PRIVATE BILL LEGISLATION

SUGGESTIONS

FOR A

PERMANENT COMMISSION

IN LIEU OF

THE PRESENT PARLIAMENTARY PROCEDURE

BY

FREDERIC W. PIM

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The Executive Committee of the Liberal Union of Ireland invite your consideration of the enclosed pamphlet on **PRIVATE BILL LEGISLATION,** which has been prepared at their suggestion, in the expectation that the subject is likely to form part of the Legislative Programme at an early date.

109 Grafton Street,

Dublin.

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PREFACE.

IT has been long felt by Irishmen of every shade of political opinion that the existing system of Parliamentary Private Bill Legislation stands in urgent need of extensive alterations. Many efforts have been made, from time to time, both by Irish Members of Parliament and by various Public Bodies in Ireland, to bring about a reform of the procedure whereby the investigation into the merits of projected schemes for Local Improvements, and Industrial Enterprises, should be conducted locally, and the unavoidable expense of Parliamentary contests conducted in London should be saved.

The Dublin Chamber of Commerce has repeatedly passed resolutions in favour of the Localisation of Private Bill Enquiries, and in 1888, when a Joint Committee of the two Houses of Parliament was appointed to consider the subject, the Council of the Chamber requested me to attend that Committee and to press upon it the views of the Chamber.

On the same occasion, but independently, the Executive Committee of the Liberal Union of Ireland also requested me, in conjunction with Mr. John M'Evoy, to give evidence before the Joint Committee.

The Joint Committee reported in favour of the substitution of a permanent Commission for the existing system of Private Bill Committees, and two Bills to carry this recommendation into effect, at least as far as Scotland and Ireland are concerned, were subsequently introduced, but

neither of them reached even the stage of Second Reading. *Inter Arma silent leges:* whilst the Home Rule battle raged there was neither time nor place for the Reform of Private Bill Procedure.

During the present quiet interlude the question of Private Bill Legislation has again a chance to come to the front. The present Government is pledged to devote itself to practical legislation, and the time seems propitious for a re-discussion of the question.

Under these circumstances I have been requested by the Council of the Liberal Union of Ireland to prepare a memorandum on the subject. The following pages are the result. In considering the subject two main principles have impressed themselves on my mind as essential in any project of Reform: the first, that all parts of the United Kingdom ought to be treated alike, and the second that no Reform will be effectual that does not wholly separate the work of Private Bill Enquiries from the Parliamentary Session. In these conclusions I am supported, as I think is shown by the evidence adduced in the following pages, by some very high Authorities, amongst whom will be found Lord Hartington (Duke of Devonshire), Lord Robert Cecil (Marquess of Salisbury), the late Sir Erskine May, Sir John Mowbray, M.P., for many years Chairman of the Committee of Selection of the House of Commons; and Mr. Courtney, M.P., Chairman of "Ways and Means," 1886 to 1893.

In addition to the Report of the Joint Committee of 1888, I have made much use of Clifford's *History of Private Bill Legislation*, published in 1887. I have also been much assisted by a pamphlet published in 1871 by my father, the late Jonathan Pim, Member of Parliament for the City

of Dublin, 1865 to 1874, containing a report of the Debate on a Motion made by him in the House of Commons, 27th June, 1871, for a Select Committee on the system of Private Bill Legislation, as well as a Leading Article of the *Times* of the following day, in which the general principle of the proposed change was strongly supported.

F. W. P.

DUBLIN,
January, 1896.

PRIVATE BILL LEGISLATION.

INTRODUCTORY.

FROM very early times, Parliament, besides the making of Public Statutes affecting the general interests of the Kingdom at large, has been concerned in a variety of legislation for personal or local purposes, for the benefit of individuals, or of sections of the community, or of special districts of the Country.

Bills for such personal or local purposes are called "Private Bills," and (except "Local Bills," which may be introduced in the House of Lords without a petition) are introduced into either House of Parliament on the "Petition" of one or more interested persons, usually styled "Promoters," who are responsible for all the costs incidental to the passing of them, including the payment of considerable fees levied by the House itself on their different stages.

"Clifford's History," vol. II., p. 768.

Report of Joint Committee Question 8, Warner.

SUBJECTS OF PRIVATE BILL LEGISLATION.

Amongst the subjects of Private Bill legislation there were in former times many matters which, more recently, in pursuance of various Public Statutes, have been transferred to the judicial tribunals or otherwise eliminated from Parliament. In very early times many strictly personal grievances which are now, as a matter of course, dealt with in Courts of Law, were made the subjects of special legislation; in some cases such personal grievances, for which individual relief was thus obtained, on petition, from Parliament, led directly to the passing of general statutes by which similar petitions were thereafter rendered unnecessary.

Naturalisation of Foreigners, formerly effected by Private Bill, is now dealt with by the Home Office. The number of Estate Bills, at one time considerable (there were 2,000 between 1801 and 1866), has been very greatly reduced by the passing of Lord Cairns' Settled Estates Act (1882) and other similar general legislation. The "Charitable Trusts Acts" have removed another considerable section once the subject of Private Bills. Bills of Attainder or for the reversal of attainder are now hardly thought of, and Bills for granting pensions and allowances only occur in connection with members of the Royal Family, or in the case of very distinguished public services, and, in such cases, are no longer classed as Private Bills; while Inclosure Bills have been greatly diminished by the operations of the Inclosure Commissioners, whose provisional orders, however, still require the sanction of Parliament.

Furthermore, Parliament has in recent times divested itself of jurisdiction in two very important matters, formerly the subject of Private or quasi-private legislation, the first when the establishment of the Divorce Court, in 1857, relieved Parliament of Divorce Bills, and the other in 1868, when the House of Commons transferred the trial of Election Petitions to the Judges.

There remains a very large class of what are still called Private Bills, but which might, in the vast majority of cases, be better described as Bills for Local Public Purposes, which still remain within the jurisdiction of Parliament. These absorb a very large proportion of the time of many members of both Houses, and this, it is increasingly felt, tends to the detriment of the broader public functions of Parliament. The expense to both promoters and opponents is very large; in many cases out of all reasonable proportion to the importance or the value of the scheme in question, and it is also considered that the existing

mode of procedure in regard to such Bills entails inconveniences which impose an unnecessary and injurious burden on the parties on both sides. These evils are so far admitted that action has been taken in Parliament from time to time, both by the appointment of Committees of Enquiry and by the introduction of various modifications tending towards simplification of the procedure, with a view to alleviate or remedy the defects complained of; but no radical alteration of the system has as yet been ventured upon, and it may be said that the practice of Parliament with regard to Private Bill legislation remains pretty much as it was when the present system of Private Bill Committees was established about fifty years ago.

Lords, 1837
Commons, 1855.

PROCEDURE WITH REGARD TO PRIVATE BILLS.

Private Bills have continued, from the very earliest times down to the present day, to go through all the same stages in each House as Public Bills; but with two important differences.

Public Bills are introduced on the Motion of a member of either House, for which, in the Commons, leave of the House—usually only a matter of form—has to be obtained. Private Bills, invariably in the Commons, and except Local Bills, in the Lords, are introduced on Petition, in a prescribed form, by the promoters; and, if opposed, a petition has to be presented by the opponents, stating their grounds of objection, and praying to be heard by counsel, agents, and witnesses in support of this statement, and of such amendments to the Bill as may be suggested. If leave for the introduction of the Bill be obtained, which follows as a matter of course if a complicated set of "Standing Orders" have been complied with, there is then a First Reading in the House, followed, after due interval, by a Second Reading, after which the Bill is

referred for examination to a Committee. In the case of a Public Bill this reference may be either to a Committee of the Whole House, or—in the Commons—to one of the recently constituted Grand Committees on Law or Trade, or in certain cases a Public Bill may be referred to a Select Committee. In the case of a Private Bill the reference is to a "Private Bill Committee," which in the Lords invariably consists of *five* members, in the Commons of *four*. Certain Bills are, however, in the Commons referred, not to an ordinary Private Bill Committee, but to a Special Committee of not more than nine members, appointed at the beginning of each Session, called "The Police and Sanitary Committee," before whom all Bills dealing with the police and sanitation of towns go, with a view to securing uniformity of action with regard to these subjects. The Committee having heard the case of the Promoters and of the Opponents—usually called the "Petitioners"—declare the Preamble of the Bill to have been "proved" or "not proved" as the case may be. In the latter case the Bill drops, and is no more heard of, unless again introduced in some subsequent Session of Parliament; but, if the Preamble be declared proved, the Committee further proceed to pass the several Clauses of the Bill, one by one, expunging or modifying or adding to them, if they consider that the evidence brought before them by the Petitioners is such as to call for amendment. The Bill is then "Reported to the House" as so amended, after which it is "read a Third time" and passed. Having successfully passed through this ordeal in the House in which it has been first introduced, the Bill is then passed on to the other House of Parliament, where the same stages have to be gone through *seriatim*, with but very slight differences of procedure, in the course of which, if still opposed, a similar enquiry by a Private Bill Committee is held, with the same array of counsel, agents and witnesses on each side. If successful in

passing through both Houses, the Bill finally receives the "Royal Assent" in the words appended by the Clerk of the Parliaments, still given in Norman-French, "*Soit faict comme il est desiré*," and the Bill becomes an Act of Parliament, and the Promoters sit down to consider whether the game was worth the candle, and how the means can be obtained to carry the Act into effect. It not unfrequently happens that, before this can take place, a fresh Act has to be obtained to remedy some unnoticed defect which renders the primary Act unworkable, or to provide for some contingency unforeseen at the time of obtaining the first Act, or to facilitate the raising of funds for carrying out its purposes. In any such case, the Amending Act, however comparatively trivial may be its provisions, must pass through all the same stages, every one of which entails its own appropriate addition to the original cost. In some cases also, where lands have been acquired, or proposed to be acquired, compulsorily, but where the promoters find themselves for any reason unable to carry out their project within the time allowed by their Act, a new Act has to be obtained for the extension of the time, or even, in some extreme cases, to authorise "the abandonment of the undertaking."*

Clifford, vol. I., p. 311.

