. The constitutions of all the States in the Union, except those of Pennsylvania, Delaware, Maryland, Virginia, North Caro-

[1] Dwarris, II. 657.

lina, South Carolina, Georgia, Louisiana, Kentucky, and Arkansas, contain a statement, under the name of the enacting style, of the words with which every act of legislation, in those States, respectively, must be introduced, sometimes with, and sometimes without, the use of negative words, or other equivalent language. The constitutions of the States above named, and of the United States, contain no statement of an enacting clause. Under those constitutions, therefore, an enacting clause, though equally requisite to the validity of a law, must depend mainly upon custom. The foregoing considerations seem to call for three remarks: I. Where enacting words are prescribed, nothing can be a law which is not introduced by those very words, even though others which are equivalent, are at the same time used. II. Where the enacting words are not prescribed by a constitutional provision, the enacting authority must notwithstanding be stated; and any words which do this to a common understanding are doubtless sufficient; or the words may be prescribed by rule.[1] In this respect much must depend upon usage. III. Whether, where enacting words are prescribed in a resolve or joint resolution, can such resolution have the force of law without the use of those very words, is a question which depends upon each individual constitution, and which we are not called upon at present to settle. The enacting style made use of at the present time in congress is not prescribed by any constitutional provision, or by any statute, or by any rule of proceeding, but rests entirely upon usage.

SECTION IV. PURVIEW OR BODY OF THE ACT.

2103. This is the portion of a statute, in which the will of the legislative power, with respect to the particular subject, is declared. Where the subject of an act is at all complicated in its character, it is usually divided into a convenient number of separate clauses, corresponding as near as may be to the several parts embraced in the enactment. The principal forms, in which the matter of a clause is expressed, are two, namely, a general declaration or statement in positive terms, and a similar statement with a qualification of such general expression by means of a saving or exception.

[1] Rules of the house of representatives of the United States, for 1789; J. of H. I. 20.

SECTION V. PROVISOS.

2104. A proviso does not differ in its nature from an exception or saving; inasmuch as the purpose of it is to restrain or qualify some general expression. When such a qualifying or restraining provision constitutes a clause of itself, it is known by the name of a proviso; when it makes a part of the clause which is affected by it, it is an exception or saving. The latter is usually incorporated in the bill, as it is drawn in the first instance, or is inserted by way of amendment, and thus makes a part of it when it is passed in one house and sent to the other. In a bill, which is drawn or passed in this form, the general and exceptional statements must consequently be considered as the expression of one and the same opinion, or of contemporaneous opinions. In the case of a proviso, it is otherwise. A proviso, strictly so called, does not generally make a part of the bill as originally drawn; it is either added by way of amendment in the house in which the bill first passes, or is introduced as an amendment in the other. It is consequently an expression of opinion subsequent to the general statement which it qualifies; it is intended to control and modify that statement; and it may be considered, in some sort, as a substitute for a redraft of the bill, which, at the stage when a proviso is usually attached, could not conveniently be done. Hence has resulted a principle of law, relative to the interpretation of statutes, which makes an important difference between a saving clause and a proviso, namely, that where a saving clause in a statute is directly repugnant to the purview or body of the act, and cannot stand without rendering the act inconsistent and destructive of itself, the act must stand, and the saving clause be rejected;[1] but that where a proviso is directly repugnant to the purview, the proviso should stand, and be held a repeal of the purview, on the ground that the proviso speaks the last intention of the lawgiver.[2] The same distinction is also recognized in pleading; an exception which makes a part of a clause must be negatived; a proviso, strictly so called, which makes a clause of itself, need not.[3]

[1] Plowden, 564.

[2] Fitzgibbon, 195.

[3] *Jones* v. *Oxon*, 1 Ld. Raym. 120; *Spiers* v. *Parker*, 1 T. R. 141; *Gill* v. *Scrivens*, 7 T. R. 27; *Steel* v. *Smith*, 1 Barn. & Ald. 99. Chancellor Kent, who was doubtless more familiar with the construction of statutes as a judge than as a legislator, remarks upon the case above cited from Fitzgibbon, "that a proviso, repugnant to the purview of the statute, renders it equally nugatory and void, as a repugnant saving clause; and it is difficult to see why the act should be destroyed by the one, and not by the other, or why the proviso and

SECTION VI. SCHEDULES.

2105. The office of a schedule is to contain matters which cannot readily be reduced into the proper form for a clause, or which would be inconvenient to the reader, if inserted in the body of the act; such, for example, as blank forms, tables, lists, etc. A schedule is properly a part of the bill to which it is attached.

SECTION VII. DATE.

2106. It was formerly the rule, as to the time when an act of parliament commenced its operation, that if no period was fixed by the statute itself, it took effect by relation from the first day of the session in which it passed, and which might be weeks, if not months, before the act received the royal assent, or even before it had been introduced into parliament. This rule was established in conformity with a common law notion, according to which a session of parliament, like that of a court of record, was accounted in law but as one day, namely, that on which it commenced.[1]

2107. This rule, though productive of injustice, even when the sessions of parliament were comparatively short, and of great hardship and oppression, when they attained the length of modern times, was not abrogated until towards the close of the last century; when by the statute 33 George III. ch. 13, the rule was abolished "by reason of its manifold injustice," and it was enacted, that statutes should have effect only from the time of their receiving the royal assent.[2] The act also provides, that an indorsement shall be made by "the clerk of the parliaments," that is, by the clerk of the house of lords, on every act of parliament, of the day, month, and year, when the same shall have passed, and shall have received the royal assent; and that such indorsement shall be taken to be a part of such act.

2108. The effect of this principle is abrogated, in this country,

the saving clause, when inconsistent with the body of the act, should not both of them be equally rejected;" Kent's Commentaries, I. 463, 4th ed. If the learned chancellor had been as familiar with the mechanism of English statute making, as he was with the doctrines of English equity, he would have been at no loss for the reason of the distinction, on which he comments; though he might perhaps have well doubted, whether it was sufficient and satisfactory. The legislation in this country is probably so different from that of England, in this respect, that it may be very questionable whether the distinction above suggested ought to be recognized at all.

[1] Whitelocke, I. 230.

[2] Kent's Comm. I. 457.

in one of two ways, either, first, by constitutional or legal provisions, operating generally upon all acts of legislation, or secondly, by particular clauses added to each, specifying the time when it shall go into operation. In default of one or the other of these provisions, the principle of the common parliamentary law prevails.

SECTION VIII. OF THE GENERAL PREPARATION OF A BILL.

2109. In the preparation of a bill, two things are essential to be observed, first, that it correspond in substance, to the sense or will of the house, so far as the opinion of the house has been previously expressed; and, second, that it be drawn in a proper form. If a bill is improperly framed in either of these particulars, it cannot be allowed to proceed, as being against order, but by the unanimous consent of the house.[1]

2110. Where a committee is appointed to consider a particular subject, with authority also to prepare and bring in such a bill relative thereto, as the committee may think proper, it is only necessary that the bill presented should be relative to the subject-matter referred, and that it should be properly drawn in point of form; the terms and provisions of it are within the discretion of the committee.

2111. Where a committee is appointed, or a member or members directed or authorized, to prepare and bring in a bill for a purpose specified in the order,[2] or in accordance with the prayer of a petition, on which the order is founded,[3] or upon the debates of the house, or upon heads, articles, or resolutions,[4] previously agreed to by the house, the bill presented must correspond with the sense or will, that is to say, the order, of the house so expressed.

2112. The following examples will serve to illustrate the rule stated in the preceding paragraph: Leave being given to bring in a bill for regulating the expense at elections, it was decided, that a provision inserted in the bill relating to the qualification of members was unauthorized;[5] leave to bring in a bill to repeal an act for the better relief and employment of the poor of certain parishes, was held not to authorize the insertion of a clause alter-

[1] Parl. Reg. (2), XVI. 401.

[2] Comm. Jour. XLVI. 611; Same, L. 374; Same, LI. 609; Same, XLII. 528, 543; Same, XLIV. 514; Same, XXII. 414; Same, 443; Same, XXXIII. 492, 554, 595; Same, LVI. 409, 504, 521.

[3] Comm. Jour. LV. 417; Same, XLII. 524, 693, 695, 705; Same, XXIX. 67; Same, XXXI. 607; Same, XXXII. 843; Same, XXXIII. 210, 211; Same, LXIX. 230.

[4] Comm. Jour. XXII. 104.

[5] May, 350.

ing the law of settlement;[1] leave being given for a bill granting certain duties on certificates issued with respect to the killing of game, it was held not competent to insert in the bill a provision extending the license to all descriptions of people, as well unqualified as qualified;[2] leave for a bill to prevent forgeries on bankers was not considered sufficient ground for the insertion in the bill of forgeries on any other persons.[3]

2113. In respect to the form, in which a bill ought to be presented, it is immaterial by whom, or by what authority, it is drawn;[4] it must, at all events, be drawn in conformity with the orders of the house, whether relating to the form of bills in general, or to particular classes of bills. The principal orders in parliament of a general character are, that a bill should be drawn in the form of a statute; that it should be written on paper without erasures or interlineations;[5] and that the proper blanks, for dates, and for the amount of salaries, tolls, rates, and other charges,[6] shall be left in it to be filled by the house.[7] Besides these orders, there are standing orders relative to particular classes of bills, which are equally essential to be observed;[8] as, for example, in reference to private bills, that inclosure bills should have the names of the commissioners inserted,[9] that a bill, to which the consent of parties is requisite, should correspond with the copy to which consent has been given.[10]

2114. Public bills are prepared, in the first instance, or caused to be prepared, by those members, who obtain leave for their introduction, or who are ordered by the house to prepare and bring them in. In the house of commons, the drafts thus made are taken to the public business office, where they are prepared in proper form for presentation. Private bills are prepared by the parties themselves, their attorneys or agents. It was anciently the practice, and is presumed to be so still, that "bills are not written in para-

[1] Comm. Jour. LXXX. 329.

[2] Parl. Reg. (2), XVI. 401.

[3] Parl. Reg. LX. 285.

[4] J. of H. 32d Cong. 1st Sess. 785.

[5] Comm. Jour. XXXVI. 703; Same, XLIII. 467, 468; Same, XXIX. 926; Same, XXXIII. 227; Same, 674; Same, LVII. 47.

[6] May, 350.

[7] Comm. Jour. XXXVI. 692; Same, XVIII. 426; Same, XXVI. 130, 145; Same, XXXIII. 674; Same, LXVII. 511; Same, XX. 779. Instead of the passages actually left blank in a bill, those parts are now filled up with the sums, names, and dates, intended to be moved by the promoters of a bill. And when the bill is printed, they are printed in italics. Passages so filled are still technically considered as blanks. This practice, which seems to be a convenient one, has not yet been adopted in this country. May, 350.

[8] Comm. Jour. XXXVIII. 925, 938; Same, LXX. 209.

[9] Comm. Jour. XLVIII. 308, 346; Same, LI. 495; Same, LV. 533, 565, 627.

[10] Comm. Jour. XXXV. 488, 489.

graphs, but all of a piece; not that the clerks may read blank, but that there may be no forging in it."[1] Anciently, it was requisite, that every bill, when presented to the speaker, should be accompanied by a breviate or brief, that is, an abstract of the heads of the bill;[2] and, unless so accompanied, the rule of the house of commons declared, that the speaker ought not to open any bill, or to command the same to be read.[3] It was also necessary, when a bill was amended, that the brief should be amended and made to conform to the amendments to the bill. The practice of preparing briefs has long been discontinued, as to public bills, but is still required by the orders of the house of commons, as to private bills.[4]

2115. The rule of parliament, which requires that every bill should be drawn, both as to substance and form, in conformity with the orders of the house, would be nugatory, unless it was equally peremptory to prevent the introduction or proceeding with a bill which was improperly drawn. Hence it is the established practice that, whenever in the course of the proceedings on a bill, notice is taken by the speaker, or some member, or it appears to the house in any other manner, that the bill is drawn contrary to order, the proceedings are at once arrested, and no further step can be taken with the bill, without the unanimous consent of the house.[5] The form of proceeding with a bill is such, that defects of this description are not, in general, likely to be taken notice of, until it has been received by the house, or received and read the first time; and sometimes the defect is not discovered until a later stage; but, if pointed out on a bill being presented, the defect would prevent the reception of it, in the same manner that a discovery after the reception will arrest the further proceedings.

2116. When notice is thus taken that a bill is objectionable in point of order, the bill cannot proceed further without the unanimous consent of the house, because it is against order, and every member has a right to require that the orders of the house shall be preserved; nor can another bill be introduced without the like consent, because, whilst a bill is pending, no other of the same substance, and for the same purpose, can be brought in consistently with order. The only course of proceeding, therefore, in such a case, is to withdraw the defective bill, and to obtain leave to pre-

[1] Grey, IX. 143.
[2] Scobel, 41.
[3] Comm. Jour. VI. 570.
[4] May, 352.
[5] Parl. Reg. (2), XVI. 401. Where a bill has been received and proceeded with, without any objection on the ground of order, it is held, in the house of representatives of the United States, that objections of that description cannot afterwards be interposed to the further progress of the bill. J. of H. 32d Cong. 1st Sess. 785.

sent a new one in a proper form. If, on the defect being noticed, it is at once seen and admitted, the friends of the bill have no other course but to move, first, for leave to withdraw it, and then for leave to present a proper bill instead thereof; both which motions are generally granted, as a matter of course, though there are instances in which the latter has been refused.[1] If the defect is not manifest, or the friends of the bill are unwilling to yield the point without a question, those who are against the bill may move that it be withdrawn, or may make the supposed irregularity a ground of opposition to the next step in the progress of the bill. The proceedings which take place in the withdrawal of a bill, will be stated more particularly hereafter.

CHAPTER SIXTH.

OF THE PRESENTATION AND RECEPTION OF A BILL.

2117. When leave has been given, or an order made, for the introduction of a bill, as above mentioned, (unless it is founded upon the resolution of a committee of the whole for a charge upon the people,)[2] the bill may be brought in on the same day, and during the same sitting, with that on which the order is made or leave given.[3] There is no rule which prevents the immediate introduction of the bill, upon the making of the order; but, as the preparation of a bill requires and implies consideration, it is deemed necessary that some time should intervene between the order for preparing it, and the presenting of it to the house,[4] and, consequently, some votes are generally allowed to be passed, after the making of the order, before the bill is introduced, even though it has been previously prepared, and is ready to be offered.[5]

[1] Comm. Jour. LXIX. 230.

[2] The standing order of February 18, 1667, Comm. Jour. IX. 52, which requires that every proposition for a charge upon the people, shall be referred to a committee of the whole house, provides, also, that it "shall not be presently entered upon, but adjourned till such further day as the house shall think fit to appoint."

[3] May, 350.

[4] Comm. Deb. VII. 267.

[5] It is not unusual, however, for bills to be introduced immediately upon leave being given, especially where the leave is for the introduction of a new bill, in a proper form, instead of one which has been withdrawn. Comm. Jour. LXVIII. 304, 323; Same, LXX. 95.

2118. In the house of lords, as has been already stated, it has always been and now is, the right of a member to present any bill or petition he may think proper, without a question. In the house of commons the same practice anciently prevailed. According to Hackwell, who states the practice in his time, bills were "either by some member of the house publicly presented to the speaker in the house, with some short speech, setting forth the needfulness of a law in that behalf, or delivered in private to the speaker or the clerk of the parliament, to be presented to the house at some convenient time."[1] At the present day, there must be leave or an order of the house, to authorize the bringing in of a bill, and the bill must also be offered and brought up in the same manner as a petition, in pursuance of an order of December 10, 1692, which appears to have been observed as a standing order, namely, "that every member presenting any bill or petition, do go from his place, down to the bar of the house, and bring the same up from thence to the table."[2]

2119. The bill must be presented by one of the members named in the order, or by one of the committee appointed to prepare and bring it in; if offered by any other member, it cannot be received; or if the irregularity is not observed, and the bill is received and proceeded with, its progress will be arrested and the bill ordered to be withdrawn, as soon as the irregularity is brought to the attention of the house.[3]

2120. The usual practice in presenting bills in the house of commons is thus described: — "The member, who has a bill to present, appears with it at the bar, and the speaker calls upon him by name. He answers, 'a bill, Sir;' and the speaker desires him to bring it up; upon which he carries it to the table, and delivers it to the clerk of the house, who reads the title aloud; when the bill is said to have been received by the house."[4] This proceeding, like many others in parliamentary practice, evidently supposes that a motion is made and a question put and decided, when, in fact, no motion or question is made, namely, a motion that the bill be brought up, and a question put thereupon, which is decided by the house in the affirmative; otherwise, that would be true of the introduction of a

[1] Parl. Reg. LXII. 200; Hakewill, 132, 133. "Mr. Bacon stood up to prefer a new bill, and said, Mr. Speaker, I am not of their mind that bring their bills into this house obscurely, by delivery only to yourself or to the clerk, delighting to have the bill to be *incerto authore*, as though they were either ashamed of their own work, or afraid to father their own children; but I, Mr. Speaker, have a bill here, which I know I shall no sooner be ready to offer, but you will be ready to receive and approve." D'Ewes, 626.

[2] Comm. Jour. X. 740.

[3] Comm. Jour. XXXIII. 255.

[4] May, 350.

bill, which is not true of any future stage, in the proceedings upon it, namely, that a step may be taken in the progress of a bill, without a motion and vote of the house. The strictly parliamentary course, therefore, in the introduction of a bill, seems to require, that the member presenting or offering to present it should explain to the house, that the gentlemen appointed, or the committee, as the case may be, have, according to order, prepared such a bill which he is ready to present, and thereupon to move that the bill be brought up. This motion, being seconded, is then to be put to the house as a question; and may then be debated, and proceeded with, generally, in the same manner as any other motion.

2121. In our legislative assemblies, the ceremony of presenting a bill is attended with little or no formality. The member who is about to present a bill, whether as the report of a committee or otherwise, rises in his seat, and having obtained possession of the floor for the purpose, proceeds to inform the house, that he has a report and bill, from such a committee or source, which he reads, if he thinks proper, and thereupon offers to present the bill to the house. If no objection is made, the bill is of course presented and received. If any objection is made, this raises the question of reception, which may also be raised by a direct motion that the bill be or be not received. If the objection is on the ground of order, a question is thus presented for the presiding officer to decide. If the point of order is overruled, or the house suffers the bill to proceed notwithstanding, or a suspension of the rules takes place, then the question is to be put to the house, or it may be put in the first instance, if there is no question of order, that the bill be received. If this question is resolved in the affirmative, the bill is accordingly received and subsequent proceedings had thereon.

2122. Another mode, in which a bill is introduced, is by message from the other house.[1] When a bill has passed in one house, it is then sent to the other, with a message informing the latter, that the former has passed a bill, stating the title of it, to which the concurrence of the latter is requested. A question is always made, or supposed to be made, on admitting the messengers; if they should be refused admittance, the bill or whatever else is the subject of the message is, of course, refused to be received. But, such a refusal, though possible, is a proceeding of so unparliamentary a character, as to be scarcely probable. When the messengers are admitted, they present the bill with which they are charged, which

[1] Cong. Globe, XVIII. 639.

is received and laid on the table. Bills presented in this manner, of which nothing but the titles can be previously known, are ordinarily received without a question; but there seems to be no good reason, why proceedings should not take place, after the message is delivered similar to those which occur when a bill emanates from a committee of the same house.[1]

CHAPTER SEVENTH.

OF THE SEVERAL STAGES THROUGH WHICH A BILL PASSES.

2123. Bills, thus received, whether presented by members, reported by committees, or sent from the other house, are, in all substantial respects, to be proceeded with in the same manner, through the several stages, which have been established by usage for the passing of bills. At each of these different stages every bill, in a parliamentary sense, presents a new question, although it may, in fact, be the same which has been formerly considered. These several stages have never been departed from, although they depend upon usage merely, and are as much in force, and as fundamental in our legislative assemblies as in parliament. The nature of the different stages, through which each bill must pass, in its progress, before it becomes a law, will be stated more fully, as we proceed. They suppose an interval of some time between one stage and another, and this interval is ordinarily one day at least between the principal stages; but they may be shorter, and there is nothing, in the usage, to prevent bills from being passed through all their stages, and in both branches, in one and the same day, if the respective houses so determine.[2] The differences, between the proceed-

[1] See J. of S. 27th Cong. 3d Sess. 271.

[2] It was said by Mr. Fox, in debate, — "In the house of commons, the form of passing a bill of importance required that it should go through several stages. It was first (that is, the subject) committed, which was the *first* stage; it was then reported, this was the *second;* the report was read a second time, which was the *third;* leave was then asked to bring in a bill to carry the resolutions into effect, which was the *fourth;* it was then brought in, which was the *fifth;* it was afterwards read a *first*, *second*, and *third* time, which made *eight;* and the passing made *nine* stages, in which a bill must pass, before it left that house. The reason of these different stages was, in order to give parliament an opportunity of so many different times for considering its tendency, before they finally gave their concurrence to its passing. It might

ings upon a bill in the house in which it is first introduced, and in that to which it is sent, relate chiefly to the engrossment, and to the manner in which the bill is amended. These differences, as well as those particulars in which the proceedings of the two houses differ, in other respects, will be pointed out in their proper places.

2124. The different stages of a bill, or readings, as they are called, have been thought so important in this country, that in some cases, they are made the subject of constitutional provision. In the constitutions of New Jersey and North Carolina, it is required that every bill, before it becomes a law, shall be read three times in each house. These readings, for aught that appears, may be on the same day, and there is no power conferred on either branch to dispense with the rule. In the constitutions of Maryland, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, Kentucky, Ohio, Indiana, Illinois, Arkansas, and Texas, it is required, in differing phraseology, that every bill, before it becomes a law, shall be read on three separate days in each house; in that of Virginia, the readings are required to be in the house in which a bill originates; but this rule may be dispensed with by a vote in Maryland, Ohio, and Illinois, of three fourths; in that of Virginia, Indiana, and Arkansas, of two thirds; in Florida, Alabama, Mississippi, Louisiana, Kentucky, and Texas, of four fifths. In South Carolina, there is no power to dispense with the rule; in Georgia, the ground of dispensation is actual invasion or insurrection; in Tennessee, the readings are required to be in the house in which the bill originates, and there is no power conferred to dispense with the rule; and in Indiana, the reading is required to be by sections.

2125. The different stages or steps, through which a bill must regularly pass, in its progress in each house, were the invention of an early period of parliamentary history, when the accomplishments of reading and writing were not so general as they now are, and when the art of printing was either unknown, or very little practised.[1] The principal of these stages were the several readings,

pass the committee, report, first, second, and third reading, and yet be rejected by parliament discovering some improprieties which they had not before observed. This law, therefore, was exceedingly wise; for nothing required more deliberation than law which should be enacted for the welfare, protection, and government of the people; and therefore it became the constitutional guardians, the representatives, to be exceedingly cautious of any measure being adopted, which might tend to preclude them from the free and unlimited exercise of their judgments, on every subject in which the interests of the country were essentially dependent." Parl. Reg. (2), XXI. 393, 394.

[1] "Before the invention of printing, and when the art of printing was unknown to three

which, as the term denotes, every bill received, in order that its contents might be fully known and understood. At each of these stages, the bill was read at length by the clerk in the hearing of the house, and was then "opened," that is, a brief summary of its contents stated, by the speaker.

2126. The first reading was for information merely, as to the nature of the provisions, which thus claimed the attention of the house. If the bill as a whole was favorably received, it was ordered to be read a second time. After the second reading, it was debated both as to matter and form. If the matter was approved of, but the form was unsatisfactory, the bill was referred to certain members selected for the purpose by whom the bill was carefully revised, and who suggested to the house such alterations as they deemed necessary. This proceeding was denominated the commitment. The house then went through the bill for the purpose of amending it, according to the suggestions of the committee, and in such other mode as they might think proper.

2127. When all the alterations had thus been made in the bill, which were necessary to put it into a proper form, it was then ordered to be engrossed, "which is no more than to transcribe the bill fairly out of the paper, in which it was written, into parchment."[1] The purpose of this proceeding was merely to make a clean copy of the bill with the amendments in their places, on a permanent and substantial material.

2128. When engrossed, the bill was then read a third time, for the obvious purpose of enabling the house to judge, first, whether it was in the form in which it had been agreed upon, and secondly, whether, in that form, it expressed the deliberate sense or will of the house. It might still be amended, if necessary, provided the amendments were such as could be conveniently effected in the bill in its engrossed form, without requiring it to be reëngrossed.

2129. The final question was then put upon its passage. If this was assented to, the bill was sent to the other house to be there proceeded with in substantially the same manner. These several stages are still in use in the passing of bills; the engross-

fourths of the deputies of the nation, to supply this deficiency, it was directed that every bill should be read three times in the house. At the present day, these three readings are purely nominal; the clerk confines himself to reading the title and the first words. But a most important effect has resulted from this antique regulation. These three readings have served to mark three distinct degrees — three epochs — in the passing of a bill, at each of which the debate upon it may be recommenced at pleasure." Bentham, Political Tactics, Works, II. 353.

[1] D'Ewes, 18.

ment being of course omitted, when the bill, having first passed in the other house, is already engrossed.

2130. The proceedings with reference to bills, though the stages remain substantially the same, as when they were first established, have nevertheless undergone an important change, since that period. At the time alluded to, it was the custom of parliament, as has already been stated, for the speaker to frame the several questions for the decision of the house, from the turn of the debate; and this practice prevailed in the proceedings on bills, as well as with reference to other matters. Motions were occasionally made, as in modern times; but, in general, the course of business was suggested or rather dictated by the speaker. In regard to bills, the discretion of the speaker was governed by certain rules, which were intended both to facilitate the expression of the will of the house, and to secure the due and proper degree of deliberation. These rules are fully explained by Hakewell and Scobell, in their treatises; and will now be stated so far as may be necessary to give an idea of the system to which they belong.

2131. It was usual for the speaker to direct the clerk, both as to the bills to be read, and as to the time of reading them; the house sometimes interfering for the purpose of having a particular bill read; and the general practice being, to devote the morning to first readings, and to defer second or third readings until the house had become full. It was against the ordinary course, also, to read a bill more than once on the same day; still this might be suffered for special reasons, especially when the house was in want of business "wherein to employ themselves," but only upon motion and special order.[1]

2132. At the first reading, it was not the course to speak to the bill, as a whole, but to take time till the second reading, to consider of it. Nor was it allowable to speak to particular parts of it, or to propose any addition; as that would imply that the bill itself was good, which could not regularly be determined until the second reading. It sometimes happened, however, that the merits of a bill were gone into upon the first reading, especially where it was objected to on the ground of its being inconvenient and hurtful to the commonwealth, and therefore not proper for the consideration of the house. If a bill originally begun in the commons was there debated, and the question was called for by the house, the speaker did not put it, whether the bill should be read a second time, "for

[1] Hackwill, 137, 139, 142.

so it ought to be of ordinary course," but whether it should be rejected. If the bill had come from the lords, the speaker, "in favor and respect thereto," did not make the question, in the first instance, for rejection, but for the second reading, and, if that were denied, then for rejection. But, usually, in the case of a debate upon a first reading, the speaker forbore to make any question at all, unless he was much pressed.[1]

2133. When a bill had been read the second time, if no man spake against it either for matter or form; or if several members spoke for the bill, without taking any exception to the form of it; the speaker, if the bill originated in the commons, made the question for the engrossing. If, as was usually the case, the house called for the committing of the bill, the first question was made for the commitment; and if that was refused, then a second question for the engrossing. In the case of a bill from the lords, which had been read the second time, the first question was for the commitment; if that was negatived, the bill was then read a third time (being already engrossed), and the question put for its passage.[2] Such was the method of proceeding anterior to and at the time when the authors above mentioned compiled their respective works.

2134. According to the modern practice, each of the different steps in the progress of a bill can only be taken in pursuance of a motion regularly made and seconded, or supposed to be so, and resolved in the affirmative by the house; and, if, at any point in the regular course, the proper motion for proceeding with the bill is not made, it remains precisely in the state in which it is thus left. Thus, when a bill is received, it is laid on the table, and remains there without being read, until a motion is made for the first reading; so, when a bill has been read the first time, no further proceeding takes place, as a matter of course, but a motion must be made and seconded for the second reading. All the other proceedings must, in like manner, be instituted by motions regularly made and seconded, without any interference or direction on the part of the speaker. If the proper motion for proceeding with a bill, at each of its several stages, is not regularly made, the bill is said to be dropped.

[1] Hackwill, 140, 141.

[2] Hackwill, 143, 144.

CHAPTER EIGHTH.

OF THE FIRST READING OF A BILL AND ORDER FOR SECOND.

2135. A bill having been received as above mentioned, it is then in order to move that it be read, or, which is the same thing, that it be read the first time. If this motion is decided in the affirmative, the next step is to fix the time on which the first reading shall take place; if in the negative, the bill cannot be read at all, or proceeded with any further; because no subsequent step in the proceedings can be taken but in regular course, and a question once decided in the negative cannot be renewed in the same session of parliament. The motion for the first reading need not be made on the day on which a bill is received, but may regularly be made at any time afterwards.[1] In the mean time, the bill may be suffered to lie without any order, or the house may order it to lie on the table, generally, or to lie for a certain number of days before being read.[2]

2136. In order to fix upon the time for the first reading, the motion must be either that the bill be now read a first time, or that it be read a first time on a subsequent day named. The motion for present reading may be put to the question as it stands, or it may be amended. In the former case, if decided in the affirmative, the bill is to be read immediately. If decided in the negative, the bill cannot be read on the same day, nor can a motion be regularly made for that purpose, because the house has already decided, that it shall not be read on that day; but the bill may be read on any other day, and, consequently, a similar motion for present reading may be made on the next or any succeeding day, or a motion may be immediately made for the first reading on some future day.[3] This latter motion is subject to be proceeded with in the same manner as if it had been made in the first instance, except that it cannot be regularly amended so as again to become a motion for present reading, which the house has already decided in the negative.

2137. The motion for present reading, that is, that the bill be *now* read, is also subject to be amended, by leaving out the word

[1] Dwarris, I. 140.
[2] Comm. Jour. XII. 586, 606, 624.
[3] Comm. Jour. XXXIV. 291.

"now," and substituting therefor some other time. A motion in this form, namely, to leave out and insert or add, as has already been stated in another place, requires two questions, first, whether the word proposed to be left out shall stand part of the question, and second, if that question is decided in the negative, whether the words proposed as a substitute shall be inserted or added. If the first question is decided in the affirmative, the proposed amendment is negatived, and no other or further amendment, which proposes to leave out that word can be moved; but the motion stands as originally moved, and must be put to the question for the present reading. If the first question is decided in the negative, namely, that the word "now" shall not stand part of the question, this is a negative of the motion for the present reading, and the second question is then to be put, namely, whether the words proposed as a substitute shall be inserted or added. On this question being proposed, it may be moved to amend it, by leaving out and inserting or adding as before.[1] If the amendment to the motion for the present reading is moved by the friends of the bill, it is, of course, for the purpose of fixing on a convenient time within the session for proceeding with it; if by the opponents, it is for the purpose of defeating the measure, by fixing upon a day for the reading beyond the probable duration of the session. In the first case, if, on the first question, that is, on retaining the word *now*, which is proposed to be struck out, that word is left out, the opponents of the bill may move to amend the second question, so as to postpone the reading beyond the session; and, in the other case, if, on the first question, the word *now* is left out, the friends of the bill may move an amendment to the second question, so as to have the bill read on some convenient day within the session.

2138. The motion for reading the bill on a future day named, may also be put to the question as it stands, or it may be amended. If thus put to the question, and decided in the affirmative, the bill is accordingly ordered to be read the first time on the day named; if decided in the negative, the same question cannot be again moved, but a motion may be made for the present reading, or for the reading on any day other than that upon which the decision of the house has already been pronounced. A motion for present reading, made after a decision in the negative of a question for reading on a future day, is subject to be proceeded with in the same manner as if originally made, except that no amendment of it is

[1] Comm. Jour. LII. 601.

allowable, which presents the question already decided. The motion for reading on a future day may also be amended, by leaving out the day named, and substituting therefor the present reading, or the reading on some other day, either more remote or nearer than the day named. This motion may be proceeded with in the manner already mentioned with reference to a motion to amend the motion for present reading.

2139. The regular course of proceedings, as above described, requires that a bill should first be ordered to be read, and that when the reading has been agreed upon, the time for it to take place should be fixed. But, in practice, the first motion usually made is, that the bill be now read the first time, or that it be read the first time on such a day. These motions, when thus made in the first instance, are subject to be proceeded with in the same manner, as when made after the house has first ordered the bill to be read.

2140. When a time is fixed for the first reading on a future day, the reading becomes an order of the day for that day. Before the day arrives, the order may be read and discharged; in which case the bill remains in the same state in which it was when the order was made; and the proceeding upon it must afterwards be renewed from that point. On the day assigned, the order is read and proceeded upon in the usual manner.

2141. When the house has come, in any of the modes above described, to a resolution for the present reading of a bill, it is thereupon to be read immediately by the clerk. The ceremony attending this proceeding in the house of commons, is thus described by Hackwill: "The clerk, with a loud and distinct voice, first readeth the title of the bill, and then after a little pause the bill itself; which done, (kissing his hand,) he delivereth the same to the speaker, who standeth up uncovered, (whereas otherwise he sitteth with his hat on,) and holding the bill in his hand, saith, this bill is thus entitled, and then readeth the title, which done, he openeth to the house the substance of the bill, which he doth, either trusting to his memory, or using the help, or altogether the reading of his breviate, which is filed to the bill, sometimes reading the bill itself. When he hath thus opened the effect of the bill, he declareth to the house, that it is *the first reading of the bill*, and delivereth the same again to the clerk."[1] In the house of lords, according to Elsing, "the clerk reads the bill, standing at the table, and then delivers the same kneeling, unto the lord chancellor, together with a

[1] Hackwill, 137, 138.

brief of the bill. The lord chancellor reads the title of the bill, and then reports the effect of the same, out of the brief, and concludes *this is the first time of the reading of this bill.*"[1] The practice, as described by these authors, was that which prevailed two hundred years ago. In modern times, no essential difference has taken place, except that public bills are not now accompanied by breviates, and it is not the custom to read any bill at length. The necessity for reading is superseded by printing; and the rule which requires a bill to be read is now satisfied by reading the title and a few of the first words. The ceremony above described is to be repeated, when a bill is read the second, or third time.

2142. As the contents of a bill cannot regularly be made known to the house, until it is read, it is not usual for the motion to read a bill the first time to be opposed;[2] it is, however, perfectly in order to oppose the bill in this stage, and for a debate to take place on this,[3] or any other of the motions above mentioned. A debate on this motion must necessarily be confined to the principle of the bill, or rather to its contents as they are set forth in the title.[4]

2143. The ancient practice, with regard to the first and second reading of bills, having been substantially adopted, in the house of representatives of congress, by a rule first adopted in the code of 1789, which has been extensively copied in other systems of rules and orders, that rule will be stated, and the practice under it, before going on with the regular course of proceeding.

2144. The rule in question is as follows: — "The first reading of a bill shall be for information, and, if opposition be made to it, the question shall be, 'Shall this bill be rejected?' If no opposition be made, or if the question to reject be negatived, the bill shall go to its second reading without a question."

2145. In the construction of this rule, it has been decided, that it applies as well to bills introduced on leave,[5] and to bills from the other branch,[6] as to bills reported by committees of the house itself, or introduced in any other manner, and read a first time; in regard to which, if any objection is stated to their further progress, or any motion is made which implies opposition, the question is to be stated by the speaker on rejecting the bill in question; and this objection, after being made and persisted in, may be withdrawn at

[1] Elsing, Harl. Misc. V. 211.
[2] Cav. Deb. I. 23.
[3] Cav. Deb. I. 25; Parl. Reg. XXII. 189, 200.
[4] Parl. Reg. XVIII. 472; Same, XLIII. 151, 155, 156.
[5] J. of H. VIII. 292.
[6] J. of H. II. 187, 583; Same, III. 274; Same, VIII. 665; Same, IX. 333; Same, 14th Cong. 1st Sess. 151; Cong. Globe, XXI. 1683.

any time before the question is taken.[1] This question may be suspended by being laid over,[2] under the rule; by lapse of time;[3] or by an adjournment of the house.[4] On this question, there may be a call of the house,[5] or the previous question may be moved;[6] but after being several times held in the affirmative, that the bill may be laid on the table,[7] or that it may be postponed to a day certain or indefinite,[8] it is now decided[9] that neither the bill itself, nor the question of its rejection, can be ordered to lie on the table. If objection is made and withdrawn, or if no objection is made, or if the question of rejection is decided in the negative, the bill goes to its second reading, either immediately, or on the next or some succeeding day, according to the determination of the house, without any further question.[10] We now resume the regular progress of the bill when there is no rule similar to the above.

2146. When a bill has been read the first time, the next step in its progress is a motion that it be read a second time; which motion may be made immediately, or may be deferred to another day. If this motion is decided in the affirmative, the next step is a motion to fix upon the time for the second reading; if, in the negative, the bill cannot proceed further, for the reasons already mentioned, with reference to a negative decision of the question for reading a bill the first time.

2147. In fixing upon the time for the second reading, the proceedings are similar to those which take place in fixing upon the time for the first; but, as in the ordinary progress of a bill, an interval of one day at least is allowed to intervene between the several stages subsequent to the first reading, it is not usual, when the order for the second reading is made on the same day on which the bill has been read the first time, for the second reading to take place immediately, but to be deferred until a future day. It is allowable, however, on extraordinary occasions,[11] to pass bills through more stages than one, and even through all their stages, and in both houses, on the same day. In reference to the occasions on which bills are thus forwarded or passed with extraordi-

[1] J. of H. 23d Cong. 2d Sess. 323, 368; Cong. Globe, XII. 167.

[2] J. of H. 26th Cong. 1st Sess. 737.

[3] J. of H. 21st Cong. 1st Sess. 257, 258.

[4] J. of H. II. 167; Same, IX. 333; Same, 474.

[5] J. of H. 21st Cong. 1st Sess. 257, 258, 669.

[6] J. of H. 22d Cong. 2d Sess. 325, 326, 327; Reg. of Deb. VI. Part 2, 1049; Cong. Globe, XXI. 1682.

[7] J. of H. IX. 333, 474; Same, 14th Cong. 1st Sess. 151; Same, 15th Cong. 2d Sess. 223; Same, 21st Cong. 1st Sess. 257, 258; Same, 24th Cong. 1st Sess. 585; Reg. of Deb. VI. Part 2, 1049.

[8] J. of H. 14th Cong. 1st Sess. 151.

[9] J. of H. 23d Cong. 2d Sess. 323; Reg. of Deb. VII. 574; Same, XI. Part 1, 1168, 1169.

[10] Rule 116.

[11] J. of H. I. 400, 597; Ann. Cong. 4th Cong. 2d Sess. 1576; Same, 9th Cong. 2d Sess. 108.

nary despatch, it is sufficient to observe, that even where two or more stages are taken on the same day, for peculiar reasons, this departure from the ordinary practice, although it requires in some cases certain proceedings to be superadded, does not make it necessary that any alteration should take place in those which ordinarily occur. In general, an interval of some days is suffered to elapse between the first and second readings. If debate takes place on the motion for the second reading, it must be confined to the principle of the bill,[1] and cannot be extended to embrace the particular provisions, except so far as may be necessary, in order that the principle of the bill may be known therefrom.[2]

2148. When a bill has been ordered to be read a second time, and a day fixed for the second reading, it is usual to make an order, on motion, that the bill be printed; so that its contents may be published and distributed to every member, before the second reading. Every public bill, in both houses of parliament, is now ordered to be printed, except ordinary supply bills, which merely embody the resolutions of the committees of supply and of ways and means, as agreed to by the house, and the annual mutiny bills, which are the same, with very few exceptions, year after year.[3]

2149. A bill having been ordered to be read a second time, and a day appointed for the purpose, it is not in order to anticipate the time, that is, to order it to be read sooner than the day originally fixed; but the reading may be postponed to a day more remote. In order to do this, the course is, on any day subsequent to that on which the day for the second reading was appointed, (for no order inconsistent with that can be made on the same day,) to move that the order of the day, for the second reading of the bill on the day fixed, be read, for the purpose of postponing it. If this motion is carried, the order is read accordingly. A motion is then to be made, that the order be discharged. If this motion prevails, a motion may then be made for the second reading, on any day subsequent to that originally fixed. On this motion, amendments may be moved, in the manner already described, but not so as to anticipate the time originally fixed. The motion may also be negatived altogether, in which case, the state of the business is, that the bill has been ordered to be read a second time, but no time fixed for that purpose. This is also the case, when a bill has been ordered to be read a second time, on a particular day, and on that day the

[1] Hans. (1), II. 1026.
[2] Hans. (3), XXVI. 855.
[3] May, 351.

house fails or is adjourned for want of forty members, or the day elapses without the order being proceeded with.

2150. When a bill has been ordered to be read a second time, but no time fixed therefor, it may on some subsequent day be read a second time, on motion that the bill be now read the second time, without any time being first fixed; or the house may then proceed to assign a time for the second reading.

CHAPTER NINTH.

OF THE SECOND READING, AND ORDER FOR COMMITMENT.

2151. The second reading, as has been seen, may take place immediately on being ordered; or on some subsequent day, no time being fixed, or the time originally fixed having failed or been abrogated; or on some subsequent day, at the time fixed. The proceedings preliminary to the second reading, when no time is fixed therefor, have already been sufficiently explained. When a time is fixed for the second reading on a subsequent day, the second reading is an order of the day, and stands in the order book in its place with the other orders, if any, for that day. When that day arrives, the order of the day for the second reading is read and proceeded upon, with the other orders of the day.

2152. The first step in the proceedings is a motion for the reading of the orders of the day, or the order of the day for the second reading of the particular bill. If this motion is decided in the affirmative, the order of the day is read accordingly, and then it is in order to proceed with the bill. The next step in the regular course of proceeding is a motion that the bill be now read the second time; on which the proceedings already indicated, with reference to the present reading of a bill the first time, may take place. A motion may be made, however, to discharge the order for the second reading, or to make a new order for it on some future day. This last motion may be made use of by the opponents of the bill, for the purpose of defeating it, by postponing the second reading to a day beyond the session.

2153. It is deemed proper, however, to allow the friends of a bill to proceed with it in the mode which they think most advisable,

either by moving for the present reading, or by postponing it to a more convenient time. According to the usual practice, therefore, the member who has charge of the bill moves "that the bill be now read the second time." This motion, as the house has already made an order that the bill shall be read a second time on that day, need not be seconded; and the same rule applies to other similar stages. The opponents of the bill, if it has any, may simply vote against the question, and so defeat the second reading on that day;[1] but, as, in this case, a motion might be immediately made to fix a time for the second reading on some other day, or the bill might be proceeded with on any other day, without first fixing the time, very little is gained by arresting the progress of the bill for one day only. 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 consequently the usual method resorted to in every stage of the proceedings, except on questions for the engrossment or passing of the bill. Another reason, which may be given for making use of this mode of defeating a bill, is, that as the house has already ordered, that the bill shall be read a second time, and the proposed amendment only names a more distant day, the order of the house, although in fact abrogated or rescinded, is still preserved in point of form.[2]

2154. This stage, embracing all the proceedings which take place on the day assigned for the second reading, is regarded as the most important through which the bill has to pass. On some one or more of the motions that may then be made, the debate takes place on the merits of the bill, — the principle of it alone being open for discussion, — unless there is an understanding among the members interested, on the one side and on the other, that the merits of the bill shall be discussed at a later stage.[3] Understandings of this description are, of course, of no binding obligation on the house, or even on the members by whom they are entered into.

2155. The second reading is the stage, at which parties are most commonly heard, by themselves, or by their counsel, or agents, and to examine witnesses, whenever a hearing has been ordered by the house. But, as a hearing may also take place at various other

[1] Comm. Jour. LXXXVIII. 399.
[2] May, 352, 353.
[3] May, 353.

stages, besides the second reading, this proceeding is treated of by itself, in the fifth part.

2156. When the present reading of a bill the second time has been resolved upon, the bill is to be read by the clerk, with the same ceremonies, and in the manner already mentioned, with reference to the first reading. When read the second time, the next step in the regular progress, according to the modern practice, is the commitment; for which purpose, a motion is to be made and seconded, that the bill be committed. If this motion is decided in the affirmative, the next motion in regular course is, that the bill be referred to a select committee, or that it be referred to a committee of the whole house. A public bill is usually committed to a committee of the whole; a private bill to a select committee; though there are instances, in which the reverse of this has taken place.

2157. If a select committee is moved for, an amendment may be proposed, to substitute therefor a committee of the whole;[1] or, if a committee of the whole is moved for, the motion may be amended, so as to make the committee a select one. In these cases, the form of the amendment is such, namely, by leaving out and inserting, that the question first taken is equivalent, in general, to the motion itself, that is, whether the words proposed to be left out shall stand part of the question; though, as those who vote in the affirmative on this question only indicate thereby their preference for the motion as it stands, over any form in which it may be put by amendments, the first question may be decided in the affirmative, and the motion itself in the negative.

2158. If the bill is referred to a select committee, the members are appointed, and the usual directions as to meeting, etc., are given to them in the ordinary manner. If the bill is committed to a committee of the whole house, it remains to fix upon the time for the house to resolve into the committee. A motion may be made, either that the house will immediately, or that it will on some other day, resolve into the said committee; and, on these motions, amendments may be moved in the manner already suggested. If there is any rule, in the particular assembly, in which the proceeding takes place, in regard to the appointment of committees, those provisions are, of course, to be pursued.

2159. The order for commitment may be discharged like any other order of the house; in which case, the proceeding on the bill is suspended at that stage of its progress, and, if renewed, must be

[1] Comm. Jour. XLIV. 46.

taken up at that point. A bill may also be transferred, from one committee to another, as from a select committee to a committee of the whole, or from the latter to the former. Another proceeding, which occasionally takes place, is the employment of the committee on a bill, in the place of a committee or gentlemen appointed to prepare and bring in a bill on a particular subject. This happens, when, instead of a distinct bill, it is proposed to insert a certain statutory provision in some other bill, which has arrived at this stage of its progress. The proper preliminary proceedings in the particular case having been gone through with, as, for example, a committee of the whole having considered a subject, and come to a resolution which is agreed to by the house, the committee on a particular bill is then empowered by way of instruction, to make provision therein for the subject in question.[1] It is also the common practice, when a bill has been committed, to refer petitions and other papers relating to the subject of it to the committee, for its consideration in connection with the bill.

2160. The ancient practice of parliament in regard to the second reading and commitment of bills, is substantially adopted in the lower house of congress, and in many other legislative assemblies of this country. In the former, the rule, by which this practice is sanctioned, was first adopted in 1794, and is as follows: — "Upon the second reading of a bill, the speaker shall state it as ready for commitment or engrossment; and, if committed, then a question shall be, whether to a select or standing committee, or to a committee of the whole house; if to a committee of the whole house, the house shall determine on what day, if no motion be made to commit, the question shall be stated on its engrossment."

CHAPTER TENTH.

OF INSTRUCTIONS TO COMMITTEES.

2161. The most frequent proceeding, after a bill is committed, is to instruct the committee. Instructions are of two kinds, enabling or mandatory;[2] the first authorizes the committee to do that,

[1] Comm. Jour. LII. 214, 608, 624; Same, 446, 568, 627; Same, 235, 237.

[2] Hans. (3), VI. 265, 268, 269.

which, otherwise it could not do, in virtue of the reference of the bill to it; the other requires the committee to do the particular thing which is the subject of it. Enabling instructions may embrace any subject whatever, within the power of the house to legislate upon, whether relating to the bill referred to the committee or not. But, as the introduction of any wholly independent topic of legislation in this manner would be in effect to overleap all the proceedings previous to the commitment, that is to say, leave for the bill, and the first and second readings, an instruction of this sort, though not objectionable in point of form, would not be likely to receive the favor of the house, except under extraordinary circumstances.[1] Enabling instructions, which propose to give the committee power to do what they are already authorized to do, are wholly unnecessary, and, therefore, objectionable;[2] but it is for the house to decide, in each individual case, whether an instruction moved is, or is not, of this description.[3]

2162. Mandatory instructions, which command the committee to do a particular thing, may relate either to a matter already within the discretionary power of the committee, or to some new and independent subject. Enabling instructions are usually confined to subjects, which are analogous, or, at all events, not entirely foreign to the bill, as, for example, where the bill referred was for continuing an act for a limited period, the committee was instructed also to amend it;[4] the form being that it be an instruction to the committee, that they have power to make provision in the bill, or to receive a clause, for such or such a purpose. Instructions, which thus enlarge the powers of a committee, are in general enabling merely and not mandatory. The latter form of instruction is usually confined to something connected with the proceedings, and independent of the subject-matter; as, that they cannot admit counsel to be heard;[5] or that they hear counsel and examine witnesses,[6] or that they do, in the first place, examine into the authority under which a particular person acts as agent in a petition presented to the house,[7] or that they inquire into the circumstances of an agreement between certain parties.[8]

2163. It is by means of an instruction to the committee, that the form of a bill is changed, as by making two bills into one, or

[1] Hans. (3), XXXVIII. 790, 791, 792, 793.
[2] Hans. (3), XIV. 959.
[3] Hans. (3), XXXV. 551, 554, 555, 556.
[4] Comm. Jour. LII. 554.
[5] Comm. Jour. XLVI. 170.
[6] Comm. Jour. XLVI. 269.
[7] Comm. Jour. XLVIII. 635.
[8] Comm. Jour. XLIX. 360.

dividing one into two or more.[1] Instructions to form two bills into one are, in general, mandatory,[2] sometimes enabling merely;[3] to divide one bill into two or more, appear always to be enabling.[4] In turning one bill into two, or in making two bills into one, the committee does not perform the part of a mere scrivener, but reports the amendments proper for those purposes, as in other cases.[5]

2164. If there is any rule in the assembly, in which a motion to instruct the committee on a bill is made, which precludes a particular amendment from being made, or any amendment at the particular stage at which the bill has then reached, it is not in order to instruct the committee to amend the bill, or to amend it in that particular manner.[6]

2165. Amendments, in pursuance of mandatory instructions, stand upon the same footing with other amendments, and must be reported upon by the committee, and acted upon by the house in the same manner.[7]

2166. Instructions may be given to a select committee, at any time after its appointment; and to a committee of the whole, at any time previous to the motion for the speaker to leave the chair.

CHAPTER ELEVENTH.

OF COMMITMENT AND AMENDMENT.

2167. When a bill has been ordered to be committed to a committee of the whole house, the business may be suffered to remain as it is, to be resumed on some future occasion, at the pleasure of the house; or the house may immediately resolve into the committee; or the order for commitment may be followed by another, fixing the time for the sitting of the committee on some future day.

2168. When the sitting of the committee has been fixed for a subsequent day, the first proceeding, in entering upon the business

[1] On the motion for an instruction of this kind, the merits of the bill are not open for debate. Hans. (3), XXIII. 954, 955.

[2] Comm. Jour. XXI. 836, 839, 841; Same, XXX. 832, 834, 837; Same, LXV. 282.

[3] Comm. Jour. LVIII. 569.

[4] This subject will be further adverted to in connection with the proceedings and report of the committee.

[5] Comm. Jour. LV. 730, 754.

[6] J. of H. 29th Cong. 2d Sess. 452, 453; Same, 31st Cong. 1st Sess. 1513, 1514; Cong. Globe, XX. 161, 584.

[7] J. of H. 27th Cong. 2d Sess. 725.

on that day, is, for the house, on motion for the purpose, to read the order of the day for the house to resolve itself into a committee of the whole to consider of the bill in question. When the order has been read, it is then proper to make any motion relative to the subject of the order; and it is at this time, generally, that petitions and other papers are referred, and instructions given to the committee; though these proceedings may take place at any time after the order for the commitment. At this time, also, it may be moved to discharge the order for the commitment. When all the motions of this description have been made and disposed of, or, if there are none such made, immediately upon the order being read, the proper motion is, that the speaker do now leave the chair.

2169. On this motion, that the speaker do now leave the chair, it is sometimes moved to amend, so as to substitute for it an instruction to the committee. But, in general, if any amendment is moved, it is for the purpose of appointing some other time for the committee, either within or beyond the session, in some one of the various modes already described. In moving an amendment for the purpose of postponing the committee, the language of the motion must be somewhat different from what it usually is in the analogous motions. The motion usually made is, to leave out the word *now*, and to add, *this day six months*, or whatever other time may be selected. If this form were adopted with reference to the motion for the speaker to leave the chair, the absurdity might arise of ordering Mr. Speaker "to leave the chair this day six months." Hence, the form of amendment, which is adopted, is, to leave out all the words after "that," in order to add, "this house will, on this day three months," or whatever other time may be fixed, "resolve itself into a committee, etc."[1] If the house agrees to the motion for the speaker to leave the chair, the committee is constituted in the usual manner.

2170. The principle of the bill being supposed to be affirmed and sanctioned by the previous proceedings, especially the second reading, at least, so far as that the house may be supposed to be willing to see the bill in the best form in which it can be put, the purpose of the commitment is, that the details of the bill may be examined and amended, if need be, in such a manner as to carry out the principle, and to effect the object of the bill. This being the purpose of the commitment, the authority of the committee, as derived from its appointment, is limited and restricted to the terms

[1] May, 355.

and provisions or rather the title of the bill; having no power to decide upon its merits, nor to introduce into it any provision which does not come fairly within the title. If any thing beyond this is desired by the house, it should be the subject of an instruction.

2171. This being the earliest stage of a bill, in which amendments are allowable, it is necessary now to explain what is meant by amendments, and in what manner they are effected. The term amendment, in its broadest sense, signifies every alteration or addition made to a bill or other proposition, after its introduction into the house, in which it first passes, as well as every addition or alteration which is made, or rather proposed, in one house to a bill passed by the other.[1] But, in a narrower sense, the word *amendment* is used in parliamentary practice to denote only one form of these alterations; the others being known as *additions* and *provisos*. These different significations will now be explained.

2172. I. *Amendment.* A bill, as has already been observed, consists of one or more propositions, in which the will of the law-making power is declared, in reference to a particular subject; each of which propositions, or clauses, as they are called, is introduced by words of enactment. When the language of which one of these clauses is composed, is changed, either by leaving out, inserting, or adding, certain words, or by leaving out certain words and inserting or adding others, these various alterations are denominated amendments. Where words are added or inserted, constituting of themselves a paragraph or sentence, which may be read independently of the clause, to which it is appended, such paragraph or sentence will, nevertheless, be an amendment, provided it relates to the clause in such a manner, as, when added, to make a part of it. Consequently, a qualifying paragraph or proviso, which is added to or inserted in a clause, and which refers only to the clause, to which it is thus appended, may be added as an amendment.

2173. II. *Addition.* When the change or alteration of a bill consists of the addition of an entire clause, containing enacting words, or of the addition of several such clauses, the amendment is denominated an addition, or more properly, a schedule of additions, "for that which containeth an addition is called a schedule."[2]

[1] The term *amendment* is sometimes used in what may be called the colloquial language of parliament, to denote a secondary motion, moved upon and taking precedence, for the time being, of a principal motion; as if on a motion pending and under discussion that a bill be read the second time, a motion is made to adjourn the house, or to adjourn the debate, this latter motion is sometimes called an amendment.

[2] Hackwill, 162.

2174. III. *Proviso.* Where the purpose of an independent addition is to qualify the general provisions of the bill, or to withdraw from its operation certain persons, things, or circumstances, which would or might otherwise come within its provisions, it is denominated a proviso. This kind of addition derives its name from the words with which it is introduced, as *provided*, *provided further*, *provided always*, etc. It generally contains enacting words, as, *Provided always, and be it further enacted;* but these are sometimes omitted, according to the nature of the subject.

2175. The several steps taken in committee, as well as in the house, are, in strictness required to be the subject of motions regularly made and seconded by the members of the committee. But, in practice, the formal proceedings are usually suggested by the chairman, and motions are not seconded at all.

2176. The first motion, in the regular course of proceeding, which, however, is suggested by the chairman, on taking the chair, is, that the bill be read a first time; which being agreed to, and the bill read accordingly (which is done by the assistant clerk of the house, who acts as clerk of the committee) the next step in regular course is, that the bill be read a second time, paragraph by paragraph. If this motion is affirmed, the bill is then to be read in that manner.

2177. The first or introductory paragraph, namely, the preamble, is the first in order to be considered; but, as in public bills, the preamble is intended to be a summary of the reasons which induce the legislature to pass the bill, and which, consequently, cannot be truly or adequately set forth, until the provisions of the bill are settled; it is usual to postpone the second reading and consideration of the preamble, until the clauses of the bill have been gone through with.

2178. The preamble being postponed, the chairman proceeds to call out the clauses, each by itself, in the order in which they stand arranged, together with the short marginal note, if there be any, attached to and explanatory of the contents of each. A clause may also be postponed, if necessary, as well as the preamble, either generally, that is, until after all the others have been considered, or until after some other clause has been considered,[1] provided it be done before the clause has been amended; but, where the preamble and also a clause or clauses are postponed, the latter are to be first

[1] Comm. Jour. LXXXVI. 143.

considered, in the order in which they stand postponed, and afterwards the preamble.[1]

2179. If no amendment is offered to any part of a clause, the chairman puts a question, either of himself, or on motion, "that this clause stand part of the bill;" which being decided, either in the affirmative or negative, the chairman proceeds to the next clause. When an amendment is proposed, the chairman states the line in which the alteration is to be made, and puts the question in the ordinary form. The subject of amendments, having been already considered at length, need not be particularly adverted to in this place.

2180. As it is a rule in amendments, that a precedent clause or line cannot be amended after a subsequent clause or line has been amended, — that is, that amendments must be made in the order of the clauses and lines, — members who have amendments to propose in committee must carefully attend to the progress of the bill, and move their amendments at the proper time, or otherwise they will be precluded from moving them altogether. If an amendment is already moved to the latter part of the clause, when it is desired to propose one in an earlier part of the same clause, the course is to have the pending motion withdrawn, in order to give an opportunity for moving the amendment in question. When the latter is disposed of, the former may be again moved.[2]

2181. When a clause has been amended, the proper question to be put is, "that this clause as amended stand part of the bill." When the clauses have thus been gone through with, in regular course, the postponed clauses are to be proceeded with, in like manner, in their order, — then any additional matters referred to the committee by way of instruction, — and, lastly, additional clauses moved in the committee."[3]

2182. The schedules may be considered in connection with the clauses to which they refer, if they refer to particular clauses, or they may be considered in the order in which they stand, and treated as clauses, after the clauses have been gone through with. Postponed clauses, (that is, those which are postponed generally) may, if necessary, be taken up before other clauses have been considered.[4] When all the clauses and schedules have been considered, and all the amendments made, which the committee see fit, or is

[1] Comm. Jour. LXXXVIII. 366, 372, 378, 382, 405.
[2] Comm. Jour. XLVI. 175.
[3] Comm. Jour. LXXXVII. 99, 101.
[4] Comm. Jour. LXXXVII. 126, 160.

authorized by instruction to make, the preamble which had been postponed is considered, and, if necessary, amended, so as to conform to amendments made in the bill; and the chairman then puts the question, "that this be the preamble of the bill," which he thereupon reads to the committee.

2183. Blanks left in a bill are filled up in the order in which they occur. The mode of filling them is different from the ordinary mode of amendment. Every member, who has a proposition to offer for filling a blank, makes his proposal accordingly; and, when all the different propositions are before the committee, they are put to the question, in the order in which they are made, until one of them is adopted.

2184. This order admits of an exception, in regard to sums and times. If a blank is to be filled with a sum, and several sums are proposed, the lowest is to be first put to the question, the next lowest afterwards, and so on until a sum is agreed upon. If the blank is to be filled with a time, and several are named, the furthest off is to be put first to the question, the next furthest afterwards, and so on until one is adopted. This rule applies not only where blanks are left, but also where they are made or supposed, that is, to the insertion or addition of sums or times in the usual form of amendments; as, for example, where it was proposed to amend a clause by the insertion of a proviso, that not more than a specified sum should be expended in virtue of its provisions.[1] But, where times and sums are already inserted in a bill, amendments are moved and made in the usual manner.

2185. Every description of amendment may be made by the committee; clauses and schedules may be added or omitted, or substituted one for another, or divided into two or more, or united together; paragraphs may be added or omitted, or left out and others inserted; and verbal alterations may be made in every part of the bill, whether the preamble, the clauses, or the schedules.[2] The only limit to the power of the committee, as to amendments,

[1] Comm. Jour. LXXXIV. 339.

[2] In the house of representatives in the congress of the United States, committees of the whole sometimes avail themselves of the form of an amendment to express an opinion hostile to the bill referred to them, as where they recommend to amend a bill by striking out the enacting clause, or the most important sections; yet Mr. Speaker Cheves, on one occasion, in 1814, where a committee of the whole recommended to strike out the entire bill referred to it, which consisted of but a single section, refused to receive the report, on the ground, that a committee of the whole had no right to destroy a bill. J. of H. IV. 444. In the same body, it is now the common practice for committees of the whole, besides reporting on a bill, to recommend that it do or do not pass. All reports of this kind, though generally sanctioned by the house, are irregular and unauthorized.

is, that they must be within the title of the bill, or within the special powers conferred upon the committee by instructions from the house. In the house of commons, the title of the bill, which is itself a specification of the authority of the committee, is not within the power of the committee to amend; but is reserved for the house after all the amendments have been made to the bill in all its stages.

2186. When the committee, in pursuance of instructions, unites two bills into one, the title of the new bill is composed of the titles of the two put together; when one bill is divided into two, that part of the title, which belongs to the subject of each, is appropriated to it; the committee not being authorized in these, any more than in other cases, to change the title.

2187. When it is proposed to add a clause to the bill, four questions are necessary, namely: that the clause be brought up;[1] that it be read a first time; that it be read a second time;[2] and that it be added to the bill. When a proposed clause has been brought up and read,[3] it is then open to amendment, in the same manner, as if it had been a part of the bill originally. The last question is, that the clause, or the clause as amended, be added to the bill.

2188. If it is desired to take the sense of the committee on retaining an entire clause, before proceeding to amend it, — the ordinary course being first to go through the clause and amend it, and then to put a question whether it shall stand part of the bill, — this may be effected by moving to leave out the entire clause, and putting the question as on an amendment to leave out the enacting and two or three of the introductory words of the clause. If the words are left out, the clause is as effectually negatived, as it would be, on the question that it stand part of the bill; if they are retained, the committee may then proceed to amend the residue of the clause.[4]

2189. When it is desired to substitute a new clause for one in the bill, the course is, to move to leave out all after the enacting words of the original clause, for the purpose of inserting the words of the new one.[5]

2190. If an amendment is moved, which is objected to, as not being within the title, the title is first read and the chairman thereupon states his opinion, whether the objection is or is not well

[1] Comm. Jour. XXXVII. 422.
[2] Comm. Jour. XXXVI. 831.
[3] Comm. Jour. LXXXIX. 521, 548.
[4] Comm. Jour. LXXXVII. 544.
[5] Comm. Journal, LXXXV. 619; Same, LXXXVI. 808.

founded; and, if his opinion is not acquiesced in, a motion may be made and the question put, to take the sense of the committee on the point. The question is to be put in the form in which the chairman's opinion is expressed; thus if his opinion is that the amendment is not within the title, the question is put that it is not within the title. These proceedings supersede, for the time being, the motion to amend, and dispose of it, if the sense of the committee is, that it is not within the title.[1]

2191. According to the practice in this country the chairman of a committee of the whole, like the speaker in the house, decides all questions of order, in the first instance, subject of course, to an appeal to the committee.

2192. The committee on a bill having no other authority, in point of form, but to amend it, or to approve of it as it stands, their report always is, that they have gone through with the bill, and have made some amendments thereto, or that they report it without amendment; and this is the form of the report, though various other matters have been referred to the committee by way of instruction, to be considered in connection with the bill. If they have been authorized, in their discretion, to receive a clause, or to make provision in the bill, for a particular purpose, and have seen fit to do so, the execution of the authority appears in the form of an amendment. If they do not see fit to exercise it, they make no report on the subject. If a committee is authorized or directed, by way of instruction, to hear counsel, to turn one bill into two,[2] or two bills into one, or to do any other act of a similar nature, they inform the house, in their report, that they have complied with such instructions.

2193. If the committee should be unable to go through the bill at one sitting, the course is to report progress, and ask leave to sit again. When the bill has been fully considered in the committee and all the amendments made, which the committee think proper to make, a motion is made and the question put, that the chairman report the bill, or the bill with the amendments, to the house; which being agreed to, the chairman leaves the chair of the committee, and the speaker resumes that of the house. The chairman then approaches the steps of the speaker's chair, and reports, or rather informs the house of the proceedings of the committee. Although the committee on a bill is not authorized to decide upon its merits, yet if the opinion of the committee is against the bill, it

[1] Comm. Jour. LXXXVII. 560, 561.

[2] J. of H. 24th Cong. 1st Sess. 1050.

it is not unusual to report against it indirectly, by rising without making any report. When this mode of proceeding is adopted, the progress of the bill is as effectually arrested, until the committee is revived by the order of the house, as if a negative had been put upon any of the motions for forwarding the bill in its regular course.

2194. When a bill is reported with amendments, the chairman informs the house, that the committee has gone through the bill, and has made an amendment, or several amendments, thereunto, which they have directed him to report, when the house will please to receive the same. The next proceeding is for the house to fix upon a time for receiving the report; which may be done either at that time, or afterwards. If the house proceeds then, or whenever it proceeds, to fix upon a time for receiving the report, it may be moved, either that the report be now received, or that it be received on some future day; which motions may be proceeded with and amended, in the manner already described.[1] In the house of lords, there is a standing order that no report shall be received from a committee of the whole on the same day the committee goes through the bill, when any amendments are made by the committee.[2]

2195. If no amendments have been made by the committee, the chairman informs the house, that the committee has gone through the bill, and has directed him to report the same without amendment; but he does not add, as he does where amendments have been made, that he is directed to make the report, when the house will please to receive the same; and, if no objection is made, he makes the report immediately. If objection is made, or there is any good reason for deferring the report, a time may be fixed for receiving it, as in other cases; thus, when the chairman informed the house, that, in pursuance of the instruction of the house, the committee had turned the bill into two bills, but had made no other amendment therein, than was necessary for that purpose, the house directed the report to be made on a future day.[3]

2196. When a committee has been authorized or directed by an instruction from the house, to divide a bill into two or more, the chairman informs the house, that the committee, pursuant to the power given them, have divided the bill accordingly; and he then reports upon each of the bills separately.[4] So, where two bills

[1] Comm. Jour. XLVII. 817; Same, XLIX. 611.
[2] May, 360.
[3] Comm. Jour. LV. 730, 754.
[4] Comm. Jour. LII. 90, 97.

have been referred to the same committee, with an instruction to make them into one, which has been done, the chairman informs the house, that the committee, pursuant to the power or instruction given them, has united the two bills into one, which is reported accordingly in the usual manner.[1]

2197. In going through and amending a bill, and this is even the case with amendments made in pursuance of mandatory instructions, a committee does not insert the amendments, which it agrees upon, in the bill itself, not even such formal amendments as become necessary in consequence of the making of two bills into one, or dividing one into two or more,[2] nor when they are for the purpose of filling a blank.[3] The amendments are all set down in a paper by themselves, containing references to the line, words, etc. where the amendments are to be inserted or added, and so reported to the house.[4] The amendments of the committee, whether consisting of amendments properly so called, or of additions and provisos, are all to be set down in the schedule of amendments, in the order in which they occur in the bill, without regard to the order in which they are made.

2198. The proceedings in a select committee are substantially the same as in a committee of the whole; differing only so far as results from the different constitution of the two sorts of committees.

[1] Comm. Jour. XXX. 832, 834, 837.

[2] Comm. Jour. LV. 730, 754.

[3] Comm. Jour. XLVI. 578.

[4] This principle, in connection with the rule relating to amendments, that the friends of a paragraph, which it is proposed to strike out, have a right to submit amendments to it, with a view to making it as perfect as possible, before the question is taken on striking out, sometimes leads to much inconvenience and embarrassment. On a proposition in a committee of the whole, to amend a bill by striking out one of the sections, that section, being first variously amended, is then ordered to be struck out on the proposition originally submitted. The amendments first adopted are not inserted in the bill, and do not appear in the report of the committee, which only recommends that the section be struck out. If the latter is rejected by the house, the section as unamended stands on the report of the committee; and thus the amendments made in committee to the section in question, do not appear at all. Cong. Globe, XXIII. 166.

CHAPTER TWELFTH.

OF THE REPORT OF THE COMMITTEE, AND PROCEEDINGS THEREON.

2199. When a day has been appointed for receiving the report, the first proceeding is the reading on that day of the order of the day for receiving the report. A motion then follows, that the report be now received, or that it be received at some future time,[1] on which motions amendments may be moved as already stated. When the report is to be received, whether immediately on the house being resumed, or on a subsequent day appointed for the purpose, the chairman, reading the report in his place, reports the amendments which the committee have made to the bill, and which they have directed to be reported to the house. He then appears with the bill and report at the bar, and, on being called upon by the speaker,[2] states that he has a report, and thereupon moves that it be now brought up.[3] On this motion, an amendment may be moved to leave out *now*, and insert some other time.[4] If the motion to bring up the report is decided in the affirmative, the chairman delivers in the bill with the amendments at the clerk's table. If there are no amendments, the chairman goes through with the same ceremony, except that no question is made on bringing up the report, and the bill is at once delivered in at the clerk's table.[5]

2200. When a bill is reported without amendment, and is thereupon delivered in at the clerk's table, no further proceeding takes place upon it, strictly speaking, as a report; the next step is the engrossment and the third reading, if the bill is pending in the house in which it originated, or the third reading merely, if it has passed in the other house, and is consequently already engrossed. The proceedings on the report of the committee, therefore, relate only to bills which are reported with amendments.

2201. The report having been brought up, the next step in the regular course of proceedings is, that a motion is to be made, and a question put, that the report be now read; which being agreed to, and the report read, or supposed to be read,[6] the next step is a motion, that the report, that is, the amendments, be read a second time, one by one. If this motion is decided in the affirmative, the

[1] Comm. Jour. XXXVII. 736.
[2] May, 282.
[3] Comm. Jour. XXXVII. 852.
[4] Lords' Jour. LXV. 531.
[5] May, 282, (1st ed.).
[6] May, 282, (1st ed.).

amendments of the committee are then read a second time, separately, in course,[1] and a motion made, and a question put on each, that it be agreed to. The amendments reported by the committee may also be amended; which, of course, must take place before they are agreed to. When the amendments of the committee have been considered, it is then in order to offer new clauses to be added to the bill; after which, amendments may be made to other parts of the bill. The proceedings now being in the house, there is no restriction upon the clauses and amendments that may be offered, as there is in the committee, that they must be within the title.

2202. When a member offers a clause on the report, that is, after the report has been considered, four motions are necessary, namely, that the clause be brought up; that it be read a first time; that it be read a second time; and, that it be made part of the bill. Clauses thus offered may be amended, in the same manner, as if reported by the committee. The last motion, in that case, is, that the clause, as amended, be made part of the bill. If any new clauses are proposed, containing provisions, which, by the rules of the house, are first to be considered in a committee of the whole, — as, for example, which contain rates, penalties, etc., — the course of proceedings is, for the house immediately to resolve itself into the committee, for the purpose of considering them, and to agree to them on the report. Clauses should be offered by way of amendment, before any amendments are made to the bill; 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.[2]

2203. Whatever other matters may be especially referred to the committee, whether of the whole house or select, or which it may undertake to report, the report upon the bill is always the same, namely, with or without amendment. If the bill has already been in the hands of a committee, either select or of the whole, which has reported it with amendments, the report, with such amendments of its own as it pleases, is, that the committee agrees or disagrees with the amendments of the first committee, or that the committee agrees to the same with amendments. If the bill, in the judgment of the committee, ought or ought not to pass, the committee sometimes reports a recommendation that the bill pass, or that it be rejected. In this case, the committee's report may or may not, according to its nature, require the action of the house to agree to

[1] Comm. Jour. LIX. 163, 347.

[2] May, 364.

it; but it does not stand, or obstruct the progress of the bill, which goes on notwithstanding, and upon which it has merely the effect of so much said in argument. Sometimes the committee, finding the amendments necessary to be adopted, very numerous, and merely formal, or for other good causes, reports the same bill in a new draft, embodying all the amendments, and denominated an amendatory bill. This kind of bill is received as the report of the committee, instead of the bill referred to it, and passes through all the regular stages of a bill originating in any other manner.

2204. When a report has been brought up and read, the further consideration of it may be deferred to a future time, and so from time to time, as may be convenient, either before or after it has been in part considered, until the consideration of it has been completed. When a report is thus deferred, it becomes an order of the day for the day assigned; and the proceedings upon it, on that day, are similar to what take place on the report, when it is taken into consideration, and gone through with on being made.

2205. When a bill has been reported with amendments, and the consideration thereof deferred, it is customary to have the bill reprinted in the mean time; the practice of both houses being to rely more upon a reprint of the bill, for a knowledge of the amendments, than upon any proceedings in the house.[1]

2206. It is a frequent and usual proceeding, after a bill has been committed and reported, to reconsider it again in committee; for which purpose it is necessary that the bill should be recommitted. A recommitment may be either to the same committee, if the original committee was a select one, or to a different committee, or to a committee of the whole house; and, if the committee was originally of the whole house, the recommitment may be either to a committee of the whole, or to a select committee.

2207. The motions for recommitment are precisely the same as for commitment. This proceeding may take place as often as the house thinks fit; and, it is not uncommon for bills to be reconsidered in committee several times, in consequence of repeated recommitments.[2] A recommitment may take place at any stage of the proceedings, after the report of the committee has been brought up, and before a subsequent stage has been taken; but, if a bill has been merely ordered to a third reading, and has not yet been read the third time, it may, notwithstanding, be recommitted, the order for the third reading being first discharged for the purpose.[3]

[1] May, 360.
[2] May, 361.
[3] Comm. Jour. LXXXVII. 303.

2208. The proceedings in the committee, on a recommitment, depend upon the manner in which the recommitment takes place. If the recommitment is general, that is, without limitation or restriction, the entire bill is again to be considered in the committee. If the recommitment is special, that is, as to certain amendments proposed, or clauses offered on the report, or with instructions to make some particular or additional provision, the proceedings in the committee must be confined to the special purpose of the recommitment. If the bill has been already in the hands of a committee, and reported upon by it, with amendments, which have not yet been adopted by the house, the new committee, whatever amendments of its own it may report, reports its agreement or disagreement, with the amendments of the first committee, or its agreement thereto with amendments. The proceedings, in making the report, and on the report, are similar to those already described.

CHAPTER THIRTEENTH.

OF THE ENGROSSMENT[1] AND THIRD READING.

2209. When the proceedings on the report of the committee have been brought to a close, in the manner already described, and also when a bill has been reported without amendment, and delivered in at the clerk's table, the next step in the proceedings is the engrossment of the bill, preparatory to a third reading, if the bill is pending in the house in which it originated, or the third reading, if the bill has already passed in the other house.[2]

2210. The motion, that the bill, or the bill with the amendments, as the case may be, be engrossed, may be made immediately upon the conclusion of the proceedings on the report, or afterwards, as may be convenient. On this motion the merits of the bill may be discussed; and, if it is negatived, the bill is lost; if decided in the affirmative, it may be followed up by a motion for the third read-

[1] The engrossment, though discontinued in both houses of the British parliament, since the year 1849, is one of the regular incidents of parliamentary proceedings, and still prevails so generally in other legislative assemblies, that it is described in this chapter as it was practised in parliament before 1849. May, 362, 363.

[2] The engrossment and third reading constitute, ordinarily, but a single question. Cong. Globe, XIII. 414.

ing of the bill, on a particular day, or on a particular day, if then engrossed; and on this motion the merits of the bill may in like manner be again discussed.

2211. The bill, as it has thus far been the subject of proceeding, and the amendments of every kind, which have been made to it, have been written on paper. Having undergone all the changes of form, which are likely to be proposed and adopted, the bill is now to be rewritten on a more permanent material, and in the form of a clean draft, containing all the amendments in their proper places. This is effected by the engrossment, "which is no more than to transcribe the bill fairly out of the paper, in which it was written, into parchment."[1] The several pieces of parchment, where there is more than one, on which a bill is written, are denominated skins,[2] or presses;[3] and, in the future proceedings on the bill, these terms serve to designate the different parts of it, for the purpose of making and describing amendments.

2212. The style of writing, in which bills are engrossed, is the old-fashioned black-letter, which is still kept up, in preference to the adoption of the common plain round hand, on the ground, that the object in view 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; that the present mode of engrossment gives a permanence and an uniformity, which cannot be obtained by the ordinary mode of writing; and that the adoption of the plain round hand would afford a greater facility for falsifying, by interpolation, or otherwise, than the use of the engrossing hand.[4] The several clauses and parts of the bill are written close, without any space left between them, and only on one side of the skin.

[1] D'Ewes, 18.

[2] Comm. Jour. X. 143.

[3] Comm. Jour. X. 178. At the time when engrossing was first practised, parchment was selected, because it was the only ordinary writing material of a permanent character. At the present day, in congress, and others of our legislative assemblies, bills are engrossed on thick and strong paper. In congress they are afterwards enrolled on parchment.

[4] In 1836, the commons proposed to discontinue the mode of engrossing in black-letter, and to substitute therefor a plain round hand. The lords disagreed to the proposition, for the reasons above mentioned. Comm. Jour. XCI. 447. In this country, bills are engrossed in the common plain round hand, or in such other equally plain, as the writer pleases to adopt. Whether the punctuation ought to be considered as making part of the bill, must depend entirely upon the intention of the draftsman, of which there can generally be little or no doubt. At any rate, before each article is published authoritatively, the punctuation ought to be revised. Particular directions may be given to the clerk as to engrossing, as, for example, in regard to numbering or lettering the schedules. J. of H. 29th Cong. 1st Sess. 1029.

2213. In both houses, it is a branch of the general duties of the clerk to see that the bills are properly engrossed.[1] But this duty, which was anciently performed by the clerk himself, or his servants out of the house, is in modern times executed by officers specially appointed for the purpose. In the house of lords, the engrossment is confided to an officer, denominated the clerk of the engrossments. In the commons, in which much the greater number of the bills originate, the engrossing is executed in the engrossing office, and examined in what is called the public bill office, the officers of which are immediately responsible for the correctness with which it is done.[2]

2214. The order for the engrossment of a bill is sometimes in the simple form, that the bill be engrossed; sometimes it is accompanied by an order for the third reading; sometimes for the third reading on a particular day; or on a particular day, if the bill should then be engrossed. If no order is made, as to the time for the third reading, it may take place as soon as the bill is engrossed; if the time has been fixed, the third reading is an order of the day for the day so agreed upon, and to be proceeded with accordingly.

2215. The next step to be taken after the engrossment, or after the report, or proceedings on the report, of a bill already engrossed, is the third reading. If a bill from the other house is reported from the committee without amendment, — being already engrossed, — it may be read a third time immediately, or it may be ordered to be read a third time, without any time being fixed therefor, or the time may be fixed for a future day.[3] If a bill from the other house is reported from the committee with amendments, the same proceedings may take place upon it with reference to a third reading, at the termination of the proceedings upon the report. But, in the latter case, it is most usual to take another day for the third reading.

2216. In the case of a bill originating in the house in which it is pending, the time for the third reading may be fixed as already remarked, at the time it is ordered to be engrossed, or the house may wait until after the bill is engrossed, and then proceed to read it a third time, at once, without previously fixing any time therefor; or a time may be fixed for the purpose. In the house of representatives of the United States, it appears to be the custom to engross bills in advance of their being ordered to be engrossed: and if a bill

[1] Hackwell, 150.

[2] May, 285, 1st ed.

[3] The time fixed for the third reading of a bill has been anticipated. J. of S. I. 408; J. of H. III. 169. But this is contrary to the general rule. Ante, §

happens to be thus engrossed, it may be read a third time immediately; otherwise this motion, except in the case of a bill from the other branch, which is already engrossed, is not in order;[1] nor, without a suspension of the rules can an unengrossed bill be read a third time.[2]

2217. When a time has been previously fixed for the third reading, the third reading becomes an order of the day for the day appointed, and is proceeded with accordingly. On reading the order, a motion may be made that the bill be now read the third time, upon which amendments may be moved with a view to postpone the third reading to a day within or beyond the session; or a motion may be made, that the bill be read the third time on a future day named, on which amendments may be moved, for the purpose of fixing upon a different day or for the purpose of presently reading the bill the third time.

2218. When the house has determined, that the bill shall now be read the third time, it is then forthwith read by the clerk, with the ceremonies and in the manner already mentioned with reference to the first and second readings. If the bill has come from the other house, and has been amended, it is to be read and considered as amended; because that is the form in which it has received the approbation of the house in which it is then pending; although the amendments are not embodied in the bill, as in the case of a bill originating in that house, but are in a separate and distinct form.

2219. When a bill has been thus read, it is still in order, though the most appropriate stage for amendments is passed, to propose amendments to any part of it, in the same manner as in committee, or upon the report, observing the same order of proceeding. If the bill is of the house in which it is then pending, the amendments must be inserted in the engrossment; if, of the other house, they are to be inserted in a schedule by themselves in paper, or added to the schedule of amendments already made. Amendments by inserting or adding, or by leaving out words, or by leaving out and inserting, are made in the same manner after the third reading, as in committee.

2220. In regard to clauses, that is, independent propositions, containing enacting words, whether direct or in the form of provisos, and whether reported as such by the committee on the bill, or moved by an individual member, the proceedings are analogous

[1] J. of H. 30th Cong. 1st Sess. 934; Same, 32d Cong. 1st Sess. 302, 1036.

[2] J. of H. 30th Cong. 1st Sess. 1209.

to the proceedings on a bill. A clause being offered, the first motion thereupon is, that it be brought up or received; if this is agreed to, the clause is read, and then follows a motion for the second reading; if the second reading is ordered, the clause is read a second time accordingly; it is then ordered to be engrossed and read a third time, on motion, in the same manner; and, lastly, a motion must be made and the question put, when it has been read the third time, that it be made part of the bill by way of rider.[1]

2221. If a clause thus offered contains blanks which require to be considered in a committee of the whole, it is to be committed accordingly, after the second reading; to be considered in committee and reported; the report received and considered; the amendment made by filling the blank on the report of the committee; and then the clause read a third time. If any amendment is necessary to be made to a clause, other than such as must first be reported upon by a committee of the whole, the proper time to make it is after the second reading, or on the report of the clause if it is committed, and before the third reading.[2]

2222. Clauses, offered as above mentioned by way of amendment to a bill after the third reading, must be already engrossed. If adopted, and ordered to be made part of the bill as riders, they are filed, that is, tied, to the bill, in the same manner that the different presses or skins are attached to one another, whether the bill originated in the house in which it is then pending or in the other.

2223. When clauses are to be proposed, whether on the report of the committee, or on the third reading, they are to be offered before any amendments are made to the bill; for the reason, that the addition of a new clause may render it necessary to introduce amendments in other parts of the bill; and, consequently, all the clauses which are to be added should be brought forward before amendments are made.[3]

2224. Amendments of a bill originating in the house in which it is pending, adopted on the third reading, are all to be made at the table. Amendments, properly so called, are written in, or interlined, or struck out of the engrossment, and clauses omitted are cut out, and clauses added are filed to the bill, by the clerk or other proper officer, at the table. Amendments of a bill originating in

[1] See J. of H. IX. 228, 367. It is now provided, in the house of representatives in congress by a rule, that "No amendment by way of *rider* shall be received to any bill on its third reading."

[2] Comm. Jour. XXXVI. 192; Same, XXXVIII. 1004; Same, XXXIX. 458, 503, 1038; Same, LI. 764.

[3] May, 364.

the other house are to be set down in a paper thereto annexed, expressing in what line, and between what words, the amendments are to be made, which is to be returned to that house with the bill.[1] Clauses and provisos are filed to the bill, in the manner already mentioned.

2225. If, in consequence of amendments or other proceedings, on or after the engrossment and third reading of a bill, it becomes necessary or advisable, the house may order it to be reëngrossed.

2226. After a bill has been ordered to be read a third time, or has been read a third time, it is then too late to recommit it generally,[2] but it may then, nevertheless, be recommitted for some special purpose, as to receive some particular clause or proviso,[3] or for the purpose of being divided into two bills.[4] When a bill, after being thus recommitted is reported to the house and again taken up for consideration, it is resumed at the point at which the proceedings upon it were interrupted by the recommitment.

2227. The ancient practice of engrossing bills on parchment, which had previously prevailed time out of mind in parliament, was discontinued in 1849, in virtue of the following standing orders which were then adopted in both houses: "That in lieu of being engrossed, every bill shall be printed fair immediately after it shall have been passed in the house in which it originated, and that such fair printed bill shall be sent to the other house, as the bill so passed, and shall be dealt with by that house, and its officers, in the same manner in which engrossed bills are now dealt with: That when such bill shall have passed both houses of parliament, it shall be fair printed by the queen's printer, who shall furnish a fair print thereof on vellum to the house of lords, before the royal assent, and likewise a duplicate of such fair print, also on vellum: That one of such fair prints of each bill shall be duly authenticated by the clerk of the parliaments[5] or other proper officer of the house of lords, as the bill to which both houses have agreed: That the royal assent shall be indorsed in the usual form on such fair print, so authenticated, which shall be deposited in the record tower in lieu of the present engrossment." By the adoption of this system, the engrossment is dispensed with, in all cases, and printing substituted in its place; the change being, that instead of a fair copy written on parchment, previous to the third reading, and liable to be amended or altered

[1] Hackwell, 163.

[2] Jefferson's Manual, Sec. XL. But see J. of H. IX. 276.

[3] Jefferson's Manual, Sec. XL. J. of S. V. 259; J. of H. IX. 57.

[4] J. of H. VII. 88; Same, VIII. 159.

[5] That is, the clerk of the house of lords.

in that stage, a fair copy is printed on paper, after the bill has received amendments, and been passed. The second order provides for the printing of a fair copy, after all amendments shall have been made between the two houses.[1]

CHAPTER FOURTEENTH.

OF THE PASSING.

2228. When a bill has been read a third time, and received such additions and amendments, as the house may see fit to make to it, the next and final motion is, that the bill do pass. This motion may be deferred, either tacitly by no order being made with reference to it, or by an express order that the bill lie on the table until a certain time;[2] but the general practice is for the motion to be made immediately after the third reading and the proceedings, if any, thereupon. As a bill has received the apparent approbation of the house both as to its principles and as to its details, previous to the question for passing, it is extremely rare, that any objection is made to this motion; but it may nevertheless be opposed and debated, like every other, and instances are not wanting, in which it has been decided in the negative.[3]

2229. If, on this motion, the house resolves, that the bill do pass it only remains to agree upon the title. In the house of commons, the original title is not amended, during the progress of the bill; but is left to be amended, if necessary, when the bill has passed. The title being then read by the speaker, and a question put, "that this be the title of the bill," it is thereupon amended, on motion, if need be, so as to make it conform to the changes which have taken place in the bill since its introduction. The change of title, which occurs when one bill is made into two, or two into one, can hardly be regarded as an exception to the rule, that no amendment is to be made in the title, during the progress of the bill; for, in the first case, the title, like the bill, is simply divided into two, and in the other the two titles are only put together into one, with the addi-

[1] May, 363.
[2] Comm. Jour. XII. 183.
[3] Comm. Jour. LXXX.617; Same, LXXXIX. 497.

tion in the former, and the retrenchment in the latter, of a few formal words. In the house of lords, the practice is to amend the title, whenever any alterations in the bill render it necessary; consequently, the fixing of the title is not there, as in the other house, left until the close of the proceedings.[1]

2230. When a bill passes in the house in which it originated, it is authenticated by an indorsement or certificate thereon by the clerk, and transmitted to the other house to be there proceeded upon in the same manner. When it passes in that house, it is there authenticated in a similar manner, and the fact communicated to the house in which it originated, sometimes with and sometimes without the bill itself. If passed with amendments, it is returned to the house in which it originated, for their concurrence in the amendments. The communications which take place on these occasions, and the certificates or indorsements by which the proceedings on bills are authenticated, will be stated and explained hereafter.

CHAPTER FIFTEENTH.

OF AMENDMENTS BETWEEN THE TWO HOUSES.

2231. Bills which are passed in one house and sent to the other are sometimes agreed to and passed in the latter, precisely in the form in which they were received. In that case, if they originated in the house of lords, and are agreed to by the commons, they are returned to the former house by the commons; if they originated in the commons, and are agreed to by the lords, they remain in the latter house, and the commons are informed of the agreement by a message. The proceedings between the two houses, with reference to the particular bill, are thus brought to a close. Bills of supply, which always originate in the commons, are informally returned to

[1] It does not appear to be the present practice, to make a record on the journal of the title being agreed to, or of the title of the bill in any form, unless it is amended, in which case, it is stated as follows: Resolved, that the bill do pass; and that the title be, &c. Comm. Jour. LXXXVIII. 239. In our legislative assemblies, the practice of the house of commons prevails, and the resolution, adopting the title, whether amended or not, is always entered on the journal. See Cong. Globe, XXIII. 749; Same, XXIV. 96.

that branch, after being passed in the lords, and are presented to the sovereign by the speaker.

2232. It frequently happens, however, that a bill, which has passed in one house, is not agreed to by the other in precisely the same form, but only with certain modifications or alterations, with which it is returned to the house in which it originated.[1] In this case, as each of the two houses has passed the bill, in a different form, there is not as yet, strictly speaking, any agreement, or only a conditional one between them in relation to it.

2233. When a bill is thus passed with amendments, it is returned to the house in which it originated, with a message, informing that house, that the other has agreed to the bill with an amendment, or with certain amendments, to which it desires the concurrence of the former. On this message being received and reported, the house may suffer the bill to remain on the table without any order, or may order it to lie there till a more convenient time for entering upon the consideration of the amendments; or it may order the amendments to be taken into consideration on a day named; or it may proceed at once to consider them. In the first case, the house may proceed on some other day, either to consider the amendments, or to appoint a time for their consideration; in the second, the consideration of the amendments having been fixed for a day named, becomes an order of the day for that day, and is proceeded with accordingly.

2234. A proceeding which may take place, preliminary to the consideration of the amendments, is to refer them to a select committee, to consider and report what it shall think proper to offer to the house thereupon. When this course is taken, the committee reports what it recommends the house to do with reference to each amendment, as, to agree, disagree, or amend. The report is read for the information of the house; and the amendments are then considered and proceeded with in the usual manner; questions being made and put not upon agreeing with the committee, in their report, but upon agreeing, &c. with the amendments,[2] according to the suggestions of the committee, if those suggestions should be agreeable to the house.

2235. It has been seen, that there are three different kinds of modifications, which may be made by one house to a bill passed by the other, to only one of which, in a strict sense, the term

[1] Appendix, XVI.

[2] Comm. Jour. XXVII. 898, 903, 907.

amendment is applied; but, in the proceedings which take place between the two houses, with reference to coming to an agreement upon them, they are all designated by the general term amendment, and, with certain exceptions, which will be presently noticed, are treated in the same manner.

2236. When the house proceeds to consider the amendments, the first motion is, that they be read; this being agreed to, and the amendments read in course, the next motion is, that they be read a second time; if this motion prevails, the amendments are then read a second time, and separately considered, in the same manner with amendments reported by a committee. When an amendment has been read the second time, and amended, if necessary, or such other proceedings have taken place with reference to it, as the house may think proper, the final motion is that it be agreed to. Formerly, it appears to have been the practice in both houses,[1] as it is now in the lords, to read amendments three times, before putting the question for agreeing to them; but, at the present day, amendments properly so called, are only twice read in the commons, as above stated, and engrossed clauses and provisos three times.[2] The consideration of a particular amendment may be postponed, or an amendment may be committed, or the debate upon it adjourned; but whatever intermediate proceedings take place, the result is, that the house agrees, or disagrees, or agrees with an amendment, or amendments, to each of the amendments of the other house.

2237. If the amendments are agreed to by the house in which the bill originated, the other house is informed thereof by a message, without the bill, if it is the house of lords which last passed the bill, and accompanied by the bill, if it was last passed by the house of commons.

2238. If the amendments agreed to consist of amendments properly so called, in paper, they are immediately made by the clerk of the house or his assistant, in the bill itself, according to the directions therefor in the paper, and the agreement is certified on the bill itself, and not on the paper of amendments. If the amendments consist of additions to the bill in parchment, that is, clauses or provisos engrossed, the agreement is certified both on the bill itself, and on the engrossed clauses or riders.

2239. When the amendments are disagreed to, if no further proceeding took place, the bill would be lost; but, as the house which passed the bill with the amendments, may be willing to recede from

[1] D'Ewes, 91, 564.

[2] Comm. Jour. XXXV. 225.

or waive them, on being informed that they are distasteful to the other, the next step is to inform that house of the disagreement. In this case, as the communication is a mere negative, which carries no reason with it, it is the usual parliamentary course, for the disagreeing house to assign reasons for its disagreement, in order that the house, by which the amendments were made, may know and weigh the grounds upon which they are objected to.[1] If it were consistent with the usages of parliament for the disagreement merely to be communicated, it might be done by message; but, as it is to be accompanied by reasons, the more formal mode of conference is necessary.