MODIFICATIONS OF PROCEDURE IN THE PAST.

Before entering on the consideration of the suggestions that have been made for improvement of the existing system, it may, perhaps, be well to give a slight sketch of some of the modifications which Private Bill legislation has undergone in the past, in the course of its development into the present strictly settled system of procedure.

As has been already mentioned, Parliament has, almost

* "Abandonment" Bills have recently been rendered unnecessary in ordinary cases, by the "Parliamentary Deposits and Bonds Act, 1892," which empowers the High Court to release Deposits under certain conditions.

from its earliest days, readily listened to petitions from individuals or sections of the Community for the redress of private and personal grievances or disabilities for which, whilst English Jurisprudence was growing up, and before judicial procedure had assumed its modern settled character, effectual remedies could not be obtained without special legislation. Along with these strictly private and personal matters, there have at all times been many petitions to Parliament for various local improvements, for which statutory powers were necessary either to enable a company of persons effectively to combine for carrying out the proposed works, or to apportion amongst the various interests concerned the cost of such works, or to settle the title to lands, or to enable the "undertakers" to acquire compulsorily lands which might be essential for the works, or otherwise to facilitate the carrying out of operations for the benefit of particular Localities. Thus, as far back as the days of the Tudor Sovereigns, and even earlier, schemes were sanctioned by Parliament, and tolls and rates authorised for their promotion and support, for such important local public purposes as the making of roads, the supply of water to towns, the improvement of harbours, the deepening of rivers, the maintenance of sea banks, the drainage and reclamation of marshes, and the inclosure of waste lands, as well as for other purposes of a similar class. Occasionally such matters have, from time to time, down to the present, been the subjects of Public Bills; but more usually these, as well as the more strictly personal matters already referred to, have been from very early times introduced into Parliament as Private Bills, on the Petition of those interested in them.

Procedure in Former Times.

At first it seems that no particular distinction was made in the procedure in Parliament on Public and Private Bills;

the clauses of both were similarly debated in open Committees, and all members were free to take part in them, though, at least as early as the beginning of the seventeenth century, Members personally interested in the Bill were, as now, disqualified from voting on a Private Bill. As regards those publicly interested in Private Bills, as representing the Locality concerned or affected by the Bill, the rule was different, and it was considered that such members were specially qualified to adjudicate on it. Thus, for example, in 1761 the petition of the Duke of Bridgewater for leave to introduce the Bill for his famous canal was referred to a Committee of fifty-two members, and the Bill itself subsequently to one of seventy-six members specially named, together with the Members for the Counties of Lancaster, Chester, Stafford, and Salop, through which the canal was to pass.

Clifford, I., 35.

Preamble of Private Bills.

Another matter on which the early Parliamentary practice differed materially from the present was as regards the Preamble of a Private Bill. The Preamble of a Private Bill — differing in this from that of a Public Bill, which is usually as concise and as general in its terms as possible, contains a full and carefully drawn statement of its objects and purposes, and one of the duties of the Committee is to see that the provisions of the several clauses of the Bill are in accordance with the Preamble and contain nothing which is not covered by it. Until the early part of the present century it was held that as the second reading of the Bill in the House sanctioned its general principles, as laid down in the Preamble, objections to the Preamble must be taken before the second reading. Hence, in former times, if the Preamble was objected to, there was a petition against it, which was considered by the House

itself, sometimes with evidence and arguments at the Bar of the House, whilst further separate petitions against the details of the Bill were referred to the Select Committee, who were not authorised to deal with the Preamble. In accordance with this principle, it was the practice for the Petitioners to begin with their case against the provisions of the Bill, which the Promoters were then called on to disprove or rebut if possible. The present practice is the very reverse of this. Although by the second reading the House assents to the general scope of the Bill, both Preamble and Clauses are referred as a whole to the Select Committee, and the main battle between promoters and petitioners is waged on the Preamble, leaving any amendments to the clauses to follow as corollaries on the propositions proved in the course of the debate on the Preamble.

This change seems to have worked itself out by degrees; but has been the settled practice since 1824, in which year occurred the last hearing of Petitioners against a Private Bill at the Bar of the House. Since about that time, although there have been many minor modifications, no radical change has been made in the method of procedure on Private Bills.

Standing Orders.

Standing Orders of both Houses for the regulation of their proceedings have existed from very early times, and for nearly two centuries have been regularly printed at the beginning of each Session, but their development into the present carefully worked out body of systematic General Rules has been chiefly due to the pressure of the great rush of work brought upon Parliament by the introduction of railways, followed, as that was, by the prodigious growth of scientific and industrial enterprise which has characterised the reign of Queen Victoria.

The first Bill for the Liverpool and Manchester Railway was unsuccesfully introduced into Parliament in the Session of 1824, and in that year the old cumbrous system of Committees on Petitions for leave to introduce Private Bills, was supplemented by a Standing Orders Committee, appointed at the beginning of each Session, by whom all questions as to compliance with Standing Orders are decided. In 1847 the Committees on Petitions were finally abolished by the appointment in their place of two Examiners on Standing Orders.

The duty of the Examiner is to see that all the highly technical and very precise rules contained in the Standing Orders have been strictly complied with. These rules refer, first of all, to such matters as the publication of *Gazette* and newspaper advertisements of the objects of the Bill, notices to owners of lands to be purchased, to frontagers on tramway lines, and to occupiers of neighbouring premises in cases of offensive works, such as gas works, sewage farms, etc., deposits of reference plans and other documents, both in the Parliamentary Bill Office, and with certain specified Local Authorities; similar deposits of copies of the Bill itself with various Public Authorities whose cognisance is necessary, according to the scope of the Bill in question. Thus, a printed copy of every local Bill must, by the Standing Orders of the House of Lords, be lodged, on or before the 17th day of December, in the office of the Clerk of Parliaments, and by the 21st December at latest at the Treasury and at the General Post Office, and on or before the same date another must be similarly deposited with such of the Public Departments as may be concerned, amongst which are several departments of the Board of Trade, the Home Office, the Local Government Board, the Education Department, the General Register Office, the Offices of Works and of Woods and Forests, and the Board of Agriculture. Plans and estimates of cost of intended

Warner, 273.

works must also be lodged—the former by the 30th November, the latter by the 31st December; and these must be prepared in accordance with specified forms. In the case of Bills promoted by Companies, proof must be given before the Examiner, previous to the second reading, that the Bill has been approved by special resolution of the proprietors at an extraordinary meeting of the company specially summoned for the purpose. Such a meeting is usually known as a Wharncliffe Meeting, this order having been originally adopted in 1846 on the motion of Lord Wharncliffe, then President of the Board of Trade. By the Municipal Corporations (Borough Funds) Act, 1872, and the Borough Funds Act (Ireland), 1888, a similar necessity of obtaining the sanction of the ratepayers, at a meeting specially summoned, before promoting a Private Bill, the expenses of which are to be defrayed out of the Local Funds or Rates, is imposed on Municipal Bodies.

The Standing Orders further require, in the case of all Bills for the construction of new works by any other than an existing railway or tramway company paying a dividend on its ordinary capital, that a deposit of money shall be made, to the extent of *five* per cent. in the case of railways and tramways, and in other works of *four* per cent. of the estimated cost. The release of this deposit in case of subsequent failure to carry out the works is often a matter of serious anxiety to speculative Promoters, and is one of the causes sometimes necessitating a new Bill for "the abandonment of the undertaking."*

There are a number of Standing Orders dealing with certain engineering and financial details, especially in connection with railways, making general provisions as regards borrowing powers, payment of interest during the progress of construction, and other such matters, whilst

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* See Note, p. 5.

other Standing Orders declare who shall be admitted as interested parties to appear as Petitioners against Private Bills, or, as it is technically termed, to have the right of "Locus Standi" before the Committees. Others, again, lay down the mode of procedure of the Committees themselves and of the Examiners and other officers of the House.

Altogether there are 249 Standing Orders of the House of Commons relative to Private Bills, and 181 of the House of Lords. The differences, however, between the Standing Orders of the two Houses, though in some respects considerable, do not seriously vary the procedure on the part of promoters and petitioners.

House Fees.

Appended to the Standing Orders are elaborate scales of fees levied on each stage of the proceedings; those in the House of Lords being in general, though not invariably, considerably higher than those for the corresponding stage in the Commons. For example, where the capital proposed to be raised does not exceed £100,000, the House fees in the Commons on each of the four principal stages, viz.:—First and Second Reading, Report, and Third Reading amount to £15, or £60 in all, whilst in the Lords the fee on Second Reading alone—up to £50,000 of capital—is £81, though the fees on First Reading and on Report are less than those in the Commons. Most, if not all, of these fees are payable at the same rate on unopposed Bills as on those that are contested. On a small unopposed Bill of one single clause, promoted some years ago by the Dublin (South) City Market Company, with the object of satisfying the Board of Works on a technical point as to the security for a loan, the House Fees amounted to £204. This would seem, therefore, to be about the lowest amount of such fees for which a Bill can be obtained.

CHANGES OF PROCEDURE SINCE 1824.

It has been already stated that since about the year 1824 no radical change has been made in the procedure on Private Bills. Considerable modifications have been made in the practice of the Houses and of their Committees; but these have been chiefly such as have arisen out of the necessities of the Houses themselves, in the endeavour to bring about an equilibrium between the number of members available and the quantity of work to be done within the time at their disposal. Some of these changes have, no doubt, proved at the same time beneficial to suitors at either side; but, on the whole, they have not seriously lessened the expense or trouble of procuring statutory powers for local public works or other industrial undertakings.