2240. If either house should so far disregard the forms of proceeding between the two houses, relative to amendments, as to communicate a disagreement merely by message, instead of proposing a conference in order to communicate the disagreement, and at the same time to assign its reasons therefor, the method of proceeding is, to redeliver the bill, (at a conference,) "to the end that the due course of parliament, in the transmitting of things of this nature, may be observed."[2]

2241. The next step, therefore, after disagreeing to the amendments, is to appoint a committee to prepare reasons for the disagreement, to be communicated to the other house at a conference. The committee reports reasons, which being considered, and amended, if necessary, are agreed to by the house. A message is then sent to the other house requesting a conference upon the subject-matter of the amendments made by that house to the bill. The conference being agreed upon, and the time and place fixed therefor, managers are appointed, who attend accordingly; and, on returning, report that they have been at the conference, etc., and have delivered to the managers for the other house the reasons for disagreeing to the amendments made by that house to the bill, and have left the bill and amendments with the managers for that house. Here the proceedings on the part of the disagreeing house terminate, until something further has taken place in the other.

2242. The managers for the amending house, on returning from the conference, report, that they have met the managers for the other house, at the conference, etc., who delivered to them the said bill with the amendments, together with a paper containing the reasons of that house for disagreeing thereto. This report may be taken into consideration immediately, or a time may be assigned

[1] Hatsell, IV. 10, note.

[2] Hatsell, IV. 49.

for that purpose. When the report is considered, it is first read, then the amendment which is the subject of it, and then the house proceeds to reconsider the amendment. The proper motion to be made is, either that the house does or does not insist upon its amendment; and it is immaterial in which form it is made, because, when put to the question, it is to be stated affirmatively, namely, that the house do insist on its amendment. If this motion is negatived, a message is thereupon sent to the other house, to inform it that the amending house does not insist on its amendments to the bill, to which the other house has disagreed.[1] If it is the house of commons, by which the message is sent, the bill is sent with it; if the house of lords, the bill remains with them. The two houses are now agreed, and the proceedings relative to the bill are at an end.

2243. If on the other hand, the amending house insists on its amendments, the next step is the appointment of a committee to prepare reasons to be offered at a conference with the other house for insisting. The reasons being reported and agreed to, a message is sent to request a conference; which being agreed to, managers are appointed, who meet the managers for the other house, and deliver them the reasons together with the bill and amendments. The managers on returning to their respective houses report accordingly, on the one side, that they have been at the conference, and communicated the reasons, as directed, and left the bill and amendments with the managers for the other house; and, on the other, that they have been at the conference, etc., that the managers for the amending house informed them that that house insists on its amendments, for certain reasons, which they gave, and which are accordingly reported. This report being made, the house may enter upon the consideration of it immediately, or may assign a time for its consideration. When considered, it is first read, and then the disagreeing house proceeds to consider it, upon a motion to insist or not insist upon its disagreement to the amendment. If this motion is decided in the negative, that is, that the disagreeing house does not insist on its disagreement, this is equivalent to agreeing to the amendment,[2] and the agreement is communicated to the other house by message,[3] either with, or without the bill, according as the proceeding is in the lords or commons. The two houses are thus agreed and the proceedings terminate.

[1] Comm. Jour. XVIII. 297.
[2] Comm. Jour. XXI. 938.
[3] Comm. Jour. LVII. 645. A communication of this kind, (Comm. Jour. XXI. 938,) was made at a conference, which seems irregular.

2244. If, however, the disagreeing house insists on its disagreement, and thinks it worth while to proceed any further in the matter, the disagreement is to be made known to the other house, in order that the latter may have still another opportunity to recede from its amendment. But, as formal reasons for the position of each house have now been presented and considered, without effect, it is not according to the usage of parliament to repeat the proceeding, even with additional reasons; and, therefore, it is not competent to the disagreeing house to request another conference; the communication must now be made by means of a free conference, the nature of which has already been explained. The managers for the disagreeing house, on returning, report, that they have been at the free conference, etc., and have acquainted the managers for the other house, that the former insists on its disagreement to the amendments, and that they have left the bill and the amendments with the managers for that house.[1] The managers for the amending house, on their part, report that they have attended the free conference, etc., that the disagreeing house insists on its disagreement, and that such and such arguments were used by the managers on both sides, and that the managers for the disagreeing house hoped, that the amending house would recede from the amendments to which the former had disagreed. On consideration of this report, the amending house may come to a vote not to insist on its amendment; in which case, the disagreeing house is informed by message, accompanied by the bill, if it is the commons, that the amending house do not insist on the amendments made by that house, to which the other has disagreed.[2] The bill is sent with the message, if the proceeding is in the house of commons; if in the lords, the bill is retained. The two houses are thus agreed.

2245. If, notwithstanding the reasons and arguments urged at the free conference, the amending house still insists on its amendments, this resolution can only be made known to the other house at a second free conference, conducted and reported as before; on the report of which the disagreeing house may take either of three courses, namely: 1. It may come to a resolution no longer to insist on its disagreement, in which case the two houses are agreed; or, 2. It may still insist and proceed to another free conference, which may terminate in a resolution of the other house no longer to insist

[1] Comm. Jour. XVIII. 769, 770.

[2] Lords' Jour. XX. 660; Comm. Jour. XVIII. 769, 770.

on its amendment, in which case, the two houses would be agreed; or, 3. It may adhere to its disagreement, in which case, the amending house must yield, or there can be no agreement, inasmuch, as after adhering, it is not competent to the adhering house to retract and agree.

2246. If the disagreeing house adopts the second course, and still insists on its disagreement, another free conference may then take place, on the report of which the amending house may recede, or adhere, in which latter case, there can be no agreement, unless the disagreeing house yields and no longer insists upon its disagreement.

2247. Free conferences may be repeated, as long as the matter is left open on either side by merely insisting; and it is not parliamentary to adhere until after two free conferences have taken place.[1] Either house may, however, pass over the term of insisting, and adhere in the first instance. On the other hand, the amending house may recede at any time from its amendment, instead of insisting upon it, and agree to the bill, or the disagreeing house may recede from its disagreement to the amendment, and agree to the same absolutely, or with an amendment.[2] But the amending house cannot recede from or insist on its own amendment, with an amendment, for the same reason that it cannot amend its own bill after having passed it.[3] It may modify an amendment from the other house, by ingrafting an amendment on it, because it has never assented to such amendment; but the amending house cannot amend its own amendment, because it has on the question, passed it in that form.[4]

2248. When, on the report of the second, or any subsequent free conference, in the house at whose request it has been held, that house resolves to adhere to its amendments, or to its disagreement, as the case may be, the result is to be communicated to the other house, together with the bill, at a free conference; either with or without reasons[5] for adhering. If, however, reasons are given on the one side for adhering, none can be allowed on the other, for not adhering; because that being out of the power of the adhering house, all reasons for doing so must of course be irrelevant. When both houses have voted to adhere, the one to its amendments, and

[1] It seems, that the lords adhered, on the report of the *first* free conference on the bill for occasional conformity. Lords' Jour. XVII. 244.

[2] Jefferson's Manual, Sec. XLV.; Gray, IX. 476.

[3] Cong. Globe, XIV. 376.

[4] Jefferson's Manual, Sec. XLV.; Gray, IX. 353; Same, X. 240.

[5] Lords' Jour. XVII. 262, 263.

the other to its disagreement, the one which last adheres, and with whom the bill is left, may inform the other house of the fact, and at the same time return the bill to the other by message, or may suffer the bill to remain, as it pleases.[1]

2249. Besides the two forms of proceeding thus far described, in which amendments are agreed to, or disagreed to, simply, there is a third which frequently occurs, namely, agreeing to an amendment with an amendment, to which the other agrees, or to which the other agrees with an amendment to which the first agrees.[2] Every part of the amendments, — clauses and provisos engrossed, as well as amendments properly so called, — may be thus amended.

2250. If a bill originating in one house is passed by the other with an amendment, the originating house may agree thereto with an amendment, that being only in the second and not the third degree; for, as to the amending house, the first amendment, with which it passed the bill, is a part of its text, and is the only text it has agreed to. The amendment to that text by the originating house, therefore, is only in the first degree, and the amendment to that again by the amending house is only in the second degree, to wit, an amendment to an amendment, and so amendable. So when, on a bill from the originating house, the other, at its second reading, makes an amendment; on the third reading this amendment is become the text of the bill, and if an amendment to it is moved, an amendment to that amendment may also be moved, as being only in the second degree.[3]

2251. It is not necessary that an amendment to an amendment should be made in the first instance. If the amendments are first disagreed to, and the amending house insists upon the amendments, the disagreeing house, as it may then resolve not to insist, may also agree, with amendments.[4]

2252. When one house agrees to the amendments of the other, with amendments, it gives no reasons therefor; the last amendment, as well as that to which it is an amendment, being supposed to carry with it a sufficient reason, until the contrary is shown; and, where an amendment is thus agreed to conditionally, the agreement is communicated by message. Thus, if the house, to which a bill is returned with an amendment, which is always done by a message, agrees to the amendment with an amendment, this

[1] Lords' Jour. XIV. 228; Comm. Jour. XIV. 183.

[2] May 366.

[3] Jefferson's Manual, Sec. XLV.; J. of H. II. 334, 335; Same, III. 473.

[4] Comm. Jour. XXIII. 523, 526; Same, XXVII. 920.

agreement is signified to the former by a message; and, if that house thereupon agrees to the amendment, this agreement is signified in like manner.[1] The agreement of the two houses, in a case of this kind, is always signified by a message, that the last-mentioned amendment is agreed to.[2]

2253. It sometimes happens, that in the proceedings on amendments between the two houses, some two, or even all three, of these forms occur, that is, some amendments are agreed to, others disagreed to, and others again are agreed to with amendments. In such cases, the communication from the one house to the other take place by means of a conference, so long as there is a disagreement as to any one point. When an agreement takes place, whether unconditional, or with an amendment, the communication is always made by a message.

2254. In proceeding upon amendments between the two houses, it is a rule, that neither house may at this stage of a bill, leave out or otherwise amend any thing, which they have already passed themselves; unless such amendments are immediately consequent upon amendments of the other house, which have been agreed to, and absolutely necessary for carrying them into effect;[3] it being "contrary to the constant method and proceedings in parliament to strike out any thing in a bill, which hath been fully agreed and passed both houses; and it would make the work endless, and might be of dangerous consequence, if that method should be diverted and changed."[4]

2255. The following case affords a good illustration of the rule stated in the preceding paragraph. In the year 1678, the house of commons having passed a bill for the more effectual preserving of the king's person and government, by disabling papists from sitting in either house of parliament, and sent it to the lords, that house passed it with three amendments, and a proviso, and returned it to the commons. The commons agreed to one of the amendments and to the proviso, and disagreed to the remaining amendments; of which they informed the lords, together with their reasons therefor, at a conference. Upon consideration of the reasons offered by the commons, for disagreeing to the amendments, the lords, without insisting on their amendments, or receding therefrom, or, indeed, voting upon them in any way, agreed to propose to the commons a

[1] Comm. Jour. XXIII. 658, 678, 679, 685; Same, XIX. 50.
[2] Comm. Jour. XXXII. 920.
[3] May, 367.
[4] Grey, VI. 240, 253, 272, 273, 274; Comm. Jour. IX. 543, 545, 546, 547, 548; Grey, VI. 274; Lords' Jour. XIV. 374.

new amendment of the bill by way of expedient. The amendments originally proposed by the lords, and to which the commons disagreed, related to certain provisions of the bill concerning the queen's servants. The expedient proposed by the lords was, to amend the bill in such a manner, as to omit the queen altogether from its provisions. Not having proposed this amendment in the first instance, they had, in fact, agreed with the commons as to this part of the bill. The commons, therefore, declined agreeing to the expedient proposed, for the reasons already mentioned, which were given by them on the occasion.[1]

2256. But though it is not allowable, in the case of a disagreement to amendments, as above mentioned, to propose to amend the bill in a part to which the two houses have already agreed, the house, whose amendments are disagreed to, as they may waive their amendments altogether, may also propose a modification of their own amendments, or new amendments in the place of them; as was done by the lords in the case above stated, by making certain limitations touching the number of the queen's servants, to which the commons agreed. In this case, the disagreement of the commons, the expedient proposed by the lords, the disagreement of the commons thereto, were all communicated at conferences. The subsequent proceedings, relating to the new amendments, were considered in the light of new proceedings, and not as a continuation of the former. If it had been otherwise, free conferences, instead of conferences, would have been proper.

2257. The house, whose amendments are disagreed to, though not at liberty to propose new amendments to a part of the bill, to which both houses have agreed, as above mentioned, may nevertheless propose amendments to a part of it, to which the amending house has not agreed. Thus, where the lords passed a bill from the commons, with an amendment, leaving out certain words, which amendment was disagreed to by the commons, the lords thereupon proposed as an expedient, to insert certain words in the words originally proposed to be left out, to which the commons agreed. In this case, the words originally proposed to be left out had not been agreed to by both houses.[2]

2258. If the originating house in the first instance agrees to the amendments offered to it, or if either house, afterwards, during the

[1] Lords' Jour. XIII. 365, 366, 373, 374, 378, 384; Comm. Jour. IX. 543, 545, 546, 547, 548; Grey, VI. 240, 253, 272, 273, 274.

[2] Lords' Jour. XLVIII. 907; Comm. Jour. LXVII. 468, 479. This is only, in fact, a modification by the lords of their own amendment; they had already agreed to every part of the bill, except that which they proposed to amend.

proceedings on the disagreeing votes of the two houses, with regard to the bill, passes a vote to agree, the agreement is to be communicated by message; and the same kind of communication may and usually does take place, as we have seen, when either house votes to adhere; but, so long as the matter is kept open by using the term "insist," and it may be used as often as desirable, the votes are communicated by means of a conference, either simple or free. The necessity for this last proceeding is, however, now done away with, in both branches of parliament, by resolutions agreed to in both on the 12th and 15th of May, 1851, by which it is provided that, in cases in which either house disagrees to any amendments made by the other, or insists upon any to which the other has disagreed, such house is willing to receive the reasons for disagreeing or insisting (as the case may be) by message, without a conference, unless the other should desire to communicate the same at a conference. In the legislative assemblies of this country, the disagreeing votes on amendments to bills, whatever they may be, are usually communicated by message, with or without a proposition for a conference.

2259. Conferences, in general, as described in the fifth part, and conferences on amendments to bills, as described in this chapter, which were originally invented and practised at a remote period, when the proceedings of one house were not known in the other, until they were regularly communicated to the latter, still constitute a part of the common parliamentary machinery, and may be resorted to on proper occasions. They constitute merely a medium of communication between the two houses, which is called a conference where the communication is previously agreed upon by the house which makes it, and a free conference where it is left to the discretion of the managers, who have no other authority, in any case, than to make the communication with which they are charged. The rules applicable to the disagreeing votes, which for the most part lead to these conferences, are applied to what are denominated conferences in our legislative assemblies; and the two have the same general purpose in view, namely, to bring the two houses into an agreement in regard to matters in difference between them. But here the similarity appears practically to end. With us, the managers of a conference, instead of being a medium of communication merely, constitute and are known as a committee of the branch to which they respectively belong; and the two constitute a joint committee of conference, whose function it is to consider and report upon the subject-matter of difference between the two houses.

These committees, and the practice relating to them, are now to be described.

2260. When the house, in which a bill originates, receives it from the other with amendments, the latter house, whatever other proceedings it may institute or adopt with regard to such amendments, when it comes to consider them, has properly but one of three courses to pursue, namely, either to agree, disagree, or agree with amendments. It is immaterial, in a parliamentary sense, in what form the motion is put, inasmuch as an equal division in either form requires the casting vote of the presiding officer, and on either a motion to amend the amendment may be ingrafted. If either of these motions is decided in the negative, it necessarily concludes the other, for the positive of either is exactly the equivalent of the negative of the other, and no other alternative remains. Thus, for example, if the question is for disagreeing, those who are in favor of the amendment may propose amendments to it, and make it as perfect as they can, before the question is taken on disagreeing to it. So if the question is stated on agreeing, amendments may be moved.[1] On this first consideration, therefore, of a bill returned with an amendment from the other house, to the house in which it originates, no other motion than the above is properly in order.

2261. When the amending house receives back the bill after this first consideration of it, with its amendment agreed to with an amendment, or disagreed to altogether, the two houses are not yet agreed, and further action is still necessary for that purpose. If its amendment is agreed to with an amendment, the proceedings are the same with what have just taken place in the originating house, namely, the amendment is agreed to, or disagreed to, or agreed to with an amendment.[2] If the amendment is simply disagreed to, the amending house has but one of three courses to pursue, namely, it may recede from its amendment, insist upon it, or adhere to it. If one only of these motions is made, that, of course, whichever it is, must be put; but two or more of them may be made and pending at the same time, in which case, the motion to recede is entitled to precedence over the motion to insist[3] and the motion to adhere,[4] and the motion to insist over that to adhere.[5] The rules applicable to these three motions are the same at every future stage in the progress of the disagreeing votes on the bill, whether they

[1] Jefferson's Manual, Sec. XXVIII.
[2] J. of H. II. 334, 335; Same, III. 473.
[3] Cong. Globe, X. 405; Same, XX. 695.
[4] Reg. of Deb. II. Part 2, 2639; Same, XI. Part 2, 1656; Cong. Globe, XXI. 1833.
[5] Cong. Globe, XI. 803.

are in the amending or in the disagreeing house, though the cases are not necessarily the same.

2262. The motion to recede, in the originating house, is, to recede from its disagreement to the amendment; if made in the other, it is to recede from its amendment. If made in the latter, and decided in the affirmative, the effect of the decision is to bring the two houses to an agreement at once. If made in the originating house, and there decided in the affirmative, the effect of the decision is to prepare the way for an agreement,[1] and the house may then agree,[2] or agree with an amendment.[3] The immediate effect of a negative decision of this question, in both houses, is obvious; it is also equivalent to a vote to insist, but not to adhere.[4] A negative decision may be followed by a motion to insist, or a motion to adhere, or both.[5]

2263. The motion to insist, in its parliamentary sense, merely reaffirms the position of the house by which it is adopted, and may be adopted, and with like effect by either. It appears to have been newly introduced about two hundred years ago, and is said to be "a happy innovation, as it multiplies the opportunities of trying modifications which may bring the houses to a concurrence."[6] The effect of a decision of this motion in the affirmative, and it is applied, of course, only where there are disagreeing votes, is, on further consideration, to reaffirm the position by which it passes, thus, by this motion, the amending house insists on its amendment, and the originating house on its disagreement to the amendment. After a motion to insist has been decided in the negative, it is then in order to recede or adhere.[7]

2264. The motion to adhere not only reaffirms but strengthens the position already taken by the house adopting it, and is understood to imply that the house will not change its determination. But there is nothing irrevocable in the affirmative of this motion, and if decided in the negative, it is then in order to recede or insist.[8]

2265. In this way a bill upon which there are disagreeing votes, sent from one house to the other, with a message announcing the action of that other upon it, is usually in the form of one of the resolutions above mentioned. If the house which thus receives a

[1] J. of H. 20th Cong. 1st Sess. 695; Same, 27th Cong. 2d Sess. 990, 998.
[2] J. of H. VIII. 248, 249; J. of S. 16th Cong. 1st Sess. 385.
[3] J. of S. II. 379.
[4] Cong. Globe, X. 407.
[5] Jefferson's Manual, Sec. XXVIII.
[6] Jefferson's Manual, Sec. XLV.
[7] Jefferson's Manual, Sec. XXXVIII.
[8] Jefferson's Manual, Sec. XXXVIII.; J. of H. VII. 399.

bill does not thereupon come to the desired agreement, it returns the bill with a like message. But it is competent for either of the houses, besides the resolution, above mentioned, at any of these stages, when the bill is in its possession, also to propose to the other the appointment of a committee of conference. This it does usually, by the appointment, on its part, of a committee to confer with a similar committee of the other branch, on the subject-matter of difference between the two houses, and proposing the appointment of a similar committee, on the part of that branch. The motion, commonly made on these occasions is, simply, for the appointment of a committee of conference, and this motion being agreed to by the house in which it is made, that house immediately proceeds to the appointment of the committee, on its part, and to notify the other thereof, with its proceedings on the bill, by message. This motion must always emanate from the house in possession of the bill,[1] and be accompanied or preceded by one of the resolutions above mentioned, namely, either to recede, insist, or adhere;[2] but this order of proceeding, though much the most usual,[3] is not essential,[4] and conference may, in fact, be asked, before the house asking it has come to a resolution of disagreement, insisting, or adhering. This, however, is an inconvenient practice, and makes some peculiar proceedings necessary which will be adverted to hereafter. The motion for a committee of conference not uncommonly makes a part of the motion to disagree,[5] to recede, insist,[6] or adhere, in which case a motion to recede takes precedence,[7] and the two motions may be divided,[8] or if the motion to insist, etc., is made separately, the motion for a committee of conference may be added to it by way of amendment.[9] A conference may also be proposed on the report of a committee to whom the bill and amendments are referred.[10]

2266. It has been made a question, whether there could be a committee of conference after or accompanying a vote to adhere, the former implying a willingness, and the latter being supposed to imply an unwillingness, to change the vote already agreed to. But, though a vote to adhere is a stronger expression of opinion than a vote to insist, and though a conference after adhering is an

[1] Jefferson's Manual, Sec. XLVI.
[2] Cong. Globe, XV. 701.
[3] Cong. Globe, XV. 701.
[4] Jefferson's Manual, Sec. XLVI.
[5] J. of S. 16th Cong. 1st Sess. 426.
[6] J. of H. I. 267, 268, 269; J. of S. 16th Cong. 1st Sess. 291; J. of H. VIII. 261, 264, 266.
[7] J. of H. 29th Cong. 1st Sess. 646.
[8] J. of H. 23d Cong. 2d Sess. 231; J. of S. 24th Cong. 1st Sess. 363.
[9] J. of S. 24th Cong. 1st Sess. 363.
[10] J. of S. III. 218.

unusual practice, yet there are instances, both in parliament[1] and in this country,[2] of such conferences being demanded and held without objection in point of order. In this country, at least, the resolution to adhere stands upon the same footing, in this respect, with a resolution to insist, and with the more reason, that here a vote to adhere may be reconsidered.[3] But the foregoing rule applies only where the adherence is on one side; where both houses have adhered, conference is no longer demandable.[4]

2267. The two houses, of which our legislative assemblies are composed, being equal in dignity, it is not the function of either to appoint the time and place, for the conference, or to do any thing more, if it does any thing at all, than in proposing a conference, to propose a time and place for holding the same. Most usually, however, nothing is said in the proposition for a conference, with respect to the time and place, and in that case, if the proposal is agreed to, the committees meet at such time as may be convenient in the room appropriated for conference. For obvious reasons, each house is left to determine the size and quorum of its committee for itself. If nothing is said in either of these respects, the ordinary rules, with regard to the appointment and organization of select committees, prevail. A committee of conference is not a heterogeneous body, acting as one committee, but two committees, each of which acts by a majority.[5] Every member of each committee is to represent the prevailing party of the house to which he belongs, on the disagreeing vote in question.

2268. The house to which a message is sent, announcing the action of the other on the bill, and containing a proposal for a conference, comes to such of the above-mentioned resolutions, as it pleases, if any, and accepts or declines[6] the proposition for a conference; it may either do this at once,[7] or take such intermediate steps, with regard to the message, as it may think necessary and proper; as by postponing it, or ordering it to lie upon the table;[8] or by referring it,[9] and, on the report of the committee, declining,[10] or acceding to, the conference. The result, whatever it may be, is to be sent to the house proposing the conference by message. If

[1] Jefferson's Manual, Sec. XLVI.
[2] J. of H. II. 133, 134, 138; Same, VIII. 63; Same, IX. 746; Reg. of Deb. X. Part 2, 2493.
[3] J. of H. I. 106, 107, 108.
[4] Reg. of Deb. II. Part 2, 2603.
[5] J. of H. 30th Cong. 1st Sess. 1283; Cong. Globe, XV. 1179.
[6] J. of H. III. 50, 52.
[7] Ann. of Cong. 5th Cong. Vol. 1, 28.
[8] J. of S. 19th Cong. 1st Sess. 300.
[9] J. of S. 19th Cong. 1st Sess. 358; Same, 23d Cong. 1st Sess. 112, 113.
[10] J. of S. 19th Cong. 1st Sess. 306, 307.

the conference is declined, the bill is to be returned to the house proposing it, with such resolutions thereto, as that house may think proper. The other house may then resort to such measures, with regard to the matter in question, as it may think advisable and convenient. If the conference is acceded to, the committee is thereupon appointed, either immediately or after an interval, in the same manner with other select committees, and the appointment is notified accordingly to the house proposing the conference by message. When the committee is thus appointed, the papers, including the bill, and proceedings thereon, together with the resolution for their appointment, are delivered to the committees, and the two committees thereupon proceed.

2269. The authority of committees of conference is that of the houses to which they respectively belong, with regard not only to the positions of each already taken, but to such expedients, within the rules above mentioned, as may be proposed by one committee and agreed to by the other.[1] In this way, it is the business of committees of conference to cover, and by their report, if it is adopted, to make an end of all matters in dispute between the two houses. Hence the committees of conference may come to an agreement or disagreement, or they may agree in part only, and disagree for the residue;[2] and their report is to be drawn up and made accordingly. In all cases, in which a conference is asked, after a resolution to disagree, etc., the committee, on the part of the house proposing it, is to leave the bill and papers with the committee of the other, or if that committee refuses to receive them, on the table in the conference room; but where a conference is asked before the house asking it has come to a resolution of disagreement, etc., the papers are not to be left with the committee of the other house, but are to be brought back to the first, to be the foundation of the vote to be there given.[3] Having agreed upon their report, it is then to be made accordingly. The report of a committee of conference is in one of three forms, namely, either that the committee have agreed, or that they have disagreed, or that they have agreed in part, and disagreed for the residue, and, in either case according to the house in which the report is made, either with or without the papers. The report is the same in both branches, and is made in each by the committee which belongs to it, accompanied by the bill and other papers in that branch, the committee of which is entitled to them.

[1] J. of H. I. 127, 192, 543, 544; J. of S. 16th Cong. 1st Sess. 291, 294.

[2] J. of H. I. 598, 599.

[3] Jefferson's Manual, Sec. XLVI.

2270. The report of a committee of conference, if it is an agreement, and accompanied by the bill and other papers, is for obvious reasons, a *quasi* privileged question, and may be made at any time,[1] even after an incidental motion, as, for example, for a call of the house,[2] is made and pending. A report of this kind is objectionable, in point of form, if the committees have discussed and considered amendments not committed to them,[3] or have introduced new matter,[4] or have not confined themselves to the differences between the houses, but have undertaken to report future legislation,[5] or have yielded or taken possession improperly of the bill or other papers;[6] but objections in point of form, must be made when the report is offered; if the report is allowed to be introduced, formal objections can only avail afterwards as reasons for not agreeing to the report.[7] A report of this kind need not be proceeded with immediately, but may be postponed, or referred to a select committee, or a committee of the whole.[8] A similar report (without the bill) is ready, at the same time, to be made in the other branch, by the committee, on its part. If made immediately, the consideration of it is deferred until the bill comes into that branch; or the making of the report may be deferred until that time.

2271. When this report is taken into consideration, in the house to which the bill is returned, whatever intermediate proceedings may take place, the question is to be taken thereon, as it stands, as a whole, without amendment,[9] or division;[10] though it has been held that the report might be divided,[11] that it might be agreed to in part and disagreed to for the remainder,[12] and that it might even be amended.[13] If the report is agreed to, it is then sent with the bill to the other house, by a message, and that house proceeds to consider the report of the committee of conference, on its part, now made or proceeded to for that purpose. If the report is rejected,[14] such further proceedings take place, with regard to the bill, by the house in which it remains, as that house may think proper and convenient; and it is no objection to such proceedings that they are recommended in the report of the committee which has been rejected.[15]

[1] J. of H. 32d Cong. 1st Sess. 481.
[2] J. of H. 31st Cong. 1st Sess. 1590.
[3] J. of H. VIII. 383.
[4] J. of H. 30th Cong. 1st Sess. 811.
[5] Cong. Globe, XI. 902.
[6] Reg. of Deb. X. Part 2, 2557; Cong. Globe, VII. 246.
[7] Reg. of Deb. X. Part 2, 2557.
[8] J. of H. VIII. 63, 65, 74; Same, IX. 660.
[9] J. of S. II. 270; Reg. of Deb. II. Part 2, 2672; Cong. Globe, XI. 869.
[10] Cong. Globe, XV. 961, 1179.
[11] J. of S. III. 304; Same, IV. 71; Cong. Globe, XI. 505.
[12] J. of S. V. 359, 360.
[13] J. of S. V. 609.
[14] J. of S. 19th Cong. 2d Sess. 284, 285.
[15] J. of H. 32d Cong. 2d Sess. 409.

2272. If committees of conference cannot come to an agreement, they make a statement of this fact,[1] by way of report, in their respective houses, accompanied by the bill in the house, which is entitled to possession of it, and that house thereupon proceeds, in relation to it, in such manner as it deems most convenient and proper. In this case it is usual for the committee on the part of each branch, respectively, to recommend what course it ought to pursue in regard to the disagreeing votes between the two houses.[2] Where committees of conference are unable to agree, the bill is to be sent from one house to the other, with messages, in the same manner as if no conference had taken place. Where a committee of conference reports an agreement in part only, and states that the committees were unable to agree for the residue, the agreement and disagreement are to be proceeded with, in the manner above mentioned, but the report and bill cannot be sent out of the house, in which the latter belongs, so long as any thing remains to be done there in reference to it.

2273. Where a proposition for conference is declined, the bill is to be returned to the house proposing the conference with the message declining it; in which case, and also where the report of a committee of conference is rejected,[3] or where the committees fail of an agreement,[4] the house, in possession of the bill, may propose a further conference, to be agreed to, held, and reported, in the manner already mentioned.[5] For this purpose, if necessary, and also for the purpose of any other proceeding on disagreeing votes, with relation to bills, either house may reconsider its former votes, and, if necessary, send to the other for the bill.[6]

2274. The house to which a bill is returned with amendments, though in strictness, it has no other power over the bill than to pass upon the amendments,[7] and though the proceeding is an unparliamentary one, may notwithstanding dispose of the bill, if that is the effect of the order, by ordering it to lie on the table,[8] or by postponing the bill, together with the report of a committee of conference thereon, to a day beyond the session.[9]

2275. If the two houses, in some one of the ways above mentioned, come to an agreement. concerning amendments in reference

[1] J. of H. I. 127.
[2] J. of S. I. 488; Same, III. 392; J. of H. 19th Cong. 2d Sess. 370.
[3] J. of S. V. 472, 475, 581, 586; J. of H. IX. 618, 619, 620.
[4] J. of S. V. 581, 586.
[5] J. of H. IV. 366.
[6] J. of H. I. 106, 107, 108; J. of S. 32d Cong. 2d Sess. 140, 141.
[7] Reg. of Deb. IV. Part 2, 2698.
[8] Cong. Globe, XI. 649.
[9] J. of S. V. 581, 586.

to which they have disagreed, the amendments, if any, are adopted, are inserted or certified in the usual manner, and the bill passed like any other bill. If they do not come to an agreement, the bill is, of course, lost, and remains on the files of that branch where it was last left. It may be resuscitated, however, and further attempts made, to come to an agreement in the manner above mentioned, by either house at its pleasure, during the same session.[1]

CHAPTER SIXTEENTH.

OF THE AUTHENTICATION OF BILLS BETWEEN THE TWO HOUSES.

2276. When a bill passes in the house, in which it originated, a certificate or memorandum is made within it, in the Norman French language, indicating the proceedings of the house with reference to it. A similar certificate is made upon a bill, which, having previously been passed in one house, and sent to the other, is there passed. Bills are also authenticated by the signature of the clerk of the house.[2] The different kinds of certificates will appear from the following classification of bills, with reference to the different proceedings upon them.

2277. I. Bills originating in the house in which they are passed, and which pass as they were engrossed, or with such amendments only, as are made in the engrossment, by the addition or erasure of words. Bills of this description originating in the house of commons have the words, *soit baille aux seigneurs*, "let it be delivered to the lords," written by the clerk within the bill, at the top, towards the right hand.[3] Those which originate in the lords are subscribed at the foot with these words, *soit baille aux communs*, "let it be delivered to the commons."[4]

2278. II. Bills originating in the house in which they are passed, which do not pass as they were engrossed, or with slight amend-

[1] The practice above described is that which prevails in the congress of the United States, and it is believed in all the other legislative assemblies of this country. There seems to be no good reason, however, why the somewhat more cumbrous forms of parliament should not be practised.

[2] Bramwell on Bills, 137, 138.

[3] D'Ewes, 45; Hackwell, 154.

[4] D'Ewes, 45; Hackwell, 154.

ments only, but with a proviso, or schedule of additions, that is, a clause or clauses in parchment, filed to the bill. Bills of this description are written upon at the top, if from the commons, or at the foot, if from the lords, with these words, *soit baille aux seigneurs*, or *aux communs*, *avecque un proviso annex*, or *avecque un schedule annex*, "let it be delivered to the lords, or to the commons, with a proviso, or with a schedule, annexed," as the case may be; and the proviso or schedule is also certified, *soit baille aux seigneurs*, or *soit baille aux communs*, as the case may be.[1]

2279. III. Bills of the first class, agreed to in the house to which they are sent, without amendment, addition, or proviso, are subscribed, under the subscription or certificate of the other house, with the words, *a cet bill les communs*, or *les seigneurs*, as the case may be, *sont assentus*, "to this bill the commons" or "the lords," as the case may be, "have agreed."[2]

2280. IV. Bills of the first class, agreed to in the house to which they are sent, with amendments, additions, or provisos, are certified, under the certificate of the other house, with the words, *a cet bill avecque des amendments*, or *avecque les amendments a mesme le bille annex*, or *avecque un proviso annex*, or *avecque un schedule annex*, *les communes*, or *les seigneurs*, as the case may be, *sont assentus*, "to this bill with amendments," or, "with the amendments to the same annexed," or, "with a proviso annexed," or, "with a schedule annexed, the commons" or "the lords, have agreed."[3] If, besides amendments, a bill passes with additions or provisos, or both, the certificate is varied accordingly. In cases of this kind, the amendments are in paper, and not separately certified; but a proviso or schedule is in parchment, and is certified as a new bill, *soit baille aux seigneurs*, or *aux communs*, as the case may be.

2281. V. Bills of the second class, agreed to in the house to which they are sent, without amendment, addition, or proviso. In cases of this kind, the bill is certified with the words, *a cet bill avecque un proviso annex*, or *avecque un schedule annex*, *les communs*, or *les seigneurs*, as the case may be, *sont assentus*. The proviso or schedule is also certified, *a cet proviso*, or *a cet schedule*, *les communs*, or *les seigneurs*, as the case may be, *sont assentus*.

2282. VI. Bills of the second class, agreed to in the house to which they are sent, with amendments, additions, or provisos. In cases of this kind, the bills themselves, and the additions or pro-

[1] Hackwell, 162; Dwarris, I. 217, 218.
[2] Hackwell, 154.
[3] D'Ewes, 20, 26, 669; Hackwell, 164, 165.

visos filed to them being separately certified, on passing in the house in which they originated, when passed in the house to which they are sent, with amendments, provisos, or additions, they are also separately certified; as, for example, *a cet bille*, or *a cet proviso*, *avecque des amendments*, or *avecque un proviso*, etc., *les communs*, or *les seigneurs*, *sont assentus;* the rule being, that every engrossed proviso, clause, or addition, which is separately certified, is to be treated as a separate bill.

2283. When a bill, which has passed in one house, is passed in the other with amendments, strictly so called, which are agreed to by the former, the clerk of that house thereupon immediately makes the amendments in the bill, according to the directions in the paper.[1] When the amendments consist of engrossed clauses, provisos, or additions, which are separately certified, the agreement of the house thereto is certified in the same manner as to a bill; if such provisos or additions are agreed to with amendments, or with engrossed provisos or additions, which are agreed to, the proceedings with reference to the latter are the same as if they had been made to a bill.

2284. It is supposed to be the general practice, in our legislative assemblies, when a bill is ordered to be engrossed, to engross it with every thing that makes a part of the bill, whether consisting of amendments, properly so called, or of additions and provisos, written out at length, in the places in which they respectively belong in the bill; and that if any such amendments are adopted afterwards, which make it necessary, the bill is reëngrossed before it is sent to the other house; so that when a bill is sent from the house in which it originates, to the other, it belongs to the first class above mentioned. It is supposed, also, that when bills are returned to the house in which they originate, with amendments, the latter are included in a single schedule, whether they consist of amendments, properly so called, or of provisos and additions. In either case, and also in the parliamentary form, if that is adopted in any case, or prevails generally, the certificate of a bill, *mutatis mutandis*, is to be made and authenticated by the clerk in English.

[1] Hackwell, 163, 167.

CHAPTER SEVENTEENTH.

OF COMMUNICATIONS BETWEEN THE TWO HOUSES, RELATIVE TO THE PASSING OF BILLS.

2285. When a bill passes in the house in which it originates, it is then sent to the other, with a message, requesting the concurrence of the latter thereto.[1]

2286. When a bill, originating in the house of lords, and passed there, is sent to the commons, and passes also in that house, without amendment, a message is sent to the lords returning the bill, and to acquaint them that the house of commons has agreed to the same without amendment. When a bill, originating in the house of commons, and passed there, and sent to the lords, is there passed without amendment, the bill is not returned, but a message is sent to the house of commons, to acquaint them that the lords have agreed to the bill, without amendment.

2287. When a bill, originating in one house, and passed there, and sent to the other, is there passed with amendments, it is returned to the house in which it originated, with a message, to acquaint that house, that the house to which it was sent has agreed to the same with some amendments, to which the latter desires the concurrence of the former.

2288. If it is the house of commons to which a bill is thus sent, with amendments, and the amendments are there agreed to, the bill is returned to the lords with a message, to acquaint them, that the commons has agreed to their amendments to the bill. If it is the house of lords to which a bill is sent with amendments, which are there agreed to, the bill is not returned to the commons, but a message is sent to inform them that the lords have agreed to their amendments.

2289. A bill can only be taken to the lords from the house of commons, when the latter is sitting; for when the bill is ready, the member, who has been ordered to carry it to the lords, takes the bill off the table, and holds it up in his hands, opposite the door, till the speaker directs the members to attend their messenger. The rule and practice of the house of lords is, to receive no message from the commons, unless eight members at least attend with it. When

[1] Bills, which have been passed in one house, should, before they are sent to the other, be examined by a committee appointed for the purpose. See J. of S. I. 401.

bills have passed in the house of commons, with a general concurrence, and on other occasions on which the house of commons wishes to have an opportunity of showing its approbation of the measure, it is customary for a great number of members to follow their messengers. The member ordered to take the bill to the lords ought to carry it there immediately, and if the lords be not then sitting, he ought to bring it back to the clerk; in case of such member's absence, another may be appointed in his place.[1]

2290. It will be perceived from the foregoing statement of the communications between the two houses relative to the passing of bills, that bills when agreed to by both houses remain in the house of lords. This is the case with all except money bills, the concurrence in which is signified in the usual manner, but which are always returned informally to the house of commons without any message, for the purpose of being presented by the speaker.[2]

2291. The communications between the two houses of parliament, relative to the passing of bills, are always by message, until there is a disagreement by one house to the amendments of the other; in which case the communication is made by means of a conference. In this country, as we have seen, they take place by message only. These proceedings have been already explained in connection with the subject of amendments between the two houses. Messages and conferences, relative to bills, take place in the same manner as with reference to other matters.

2292. In those of our legislative assemblies, in which it is required, by the constitution, that every bill, before it becomes a law, shall receive the executive approval, and in which, consequently, bills must be duly presented to the executive department, it is supposed, that all bills, until sent out of the house for approval, remain in the house in which they were last agreed to. It is not the usage, for one of the two houses of a legislative body to inform the other by what numbers a bill has passed;[3] nor where a bill from the other house has been rejected, does the house, in which the proceeding takes place, give the other any notice of the rejection, or returns the bill to that house; but the matter passes *sub silentio* to prevent unbecoming altercations.[4] This is the ordinary rule of parliamentary practice, subject, of course, to such particular regulation as each assembly may prescribe. In congress, it is provided, that, "when a bill or resolution which shall have passed in one

[1] Bramwell on Bills, 139, 144, 145, 146.
[2] May, 369. See Hatsell, III. 161, 162.
[3] Grey, X. 150.
[4] Black. Com. I. 133.

house, is rejected in the other, notice thereof shall be given to the house in which the same shall have passed." It is the practice under this rule, when a bill, passed in one house and sent to the other, is there disposed of permanently, although not by a technical vote of rejection, to return the bill and notify the originating house of such rejection, by means of a message; as when the question on any of the regular stages of a bill, is decided in the negative, or when the bill is postponed, either indefinitely, or to a day beyond the session. The rule appears to extend to vetoed bills.[1]

2293. It is usually provided, by rule, in our legislative assemblies, as it is by a joint rule in congress, that, while bills are on their passage between the two houses, they shall be under the signature of the clerk of each house, respectively; and without any rule to this effect, it seems to be a part of the duty of the clerk, to authenticate all papers, when passing between the two houses, by his signature; but, in the absence of any rule or usage, in this respect, it seems that every bill or other paper is sufficiently authenticated by the message which accompanies it.

2294. If messengers, as we have seen,[2] commit an error in delivering their message, and the mistake is seasonably discovered, they may be admitted of their own accord, or may be called in by the house to which they are sent, to correct their mistake.[3] But this practice, though equally applicable to messages on bills, is not likely to extend to any errors in the contents of bills and amendments, which are not ordinarily stated in the message, or officially known to the messengers. Mistakes of this kind, which are not discovered at the time, or do not then admit of correction, may be the subject of a subsequent message, and corrected accordingly.

[1] J. of S. II. 337; J. of H. IX. 705.
[2] See ante, § 818.
[3] Grey, IV. 41; Jefferson's Manual, § XLVII.

CHAPTER EIGHTEENTH.

OF BILLS WHICH ARE REQUIRED TO BE COMMENCED IN ONE HOUSE IN PREFERENCE TO THE OTHER.

2295. It is a general principle of parliamentary law, which prevails in England, and in this country, with certain exceptions, which will be presently mentioned, that all bills may be commenced in either house, and may be concurred in, amended, or rejected, by the other. This principle is inserted in several of the State constitutions, but is clearly unnecessary.[1] The exceptions, which, in parliament, are the result of precedent and usage only, are, in this country, the result of constitutional provision, and are now to be considered.

2296. From considerations of convenience, bills concerning either house of parliament, exclusively, usually begin in the house whose proceedings are intended to be affected thereby.[2] This rule, though not a matter of right, is so obviously convenient, that it would undoubtedly be held applicable here.

2297. The lords claim exclusive right of originating bills for restitution of honors or blood; and in that house, estate bills, divorce bills, bills of attainder, and of pains and penalties, and others of a judicial nature, generally begin; in consequence, it is presumed, of the forms of judicature possessed by that house exclusively.[3]

2298. The sovereign claims and exercises the privilege of introducing a bill, which usually passes in every parliament, or for a general pardon. This is an exception to the common practice of passing bills; being sent by the crown, and read only once in each house. A bill of this kind receives the royal assent, after it has passed both houses, in the ordinary form.[4]

2299. The house of commons by precedent and usage, particularly since the time of the restoration, has asserted and maintained its right to begin bills of supply, and all other bills for imposing any pecuniary charge or burden upon the people; and the house of lords has now for many years desisted either from beginning any bill, or from making amendments to any past in the other branch,

[1] Maryland, Virginia, South Carolina, Alabama, Mississippi, Tennessee, Ohio, Indiana, Illinois, Missouri, Arkansas, Texas, Iowa, Wisconsin, California.

[2] Bramwell on Bills, 3.

[3] Bramwell on Bills, 2.

[4] May, 345.

which either in the form of positive taxes, or pecuniary penalltes, or in any other shape, might by construction be considered as imposing burdens upon the people.[1]

2300. This rule extends in practice to all bills and provisions in bills affecting the public revenue; to all such as impose any rate, toll, or duty, pecuniary penalty, fine, or fee; and to all bills containing provisions which in their consequences necessarily increase or diminish any previously existing rate, toll, or duty; but it does not extend to bills for imposing or removing personal disabilities, incapacities, or punishments.[2]

2301. The constitutional power of the house of commons to originate bills of the above description, without any interference on the part of the lords, has occasionally been abused by annexing to bills of supply enactments which in another bill would be rejected by the lords; but which being contained in a bill that they have no right to amend, must either be suffered to pass unnoticed, or cause the rejection of a measure highly important, perhaps, for the public service. Such a proceeding, under the name of *tacking*, is a great infringement of the privileges of the lords; and has been resisted by protest, by conference, and by the rejection of the objectionable bills. It was in reference to this practice, that the lords on the 9th of December, 1702, passed a standing order, that the annexing of any clause to bills of aid, the matter of which is foreign to and different from the matter of such bill, is unparliamentary, and tends to the destruction of the constitution. There have been no recent occasions on which clauses have been irregularly tacked to bills of supply, but so lately as 1807, the standing order above-mentioned, was read, and a bill rejected on that account in the house of lords; but in that case the clause had been inadvertently inserted, and it was doubtful whether it was a tack within the intention of the standing order.[3]

2302. When, through inadvertence in the framers of a bill, or in the addition of amendments to any bill of the house of commons, it happens that this rule is invaded, the latter is very vigilant in noticing it, and, thereupon the further consideration of such bill, or of the lords' amendments, is put off for the session, allowing, however, a fresh bill, as passed by the lords, to begin *de novo* in the commons.[4] Sometimes the amendments of the lords, though not strictly regular, do not appear materially to infringe the privileges

[1] Hatsell, 126, 147, 154; Comm. Jour. IX. 238.

[2] Bramwell on Bills, 1, 2.

[3] May, 409, 410.