It would be tedious and unprofitable for the purpose in hand to go at any length into a history of the changes made since 1824; a few of them may be noticed without much regard to chronological sequence.

"Clauses Acts."

It was very soon found that railway legislation especially would tend to drift into a state of confusion bordering on chaos, unless some stringent means were adopted to harmonise the divergent, and in some cases inconsistent, action of Committees in relation to the provisions of the multiplicity of Bills coming before them. To remedy this—in pursuance of the recommendations of a Special Committee of the House of Commons in 1838—a number of Bills were drafted, each codifying a set of general provisions applicable to all Bills dealing with some specific class of undertakings; such series of general provisions to be incorporated, as far as applicable, in every future Bill of the class referred to, by mere reference to the clauses adopted.

The first of these Bills adopted by Parliament were the Companies Clauses Act, the Lands Clauses Act, and the Railways Clauses Act, all passed in 1845; and these were followed by the Markets and Fairs Clauses Act, the Commissioners Clauses Act, the Harbours, Docks, and Piers Clauses Act, the Gasworks Clauses Act, the Waterworks Clauses Act, the Towns Improvement Clauses Act, the Cemeteries Clauses Act, and the Towns Police Clauses Act, all passed in 1847. These Acts, which have since been amended and consolidated from time to time, as new needs have been discovered, and new principles brought into play, have very greatly shortened Railway and other Private Bills, and have much lessened the labour and responsibility of Committees. They have been supplemented by other general legislation dealing with other branches of Private Bill work. Clifford, II., 523, *et seq.*

Committees of Selection and "Chairmen's Panel."

Amongst other important measures tending to promote uniformity in local legislation was the appointment, in 1882, of the Select Committee of the House of Commons on Police and Sanitary Regulations, which has since been made a regular part of the system, being appointed at the beginning of every Session. It consists of not more than nine members. All Bills dealing with police and sanitary matters in towns are referred to this Committee, and they also supervise any clauses in other Bills that may trench upon such matters, before those Bills are sent before the ordinary Private Bill Committees. With an analogous object as regards railway legislation, there is appointed at the beginning of every Session a "Committee of Selection" who nominate a General Committee on Railway and Canal Bills. One duty of this General Committee is to appoint, from amongst their own number, the Chairman C. Leigh, 357. C. Leigh, 352-354.

for every Committee on Railway and Canal Bills. The list so appointed is commonly called the "Chairmen's Panel," its object being to secure the continuity of experience and uniformity of policy in regard to this large and important class of Bills, which was found to be wanting when the Chairmanship was left to the fortuitous selection of the separate Committees. The want of uniformity of general policy was particularly brought into view in connection with the "Battle of the Gauges," which arose out of Brunel's grand designs for the Great Western Railway, and with the rivalry of the atmospheric principle in the early days of railway construction, as well as with the burning questions of competing lines, and, more recently, of various projects of amalgamation. In the House of Lords there is no General Railway Committee, but the Committee of Selection nominate the "Chairmen's Panel."

Preliminary Local Enquiries.

An attempt was made in 1846 to attain the same result at an earlier stage, by a measure providing in certain cases for the holding of preliminary and local enquiries by Inspectors of the Board of Trade; but this experiment soon came to an end. It was found that the real contest was reserved for the Committee, whilst promoters suffered disadvantage by the premature disclosure of their case to the adversary, and but little weight was given by the Committees to the recommendations of the Inspectors. The Act, which was called Lord Dalhousie's Act, was repealed in 1851. Some preliminary supervision is, however, still exercised over Private Bills by the Public Departments, who make reports to the Committees, chiefly with regard to any clauses that may infringe on public rights, or may tend to injuriously affect the public interests.

C. Leigh, 340-341.

UNOPPOSED BILLS.

An unopposed Bill goes through the same stages, and is liable to the same fees as one that is contested in Committee, the only important difference being that in the Commons it is referred to a Committee of three, of which the Chairman of the Committee of Ways and Means is *ex-officio* Chairman. Practically, the examination of unopposed Bills is conducted respectively by the Chairman of Committees in the Lords and by the Chairman of Ways and Means in the Commons, before whom a certain amount of *primâ facie* evidence is given by the promoter or his agent. A very careful preliminary investigation of the clauses is made by the Chairman's Counsel, and amendments are made, if deemed by the Chairman to be required in the public interest, or in order to maintain consistency with usual formal practice.

C. Leigh, 342.

OBJECTIONS TO EXISTING SYSTEM.

The system thus imperfectly outlined has been, at various times during many years back, the subject of much animadversion, and suggestions for extensive alterations have been made, some from the Parliamentary and others from the local point of view, as well as from that of Suitors—Promoters and Petitioners.

From the Parliamentary side the objections are chiefly based on the enormous demands which Private Bill business makes on the time of the members, a burden which, in spite of the various expedients adopted from time to time to lighten it, is felt to become more onerous Session by Session.

Suitors on both sides object to the very great expense involved, which seems to be inseparable from the Parliamentary system, enhanced, as it must be, by the necessity

of having all the operations connected with the Bill carried on in London.

Both promoters and opponents of Local Bills object strenuously to the rigid necessity of having every case, however purely local its objects, and however simple its provisions, tried in London, and before a tribunal which, whatever may be its other merits—and as to the fairness of intention and openness of mind of the great majority of Parliamentary Committees, no serious complaint is made—often suffers from an incurable ignorance of the topography and surroundings of the place where the Bill is to be put in operation. Any member of Parliament "locally or otherwise interested" in any Private Bill is disqualified for appointment as a member of the Committee to consider it.

From this point of view the Parliamentary system of Private Bill Legislation is felt both in Scotland and Ireland as a national grievance urgently calling for remedy, a feeling which is shared in, though perhaps less poignantly, in many localities in England and Wales. The Association of Chambers of Commerce of the United Kingdom has repeatedly passed unanimously resolutions in favour of the Localisation of Private Bill Enquiries.

Campbell, 933, *et seq.*

Over and above these objections there exists, in many important Centres, a not unnatural, if perhaps somewhat sordid, feeling, that if so much money has to be spent in inaugurating local public works and industries, it would be desirable, as far as possible, to have that money spent locally rather than added as tribute to the gigantic wealth of the Metropolis.

Parliamentary Objections.

Considering the question first from the Parliamentary side:—In the Session of 1888 a Joint Committee of Lords and Commons, consisting of six members of each House, (Lord Monk Bretton, who, as Mr. Dodson, had been Chair-

man of Committees in the House of Commons from 1865 to 1872, being Chairman) was appointed "to examine into the present system of Private Bill Legislation, and to report how far and in what manner, without prejudice to Public Interests, that system may be modified with a view to the Interests of Suitors, the economy of the time of Parliament, and the Reduction of Costs and Charges."

That Committee examined thirty-seven witnesses, of whom about half were Members or Officials of Parliament, or Parliamentary Counsel or Agents. Its final conclusion was a half-hearted suggestion for the substitution of a permanent Commission in place of the Committees for the trial of opposed Private Bills, but leaving all the rest of the procedure untouched; adopting a plan suggested by the Right Hon. Edward Stanhope, M.P., but "damning it" in the same breath with the very "faint praise" that "though a Commission must necessarily be an experiment, it presents the best hope of an adequate solution of the difficulties of the situation."

It is obvious that neither the Committee nor the principal witnesses can be suspected of any violent prejudice against the existing system, yet the Report—unanimously adopted—contains the following sentences, referring to the difficulty of "manning" Committees of the House of Commons:—

"In further proof of the importance now attached to a tribunal of a stable character, it is to be noted that, with hardly an exception, every witness whose attention was directed to the point, whatever his view upon Private Bill Legislation in other respects, expressed or implied a preference for the Committees of the House of Lords, as composed of less fluctuating elements, and possessing a higher degree of quasi-judicial training and experience." Report of Joint Committee, par. 8.

Again,

"It seems to be more or less reluctantly admitted, even by some of the supporters of the present system that, whether owing Report, par. 9.

to the greater demands of public and local business upon the time of members or to other causes, the Committees of the Lower House have of late years been less strongly manned than formerly."

And again,

Report, par. 20 "Even in the lightest years, and with the increasing disposition of the House of Lords to take a full share of the burden, it has now become most difficult to provide in the House of Commons for the discharge of the duties of Private Business Committees."

Adding

Par. 21 "The evidence of Sir John Mowbray, the Chairman of the Committee of Selection of the House of Commons, on this point is striking, and commands the gravest consideration."

The evidence of Sir John Mowbray, thus referred to, was as follows:—After stating that he had been a Member of Parliament since 1853, and Chairman of the Committee of Selection since 1873, of which Committee he had been a member several years before, he proceeds, in reply to questions of the Chairman:—

4485. "I do not either deny the competence of the Committees, or the satisfaction their decisions give; but I think there must be a change, and that sooner or later; Parliament will have to transfer its jurisdiction on Private Bills to some external tribunal."

And he gives the following reason for that conclusion:—

4486. "I find that in each Parliament every year it becomes more and more difficult to man the Committees, speaking from my experience as Chairman of the Committee of Selection."

In another answer Sir John Mowbray says that members
4489. resort to "every sort of dodge" to escape service, and he further accounts for the growing difficulty partly by the grealty increased number of Select Committees and of Royal Commissions on public matters—besides the two Grand Committees already referred to, and partly by the

greatly-increased demands made on members of the House by their Constituencies ; and adds that—

"The consequence of all that is that with the Committees of the House and the Royal Commissions, we find extreme difficulty in finding competent and experienced Chairmen, independently of the difficulty of finding three other Members for each Committee." 4495.

The evidence of other expert witnesses was to the same effect, and it is certain that the difficulty is not likely to diminish in the future. The widened basis of the representation not only tends to throw on Members of Parliament individually a greatly-increased burden of local demands on their time, but it also imposes on the House of Commons a necessity for attention to a mass of detail, both in investigation and in legislation, formerly unknown, and this is still further increased by the modern facilities of locomotion and communication, which bring daily before Parliament the affairs of the remotest parts of the Empire.

The efforts made, by a variety of expedients, adopted by Parliament from time to time, to maintain consistency of practice, and to secure coherence of general policy on the part of Private Bill Committees, have been already referred to. One of the objections made by all the supporters of the existing system to any extra-Parliamentary tribunal for dealing with Private Bills is that such a tribunal would be apt to adopt a stereotyped policy, and an adherence to precedent, which are injuriously contrasted with the openness to conviction and readiness for reconsideration which is thought to characterise the system of "fluctuating" Parliamentary Committees. It is evident, however, that the ingenious expedient of the Chairmen's Panel, with the reduction of the number constituting a Committee to four members was, in fact, an endeavour on the part of the House

of Commons to remedy the admitted weakness of the fluctuating Committees, by giving to the system the nearest approach to the character of a permanent tribunal that the varying materials of the House itself would admit of. Naturally, the more permanent constitution of the House of Lords makes its Committees much less subject to this disadvantage, and fully accounts for the preference for the Lords' Committees expressed by the witnesses.

Warner 154, *et seq.*, C. Leigh, 403; Grimthorpe, 1867;

A further testimony to the inherent weakness of the Parliamentary Committee system is shown in the reluctance of most of the witnesses to consent to the substitution of a single examination by a Joint Committee of the two Houses for the present system of separate Committees. It was admitted that the second hearing often enables deficiencies to be supplied or errors corrected for which in a single tribunal no opportunity can be afforded. Surely such an argument implies some doubt, conscious or unconscious, as to the perfection of the system which it is used to recommend. What would be thought of our confidence in juries if we required every important case in our Civil Courts to be twice heard, not by way of appeal on points of law or of principle, but as a second trial before a new jury as to the facts?

Pembroke Stephens, 2030, *et seq.*

"Clifford's History," vol. II., p. 911.

Objections on the Part of Suitors.

It seems certain that, judged from the Parliamentary point of view alone, the existing system cannot much longer be maintained. Before we consider the suggestions that have been made for a remedy, let us look at the matter from the point of view of the Suitors.

Expense of Present System.

The first and most obvious objection is the expense of the present system. This is a point which hardly needs

labouring. It is admitted on all hands; though it is urged by the supporters of the Parliamentary system, against any plan for local enquiries, that the expenses attendant on local enquiries, at least in important and strongly contested cases, could not be less than at present. There can be no doubt that no ingenuity will devise a system by which a long and strenuous contest about the merits of an important public work, with a host of engineering and other professional witnesses on each side, can ever be cheaply conducted; but the real hardship of the present system is not in cases such as this, but is grievously felt in the case of the more modest schemes which form the bulk of the work of Private Bill Committees, and in the case of unopposed, and of what might be called matter-of-course Bills, it becomes a serious injustice; while to Petitioners merely desirous of securing clauses for the preservation of rights and interests affected incidentally by the clauses of some Bill promoted by a Railway Company or other wealthy Corporation, it amounts in some cases to nothing short of a denial of justice altogether.

Report, par. 1

Wilson, 3266-67; Hay, 3413.

Two illustrations will suffice for present purposes as to the expense of Parliamentary proceedings.

It was stated by the Town Clerk of Glasgow, in his evidence before the Joint-Committee in 1888, that in the fourteen Sessions during his term of office the Glasgow Corporation had expended £100,203 10s. 4d. in connection with various Parliamentary enquiries. Of this sum the London solicitors' (or Parliamentary agents') accounts absorbed £45,368 15s. 8d., out of which the House fees were £6,366 3s. 3d., and the shorthand writers' notes, and printing £6,558 4s. 7d.

Marwick 2211, *et seq.*

A good example of the cost of an unopposed Bill is afforded by the Act passed in 1887 on the final winding-up of the Munster Bank, to authorise the vesting of the re-

maining assets in the Munster and Leinster Bank, Limited. The Act, in its final shape, consists of thirteen clauses. It contains a Preamble of four pages of print, reciting the steps by which the Liquidation had been carried out, and two Schedules setting out the agreement between the Liquidators and the Munster and Leinster Bank for the transfer of the assets.

The Bill was first introduced in the Lords, and underwent a very close scrutiny by the Chairman of Committees, the Duke of Buckingham, and his Counsel, Sir Joseph Warner, in the course of which several amendments were made, chiefly with a view to greater precision of language and stricter conformity to precedents. Only one witness attended, the necessary proofs of notices and preliminary proceedings being given by the Solicitor and the London agent. The whole cost was £1,090 15s. 9d., of which the House fees amounted to £201 8s. 0d., and the Parliamentary agents' costs—not including counsel's fees incurred in preparing the Bill—to £190 8s. 2d.

Report, App., p. 557, Mem., T. Fitzgerald.

House Fees.

There are many still smaller and simpler Bills in which the House fees bear a much larger proportion to the whole expenses, and there is no good reason why the scale of fees not should be considerably simplified and reduced. It was shown before the Joint Committee that, in the ten years previous to 1888, the Private Bill fees received in the Lords had averaged rather more than £30,000 a year, while the expenses of Committees had hardly exceeded £10,000. In the Commons the receipts were rather more and the expenses somewhat less.

Report, App. F. p. 536, Symons Jeune; G. p. 537, Ferguson Davie.

Altogether, taking the two Houses together, there appears to be a yearly profit—over and above the expenses—of more than £40,000; and this large sum is not, as is

Report, par. 25

commonly supposed, a contribution to the expenses of the Parliamentary Staff. The whole amount of fees levied goes directly into the Exchequer to swell the credit side of the Chancellor's Budget. It is a simple piece of most injurious and impolitic taxation, a tax levied on the initial stage of every nascent undertaking, and therefore a penalty on Enterprise and a discouragement to Progress.

Ferguson Davie, 4236-38

Rigid Limitations Imposed by Conditions of Parliamentary Session.

But it is not in the House fees alone, or even in the Parliamentary agents' costs, that the great burden of expenses comes in. Every item in a bill of costs is swollen, some of them out of all reason, by the necessity of conforming, at every stage of the proceedings, to the rigid time limits imposed by the conditions of the Parliamentary Session. The consequence of this is that at nearly every possible stage of the proceedings there is a liability to hurry which, if not always actually incurred, has to be guarded against with minute precaution. In the Standing Orders the provisions as regards the dates of notices and advertisements and the intervals required between the several stages, are all framed to meet the exigencies of the Parliamentary Session; and these exigencies have other serious disadvantages, besides increasing the expenses. Witnesses have to be brought up to Westminster, sometimes from far distant parts of the Country, at one particular time of the year only, and may have to remain there over some adjournment of the Committee, or at least—as Committees do not work on Saturdays—over three days, from Friday to Monday, often at very great personal inconvenience. It is said that witnesses are not averse to enjoying a holiday in London during the season at the expense of a Railway Company or a Town Council; but, whatever truth there may be in this, it

Sir T. Martin 600; Colquhoun, 761.

Colquhoun, 745.

clearly applies least to the best class of witnesses. The evidence of a really valuable and important witness has often to be dispensed with owing to the unwillingness of a busy man to incur the waste of time involved in a journey to London at an inconvenient time of the year, to dangle from day to day in the Committee Room or the Lobby, in order to give evidence that might not perhaps occupy a quarter of an hour, and yet might be decisive of the fate of a Bill or of the shaping of an important clause. What is perhaps worse is the necessity, in cases of agreement or compromise, of drafting amendments in the brief interval allowed for the purpose by Committees. It is extremely probable that the recent costly litigation between the Dodder Mill-owners and the Rathmines Commissioners, the result of which entailed the passing of an Amending Act and the construction of supplementary Works, would never have occurred if the clauses of the Rathmines Waterworks Act, for securing their rights to the Mill-owners, could have been drafted and considered quietly in Dublin, instead of in a dark and noisy corridor in Westminster, between one sitting of the Committee and another, and in the absence of some of the principal Parties to the proceedings.

The evidence before the Joint Committee of Mr. Courtney, M.P., then in his third year of office as Chairman of the Committee of Ways and Means, is clear and striking on this branch of the subject. He says :—

Courtney, 4291. "The necessity of the work being done in the course of a Session involves very many objections; it means the work being hurried. It involves of necessity the expense of engaging many more Counsel than would otherwise be necessary. Occasionally it is subject to the accidents of Parliamentary life, such as a dissolution, and although the consequences of that may be got over by providing that what is done in one Session should be to the good in the next, the delay, even though so mitigated, is productive of great expense, and is very injurious to persons promoting such legislation."

Again,

"I think the association of Private Bill Committees with Parliamentary life is an incurable defect." 4300.

And again,

"I would say . . . that any scheme which did not sever all the first stages of the promotion of Private Bills from Parliamentary life would be open to many of the defects attendant upon the present system. Any scheme which contemplated that Bills should be read a second time, and then sent for examination to some outside tribunal, in my opinion, is subject to such objections that it would be scarcely worth serious consideration. You would have all the difficulties of compression still occurring; you would have all the chances of objections and opposition on party grounds upon Second Reading still remaining; and it would be necessary probably to dispose of the business in a still more hurried way if Bills are to be brought back again, and to be affirmed by Parliament before the end of the Session. Therefore I think I should reject altogether any scheme which contemplated that every Private Bill should be brought in, in one or the other House, read a second time, and then remitted to an outside tribunal, to be brought back again simply to be passed through Committee and to be discussed upon Report and read a third time." 4306.