[4] Bramwell on Bills, 5.

of the commons, in which case it has been usual to agree to them, with special entries in the journal. The commons have, also, by standing orders passed in 1831 and 1849, somewhat relaxed the rule, by providing that this house will not insist on its ancient and undoubted privileges, when the object of such forfeiture is to secure the execution of the act; or where fees are imposed in respect of benefit taken, or service rendered under the act; or when it is a private bill for a local or personal object.[1]

2303. The constitutional privilege, above mentioned, in virtue of which, it is the practice of the house of commons to originate taxes, has been extensively copied in this country; a corresponding provision being found inserted in all our constitutions, except in those of the following States, namely, Rhode Island, Connecticut, New York, Maryland, Virginia, North Carolina, Florida, Tennessee, Ohio, Illinois, Michigan, Arkansas, Wisconsin, and California. In the constitutions of the United States, and of the States of Maine, New Jersey, Pennsylvania, Delaware, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Kentucky, Indiana, Missouri, and Texas, the language is, "that all bills for raising revenue" shall originate in the house of representatives; in those of New Hampshire and Massachusetts, it is that "all money bills" shall originate in the house of representatives; in that of Vermont "all revenue bills," and in that of "Iowa all bills for revenue are required to originate in the house of representatives;" and in that of Georgia, the words, "or appropriating moneys," are added to the requisition already made. In all the constitutions in which it is provided substantially that taxes shall originate in the lower branch, it is provided that the senate or first branch may propose or concur therein with amendments, as on other bills, thus preventing the process of tacking; but in Maine, Louisiana, and Kentucky, it is provided, further, that the senate shall not, under color of amendments, introduce any new matter which does not relate to raising a revenue. The constitution of Delaware contains a similar provision in substance.

2304. It will be perceived from the foregoing enumeration, that the clauses relative to taxation are divisible into two classes, namely, first, those which relate to raising revenue only, and second, those which embrace both the raising and spending of money. The constitution of Delaware is the only one which undertakes to define a revenue bill; it declares that "no bill, from the operations

[1] May, 407, 408, 409.

of which, when passed into a law, revenue may incidentally arise, shall be accounted a bill for raising revenue." This is so obviously the proper signification of the word revenue, that it would probably be admitted as conveying the true meaning; rejecting the parliamentary meaning of the term, by which penalties and forfeitures taken from the subject are accounted a revenue, whether they go into the public treasury or not. The term, "money bills," as used in the constitutions of New Hampshire and Massachusetts, are broad enough to include both the raising and the appropriation of money. Whether the senate in amending a bill of the house, so as to make it a bill for raising revenue, transcends its constitutional powers, or not, is a question of constitutional right, between the two houses, and not of order or privilege.[1]

CHAPTER NINETEENTH.

OF THE RULE WHICH PRECLUDES THE SAME QUESTION FROM BEING A SECOND TIME PRESENTED DURING THE SAME SESSION, IN ITS APPLICATION TO BILLS.

2305. It is a rule of parliamentary practice, which has already been generally considered, that no question or motion can regularly be offered, upon which the judgment of the house has been expressed during the current session. This rule is essential, in order to avoid contradictory decisions, to prevent surprise, and to afford proper opportunity for determining questions as they severally arise.[2] It is equally essential, however, that the discretion of the house should not be so far confined by its rules of proceeding, as to subject its votes to irrevocable error, or to prevent it from changing its determination, when such change is clearly proper and necessary.

2306. The constitution of a deliberative assembly is necessarily such, that it may occasionally be constrained by its own rules to

[1] J. of H. 27th Cong. 2d Sess. 287.

[2] May, 233. The principle of parliamentary law elucidated in this chapter, is inserted in the constitutions of Tennessee and Texas, and in those of South Carolina and Georgia, in a modified form. That of Tennessee provides that "after a bill has been rejected, no bill containing the same substance, shall be passed into a law during the same session."

come to a determination, which does not express its deliberate sense; but if such a determination could not, under any circumstances, be reconsidered and rescinded, the rules of proceeding would be the means of obstructing, rather than facilitating, the will of the assembly. Hence, while the rule above alluded to is recognized as a general one, it admits of such exceptions, and is applied in such a manner, that the discretion of the assembly is not thereby unnecessarily restrained. As it is in reference to bills, and the proceedings upon and in relation to them, that this rule receives its most important application, it is proposed to give it a separate consideration in this place.

2307. The rule is thus expressed in a declaration of the house of lords, entered in the journal of May 17, 1606: "That when a bill hath been brought into the house, proceeded withal, and rejected, another bill of the same argument and matter may not be renewed and begun again, in the same house, and in the same session."[1] In the house of commons, "it was agreed for a rule," June 1, 1610, "that no bill of the same substance be brought in the same session."[2] Neither of these statements fully expresses the rule, as understood in the practice of the present day. It is not now necessary, for example, if it ever was, to the application of the rule, that a bill should be rejected, as expressed in the rule of the lords; inasmuch as a new bill cannot be introduced, while a similar bill is pending, or has passed. Nor does the rule apply only to the introduction of bills, as might be supposed from the statement of it by both houses; since it equally precludes those motions, which at the present day, are preliminary to the introduction of bills. Neither does it require the pendency of a bill, in order that the judgment of the house may be expressed in such a manner, as to preclude the introduction of the subject a second time; a judgment of the house upon a motion for a bill being equally effectual to preclude the introduction of a bill, as a judgment upon the bill itself.

2308. In explaining this rule, it will be most convenient to consider it with reference to the several circumstances, in which occasion may arise for its application. At the same time, it will be useful to point out the limitations and restrictions, to which it is subject, with a view to enable the house to reconsider, and, if necessary, to rescind a prior determination. The several steps in the proceedings with reference to bills, to which it is necessary to call attention, in order to explain the rule in question, are: 1, when a

[1] Lords' Jour. II. 435. [2] Comm. Jour. I. 434.

motion for a bill has been affirmed or denied; 2, when a bill is pending; 3, when a bill has been rejected; and, 4, when a bill has been passed. It is proposed, in the first place, to make some preliminary observations applicable to the general subject, and then, to consider the rule in question with reference to the different occasions above indicated for its application.

SECTION I. OF THE APPLICATION OF THE RULE IN GENERAL.

2309. The terms made use of to indicate the identity or similarity of two propositions, namely, "of the same argument and matter," and "of the same substance," which signify the same thing, clearly imply, that if the propositions in question are the same in substance and effect, however different in form, they are within the rule. Where the house has merely come to a vote, either rejecting or allowing a motion for the introduction of a bill, and a motion is afterwards made, which is objected to on the ground of its identity with the former, the question must be determined by comparing together the two propositions as they stand; although if bills should be introduced in pursuance of the two, they might be materially different from each other. Thus, where a motion was made for leave to bring in a bill "to relieve from the payment of church-rates that portion of her majesty's subjects who conscientiously dissent from the established church," which was decided in the negative, a motion subsequently made "to relieve dissenters from the established church from the payment of church-rates," was considered to be within the rule, and consequently inadmissible, on the ground, that the two propositions, though different in form and words, were substantially the same.[1]

2310. When a bill is already pending, and a motion is made for leave to introduce a similar bill, the question to be determined is, whether, if the motion should be adopted, it would authorize the introduction of a bill substantially the same with that already pending; if it would, then the motion is contrary to the rule.

2311. When it becomes necessary to institute a comparison between the different provisions of two bills, which are already drawn, it may appear, that, although intended for the same purpose, and consequently "of the same substance," and "of the same argument and matter," in one sense, they nevertheless differ so essentially in the mode and means, by which that purpose is to be

[1] Hans. (3), 553.

effected, as to be in substance different bills. In such a case, the judgment of the house against one of the bills, that is, against effecting a particular object in a particular manner, ought not to preclude it from entertaining the other, which proposes to effect the same object in a different manner. Thus, a bill which creates a new offence, and punishes it in one manner, ought not to be considered as the same in substance with a bill which creates the same offence, and punishes it in a different manner. The identity or similarity, therefore, which is implied in the rule in its application to bills, would be more fully expressed, in the following form, namely; that two bills are the same when they have the same purpose in view, and propose to effect it by the same means, although, in point of phraseology, they may be expressed in different terms;[1] and, this, it is apprehended, will be found to be in accordance with the practice of both houses.

2312. It does not seem to be essential to the application of the rule, that the proposition already passed upon should have received the judgment of the house by itself, provided it is distinct from any other proposition, with which it might have been accompanied; or that the new one should be made by itself, provided it is distinct from and independent of any other, in company with which it may be brought forwards;[2] thus, where the house of commons, having passed a bill which was rejected by the lords, or rather passed by them with amendments to which the commons did not agree, inserted the same bill as a proviso in another bill of a different character, this proceeding was held to be contrary to the known and constant methods of parliament.[3]

2313. The general rule being, as already stated, that no question can be a second time moved,[4] upon which the judgment of the house has already been expressed, it follows, not only that no resolution or bill can be introduced, which proposes to do what the house has declared shall not be done, but also that no two resolutions, nor any two bills, contradictory to each other, can be passed

[1] Hans. (1), X. 1344.

[2] Hatsell, II. 125, 127; Parl. Reg. XXXVI. 223.

[3] Lords' Jour. XV. 90. The house of lords, deeming it necessary nevertheless, (for the public welfare,) to pass the bill, directed a special entry to be made in the journal, "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."

[4] The rule, when stated broadly and fully, may be thus expressed, namely: that when the house has already done a particular thing, that thing can neither be undone, nor otherwise done; and that when the house has refused to do a particular thing, that thing cannot be done.

in the same session;[1] and, consequently, that no motion or proposition, preliminary to such contradictory legislation, can be regularly introduced.[2]

2314. The judgment of one house being obligatory only upon itself, and its own members, it follows, that the application of the rule in question is confined to the house in which the previous proceeding has taken place, and to the members of that house. Thus, if a bill is pending, or has been rejected in one house, the same bill, that is, a bill of the same tenor, may nevertheless be introduced in the other; inasmuch as the latter has not as yet come to any judgment upon that or a similar bill. If such bill passes in the house in which it is begun, it may be sent from that house to the other, and so introduced in that house, although a similar bill is there pending, or has been passed, or rejected; because the judgment of that house is obligatory only to prevent the introduction of such a bill by its own members, but not to its introduction from the other house, which is an independent and coördinate branch. If the introduction of a bill from the other house, in this manner, cannot be objected to, on the ground of order, so neither can its being proceeded upon and passed. Whether the house, to which it is sent, having already expressed its opinion by rejecting a similar bill, or having a similar bill then under consideration, will reconsider its judgment, and pass the bill thus sent, is a question which does not depend upon the order or method of proceeding.

2315. It is wholly immaterial in what form it is proposed a second time to bring forward a question which has already been decided; as, for example, it is not allowable to move an amendment to a pending bill, which, if adopted, will render the bill the same with one which has already been rejected or passed.[3]

SECTION II. OF THE APPLICATION OF THE RULE, WHEN LEAVE HAS BEEN GIVEN OR REFUSED, OR AN ORDER MADE OR REJECTED, TO PREPARE AND BRING IN A BILL FOR A PARTICULAR PURPOSE.

2316. When the judgment of the house has been expressed in this form, no motion or order can afterwards be made for a similar bill. But, when a bill has thus been authorized, it is competent for the house, nevertheless, to discharge the order;[4] in which case, the

[1] Parl. Reg. XXVII. 679.
[2] Comm. Jour. XIX. 639.
[3] Hans. (1), X. 1344.
[4] Hatsell, II. 133.

effect of it is entirely done away with, and a new order may afterwards be made in the same or a different form. When a motion for leave to bring in a bill has been rejected, the same subject may again be brought forward, in a different form; as, for example, by moving the appointment of a committee to consider the laws relating to that subject.[1] In this case, however, it will still be for the house to determine, when the contemplated measure is brought forward, — either in the committee or the house, — whether it interferes with the judgment already expressed.[2]

SECTION III. OF THE APPLICATION OF THE RULE WHILST A BILL IS PENDING.

2317. When a bill has been introduced, and is pending, no other of the same substance can be moved for or introduced. A bill is pending, until it has been rejected; or until a negative has been put upon some one of the motions necessary to forward it, which is equivalent to a rejection, as, for example, that it be read a second or a third time, or that it be engrossed or passed; or, until the house, by a direct vote, has declared that it will no longer proceed with the bill, as where it is ordered to be withdrawn or laid aside.

2318. A negative, put upon a motion for proceeding with a bill, in pursuance of a previous order, is not equivalent to a rejection; because it leaves the order still in force, to be proceeded upon, if the house pleases, at some other time. Thus, if a bill is read a first time, and a motion made that it be read a second time, which is negatived, the bill is as effectually rejected as it could be upon a direct motion for that purpose. But, if the motion for second reading is carried, and a day is then fixed for the second reading, and, on that day, a motion for the present reading of the bill is made and negatived, this negative is not equivalent to a rejection; for the order, that the bill be read a second time is still in force, and the house may proceed upon it at any future time.

2319. A bill is also considered to be pending, when the proceeding upon it has been postponed to a day beyond the probable duration of the session.[3] In this case, the order relative to the bill is,

[1] May, 187.

[2] Hans. (1), XIII. 765, 769.

[3] This is a mode, more frequently adopted than any other, for expressing opposition to and defeating a bill; and it is entirely effectual for that purpose, so long as the order for postponement remains in force. But it seems, that this order may, at any time, be dis-

that it be read the second, or third time, etc., on a day fixed, on which the house may, possibly, though it is not likely to be, sitting. If the postponement should be to a day beyond the possibility of the continuance of the session, — as for example, to a day beyond the term of the legal existence of the parliament, — such a postponement could hardly be considered in any other light than as a rejection.

2320. When it becomes desirable or necessary, as frequently happens, to introduce a new bill of the same substance with, and in place of, one already pending, this can only be done by withdrawing the latter, if it is a bill of the house in which it is pending, or by laying it aside, if it originated in the other house. These proceedings will be fully described hereafter.

SECTION IV. OF THE APPLICATION OF THE RULE WHEN A BILL HAS BEEN REJECTED.

2321. When a bill has been rejected in any of its stages, in the house in which it originated, the same bill cannot be again introduced in the same house; but a new bill, which really presents a different question, or the same question in a modified form, however slight the difference or modification may be, is not objectionable in point of order. Hence, in matters of considerable importance, in reference to which the opinion of the house has undergone a change, some trifling variation in the question has been deemed sufficient to prevent the operation of the rule.[1]

2322. When a bill which has been passed in one house, and sent to the other, is there rejected, it is according to the established parliamentary usage, "that a new bill of the same matter may be drawn and begun again in that house whereunto it was sent;"[2] and such bill, being passed in the house in which it is begun, and sent to the other, may be there proceeded upon and passed.[3] The rule, as thus stated, seems to imply that the new bill differs from the old one, so far at least as to be free from the objections which were

charged; and, when discharged, although it cannot be renewed for an earlier day, the bill may be withdrawn, and a new one ordered and presented, and forwarded in the ordinary manner.

[1] Hatsell, II. 125, 128, and n. Bishop Burnet (History of His Own Times, vol. VI. p. 31, 2d Oxford Ed.) relates an instance of the evasion of this rule, by substituting the words "skins and tanned hides" in the place of the word "leather," of which, Mr. Speaker Onslow remarks, that "the method here spoken of to recover the loss of the former question was unparliamentary, and dangerous, and mean too."

[2] Lords' Jour. II. 435.

[3] Hatsell, II. 125, 127.

fatal to the latter. But there is a class of cases, to which alone the rule seems to have any practical application, in which the new bill would be free from the objections of the first, without in the slightest respect differing from it in terms, namely, where the former contains provisions, which, as coming from the house, in which it originated, are in breach of the privileges of the other. Thus, for example, if the lords pass a bill containing clauses imposing a charge of some sort upon the people, and send it to the commons, the bill is objectionable in the latter house, and cannot be there allowed to proceed, consistently with the privileges of that house; but a new bill, containing precisely the same provisions, originating in the house of commons, is entirely unobjectionable. According to the present practice, a bill sent from one house to the other, which is contrary to the privileges of the latter, is not there rejected; but is laid aside, and another bill precisely similar in its terms ordered to be brought in, which latter is passed and sent to the other house as an original bill.[1]

SECTION V. OF THE APPLICATION OF THE RULE WHEN A BILL HAS BEEN PASSED.

2323. When a bill has been passed in one branch, the rule is equally peremptory, that no similar bill can be afterwards introduced.[2] In practice, however, when it has been ascertained that a bill, which has been passed in one house and sent to the other, is there unacceptable in some particulars, a new bill may be introduced and passed in the house in which it originated, with such variations from the first bill, as to make it acceptable to the other house. This practice appears to be most frequently resorted to in regard to bills, in which the objectionable parts cannot be amended, without infringing upon the privileges of the house from which the bill is sent. The following is an instance of this sort. A bill being passed in the house of commons and sent to the house of lords, is there proceeded with, and committed, in the regular course of proceeding. The committee report it with amendments imposing rates, tolls, or other charges upon the people, which the house of lords cannot agree to without infringing upon the privilege of the commons; and as they cannot agree to the bill without the amendments, the bill is

[1] May, 238.

[2] Hats. II. 125, 127. But this rule does not seem to apply to the case of an amendment containing the provisions of a bill that has passed. Reg. of Deb. IV. Part 1, 631.

accordingly dropped, that is, it is no further proceeded with. In this state of things, the commons appoint a committee to inspect the lords' journals, and to report therefrom the proceedings of that house upon the bill in question. On the report of the committee, if the amendments reported in the lords are acceptable, the commons order another bill to be brought in similar to the first, but with its provisions so far altered as to conform to the amendments proposed in the lords. This bill is, of course, acceptable to both houses.[1]

2324. In one case, in which the house of commons ordered that leave be given for the introduction of a bill bearing the same title with one which had already passed, and been sent to the lords, an entry was made in the journal of the reasons, which induced the house to give leave for bringing in the new bill, namely, that the house were informed by a member in his place, that the former bill had been rejected in the house of lords, on account of its containing multifarious matters.[2]

2325. When a bill has passed in both branches, it is a rule of parliament, that no other can be introduced into either, during the same session, which has for its object to repeal or amend the former. This rule was considered so imperative, that in 1721, a prorogation of parliament took place for two days, in order that a bill relating to the South Sea Company might be passed, in which it was proposed to insert provisions contradictory to clauses contained in an act of the same session.[3] In order to avoid the embarrassment which might otherwise result from the application of this rule, it became and was the common practice until the year 1850, to insert in all bills, particularly in those of a temporary policy, and in tax bills, a clause providing that they might be amended or repealed by any act to be passed in the same session.[4] But this clause, since the year above mentioned, has become unnecessary, in consequence of the 13 and 14 Vict. c. 1, which provides, "that every act may be altered, amended, or repealed, in the same session of parliament, any law or usage to the contrary notwithstanding."

[1] May, 237.

[2] Comm. Jour. XXXIII. 726.

[3] Comm. Jour. XIX. 639.

[4] May, 239; Hats. II. 129, 133, n. The rule stated in the text, never, it seems, applied to prevent the passing of an explanatory act; or to a bill to enforce, and make more effectual a former act; or to rectify mistakes in, continue in force, or to enlarge the time for the execution of, a former act. Jefferson's Manual, Sec. XLIV. It is doubtful whether the rule ever prevailed in this country. See J. of C. VII. 417; J. of H. I. 118, 119; J. of S. I. 50, 91.

SECTION VI. OF THE APPLICATION OF THE RULE TO THE DIFFERENT STAGES OF A BILL AND TO AMENDMENTS.

2326. It is a general rule of parliamentary practice, that, whenever the course of proceeding requires the house to come to several successive resolutions, each one is to be considered and decided by itself, and without reference to any step previously taken. The advantage of this method is, that it affords the house an opportunity to revise and reconsider its prior determinations. In the passing of bills, — the most important of the functions of a legislative assembly, — these different steps or stages are more numerous than with reference to any other proceeding, and every stage of a bill submits the whole and every part of it to the opinion of the house. It is the operation of this rule, chiefly, that prevents the inconveniences which would otherwise inevitably result from a strict application of the principle, which is the subject of the present chapter.

2327. The rule stated in the preceding paragraph applies as well to the preliminary proceedings, as to the several stages which occur in the regular progress of a bill. Thus, when the house has come to a resolution, which would be wholly ineffectual, unless it were made the foundation of a bill, the motion for leave to bring in a bill thereupon may, nevertheless, be rejected;[1] and, in like manner, if leave be granted, the bill may be refused, when presented; or, if received, the house may negative the motion that it be read. So, when a bill has commenced its regular progress, a negative may be put upon any one of the successive steps or stages through which it ought to pass.

2328. The rule also applies to the amendments, which may be made at the different stages of a bill; at each of which, "every part of the bill is open for amendment, either for insertion or omission, whether the same amendment has been, in a former stage, accepted or rejected."[2] The stages at which amendments are usually made, are, 1, in the committee (this stage being renewed either in whole or in part, as often as a bill is recommitted); 2, on, that is, after considering the report; and, 3, on the third reading. In the committee, those amendments only can be made, which are consistent with the title, or within the instructions that may have been previously given by the house; but within these limits, amendments may be made contradictory of previous resolutions or votes; on

[1] Comm. Jour. LXXXVIII. 317, 329. [2] Hatsell, II. 135.

the report, the amendments of the committee may be negatived, amendments rejected by the committee may be adopted, and new amendments may be made; and, on the third reading, clauses may be added, or amendments made, which have before been rejected, and clauses may be left out of the bill, which have been inserted at any previous stage.

2329. It is hardly necessary to remark, that amendments between the houses stand upon the same footing; not only for the reason already suggested, but also for the further reason, that the votes or judgments of one house are not binding upon the other.

CHAPTER TWENTIETH.

OF SOME PARTICULAR PROCEEDINGS, WITH REFERENCE TO BILLS, WHICH ARE OUT OF THE ORDINARY COURSE.

SECTION I. WITHDRAWAL.

2330. The rules of parliamentary practice, which preclude the introduction of a second bill, whilst one is already pending with the same title, or after one of the same title or tenor has been passed or rejected, sometimes make it expedient that a bill should be withdrawn, in the course of its progress, in order to the introduction of a new one. The effect of this proceeding is, that a new bill may then be introduced, in the same manner as if the former had never been before the house. The occasions on which this proceeding takes place, occur, *first*, when a bill is so defective or objectionable in point of form, or the proceedings in reference to it have been so irregular, that it cannot be allowed to proceed further, consistently with the orders of the house; and, *second*, when, for various reasons, it becomes expedient or desirable, in the opinion of the parties, if it be a private bill, or of the friends of it in the house, if it be a public one, that it should be withdrawn.[1]

[1] It seems, according to the practice in our legislative assemblies, that those objections, in point of form, which in parliament are fatal, when taken notice of, and lead to the withdrawal of the bill, are, in this country, considered as waived, unless taken advantage of when the bill is first offered to be presented, and cannot be made afterwards. See ante, § 2115, and J. of H. 32d Cong. 1st Sess. 785; Cong. Globe, XXIII. 312. See Same, XXI. 807; Same, XXIII. 312.

2331. When, in the course of the proceedings upon a bill, it becomes apparent, that its further progress would be inconsistent with the orders of the house, the bill must be abandoned, unless it should be allowed to proceed by the unanimous consent of the house. When a case of this kind occurs, and the objection is pointed out, either by the speaker, or some member, or is discovered by the parties, it is usually so obvious, that the effect of it is admitted at once, and the bill immediately abandoned, or measures taken to withdraw it, for the purpose of presenting or introducing a new one. But, if the objection is not apparent, or the friends of the bill persist in carrying it forward, the question may be settled either by a direct motion that the bill be withdrawn, or by a motion in some one of the common forms, to postpone it to a day beyond the session, or by objecting the irregularity to any of the motions for proceeding with the bill.

2332. The principal grounds of objection to proceeding with a bill, as against order, relate: 1, *to its form;* as where a bill contains no enacting words; where it contains interlineations or erasures;[1] where parts of a bill which should have been left blank are filled up;[2] where commissioners' names are not inserted as required by the orders of the house;[3] where a bill is not prepared according to the standing orders relating to the subject;[4] 2, *to its substance;* as where the title of a bill varies from the order for preparing and bringing it in;[5] where a bill varies from the order, or is not properly prepared,[6] where a bill contains provisions not authorized by the order,[7] or not included in the petition[8] or resolutions[9] on which it is founded; 3, *to the manner of its introduction;* as where a bill is presented by a member not named in the order of leave;[10] where a private bill is introduced on leave, instead of being brought in on petition;[11] where a bill contains provisions which should have been

[1] Comm. Jour. XXXVI. 703; Same, XLIII. 467, 468; Same, XXIX. 926; Same, XXXIII. 227, 674; Same, LVII. 47.

[2] Comm. Jour. XXXVI. 692; Same, XVIII. 426; Same, XIX. 115; Same, XXVI. 130, 145; Same, XXXIII. 674; Same, LXVII. 511; Same, XX. 779.

[3] Comm. Jour. LI. 495; Same, LV. 533, 555, 627; Same, XLVIII. 308, 346.

[4] Comm. Jour. XXXVIII. 925, 938; Same, LXX. 209.

[5] Comm. Jour. XLVIII. 341, 361; Same, LIII. 696; Same, LVIII. 300; Same, LXXI. 252; Same, LXX. 265.

[6] Comm. Jour. XLI. 825, 827; Same, XXIII. 66, 67, 90; Same, LVII. 467; Same, XXXII. 327, 359; Same, LVIII. 309; Same, LXIX. 266, 314; Same, LXX. 263.

[7] Comm. Jour. XLVI. 657; Same, L. 374; Same, LI. 609; Same, XLII. 528, 543; Same, XLIV. 514; Same, XXII. 414, 443; Same, XXXII. 843; Same, XXXIII. 492, 554, 595; Same, LVII. 409, 504, 521.

[8] Comm. Jour. LV. 417; Same, XLII. 705; Same, XXIX. 67; Same, XXXI. 607; Same, XXXII. 843; Same, XXXIII. 210, 211; Same, LXIX. 230.

[9] Comm. Jour. XXII. 104.

[10] Comm. Jour. XXXIII. 255.

[11] Comm. Jour. LXX. 46; Lords' Jour. XL. 576.

previously considered in a committee of the whole;[1] and, 4, *to the proceedings in relation to it;* as where printed copies of a bill have not been delivered, as required by the orders of the house, before presenting it;[2] where the printed copies delivered do not contain proper blanks;[3] where a bill, to which the consent of parties is necessary, varies from the copy to which the parties have signified their consent.[4]

2333. There is another class of cases, in which, although bills are not objectionable as against order, it is nevertheless deemed expedient or desirable, for various reasons, either of a public or private nature, that they should be withdrawn; as, where it appears that a bill, in its present form, will not effectually answer the purposes for which it was intended;[5] where it is apparent from the great number of alterations and amendments, reported by the committee on the bill, that it will be for the convenience of the house, that the bill should be withdrawn, and another presented in its place;[6] where the house is informed that several material alterations are necessary to be made in the bill, which cannot be made or inserted therein, so as to correspond with its present provisions, in the form in which the bill is drawn;[7] where an estimate on which the bill is founded is discovered to be inaccurate;[8] where the parties to private bills desire, for particular reasons, to withdraw the same;[9] where the second reading of a bill being deferred to a distant day, it afterwards appeared that to put it off for so long a time might be attended with great public inconvenience, and an earlier day could not be appointed consistently with the orders of the house;[10] where, in consequence of the alterations and amendments to be proposed to a bill, it will be for the convenience of the house to have it withdrawn, and a new one presented in its place.[11]

2334. The withdrawal of a bill may take place, at any time, in the course of its progress, whenever the informality is discovered, or the reason becomes manifest, on account of which it is expedient or necessary to withdraw it. When a bill has been proceeded with, in regular course, to any stage, but has not been made the

[1] Lords' Jour. LV. 396.
[2] Comm. Jour. LXXIV. 235.
[3] Lords' Jour. XLII. 528, 543.
[4] Lords' Jour. XXXV. 488, 489.
[5] Comm. Jour. XLVII. 611, 714; Same, XXXVI. 479; Same, XLI. 739; Same, XXXII. 815, 818; Same, XXXIII. 28; Same, LVII. 388, 467; Same, LVIII. 620; Same, LXXIII. 350, 397.
[6] Comm. Jour. XL. 905, 914.
[7] Comm. Jour. L. 229; Same, XLI. 281, 282, 637; Same, XXXIV. 201, 268; Same, LX. 165; Same, LXIV. 95.
[8] Comm. Jour. LIII. 525.
[9] Comm. Jour. LIV. 551; Same, LIX. 227; Same, LXXIV. 235.
[10] Comm. Jour. XXXIII. 46.
[11] Comm. Jour. LVI. 267, 560.

subject of an order which is not yet executed, as, for example, where it has been received, but has not been ordered to be read the first time;[1] or has been read the first time, without being ordered to be read the second time;[2] a motion for the withdrawal of the bill may be made directly and at any time, without any preliminary proceeding. Where a bill has been made the subject of an order which is not yet executed, as, for example, where a bill has been read a first time, and has been ordered to be read a second time, but has not yet been read in pursuance of the order,[3] a motion to withdraw it may be made, in like manner, at any time, but it must regularly be preceded by a discharge of the order. If a time has also been assigned for the execution of the order, as where a bill has been ordered to be read a second time, on a day named, both orders, — for the second reading, and for the time assigned, if the subjects of separate orders, — must first be discharged.[4]

2335. When a bill, having been proceeded with, has been made the subject of an order, for a particular day, the order is an order of the day for that day; and when read as such, the motion for withdrawal may be made; but, in this case, it is necessary, in the first place, that the unexecuted orders, whatever they may be, as, for example, for the second reading,[5] commitment,[6] or third reading,[7] on that day, should be discharged; and, secondly, that any pending motion for proceeding with the order, as, that the bill be now read the third time,[8] or that the speaker do now leave the chair, should be previously withdrawn;[9] if not withdrawn, the withdrawal of the bill may be moved as an amendment.[10]

2336. When a bill has been committed to a select committee, it may be withdrawn at any time afterwards, on motion, the order for commitment being previously discharged;[11] or, upon its being ascertained by the committee, that the bill ought to be withdrawn, the chairman may be directed to inform the house of the circumstances, and to move that the bill be withdrawn.[12] When a bill is under consideration in a committee of the whole, and it becomes

[1] Comm. Jour. XLVIII. 341, 361; Same, LXIV. 198.

[2] Comm. Jour. XVIII. 426; Same, XIX. 115; Same, XX. 779; Same, XXI. 248; Same, XXII. 414, 443; Same, XLIV. 514.

[3] Comm. Jour. XXXVI. 258, 703; Same, XLVIII. 308, 346; Same, LI. 495; Same, LV. 533, 555, 627.

[4] Comm. Jour. LVI. 504.

[5] Comm. Jour. XXXII. 843; Same, LIV. 551.

[6] Comm. Jour. LVI. 267, 521.

[7] Comm. Jour. LVII. 388; Same, LXX. 355.

[8] Comm. Jour. LXX. 355.

[9] Comm. Jour. LVI. 409.

[10] Comm. Jour. XXXV. 488, 489.

[11] Comm. Jour. XXVI. 692; Same, XLII. 528, 543; Same, LIX. 227, on.

[12] Comm. Jour. XLVII. 714.

apparent to the committee that the bill ought not to proceed, the committee may thereupon report progress, and the proper motions be made in the house for the withdrawal of the bill.[1]

2337. The withdrawal of a bill usually occurs upon the statement of a member, calling the attention of the house to the circumstances; sometimes upon the report of the committee on the bill;[2] and sometimes also upon the petition of the parties interested;[3] but in whatever mode it takes place, the reason for the proceeding is generally entered on the journals; and when the ground for withdrawal is suggested by a member, the entry is, "that notice being taken," or "the house being informed that," &c.

2338. Clauses offered to be added to a bill by way of amendment, or as riders, may be withdrawn, in the same manner as the bill itself, at any time before they have been made a part of it by the vote of the house. If offered on the report, and made a part of the bill before the third reading, they may be left out in that stage, by way of amendment; but, if offered and annexed to the bill, after the third reading, they cannot be withdrawn, nor, as that is the last stage, can they be left out by way of amendment.

2339. A motion for the withdrawal of a bill is sometimes expressed in the form of a request, that leave be granted for that purpose, sometimes in the form merely that the bill be withdrawn. The former seems most proper, when the bill is private, the latter when it is public, in its character; but the effect is the same in both. The motion to withdraw a bill (unlike a motion for leave to withdraw a motion, which cannot be debated, and requires the unanimous consent of the house) is made, debated, and decided upon, like other motions made in the progress of a bill.

2340. When leave is given, or an order made, for the withdrawal, it is usually followed by a motion, which is seldom refused, that leave be granted for the introduction of a new or proper one. Where leave is thus granted for a new bill, the original order of leave remains in force, and is the authority upon which the bill is presented. It is not unusual, however, to name other members, or to add members to those originally named, for the purpose of presenting the bill. Where a bill, which is withdrawn, was not introduced in pursuance of an order of leave, but in some other mode, as, for example, by the report of a committee, or from the other house, the house can, of course, direct the introduction of a new one in such manner as they may think proper.

[1] Comm. Jour. LXVII. 511.
[2] Comm. Jour. XLVII. 714.
[3] Comm. Jour. LIX. 227; Same, LXXIV. 235.

SECTION II. REJECTION.

2341. Opposition to a bill may be manifested in several ways; as by postponing the proceeding upon it to a day beyond the session, which is the usual mode; or by putting a negative upon any of the motions which may be made to forward it in the regular course of business, which is a mode frequently adopted; or by a direct motion to reject the bill altogether, which, as it implies some degree of feeling on the part of the house,[1] is not so common, at least, in modern times. Before the revolution, and for some time afterwards, it was not uncommon to reject bills; but, for the last half century and more, the journals of the commons record only two instances of this proceeding, though in the other house the practice has been more general.[2]

2342. A direct motion to reject may be made at any regular stage, or at any interval in the progress of a bill; as, for example, upon being refused a first reading,[3] immediately after being read a first time,[4] upon being refused a second reading,[5] upon being refused a second reading at the time ordered therefor,[6] immediately after second reading and hearing counsel,[7] upon being refused to be committed,[8] upon being refused to be committed at the time ordered therefor,[9] upon being reported,[10] after considering the report,[11] after being ordered to a third reading.[12]

2343. The motion is usually made, as appears by the above examples, either immediately after some step in the regular progress has been taken, or after a negative has been put upon some one of the proper motions for forwarding the bill, at the time assigned for the purpose; but it may also be made during the interval between any two stages, as for example, when a bill has been read a second

[1] In the reign of Elizabeth, it appears from one entry in the journal, that a bill was rejected and ordered to be torn, Comm. Jour. I. 63; and in the year 1620, a bill, on the motion of Sir Edward Coke, "was rejected and torn without one negative," Comm. Jour. I. 560. The following extract from the Parl. Deb. VI. 248, shows that such manifestations of feeling do not belong exclusively to an early period: "The speaker (Sir Fletcher Norton) protested, before he put the question on agreeing with the lords in their amendment to the corn and game bills, that he was sincerely for throwing them both over the table; and, when they were rejected, he was as good as his word, for he tossed them into the very middle of the house."

[2] May, 354.

[3] Comm. Jour. XXII. 138; Lords' Jour. XXXVIII. 507.

[4] Lords' Jour. XX. 637.

[5] Lords' Jour. XXIV. 23.

[6] Lords' Jour. XXXV. 333.

[7] Lords' Jour. XLI. 485, 487.

[8] Lords' Jour. XXXVIII. 488.

[9] Lords' Jour. XXXIII. 519, 520.

[10] Lords' Jour. XLII. 270, 272, 329.

[11] Lords' Jour. XXXVIII. 588.

[12] Lords' Jour. XXXVIII. 502.

time and ordered to be committed on a day subsequent, it may be rejected on any intermediate day, the order for commitment being first read, on motion, and discharged;[1] and so, on the order of the day being read for proceeding with a bill, the motion to reject may be made at once, instead of a motion to forward the bill, as, for example, on reading the order of the day for the third reading of a bill, a motion may be immediately made to reject it.[2]

2344. The rejection of a bill, though implying a strong expression of opinion, does not differ materially, as to its practical effect, from that of any of the other motions by which the opinion of the house is adversely expressed. Whilst a bill is pending, — and it is in a parliamentary sense pending although postponed in the usual manner, — no other which is the same in substance can be introduced during the same session. The same result follows from the rejection of a bill.

SECTION III. LAYING ASIDE.

2345. A mode of proceeding, somewhat similar in its operation, as between the two houses, to the withdrawal of a bill, in reference to the petitioners for it, or parties interested in it, occurs when a bill is laid aside. This disposition of a bill takes place, when one house sends a bill to the other, which that house cannot proceed upon, consistently with the preservation of its privileges, but which it is nevertheless willing to pass. Thus, if the house of lords passes a bill and sends it to the house of commons, with clauses in it which ought to originate in the latter, the bill is in violation of the privileges of the commons, and cannot be allowed to proceed there as a bill from the lords. But, if it contains nothing objectionable in other respects, and the house of commons would be willing to pass it, if it had originated in that house, the course of proceeding is, to order the bill to be laid aside, — equivalent to a withdrawal, — and to order another precisely similar to be brought in. The latter is then proceeded with and passed, without objection, — having originated in the commons, — and is sent to the house of lords to be there agreed to, as if the other bill had never had any existence. This course is also adopted, when a bill from one house is passed in the other with amendments, which the former cannot entertain consistently with its own privileges, as coming from the latter, but to which it has no other objection. In such a case, the

[1] Lords' Jour. XXXVIII. 146, 262.

[2] Lords' Jour. XXXVIII. 502.

house to which the bill is sent, orders it to be laid aside, and another embodying the amendments to be prepared and brought in, which is proceeded with and passed, as an original bill of the latter house.[1]

2346. A bill may be thus laid aside immediately upon its being introduced, or after it has been proceeded upon, and at any stage, or in any interval, of its progress; as, for example, after being ordered to a second reading,[2] or at the time appointed therefor,[3] or upon the report of the committee upon it;[4] and, in two instances, it appears from the journals, that the motion to lay aside was allowed to supersede a motion that the bill be now read a second time, but the propriety of this course, supposing the entry in the journals accurate, may well be questioned.[5]

2347. A proceeding not unlike the laying aside of a bill, is to resolve to proceed no further with it, without taking any measures for the introduction of a new one. Thus, where a bill from the commons was twice read in the lords, and committed, and the committee reported, "that they had gone through the bill and made some amendments thereunto; but, upon consideration of the whole matter, find several things contained in the said bill unparliamentary and unprecedented, intrenching on the rights and privileges, and derogatory to the honor of the house, and therefore did not think fit to proceed any further in the bill, without having the direction of the house;" it was thereupon ordered, "that this house will proceed no further on consideration of the said bill." [6]

SECTION IV. DROPPING.

2348. When any of the regular proceedings upon a bill has been assigned for a particular day, and thus made an order of the day for that day, as, for example, when a bill has been read the first time, and ordered to be read a second time on a given day, if any thing occurs to prevent the order from being proceeded with on that day, it becomes what is called a dropped order. The most common occasion on which an order drops, is when the house is adjourned by the speaker for want of forty members. The same thing occurs when, for any other cause, the orders of the day are not proceeded with, before the adjournment of the house for the

[1] May, 238.
[2] Comm. Jour. XXXIV. 745, 746.
[3] Comm. Jour. XXXIV. 745, 746.
[4] Lords' Jour. XXIII. 232.
[5] Comm. Jour. XXVI. 758; Same, XXIX. 274.
[6] Comm. Jour. XXIII. 232.

day. Sometimes an order is dropped, in consequence of the adjournment of the house over the day assigned.

2349. In all these cases, the course of proceeding is to take up the business precisely at the point where it was left, or to renew the order for a subsequent day. An order may also be dropped, in consequence of no motion being made for the reading of it, or if read, of no motion being made for proceeding with it. This is a mode usually resorted to, when the parties to a private bill, or the members interested in and having the charge of a public one, desire to abandon it; they can effect their object by simply refraining from making the motions which are necessary to carry it forward. Proceedings thus abandoned are seldom renewed; instances, however, have occurred, in which public or private bills, which have been dropped by their original promoters, in consequence of amendments being introduced by their opponents, have been taken up and carried forward by other members.[1]

CHAPTER TWENTY-FIRST.

OF COMMUNICATIONS BETWEEN THE TWO HOUSES RELATIVE TO THE REASONS OR GROUNDS FOR THE PASSING OF BILLS.

2350. When one house passes a bill and sends it to the other, it offers no inducements or reasons for passing the bill, in order to obtain the concurrence of the latter, other than the statements of such grounds or reasons which appear in the preamble. The facts or reasons there stated, when they are of a public nature, are equally in the possession of the house to which the bill is sent; and the freedom and independence of each branch require that these facts and reasons should be left to exert their proper influence, without further interference.

2351. When a bill has passed in one house, and been sent to the other, the provisions of which bill have been grounded, not upon general notoriety, but upon special facts that are necessary to be proved by evidence, it is usual for the house to which the bill is sent, at any stage of the proceedings, when it thinks proper, either by a message, or at a conference, (usually the former,) to ask infor-

[1] May, 488.

mation of the grounds and evidence upon which the bill, or some particular clause of it,[1] has passed; and this evidence, whether arising out of papers, or from the examination of witnesses, is, in general, immediately communicated.[2]

2352. The right to request, and the obligation to furnish, the grounds and evidence upon which a bill is passed, are restricted to those grounds upon which the passing of the bill is placed by the house in which it originates, that is, to the facts recapitulated or documents mentioned in the preamble, and on which the bill is avowedly founded.[3] When, however, a bill is judicial in its nature, as affecting the legal rights or private property of individuals, the evidence on which it is founded may be requested, and ought to be communicated, even when the bill itself contains no statement of the facts, or states facts the evidence of which does not appear in the preamble.[4]

2353. In order to obtain the desired information, a message is to be sent to the house by which the bill is passed, requesting that house to communicate to the other the evidence on which the former passed a bill entitled, etc., or to communicate a certain document, or papers, particularly specified in the message. On receiving this message, the house may proceed at once to consider it, in which case, if there is no objection to granting the request, the practice is, to send the papers or documents by the messengers; or, a time may be assigned for the consideration of the message, in which case, the messengers are dismissed with the answer, that the house will send an answer by messengers of their own.

2354. If the house, of which the request is made, declines acceding to it, on the ground that the case is not one in which it is the right of the other house to request information, the answer is, that they have taken the message into consideration, but conceive that it has not been the practice of parliament, for the house making the request to desire the evidence upon which the other has passed bills of this nature, and that they think this reason sufficient for not giving any further answer.

2355. If this answer should not prove satisfactory, the other house renews the request, declaring at the same time, that it is according to the practice of parliament, to which the former replies, stating more fully the reasons for declining; as, for example, where the lords requested the commons to communicate the evi-

[1] Comm. Jour. XXXV. 392.
[2] Hats. III. 70, 71.
[3] Parl. Reg. (2), XX. 247, 248.
[4] Hats. III. 70, note.

dence, on which they passed a bill for settling an annuity on the duke of Athol, to which the commons declined to accede, and the lords renewed the request, the commons replied, that as the nature of the bill mentioned in the message was for the express purpose of making a disposition of public money, the commons conceive that the claim asserted in the message is not warranted by the practice of parliament, and doth intrench upon the rights and privileges of the commons, from which they can never depart.[1]

2356. Or the reason may be stated at once, in the first instance; as, for example, where the house of commons, in answer to a request from the house of lords, for the information upon which the former had passed a bill, returned an answer, that they conceive it has not been the practice of parliament for either house to desire of the other the information on which they have proceeded in passing any bill, except where such information has related to facts stated in such bill as the ground and foundation thereof; and that the commons think this reason sufficient for not giving, at this time, any further answer to the message.[2]

2357. In the cases above alluded to, the communications were all made by message. It would seem, however, to be more consonant with the usages of parliament, that, where the communication is for any purpose beyond the merely making or granting the request, especially where the request is declined for reasons stated, it ought to be made by means of and at a conference.

2358. The evidence, thus desired by the one house of the other, usually exists in a form in which it can be at once communicated, as, for example, where the testimony of witnesses has been taken by a committee, and the minutes of it reported and printed; but, where this is not the case, the course is to refer it to a committee to state the matters-of-fact. Thus, where the commons passed a bill, which was sent to the lords, and there read a first and second time, and committed, the lords informed the commons, "that the matters-of-fact suggested in the said bill as the ground and foundation upon which it seems to have proceeded, in the house of commons, so far as relates to certain persons therein named, not appearing sufficiently before the lords," they desired the assistance of the commons, in order to have the state of the said matters-of-fact more fully laid before them. The commons thereupon appointed such members as were of the committee of secrecy, by whom the general subject had been investigated, a committee to state those mat-

[1] Comm. Jour. LX. 462, 471, 497.

[2] Comm. Jour. XLI. 842, 847.

ters-of-fact, upon which the provisions were grounded, which related to the persons in question. The committee made a statement accordingly, which was delivered to the lords, agreeably to their request, at a conference.[1]

2359. In order to determine upon the particular documents or papers to request the communication of, the two houses proceed differently. The votes of the commons being printed from day to day, the lords may have recourse to them, and send for such papers as they read of therein; but the votes of the lords not being printed, and the commons consequently having no such means of information, their only regular course is to appoint a committee to search the lords' journals,[2] which are open to inspection as public records, and, upon the report of the committee, to send for such papers and documents as they think proper.[3]

2360. It is not regular for either house to proceed further than to request, or to communicate, the grounds and evidence upon which a bill has passed; to ask why the house, where the bill took its rise, passed it in such or such a manner, or to acquaint the house to which it is sent, that it has passed unanimously,[4] are objectionable proceedings. It has not, however, been unusual, for either house to remind the other of a bill, which, from its importance, has appeared to deserve greater despatch, than the house to which it was sent seemed inclined to give it.[5]

2361. There is one exception to this rule, of those bills, which, by the custom of parliament, must originate in the one or the other, and not indifferently in either, of the two houses; as, for example, money bills, or bills for the expenditure of public money,[6] which can only originate in the house of commons. In the case of such bills, or clauses of a similar character in other bills, it is not according to the custom of parliament, for the house which passes the bill, although sometimes requested by the other, to communicate the grounds and evidence on which they are passed.[7]

2362. As one house, when it passes a bill, and sends it to the other, gives no reasons, nor can be required to give any, except what appear on the face of the bill; so, neither does the house which amends a bill give any reason for its amendment, nor can properly be required to give any, — every amendment being sup-

[1] Comm. Jour. XIX. 630, 631; Hatsell, IV. 13, and note.

[2] The minutes of the proceedings in the lords are now published from day to day, but it does not appear that the practice above stated has been changed. May, 198.

[3] Hatsell, III. 143, 144, 145.

[4] See Comm. Jour. XVIII. 625, 626.

[5] Hatsell, III. 71.

[6] Comm. Jour. LX. 462, 471, 497.

[7] Hatsell, III. 143, 144, 145.

posed to carry with it its own reason, until it is objected against.[1] But, where additional clauses, containing new provisions, are added to a bill by way of amendment, by the house to which the bill is sent, such additional clauses, it seems, stand upon the same footing in this respect, as a bill; and the house to which the bill is returned, with such clauses, may request to be informed of the grounds and reasons upon which they have been added.

2363. The inconvenience likely to result, in practice, from the rule mentioned in this chapter, is obviated, in part, in this country, by the custom, which prevails in our legislative assemblies, of sending from one branch to the other, with a bill, all the documentary evidence which belongs with it, or upon which it is founded. This practice, which is supposed to be quite general, is in some assemblies, sanctioned by a special rule. A joint rule of congress provides that "each house shall transmit to the other all papers on which any bill or resolution shall be founded."[2] In those cases where testimony is taken, but not preserved in writing, the inconvenience may be partly obviated in those assemblies which proceed by joint committees constituting homogeneous bodies, by the reference of the subject-matter to such a committee. Where this is the case, the oral evidence can be stated by members of the committee, in both branches. In other cases there seems to be no alternative, but to procure the evidence in the manner above stated, or to cause it to be taken over again in the branch to which a bill is sent.

CHAPTER TWENTY-SECOND.

OF THE ROYAL ASSENT, OR APPROVAL BY THE EXECUTIVE.

2364. When bills have been finally agreed to by both houses, the royal assent is necessary, in order to give them, as Lord Hale expresses it, "the complement and perfection of a law;"[3] and, for this purpose, all bills, except money bills, remain in the custody of the clerk of the enrolments in the house of lords. Money bills are informally returned to the commons, after having been agreed to by the lords, and are presented by the speaker. Bills, which have

[1] Hatsell, IV. 4, 5, and note.

[2] Under this rule, the report on a bill, sent from one branch to the other, is not read in the latter, as a matter of course. J. of S. I. 498, 499.

[3] Jurisdiction of the Lords, C. II.

passed both houses, cannot legally be withheld from being presented to the sovereign for the royal assent;[1] which may be signified either by the sovereign in person, or in virtue of a commission to certain lords, issued under the great seal for the purpose.

2365. The royal assent is seldom given in the former mode, except at the close of a session, when parliament is prorogued by the sovereign in person. Certain bills, however, which make provision for the honor and dignity of the crown, are generally assented to in this manner, immediately after they have been agreed to by both houses; such, for example, as bills for settling the civil lists. When the sovereign comes in person to give the royal assent, the clerk assistant of the parliaments waits upon him before he enters the house, reads a list of the bills, and receives his commands upon them. When the assent is to be thus given, (which takes place in the house of lords, both houses being present) the clerk of the crown reads the titles of the bills, and the clerk of the parliaments, first making an obeisance to the throne, signifies the assent of the sovereign thereto, in a form of words which will presently be stated. The assent of the sovereign to each particular bill, as its title is read, is indicated to the clerk by a gentle inclination; though, as already stated, the royal commands with reference to each have previously been given to the clerk assistant.

2366. When the royal assent is to be given by commission, the lord chancellor is notified that a commission is wanted for the purpose. The clerk of the enrolments then prepares two copies of the titles, (each written upon a separate piece of paper,) of all the bills in his custody awaiting the royal assent. One of the copies is for the clerk of the crown to insert in the commission, and the other for the royal inspection before the commission is signed. The commission is directed to several lords by name, and empowers them, or any three or more of them, to give the royal assent to certain bills therein mentioned.

2367. This form of giving the royal assent is sanctioned by a statute of Henry VIII., which declares that the king's royal assent, by letters patent under the great seal and signed with his hand, shall be taken and reputed good and effectual to all intents and purposes. The commission is accordingly signed by the hand of the sovereign, in ordinary cases; but, towards the close of the reign of George IV., it having become painful for him to write, he was authorized by statute to appoint one or more persons, to affix his

[1] Hatsell, II. 339; Lords' Jour. XIII. 756.

signature, in his presence, and upon a verbal command from him, by means of a stamp prepared for the purpose.

2368. In signifying the royal assent by commission, the proceeding is as follows. Three or more of the commissioners, seated on a form between the throne and the woolsack in the house of lords, command the usher of the black rod to signify to the commons, that their attendance is desired in the house of peers to hear the commission read. The commons, thereupon, with their 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 is signified to each by the clerk of the parliaments, in the Norman French language.

2369. Money bills, that is, those which grant a supply, or make an appropriation of money, for the purposes of government, do not, when agreed to by the lords, remain in their custody, to receive the royal assent in the ordinary manner; but are returned informally to the speaker of the commons to be presented by him in person. When, therefore, the commons are summoned and go up to attend the sovereign or the lords commissioners, in the house of lords, the speaker carries the supply bills with him to the bar, and there delivers them into the hands of the assistant clerk of the parliaments for the royal assent. When the sovereign 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 takes care to mention the supplies granted by the commons. When the sovereign is not present in person, these bills are delivered without any speech. The money bills then receive the royal assent before any of the other bills awaiting the same ceremony.[1]

2370. The assent, whether given in person or by commissioners, is expressed in a different form of words to the different sorts of bills. The language, in which the assent to a bill of supply is pronounced, acknowledges the free gift of the commons: *La regne remercie ses bons sujets, accepte leur benevolence, et ainsi le veult.* The form of expression, in giving the assent to a public bill, is, *La regne le veult;* to a private bill, *Soit fait comme il est desirée;* to a petition demanding a right, whether public or private, *Soit droit fait comme il est desirée.* In the case of an act of grace or pardon, which has the royal assent before it is agreed to by the two houses, the clerk says, *Les prelats, seigneurs, et communes en ce present parliament assemblées, au nom de touts vos autres sujets, re-*

[1] May, 208, 372, 426.

mercient tres humblement vostre majestée, et prient a Dieu vous donner en santé bonne vie et longue.

2371. The royal assent may be constitutionally withheld from any bill, in which case, it cannot become a law. The form of words used to express such a denial is, *La Regne s'avisera.* But the necessity of refusing the royal assent is obviated by the strict observance in modern times of the constitutional principle, that the crown has no will but that of its ministers; who only continue to serve in that capacity, so long as they retain the confidence of parliament. This power was last exercised in 1707, when Queen Anne refused her assent to a bill for settling the militia in Scotland.[1]

2372. 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.[2]

2373. When acts are thus passed, the original engrossment rolls are preserved in the house of lords. 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.

2374. The practice in this country, with regard to bills that have been agreed to by the two branches of which our legislative bodies are composed, depends almost entirely upon the rules established by each assembly for itself. The proceedings of congress, in respect to such bills, which take place exclusively in virtue of certain joint rules first adopted in 1794, and which have been imitated extensively in other assemblies, are as follows: When a bill has passed in both branches, having been previously engrossed on paper merely, and not on parchment, it is then to be enrolled on the latter material, by the clerk of the house in which the same originated, with a certificate thereon signed by him, of that fact, and then delivered without any order of commitment, to a committee, called the committee on enrolled bills, for examination by them. This is a joint standing committee, consisting of two mem-

[1] May, 372. [2] May, 373.

bers from each branch, appointed at the commencement of each session, whose duty it is to compare the enrolment with the engrossed bills, as passed in the two houses, and, after correcting any errors they may discover therein, to report the same forthwith to their respective houses.[1] Enrolled bills, after this examination and report, are to be signed in the respective houses, first by the speaker, and then by the president of the senate, and entered on the journal of each house. The committee is then to present the enrolled bills to the president of the United States, for his approbation. They are then to report the day of the presentation, which is to be entered on the journal of each house. The signing of an enrolled bill by the speaker or president is an official act, which can only be done when the house over which he presides is in session, and a quorum is present therein for the transaction of business.[2]

2375. In the greater number of the legislative bodies in this country, the approval of the executive is as necessary to constitute a law, as it is in parliament to have the royal assent, in the manner already described. In the constitution of the United States, and in those of every State in the Union, except in the following eight States, namely, Rhode Island, Delaware, Maryland, Virginia, North Carolina, South Carolina, Tennessee, and Ohio, the intervention of the executive is required to the perfection of every act of a legislative character. In the States above named, no approval of bills by the executive is required, but every act of legislation therein is complete by the concurrence of the two branches of which their legislative bodies are composed. The veto power, as it is called, which, in the English government is, in theory, absolute, and which seems, in modern times, such is the manner in which parliament is at present constituted, not to be exercised at all, is, in this country, qualified and limited only; but everywhere with us, where it exists, it is frequently and freely used, as one of the ordinary functions of government, chiefly on the ground of constitutional objections.

2376. The proceedings on bills, in the legislative bodies of this country, after they have passed both houses, are somewhat different

[1] Mistakes in the enrolment are to be corrected by the committee before they report an enrolled bill; but, in looking over bills for this purpose, they sometimes discern important mistakes which have hitherto escaped detection; and which, upon being pointed out, are at once corrected by general consent. When this takes place, the bill is again examined and reported upon by the committee, and, if it has already been signed, is signed over again by the presiding officers of the two houses. See J. of H. 30th Cong. 1st Sess. 979, 980, 991; J. of S. 30th Cong. 1st Sess. 453.

[2] J. of H. 19th Cong. 1st Sess. 639.

from those above described, at least under those constitutions in which the veto power is established. In our assemblies, the executive approval is not given at stated times, or at the end of the session, at a meeting of the two branches; but bills, and such other papers as require the approval of the executive, are sent to him, as they are passed, and his approval thereof signified and authenticated by his signature; nor for that purpose are they sent to, or do they remain, in one house, in preference to the other, after they have passed both houses, but remain in that branch in which they were last passed, or where they were last agreed to, to be transmitted at once to the executive department. In those States where there is no veto power in the executive, bills which have passed both branches, are authenticated in the usual manner, probably by the signatures of the presiding officers, and deposited in the receptacle or custody appointed by law for the purpose. In the following paragraphs, the subject of the veto power, which, in all the constitutions in which it is inserted, is quite similar, or nearly the same, and the practice in relation to it, are stated and explained.

2377. I. The first requisition for the exercise of this power is, that every bill, including, of course, every instrument intended to have the force of law, which shall have passed both branches, shall, before it becomes a law, be presented to the executive for his approval. The other papers, besides bills, which are required to be approved by the executive, are particularly specified in each constitution. There is no time stated within which bills must be presented to the executive; this may take place at any time after a bill has passed, and before the end of the session; though this matter may be otherwise regulated by rule, or by constitutional provision; and the bill is not passed so long as there remain any amendments to the same, of the other branch, not yet acted upon or agreed to.[1] There is no provision in the veto clause, as to the manner in which bills presented to the executive are required to be authenticated, but they are required for this purpose to be authenticated only in the ordinary manner, which, either by usage, rule, or constitutional provision, is effected by appropriate words and the signatures of the presiding officers. In the following States, in some of which the veto power exists, and in others not, namely, North Carolina, South Carolina, Florida, Georgia, Alabama, Mississippi, Tennessee, Ohio, Indiana, Illinois, Missouri, Arkansas, Texas, and Iowa, it is provided by their several constitutions, that

[1] J. of H. 26th Cong. 1st Sess. 1315.

when bills have passed both houses, they shall be signed by the respective presiding officers thereof.

2378. II. The second requisition of the veto clause is, that if the executive approves the bill thus presented to him, he shall sign it. Mere approval alone, without signing, although the latter is omitted by accident, will not be sufficient.[1] On the other hand, if a bill which has been duly authenticated, as having passed both branches, receives the executive approval, and is signed by him, it will become a law, notwithstanding the agreement of the two branches is certified thereon by mistake.[2] There is no provision as to the time that a bill shall be approved and signed; but from the fact that it can only be disapproved of and returned, while the legislative body is in session, it may fairly be inferred that a bill can be approved and signed only within that time. When a bill has been approved and signed, the legislative body is usually notified of it by message, and the bill, now become an act, is deposited in the place for the purpose appointed by law for the keeping of the records and archives. The approval of a bill should be by the use of some appropriate word or words, accompanied by the signature of the executive magistrate, but not by a statement of his exposition of the meaning of it, or of his reasons for signing the bill. The latter course, though it does not detract from the validity of the bill, is clearly irregular and unconstitutional.[3]

2379. III. The veto clause then provides, that if the executive shall not approve the bill, he shall return it with his objections, to the house in which it shall have originated, within a certain number of days fixed in each constitution; and that if not so returned, the bill shall become a law, in the same manner as if signed by the executive. If a bill is not approved or returned within the time, the legislature ought to be notified by the executive that the bill has become a law without his agency, and the bill itself deposited accordingly. The house, in which a bill originates, is commonly made known by a certificate on it, or by the message with which the same is transmitted; or the executive may send a message to both houses to be informed in which the bill originated. In all the constitutions, except that of Massachusetts, Sundays are expressly excluded from the computation of the interval within which a bill is to be returned, and the day on which it is presented is also to be

[1] J. of H. 18th Cong. 2d Sess. 276, 279.

[2] J. of H. 23d Cong. 2d Sess. 433, 434; J. of S. 23d Cong. 2d Sess. 162.

[3] J. of S. 21st Cong. 1st Sess. 382. See J. of H. 27th Cong. 2d Sess. 1025; Cong. Globe, XI. 712.

excluded from the computation. This interval, in the constitutions of the United States, New York, Pennsylvania, Louisiana, Kentucky, Illinois, Michigan, and California, is fixed at ten days; in that of Mississippi at six; in those of Maine, New Hampshire, Vermont, Massachusetts, New Jersey, Florida, Alabama, Georgia, and Texas, at five days; in that of Missouri at four; and in those of Connecticut, Indiana, Arkansas, Iowa, and Wisconsin at three days.

2380. In all the constitutions above mentioned, it is provided, further, that if the legislature adjourns within the interval therein respectively fixed (or in Vermont within three days) and thus prevents the return of a bill within that time, it shall not become a law. But in those of Maine, Pennsylvania, Louisiana, Kentucky, and Illinois, the bill is to become a law notwithstanding such adjournment, unless it is returned in the first four named States, within three days after the next meeting of the legislatures thereof respectively, and in Illinois, on the first day of the meeting of the general assembly next after the expiration of ten days; in Indiana, the bill is to become a law notwithstanding such adjournment, unless the governor within five days next after shall file the bill with his objections thereto in the office of the secretary of state, who shall lay the same before the general assembly at its next session in like manner as if the bill had been returned by the governor; in Michigan it is provided that the governor may approve, sign, and file in the office of the secretary of state within five days after the adjournment of the legislature, any act passed during the last five days of the session; and in Texas it is provided that every bill presented to the governor one day previous to the adjournment of the legislature, and not returned to the house in which it originated, shall become a law, and have the same force and effect as if signed. When a bill fails of becoming a law by reason of the lapse of time provided above, without its being returned to the house in which it originated, a message is usually sent with the bill to that house, at the commencement of the next session.[1] Sometimes the executive in his answer to the message informing him of the close of the session takes notice of bills detained for further consideration.[2]

2381. IV. The executive having returned a bill to the house in which it originated, it is competent, nevertheless, according to our constitutions, for the legislature to give the bill the force and effect of law, notwithstanding the executive objections to it, by passing

[1] J. of S. 21st Cong. 2d Sess. 13, 31; J. of H. 27th Cong. 3d Sess. 57; Cong. Globe, XVIII. 30.

[2] J. of S. 21st Cong. 1st Sess. 382, 383, 384.

it in the manner and by the majority, required in the constitution. For this purpose, it is provided, in all the American constitutions which contain the veto power in substantially the same terms, that the house to which the bill is returned shall enter the objections on its journal, and proceed to reconsider the bill; that if upon such reconsideration, the yeas and nays being taken thereon, that house shall agree to pass the bill, by the requisite majority, the bill shall then be sent with the objections to the other house, where it shall likewise be in the same manner reconsidered, and that if it there passes by the requisite majority of that house it shall then become a law, notwithstanding the objections of the executive. A word or two on each of the steps suggested by this general analysis will complete what remains to be said on the subject of the executive veto in this country.

2382. (1.) The objections of the executive, to the approval of a bill, are usually sent with the bill to the house in which it originated, by means of a message transmitted in the usual manner. The reading of this message may be deferred, but when once commenced, it cannot consistently with order, be dispensed with, even though it is then printed and accessible to the members in that form.[1] The message, as it contains the objections of the executive to the bill, makes, properly speaking, a part of the communication, and ordinarily belongs regularly with the bill,[2] but it may be separately considered, if thought proper, and may be printed,[3] or referred,[4] without the bill;[5] and in the house of representatives of congress, it has been decided, that if a motion is made to refer the message separately, and the previous question is thereupon moved, the main question is on the motion to refer.[6]

2383. (2.) The first requisition of the constitutions which contain the veto power, on the part of the house, to which a bill is returned with objections, is, that it shall, on the reception of the bill and objections, enter the latter at large on its journal, and proceed to reconsider the bill. According to the literal import of the language, the objections would be required to be, in fact, spread upon the journal before any steps could be taken to reconsider the bill, and this is sometimes done;[7] but it is not necessary, as by the rule of construction and the practice of legislative bodies, the objections

[1] Cong. Globe, XX. 13.
[2] Cong. Globe, XIV. 391.
[3] J. of S. V. 620, 622, 630, 631.
[4] J. of H. 27th Cong. 2d Sess. 1252, 1254; Cong. Globe, XI. 874.
[5] Cong. Globe, XI. 874.
[6] Cong. Globe, XI. 875.
[7] J. of H. VII. 566.

are considered as spread upon the journal, though they are not so in fact when they are first received;[1] it is sufficient if they are entered upon the journal as a part of the proceedings on the bill before they are sent to the other house.

2384. (3.) The house to which a bill is returned with objections, may, thereupon, proceed to reconsider the same at once, or it may assign the consideration thereof for some future time, to which the bill and objections are postponed;[2] or they may be referred to a select committee,[3] or a committee of the whole;[4] or a vetoed bill may be ordered to lie on the table;[5] or the house may adjourn during its consideration;[6] and in the house of representatives of congress, it has been decided that if a motion is made to refer or to postpone the bill, and a motion is thereupon made for the previous question, the main question is on passing the bill notwithstanding the president's objections.[7] In reconsidering a vetoed bill either house, before taking the final question thereon, may institute such preliminary proceedings with regard to the same as it may think proper.

2385. (4.) The question, on passing a vetoed bill, whether from the other branch,[8] or from the executive,[9] is a privileged question, even against a special order for the consideration of a report and resolutions concerning the objections of the executive to the bill in question;[10] that is to say, a motion to proceed to the consideration of the vetoed bill will take precedence of motions to proceed with other bills, on the ground that the provisions of the constitution are entitled to precedence over the rules of the house. If this motion is decided in the negative the ordinary course of business will revive.

2386. (5.) When a vetoed bill, after all the other intermediate proceedings thereon have taken place, comes up for consideration in the house in which it is pending, it is the duty of the presiding officer of that house, without any motion made for either purpose, to state the question on passing the bill, and that the same is to be taken by yeas and nays in the manner required by the constitution under which the proceedings take place. This question is the

[1] Cong. Globe, XV. 483.
[2] J. of S. V. 620, 622, 630, 631.
[3] J. of H. 27th Cong. 2d Sess. 1252, 1254; Cong. Globe, XI. 873.
[4] Cong. Globe, XI. 873.
[5] J. of S. 24th Cong. 1st Sess. 421, 467; J. of H. 27th Cong. 2d Sess. 1252, 1254; Cong. Globe, XI. 873.
[6] Cong. Globe, XI. 873.
[7] Cong. Globe, XIII. 665; Same, XV. 1166.
[8] Cong. Globe, XIV. 396.
[9] Cong. Globe, XI. 905.
[10] Cong. Globe, XI. 905.

same in all cases, namely, shall the bill pass notwithstanding the objections of the executive, and must in all cases be taken by yeas and nays, which must be recorded on the journal. It may be disposed of, either temporarily or permanently, by any of the subsidiary motions, except that of amendment, which, as a veto bill must be passed or rejected as it stands, is not admissible.[1] On any of the motions for disposing of the bill, whether made at the present time or any other, the question thereon is to be taken and decided in the ordinary manner, and by the ordinary majority. The final question on the bill, as stated above, must, on the contrary, be taken in the manner prescribed, and decided by the majority required, usually greater than is required on other questions in each particular constitution.

2387. (6.) This majority is variously expressed in the different constitutions; and, with one exception, which will be presently stated, it is the same in both branches. These constitutional provisions may, however, be all reduced to four classes; first, in the constitution of the United States, and in those of the States of Maine, New Hampshire, Massachusetts, Pennsylvania, Mississippi, New York, Georgia, Texas, Wisconsin, Iowa, and California, the house being duly constituted for the transaction of business, the majority required is that of two thirds of the members present; second, in those of Louisiana, and Michigan, two thirds of all the members elected; third, in those of Vermont and Connecticut, the ordinary majority; and, fourth, in the constitutions of New Jersey, Florida, Alabama, Kentucky, Indiana, Illinois, and Arkansas, the majority required is a majority of all the members elected. In the constitution of Missouri, it is remarkable, that in the house to which a bill is returned with objections, the ordinary majority only is required to pass it, but in the other, it must be passed by a majority of all the members elected to that house.[2]

2388. (7.) If the bill passes in the house to which it is returned by the requisite majority, it is then to be sent to the other, to be there reconsidered, with the objections of the executive, by a message from the former. If, on such reconsideration, the house agrees to pass the bill by the requisite majority, it then becomes a law.[3] The vote on the bill, whether in the affirmative or negative, does

[1] Cong. Globe, XV. 1184.

[2] The intention was probably the same, in regard to both branches, but the language is different.

[3] See the proceedings of the two houses of congress, on the third of March, 1845, in passing a vetoed bill, "relating to revenue cutter steamers." J. of S. 28th Cong. 2d Sess. 262.

not admit of being reconsidered.[1] But a new bill may be offered, if not otherwise objectionable.[2]

2389. (8.) There seems to be no good reason why a bill which has been passed in this manner should not be authenticated by a certificate thereon of the proceedings with relation to the same in each branch, signed by the proper authenticating officers thereof, respectively, and deposited at once without the intervention of the executive, in the place or custody appropriated for the keeping of the laws. But, in one case, it was thought necessary by congress to pass a joint resolution, "that the secretary of the senate be directed to present to the secretary of state, the bill in question, with certified extracts from the journals of the senate and house, showing the proceedings in the two houses of congress respectively on the same bill, after the same had been returned to the senate by the president with his objections thereto."[3]

2390. (9.) When bills have been agreed to, and become laws, in any of the ways above mentioned, that is to say, either by the concurrence of the two branches alone, or by such concurrence, accompanied by the approval of the executive, or by such concurrence, notwithstanding the objections of the executive, they are deposited and kept by the proper officer, appointed by law, or designated by usage, for the purpose, by whom or whose authority, the laws are authenticated and published, from time to time, for the information of the people, and as evidence in courts of justice. This is so generally the case, that the necessity of proving by an authenticated copy seldom occurs.[4]

[1] J. of H. 27th Cong. 1st Sess. 1093, 1095, 1097, 1098; Cong. Globe, XIII. 672.

[2] J. of S. V. 636.

[3] J. of S. 28th Cong. 2d Sess. 262.

[4] For full and accurate information on this subject, which does not properly belong to the plan of this work, see the works on evidence generally, and May, 580, and following.

CHAPTER TWENTY-THIRD.

OF SEVERAL MISCELLANEOUS MATTERS CONNECTED WITH THE PASSING OF BILLS.

2391. This chapter is devoted to the consideration of several topics, which either do not make a necessary part of the proceedings on bills, at any of the regular stages in their progress, or which are quite independent of the progress of a bill, but are too important, in their connection with bills, to be wholly overlooked. These proceedings relate chiefly to the correction of mistakes between the two houses, with regard to the passing of bills; to the reconsideration of votes respecting the same; to the correction of mistakes in declaring and recording the votes thereon; and how far the validity of the proceeding is affected by the want of the usual forms.

2392. If any mistake occurs in the delivery of a message accompanying a bill, which is not discovered until the messengers have returned, the mistake may be corrected by means of a new message, either from the house by which the first was sent, or from the other, suggesting the occurrence of the mistake.

2393. It sometimes happens, where a bill, which is passed in one house, and sent to the other, is there passed with amendments, that the latter are incorrectly engrossed or certified, when the bill is returned to the house in which it originated. Where this is the case, the amending house informs the other of the fact, by message, and either requests a return[1] of the bill and amendments, in order that the mistake may be corrected;[2] or that the clerk of the amending house may be permitted to attend[3] in the other for that purpose. Where a mistake occurs in the engrossment of a bill which is sent by one house to the other, a similar proceeding takes place.[4] Where a bill is sent from one house to the other, without the signature of the clerk of the amending house, the defect is suggested by a message from the house to which the bill is sent, and the clerk of the former is thereupon allowed, on message for the purpose, to

[1] J. of H. I. 520; Same, VII. 356; Same, 14th Cong. 1st Sess. 549; J. of S. 14th Cong. 1st Sess. 357; Cong. Globe, XII. 390.

[2] In one case, where an amendment, which was not, in fact, adopted, was improperly certified, the mistake appears to have been corrected, by the amendment being disagreed to. J. of H. I. 267.

[3] J. of S. 27th Cong. 3d Sess. 283.

[4] J. of H. 27th Cong. 3d Sess. 520; Same, 25th Cong. 2d Sess. 1244.

affix his signature to the bill at the clerk's table of the latter;[1] or the bill may be sent to be attested.[2]

2394. Where a bill is sent from one house to the other by mistake,[3] or is wanted in the originating house for the purpose of reconsideration,[4] or for any other purpose,[5] a message is sent from the former requesting its return.

2395. In all the above-mentioned cases, in which one house sends to the other for the return of a bill, the message is considered by the house to which it is sent, and the bill ordered to be returned, at the first convenient opportunity, without formally rescinding any of its former votes[6] with relation to the bill. When a bill, returned in this manner, is received back, it is begun again as a new bill.

2396. It is a general rule, that it is not competent for either house, or any of its committees, to proceed upon a bill or other paper which is not in its possession; and in such case, therefore, when a bill,[7] joint resolution,[8] or series of amendments,[9] from the other branch, is accidentally lost or mislaid, the house, to which the same is sent, may request of the other, by message, a certified copy of such bill, resolution, or amendments, and this request is never refused; but if the bill or other paper in question is of the same house, and is there referred to a committee of the whole, the committee, on reporting the fact that the paper referred to it is lost or mislaid, or that it has been sent to be printed, and is not likely to be returned in season, may be deferred,[10] or the committee may proceed upon a copy furnished by a member.[11]

2397. The proceedings on a bill, at any stage of its progress, may be interrupted, by its being ordered to lie on the table; and in this case, when the consideration of the bill is resumed, it is taken up at the precise point at which it was suspended.[12]

2398. The distinction between public and private bills, which, in parliament, leads to the separate consideration of the latter, upon a distinct system, is recognized in all our assemblies,[13] in which it is

[1] J. of H. 25th Cong. 2d Sess. 254.

[2] J. of S. 25th Cong. 2d Sess. 133.

[3] J. of S. 25th Cong. 1st Sess. 375; Same, 30th Cong. 2d Sess. 291; Same, 1st Sess. 170.

[4] J. of H. 28th Cong. 2d Sess. 554, 555.

[5] J. of H. 30th Cong. 1st Sess. 404, 972; J. of S. 32d Cong. 1st Sess. 472.

[6] J. of S. 23d Cong. 1st Sess. 375; Same, 25th Cong. 2d Sess. 133; Same, 27th Cong. 1st Sess. 241, 246; Same, 3d Sess. 268.

[7] J. of S. 19th Cong. 2d Sess. 131; J. of H. 32d Cong. 1st Sess. 1026; J. of S. 32d Cong. 1st Sess. 592.

[8] J. of H. 32d Cong. 1st Sess. 348; J. of S. 32d Cong. 1st Sess. 209, 211.

[9] J. of H. IX. 521, 523.

[10] J. of H. IX. 339.

[11] Cong. Globe, IX. 169.

[12] J. of H. I. 241, 242, 245.

[13] Whether a bill belongs to the one class or the other, is a question of order. Cong. Globe, XII. 183; Same, XIII. 636.

attended, in a greater or less degree, according to the character of each assembly, with corresponding differences in the proceedings. Among these differences, one of the most common is the passing of an order, on the report of a committee or otherwise, requiring the parties interested in the bill, or applying for it, to give notice of such bill or application in the manner pointed out in the order, either to all persons generally, or to particular persons named, requiring them to appear, on a day fixed, and show cause, if they have any, why the application should not be granted.[1] In the mean time all further proceedings are, of course, suspended.

2399. It is not consistent, as we have seen, with the ordinary practice of parliament, for one house to inform the other by what number a bill passes;[2] yet where a bill or other measure passes without a dissenting vote, it is allowable to insert that fact in the attestation;[3] and it is not disrespectful in one house towards the other, to recommend the bill, as one of great importance, to the consideration of the house to which it is sent.[4] For the same reason, if a bill, sent by one house to the other, is there apparently neglected, the first house may remind the other of it by message.[5] So one house may be reminded by the other of the report of a committee of conference on the disagreeing votes of the two houses concerning a bill.[6]

2400. When a bill, sent from one house to the other, is of the same title, or for the same purpose, with a bill of the other already pending in that branch, the course is, as one bill only is necessary to be passed, to refer them both to the same committee, and, upon their report, to reject the one and pass the other.[7] The bill passed may ordinarily be amended, if necessary, by provisions taken from the other;[8] but in the house of representatives in congress, it is provided, by rule, that no bill shall be amended by the annexation or incorporation of any other bill pending before the house. The operation of this rule, however, may be prevented, by a slight change of phraseology.[9]

2401. Amendments, which are merely the necessary consequence of another and principal amendment, cohere with it, and are dis-

[1] J. of S. II. 78, 80.

[2] Ante, § 2360.

[3] Parl. Reg. XV. 238.

[4] Jefferson's Manual, Sec. XLVII.

[5] Jefferson's Manual, Sec. XLVIII.; Cong. Globe, XV. 1084. Mr. Jefferson remarks, that if this apparent neglect "be mere inattention, it is better to have it done informally, by communications between the speakers, or members of the two houses."

[6] J. of S. 23d Cong. 2d Sess. 239; Reg. of Deb. XI. Part 2, 1661.

[7] J. of H. VIII. 651; Same, 14th Cong. 2d Sess. 453, 454, 455.

[8] Reg. of Deb. IV. Part 1, 631.

[9] Cong. Globe, XIV. 85.

posed of, as matters of form only, by a vote on the principal amendment; thus, where the senate of the United States adopted an amendment to a bill from the house, relating to the apportionment of representatives, changing the ratio of representation, and other amendments in subsequent clauses, changing the numbers of the representatives to be elected, accordingly, it was held, in the house, that the latter were consequent only upon the former, and as such, might be treated by the clerk as merely matters of form, without any specific vote thereon;[1] but this principle does not extend to errors, which are merely clerical, and which must still be corrected by motion and vote only.[2]

2402. It sometimes happens that the vote on a bill is incorrectly announced, either in consequence of some error in the computation,[3] or in the record[4] of the vote, and that the error is afterwards discovered, or the mistake corrected, and the true result ascertained; as, for example, that an amendment reported by a committee on the bill was adopted,[5] or that the bill was not ordered to lie on the table,[6] or that the bill passed;[7] when, in point of fact, the amendment was not adopted, or the bill was ordered to lie on the table, or that it was rejected. In these cases, at whatever distance of time the discovery is made, or the correction takes place, the subsequent proceedings, with reference to such bills, are null and void; and the bill stands before the house for its action thereon, if any is necessary or expedient, precisely as if the vote had been correctly announced when it was taken. Thus, in one of the above-mentioned cases,[8] the house having ordered the bill to be engrossed, after the vote on the amendment had been declared, and before it had been corrected, it was held, in the house of representatives of the United States, that the proceedings commenced at that point, and that the house was entitled to a new vote on the engrossment. In several of the cases cited, it was held by the same house, that a motion to reconsider could only be made by one who voted with the prevailing party, and that this motion must be made within the time limited by the rules and orders, reckoned from the time when the vote was given, and not from the time when the result was correctly announced.

[1] J. of H. 27th Cong. 2d Sess. 965.

[2] Cong. Globe, VII. 28.

[3] J. of H. 31st Cong. 1st Sess. 1436; Same, 2d Sess. 171; Cong. Globe, XV. 856; Same, XXI. 1786.

[4] J. of H. 26th Cong. 2d Sess. 31, 32; Same, 30th Cong. 1st Sess. 1079, 1080, 1081.

[5] J. of H. 30th Cong. 1st Sess. 1079, 1080, 1081.

[6] J. of H. 31st Cong. 2d Sess. 171.

[7] J. of H. 31st Cong. 1st Sess. 1436; Cong. Globe, XV. 856; Same, XXI. 1786.

[8] J. of H. 30th Cong. 1st Sess. 1079, 1080, 1081.

2403. A form of legislation, which is in frequent use in this country, chiefly for administrative purposes of a local or temporary character, sometimes for private purposes only, is variously known, in our legislative assemblies, as a joint resolution, a resolution, or a resolve. This form of legislation is recognized in most of our constitutions, in which, and in the rules and orders of our legislative bodies, it is put upon the same footing, and made subject to the same regulations, with bills properly so called. In congress, a joint resolution, which is the name given in that body to this kind of legislation, is there regarded as a bill.[1]

2404. It is not uncommon, after a bill has been passed through all its regular stages in either house, for that house to discover, that an amendment to the bill has been improperly adopted or rejected, and to desire a correction of the erroneous vote. This can only be done in parliament, if at all, ordinarily by means of a new bill. But, in our legislative assemblies, as the regular stage for amending the bill has passed, the correction can only take place by unanimous consent, or if objection is made, by a series of reconsiderations. This is the method usually resorted to. Thus, if the committee to whom a bill is referred after the second reading, report the same with an amendment, which is improperly adopted or rejected, and the bill is thereupon read a third time, and passed, and it is then discovered that the vote on the amendment is incorrect, and a correction thereof is desired before the bill passes. In order to accomplish this, a motion is made to reconsider the vote, by which the bill passed, and this being decided in the affirmative, the question then recurs on passing; and this motion being decided in the negative or withdrawn, a motion is then made on which similar proceedings take place, that the vote on ordering the bill to a third reading be reconsidered. The stage at which the amendment was voted upon, being thus reached, the mistake may be corrected by means of a reconsideration; and the mistake being corrected, the bill is then again passed through all its regular stages. The only difficulty likely to be encountered in this course of proceeding occurs, when the previous question has been moved upon the bill and sustained at any one of its stages. When the vote therefore has been reached, it may be reconsidered like any other; but the question thereupon recurs on the motion for the previous question, which, in order to accomplish the end in view, must be withdrawn; inasmuch as a negative decision of it will

[1] J. of H. 32d Cong. 1st Sess. 679; Cong. Globe, XII. 384, 385.

postpone the bill for that day, and an affirmative will compel the house to take the question, on which it is moved, immediately, and without alteration.

2405. It remains to be seen in what manner and to what extent the passing of bills is affected in this country, by constitutional provisions; in reference to all which it may be stated generally, that those which require the observance of certain formalities are equally imperative with those which withdraw certain topics altogether from ordinary legislation; and that it is competent in the one case as well as in the other, for the courts of law to set them aside for unconstitutionality. The American constitutions contain many provisions on this subject; which, as it would take too much space to notice in detail, may all be arranged in four different classes. 1. Provisions, which withdraw certain topics altogether from ordinary legislation; one of the most common of which is in express terms that no law shall be passed impairing the obligation of contracts, and it is implied, in every constitution, that no law shall be passed to alter its form, or which is repugnant to its substance. 2. Provisions which require the observance of certain formalities in the passing of all laws. The constitution of New York contains a good illustration of the provisions of this class. It declares that "no bill shall be passed unless by the consent of a majority of all the members elected to each branch of the legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal." 3. Provisions, which declare that no bill of a particular description or for a given purpose shall be passed but with certain formalities. The constitution of Rhode Island, provides that when bills are presented in either house, for the creation of certain corporations, they shall be continued, and public notice given thereof, in the mean time, until a new election of members shall have taken place; the constitution of Delaware provides, that no act of incorporation, except for certain purposes, shall be enacted, which does not contain a reserved power of revocation by the legislature, and in many of the constitutions it is required, that laws for particular purposes shall only pass by certain majorities as, in the last-mentioned State, no act of incorporation can be passed without the concurrence of two thirds of each branch. 4. Provisions, which require that bills of a certain description shall originate in one house, in preference to the other, of which, the most important is that already spoken of, revenue bills.

2406. In determining whether a given act is constitutional, or

whether it is inoperative, as contravening some of these constitutional provisions, courts of justice proceed in different manners, according as the act in question belongs to one or another of the above-mentioned classes. In determining whether the act belongs to the first class, its internal contents only are to be considered; in determining whether the required formalities have been complied with, the internal contents of the act ordinarily furnish no evidence, but the inquiry must be extraneous altogether; and, in determining whether the act in question comes under the third and fourth classes respectively, both these sorts of inquiry must be combined; first: it must be determined, from the internal character of the act, whether it is of the particular description specified; and, second, if so, whether the requisite formalities have been complied with. In regard to the requisition of certain formalities, four remarks may be made: first, that if no peculiar formalities are required, the authentication of the act, by the signatures of the presiding officers, is only requisite; second, the publication of the act in question, by competent authority among the laws, is, at least, presumptive evidence that it was passed with the requisite formalities; third, there seems to be no good reason why the formalities required should not appear on the bill itself, or in the attestation at the end; but, fourth, if the formalities required do not appear in this manner, they can only be proved or disproved, in the absence of a law for the purpose, by the testimony of the proper officer, accompanied by his book of records.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART EIGHTH.

OF THE PASSING OF BILLS.

SECOND DIVISION.

PRIVATE BILLS.[1]

2407. THE nature of private bills, as distinguished from public, has already been explained; and it has also been seen, that the latter are so far judicial in their character, that the proceedings with reference to them frequently involve the exercise of judicial inquiry and determination. There are cases, indeed, in which the interests of individuals are not adversely concerned, but, in which, the passing of a private bill simply confers a benefit upon the party petitioning, without injuriously affecting any one, as, for example, a bill to naturalize or to change the name of an individual; but, in general, private bills are of such a nature, that they do or may affect either individuals or the public in an injurious manner.

[1] In preparing the following account of the proceedings in the two houses of the British parliament, in the passing of private bills, I have availed myself, to the fullest extent, of the treatise of Mr. May; to whom I desire, here, to acknowledge my great obligations. In adapting the matter of his third book to my purposes, I have, in many instances, condensed and abridged; in others, thrown it into a somewhat different arrangement; and, in other cases, I have not scrupled (after the manner of the compilers of law-books) to make literal extracts, sometimes, with slight verbal alterations.

2408. In order to protect the interests, public or private, which may thus be affected, the proceedings with reference to private bills, besides being in general similar to those which take place with reference to public bills, are nevertheless partly judicial in their character, and are differently conducted in several important respects, chiefly by the addition of certain proceedings which do not occur in the case of public bills. The persons, for whose benefit a private bill is introduced, appear as suitors for it; while those who apprehend any injury from its provisions, are admitted as adverse parties. The proceedings are, in some respects, assimilated to those of courts of justice; and various preliminary notices are required to be given and proved, and conditions to be observed. If the parties interested do not sustain the bill in its progress, by pursuing the requisite forms and regulations, it will not be forwarded by the house in which it is pending; and if abandoned by the parties, and no others undertake to prosecute it, the bill will be lost, however sensible the house may be of its value. Fees are also required to be paid by every party promoting or opposing a private bill, or petitioning for or opposing any particular provision. The solicitation of a bill in parliament is so far regarded by courts of equity as an ordinary suit, that the promoters of a bill have been restrained by injunction from proceeding with it, on the ground, that its object was to set aside a covenant; and parties have been restrained, in the same manner, from appearing as petitioners against a private bill pending in the house of lords. Such injunctions are justified, on the ground, that they act merely upon the person of the suitor, and do not interfere with the jurisdiction of parliament; which would not be true in the case of public bills.[1]

2409. This union of judicial with legislative functions, in the passing of private bills, is not confined to the forms of proceeding, merely, but is equally manifest in the inquiries and decisions of parliament upon the merit of such bills. As a court parliament adjudicates upon the individual interests involved in a private bill; while, in its legislative capacity, it takes care, that individual shall not be promoted at the expense of public interests. However much the interests of the promoters of a private bill may be advanced by its success, yet if it is likely to prove hurtful to the community, it will be rejected as if it were a public measure, or qualified by restrictive provisions not solicited by the parties. In order to secure this protection to the public interests, the chairman of

[1] May, 488, 489.

committees of the whole in the lords, and the chairman of the committee of ways and means in the commons, are intrusted with the peculiar care of unopposed private bills, and with the general revision of all other private bills. The agency of different government boards is also brought in aid of the legislature for the same purpose. But while private bills are thus subjected to a variety of peculiar proceedings, yet, in every separate stage, when they come before either house, they are treated precisely as if they were public bills. They are read as many times, and similar questions are put, except when otherwise specially directed by the standing orders; and the same rules of proceeding and debate are maintained throughout.[1] The differences above alluded to it is proposed now to describe. But before entering upon the description, it will be convenient to give an account of what may be called the parliamentary machinery, by means of which these peculiarities of proceeding are conducted. The proceedings with reference to private bills are so nearly the same in both houses, that in order to give an idea of them, it will be sufficient to present a sketch of their progress in the first place in the house of commons, and afterwards to point out some of the principal differences between the proceedings in that and in the other branch. This course will be the more convenient also, from the fact, that, inasmuch as by the privileges of the house of commons, every bill which involves any charge or burden upon the people, by way of tax, rate, toll, or duty, must be first brought into that house, much the greater number of private bills, being of that character, are necessarily passed first by the commons. Besides these, there are others, which, though they may originate in either house, are generally first solicited in the commons. Those private bills, which must or generally do originate in the house of lords, such as naturalization, name, estate, and divorce bills, are few in number. In what follows, therefore, the house of commons alone is always to be understood as referred to, unless the house of lords is expressly mentioned, or embraced in the terms used.

2410. In pursuance of this general plan, the passing of private bills will be treated in the seven following entitled chapters, namely: — I. Of the standing orders and proceedings peculiar to the hearing of private bills; II. Of the presentation and reference of the petition and proceedings thereon; III. Of the bringing in and first and second reading of a private bill; IV. Of the com-

[1] May, 489, 490.

mitment and proceedings in committee; V. Of the report of the committee and proceedings thereupon; recommitment; third reading; passing; amendments between the two houses; VI. Of the differences in the modes of proceeding between the two houses; VII. Of private bills after receiving the royal assent.

CHAPTER FIRST.

OF THE STANDING ORDERS AND PROCEEDINGS PECULIAR TO THE PASSING OF PRIVATE BILLS.

SECTION I. NOTICES.

2411. In order to give due notice, both to the public, and to parties who may be individually interested in private bills of a local or general character and operation, certain public and personal notices are required to be previously given of intended applications for leave to introduce such bills. For this purpose, the standing orders of both houses, which, in reference to this subject, have been gradually assimilated to each other, have arranged those bills, concerning which notices are required, into two classes, in reference to each of which different forms of notices are required. The second class consists of bills for making, maintaining, varying, extending, or enlarging any aqueduct, archway, bridge, canal, cut, dock, ferry, (where any work is to be executed,) harbor, navigation, pier, port, railway, reservoir, sewer, street, tunnel, turnpike, or other public carriage road, waterwork, and of bills for making and maintaining an act for drainage, being a new work, where it is not provided in the bill, that the same shall not be of more than eleven feet width at the bottom. The first class may be said to include bills of every description not embraced in the second.[1] In regard to some bills, it is also required, that plans of what is proposed to be done, should be previously prepared and deposited where parties interested can have access to them. Thus, when application is to be made to

[1] May, 495, 496.

parliament for leave to introduce a bill for the construction of a railroad, the standing orders require that a plan of the road should be deposited with the clerk of the peace for each county, in which the road is proposed to be made. In some cases, it is required, that estimates of the expense of contemplated work should be previously made, and some portion thereof deposited by the subscribers. Various other preliminary conditions, which it would be impossible and unnecessary to enumerate, are also required by the standing orders to be observed, with regard to different kinds of bills.

SECTION II. PARLIAMENTARY AGENTS.

2412. Parties interested in private petitions or bills are represented in their attendance upon parliament by a class of official persons, denominated parliamentary agents, analogous to attorneys in courts of justice, by whom all the proceedings relative thereto out of the house are conducted, and by means of whose agency the parties are brought into communication with individual members. The agents are personally responsible to the house for the observance of all the rules, orders, and practice of parliament, and for the payment of all fees and charges.

2413. Before any person is allowed to act in this capacity, he must subscribe a declaration before one of the clerks in the private bill office, engaging to observe and obey all the rules of the house, and to pay all fees and charges when demanded, and, if required, must enter into a recognizance in the sum of £500, for the performance of his duty in respect to such payment. He is then registered in a book kept in the private bill office, and is thereupon entitled to act as a parliamentary agent. It is deemed contrary to the law and usage of parliament, for any member of the house of commons, to engage either by himself or by a partner, in the management of private bills before either house, for pecuniary reward; and the same prohibitions apply to the clerks and other officers of the house. It is provided, also, by the standing orders, that 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, or be guilty of any wilful violation of the sessional standing orders of the house, shall be liable to an absolute or temporary prohibition to practise as a parliamentary agent, at the pleasure of the speaker.

SECTION III. PRIVATE BILL OFFICE.

2414. In order to facilitate the proceedings upon private bills, and, at the same time, to protect the public and parties adversely interested, an office has been established, denominated the "private bill office," for the transaction of much of the business relating to private bills, which occurs out of the house. In this office a register is kept, which is open to public inspection, and in which all the proceedings are registered, from the presenting of the petition to the passing of the bill.[1] The entries in this register specify briefly each day's proceeding before the examiners or in the house, or in any committee to which the bill may be referred; the day and hour on which the committee is appointed to sit; the day and the hour to which it may be adjourned; and the name of the committee clerk. In this office, all the papers of every description, relative to the proceedings on a private bill are filed; and all the notices of proceedings to be instituted are given.

SECTION IV. EXAMINERS OF PETITIONS.

2415. Previous to the year 1846, a select committee on petitions for private bills was appointed at the commencement of each session, consisting of forty-two members, whose business it was to inquire and report, in reference to the several petitions referred to it, whether the notices and other preliminary proceedings required by the standing orders, before application was made for a bill, had been regularly given and complied with. This committee, in order to facilitate its proceedings, was authorized to divide itself into subcommittees, consisting of not less than seven members each, among whom the petitions referred to the committee were distributed for examination. The quorum of the committee was five in opposed, and three in unopposed cases. Since 1846, the functions of these committees have been transferred to, and performed by, two examiners of petitions, not members, appointed by the speaker, in pursuance of standing orders for that purpose.

[1] Notices in relation to private business are not given by a member, or entered in the order book, like those relating to public business, except in the case of some special proceeding; but are required to be delivered at the private bill office, at specified times, by the agents soliciting the bills. They are also printed with the votes.

SECTION V. STANDING ORDERS COMMITTEE.