Local Enquiries.

The case for the substitution of local enquiries into the merits of Private Bill schemes, for the part of the present system, by which the whole case, whether in support or in opposition, has to be proved in the Parliamentary Committee Room, has yet to be considered.

It is curious that this concentration of the proceedings in London, which strikes outsiders, judging merely by what they would call their common-sense, as the most obvious defect of the system, is the part of the case against the present procedure, of which its defenders seem most to make light, in many cases even claiming it as a merit.

Firstly, they point to the failure of the Preliminary Inquiries Act of 1846. That Act empowered the Com- Report, App A., p. 528. Warner.

missioners of Woods and Forests, in cases of Towns' Improvement Bills, and the Admiralty in respect of Harbour Bills, to send Inspectors to the locality to hold preliminary enquiries, the result of which they then reported to the Private Bill Committees. There was a similar reference to the Railway Department of the Board of Trade by another Act passed about the same time. Both experiments failed just because the enquiries were preliminary. Committees could not be got to accept the Inspector's report and the printed evidence, and insisted on enquiring into the facts for themselves, just as if no such preliminary enquiry had taken place. Moreover, opponents were unwilling to strengthen the case to be made for the promoters before the Committee, by prematurely disclosing their own before the Inspector. A Committee appointed in 1850 to enquire into the cause of the failure of the Act of 1846 reported to the House of Commons that, "in order to render any system of local enquiries effectual, it would be necessary to delegate to other tribunals much of the authority of Parliament." This delegation of authority the Committee were not prepared to recommend, and, accordingly, the preliminary enquiries were finally discontinued.

Report, App. p. 528, Warner.

Permanent Tribunals.

Secondly, it is said that the fluctuating character of Parliamentary Committees is really a great advantage, by preventing a sterotyped policy from nipping enterprise in the bud. "A fixed tribunal," it is said, "will have fixed opinions;" "the system will tend to become judicial rather than legislative;" precedents would be appealed to by Counsel, and any fixed Tribunal would necessarily feel itself bound and fettered by its own past decisions, which would, therefore, become an obstructive impediment in the way of

Report, App. A, Warner, p. 526.

all new departures, such as are from time to time called for by the scientific progress of the age. In 1868 Mr. Dodson (Lord Monk Bretton), speaking on the subject in the House of Commons, put this objection very weightily; and his words demand the fullest consideration. He said:—

"A judicial tribunal must aim at consistency, and, from the very nature of its being, always seek to uphold that which it has once decided. Imagine our position if decisions respecting Railways had, during the last five-and-twenty years, been left to such a Court, The Court must either have broken away from its own rules and precedents, in which case it would have lost all weight and character as a judicial tribunal, or it would have lagged behind, and found itself long ago in antagonism to the wants and opinions of the Country." * Clifford, II., 906.

To this it may be answered, firstly, that a great deal would depend on the *personnel* of the tribunal in question, and that in twice over speaking of it as a "judicial tribunal," Lord Monk Bretton to some extent begs the question; this objection, however, will be better met later on in dealing with the proposals for the creation of such a Commission as is alluded to. In regard to the question as to what would have become of our Railway System, if decisions respecting it had been left to one permanent, instead of a great many ephemeral tribunals—a question which, since it was put by Lord Monk Bretton, has been triumphantly repeated by every subsequent objector as if conclusive of the whole controversy, it may be incidentally remarked, that in the two most burning questions which arose in the early days of railway development—the rivalry between the Atmospheric System and the Locomotive Engine, and "the Battle of the Gauges"—the Railway Department of the Board of Trade

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*The quotations from Mr. Dodson's speech are taken from Clifford's "History of Private Bill Legislation," a work containing a valuable collection of facts, of which much use has been made in this paper.

took the side which ultimately prevailed, and reported, in spite of the high engineering genius by which both were recommended, that, in their judgment, neither the atmospheric railway nor the extension of the broad-gauge system was likely to prove a practical and commercial success, and that neither could be recommended in the general public interests. The early shareholders in the Great Western Railway, at all events, might well ask—"How much better would our position have been, had not the foresight and common-sense of the permanent Department been overruled by the temporary Committee?" At that time—1845—only 274 miles of the broad-gauge system were at work; yet, though a Royal Commission of scientific men in 1846 endorsed the recommendations of the Board of Trade, Parliament continued to sanction extensions of the Great Western system, till in 1867 there were no less than 1,450 miles of broad-gauge laid down. As is well known the whole of this—equal to about half the length of the railway system of Ireland—has since had to be taken up and relaid, and the engines and rolling stock broken up or reconstructed, at the sacrifice of a prodigious amount of capital.

"Clifford's History," vol. I., pp. 58, 68.

It must, however, be admitted that the danger of what was styled by members of the Joint Committee "grooviness" on the part of any permanent tribunal is a real one, and should not be ignored in devising any scheme of reform. No reform, however, would ever be carried into effect if its possible dangers were allowed to overshadow its certain advantages. Such a tribunal moreover could never escape from the pressure of public opinion, which now-a-days perhaps errs on the side of too much favour to doubtful experiments and questionable new departures; neither could it ever be wholly freed from Parliamentary control, with Members ever ready to resent any fancied injustice to their Constituencies.

Lord Advocate, 2553.

Want of Local Knowledge.

Thirdly, as regards the want of local knowledge on the part of Private Bill Committees, and the objections made to their investigations being conducted wholly at Westminister, without any opportunity being afforded them of making themselves acquainted with the locality affected by the Bill; this also is, by some upholders of the Parliamentary system, seriously claimed as an actual merit. It tends, they say, to impartiality that the Committee should be wholly removed from local influences, from which no tribunal holding its enquiries on the spot could be free. This defence reminds one of the witty critic who said that he never read a book before reviewing it, "he found it prejudiced him so." One or two illustrations may perhaps be given on this point.

The present Writer was once on a jury in a case which turned on the question of the cause of a fire in certain premises in Dublin. After a couple of days spent in argument and contradictory evidence, the Jury asked to be allowed to see the premises. A very few minutes on the spot showed them that the true cause was one wholly different from any that had been suggested on either side in the Four Courts, and a verdict was arrived at without any further hesitation. The difference was that the Jury had seen both sides of a party-wall, whereas neither Plaintiff nor Defendant had seen any side of it but his own.

Such a case as this seems not unlike many that turn up in connection with Private Bills; but two cases, both also originating in Dublin, may be cited from actual Parliamentary experience

In 1864 a group of four or five competing Railway Bills were promoted for connecting the various Railways in Dublin. Of these, at least three reached the Committee

stage in the Commons. Previously to an adjournment of the Committee the Chairman expressed the opinion that no plan would be satisfactory which did not unite all the Railways having Termini in Dublin, and which did not provide a Central Station. In spite of this warning, the Committee, after re-assembling, either forgetting their Chairman's *dictum*, or not clearly apprehending the plans before them, actually selected the only one of the three schemes which fulfilled neither of the conditions laid down, rejecting the other two. Dublin was thus for ever deprived of the great advantages of a central station, and condemned to wait more than twenty years for the very imperfect substitute of the "Loop Line."

It is inconceivable that any tribunal with even a slight knowledge of the locality could have adopted the scheme thus sanctioned. It proved, as everyone in Dublin knew it must, wholly impracticable. Two holes for a tunnel under the lower part of the Liffey were commenced, but speedily discontinued, and the Promoters, in order to recover what was left of their deposit money, subsequently obtained an Act for "the abandonment of the undertaking."

The second case referred to is that of the Bill for the conversion of Stephen's Green into a Public Park. It is probable that Lord Ardilaun's inestimable gift to the people of Dublin would never have been realised had it not chanced that that Bill also was adjourned over an Easter Recess. Two members of the Committee, puzzled by the discrepancies of the evidence on both sides, spent their holiday in a visit to Dublin, and were convinced by their inspection of the place of the great benefits of Lord Ardilaun's generous proposal.

Doubtless these examples drawn from a limited experience, in connection with Dublin only, could be matched by

many from other parts of the country. The Scottish Lord Advocate, The Right Hon. J. H. A. MacDonald, M.P., was asked by a member of the Joint Committee, whether he believed that the decisions of a permanent tribunal such as had been proposed, "would carry the same confidence in the country as the decisions of Committees of the House." He replied :—

"But I do not know what confidence in the country a Committee of the House of Lords or of the House of Commons commands. I only know that I hear them spoken very much against wherever I go. I know sometimes one Committee decides one way, and another exactly the reverse; both of those cannot possibly command the confidence of the country generally." Lord Advocate, 2555.

SUGGESTIONS FOR REFORM.

Having so far examined some of the defects of the existing system, we now approach the consideration of the suggestions that have been made for Reform. We may pass lightly over mere modifications of the present practice.

Reduction of Fees.

First comes the reduction of the House fees. The injustice of the present scale is admitted on all hands, particularly in the case of unopposed Bills. This was described to the Joint Committee by Lord Grimthorpe as monstrous, and he mentioned a case of a small Bill for King's College, which he had himself drafted without expense, being a Governor of the College, and which without "an atom of opposition" cost altogether £400, though "there was nothing in the world to do but to bring the Bill in, and run it through the two Houses." Grimthorpe, 1830.

Assimilation of Standing Orders.

Next is the proposal for assimilation of the Standing Orders of the two Houses.

This would undoubtedly effect a saving both of time and of expense. There is no serious difficulty in the way of carrying it out.

Abolition of Court of Referees.