2416. A committee, connected with the proceedings on private bills, is also appointed at the commencement of each session, which is called the standing orders committee, consisting of eleven members, five of whom are a quorum. It is the office of this committee, upon the report of the examiners of petitions, that the standing orders have not been complied with, in a particular case, to determine and report whether they ought or not to be dispensed with; 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, as to giving notices, publishing advertisements, and depositing plans, when such conditions seem proper.

SECTION VI. COMMITTEE OF SELECTION.

2417. A second committee, relative to private bills, called the committee of selection, is also appointed at the commencement of each session, consisting of the chairman of the standing orders committee, who is *ex officio* the chairman thereof, and of four other members, nominated by the house, three of whom are a quorum. The function of this committee, as its name imports, is the selection and appointment, according to certain rules, which will be adverted to hereafter, of the committees on private bills.

SECTION VII. CHAIRMAN OF THE COMMITTEE ON WAYS AND MEANS; COUNSEL TO MR. SPEAKER; GOVERNMENT BOARDS.

2418. It has recently been made the duty of the chairman of the committee of ways and means, assisted by Mr. Speaker's counsel, who is not a member, to examine all private bills, whether opposed or unopposed, and to call the attention of the house, and also if he thinks fit, of the chairman of the committee on every opposed private bill, to all points which may appear to him to require it; and, in the case of unopposed bills, he is also to report any special circumstances. To facilitate this examination, the chairman and counsel are required to be furnished with copies of the original bill, and also of the bill as proposed to be submitted to the committee. If a bill is returned from the lords with amendments, to which

amendments are proposed to be moved, the latter are also required to be referred to the chairman and counsel.[1]

2419. The different public boards and government departments are also employed in the supervision of private bills. The commissioners of railways suggest such amendments in railway bills, as they think necessary for the protection of the public, or for the saving of private rights. The secretary of state for the home department exercises a similar supervision over turnpike-road bills. Where tidal lands are proposed to be interfered with, the lords commissioners of the admiralty require protective clauses to be inserted. Where crown property is affected, the commissioners of woods and forests have the bill submitted to them. The board of trade offer suggestions in reference to bills affecting trade, patents, shipping, and other matters connected with the general business of that department. Bills relating to the sewerage of towns are considered by the board of health; and those which affect the revenue are brought to the notice of the treasury and other revenue departments.

SECTION VIII. TIME FOR PROCEEDING WITH PRIVATE BILLS.

2420. The time appropriated 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. Every afternoon, a quarter of an hour before the time appointed for the speaker to take the chair, a list, called the "private business list," is placed on the table of the house, on which those members enter their names, who have charge of any private petition or bill, in reference to which a motion is to be made; and their names are called by the speaker in the order in which they appear on the list.[2]

SECTION IX. CONDUCTING OF THE PROCEEDINGS.

2421. Every form and proceeding out of the house, in conducting a bill, is managed by a parliamentary agent, or by officers of the house; within the house no order can be obtained, but by a motion made by a member, and a question proposed and put or supposed to be put in the usual manner from the chair. Two members are generally requested by their constituents, or by the parties, to un-

[1] May, 526, 527, 556.

[2] May, 511.

dertake the charge of a bill;[1] they receive notice from the agents, when they will be required to make particular motions, of which the forms are prepared for them; and they attend in their places, at the proper time, for that purpose. In ordinary cases, the motion is merely formal, preliminary to the usual order of the house; but whenever any unusual proceeding becomes necessary, notice is required to be given of the motion, which is afterwards to be made in the usual manner.[2]

SECTION X. TIME FOR PRESENTING PETITIONS.

2422. All petitions for private bills are required, by a sessional order, to be deposited in the private bill office, on or before the 31st of December, before the commencement of every session of parliament; 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 deposit a petition for the bill, and stating and explaining the peculiar circumstances, which account for the delay, and justify the application for a departure from the standing orders. The petition is referred to the standing orders' committee, and, if their report is favorable to the application, leave is given to present the petition.[3]

SECTION XI. PRIVATE BILLS NOT TO BE BROUGHT IN, BUT UPON PETITION.

2423. It is an express standing order, in each house, that no private bill shall be brought in otherwise than upon petition. But to this order, in the house of lords, bills for reversing attainders, — for the restoration of honors and lands, — and for restitution in blood, are exceptions. These bills 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. The enforcement of the order depends, of course, upon the house, and may be waived, if the house thinks proper. Sometimes it happens, that a private bill is introduced and proceeded with as a public bill, and, in this case, on the fact being pointed out to the house, the bill

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

[2] May, 512, 513.

[3] May, 500, 520.

is withdrawn. Sometimes, however, when a bill of a private nature is brought in as a public bill, without the previous presentation of a petition, it is allowed to proceed, subject to all the regulations prescribed for the conducting of private bills, — to the proof of notices and other precedent conditions, — and to the payment of fees. Bills of this description are generally for carrying out public works in which the government is concerned.[1]

CHAPTER SECOND.

OF THE DEPOSIT, PRESENTATION, AND REFERENCE OF THE PETITION, AND PROCEEDINGS THEREON.

2424. Having thus explained what may be called the parliamentary machinery relative to the proceedings upon private petitions and bills, it is proposed now to give a brief account of those proceedings, and of the practice relative to private bills, in the order in which they occur. For this purpose, the proceedings and practice of the house of commons will be first stated, and afterwards some of the principal points in which there are differences between the proceedings and practice of the two houses.

2425. The party or parties interested in procuring the passing of a private bill, having performed all the preliminary conditions as to notices, etc., application for leave to bring in the bill is made to the house by a petition, which must be signed by the parties, or some of them, who are suitors for the bill. Where the standing orders require any document to be deposited in the private bill office, before the petition can be presented, such documents should be deposited accordingly, and a receipt therefor indorsed on the petition. These preliminaries having been duly observed, the agent of the petitioners deposits their petition, with a printed copy of the proposed bill annexed, in the private bill office, on or before the 31st day of December, previous to the commencement of the session.

2426. When all the petitions for private bills have been thus deposited, a general list of them is made out, on which each is numbered; and when the time for depositing documents, and comply-

[1] May, 514.

ing with other preliminary conditions, has elapsed, if it appears that the promoters have neglected to comply with any of them, parties adversely interested may then complain of such non-compliance, by means of memorials drawn up for the purpose, and deposited in the private bill office, according to the position of the petition for the bill to which they relate, on the general list. Upon such a memorial, duly deposited in the private bill office, the standing orders provide, that any parties may appear and be heard before the examiner, provided the matter complained of is specifically stated in the memorial; otherwise, the memorialists are not entitled to be heard.[1]

2427. The memorials are addressed to the examiner of petitions for private bills, and are prepared in the same form, and subject to the same general rules, as petitions addressed to the house. When the time for depositing them has expired, the opposed and unopposed petitions are distinguished in the general list, and the petitions are set down for hearing before the examiners, in the order in which they stand in the general list, precedence being given, whenever it may be necessary, to unopposed petitions. The public sittings of the examiners, of which due notice is given, commence on the 25th of January, being generally a few days before the meeting of parliament.[2]

2428. In order to facilitate the examination of unopposed petitions, the daily lists of cases set down for hearing before each of the examiners are divided into opposed and unopposed, and the latter are placed first on each day's list, and first disposed of before proceeding to the others.

2429. If the promoters of a petition do not appear, when their petition comes on to be heard, the examiner is required to strike off the petition from the general list. In such a case, the petition cannot afterwards be reinserted on the list, except by order of the house; and if the promoters still desire to proceed with their bill, they must present a petition to the house, praying that the petition may be reinserted, and explaining the circumstances under which it was struck off. The petition being referred to the standing orders committee, they determine, upon the statement of the parties, whether the promoters have forfeited their right to proceed, and will report to the house accordingly. If the promoters are allowed to proceed, the petition is reinserted in the general list, the usual notice given by the examiner, and the case heard by him at the appointed time.

[1] May, 504.

[2] May, 500, 501, 502.

2430. When a petition is called on, the agent soliciting the bill, if the case is proceeded in, appears before the examiner with a written statement of proofs, showing all the requirements of the standing orders applicable to the bill, which have been complied with, and the name of every witness opposite each proof who is to prove the matters stated therein. At this time, also, if a petition is opposed on the ground, that the standing orders have not been complied with, the memorialists are required to enter their appearances upon each memorial.

2431. In the mean time, the formal proofs, as they are termed, proceed generally in the same manner both in unopposed and opposed cases. Each witness is examined by the agent, and the affidavits and other necessary proofs produced by him, in the order in which they are set down in the statement; the examiner, also, requiring such other proofs and explanations as he may think fit, to satisfy him that all the orders of the house have been complied with. The standing orders provide, that the examiner may admit affidavits in proof of such compliance, unless, in any case, he shall require further evidence.[1]

2432. In an unopposed case, if the standing orders have been complied with, the examiner at once indorses the petition accordingly. If not, he certifies, by indorsement on the petition, that the standing orders have not been complied with, and also reports to the house the facts upon which his decision is founded, and any special circumstances connected with the case. In an opposed case, when the formal proofs have been completed, the examiner proceeds to hear the memorialists, who, ordinarily, take no part in the proceedings upon the formal proofs.[2]

2433. When the agent for a memorial rises to address the examiner, the agent for the bill may raise preliminary objections to his being heard upon the memorial, on any of the grounds referred to in the standing orders, or on account of any violations of the rules and usages of parliament, or other special circumstances. These objections are distinct from any subsequent objections to particular allegations. If no preliminary objection is made, or if it is overruled, the agent proceeds with the allegations in his memorial. Preliminary objections may be raised to any allegation; as that it alleges no breach of the standing orders; that it is uncertain or not sufficiently specific; that the party specially affected has not signed the memorial; or that he has withdrawn his signature.

[1] May, 503.

[2] May, 503, 504.

2434. The allegations of a memorial are to be confined to breaches of the standing orders, and are not allowed to raise any question upon the merits of the proposed bill, which are to be subsequently investigated by parliament, and by committees of either house. Thus it may be objected, for example, that a subscription contract is not valid, or that the subscribers do not thereby legally bind themselves, for the payment of the money subscribed; but it may not be alleged, that the subscribers are insolvent and will be unable to pay the money. It may be objected, that an estimate is informal, or not such an one as is required by parliament; but the insufficiency of an estimate is a question of merits which is not within the jurisdiction of the examiner. Again, in examining the accuracy of a section of a proposed railway, the examiner may inquire whether the surface of the ground is correctly shown, or the gradients correctly calculated; but he cannot entertain objections, which relate to the construction of the works, or other matters, which are afterwards to be considered by the committees on the bill.[1] The examiner decides upon each allegation, and, whenever it is necessary explains the grounds of his decision. When all the memorials have been disposed of, he indorses the petition; and if the standing orders have not been complied with, he makes a report to the house as already stated. If he should have doubts as to the due construction of any standing order, in its application to a particular case, he may make a special report of the facts to the house, without deciding whether the order has been complied with or not. When the petitions have been indorsed by the examiner, they are then returned to the respective agents, who arrange for their presentation to the house.[2]

2435. When the petition for a private bill has been thus indorsed by one of the examiners, it must be presented to the house, by a member, at some time when private business is in order, together with a printed copy of the bill annexed, not later than three clear days after each indorsement; or if the house is not sitting at the time of the indorsement, then not later than three clear days after the first sitting. If the standing orders have been complied with, the bill is at once ordered to be brought in. If not complied with, the petition is referred to the standing orders committee; and the report of the examiner, which had been previously laid on the table by the speaker, is also referred to the committee.[3]

[1] May, 506, 507.
[2] May, 507.
[3] May, 513.

2436. The committee determine and report, whether such standing orders ought or ought not to be dispensed with, and whether, in their opinion, the parties should be permitted to proceed with their bill, or any portion of it; and under what conditions, if any; as, for example, after publishing advertisements, depositing plans, or amending estimates, when such conditions seem to be proper. In the case of a special report, the committee are to determine, according to their construction of the standing order in question, and on the facts stated by the examiner, whether the standing orders have been complied with or not. If they determine that the standing orders have been complied with they so report to the house; and if not complied with, they proceed to consider whether they ought to be dispensed with.

2437. If, after the introduction of a private bill, any additional provision should be desired to be made in the bill in respect of matters to which the standing orders are applicable, a petition for that purpose should be presented, with a copy of the proposed clauses annexed. The petition will be referred to the examiners, and memorials may be deposited against it. After hearing the parties, in the same manner as in the case of the original petition for the bill, the examiner reports to the house whether the standing orders have been complied with or not, or whether there are any applicable to such petition.[1] If the additional provisions petitioned for affect the revenue, the matter is considered in a committee of the whole on some future day; and if the committee reports a resolution in favor of the petition which is agreed to, an instruction is given to the committee on the bill to make provision accordingly.[2]

2438. If the standing orders committee, upon such reference to them, report, that indulgence should be shown to the promoters of a bill, they are allowed to proceed either at once, or after complying with certain conditions suggested by the committee. To give effect to this permission, the proper course is, for a member first to move that the report be read, and then, upon the reading, that leave be given to bring in the bill. If any conditions are imposed, it will be necessary to prove a compliance with them, before the examiner, or before the committee on the bill, when it comes into that stage.

2439. If the committee reports, that the standing orders ought not to be dispensed with, the decision is generally fatal to the bill, although no reasons are ever assigned for their determination. The

[1] May, 514. [2] May, 515.

report is not conclusive, indeed, and cannot preclude the house from giving a more formal consideration to the case; but, although parties have sometimes been allowed to proceed, under peculiar circumstances, notwithstanding the report, yet attempts are rarely made to disturb the decision of the committee. But, in order to leave the question open, the house only agrees to those reports which are favorable to the progress of bills, and passes no opinion upon the unfavorable reports, which are merely ordered to lie on the table.

2440. If the promoters of a bill, after and notwithstanding such an adverse report, still entertain hopes, that the house may be induced to dispense with the standing orders; or are willing to abandon portions of their bill; or if there be special circumstances in the case, such as the consent of all parties; or if there be an urgent necessity that the bill should pass during the current session; they should present a petition to the house, praying for leave to deposit a petition for a bill, and stating fully the grounds of their application. The petition will be referred to the standing orders committee, who, after hearing the statements of the parties, will report to the house, whether, in their opinion, the parties should have leave to deposit a petition for a bill. If leave is given, the petition is deposited in the private bill office, and the case is examined, and the petition certified by the examiners, in the same manner, as if it had been originally deposited before the 31st of December.

CHAPTER THIRD.

BRINGING IN AND FIRST AND SECOND READINGS OF PRIVATE BILLS.

2441. When leave has been obtained, in the ordinary manner, to bring in a private bill, it is required to be presented not later than three days after the presentation of the petition. The bill must be printed on paper of a *folio* size (as determined by the speaker) and must be presented in that form, with a cover of parchment attached to it, upon which the title is written. When presented, it is entered in the votes by a short title given to it in accordance with its subject-matter, and by which it is known through all the subsequent

proceedings. This title cannot be changed, either by the parties, or by committees, unless by the special order of the house.

2442. It is a general rule, as has already been stated with regard to public bills, that all provisions, which, by the standing orders, are required to be first voted upon in committee, are to be left blank in the bill when presented. In private bills, it is now the rule, that all provisions of this description, which are intended to be proposed, such as rates, tolls, forfeitures, etc., instead of being left blank, shall be inserted in *italics* in the printed bill. These parts of the bill are still technically regarded as blanks to be filled up by the committee; the only purpose of the rule being to make known to the house the particular provisions of this description, which are intended to be proposed, at the same time that the house are informed of the other provisions of the bill.

2443. The bill may be read a first time immediately after it is presented; but before the first reading of every private bill, except name bills, printed copies of the bill must be delivered to the doorkeeper in the lobby of the house, for the use of members.[1]

2444. When a bill has been read a first time, the regular course of proceeding is, that it be ordered to be read a second time, but without then fixing a time for that purpose; and the next step in its progress, is the second reading. In the mean time, the bill remains in the custody of the private bill office, where it is carefully examined by the proper officers, to see whether it conforms with the rules and standing orders of the house. If it is found not to be in proper form, the examining clerk specifies on the bill the nature of the irregularities wherever they occur. If the bill is improperly drawn, or at variance with the standing orders, or with the order of leave, the attention of the house is called to the fact by a member, and the order for the second reading is thereupon discharged, the bill withdrawn, and leave given to present another. The bill so presented is distinguished from the first bill by being numbered, and having been read a first time, is referred to the examiners of petitions for private bills.[2]

2445. Between the first and second reading, an interval of three and no more than ten 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 which is to be proposed for the second reading.[3]

2446. The second reading of a private bill, like the same stage

[1] May, 520, 521. [2] May, 521. [3] May, 521.

in public bills, is that in which the house affirm or disaffirm the general principle and expediency of the measure which it proposes. This is the first occasion on which the bill comes before the house otherwise than as a matter of form, or in connection with the standing orders; and if there be any opposition to it, upon its principle, this is the proper time for attempting its defeat. If the second reading should 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.[1]

CHAPTER FOURTH.

COMMITMENT AND PROCEEDINGS IN COMMITTEE.

SECTION I. OF THE CONSTITUTION OF THE COMMITTEES ON PRIVATE BILLS, AND OF THEIR PROCEEDINGS IN UNOPPOSED BILLS.

2447. When a private bill has been read a second time, the next regular step is the commitment; for which purpose, it is referred to the committee of selection, to whom the power is delegated, as already stated, to appoint the committees on private bills. In the discharge of this duty, the committee proceed differently, according as a bill is opposed or unopposed. A bill is opposed, when a petition is presented to the house, by depositing it in the private bill office, in which the petitioners pray to be heard against the bill by themselves, their counsel or agents, either generally, or only as to some of its provisions; and no bill is considered as opposed unless such petition is deposited within seven clear days after the second reading.[2] A bill is also considered as opposed, in regard to which the chairman of the ways and means reports to the house, that it ought to be so treated.

2448. It is the business of this committee to classify the bills, nominate the members of the committees to whom they are referred, and otherwise arrange the private business of the session. For this purpose, all the private bills of the session are laid before

[1] May, 522.

[2] May, 523, 524.

them by the promoters, at their first meeting, and are arranged by the committee into groups of such as may conveniently be submitted to the same committee. At the same time, they name the bill or bills which are to be taken into consideration on the first day of the meeting of the committee.[1]

2449. Every unopposed private bill is referred, by the committee of selection, to the chairman of the committee of ways and means, and two other members of the house, one of whom is to be a member who had been ordered to prepare and bring in the bill, and the other a member not locally interested.

2450. Opposed private bills are referred to a chairman and four members not locally or otherwise interested, to whom are added, in certain cases, members representing the county or borough, to which the bill or bills specially relate. The members, who are added in respect of local representation, however, are merely entitled to attend and take part in the proceedings of the committee upon the bill, in respect of which they are added, but have no vote upon any question that may arise.[2]

2451. Every railway bill committee is to consist of a chairman and four members not locally or otherwise interested in the bill or bills referred to them. Every unopposed railway bill, which has not been included in a group, or has been withdrawn from a group, is referred in the same manner as other unopposed private bills.[3]

2452. The committee of selection give each member of a committee so appointed, fourteen days notice, at least, by publication in the votes, and by letter, of the week in which he is required to be in attendance, to serve as a member not locally interested; and they also give him sufficient notice of his appointment as the member of a committee, and transmit to every member not locally or otherwise interested, a blank form of declaration, which he is to return forthwith, properly filled up and signed, "that his constituents have no local interest, and that he has no personal interest" in the bill; "and that he will never vote on any question which may arise, without having duly heard and attended to the evidence relating thereto." No committee can proceed to business until this declaration has been made and signed by each of the members; and if any member neglects to sign and return it in due time, or does not send a sufficient excuse, the committee of selection report his name to the house, and he will be ordered to attend the committee on the bill. If a member, who has signed this declaration,

[1] May, 523.
[2] May, 524.
[3] May, 523.

should subsequently discover that he has a direct pecuniary interest in a bill, or in a company who are petitioners against a bill, he states the fact, and upon the motion of the chairman, he will be discharged by the house from further attendance on the committee.[1]

2453. If the excuse of a member is not deemed satisfactory by the committee, they require him to serve; in which case, his attendance becomes obligatory, and, if necessary, will be enforced by the house. At any time before the meeting of a committee on a bill, the committee of selection may substitute one member for another, whom they shall deem it proper to excuse. But after the committee has met, members can only be discharged from attendance, and other members added to the committee, by order of the house.[2]

2454. All questions before committees on private bills are decided by the majority of voices, including the voice of the chairman; and, whenever the voices are equal, the chairman has a second or casting vote. But, in applying this rule, none but selected members are entitled to vote; members added in respect of local representation, being only entitled to attend and participate in the proceedings of the committee, without voting. If the chairman is absent at any time, the member next in rotation on the list of members, not locally or otherwise interested, who is present, acts as chairman.[3]

2455. An interval of fourteen days is required to elapse between the second reading of every private bill, and the first sitting of the committee, except in the case of divorce and some other bills, in reference to which the interval is less. Subject to this general regulation, the committee of selection fixes the time for holding the first sitting of the committee on every private bill; which, however, is not to be appointed, until the chairman of the committee of ways and means has certified that the bill is so far approved of, as to be ready for the consideration of the committee.[4]

2456. Before the sitting of committees on private bills, the agents of the promoters are requested to lay copies of them before the chairman of the ways and means, whose duty it is, with the assistance of the speaker's counsel, to examine all private bills, whether opposed or unopposed, and to call the attention of the house, and, also, if he thinks fit, of the chairman of the committee, on every opposed private bill, to all points which may appear to

[1] May, 524, 529, 530.
[2] May, 524, 525.
[3] May, 523.
[4] May, 525, 529.

him to require it; and, in the case of unopposed bills, he is also to report any special circumstances. During this interval, amendments are suggested or required by the authorities in both houses, which are agreed to at once by the promoters, or after discussion, are insisted upon, varied, modified, or dispensed with. In the mean time, also, the promoters endeavor, by proposing amendments of their own, to conciliate parties who are interested, and to avert opposition. They are, besides, frequently in communication with public boards or government departments, by whom amendments are sometimes proposed; and who, again, are in communication with the chairman of the ways and means, or with the chairman of the lords' committees.[1]

2457. When the amendments consequent upon these various proceedings have been introduced, the printed bill, with all the proposed amendments and clauses inserted, in manuscript, is in a condition to be submitted to the committee. But before the meeting of the committee, at least one clear day, the agent of the promoters is required to deposit in the private bill office a filled up copy of the bill signed by himself, as proposed to be submitted to the committee. A similar copy is also required to be laid before the chairman of ways and means, three clear days before the meeting of the committee.[2]

2458. If, at the time appointed for the sitting of the committee, three of the members not interested are present, the committee may proceed, but not with a less number, without the special leave of the house; and so soon after the expiration of ten minutes from the time appointed for the first sitting of a committee on an opposed bill, (not being a railway bill,) or three at least of such members are present, the chairman proceeds to take the chair. But no member of a railway committee, nor any of the five members, not locally or otherwise interested, of the committee on any other private bill, may absent himself, except in case of sickness, or by order of the house.[3]

2459. If, at any time, a quorum of three should not be present, the chairman suspends the proceedings, and if, at the expiration of an hour, there should still be less than three members, the committee is adjourned to the next day on which the house sits. Members absenting themselves are reported to the house, at its next sitting, when they are either directed to attend at the next sitting of the committee, or, if their absence has been occasioned by sickness,

[1] May, 526, 527. [2] May, 528, 529. [3] May, 530.

domestic affliction, or other sufficient cause, they are excused from further attendance. If, after a committee has been formed, a quorum of members cannot attend, the chairman reports the circumstance to the house, when the members still remaining, will be enabled to proceed, or such other orders will be made as the house may deem necessary.[1]

2460. Petitions in favor of, or against, private bills, are presented to the house, not in the usual way, but by being deposited in the private bill office, by a member, party, or agent; and every petition, which has been thus deposited not later than seven clear days after the second reading, stands referred to the committee on the bill, without any distinct reference from the house; and, subject to the rules and orders of the house, petitioners who have prayed to be heard by themselves, their counsel, or agents, are to be heard upon their petition accordingly, if they think fit; and counsel heard in favor of the bill against such petition.[2]

2461. Petitioners will not be heard before the committee, unless their petition is prepared and signed in strict conformity with the rules and orders of the house, and has been deposited within the time limited, except in cases in which the petitioners complain of some matter which may have arisen in committee, or which may be contained in the amendments as proposed in the filled up bill.[3] If a petition is presented after the time limited, the only mode by which the petitioners can obtain a hearing, is by presenting a petition, praying that the standing orders may be dispensed with in their case, and that they may be heard by the committee. The petition will be referred to the standing orders committee; and if the petitioners are able to show any special circumstances, which entitle them to indulgence, and particularly that they have not been guilty of negligence, the standing orders will be dispensed with.[4]

2462. If a petition does not distinctly specify the grounds, on which the petitioners object to the provisions, or any of them, of a bill, it will not be considered. The petitioners can only be heard on the grounds so stated; and if not specified with sufficient accuracy, the committee may direct a more specific statement to be given in writing, but limited to the grounds of objection which had been insufficiently stated.[5]

2463. If no parties appear on the petitions against an opposed

[1] May, 530.
[2] May, 531.
[3] May, 531, 532.
[4] May, 532.
[5] May, 532.

bill, or having appeared, withdraw their opposition before the evidence of the promoters is commenced, the committee is required to refer back the bill to the committee of selection, who deal with it as an unopposed bill; and, in the case of a railway bill, the committee may refer the bill back to the committee of selection, under the same circumstances, if they think fit, but otherwise may consider the bill, though unopposed. And, on the other hand, if the chairman of the ways and means reports that any unopposed bill should, in his opinion, be treated as opposed, it is again referred to the committee of selection, and dealt with accordingly.[1]

2464. It is the duty of every committee to take care that the several provisions, required by the standing orders of the house to be inserted in private bills, are included in them, wherever they are applicable. Some of these provisions relate to private bills generally, and others to particular classes of bills. Of the former, are clauses for compelling the payment of subscriptions; for the safe custody of moneys, and the auditing of accounts, in bills authorizing the levy of fees, tolls, or other rates of charge; and for defining the level of roads, and otherwise protecting them, when altered by the construction of any public work.[2]

2465. The functions and proceedings of committees on unopposed bills are somewhat different from those of other committees. The chairman of the ways and means, and one of the two other members of the committee, are a quorum; and, unless they are of opinion that a bill referred to them should be treated as an opposed bill, they proceed to consider the preamble, and all the provisions of the bill, and take care that they are conformable to the standing orders. The chief responsibility is imposed upon the chairman, who, being an officer of the house, as well as a member, is intrusted, as already stated, with the special duty of examining, assisted by the speaker's counsel, every private bill, whether opposed or unopposed. For this purpose, a copy of the bill, signed by the agent, as proposed to be submitted to the committee, has been already laid before the chairman and counsel; and, at the first meeting of the committee, is ordered to be laid before each member.[3]

2466. There being no opponents of the bill before the committee, the promoters have only to prove the preamble, and satisfy the committee of the propriety of the several provisions; that all the clauses required by the standing orders are inserted in the bill; and

[1] May, 533.
[2] May, 534.
[3] May, 534.

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. If it should appear that the bill ought to be treated as an opposed bill, the chairman reports his opinion to the house, and the bill is thereupon referred to the committee of selection, who deal with it accordingly.[1]

2467. There are various orders of the house, which are binding upon all committees on private bills. Thus the names of the members attending each committee, are to be entered by the committee clerk in the minutes; and when a division takes place, the clerk takes down the names of the members, distinguishing on which side of the question they respectively vote; and such lists are to be given in, with the report, to the house.[2]

2468. So, too, the committee is precluded from examining into the compliance with such standing orders as are directed to be proved before the examiners of petitions for private bills, unless they have received an instruction from the house to that effect. Such an order is only given, when the house, on the report of the standing orders' committee, allows parties to proceed with their bill, on complying with certain standing orders which they had previously neglected. In such cases, the committee on the bill inquires whether the orders have been complied with, instead of referring that inquiry to the examiner of petitions, but when any special inquiry, in reference to the standing orders, is necessary, the matter is referred to the examiner instead of the committee; and the examiner's certificate is produced before the committee.[3]

2469. Among the orders, which relate only to particular classes or descriptions of bills, those which relate to railway bills have been the most important in modern times. To these, the attention of the committee on every railway bill, and of the promoters and opponents of such bills, should be directed. By these orders, it is, in the first place, required, that particular matters should come under the investigation, and be reported upon, by the committee, as, for example, as to the sufficiency of the subscribers, the proposed capital, the amount of shares subscribed for, and deposits paid, the engineering particulars of the line, the names of the engineers examined as witnesses for and against the bill, the main allegations of

[1] May, 534.
[2] May, 535.
[3] May, 535, 536.

every petition in opposition to the preamble of the bill, or any of its clauses, and, generally, as to the fitness, in an engineering point of view, of the projected line of railway; *secondly*, certain fixed principles of legislation are laid down, from which the committee, except in special cases, will not be justified in departing, relating, for example, to the authority of the company to raise money by loan or mortgage, to the level of any turnpike or other road which is proposed to be altered in making a railway, to the authority to construct a dock, pier, harbor, or ferry, to the fixing of the tolls and rates of charge for the conveyance of goods and passengers; and, *thirdly*, particular clauses are required to be inserted, as, for example, relating to preference to be granted to any shares or stock in the payment of interest or dividends, prohibiting the payment of capital for the construction of another railway, providing that the railway shall not be exempted from the provisions of any general acts, or from future revision by parliament of the maximum rates of fares and charges previously authorized.[1]

2470. The committee on a bill for confirming letters patent, are to see, in compliance with the standing orders, that there is a true copy of the letters patent annexed to the bill. There are several standing orders, relating specially to bills for the inclosure and drainage of lands, compliance with which is to be examined into and enforced by the committees, such as the proof of notices, and the consent of the lord of the manor, or of the owners or occupiers of the lands, and the provision in inclosure bills for leaving a space open for exercise and recreation.[2]

2471. If the committee on any private bill should report it to the house, without proper provisions made in it, in conformity with the standing orders, of the description above alluded to, it is the duty of the chairman of the ways and means to inform the house of the fact, or to signify it in writing to the speaker, on or before the consideration of the bill; upon which the house will make such orders as it shall think fit.[3]

SECTION II. OF THE PROCEEDINGS OF COMMITTEES ON OPPOSED BILLS.

2472. The proceedings of committees upon opposed private bills, which are regulated partly by the usage of parliament,

[1] May, 536, 537, 538, 539, 540.
[2] May, 540, 541.
[3] May, 541.

and partly by standing orders of the house, are ordinarily the same as those of other select committees, which have been explained elsewhere.[1] The questions for the consideration of the committee are moved in the same manner as in the house, and are put by the chairman, and determined by the vote of a majority as already mentioned.

2473. When counsel are addressing the committee, or while witnesses are under examination, the committee room is an open court; but when the committee is about to deliberate, all persons present, counsel, agents, witnesses, and strangers, are ordered to withdraw and the committee sits with closed doors. When it has decided the question, the doors are again opened, and the chairman acquaints the parties, if the matter concerns them, with the determination of the committee.

2474. The first proceeding on an opposed bill, is to call in all the parties. The counsel in support of the bill appear before the committee; the petitions against the bill, in which the petitioners pray to be heard, are read by the committee clerk; and the counsel or agents in support of them present themselves.[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.

2475. When the parties are before the committee, the senior counsel for the promoters of the bill opens their case, commencing with the preamble, which in the case of a private bill, unlike the practice in regard to public bills, is first considered. If the preamble is opposed, the counsel addresses himself more particularly upon the general expediency of the bill, and then calls witnesses to prove the truth of the allegations contained in the preamble. The witnesses may be cross-examined on behalf of petitioners against the preamble, but not as to the general case, on behalf of parties objecting only to certain provisions in the bill. When all the witnesses for the preamble have been examined, the case of the promoters is closed, unless their counsel has waived the right to an opening speech.[3]

[1] See Part VII. Sec. 2.

[2] A standing order of January 3d, 1701, directed the committee of privilege and elections to "admit only two counsels of a side, in any cause before them," (13 Comm. Jour. 648); and this order has been supposed to apply to all committees, Hans. (3), Vol. 62, p. 311; but by its terms, it would appear to be confined to a single committee not now in existence; and, in practice, it is not observed.

[3] May, 542.

2476. All the petitions against a bill, which have been deposited within the time limited, stand referred to the committee by the general order of the house; but no petitioners are entitled to be heard, unless they have prayed to be heard by themselves, their counsel or agents, nor unless they have a *locus standi*, according to the rules and usages of parliament; nor unless their petition, and the proceedings thereupon, are otherwise in conformity with the rules and orders of the house.[1]

2477. Some petitions pray to be heard against the preamble and clauses of the bill; some against certain clauses only; and others pray for the insertion of protective clauses, or for composition for damage, which will arise under the bill. Unless the petitioners pray to be heard against the preamble, they will not be entitled to be heard, nor to examine any of the promoters' witnesses, upon the general case, nor otherwise to appear in the proceedings of the committee, until the preamble has been disposed of. Nor will a general prayer against the preamble entitle a petitioner to be heard against it, if his interest is merely affected by certain clauses of the bill. The proper time for urging objections to parties being heard against the preamble, is when their counsel or agent first rises to put a question to a witness, or to address any observations to the committee. This is also the proper time for objecting, that petitioners are not entitled to be heard on any other grounds.[2]

2478. Parties are said to have no *locus standi* before a committee, when their property or interests are not directly and specially affected by the bill, or when, for other reasons, they are precluded from opposing it. The committee determine, according to the circumstances of each case, whether the petitioners have such an interest as to entitle them to be heard; the circumstances varying, of course, according to the special relations of the petitioners, and the nature and objects of the bill.[3]

2479. It has been held generally, as a parliamentary rule, that competition does not confer a *locus standi;* but, of late years, this rule has been considerably relaxed, and numerous exceptions have, in practice, been admitted. The proprietors of an existing railway have no right to be heard, according to the rule, upon their petition against another line, on the ground, that the profits of their undertaking will be diminished. But if it is proposed to take the least portion of the land belonging to the company, they then have a

[1] May, 543.
[2] May, 544.
[3] May, 544.

locus standi before the committee. The result of this application of the rule has been, that most of the great parliamentary contests between railway companies have been conducted in the names of land-owners; each company having obtained the signatures of land-owners to petitions against the scheme of the other, have instructed counsel to appear upon them, and have defrayed all the costs of the nominal petitioners. The rule has been since relaxed in favor of competing railway schemes referred to the same committee, and also in favor of the proprietors of canals or navigations. In recent cases, too, the rule has not been enforced, in its application to the right of an existing gas or water company to oppose the establishment of a new company proposing to supply the same district.[1]

2480. Another ground of objection to the *locus standi* of petitioners is, that they are shareholders or members of some corporate body by whom the bill is promoted, and that being legally bound by the acts of the majority, they are precluded from being heard as individual petitioners. This rule has, however, been departed from, in the case of dissentient shareholders, as, for example, preference shareholders, who have some interest different from that of the general body. In the house of lords, a different rule prevails.[2]

2481. Objections may also be taken, that a petition is informal, according to the rules and orders of the house applicable to petitions, generally, or as specially applicable to petitions against private bills; as, for example, where the seal attached to the petition of a company is not the corporate seal; and, in such case, when the ground of objection is proved, all the evidence in support of the petition is expunged.[3]

2482. It may also be objected, that petitions do not distinctly specify the grounds on which the petitioners object to the bill. The committee may, however, direct a more specific statement of objections to be given in, limited to the grounds of objection which had been inaccurately stated. But if the committee determines, that the grounds so stated do not amount to an objection to the preamble to the bill, no further specification can avail the petitioners.[4]

2483. When counsel are allowed to be heard against the preamble, one of them either opens the case of the petitioners, or reserves his speech until after the evidence. Witnesses may then be

[1] May, 544.
[2] May, 545, 546.
[3] May, 546.
[4] May, 546.

called and examined, in support of the allegations in the petition, cross-examined by the counsel for the bill, and reëxamined by the counsel for the petitioners. When the evidence against the preamble is concluded, the case of the petitioners is closed, unless an opening speech has been waived; and the senior counsel for the bill replies on the whole case. If the petitioners do not examine witnesses, the counsel for the bill has no right to a reply; but in some special cases, where new matter has been introduced on the other side, (as, for example, an act of parliament or precedents,) a reply, strictly confined to such new matter, has been allowed. When there are numerous parties appearing on separate interests, the committee makes such arrangements, as they think fit, for hearing them.[1]

2484. When the arguments and evidence upon the preamble have been heard, the committee room is cleared, and a question is put, "That the preamble has been proved," which is resolved in the affirmative or negative, as the case may be.[2]

2485. If the question is affirmed, the committee calls in the parties, and go through the bill clause by clause, and fill up the blanks; and when petitions have been presented against a clause, or proposing amendments, the parties are heard in support of their objections or amendments, as the clauses to which they relate come before the committee; but clauses may be postponed and considered at a later period in the proceedings, if the committee thinks fit.[3]

2486. When all the clauses of a bill have been agreed upon, new clauses may be offered either by members of the committee or by the parties. It must be borne in mind, however, that the committee may not admit clauses or amendments which are not within the order of leave; or which are not authorized by a previous compliance with the standing orders applicable to them, unless the parties have received permission from the house to introduce certain additional provisions in compliance with petitions therefor.[4]

2487. If the proof of the preamble is negatived, the committee reports 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.[5] In a special case, however, the committee on a private bill was ordered

[1] May, 547.
[2] May, 547.
[3] May, 548.
[4] May, 548.
[5] May, 548.

by the house to reassemble, "for the purpose of reporting specially the preamble, and the evidence and reasons in detail, on which they came to the resolution that the preamble had not been proved."[1]

2488. No alterations were formerly admissible in the preamble of a private bill; but since 1843, they have been allowed; subject to the same restriction as in the case of other amendments, that nothing shall be introduced inconsistent with the order of leave, or with the standing orders applicable to the bill. Such amendments are, however, to be specially reported.[2]

SECTION III. OF THE DUTIES OF THE COMMITTEE AS TO REPORTING THEIR PROCEEDINGS.

2489. The duties of the chairman and committee in recording the proceedings, and reporting them to the house, as explained in the standing orders, require, that every plan and book of reference produced in evidence shall be signed by the chairman and deposited in the private bill office; that the chairman shall sign a printed copy of the bill (called the committee bill) on which the amendments are fairly written; that the chairman shall report that the allegations of the bill have been examined, and whether the parties concerned (whose consent is required) have given their consent to the satisfaction of the committee; that the committee shall report the bill to the house, whether they have or have not agreed to the preamble, or gone through the several clauses or any of them, that when any alteration shall have been made in the preamble, such alteration, together with the ground of making it, shall be specially stated in the report; and that the minutes of the committee be brought up and laid on the table with the report of the bill.[3]

2490. 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, by direction of the committee, should move the house that leave be given to the committee to make a special report. The house may also instruct the committee to make a special report.[4]

[1] Comm. Jour. XCI. 306.

[2] May, 548.

[3] May, 549.

[4] "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 combina-

2491. Committees on private bills have no power conferred upon them 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 the party has used due diligence, 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.

2492. Besides making the prescribed form of report, or special reports in particular cases, committees have had leave given them to report the minutes of evidence, which have also been ordered to be printed, at the expense of the parties, if they think fit, and even in special cases, at the expense of the house; or have been referred to the committee on another bill.[1]

2493. If parties acquaint the committee, that they do not desire to proceed further with the bills, that fact is reported to the house, and the bill will be ordered to be withdrawn. 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 their chairman to move for leave to lay the minutes of evidence on the table of the house.[2]

2494. It is the duty of every committee to report to the house the bill that has been committed to them, and not by long adjournments, or by an informal discontinuance of their sittings, to withhold from the house the result of their proceedings. If any attempt of this nature is made to defeat a bill, the house will interfere to prevent it, by directing the committee to meet immediately, and proceed with the bill referred to them.

2495. 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]

tion 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 land-owners heard and the clauses settled." Comm. Jour. XCII. 356. 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. Ib. 417. On the report of the engineer appointed, in answer to this address, the house instructed the committee to hear the case of the land-owners upon the direct line. Ib. 519; May, 549.

[1] May, 551.

[2] May, 531.

[3] May, 552.

2496. If a committee adjourns without naming another day for resuming its sittings; or if any informality in the notices prevents the committee from sitting; or if, from the absence of a quorum, the committee is unable to proceed to business, or to adjourn to a future day; it has no power of reassembling, without an order from the house; and the committee is said to be revived, when this intervention of the house takes place. 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 for the next meeting, before the proceedings of the committee are interrupted by the notice of the sergeant-at-arms, that the speaker is at prayers.[1]

CHAPTER FIFTH.

OF THE REPORT OF THE COMMITTEE, AND PROCEEDINGS THEREON; RECOMMITMENT; THIRD READING; PASSING; AMENDMENTS BETWEEN THE TWO HOUSES.

2497. When the report has been made out and agreed to by the committee, the committee clerk is required to deliver in at the private bill office, a printed copy of the bill, with the written amendments made by the committee; and with the several clauses added by the committee, regularly marked in those parts of the bill in which they are to be inserted. In strict conformity with this authenticated copy, the bill, as amended by the committee, is required by the standing orders to be printed at the expense of the parties, unless the committee report that the amendments are merely verbal or literal. When printed, they must be delivered to the door-keepers, three clear days at least before the consideration of the report; but these copies are not to be delivered before the report of the bill is made to the house.[2]

2498. In some cases, the alterations made by the committee have been so numerous and important, as almost to constitute the bill a different measure from that originally brought before the house. In such cases, the house has sometimes required the bill to be with-

[1] May, 552.

[2] May, 552.

drawn, and another bill presented, which has been referred to the examiners. But unless the case is one of great irregularity, the later and better practice has been, to refer the bill, as amended, "to the examiner, to inquire whether the amendments involve any infraction of the standing orders." If the examiner reports, that there is no infraction of the standing orders, the bill proceeds, without further interruption; but if he reports, that there has been such an infraction, his report, together with the bill, will be referred to the standing orders' committee.[1]

2499. The committee makes its report to the house, in the same manner as other select committees; and the proceedings on the report, with certain exceptions, which will be briefly stated, are substantially the same as in other cases. When the report is first made, it is ordered to lie on the table, together with the bill, (if a railway bill, or a bill amended in committee,) and is not taken into consideration until a future day; but if not amended in committee, the bill is ordered to be read a third time. The bill reported to the house is a duplicate copy of the committee bill, including all the amendments and clauses agreed to by the committee. On or before the consideration of the bill, the chairman of ways and means is also to inform the house, or signify in writing to the speaker, whether the bill contains the several provisions required by the standing orders; and, until he has done so, the bill will not be considered. 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 on the table.

2500. When it is intended to bring up any clause, or to propose any amendment on the report, or on the consideration of the report, or on the third reading of the bill, notice must be given in the private bill office one clear day previously. 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 no clause or amendment may then be offered, or on the third reading, unless the chairman of ways and means has informed the house, or signified in writing to the speaker, whether, in his opinion, it is such as ought (or ought not) to be entertained by the house, without referring it to the standing orders committee, and the clause or amendment is to be printed at the expense of the parties; and when the proposition is to amend a clause, it is to be

[1] May, 553.

printed in full, with every addition or substitution in different type, and the omissions therefrom in brackets and underlined. And on the day on which notice is given, the clause or amendment is to be laid before the chairman of the ways and means and the speaker's counsel.[1]

2501. If a clause or amendment is referred to the standing orders committee, there can be no further proceeding until its report has been brought up. When the clause or amendment has been offered on the consideration of the bill, it reports whether it should be adopted by the house or not, or whether the bill should be recommitted. If offered on the third reading, it merely reports whether it ought (or ought not) to be adopted by the house at that stage; as it is then too late to recommit the bill.[2]

2502. 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; or be added by the house. 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; and, a filled up copy of the bill, as proposed to be submitted to the committee, on the recommital, is to be deposited in the private bill office one clear day before the meeting of the committee. Unless the bill is recommitted by the house, with express reference to particular provisions, the whole bill is open to reconsideration by the committee.[3]

2503. When amendments are made by the house, on the report or third reading, or when amendments of the other house are agreed to, 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; and such copy is signed by the clerk, as amended, and preserved in the office.[4]

2504. 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; but this notice is not to be given until after the bill has been ordered to be read a third time. The proceedings on the third reading of private bills are the same as in the case of public bills; but if clauses are offered, or amendments proposed, they are subject to the rules already stated in regard to the report, or further consideration of the report. If the bill is

[1] May, 554.
[2] May, 555.
[3] May, 555.
[4] May, 555.

finally approved by the house, with the alterations, if any, made subsequently to the second reading, it is passed and sent to the house of lords.

2505. No private bill is permitted to be sent up to the house of lords, until a certificate is indorsed on the fair printed bill, and signed by the proper officers, declaring that such printed bill has been examined, and agrees with the bill as read a third time.[1]

2506. The foregoing is an outline of the proceedings, which take place in the house of commons, on the passage of a private bill originally introduced therein through its several stages. Two general rules are applicable in all cases, namely, *first*, "That no private bill may pass through two stages on one and the same day;" and, *second*, "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]

2507. The proceedings between the two houses, in regard to amendments to private bills, differ in no respect from those which have been already described, with reference to public bills. When the amendments made by the lords are to be taken into consideration by the commons, notice is required to be given in the private bill office, on the previous day; but this notice cannot be given until the day after that on which the bill has been received from the lords. If any amendments are proposed thereto, a similar notice is to be given, and a copy of such amendments to be deposited. A copy is also to be laid before the chairman of the ways and means, and the speaker's counsel, before two o'clock on the day previous to that on which they are to be considered. And as the lords' amendments may relate to matters which might be considered to involve an infringement of the privileges of the commons, and the amendments proposed by the latter may be in the nature of consequential amendments, the speaker's sanction should be obtained before they are proceeded with. Before lords' amendments are taken into consideration, they are printed at the expense of the parties, and circulated with the votes; and when a clause has been amended, or a lords' amendment is proposed to be amended, it is printed at length, with every addition or substitution in different types, and omissions included in brackets, and underlined.[3]

2508. In case a private bill should not be proceeded with in the house of lords, in consequence of amendments having been made

[1] May, 556.
[2] May, 556.
[3] May, 557.

there, which infringe the privileges of the commons, the same proceedings are adopted as in the case of public bills. A committee is appointed to search the lords' journals, of which notice is to be given by the agent, in the committee clerk's office; and, on the report of the committee, another bill will be ordered, including the amendments made by the lords.[1]

CHAPTER SIXTH.

DIFFERENCES IN THE MODES OF PROCEEDING BETWEEN THE TWO HOUSES.