The abolition of the Court of Referees, which in the Commons decides all questions of "Locus Standi," is strongly recommended by several witnesses—in particular by Lord Grimthorpe, who, as well as other witnesses, instanced several cases of grievous injustice to petitioners through the rigidity of the present system. Questions of "Locus Standi" in the Lords are dealt with by the several Committees. Although there is much difference of opinion amongst expert witnesses as to the propriety of abolishing the Court, there is no doubt that the rules as regards "Locus Standi" in many cases need relaxation. The great objection made to the adoption in the Commons of the practice of the Lords is that it would throw more work on the Committees, and so increase the fundamental difficulty of "manning" them.

Grimthorpe, 1833, *et seq.*

C. Leigh, 393; Sir T. Martin, 574.

C. Leigh, 389.

Joint Committees.

The suggestion has frequently been made, and has been considered by more than one Select Committee, to substitute a Joint Committee of the two Houses, for the two separate Committees. This suggestion, however, has always failed to command any general approval. It would not effect much saving of the time of Members of the House of Commons since, though some few Committees would be dispensed with in those cases where Bills are opposed on the Second Enquiry in the Commons, this advantage would be largely neutralised by having to contribute members to the Joint Committees in a considerable number of cases, where the Bill now originates in the

Report, par. 23 B. D. of Buckingham, 4628.

Lords and is unopposed when it comes down to the Commons. On the other hand, Petitioners are extremely unwilling to give up the chances of success afforded by the opportunity of opposing in the Second House. Almost all the defenders of the Parliamentary system are in favour of retaining the power of a second hearing as a necessary corrective to the possible errors of the first. There are also some obvious practical difficulties about Joint Committees, which would almost certainly tend to produce friction between the two Houses.

Lord Balfour, Report P. xxii. par. 12.

Warner, 155; Sir T. Martin, 570.

Committees to Sit Out of Session.

Suggestions for extending the work of Private Bill Committees beyond the Session of Parliament, and even for Local Enquiries being held by the Committees, have been made; but these are inadmissible for the same reason. The additional burden on the Members of the House would be wholly insupportable.

Provisional Orders.

It is indisputable that, though the existing system is susceptible of some amendment in the directions already indicated, no substantial relief as regards economy of the time of Members of Parliament, or as regards time and costs on the part of suitors, can be effected except by some plan which shall altogether remove at least a large part of the work from Parliamentary Committees to some other tribunal.

With this view a considerable extension of the Provisional Order system already in operation has been recommended. Possibly something might be done in this direction with advantage; but the system is already open to some degree of adverse criticism, which would be aggravated if more, and more important, work, were thrown upon

Campbell, 973-974.

it, and it is doubtful whether much further extension can be given to the Provisional Order system without bringing in all the objections which have up to the present been held to forbid the delegation of the powers of Parliamentary Committees to a Permanent Tribunal.

Report, App O., pp. 548-552.

From a return in the appendix to the Report of the Joint Committee it would appear that there are at least twenty-six separate Statutes, eight of which apply to Ireland, under which Provisional Orders may be made, by a number of different Departmental Authorities. These apply to sixteen different local purposes, without including the Irish Light Railways Acts, under which the Irish Privy Council deal with Light Railway and Tramway Schemes.

The average number of Provisional orders made and subsequently confirmed by Parliament amounted in the thirteen years ending with 1887 to 157 per annum. An average of about fourteen per annum of the orders were petitioned against; but only an average of six per annum of these petitions were persevered in as far as an opposition in Committee, and in the whole thirteen years only nine orders failed to receive Parliamentary confirmation.

In the same period of time the average number of Private Bills introduced into Parliament was 247 per annum, of which rather more than half are stated to have been unopposed in the House of Commons, but what proportion of them were wholly unopposed in either House does not appear.

Irish Provisional Orders.

Report App. P., Mem. of T. Fitzgerald.

In Ireland there are four Authorities competent to make Provisional Orders:—

The Board of Works, for Arterial Drainage, under the Drainage and Improvement of Lands Act, 1863.

THE BOARD OF TRADE, under the General Pier and Harbour Act, 1861 ; the Gas and Water Facilities Act, 1870 ; and the Electric Lighting Act, 1882.

THE LOCAL GOVERNMENT BOARD, for various Towns Improvements, under the Public Health Acts, 1874 and 1878.

THE LORD LIEUTENANT AND THE PRIVY COUNCIL, for Light Railways and Tramways, under the Tramways and Public Companies' Act, 1883.

The Board of Works appear to have made altogether fourteen Drainage Orders in the six years, 1881 to 1886. Report, App. P., Schedule 5

The Local Government Board, in their last Annual Report give a return of fourteen Orders made in the year 1894, and of thirteen under consideration at the date of the Report. The number made by the Board of Trade in Ireland must be very small ; whilst the number made by the Privy Council is necessarily limited by the nature of the subject of them.

Besides those enumerated, Provisional Orders are made by the Local Government Board for labourers' dwellings ; but these, when opposed, do not go before Parliament, but before the Privy Council, who deal with them under the Labourers' Act, 1885, and amending Acts.

Orders made by the Privy Council do not go before Parliament *unless* they are opposed, within a specified time, by the presentation of a Petition to Parliament. Those made by the other Authorities are provisional only, and have no force *until* confirmed by Act of Parliament. A Bill for the confirmation of a group of Orders is presented to Parliament as a quasi-Public Bill. If no petition be lodged against any of the grouped Orders within a stated number of days, the Bill is passed through its stages, as a matter of course.

If any one of the Orders be opposed, that Order is referred to a Private Bill Committee, and is treated in all respects as an ordinary Private Bill. In that case the expense may be greater than if the Bill had been originally presented in Parliament in the usual way, for the cost of the preliminary enquiry by the Local Government Board Inspector is added to the ordinary Parliamentary expenses of the opposed Bill.

Objections to Extension of Provisional Order System.

The inevitable result of this practice is that, while the process of procuring statutory sanction for a certain class of comparatively small and non-contentious projects has been greatly simplified and cheapened, with manifest advantage, all the old objections to preliminary enquiries revive in full force in connection with contested projects, so that nothing that is deemed likely to meet with serious opposition is made the subject of an application for a Provisional Order.

There seems also a grave objection in principle to conferring on an Administrative Department, such as the Local Government Board or the Board of Works, wide powers of quasi-legislation on the very subjects with which they are themselves dealing from day to day in their administrative capacity. This objection is of little importance, whilst the matters dealt with are few and comparatively insignificant, but it could not fail to make itself felt if enlarged powers of dealing with severely contested schemes were conferred on the Departments.

County Councils.

Proposals have been made for vesting in County Councils or other Representative Bodies legislative powers for local

Private Bill purposes. No suggestion that has yet been made can be more objectionable than this. The opportunities for jobbery and corruption would in many cases be absolutely irresistible; at best, the lives of members of such bodies would be made a burden to them by incessant canvassing on behalf of all sorts of desired concessions, and though they were all "as chaste as ice, as pure as snow, they should not escape calumny." Private Bill Legislation by any such Elective Body seems altogether out of the question.

CONCLUSIONS OF JOINT COMMITTEE.

In view of these considerations the Joint Committee of 1888 were, as everyone who carefully studies the subject will probably be likewise, "brought to the conclusion that, although" (as they say) "a Commission must necessarily be an experiment, it presents the best hope of an adequate solution of the difficulties of the situation." Report, par. 24.

Two schemes for such a Commission were sketched out for the Committee in Memoranda presented to them—one by Mr. Edward Stanhope, M.P., the other by Mr. Courtney, M.P., then Chairman of Committees in the House of Commons. The scheme of Mr. Stanhope was adopted by the Committee, who concluded their Report with the following paragraph:— Report, App. Q. Report, App. R.

"The Committee would, nevertheless, in closing their Report, express the opinion that, of the different schemes laid before them, that submitted by Mr. Stanhope affords a ready basis on which to proceed as combining a substantial accomplishment of the chief objects immediately aimed at with the least disturbance of existing interests and arrangements. In the event of such a scheme being adopted and of its operation proving satisfactory, it would admit at some future time, if it were thought fit, of being simplified and extended on the lines of the proposals that have been made by Mr. Courtney and others." Report, par. 27.

PRIVATE BILL COMMISSION BILL, 1889.

In the following Session of Parliament a Bill called the "Private Bill Commission Bill" was introduced into the House of Commons by the late Mr. Craig Sellar, M.P., framed with a view to substantially carry into effect Mr. Stanhope's proposals.

By that Bill a Commission was to have been created consisting of :—

(*a.*) The Chairmen of Committees of Lords and Commons respectively.

(*b.*) A Judge of a Superior Court for England, Scotland, and Ireland respectively.

(*c.*) A certain number of appointed and paid Commissioners, of whom one each was to be appointed for Scotland and Ireland respectively.

The Commission so created was to deal only with opposed Bills, merely taking the place of the Parliamentary Committee, but with liberty to hold local enquiries, and specially to devote one month in each Session to sittings in Scotland and Ireland respectively, and if necessary to extend their sittings beyond the Session of Parliament.

Objections to the Bill.

No change whatever was to have been made in the procedure on unopposed Bills, although the grievances of the present system are quite as substantial, if somewhat less in degree, with regard to unopposed Bills, as with regard to those that are opposed, and all Bills were required to go through all their other stages just as at present. This scheme, therefore, could not have effected any saving of expense ; on the other hand the provisions by which it was hoped to propitiate the local national feeling of Scotland

and Ireland were cumbrous and unsatisfactory, and would almost certainly have greatly increased the delay in getting Scotch and Irish Bills through Parliament.

The Bill, which never went beyond the first reading, was plainly a compromise between the desire to meet the claims of public opinion and the endeavour to do this with as little disturbance as possible of the existing system, of which it left the most objectionable features untouched. It seems certain that no such compromise could possibly be successful in working.