2509. Having thus briefly stated the proceedings, with regard to private bills, in the house of commons, it now remains to mention some particulars, in which the proceedings of the two houses differ. As a consequence of the fundamental principle of the English constitution, that all bills imposing a charge upon the people must originate in the house of commons, it is necessary, that every private bill, which contains provisions for rates, tolls, penalties, or other charges, (under which description, the greater number of private bills is embraced,) should be introduced and first passed in the house of commons. According to this rule, some few of the private bills included in the first class may occasionally originate in the lords, because rates, tolls, or duties are not essential to their operation; but all bills in the second class must be brought into the commons on petition, and the others are, with very rare exceptions, also commenced in the same house.[2] On the other hand, the lords claim that all bills for the restitution of honors and in blood should commence with them. Bills, which, in practice, are first brought into the house of lords, are estate, naturalization, name, and divorce bills, and such as relate to the peerage.[3]

2510. The progress of a bill through the lords, after it has passed the commons, is much facilitated by the practice of laying the bill before the chairman of the lords' committees, and his counsel, (answering to the speaker's counsel in the commons,) and giving effect to their observations during the progress of the bill through

[1] May, 557.
[2] May, 557.
[3] May, 558.

the commons. The amendments suggested in the lords are thus embodied with the amendments, before the bill has passed the commons; and unless the bill should be opposed, its progress through the lords is at once easy and expeditious. Another advantage of this mode of amending a bill, as it were, by anticipation, is, that numerous amendments may then be conveniently introduced, which could not be made by the lords, without infringing the privilege of the commons.[1]

2511. The lords, having power to consult the judges in matters of law, require that petitions presented in that house, for the passing of estate bills and bills of a similar character received from the commons, shall be referred to two of the judges in rotation, not being lords of parliament, who are to report their opinion, whether assuming the allegations of the preamble to be satisfactorily established, it would be reasonable to pass the bill; and whether the provisions are proper for carrying its purposes into effect, and what alterations or amendments are necessary. The report of the judges is required to be delivered to the chairman of committees. If favorable, the bill may then be presented and read a first time; if adverse, the bill is not offered at all; if the report objects to particular provisions, or suggests others, the bill is altered accordingly before being presented. In the event of their approving the bill, the judges are to sign it; but, except in special cases, no other commons' bills are referred to the judges.[2]

2512. A "committee for standing orders" is appointed at the commencement of every session, which combines the functions of the examiner of petitions for bills and on standing orders, in the commons. This committee consists of forty members, together with the chairman of the lords' committees, who is always the chairman; and three lords, including the chairman, are a quorum.

2513. Before the second reading of any private bill in either of the two classes, the bill is referred to the standing order committee, before whom compliance with the several standing orders applicable thereto is required to be proved; and before whom any parties are at liberty to appear and be heard, upon their petition presented and referred to the committee, complaining of a non-compliance with the standing orders. Statements of proofs are prepared, and evidence introduced, in the same form as in the commons, before the examiners; the main differences being, that in the lords affidavits are not received, and that all the witnesses are required to

[1] May, 558.

[2] May, 558, 570.

have been previously sworn at the bar of the house.[1] The orders, which the promoters of a private bill are required to prove in the lords, are, for the most part, similar to those which are established in the commons.

2514. The standing order committee makes a similar report in the lords to the report made by the examiners in the commons, and no bill included in either of the two classes is read a second time before the third day on which the house sits after the bill has been reported from the committee for standing orders. The second reading, as in the commons, affirms the principle of the bill, and is immediately followed by the commitment.[2]

2515. Unopposed 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 the committee on ways and means in the house of commons. These open committees may be and are attended by any of the lords present; but the business is, in fact, transacted by the chairman, upon whom the responsibility is imposed by the house. He is assisted in his duties by a counsel attached to his office, who previously examines the provisions of every private bill, and points out any variance with the standing orders, or the general laws of the country. 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.

2516. Every opposed bill is referred to a select committee of five lords, who choose their own chairman. Each member of this committee is required to attend during the whole continuance of the inquiry, and none but members can take any part in the proceedings. These committees are appointed by a committee, which is named by the house, at the commencement of every session, consisting of the chairman of committees, and four other lords; whose duty it is, to select and propose to the house the names of the five lords, who are to form a select committee for the consideration of every opposed private bill.

2517. The time for the first meeting of the committee is appointed by the house, and the attendance of the members is very strictly enforced. The duties of the committee on a bill, whether opposed or not, and their proceedings, differ in no material point from those

[1] May, 559, 560.

[2] May, 563, 564.

of committes of the house of commons, which have already been described, except that in the lords, the witnesses are examined upon oath, previously administered to them at the bar of the house. The proceedings upon the report, and on the third reading, are also similar. In the event of any disagreement between the houses, in reference to amendments, the same forms are observed as in the case of public bills.[1]

2518. In proceedings with reference to divorce bills, the standing orders require, that the party presenting a petition for such a bill, should, previously to presenting the same, produce an official copy of the proceedings in the ecclesiastical court, and of a definitive sentence of divorce therein, *a mensa et thoro*, at the suit of such party; that if any trial shall have taken place, or any writ of inquiry been executed, within the United Kingdom, relative to the alleged cause of divorce, wherein the petitioner shall have been a party, a report of the proceedings upon such trial or writ of inquiry shall be laid upon the table of the house, before the bill shall be read a second time; that, upon the second reading of the bill, the petitioner shall attend the house, (unless such attendance be specially dispensed with,) in order to be examined at the bar, if the house shall think fit, as to whether there has been any collusion, directly or indirectly, on the part of such party, with the other party, or with any other person, touching the bill of divorce, or the proceedings relating to the alleged ground of the same, either at law, or in the ecclesiastical court, and, whether, at the time of the adultery, the parties were living together or separate.[2]

2519. The standing orders also provide, that no bill of divorce founded on a petition to dissolve a marriage for the cause of adultery, and to enable the petitioner to marry again, shall be received in the house, unless it provides, that it shall not be lawful for the party, whose marriage with the petitioner shall be dissolved, to intermarry with any offending party, on account of whose adultery with such party, it shall be enacted in the bill that the marriage is dissolved. This clause, though required to be inserted in the bill, is usually struck out by the committee, except in very peculiar cases.[3]

2520. Notice of the second reading of a divorce bill, with an attested copy of the bill, signed by the clerk's assistant, is required to be served upon the party, husband or wife, as the case may be, against whom the bill is prosecuted, and such service must be

[1] May, 569. [2] May, 573. [3] May, 573.

proved on the second reading; but, if the party cannot be found, or is in a distant part of the world, service may be made on the agent of such party, upon a petition from the agent of the promoter of the bill, stating the facts, and proof thereof on oath at the bar. On the second reading, counsel are heard and witnesses examined at the bar, in support of the bill, whether there are any opposing petitions or not; and, after the second reading, the bill, instead of being referred to an open committee, or to a selected committee, like other private bills, is committed, like a public bill, to a committee of the whole house.[1]

2521. In divorce bills, the proceedings of the ecclesiastical court, the sentence of divorce, and the proceedings on the trial, are before the house, but are not admitted as evidence to establish the fact of adultery. Of that fact, the house may be satisfied by other testimony offered at the bar; and if that fails, the bill will not be read a second time, even when there is no opposition to it.[2]

2522. When the petitioner for a divorce bill states that the witnesses necessary to substantiate the allegations of the bill, are in India, the speaker of the house in which the petition is presented, is authorized by the statute of 1 Geo. IV. c. 101, to issue a warrant for the examination of witnesses to the judges of the several supreme courts in India; and the evidence taken before them, accompanied by a declaration that the examinations have been fairly conducted, is declared by the same statute to be admissible in either house of parliament. When a warrant has been issued under this act, the proceedings are suspended until the return of the same, and are not discontinued by any prorogation or dissolution previously occurring; but may be resumed and proceeded upon in a subsequent session or parliament, in the same manner, and with the like effect, as if no dissolution or prorogation had taken place.[3]

2523. In the house of commons, 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 nine members, of whom three are a quorum, and which is denominated "the select committee on divorce bills." To this committee, all divorce bills are referred, after the second reading, with an instruction to hear counsel and examine witnesses for the bill; and to hear counsel and examine witnesses against the bill, if the parties concerned think fit to be heard by counsel, or to produce witnesses. By the terms of the in-

[1] May, 574. [2] May, 574. [3] May, 575.

struction, the promoter is bound to examine witnesses, or otherwise to substantiate the allegations of the bill; but the party opposing is at liberty to be heard or not, as he or she shall think proper. At the same time, a message is sent to the lords, to request them 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. The latter are made evidence by the statute above mentioned. The former seem to be nothing more than memoranda, by which the committee may aid themselves in examining the witnesses.[1] The committee is also directed by the standing orders, to require evidence, that an action for damages has been brought against the person supposed to be guilty of adultery, and judgment for the plaintiff had thereupon; or sufficient cause to be shown, why such action has not been brought, or such judgment not obtained.

2524. Where petitioners have been required to be in attendance in the house of lords, whilst the bill was pending there, to be examined as to collusion, if the house thinks proper, the committee of the commons is, in all cases, to require their attendance before it, for the same purpose. The committee is required to report the bill to the house, whether it shall or shall not have agreed to the preamble, or gone through the several clauses, or any of them.

2525. In the progress of private bills from the lords through the commons, they are subject to the same rules, and pass through the same stages, and with the same intervals and notices, as those which have been already 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 delay.[2]

[1] Parl. Reg. (2), XVIII. 27, 30, 33. [2] May, 579.

CHAPTER SEVENTH.

OF PRIVATE BILLS AFTER RECEIVING THE ROYAL ASSENT; AND OF FEES AND COSTS.

2526. All private bills, during their progress in the commons, are known only 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 no such distinction is expressed in the standing orders. After receiving 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.

2527. (1.) Every local and personal act passed previous to the year 1850, contained 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. This practice 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]

2528. (2.) From 1798 to 1815, the private acts, not declared public, were not printed by the queen's printers, and could only be given in evidence by obtaining authenticated copies from the statute rolls in the parliament office; but since 1815, the greater part of the printed 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."

2529. (3.) The last class of acts consists of those which still remain unprinted. These are 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.

2530. The main distinction in law between these classes of acts

[1] But by Lord Brougham's act of 1850, for shortening the language of acts of parliament, it is enacted, that every act "shall be deemed and taken to be a public act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such act;" and the public clause will consequently be omitted from all future local and personal acts. Such acts were printed with the other statutes of the year, and were not distinguishable from public acts, except by the character of their enactments; but since 1798, they have been printed in a separate collection, and are known as local and personal acts. May, 580.

is, that a local and personal act, which is declared to be a public act, 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 made 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] Since Lord Brougham's act, however, this distinction between public and private acts is done away with, as every public act is required to be judicially noticed, unless the contrary is expressly declared. And by the 8 and 9 Vict. c. 113, § 3, it is enacted, that all copies of private and local and personal acts, not public, if purporting to be printed by the queen's printers, shall be admitted in evidence thereof by all courts, judges, justices, and others, without any proof being given that such copies were so printed.[2]

2531. Fees are chargeable in both houses, upon the various stages of private bills, and are payable by the several parties promoting or opposing such bills; the parliamentary agents employed by the parties being responsible for the same to officers of the house, whose special duty it is to take care, that such fees are properly paid; and if a parliamentary agent neglects his duty in this respect, and is reported as a defaulter, the speaker gives orders that his functions as agent shall be suspended, until further directions have been given by the house.[3]

2532. The last matter to be mentioned in connection with the passing of private bills, is the taxation of the costs incurred by the promoters, opponents and other parties, and payable by them to their parliamentary agents. By acts recently passed, in both houses, a regular system has been established, for ascertaining the reasonable and proper costs arising out of every application to parliament; a taxing officer has been appointed in each house for the purpose; and lists have been prepared, defining the charges which

[1] Phillipps & Amos, II. 611; May, 581.
[2] May, 582.
[3] May, 582, 583.

parliamentary agents and solicitors will be allowed for the various services usually rendered by them.[1]

2533. Any person upon whom a demand is made by a parliamentary agent or solicitor, for any costs incurred in respect of any proceedings in the house, or in complying with its standing orders, may apply to the taxing officer for the taxation of such costs; and any parliamentary agent or solicitor, who may be aggrieved by the non-payment of his costs, may apply, in the same manner, to have his costs taxed, preparatory to the enforcement of his claims. The taxing officer of either house is thus enabled to tax the whole of a bill brought before him for taxation, whether the costs relate to the proceedings of that house only, or to the proceedings of both houses; and also other general costs incurred in reference to a private bill or petition.

2534. In the commons the taxing officer reports his taxation to the speaker, and in the lords to the clerk of the parliaments. If no objection is made within twenty-one days, either party may obtain from the speaker or clerk, as the case may be, a certificate of the costs allowed, which, in any action brought for the recovery of the amount so certified, will have the effect of a warrant of attorney to confess judgment, unless the defendant shall have pleaded that he is not liable to the payment of the costs.[2]

[1] May, 583, 584.

[2] May, 584, 585.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART NINTH.

IMPEACHMENT.

LAW AND PRACTICE

OF

LEGISLATIVE ASSEMBLIES.

PART NINTH.

IMPEACHMENT.

2535. It has already been stated, that parliament exercises a judicial power, for the trial and punishment of offenders, in certain cases, by means of bills of attainder and of pains and penalties. In proceedings of this description each house participates as a legislative body, and the concurrence of both is necessary. The person, against whom the bill is directed, is tried, so far as any trial takes place, first by the one house and then by the other, and if the bill passes, is found guilty by both. There is also another form of proceeding, in which one house, the commons, appears solely in the character of complainants or accusers, and the other, the lords, performs the functions of a judicial tribunal. A prosecution of this character is known by the name of impeachment.

2536. The earliest instance of an impeachment by the commons, at the bar of the lords, was in the year 1376, in the reign of Edward III. Before this time, the practice had been for the lords to try persons, whether peers or commoners, without any previous complaint or interference on the part of the commons, for great public offences. At this period, the only participation of the commons, in the making of laws, was in the form of a petition to the king and lords, praying that the law desired might be enacted. When they

extended their inquiries into the official conduct of great public officers, they proceeded in the same manner, and petitioned the king and lords that they might be brought to trial for their offences. This was the introduction of the proceeding by impeachment, which, by the practice of succeeding times, has become established as a constitutional mode of bringing great offenders to justice, and has attained a distinct and well-settled form.[1]

2537. During the four reigns, which succeeded that of Edward III., impeachments were frequent; but in the reigns of Edward IV., Henry VII., Henry VIII., Edward VI., Mary, and Elizabeth, no instances of it occurred. Mr. Hallam remarks, that during this latter period, "the institution had fallen into disuse, partly from the loss of that control which the commons had obtained under Richard II., 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."[2] Perhaps, also, the prosecutions in the star-chamber, which were resorted to by the sovereign, during these reigns, for the punishment of state offenders, may, to some extent, have supplied the place of impeachments.[3]

2538. In the reign of James I. the practice of impeachment was revived, and 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 Monpesson and the lord chancellor Bacon were impeached, and the revolution of 1688, there were about forty cases of impeachment. In the reigns of William III., Anne, and George I., there were fifteen; and in the reign of George II., only one, that of Lord Lovat, for high treason, in the year 1746. The last cases were those of Warren Hastings, in 1788, and of lord Melville, in 1805.[4]

2539. The purpose of impeachment, in modern times, is the prosecution and punishment of high crimes and misdemeanors, chiefly of an official or political character, which are either beyond the reach of the law, or which no other authority in the State, but the supreme legislative power, is competent to prosecute; and, by the law of parliament, all persons, whether peers or commoners, may be impeached for any crimes or offences whatever.[5]

2540. This extraordinary judicature seems to have been called into action most frequently, and then to have been most needed, in

[1] May, 49, 50.
[2] Cons. Hist. 357.
[3] May, 49.
[4] May, 49, 50.
[5] May, 474.

times when the people had reason to be jealous of the crown; when parliament had less control over prerogative; when judges held their offices at the pleasure of the crown, and courts of justice were less pure; and when, instead of vindicating the law, its execution was resisted, and political offenders were screened from justice, by the crown and its officers. But, at the present day, since the limitations upon the prerogative, the immediate responsibility of the ministers of the crown to parliament, the vigilance and activity of parliament in scrutinizing the actions of public men, the settled administration of the law, and the direct influence of parliament over courts of justice, and the independence of the latter of the crown, the offences properly punishable by impeachment have been of rare occurrence.

2541. In this proceeding, the commons are said to act as the grand inquest of the whole kingdom, in investigating the subject of a supposed offence, and in agreeing upon and drawing up the articles of impeachment. While engaged in this preliminary step, the commons proceed in the same manner, and upon the same evidence, as in relation to ordinary matters of legislation. According to the usual practice, a member, in his place, first charges the accused with high treason, or some other high crime or misdemeanor, and after supporting his charge with proofs, moves that the person thus implicated, be impeached. If the house deems the grounds of accusation sufficient, and agrees to the motion, the member, by whom it was made, 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, thereupon, accompanied by as many others as are necessary to go with a message, proceeds to the bar of the house of lords, and impeaches the accused accordingly.[1]

2542. The articles of impeachment have usually been prepared after the formal impeachment above described; though, in the case of Warren Hastings, it was otherwise. A committee is appointed to draw up the articles, who proceed accordingly, and, on their report, the articles are considered. When agreed to, they are engrossed and delivered to the lords, with a saving clause, providing that the commons shall be at liberty, if they think proper, to exhibit further articles from time to time.

[1] May, 476.

2543. Upon the formal impeachment, at the bar of the lords, if the accused is a peer, he is attached or restrained in custody, by order of the house of lords; if a commoner, he is taken into custody by the sergeant-at-arms attending the commons, by whom he is delivered to the gentleman usher of the black rod, in whose custody he remains, unless he is admitted to bail by the house of lords, or otherwise disposed of by its order.[1]

2544. Copies of the articles of impeachment are furnished by the house of lords to the party accused, who answers each of them in writing, and copies of all such answers are communicated by the lords to the commons, who return replications to the same, if necessary.

2545. The lords appoint a day for the trial, and, in the mean time, the commons appoint managers to prepare evidence and conduct the proceedings. The witnesses necessary to prove the charges, are summoned by the lords, at the request of the commons. The accused may have summonses issued for the attendance of witnesses on his behalf, in the same manner. He is also entitled to be fully heard in defence by counsel.

2546. When the house of lords is sitting as a court of impeachment, for the trial of a peer impeached of high treason, one of them is appointed by the crown, on the address of the house, to preside during the trial, as lord high steward. On other occasions, the chancellor, or speaker for the time being, presides.

2547. The trial of an impeachment has usually taken place in Westminster Hall, which has been temporarily fitted up for the purpose. When this is the case, the lords proceed each day, in a body, from their own house to the place of trial, where they remain whilst the trial is proceeding. When the sitting for the day is brought to a close, they return in the same manner. If, during the progress of the trial, any question arises, which it is necessary to consider and decide, the lords withdraw for that purpose to their usual place of sitting, and there consider and debate the matter in question, in the same manner as any other subject. When it has come to a decision, it returns to the place of trial, and makes the decision known by its presiding officer.

2548. The house of commons prosecutes an impeachment by the agency of managers previously appointed for the purpose from among their own members. The managers exercise the ordinary functions of counsel, and open the case, and examine witnesses to sustain the charges, in the same manner as on the trial of an in-

[1] May, 477.

dictment. When the case has been concluded, on the part of the prosecution, the managers for the commons are answered by the counsel for the accused, who also call and examine witnesses for the defence, if they think proper, according to the usual course of criminal proceedings. When the case for the defence is closed, the managers have the right to reply. The house of commons proceeds to the place of trial, and there attends, in a body, each day, during the trial, as a committee of the whole, and returns to its house in the same manner. In the performance of their several duties, both the managers for the commons, and the counsel for the accused, are subject to the direction and supervision of the court, and are bound to conform to the rules of proceeding which are observed in other judicial tribunals. The managers for the commons are bound to confine themselves to the charges contained in the articles of impeachment.[1]

2549. When the cause is concluded on both sides, the lords withdraw to their own house, and there agree upon the questions to be put, in order to determine whether the accused is guilty or not guilty. When the questions are agreed upon, which may not be the case under some days, the lords proceed again to the place of trial, and there in the presence of the accused and of the house of commons, each member of the court, beginning with the lowest in rank, is interrogated, in the manner agreed upon, by the lord high steward. The peers successively rise in their places, as the questions are put, and, standing uncovered and laying their right hands upon their breasts, answer "guilty" or "not guilty," as the case may be, "upon my honor." The lord high steward, or other presiding officer, if a peer, then gives his own opinion, and proceeds to ascertain the result. The numbers, being cast up and ascertained, are stated by the presiding officer to the lords, and then the accused is acquainted with the result. The lords then withdraw to their house, and agree to a resolution accordingly, which is entered on their journals. If the accused is found guilty, they also agree upon the judgment to be rendered against him.

2550. If the accused is declared not guilty, the impeachment is dismissed; but, if guilty, it then remains for the commons to demand judgment against him, if they think proper. But as the commons commence a prosecution by impeachment, at their own

[1] On the trial of Mr. Hastings, he complained, by petition, to the house of commons, that matters of accusation had been added to those originally laid to his charge, and the house resolved that certain words (those objected to by Mr. Hastings) ought not to have been spoken by Mr. Burke, one of the managers. Comm. Jour. XLIV. 298, 320.

will and pleasure, so they may proceed with it or not, or suspend their proceedings, at any stage, as they please. It is in their power, therefore, after a conviction, to refrain from demanding judgment against the accused, and thus, in effect, to extend a pardon to him. Without such demand, the lords cannot proceed to pronounce judgment.

2551. When the lords have agreed upon the judgment to be rendered, they send a message to the commons to acquaint them, that the lords are ready to proceed further with the impeachment, and to render judgment against the accused, if the commons shall see fit to demand the same. The commons thereupon attend, with their managers, in the place of trial, as before, at the time appointed by the lords for the purpose; and the accused, being called to the bar, is then permitted to offer reasons, if he has any, in arrest of judgment. When all such matters have been heard and overruled, or when nothing is urged in arrest of judgment, the speaker of the commons demands judgment, in their names, and in the names of all the commons of England, against the accused; and the judgment is thereupon pronounced by the lord high steward, the lord chancellor, or the speaker of the lords, as the case may be. The proper measures are then taken by the lords to enforce the sentence. If the offender is sentenced to the payment of a fine, he is ordered to be committed to the tower until payment.

2552. When an impeachment is once pending in the house of lords, it is not discontinued by a prorogation, or even by a dissolution of parliament, but continues from session to session, until the proceedings are terminated. Each succeeding house of commons may, therefore, take up and proceed with an impeachment, which has been commenced or prosecuted by their predecessors. But this is not the case with the preliminary steps in the house of commons, which precede an impeachment, which, like all other unfinished business, are discontinued by a prorogation or dissolution, and therefore require to be revived in a succeeding session. To prevent the inconvenience which would have resulted from such a discontinuance in the cases of Warren Hastings in 1786, and in that of Lord Melville, in 1805, acts were passed to provide that the proceedings depending in the house of commons upon the articles of charge in those cases should not be discontinued by any prorogation or dissolution of parliament.

2553. The royal prerogative of pardon extends to all convictions on impeachment, as well as indictment; and, therefore, after the judgment of the lords has been pronounced, the crown may re-

prieve or pardon the offender. But attempts having been made by the crown, to screen offenders from the inquiry and justice of parliament, by the intervention of the prerogative of pardon, the commons, in the case of the earl of Danby, in 1679, protested against a royal pardon being pleaded in bar of an impeachment, and by the act of settlement, 12 and 13 W. III. c. 2, it was declared, "that no pardon under the great seal of England shall be pleadable to an impeachment by the commons in parliament."

2554. In this country, whatever may be thought of the question, whether the proceeding, by way of impeachment, is a necessary incident to a legislative body or not, it is a question, which we have no occasion to decide; inasmuch, as this proceeding is a matter here of constitutional provision; being mentioned and established by the constitutions of the United States, and of all the States in the Union. The provisions on this subject in the constitution of the United States prevail most extensively, with some differences of minor importance, in the several States, and will be taken as the basis of the remarks which follow touching impeachments in this country. The subject will be concluded by a short statement of the practice in proceedings of this sort.[1]

2555. I. The subjects of this proceeding are, in general, declared to be the chief executive magistrate, and other civil officers. Who are civil officers, liable to this process, can only be authoritatively settled by their being enumerated, but which has not been done, by the constitution of the United States; under which it has only been decided by the senate, sitting as a court of impeachment, that members of the legislature are not such civil officers.[2]

2556. II. The power of impeachment is expressly conferred by all our constitutions upon the lower or more popular of the two branches of which the legislative body is composed, and which, from this function, is sometimes denominated the grand inquest of the State; to be exercised, not like a grand-jury, but in its ordinary legislative form of proceeding; and to be determined upon, unless otherwise specified, which is the case in some of the constitutions, by the ordinary major vote. This power, in the constitutions of the United States, and of the greater number of the individual

[1] In the congress of the United States, from the practice of which this summary is taken, four trials of impeachment have occurred, namely, those of William Blount in 1799; of John Pickering in 1803; of Samuel Chase in 1805; and of James H. Peck in 1832. The three first-named cases are published together in the third volume of the journals of the senate. Besides these, there have been cases of impeachment in individual States, as, for example, that of James Prescott, in Massachusetts.

[2] J. of S. III. 490.

States, is conferred directly, and in the most appropriate phraseology, upon the house of representatives; in others, notice is required to be previously given, and an opportunity to be heard in his defence, allowed to the party accused; in others a greater than the ordinary majority is required to sustain articles of impeachment; and in others it is provided, that the impeachment of an offender shall operate, until a decision of it in his favor, to suspend him from the exercise of the functions of his office.

2557. III. The charges of impeachment, thus agreed upon, are to be preferred by the lower house, to the upper or senate, as this branch is called; upon which is conferred, in express terms, the power to try all impeachments thus preferred. For this purpose, the members of the upper branch, who may take their seats therein, and be qualified as such at any stage of the proceedings on an impeachment, are generally required to be under an oath or affirmation similar to that taken by jurors on the trial of an indictment, *well and truly to try the charge or charges*, embraced in the articles; and it is no objection to a member's sitting or acting in this capacity, that he has already participated, as a member of the lower house, in agreeing to them.[1] In some of the constitutions it is provided, that when the chief executive magistrate shall be tried, the court of impeachment shall be presided over by the chief or other presiding justice of the supreme court; in that of Vermont it is provided that the senate sitting as a court of impeachment, shall take to its assistance, for their opinion merely, the justices of the supreme court; and in other constitutions it is provided generally, that there shall be no trial of an impeachment until after an adjournment of the legislature.

2558. IV. The principle of unanimity, which distinguishes trial by jury, does not prevail in the trial of impeachment; the votes of a majority only of the members constituting the court, unless otherwise specified in the particular constitution, being necessary to a conviction. In the constitution of the United States, and in those of the greater number of the States, it is expressly provided, that the concurrence of two thirds, at least, of the members present, shall be necessary to convict.

2559. V. The sentence, in cases of impeachment, commonly extends only to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the particular state or government in which the proceeding is instituted; and either or

[1] Hatsell, IV. 177, and note 181; J. of S. III. 333, 369.

both of these may be inflicted in any given case.[1] A conviction on impeachment is usually exempted from the operation of the ordinary pardoning power.

2560. VI. It is generally provided, in the American constitutions, that the party convicted on an impeachment shall, nevertheless, "be liable and subject to indictment, trial, judgment, and punishment, according to law," as in other cases.

2561. VII. An impeachment is not discontinued or dissolved by an adjournment or dissolution of the legislature in which it is pending; but may be brought forward, in the state in which it was left, and prosecuted in a succeeding legislature.

2562. VIII. The tribunal before which an impeachment is preferred, may take such order as it thinks proper according to law, for the appearance of the party accused, and may proceed to trial in his absence.[2]

2563. The following is a summary of the practice in this respect of the two houses of the congress of the United States. When an officer is known or suspected to be guilty of malversation in office, some member of the house of representatives usually brings forward a resolution to accuse the party, or for the appointment of a committee to consider and report upon the charges brought against him. The latter is the usual course; and the report of the committee ordinarily embraces, if adverse to the party, a statement of the charges, and recommends the resolution that he be impeached therefor. If the resolution is adopted by the house, a committee is thereupon appointed to impeach the party at the bar of the senate; to state that the articles against him will be exhibited in due time, and made good before the senate; and to demand that the senate take order for the appearance of the party to answer to the impeachment.

2564. This being accordingly done, the senate signifies its willingness to take such order; and articles are then prepared by a committee, under the direction of the house of representatives; which, when reported to, and approved by the house, are then presented in the like manner to the senate; and a committee of managers is appointed to conduct the impeachment. When the articles are thus presented, the senate issues a process summoning the person accused to appear before it, to answer the articles. The process is served by the sergeant-at-arms of the senate, and due return is made thereof under oath.

[1] J. of S. III. 376.

[2] J. of S. III. 505, 506.

2565. The articles thus exhibited need not, and do not in fact, pursue the strict form and accuracy of an indictment. They are sometimes quite general in the form of the allegations; but always contain, or ought to contain, so much certainty as to enable the party to put himself upon the proper defence, and also in case of acquittal to avail himself of it, as a bar to another impeachment. Additional articles may be exhibited, especially, as is commonly the case, if the right to do so has been reserved, at any stage of the prosecution.

2566. When the return day of the process for appearance has arrived, the senate resolves itself into a court of impeachment, and the senators are then, if not before, solemnly sworn or affirmed to do impartial justice upon the impeachment, according to the constitution and laws of the United States. The person impeached is then called to appear and answer the articles. If he does not appear in person, or by attorney, his default is recorded, and the senate may proceed, *ex parte*, to the trial of the impeachment. If the party does appear in person, or by attorney, his appearance is recorded. Counsel are permitted to appear, and to be heard upon an impeachment.

2567. When the party appears, he is entitled to be furnished with a copy of the articles, and time is allowed him to prepare his answer thereto. The answer, like the articles, is exempted from the necessity of observing great strictness of form. The party may plead that he is not guilty as to part, and make a further defence as to the residue; or he may in a few words, saving all exceptions, deny the whole charge or charges; or he may plead specially in justification or excuse all the circumstances attendant upon the case. And he is also indulged with the liberty of offering argumentative reasons, as well as facts, against the charges, in support, and as part, of his answer, to repel them. It is usual to give a full and particular answer separately to each article of the accusation.

2568. When the answer is prepared and given in, the next regular proceeding is, for the house of representatives to file a replication to the answer in writing, in substance denying the truth and validity of the defence stated in the answer, and averring the truth and sufficiency of the charges, and the readiness of the house to prove them, at such convenient time and place as shall be appointed by the senate. A time is then assigned for the trial, and the senate at that time, or before, adjusts the preliminaries and other proceedings proper to be had, before and at the trial, by fixed regulations; which are made known to the house of representatives,

and to the party accused. On the day appointed for the trial, the house of representatives appears at the bar of the senate, either in a body, or by managers selected for that purpose, to proceed with the trial. Process to compel the attendance of witnesses is previously issued, at the request of either party, by order of the senate, and at the time and place appointed, such witnesses are bound to appear and give testimony.

2569. On the day of trial, the parties being ready, the managers to conduct the prosecution open it on behalf of the house of representatives, one or more of them delivering an explanatory speech, either of the whole charges, or of one or more of them. The proceedings are then conducted substantially as they are upon common judicial trials, as to the admission or rejection of testimony, the examination and cross-examination of witnesses, the rules of evidence, and the legal doctrines as to crimes and misdemeanors. When the whole evidence has been gone through, and the parties upon each side have been fully heard, the senate then proceeds to the consideration of the case. If any debates arise, they are ordinarily conducted in secret; if none arise, or after they are ended, a day is assigned for a final public decision by yeas and nays upon each separate charge in the articles of impeachment.

2570. When the court is assembled for the purpose of giving judgment, the question is propounded to each member of the senate by name, by the presiding officer of the court, in the following manner, upon each article, the same being first read by the secretary of the senate: "Mr. ———, how say you; is the respondent guilty, or not guilty, of a high crime and misdemeanor, as charged in the ——— article of impeachment?" Whereupon the member rises in his place, and answers guilty or not guilty, as his opinion is. If upon no one article two thirds of the senate decide that the party is guilty, he is then entitled to an acquittal, and is declared accordingly to be acquitted. If he is convicted of all, or any of the articles, the senate then proceeds to fix and declare the proper punishment. The pardoning power of the president does not extend to judgments upon impeachment; and hence, when once pronounced, they become absolute and irreversible.[1]

[1] Story, Commentaries on the Constitution, II. §§ 805, 806, 807, 808, 809.

In concluding the foregoing work on parliamentary law and practice, the author may be allowed to suggest that, THE GREAT PURPOSE OF ALL THE RULES AND FORMS, BY WHICH THE BUSINESS OF A LEGISLATIVE ASSEMBLY IS CONDUCTED, WHETHER CONSTITUTIONAL, LEGAL, OR PARLIAMENTARY, IN THEIR ORIGIN, IS TO SUBSERVE THE WILL OF THE ASSEMBLY, RATHER THAN TO RESTRAIN IT; TO FACILITATE, AND NOT TO OBSTRUCT, THE EXPRESSION OF ITS DELIBERATE SENSE.

APPENDIX.

APPENDIX.

I.

OF THE CONTINUITY AND PERMANENCE OF THE SENATE OF THE UNITED STATES.

Mr. Buchanan rose and said:—

An old senate and a new senate! There could be no *new* senate. This was the very same body, constitutionally, and in point of law, which had assembled on the first day of its meeting, in 1789. It had existed, without any intermission, from that day until the present moment, and would continue to exist so long as the government should endure. It was, emphatically, a permanent body. Its rules were permanent, and were not adopted from congress to congress, like those of the house of representatives. For many years after the commencement of the government, its secretary was a permanent officer, though our rules now require that he should be elected at stated intervals. The senate always had a president, and there were always two thirds of its actual members in existence, and generally a much greater number. It would be useless to labor this question. Every writer, without exception, who had treated on the subject, had declared the senate to be a permanent body. It never dies; and it was the sheet-anchor of the constitution, on account of its permanency.[1]

II.

WRIT FOR THE ELECTION OF THE MEMBERS OF THE HOUSE OF COMMONS.

The Writ to the Sheriff, on a General Election.

George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and so forth. — To the Sheriff of the county of Oxford, greeting. Whereas by the advice and assent of our council, for certain arduous and

[1] Cong. Globe, IX. 240.

urgent affairs concerning us, the state and defence of our kingdom of Great Britain and the church, we have ordered a certain parliament to be holden at our city of Westminster, on the twenty-ninth day of November next ensuing, and there to treat and have conference with the prelates, great men, and peers of our realm, We command and strictly enjoin you, that proclamation being made of the day and place aforesaid, in your next county court to be holden after the receipt of this our writ, two knights of the most fit and discreet of the said county, girt with swords, and of the university [1] of Oxford two burgesses, and of every city of that county two citizens, and of every borough in the same county two burgesses of the most efficient and discreet, freely and indifferently *by those who at such proclamation shall be present according to the* form of the statues in that case made and provided, *you cause to be elected; and the names of those knights*, citizens, and burgesses, *so to be elected* (whether they be present or absent) you cause to be inserted in certain indentures to be thereupon made between you and those who shall be present *at such election*, and then at the day and place aforesaid you cause to come in such manner that the said knights, for themselves and the commonalty of the same county, and the said citizens and burgesses for themselves and the commonalty of the said universities, cities, and boroughs respectively, may have from them full and sufficient power to do and consent to those things which then and there by the common council of our said kingdom, (by the blessing of God,) shall happen to be ordained upon the aforesaid affairs, so that for want of such power, or through an improvident election of the knights, citizens, or burgesses, the aforesaid affairs may in nowise remain unfinished; *willing, nevertheless, that neither you nor any other sheriff of this our said kingdom be in anywise elected;* [2] and that the election in your full county so made distinctly and openly, under your seal and the seals of those who shall be present at such election, you do certify to us in our chancery, at the day and place aforesaid without delay, remitting to us one part of the aforesaid indentures annexed to these presents, together with this writ. Witness ourself at Westminster, the first day of October, in the fourteenth year of our reign.

To be indorsed when returned.

The execution of this writ appears in certain schedules hereunto annexed.

A. B. Sheriff.

[By the statute VII. H. 4, c. 15, in the writs of the Parliament to be made hereafter, this clause shall be put, "Et electionen tuan

[1] The writs to the sheriff are all in the same form, except that in this and in *that* to the sheriff of *Cambridgeshire* there is a clause for the election of members for the respective universities. *Dougl.* Hist. Controv. Elect. 450. This also corresponds with the Latin form. 1 Eliz. set forth in D'Ewes, 37.

[2] See Doug. Hist. Controv. Elect. 450.

in plene comitatu tuo factam distincti, et aperté sub sigillo tuo, et sigillis eorum que electioni illi inter fuerint nobis in cancellaria nostra ad diem et locum in brevi contentos certifias in dilate."]

III.

ON THE LIABILITY OF RETURNING OFFICERS.

The great constitutional principle stated in the text was first established in England, at the commencement of the last century, in the case of Ashby *v.* White, reported in 2 Lord Raymond, 938; 6 Modern Rep. 45; and Brown's Parliament Cases, 49; and was afterwards recognized and confirmed in Harman *v.* Tappenden, 1 East, 555, in Drewry *v.* Coulton, 1 East, 563, (note,) and in other cases. The case of Ashby *v.* White is a leading case in English jurisprudence, which is generally referred to, not only for the particular point decided, but as authority for the great principle, that wherever the common law gives a right, it gives at the same time a remedy by action. The case is also interesting on account of the important constitutional principle involved in the question which it decides, and the extraordinary proceedings to which it subsequently gave rise between the two houses of parliament, involving questions of still greater extent and importance. The case is further remarkable, from the fact, that it was at first decided against the plaintiff by these judges against the chief justice, Sir John Holt, whose opinion was finally sustained, and the judgment of his brethren reversed, by the house of lords, on a writ of error. This case undoubtedly establishes the law in this country, as well as in England, and has been recognized as authority, by cases in Massachusetts, (Kilham *v.* Ward, 2 Mass. Rep. 236; Lincoln *v.* Hapgood, 11 Mass. 350; Capen *v.* Foster, 12 Pickering, Rep. 485); by cases in New Hampshire, (Wheeler *v.* Patterson, 1 N. H. Rep. 88); in Connecticut, (Swift *v.* Chamberlain, 3 Conn. Rep. 537); and by cases in New York, (Jenkins and others *v.* Waldron, 11 John. Rep. 115); and probably by cases in other States. The decisions in the first-named State extend the principle of the liability much beyond the case of Ashby *v.* White, and allow the action to be maintained, even where there is no ground for imputing any wilful, intentional, or corrupt conduct to the officers managing the election; but in this respect, the jurisprudence of Massachusetts has not been followed or sustained by the courts in New Hampshire, or New York. In the case of Wheeler *v.* Patterson, (1 N. H. Rep. 88,) chief justice Richardson in giving the opinion of the court, reviews, and completely refutes the reasoning of the supreme court of Massachusetts, in the care of Lincoln *v.* Hapgood, (11 Mass. Rep. 350,) in which it was held, that wilful or corrupt misconduct was not

necessary to support the action. The doctrine of the latter case was however reaffirmed in the later case of Capen *v.* Foster, (12 Pick. Rep. 485,) in a very able opinion pronounced by the present chief justice, not on the ground apparently of reason or principle, but on that of authority merely. Indeed, unless the question is considered as no longer an open one, it seems to be entirely impossible to sustain the Massachusetts decisions, but upon the anomalous and extraordinary ground, that a municipal officer, acting in a judicial capacity at an election, is responsible in damages for an error of judgment; a principle which has never at any time or in any country been applied to other officers of a judicial or quasi judicial character.

IV.

ORIGIN OF THE MAJORITY PRINCIPLE.

The charter of the colony of the Massachusetts Bay being that of a trading company, and not municipal in its character, the officers of the colony were originally chosen at general meetings of the whole body of freemen; precisely as at the present day, the directors of a business corporation, a bank, for example, are chosen by the stockholders at a general meeting. In the choice of assistants, who were to be eighteen in number, at these meetings of the company, or, as they were called, courts of election, the practice seems to have been for the names of the candidates to be regularly moved and seconded, and put to the question, one by one, in the same manner with all other motions. This was then, as it is now, the mode of proceeding in England, in the election of the speaker of the house of commons, and in the appointment of committees of the house, when they are not chosen by ballot. Probably, also, it was the usual mode of proceeding in electing the officers of a private corporation or company. In voting upon the names thus proposed, it was ordered, — with a view, doubtless, to secure the independence and impartiality of the electors, — that the freemen, instead of giving an affirmative or negative voice in the usual open and visible manner, should give their suffrages by ballot, and for that purpose should "use Indian corn and beans, the Indian corn to manifest election, the beans contrary." The names of the candidates being thus moved, and voted upon, each by itself, it followed, of course, that no person could be elected but by an absolute majority.

In a very few years, however, from the first settlement of the country, the number of the freemen had so much increased, and they had so widely distributed themselves over the territory of the colony, that it had become inconvenient to a great many of them to attend the meetings of the company, on account of their dis-

tance from the place of meeting. In order to obviate this inconvenience, a mode of proceeding was, at length, established, which enabled those of the freemen who did not wish, or found it impracticable, to attend the meetings, to participate both in the nomination, and in the election of the assistants, as they had done before.

Previous to the annual meeting for election held in Boston, meetings were held in the several towns, at which the freemen put in their votes in distinct papers, or, as we now call them, ballots, for such persons not exceeding twenty in number, being freemen and resident, whom they desired to have chosen for magistrates or assistants, at the next election. These votes being sent to Boston, a convenient time before the election, and there examined by the proper authorities, the names of those twenty-six persons who had the most votes were ascertained, and they were declared to be "the men and they only," to be put to vote at the election. These names, together with the number of votes given for each, were then communicated to the freemen of the several towns, as the persons nominated for election as magistrates or assistants.

The freemen were again called together in their several towns, a short time before the holding of the court of election, and such of them as pleased were allowed to put in their proxies of election, for the officers then to be elected, including twenty assistants to be chosen by Indian corn out of the twenty-six persons in nomination. These proxies were sealed up, with the name of the person voting, written on the paper, and transmitted to Boston, on the day of election; when and where all the freemen of the colony, who had not voted by proxy, were required to appear, and bring in their votes. The votes thus sent by proxy, as well as those brought in by the freemen, in person, were all counted together, and the result of the election determined accordingly. Those eighteen of the twenty-six nominated, who had the most votes, were declared the assistants.

By this mode of proceeding, it will be perceived, that all the freemen of the colony were enabled to participate in the nomination of the candidates, and those who chose to do so in the election, for assistants, without being obliged to attend the court of election, in person; and that the assistants were elected substantially in the same manner as before, namely, by a nomination at large, and an affirmative or negative put upon each name. The principle of the absolute majority, as distinguished from that of the plurality, seems thus to have had its origin and become established in our municipal elections.

V.

RETURN OF A WRIT OF ELECTION.

Indenture of Return for a County.

This indenture, made in the full county of York, holden at the Castle of York, in and for the said county, on Wednesday day of , in the year of the reign of our Sovereign Lord George the Third, etc.; and in the year of our Lord , between A. B. Esq., sheriff of the said county of the one part; and C. D. E. F. etc., and many other persons of the county aforesaid and electors of knights to Parliament for the said county of the other part; witnesseth, that proclamation being made by the said sheriff, by virtue of and according to a writ of our sovereign lord the king directed to the said sheriff and hereunto annexed, for the electing of two knights, of the most fit and discreet of the said county, girt with swords, to serve in a certain Parliament to be holden at the city of Westminster, on the day of next ensuing. The said parties to these presents, together with the major part of the electors for the county aforesaid, present, in the full county of York at the castle of York aforesaid, on the day of the date hereof, by virtue of the said writ, and according to the force and effect of the statutes in that case made and provided, have, in the said full county of York by and with our assent and consent, freely and indifferently elected and chosen two knights the most fit and discreet of the said county girt with swords, to wit, Sir G. S., baronet, and H. D. of etc. Esq., to be knights to the said parliament, so to be holden at the day and place in that behalf hereinbefore mentioned for the commonalty of the county of York; giving and granting to the aforesaid knights full and sufficient power for themselves and the commonalty of the same county to do and consent to those things which, in the said parliament, by the common council of the kingdom of our said lord the king, by the blessing of God, shall happen to be ordained upon the affairs in the said writ specified. In witness whereof, the parties to these presents have interchangeably put their hands and seals, the day, year, and place first above written.

A. B.,
C. D.,
E. F., etc.

VI.

SPEAKER'S WARRANT.

I. *Copy of the Warrant issued in Duane's Case. J. of S. III.* 60.

UNITED STATES, } ss.
The 27th day of March, 1800, }

Whereas the senate of the United States, on the 18th day of March, 1800, then being in session in the city of Philadelphia, did resolve that a publication in the General Advertiser, or Aurora, a newspaper printed in the said city of Philadelphia, on Wednesday, the 19th day of February, then last past, contained assertions and pretended information respecting the senate, and committee of the senate, and their proceedings, which were false, defamatory, scandalous, and malicious, tending to defame the senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States; and that the said publication was a high breach of the privileges of the house.

And whereas the senate did then further resolve and order, that the said William Duane, resident in the said city, and editor of said newspaper, should appear at the bar of the house, on Monday, the 24th day of March, instant, that he might then have opportunity to make any proper defence for his conduct in publishing the aforesaid false, defamatory, scandalous, and malicious assertions and pretended information.

And whereas the said William Duane did appear on said day at the bar of the house, pursuant to said order, and requested counsel; and the senate, by their resolution of the 24th day of March, instant,

Resolved, That William Duane, having appeared at the bar of the senate, and requested to be heard by counsel on the charge against him for a breach of privileges of the senate, he be allowed the assistance of counsel while personally attending at the bar of the senate, who might be heard in denial of any facts charged against said Duane, or in excuse and extenuation of his offence, and that the said William Duane should attend at the bar of the senate on Wednesday, then next, at twelve o'clock, of which the said Duane had due notice.

And whereas said William Duane, in contempt of the said last-mentioned order, did neglect and refuse to appear at the bar of the said senate, at the time specified therein; and the senate of the United States, on the 27th day of March, instant, did thereupon resolve that the said William Duane was guilty of a contempt of said order and of the senate, and that for said contempt he, the said William, should be taken into custody of the sergeant-at-arms attending the

senate, to be kept for their further orders. All which appears by the journals of the senate of the United States, now in session in the said city of Philadelphia.

These are, therefore, to require you, James Mathers, sergeant-at-arms for the senate of the United States, forthwith to take into your custody the body of the said William Duane, now resident in the said city of Philadelphia, and him safely to keep, subject to the further order of the senate; and all marshals, and deputy marshals, and civil officers, of the United States, and every other person, are hereby required to be aiding and assisting to you in the execution thereof; for which this shall be your sufficient warrant.

Given under my hand, this 27th day of March, 1800.

THOMAS JEFFERSON,
President of the Senate of the United States.

2. *Copy of the Warrant issued by the Speaker of the House of Commons in the case of the Sheriff of Middlesex. May, 72.*

Whereas the house of commons have this day resolved that W. Evans, Esq., and J. Whulton, 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 sergeant-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. Whulton, and them safely to keep during the pleasure of this house; for which this shall be your sufficient warrant.

3. *Copy of Summons for Witnesses in the House of Representatives of the United States.*

By authority of the house of representatives of the congress of the United States of America.

To Sergeant-at-arms. You are hereby commanded to summon of , to be and appear before the committee of the house of representatives of the United States, in their chamber, in the capitol, in the city of Washington, on the , at the hour of , then and there to testify touching matters of inquiry committed to said committee, and he is not to depart without leave of said committee.

Herein fail not, and make return of this summons.

Witness my hand, and the seal of the house of representatives of the United States, at the city of Washington, this day of

Speaker.

ATTEST:

Clerk.

VII.

THE SPEAKER'S PRAYER DURING THE SESSION.

It had been the custom of these later Protestant parliaments for the speaker to compose a prayer, to be read by him every morning during the session. Accordingly, the present speaker made and read the following: — "O eternal God, Lord of heaven and earth, the great and mighty Counsellor, we thy poor servants, assembled before thee, in this honorable senate, humbly acknowledge our great and manifold sins and imperfections, and thereby our unworthiness to receive any grace and assistance from Thee: yet, most merciful Father, since, by thy Providence, we are called from all parts of the land to this famous council of parliament, to advise of those things which concern thy glory, the good of thy church, the prosperity of our prince, and the weal of her people; we most entirely beseech thee, that pardoning all our sins in the blood of thy son Jesus Christ, it would please thee, by the brightness of thy Spirit, to expel darkness and vanity from our minds, and partiality from our speeches; and grant unto us such wisdom and integrity of heart as becometh the servants of Jesus Christ, the subjects of a gracious prince, and members of this honorable house. Let not us, O Lord, who are met together for the public good of the whole land, be more careless and remiss than we use to be in our own private causes. Give grace, we beseech thee, that every one of us may labor to show a good conscience to thy majesty, a good zeal to thy word, and a loyal heart to our prince, and a Christian love to our country and commonwealth. O Lord, so unite and conjoin the hearts of her excellent majesty and this whole assembly, as they may be a threefold cord, not easily broken; giving strength to such godly laws as be already enacted, that they may be the better executed, and enacting such as are further requisite for the bridling of the wicked, and the encouragement unto the godly and well-affected subjects: that so thy great blessing may be continued towards us, and thy grievous judgments turned from us. And that only for Christ Jesus' sake, our most glorious and only mediator and advocate, to whom with thy blessed majesty and the Holy Ghost, be given all honor and praise, power and dominion, from this time forth for ever more." (Hans. P. H. I. 808.)

VIII.

BILL PASSED BY THE MISCOUNTING OF VOTES.

Burnett, (History of His Own Times,) vol. II. p. 485, (1680,) relates the following anecdote:—"The former parliament had passed a very strict act for the due execution of the *habeas corpus;* which was indeed all they did; it was carried by an odd artifice in the house of lords. Lord Grey and lord Norris were named to be the tellers; lord Norris, being a man subject to vapors, was not at all times attentive to what he was doing; so a very fat lord coming in, lord Grey counted him for ten, as a jest at first; but seeing lord Norris had not observed it, he went on with this misreckoning after; so it was reported to the house and declared that they who were for the bill were the majority, though it indeed went on the other side; and by this means the bill passed." Speaker Onslow's note on this passage is:—"See Minute-Book of the House of Lords, with regard to this bill, and compare there the number of lords that day in the house with the number reported to be in the division, which agrees with this story." The bill, which was the subject of this anecdote, passed in the 31 Charles II. of which it is chap. 2, and is entitled, "An act for the better securing the liberty of the subject, and for preventing of imprisonments beyond seas." This statute is the famous *habeas corpus* act, which, says Blackstone, III. 135, is frequently considered as another *magna charta.* Also, IV. 438, "great bulwark of the constitution." Lord Mansfield, Parl. Reg. II. 168, alluding to the anecdote, says:—"Suppose, again, the tellers, through mistake or design, had misreported the numbers, would you consent to have the declared sense of the house set aside? I remember to have heard a matter of that sort, upon one of the greatest questions ever decided in this house: Lord Bradford, being a remarkably fat man, the teller, after the question was carried, said, that he counted him as ten, by which he gained the victory. It is, indeed, more probable, that he might have told him as two; but, in either event, it is plain, the matter was not to be set right after the sense of the house was once regularly declared." This last remark is not now true; it is quite common to correct mistakes in a count, and, if made necessary by such correction, to alter the determination of the house.

IX.

TAKING OF THE YEAS AND NAYS.

Attempts have been recently made, some of which are not wanting in ingenuity, to facilitate the taking of a question in this manner by mechanical contrivances. One plan proposed to provide each member at his seat with two handles, like those of a door bell, one of which he was to pull for aye, and the other for no. These were to communicate with machinery at the clerk's table, by means of which it would be seen how each member voted. The votes could then be enumerated and declared. This invention seems to have attracted some admiration for its novelty and ingenuity, but has not as yet been anywhere adopted. The method of taking the yeas and nays, which has long been practised in Massachusetts, probably combines all the advantages which can be derived from any kind of mechanical invention.

In the house of representatives of Massachusetts, which is by far the most numerous of all the legislative bodies in this country, the mode practised in taking the yeas and nays is the following. The names of the members being printed on a sheet, the clerk calls them in their order; and, as each one answers, he places a figure in pencil expressing the number of the answer, at the right or left of the name, as the answer is yes or no; so that the last figure on each side shows the number of the answers on that side, and the two are the numbers on the division; thus, at the left hand of the name of the first member that answers *yes*, the clerk places a figure 1; at the right hand of the name of the first member that answers *no*, he also places a figure 1; the second member that answers yes is marked 2; and so on to the end; the side of the name, on which the figure is placed, denoting whether the answer is yes or no, and the figure denoting the number of the answer on that side. The affirmatives and negatives are then read separately, if necessary, though it is usually omitted, and the clerk is then ready, by means of the last figure on each side, to give the result to the speaker to be announced to the house. The answers are afterwards written out at length on the lists, — the names recorded when that is required in the journal, — and the lists themselves preserved and bound up at the end of the session. By this mode of proceeding, which is at the same time the most expeditious and the most certain to be correct, much valuable time is saved, which would otherwise be wasted in waiting for the result to be ascertained by the comparatively slow and uncertain method of counting.

X.

FREEDOM OF SPEECH AND DEBATE.

The doctrines laid down by Chief Justice Parsons, in the case of *Coffin* v. *Coffin*, (Mass. Rep. IV. 1 to 36,) seem perfectly consonant with the true principles of parliamentary law; but the application of them to the case itself has always appeared to me very extraordinary, and, to say the least, of very doubtful correctness. The facts were these: By the constitution of Massachusetts, as it then stood, public notaries were chosen, for the several counties, by the joint ballot of the two branches of the legislature. At the June session, in 1805, one of the members of the house of representatives, as a preliminary step to the election of notaries, submitted a resolution for the appointment of an additional notary for the county of Nantucket, stating, at the same time, the facts on which he founded his proposition. The defendant, also a member, rose in his place, and inquired of the mover, where he obtained his information of the facts which he had stated to the house. The mover answered, that his information came from a respectable gentleman from Nantucket. The resolution was then adopted, and the house proceeded to other business. The defendant afterwards, and before the rising of the house, met the mover of the resolution in one of the passage ways within the body of the house, and inquired of him who the respectable gentleman was from whom he received his information. The mover then pointed out the plaintiff, who was sitting without the bar, and said that he was the gentleman in question. The defendant, thereupon, uttered the slanderous words upon which the action was brought. The court decided that his privilege was no defence to the action. It seems difficult, even upon the principles advanced by the court, to conceive of a case in which a member could be more clearly entitled to immunity than this. The defendant spoke the words, not in debate, it is true, but within the house, during its sitting, to a brother member, within the hearing of members only, and in reference to a subject before the house; for although the resolution had passed, yet notaries had not been elected, and the resolution might have been rescinded at any time before the election.

XI.

EXTRACT FROM PRESIDENT POLK'S MESSAGE, DECLINING TO FURNISH PAPERS.

"It may be alleged, that the power of impeachment belongs to the house of representatives, and that with a view to the exercise of this power, that house have the right to investigate the conduct

of all public officers under the government. This is cheerfully admitted. In such a case, the safety of the republic would be the supreme law; and the power of the house, in the pursuit of this object, would penetrate into the most secret recesses of the executive department. It could command the attendance of any and every agent of the government, and compel them to produce all papers, public or private, official or unofficial, and to testify on oath to all facts within their knowledge. But, even in a case of that kind, they would adopt all wise precautions to prevent the exposure of all such matters, the publication of which might injuriously affect the public interest, except so far as this might be necessary to accomplish the great ends of public justice. If the house of representatives, as the grand inquest of the nation, should at any time have reason to believe that there has been malversation in office, by an improper use or application of the public money by a public officer, and should think proper to institute an inquiry into the matter, all the archives and papers of the executive department, public or private, would be subject to the inspection and control of a committee of their body, and every facility in the power of the executive be afforded to enable them to prosecute the investigation." (J. of H. 29th Cong. 1st Sess. 693.)

XII.

DIVISION OF A QUESTION.

In the year 1770, a question arose in the house of commons, whether an individual member had not a right to have a complicated motion divided into its several parts, and a question put separately on each, on his mere demand, and without any motion or vote for that purpose. A committee of the whole having reported a resolution, containing two propositions, and the question being stated on agreeing to the resolution, Sir William Meredith addressed the house in opposition to the resolution, and concluded his speech with insisting that it contained a complicated question, and that it was the undoubted right of any one member to have it separated, before any question could be put upon it. On this question a debate took place, in which several members participated, Mr. Dyson, who had been clerk of the house, taking the negative, and Mr. George Grenville the affirmative; and the speaker, Sir Fletcher Norton, being called on for his opinion, gave it in the negative. Sir William Meredith thereupon replied, and concluded his remarks by saying, that he should take the sense of the house upon the question; and, accordingly, he subsequently moved the following resolution for that purpose, namely, "that it is the rule of this house, that a complicated question, which prevents any member from giving his free assent or dissent to any part thereof, ought, if required, to be divided." This question was debated at length,

and was decided in the negative, on a division, 174 to 243. The original resolution was then divided into two parts, on the motion of Lord North, and the question ordered to be put separately upon each part. Since this decision, it has no longer been insisted on in either branch, that a complicated question could be divided on the suggestion or request of an individual member. This proceeding is remarkable, as being the first instance which I have met with, in the English parliamentary debates, of a proceeding analogous to the modern and American practice, on an appeal from the chair. (See Comm. Jour. XXXII. 707, 710.) These proceedings, being very instructive in other respects, the record thereof is printed at length in the next number of this appendix.

XIII.

APPEAL FROM THE SPEAKER'S DECISION IN THE HOUSE OF COMMONS.

"The other order of the day being read, Sir Francis Vincent reported from the committee of the whole house, to whom it was referred to consider further the state of the nation, the resolution which the committee had directed him to report to the house, — which he read in his place, and afterwards delivered in at the clerk's table, where the same was read, and is as follows, namely: —

"*Resolved*, That it is the opinion of this committee, that this house, in the exercise of its judicature in matters of election, is bound to judge according to the law and custom of parliament, which is part thereof; and that the judgment of this house, declared in the resolution of the 17th day of February last, 'that John Wilkes, Esquire, having been, in this session of parliament, expelled this house, was, and is, incapable of being elected a member to serve in this present parliament,' was agreeable to the said law of the land, and fully authorized by the law and custom of parliament.

"The said resolution being read a second time, and an objection being made, that the said resolution contained a complicated question, and that it was the undoubted right of any one member of the house to have it separated, before any question could be put upon it, Mr. Speaker was called upon by the house, to state what he understood to be the order of proceeding of the house in this respect; and Mr. Speaker accordingly delivered to the house his opinion thereupon. And a member of the house having, in his speech, made some observations upon what had been said by Mr. Speaker; and Mr. Speaker offering his sentiments to the house, in answer to what had been observed by the said member; exception was taken to some words used by Mr. Speaker, in such answer; which words being taken down by a member of the house, were afterwards copied by the clerk at the table, and are as followeth: "When I expected candid treatment from that member, I was mis-

taken; for I find I am not to expect candor from that gentleman, in any motions he is to make to the chair."

"And the said words, so taken down, being read to the house, Mr. Speaker declared, that those were not the words which he had made use of; but that they were as followeth: 'In candor, I hoped he would have informed me of the motion he intended to make; but I now find, from what that member has said, that I am not to expect that candid treatment from him; — for he said in his speech that, from this time forward, he will have no communication with the chair.' And Mr. Speaker declared, he did not mean any general reflection on the character of the member. And afterwards Mr. Speaker said: 'What I said, arose out of what I understood the member to have said. If he disclaimed candor with the chair, I had a right to say I was not to expect candor on that subject. I did not, in justice I ought not, to have made a general reflection upon the member's character; but, if the member had said what I understood he said, I had a right to say what I did. I can make no apology for what I said, but will abide the sense of the house.'

"Then a motion being made, and the question being put, That the words spoken by Mr. Speaker, from the chair, are disorderly, importing an improper reflection on a member of this house, and dangerous to the freedom of debate in this house. It passed in the negative.

"*Ordered*, That the further consideration of the report from the committee of the whole house, to whom it was referred to consider further of the state of the nation, be adjourned till Monday morning next, at twelve of the clock.

"And then the house adjourned till Monday morning next, ten of the clock.

"The other order of the day being read, the house resumed the adjourned consideration of the report from the committee of the whole house, to whom it was referred to consider further of the state of the nation. And a motion was made, and the question being proposed, That it is the rule of this house, that a complicated question be divided, an amendment was proposed to be made to the question, by inserting after the word 'question,' the words, 'which prevents any member from giving his free assent or dissent to any part thereof, ought, if required, to.' And the said amendment was, upon the question put thereupon, agreed to by the house. Then the main question being put, That it is the rule of this house, that a complicated question, which prevents any member from giving his free assent or dissent to any part thereof, ought, if required, to be divided, — the house divided. The yeas went forth.

"Tellers for the yeas,	Sir William Meredith, Mr. Hampden,	174.
"Tellers for the noes,	Mr. Onslow, Sir Charles Whitworth,	243.

So it passed in the negative."

"*Ordered*, That the said resolution be divided into two parts, the first part ending at the word 'thereof;' and the question for agreeing with the committee therein, be put upon each part separately. And the question being accordingly put, to agree with the committee in the first part of the said resolution, That this house, in the exercises of its judicature in matters of election, is bound to judge according to the law of the land, and the known and established law and custom of parliament, which is part thereof; it was resolved in the affirmative. Then a motion was made, and the question being put, to agree with the committee in the second part of the said resolution, that the judgment of this house, declared in the resolution of the 17th day of February last, 'That John Wilkes, Esquire, having been, in this session of parliament, expelled this house, was, and is, incapable of being elected a member to serve in this present parliament,' was agreeable to the said law of the land, and fully authorized by the law and custom of parliament, the house divided. The noes went forth.

"Tellers for the yeas,	MR. CHARLES FOX, MR. BURRELL,	237.
"Tellers for the noes,	MR. ALDERMAN TOWNSEND, MR. CALCRAFT,	159.

So it was resolved in the affirmative.

"And then the house adjourned till to-morrow morning, ten of the clock." Comm. Jour. XXXII. 707, 710.

XIV.

APPOINTMENT OF COMMITTEES.

Mr. Speaker Hunter, in his valedictory address on the 3d March, 1841, in answer to the usual vote of thanks, said:—

"To administer the rules fairly, is comparatively an easy task; but there is great difficulty in organizing the committees of the house so as to do justice to all parties. As much in deliberation depends upon the statement of the proposition to be discussed, so the efficiency of this body depends greatly upon the constitution of the committees, which present most of the subjects upon which it acts. It is, therefore, important to the parties and the country, that the power of proposing, through these committees, should be fairly and rightly bestowed. To ascertain what is fair in the dispensation of this power, is the most difficult duty, as it should be the most anxious care, of a speaker. To say that I had developed the just principles of a just organization, would be to claim far more than I deserve. But that such principles may be established by a reference to the position of parties, and the nature of the questions to be considered, I do not doubt.

"The party upon which it naturally devolves to propose a question, ought to have the power, it would seem, to present its proposition in the shape for which it is willing to be responsible. And, as the different parties hold the affirmative, according to the nature of the question, so ought the constitution of the committees to be varied. In the committees connected with the executive departments, it would seem just that the friends of the existing administration should have the majority, to propose the measures which emanate originally from their party, and for which they are mainly accountable. In committees of investigation, it is equally clear that the opposition, who hold the affirmative, should have the majority and the power. And so, upon other questions, a reference to their nature, and to the views of the various sections of our confederacy, will generally enable a speaker to approximate to just rules in constituting the committees which take charge of these measures. But, in all cases, I have endeavored to guard the minority upon the committee, in point of numbers and ability."

XV.

OF GRAND COMMITTEES AND COMMITTEES OF THE WHOLE HOUSE.

The appointment of a few members, selected from the whole body, for the performance of some particular duty, furnishes so obvious and convenient a means of facilitating the transaction of business, in a legislative body, or other deliberative assembly, that it would be strange not to find the employment of committees a common practice in both branches of parliament, from the earliest period. Accordingly, in the most ancient of the journals of the commons, which are now extant, and as early as the year 1554, there are entries of the appointment of committees (Comm. Jour. I. 35, 41); and it scarcely admits of doubt, that this mode of proceeding is as ancient, at least, as the separation of the commons from the lords, and their sitting apart as distinct branches of parliament.

The reason for the existence of those committees, which are now known as committees of the whole house, is not, however, equally obvious; and, indeed, if there never had been any other ground for the use of committees, than the increased facility for the transaction of business, resulting from the employment of a few selected individuals, in preference to a larger number, having no peculiar qualifications for the duty imposed upon them, committees of the whole, as they would possess no advantages in the way of business over the same members sitting as a house, would probably have never become an established mode of parliamentary procedure.

The origin and use of these committees must, therefore, be sought in some other source than the mere convenience of parlia-

mentary procedure; and, by recurring to the history of the period when they were first introduced, it will be found, that they were the offspring of circumstances of a different character; and that they were invented, not to facilitate the passing of bills, in the ordinary course of legislation, but to afford means for bringing forward and discussing the great constitutional questions which were agitated in the parliaments of the first Stuarts.

In the first parliament of James, which met on the 19th March, 1603, the house of commons, "by reason of more charters granted by his majesty, as also by their attendance in greater multitudes," than had been usual, was more numerous than had ever before assembled; among its members, were many of the most distinguished statesmen, lawyers, and men of learning, as well as gentlemen of weight and character, in the kingdom; and, the assembling of a parliament, convened by a sovereign who united in his person the crowns of England and Scotland, and was the undisputed heir of the throne, was in itself an event of more than common importance and interest to the whole people.

In an assembly of the size and character of this house of commons, it was almost a thing of course, that committees appointed for the consideration of important and weighty matters, should consist of as many members, at least, as could act with efficiency; and, where the principal purpose of a committee was to bring together information from all the different parts of the kingdom, with respect to the subject in hand; or where the matter referred was one, in reference to which the house could thereby testify their sense of its weight and importance; the selection of a large number of members for the service was an obvious means for the accomplishment of the object in view.

It appears, accordingly, from the journals of the house of commons, that several of the committees appointed during the first session of this parliament, were of extraordinary magnitude. Thus, a committee appointed on the fifth day of the session, to consider the three grievances suggested by Sir Edward Montague, consisted of all the privy councillors who were members, and of fifty-seven others specially named (Comm. Jour. I. 151); a committee to confer with the lords, touching the union, consisted of one hundred members specially named (Ib. 172), and, being afterwards directed to attend the king, for the purpose of hearing him explain his meaning in the matter of the union (Ib. 179), was enlarged by the addition of forty-two members specially named, with liberty to any member of the house, though not named, to accompany them to the king (Ib. 180); a committee, to consider of the abuses of purveyors, consisted of forty-seven members specially named (Ib. 151); a committee on matters of religion was appointed of twenty-nine members, by name, and all the privy councillors who were members (Ib. 172, 173). Committees of this character were commonly designated as great, or grand committees (Ib. 215).

In the second and third sessions of this parliament, committees appointed to consider the topics above adverted to, and others of a similar character, — such as the abuses of purveyors, matters of religion, and grievances, — also consisted of large numbers of members, and were known as the great or grand committees for religion, grievances, etc.; but, it was not until the third session, and in reference to a subject of a different character, that a committee was first appointed of the whole house.

In pursuance of an act passed at the preceding session, an "instrument of union" between the two kingdoms had been signed and sealed by certain commissioners appointed for the purpose. This instrument being communicated to both houses, the lords requested a conference with the commons, in order that there might be some further proceeding in the business, and appointed a committee of forty to conduct the conference on their part. The commons, in answer, resolved not to confer, but to meet the committee of the lords with a committee of their own members, to the number of one hundred and eleven, to hear what the lords should propound, and to report the same to the house (Comm. Jour. I. 324). Shortly afterwards, the subject was again brought forward in the house, and a discussion ensued as to what further proceedings should take place; and a motion was made, that the instrument of union should be first debated, and then committed, and that "*the whole house* (saving the commissioners) *should be of the committee;*" but the house acceded to the motion, only so far as to resolve that the instrument should be committed, and "that the committee named for the meeting with the lords should be read, and that those (with others added) should stand for a committee in this business." The committee was then read, and enlarged by the appointment of forty-two members by name, and of all the lawyers of the house, the burgesses of all post towns, and the knights and burgesses of all the northern counties (Ib. 326). Considering the size of the committee, as actually constituted, it can hardly be supposed, that the objection to a committee of the whole house had any reference to the increased number of which the committee would thereby be made to consist.

After some further proceedings between the two houses, a bill was presented to the house, by the speaker, ready drawn, for the continuance and preservation of the union, (Comm. Jour. I. 368,) which was read a first and second time, and moved to be committed. It was now again attempted, and with better success, to make the committee of the whole house; for, it being "*affirmed, that if Mr. Speaker were absent, the whole house might be a committee,*" it was thereupon "*thought fit to commit the bill to the whole house, Mr. Speaker only excepted*" (Ib. 370, 371). It may be conjectured, from the terms, in which this order is entered in the journal, that the reason, why the motion for a committee of the whole was not successful, when previously made, was a doubt

in the minds of the house, as to the regularity of such a proceeding.

It is probable, that this committee sat, like other great committees, in the house, when the house was not sitting; and it appears, from an entry in the journal, (Comm. Jour. I. 377,) that on one occasion, at least, the committee sat in the court of wards, while the "speaker, with the officers, and sundry members of the house, being assembled, sat in the house, from eight o'clock until eleven; and then did arise and depart, without motion made or bill read."

The bill being reported by the committee, and amended agreeably to their report, passed the house, and was sent to the lords. In that branch, it passed with amendments, and the bill and amendments were sent to the house for their concurrence (Comm. Jour. I. 387). The amendments, being twice read in the commons, were "committed to the great committee, named upon the second reading of the bill itself in this house: And moved, that Mr. Speaker might depart, and the committee, being compounded of the whole house, and now together, and the business of the house very little, might (for saving of time) presently enter into consideration of their charge; which, after some dispute, whether it were fit or no, being without precedent, seldom moved, and carrying with it no decorum, in respect of Mr. Speaker's ordinary and necessary attendance upon the house till eleven o'clock, grew to a question, namely, whether the committee should now sit, or in the afternoon, and resolved, upon question, they should meet in the afternoon, and not now" (Ib. 387, 388). It appears, from these proceedings, that the committee of the commons on this important bill "of hostile laws," as it was called, was the first committee, which, in point of numbers, embraced the whole house, the speaker excepted; but it differed from modern committees of the whole, inasmuch as it was thought necessary to exclude the speaker expressly, and it was not considered as consistent with order and decorum, for the committee to sit, or, in other words, for the house to be turned into a committee, during any part of the time of the usual sitting of the house. It was not until the next, being the last, session of this parliament, that the house were able to get over the point of decorum, for the sake of convenience.

At the beginning of this session, general committees (as they were called) were appointed for the consideration of all matters of importance; the form being usually, in the first place, to appoint certain members by name, then to add to them certain classes, as, for example, the privy council, or the lawyers, and lastly, a general clause, as, "any of the house to be admitted," or "whosoever will come to have voice," including the residue of the house. One of the committees of this session was a committee of the whole on tenures and wardships, which was directed to sit every other day in the house, to begin at seven or eight and to sit till half an hour

after nine in the morning, and the house to sit till half an hour after eleven. This committee was probably the first that ever sat in the house, during the time assigned for the sitting of the latter; in consequence, no doubt, of its being found convenient, in order to enable the committee to finish their business on a given day, to continue the sitting on that day until after the time appointed for the house to sit; for, on the last day the committee sat, it appears from an entry in the journal, that "this day the committee for tenures, etc., sat till half an hour after eleven; the speaker, from nine, sitting in the clerk's chair; the clerk standing at his back; and Mr. Recorder, the moderator of the committee, sitting on a stool by him" (Comm. Jour. I. 414); and, from the fact, that business was transacted in the house on the same day, it is certain that the house must have been resumed when the committee had concluded its labors. The innovation thus introduced very soon after became an established usage. At first, the practice was introduced for the general committees, which usually sat in the afternoon, to meet occasionally in the morning, and to sit till the speaker took the chair (Ib. 422); at length it was perceived, that any of the committees of the whole, without impropriety, but greatly to the convenience of the house, might be directed to sit, at any time, during the sitting of the house; the speaker when the practice first began retiring from the house to the committee chamber, and returning and resuming the chair, but, at last, merely sitting down, without leaving the house, and again ascending the chair whenever it was necessary or proper that the house should be resumed (Ib. 429). During the residue of this session, committees of the whole were frequently appointed, sitting sometimes like other committees in the afternoon, and sometimes like committees of the whole, in more modern times, during the sitting of the house. The practice became still more general in the parliaments subsequently called by James and his successor; and, in the fifth of the latter sovereign, — the celebrated long parliament, — committees of the whole became, what they now are, a part of the regular and established system of parliamentary procedure.

In the foregoing remarks, the history of the introduction and establishment of this form of proceeding has been traced. It remains now to be seen what advantages, if any, it possessed over the ordinary mode; for, except that it furnishes an occasional relief to the speaker, and that members are allowed, in committee, to speak more than once to the same question, it is difficult, at the present day, to perceive any other difference between the house, and a committee of the whole house, than that the speaker presides in the former, and a chairman in the latter.

The appointment of large committees, which, as has been seen, was quite common, if it did not commence, in the first parliament of James I., — a custom originally practised, perhaps, more for the purpose of testifying the interest of the house in the measure or subject referred, than with a view to a more efficient action, — was

very soon discovered to be the most efficacious means of accomplishing the purposes which the great parliamentary leaders of the commons, in the reigns of the first Stuarts, had in view. A committee, however large, was still but a committee; it could not proceed, indeed, without the authority of the house; but, once appointed and authorized, it could then proceed, even in matters of the highest importance, with a degree of freedom and independence wholly unattainable at that time, consistently with the forms of proceeding in the house.

The presiding officer of the house was the speaker. He was elected, indeed, by the house; but the election was made by the voices, and not by ballot; the nomination always came from some one of the great officers of State; and the speaker elect, if not agreeable to the king, might be rejected by him. It could hardly be expected that this officer, deriving his honors, in the first instance, from the influence of the sovereign, and looking forward to further favors from the same source, should be inclined, or, if willing, should be able, to hold an even balance between royal prerogative on the one hand, and the rights of the people on the other. We accordingly find that the official influence of the speaker was sometimes, at least, exerted in favor of the prerogative; he considered it his duty, when commanded by the king, to adjourn the house, without putting a question (Comm. Jour. I. 375, 376); he thought it not beneath his dignity to go to the king, when sent for, to inform him of the proceedings of the house, and to take with him "a little note of the clerk's book," for the same purpose (Ib. 500); and being, ordinarily, a member of the king's privy council, he could not but be fully acquainted with all the plans and measures of the court party.

The clerk of the house, originally, in fact, and to this day, in name, the under clerk of the parliament, appointed to attend on the commons, held his office, not by the election of the house, but by a patent from the king, for his life, and with power to make, and discharge the duties of his office by, a deputy. Such an officer would not be likely to withhold the records and papers of the house, then in his personal custody, and not kept in any building or apartment belonging to the house, or under its control, from the inspection of the sovereign or his council; and it is matter of history, that the clerk of the house, in the third parliament of James I., by the king's command, attended with his journal book, at a meeting of the council, where the king, with his own hand, tore out the record of the famous protestation of the commons concerning their privileges, which the house had solemnly directed to be entered in the journal, there to remain of record. (Hansard, Parl. H. I. 1361, 1362; Comm. Jour. I. 668.)

The sergeant-at-arms, also, was an officer appointed by the king, and holding his office at the king's pleasure. His functions, as the executive officer of the house, were by no means unimportant. It

was a part of his duty to take care that no strangers should witness the proceedings, to keep the doors and avenues of the house for the free access and departure of the members, to serve all the warrants and processes of the house, and to have the custody of all persons arrested and brought before the house by its order. It is not probable that this functionary ever had it in his power to exercise much, if any, influence upon the proceedings of the house; but, as an officer appointed by the sovereign, and dependent on him, his feelings may not unreasonably be supposed to be on the side of the crown, rather than on that of the people.

If the officers of the house were thus, to a greater or less degree, exposed to the influence of the power of the crown, and therefore liable to become subservient to those by whom it was wielded, the forms of proceeding were not less unfriendly to a free, full, and independent discussion of topics, which might be distasteful to the sovereign. It was in the power of the individual members to introduce such topics as they pleased, and to submit motions and questions for the consideration of the house; but it was the usual, and doubtless considered the more regular course, for the speaker himself to frame the question, from the turn of the debate, whether motions were made or not; and thus the questions submitted to the house, were greatly in the power of the speaker, and of those about the chair. The rule, also, that no member should speak more than once to the same question, which, as a rule of order, was strictly observed in the house, though sufficient, perhaps, where a subject had been so matured, that nothing remained but to say yes or no to it, was not by any means favorable to those discussions, which were necessary to mature any business for the decision of the house. A third circumstance, connected with the forms of proceeding, was the manner in which the clerk of the house performed the duties of his office. During all the parliaments of James, and the first three of Charles I., the journals contain not only the votes, orders, and resolutions of the house, and the reports of committees, but also short notes of the speeches and motions of the members. This practice seems to have been pursued by the clerk, either because he considered it a part of his official duty, or because it was an acceptable service to those from whom he derived his appointment; but, as appears by the following proceeding, it seems never to have been sanctioned by the house. In the third parliament of Charles I., April 17, 1628, the lords having sent a message to the commons, requesting that the clerk might attend the lords, with the journal book of a preceding parliament, touching "something then delivered by a learned member" of the commons, relative to a certain bill, the commons made answer, "that there was no resolution of the house, in the case mentioned; and that the entry of the clerk, of particular men's speeches, was without warrant at all times, and, in that parliament, by order of the house, rejected and left; and therefore not thought fit to be sent up to

their lordships." (Comm. Jour. I. 884.) The method of taking notes and making entries, as practised by the clerks in the parliaments above mentioned, appears to have been introduced with the first parliament of James; the journals of the commons in the reigns of Elizabeth and her predecessors, as far back as the journals are extant, contain only minutes of the things done and passed in parliament, but no notes of what was said or proposed by any of the members; the new method continued only until the third parliament of Charles, in which the commons resolved, that the entering of particular men's speeches, was without warrant at all times; and it appears to have been laid aside about the time of the passing of that resolution. The last circumstance to be mentioned, which was not without its influence upon the action of the house, was the secrecy with which all its proceedings were required to be conducted. Strangers, as all but members were called, were carefully excluded from the sittings; and it was a breach of privilege, then and long afterwards, punishable with great severity, for any of the members to divulge or publish an account of what took place within the walls of the house. While, therefore, the king had all the knowledge of what was passing in the house, which could be derived from an inspection of the clerk's books, and from the oral communications of the speaker, or other members of the council, the people were as carefully kept in ignorance of what it equally concerned them to know.

According to the constitution of ordinary committees, and the rules of proceeding, by which they were governed, none of these inconveniences were likely to result. Committees were presided over by a chairman of their own appointment; no record was kept of their proceedings but what was made by him; every member had full liberty to speak as often as the committee might please to hear him; and it was only when the committee came to make their report, that their proceedings were inscribed on the journals of the house. When, therefore, it had once been settled that the whole house could be of a committee, it was an obvious expedient, whenever the occasion demanded a degree of freedom and independence incompatible with the ordinary forms of proceeding, to turn the house at once into a committee. It accordingly became the practice during the reign of James I. and Charles I. for the house of commons, generally at the commencement of each session, to appoint committees to consider of all the great subjects of interest, which they undertook to investigate; which committees, from being at first large committees, the members of which were specially named, came at length to be of the whole house, either generally named, or specially named, with authority to all members of the house, who chose to do so, to attend and have voices. These committees were in general presided over by the popular leaders; they had authority to receive petitions and complaints from all the citizens without the intervention of the house; their proceedings

were open to the public, or with closed doors, as might best suit the occasion; all papers and documents presented to them remained in their custody; the officers of the house, unless specially directed to do so, did not attend their sittings; they sat in the house at such times as were not appointed for the sitting of the house; or when the business in hand required them to sit, during the time appointed for the house to sit, the house was resolved into the committee.

These general committees, as they were appointed, from time to time, bore different appellations, according to the subjects referred to them; but, at length, those that were appointed for the consideration of certain subjects, within the peculiar jurisdiction of the commons to investigate, came to be denominated the committees for religion, for grievances, for courts of justice, and for trade, to which at the commencement of the long parliament, was added a committee for Irish affairs. These were committees of the whole house, which sat as committees in the afternoons, when the house did not sit; and, when occasion required, sat during the sitting of the house, as committees of the whole, properly so called. Sometimes, when they were directed by the house to sit in the afternoon, the speaker was also directed to attend, either at the same time, or after some little interval, when the business of the committee might be expected to be completed; in order to take the chair and make a house, if any thing should occur to render it necessary, or to receive the report of the committee, when they should have gone through the subject referred to them.

In order to give some idea of the advantages, at the period adverted to, of proceeding in the investigation of corruptions and abuses, by committees, rather than by the house itself, the practice in reference to the preferring of petitions deserves specially to be mentioned. In consequence of the danger to which petitioners were exposed, who gave information of abuses in the public offices, or of corruption of the great officers of government, petitions were at first allowed to be delivered, without having any names attached to them. But this practice was found to be attended with danger on the other side; for, if petitions thus delivered should turn out "to contain libels or treasons," then, "not knowing from whom they were received, the burden might lie upon the house." A middle course was therefore devised; which was, that the name of the petitioner should, in the first instance, be put to his petition; and that when the petition had been read and allowed, the name of the petitioner should be torn off; so that no man should know by whom it had been preferred. (Comm. Jour. I. 465.) By this expedient, all danger, to the house and the members, on the one hand, and to petitioners, on the other, was obviated.

After these general committees had thus become established, as a part of the regular parliamentary machinery, it became the practice to pass orders for their appointment, at the commencement of

each session, as standing committees of the house, under the names of the grand committees for religion, grievances, courts of justice, and trade. This practice continued, — though from the time of the restoration, the committees were never called upon to sit, — until the first session of the Reformed Parliament in 1833, when, the orders for their appointment not being renewed, they were of course laid aside.

If any further proof were needed of the great advantages which the popular party derived from proceeding by means of committees, during the reigns of James I. and Charles I., it may be found in the following remarkable passage of the declaration promulgated by the latter immediately after the dissolution of his third parliament in March, 1620: —

"We are not ignorant how much that house" (the commons) "hath of late years endeavored to extend their privileges, by setting up general committees for religion, for courts of justice, for trade, and the like; a course never heard of till of late: so as where, in former times, the knights and burgesses were wont to communicate to the house such business as they brought from their countries; now, there are so many chairs erected, to make inquiry upon all sorts of men, where complaints of all sorts are entertained, to the insufferable disturbance and scandal of justice and government, which, having been tolerated awhile by our father, and ourself, hath daily grown to more and more height; insomuch that young lawyers, sitting there, take upon them to decry the opinion of the judges; and some have not doubted to maintain, that the resolutions of that house must bind the judges, a thing never heard of in ages past. But, in this last assembly of parliament, they have taken on them much more than ever before." (Rushworth, I. App. 7.)

XVI.

AMENDMENTS BETWEEN THE TWO HOUSES.

The Act for preventing Occasional Conformity.

THE BILL AND AMENDMENTS.

The commons agreement and disagreement to the amendments made by the lords to the bill for preventing occasional conformity, with the commons amendments to the lords amendments.

The amendments made by the lords to the bill for preventing occasional conformity.

Decemb. 2, 1702.

As nothing is more contrary to the profession of the Christian religion, and particularly to the doctrine of the Church of England, than persecution for conscience only; in due consideration whereof, an act passed in the first year of the reign of the late king William and queen Mary, entitled, *An act for exempting their majesties' Protestant subjects, dissenting from the Church of England from the Penalties of certain laws;* which act ought inviolably to be observed, and ease given to all consciences truly scrupulous; nevertheless, whereas the laws do provide that every person to be admitted into any office or employment should be conformable to the church, as it is by law established, by enacting, that every such person, so to be admitted, should receive the sacrament of the Lord's Supper, according to the rites and usage of the Church of England; yet several persons dissenting from the church, as it is by law established, do join with the members

Agreed to by the commons.

Line 9. After [*Mary*] add [*of glorious memory*].

Disagreed to by the commons.

L. 16. After [*scrupulous*] add [*but*]

Disagreed to by the commons.

L. 17. Leave out from [*whereas*] to [*several*] in the 27th line.

thereof in receiving the sacrament of the Lord's Supper, to qualify themselves to have and enjoy such offices and employments, and do afterwards resort to conventicles or meetings for the exercise of religion in other manner than according to the liturgy and practice of the Church of England, which is contrary to the intent and meaning of the laws already made. Be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in parliament assembled, and by authority of the same, that if any person or persons after the first day of March, which shall be in the year of our Lord, one thousand seven hundred and two, either peers or commoners, who have or shall have any office or offices, civil or military, or receive any pay, salary, fee, or wages, by reason of any patent or grant from her majesty, or shall have any command or place of trust from or under her majesty, or from any of her majesty's predecessors, or by her or their authority, or by authority derived from her or them, within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, or in her majesty's navy, or in the several islands of Jersey and Guernsey, or shall be admitted into any service or employment in her majesty's household or family; or if any mayor, alderman, recorder, bailiff, town clerk, common council-man, or other person bearing any office of magistracy or place of trust, or other employment relating to or concerning the government of the respective cities, corporations,

Disagreed to by the commons.

L. 3. Leave out [*such*]

Disagreed to by the commons.

L. 41. Leave out from [*family*] to [*shall*] in the tenth line on the next page.

boroughs, cinque-ports, and their members, and other port-towns within the kingdom of England, dominion of Wales, and town of Berwick upon Tweed, who by the laws are obliged to receive the sacrament of the Lord's supper, according to the rites and usage of the Church of England, shall at any time after their admission into their respective offices or employments, or after having such grant as aforesaid, during his or their continuance in such office or offices, employment or employments, or the enjoyment of any profit or advantage from the same, shall resort to or be present at any conventicle, assembly, or meeting, under color or pretence of any exercise of religion, in other manner than according to the liturgy and practice of the Church of England, in any place within the kingdom of England, dominion of Wales, and town of Berwick upon Tweed, at which conventicle, assembly, or meeting, there shall be five persons or more assembled together, over and besides those of the same household, if it be in any house where there is a family inhabiting, or if it be in an house or place where there is no family inhabiting, then where any five persons or more are so assembled, as aforesaid, shall forfeit the sum

Agreed to by the commons.

L. 17. Leave out [*shall*] and read [*knowingly and willingly.*]

Agreed to by the commons with the amendments following, *viz.:*

1. After the word [*or*] add [*shall knowingly and willingly be present.*]

After the word [*any*] add [*such.*]

After the word [*meeting*] leave out [*where*] and insert [*in such house or place, as aforesaid, although.*]

After [*liturgy*] leave out [*is*] and insert [*be there.*]

After [*used*] leave out [*and where*] and insert [*in case.*]

L. 38. After [*aforesaid*] add [*or at any meeting where her liturgy is used, and where her majesty and the princess* Sophia *shall not be prayed for in express words, according to the liturgy of the Church of* England.]

1. To which amendments of the commons (to the lords' amendment) as entered on the other side, the lords agreed, with the addition following:

2. After the words [*prayed for*] in the commons amendment, add [*in pur-*

Disagreed to by the commons.

of one hundred pounds, and five pounds for every day, that any such person or persons shall continue in the execution of such office or employment, after he or they shall have resorted to or been present at any such conventicle, assembly, or meeting as aforesaid, to be recovered by him or them that shall sue for the same, by any action of debt, bill, plaint, or information; in any of her majesty's courts at Westminster, wherein no essoign, protection, or wager of law shall be allowed, and no more than one imparlance.

L. 1. Leave out [*One hundred pounds, and five pounds for every day that such person or persons shall continue in the execution of such office or employment*] and instead thereof insert [*twenty pounds, to be divided into three parts, whereof one third part to the queen, one other to the poor of the parish where the offence shall be committed, and one third part to the informer.*]

And be it further enacted, that every person convicted in any action to be brought, as aforesaid, or upon any information, presentment, or indictment in any of her majesty's courts at Westminster, or at the assizes, shall be disabled from thenceforth to hold such office or offices, employment or employments, or to receive any profit or advantage by reason of them, or of any grant, as aforesaid, and shall be adjudged incapable to bear any office or employment whatsoever, within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed.

Line 28. Leave out from [*aforesaid*] to the end of the bill.

And add the clauses A, B, C, D, E.

Disagreed to by the commons.

Clause [*A*] agreed to by the commons.

Provided always, and be it further enacted by the authority aforesaid, that if any person or persons who shall have been convicted, as aforesaid, and thereby

[A] *Provided that no person shall suffer any punishment for any offence committed against this act, unless oath be made of such offence before some judge or justice of the peace (who is hereby empowered and required to take the said oath) within ten days after the said offence committed, and unless the said*

After [*majesty*] add [*whom God long preserve*, Catherine *the Queen Dowager*].

After [*Sophia*] add [*or such others as shall from time to time be lawfully appointed to be prayed for*].

After [*be*] add [*there*].

2. To which addition of the lords (to the amendments made by the commons to the lords' amendment) as entered on the other side, the commons agreed.

suance of an act passed in the first year of king William *and queen* Mary, *entitled*, An act declaring the rights and liberties of the subject, and settling the succession of the crown; *and the act passed in the twelfth and thirteenth of king* William *the Third, entitled*, An act for the further limitation of the crown, and better securing the rights and liberties of the subject.]

made incapable to hold any office or employment, shall, after such conviction, conform to the Church of *England* for the space of one year, without having been present at any conventicle, assembly, or meeting, as aforesaid, and receive the sacrament of the Lord's supper at least three times in the year; every such person or persons shall be capable of a grant of any office or employment, or of being elected into or holding of any the offices or employments aforesaid.

Clause [*B*] disagreed to by the commons.

Provided also, and be it enacted, that every person so convicted, and afterwards conforming in manner, as aforesaid, shall at the next term after his admission into any such office or employment, make oath in writing, in any of her majesty's courts at Westminster, in public and open court, between the hours of nine of the clock and twelve in the forenoon, or at the next quarter-sessions for that county or place where he shall reside, that he has conformed to the Church of England for the space of one year before such his admission, without having been present at any conventicle, assembly, or meeting, as aforesaid, and that he has received the sacrament of the Lord's supper at least three times in the year, which oath shall be there enrolled and kept upon record.

Clause [*C*] disagreed to by the commons.

Provided also, and be it further enacted by the authority aforesaid, that if any person after such his admission, as aforesaid, into any office or employment, shall a second time offend, in manner aforesaid, and shall be thereof lawfully convicted, he shall for such offence incur double the

Clause [*D*] disagreed to by the commons.

offender be prosecuted for the same within three months after the said offence committed; nor shall any person be convicted for any such offence, unless upon the oath of two credible witnesses at the least.

[B] *Provided always, and be it enacted, that from and after the said first day of* March, *no Protestant Dissenter shall be compelled or compellable to take, serve, hold, or bear any office or place whatsoever, for the taking, serving, or holding whereof he cannot be duly qualified by law, without receiving the holy sacrament according to the usage of the Church of* England, *and also making and subscribing the declaration mentioned in the statute, made* 25 Car. 2, *entitled,* An act for preventing dangers which may happen from Popish recusants, *any statute, law, usage, or other thing to the contrary notwithstanding.*

[C] *Provided nevertheless, that this act shall not extend to the universities churches in the universities of this realm, or either of them, when, or at such times as any sermon or lecture is preached or read in the same churches, or any of them, for, or as the public university sermon or lecture, but that the same sermons and lectures may be preached or read, in such sort or manner, as the same have been heretofore preached or read, this act, or any thing therein contained to the contrary, in anywise notwithstanding.*

Clause [E] disagreed to by the commons.

penalties before mentioned, to be recovered in manner, as aforesaid, and shall forfeit such office or employment, and shall not be capable of having any office or employment, until he shall have conformed for the space of three years, in manner aforesaid, whereof oath shall be made in writing in one of her majestie's courts at Westminster, or at the quarter-sessions of the county where he resides.

[D] *Provided, that no person shall incur any the penalties in this act, by resorting to, or being present at the religious exercises used in the* Dutch *and* French *languages in churches established in this realm in the reigns of king* Edward *the Sixth, or of queen* Elizabeth, *or of any other king or queen of this realm.*

[E] *Provided always, and be it enacted by the authority aforesaid, that nothing in this act shall extend, or be construed to extend to any governor or governors of any hospital or hospitals, or to any assistants of any corporation or corporations, workhouse or workhouses, constituted, erected, or employed for the relief, and setting of the poor on work, and for punishing of vagrants and beggars; all which said persons, and every of them, shall be, and are hereby exempted from all the penalties mentioned in this act, and are hereby adjudged and declared not to be subject or liable to any of the penalties or forfeitures mentioned in one act of parliament made in the twenty-fifth year of the reign of king* Charles *the Second,* For preventing dangers which may happen from Popish recusants, *for or by reason of any of the aforesaid offices or employments.*

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