In the words of Mr. Courtney, already quoted :— *Ante*, p. 25.
"The association of Private Bill Committees with Parliamentary life is an incurable defect." . . . .
"Any scheme which did not sever all the first stages of the promotion of Private Bills from Parliamentary life would be open to many of the defects attendant on the present system. Any scheme which contemplated that Bills should be read a second time, and then sent for examination to some outside tribunal . . . would be scarcely worth serious consideration."

MR. COURTNEY'S SCHEME.

The scheme propounded by Mr. Courtney would have fully effected this severance. It was embodied in a memorandum handed in by him to the Joint Committee, which, slightly shortened, was substantially as follows :—

A Commission to be established, consisting of three members, "of judicial or quasi-judicial authority," to whom all applications in the form of Private Bills should be made. Report, App. R., p. 561.

The existing Orders and Rules of procedure as to notices, deposits of plans and of money, &c., to be continued until modified or changed by the Commissioners ; but the times of such notices and reports to be no longer connected with the Session of Parliament.

New Rules made by the Commissioners to be subject to Parliamentary sanction.

The Head-quarters of the Commission to be in London; but power to be given to hear the application or to try any of its issues in any specified locality. Any party to an application to be entitled to move for a local hearing.

As a rule, each case to be heard before one Commissioner, but with power to any party to move for a hearing by the full Commission.

Unopposed applications, and unopposed issues in any application, to be worked out before the "Registrar," subject to adjournment of any point for the decision of the Commission if necessary.

The Commission to decide all questions of "*locus standi*," and to have power to award costs.

Approved schemes to be laid on the tables of both Houses, and to become Law if not negatived within a specified time. No reasons for their decisions to be reported by the Commission of the Scheme. Parliament to retain only the power of rejection of the Scheme.

Rejected applications not to be reported to Parliament, except as summarised in an Annual Report. In this Report attention might be directed to any new questions requiring the consideration of the Legislature. Any point so raised might be brought before either House by motion on the part of any member.

Members of the Commission not to sit in the House of Commons; but the Chairman of Committees to be kept in communication with the Commission so as to be able to state the views of the Commission in any disputed case.

On the publication of the Report of the Joint Committee, the following letter, in reference to Mr. Courtney's Scheme, was addressed by the Council of the Dublin Chamber of Commerce to the Chief Secretary :—

Report of Dublin Chamber of Commerce, for 1890, p. 17

"*To the Right Honourable A. J. Balfour, M.P., Chief Secretary, Irish Office, London,*

"*22nd March*, 1890.

"SIR,—At the last meeting of the Council of this Chamber a resolution was unanimously adopted, by which I was directed to communicate to you the strong desire of the Chamber that the Government, at as early a date as it may be found practicable to move in the matter, should introduce into Parliament a measure for the establishment of a Commission for Private Bill Legislation, for which a foundation has been laid by the Report of the Joint Committee of Lords and Commons, which sat and took evidence on the subject of Private Bill Legislation during the Session of 1888.

"I am at the same time to convey to you the opinion of the Council, that in the creation of such a Commission it would be desirable, especially with a view to the facilitation of Irish business, to adopt, as far as may be practicable, the principles of the Memorandum presented to the Joint Committee by Mr. Leonard Courtney, M.P. (Appendix A., p. 561 of the Report of the Committee). The principles, the adoption of which appears to the Council to be of special importance, are as follows :—

"1st. The Commission should be a permanent body sitting throughout the year, and consisting of (three) members.

"2nd. One Commission for the whole United Kingdom would be better than an independent authority in each.

"3rd. All Bills, whether opposed or unopposed, to go before the Commission, and all applications in regard to Private Bills to be made directly to the Commission.

"4th. The initiation of Private Bills to be no longer limited in point of time in relation to the sittings of Parliament, but to be at any time during the year, subject to the convenient arrangement of the business of the Commission.

"5th. The inquiry, as far as convenient, to be held at some place in the locality affected; but a discretion might be left to the Commission to fix the place of hearing.

"6th. Schemes which have been approved by the Commission to be laid on the table in both Houses of Parliament, in a manner analogous to that in which Provisional Orders are now dealt with.

"The Council are led to make these suggestions, feeling fully convinced that no system of Private Bill Legislation, which does not provide for local inquiries, will be satisfactory for Irish business, and no system of inquiry which may be substituted for Parliamentary Committees will work either economically or satisfactorily, which requires a Bill to be read in Parliament previous to the holding of the inquiry, and, therefore, necessarily crowds all the preparatory stages into a short period of time previous to the opening of the Session.

"I have the honour to be, Sir,

"Your obedient servant,

"JOHN R. WIGHAM,

"*Hon. Secretary.*"

Any such drastic measure as that thus outlined necessarily incurs the utmost hostility on the part of the whole army of Parliamentary Counsel and Agents, as well as of the professional expert witnesses. Their evidence and opinions should, however, be taken, not only with a considerable

"grain of salt," but with a very liberal discount, not merely on the vulgar ground that in most cases their personal revenues and, in nearly all, their personal convenience, are at stake, though probably few men are so devoid of human nature as to be wholly indifferent to these considerations; but because the necessary laws of habitual thought and practice make it impossible for any but a very few rare exceptions to admit the superiority of a new departure of which they clearly perceive all the risks, to the system in which they have been brought up, and in which they have made their careers.

Objections made to Mr. Courtney's Scheme.

Three considerable objections—two of some practical value, and the third involving an important question of principle—are made to the proposed delegation, to an outside tribunal with local enquiries, of so much of the powers now exercised by Parliament over Private Bills.

Local Enquiries.

Firstly, it is said that a system of local enquiries will be more costly than one concentrated in London; because, amongst other reasons, eminent Counsel and expert Witnesses will be taken down to the Country at vastly greater expense than what is incurred by bringing up witnesses to London; whilst local enquiries will occupy more time by encouraging the multiplication of unnecessary witnesses.

To this it may be answered that neither the eminent Counsel, nor the expert Witnesses, nor the experienced Parliamentary Agents are half so necessary as the present system makes them appear. Half the virtue attributed to eminent counsel and expert witnesses lies in their supposed power to influence and, in some cases, to overawe the variable tribunals by whom the cases are now

heard, and amongst the most important functions of Parliamentary Agents are, firstly, to steer promoters or petitioners through the reefs and shallows of the sea of Standing Orders, complicated as they are by the association of the tribunal with the Parliamentary Session, and secondly, to make themselves acquainted as far as possible with the idiosyncrasies of the Chairmen's panel, (especially if the Bill be about to come before a Committee of the House of Commons), and advise as to the best line of action according as Lord A—. or Mr. B—, may be in the Chair. Local talent will soon adapt itself to the circumstances of the new tribunal. In nine cases of local enquiries out of ten neither counsel nor experts will be required from London, and in the tenth case it will probably be considered that they are worth the extra expense ; moreover it is not a *sine quâ non* that all enquiries shall be locally held, no matter how remote the district ; in many cases it will be much more convenient to all parties to conduct the business in the Metropolis, whether it be London, Edinburgh, or Dublin.

As regards unnecessary multiplication of witnesses, a probably sufficient check would rest in the hands of the Commission in the power to award costs against an unsuccessful Petitioner. This is a matter in which the present practice of Parliamentary Committees is notoriously inefficient.

Warner, 200-201 ; C. Leigh, 393, 403.

Hostility of Great Railway Companies.

The second difficulty arises out of the enormous Parliamentary power of the great railway companies and their known reluctance to have a system disturbed in which their unlimited power of the purse gives them so great an advantage. This creates a serious practical difficulty in introducing any new method. It may be suggested that if by any

exceptional means these great companies could be temporarily omitted from the scope of the new system, it is probable that within a limited time they would find it quite as advantageous to fall into it as to continue indefinitely to work through Parliamentary Committees.

Delegation of Parliamentary Jurisdiction.

The third objection, of principle, is one of undoubted weight, and seems in fact the *crux* of the whole problem.

It is urged that, though Parliament has parted with its jurisdiction over many matters which were once the subjects of legislation, and though in particular the House of Commons has transferred to the judges its right to try Election Petitions, none of those matters were in substance properly subjects for Legislation; they were questions of interpretation of laws already made and were therefore proper subjects for judicial, as distinguished from legislative treatment, and as such were rightly handed over to the sole jurisdiction of the High Court. In the matter of Private Bills, on the contrary, Parliament is asked to divest itself of its omnipotence, and to hand over to an outside Authority a share of those strictly legislative functions which are its own essential attribute.

This being so, it is said that any powers so transferred must, from the nature of things, be only of a restricted character, that Parliament must retain the final control, and that thus we shall be landed again in all the difficulties of the already exploded system of Preliminary Enquiries.

This argument seems to be one much more of form than of substance, deriving its apparent strength from an illegitimate application of the term Legislation by which it is made to cover a great deal that is not in any true sense Legislation at all.

Formerly, as has been shown in the early part of this

paper, it was the practice of Parliament to legislate in a great variety of individual cases, which, according as general principles evolved themselves, were found capable of being provided for by general statutes, by means of which what were once matters of Legislation became transformed into questions of Judicial Interpretation.

This process has been carried further, into the region of those Bills for Local Public Purposes which are now known as Private Bills, by the several "clauses acts," and consolidating statutes, grouping together in parcels of general regulations, the set of restrictions which experience showed to be necessary for the guidance of Committees in dealing with the several classes of projects coming before them. By far the greatest part of the work of Committees at the present time really lies in the application to the particular cases before them of well known and authoritatively expressed general principles. Of strictly legislative function comparatively little now remains. What does remain is susceptible of still further elimination in course of time by further general consolidating Acts. The true function of Parliament lies, not in continuing to legislate for individual cases, but in carefully watching over the general interests in this class of subjects and laying down in Public statutes, such further general rules as may be called for.

Rights of Property.

But, it will be urged, Private Bills propose to extinguish individual rights and to appropriate individual property for the benefit of other individuals or sections of the Community, and here the functions of the Legislative Authority come in, and Parliament is rightly jealous of parting with its authority in this matter.

Whatever semblance of validity there might once have

been in this argument, it now comes too late. In the creation of the Irish Land Commission and in conferring on it its undefined powers of dealing with individual rights and property for the public good, Parliament has already created a precedent, covering far wider ground and more far-reaching principle than any that come within the scope of the most important of Private Bills Unless it is to be said that the Irish Land Acts were an "*experimentum in corpore vili*," and so of no cogency as a Parliamentary precedent, the argument as to the impropriety of parting with authority over the rights of property appears to fall to the ground.

Real Functions of Private Bill Committees.

As to the real functions which Private Bill Committees now exercise, let us hear two witnesses, neither of them advocates of the extensive change proposed. Lord Monk Bretton, in the House of Commons, in the same speech already quoted as stating the objections to a Judicial Tribunal, used the following words :—

Vide ante, p. 27.

"What are the questions before a Committee on a Private Bill? It is not the interpretation of a law, the construction of a document, or the ascertainment of a right and a wrong. It is a question of expediency, a balancing of advantages and disadvantages to the Public. It is essentially a question of Policy."

The definition given by Sir Joseph Warner, Counsel to the Chairman of Committees of the House of Lords, is not dissimilar. He says :—

Report, App. A. p. 526.

"What is wanted in a tribunal to which Private Bill questions are referred, is ability to take a plain common-sense view of the merits of each case."

And he also deprecates the notion of a Judicial Tribunal in his answer to the question :—

Warner, 265.

"Would not you say that, if the questions are more intricate"

[than they formerly were] "men of judicial experience and training should be appointed to solve these problems?"

"I should not, myself, appoint men of legal experience specially to cut Gordian knots, which is what often has to be done."

It would be impossible to express more tersely than in these sentences the true functions of a Private Bill tribunal, and this brings us to the last consideration, the *personnel* of the proposed Commission.

PROPOSED COMMISSION.

Mr. Courtney proposed a Commission of *three* members sitting, as a rule, singly; but with power in important cases for a hearing by the full Commission; the Commission to work all the year round, to make its own rules of procedure, and to decide all questions of "Locus Standi," Parliament to retain the power only of acceptance or rejection of the Bill when reported, pretty much as the House of Lords now deals with Money Bills sent up from the Commons.

There seem, however, good grounds for suggesting that a Commission of at least *five* Members, with a *quorum* of *three*, would be much preferable, and that only unopposed and routine work should be dealt with by one Commissioner sitting alone. Considering that the work is admittedly of the nature of an arbitration, often requiring "the cutting of Gordian knots," it would appear that the power of consulting together during the progress of the evidence might often be of very great value, besides lessening the probability of too great weight accruing to individual prepossessions. Campbell, 1005. 1065.

The Commissioners should be men of high standing, selected for general ability and practical experience, and not specially on account of any particular professional training, whether legal, engineering, or otherwise. This need not

necessarily exclude a barrister or an engineer; but it is submitted that there is no necessity whatever for placing a Judge of the High Court on the Commission, as was proposed by Mr. Stanhope's plan, following the precedent of the Railway Commission, the functions of which are quite different, being almost wholly judicial. The Commission should, of course, be supplied with the best legal advice in the person of Standing Counsel, as is now the case with the Chairmen of Committees in both Houses. If it may be permitted to mention individuals, by way of indicating the sort of qualification that seems to be called for, it may be suggested that a Commission of five members, composed of men such as the past and present Chairmen of Committees, with one Commissioner each selected to represent Scotland and Ireland, respectively, and assisted by Counsel of the ability and common-sense of Sir Joseph Warner, or the present Speaker's counsel, the Hon. Chandos Leigh, Q.C., would form a tribunal, whose decisions would, in the course of a very short time, command as fully the confidence of the Public as do the twin judgments of any pair of Committees of five Peers and four Members of the House of Commons, nominated in February by the respective Committees of Selection. As was well said by the Lord Advocate before the Joint Committee—

Lord Advocate, 2553. "If you want a good tribunal to carry out any practical work in this country, I think you can always find the men to do it. I think I could find among the gentlemen who have presided over Committees of both Houses a tribunal which everybody would trust. I do not say I would take them from the House, but I could find them there. . . . And if I could find amongst them those who would do, the inference is, *multo magis*, that I could find them amongst men who are not now in Parliament."

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2554. "I think such a tribunal as I suggest must always be better for deciding questions involving matters both of opinion and of fact, than a haphazard Jury tribunal, which is in fact what a Committee of the House of Lords or the House of Commons necessarily is; it is just a Jury!"

A similar opinion was expressed by the late Sir Erskine May in his evidence before a Select Committee of the House of Commons in 1863, which was quoted by the late Mr. Jonathan Pim, then member of Parliament for the City of Dublin, when moving, in the Session of 1871, for a Select Committee on this subject.* This motion was made in connection with two Bills for dealing with Irish Private Bills, which had been introduced, one by Mr. Denis Caulfield Heron, then member for Tipperary, and the other by Mr. McMahon, member for New Ross. To the latter of these two Bills Lord Hartington had objected, on the ground that the subject "ought to be taken up as a whole, not merely as regards one part of the United Kingdom." In the course of his speech, Mr. Pim quoted Sir Erskine May's opinion as follows :—

"It has long been my opinion that the complete remedy for the whole of the evils is to be found in the constitution of a distinct tribunal. . . . I apprehend it would not be difficult to establish a tribunal which should soon create so much public confidence, and also ensure the confidence of Parliament, that its decisions would not be disturbed more frequently than the decisions of Committees under the present system."

Mr. Pim also referred to a speech made in the House of Commons, 16th February, 1864, by Lord Robert Cecil, now the Marquess of Salisbury, in a debate on certain resolutions introduced by Mr. Milner Gibson, President of the Board of Trade, with a view to simplify the Procedure on Private Bills.

Hansard, vol. 173, p. 647, *et seq.*

In the course of that speech, the Noble Lord said that—

"There was no need to prove to Hon. Members the burden entailed by the existing system. The labours of the House were severe enough in themselves, . . . without the superadded attendance upon Committees.

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* *Vide* a pamphlet (Hodges, Figgis, and Co., Dublin) containing a full report of the Debate, to which is appended the leading article of the *Times*, quoted above.

"The real objection to this Private Bill Legislation was, that it was work which Members were not sent to Parliament to perform

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"It might be endurable if it were of any use, or if the work could be done by no one else, or if the mode of doing it were satisfactory."

Lord Robert Cecil read to the House a petition of the Association of Chambers of Commerce, in which, after expressing a strong opinion as to the injurious effect of the "expense and uncertainty" of the Parliamentary Private Bill system, the Association advocated as a remedy, "referring the evidence in support of, or in opposition to such Bills, to some permanent judicial body of competent and experienced persons, sitting in public, and who would hear and examine the same, and report thereon to each House of Parliament." In continuing his speech, Lord Robert Cecil further said:—

"Depend upon it, the public would not long be satisfied to endure the enormous evils of the present system—the cost was too great and the hindrance to enterprise too appalling. The oppression to private individuals was, meanwhile, growing and increasing, and the burdens which the system imposed on Members of that House were beginning to be found intolerable."

He concluded by moving—

Hansard, vol. 173, p. 653.

"That in the opinion of this House, it is expedient that the duty of ascertaining the facts upon which legislation in respect to Private Bills is to proceed, should be discharged by some tribunal external to this House."

P. 662.

In finally withdrawing his amendment, Lord Robert Cecil said "he would bring the matter forward on another occasion."

Except the slight relief afforded by means of the Provisional Order system, nothing has been substantially

changed since this speech was made. Is it too much to expect that the Marquess of Salisbury may now consider that the favourable occasion has at last arrived to which Lord Robert Cecil looked forward in 1864?

Mr. Dodson, then Chairman of Committees, made a reply to Mr. Pim's motion, in terms almost identical with those of his speech in 1868, already quoted. Referring to this reply, the *Times* (Friday, 30th June, 1871), in a leading article on the debate, made the following observations :— *Vide ante*, p. 27.

"At the best a Parliamentary Committee is an ineffective sort of tribunal; it resembles, as Mr. Dodson confessed, "a jury without a judge to guide them." It is uncertain in its composition; its action is necessarily slow, for it sits only for a limited time and for a very few hours each day; it is expensive, because witnesses, as a general rule, have to be brought from a great distance to the metropolis; and its inquiries, being conducted without the advantages of local inspection, are frequently imperfect. All this is admitted by the Chairman of Committees, who stood forward on Tuesday as a rather lukewarm advocate of the existing system of Private Bill Legislation. When we add these admissions to the strong case advanced by Mr. Pim, we must confess that his motion deserved a better fate than its sudden extinction in the "count-outs" perseveringly provoked by Mr. Whalley.

Mr. Pim put forward the grievance as one peculiarly oppressive on Ireland, and certainly, from the instances he adduced, it is clear that the expense of bringing over batches of witnesses from the sister kingdom is often so enormous as to weigh down schemes of public improvement which are loudly called for and sorely needed. Where there is powerful and legitimate opposition to any proposed measure, the waste of money, though much to be deplored, is at least something to be expected by the promoters; but in the case of unopposed Bills, the expenditure appears to be cruelly purposeless.

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We can understand fairly enough how the grievance is felt, and it ought not to be difficult to devise a remedy; for though Ireland suffers most from the centralization of authority over Private Bills at Westminster, yet Scotland has almost as much reason to complain. The distant counties of England and Wales are sufficiently burdened by the expense of transacting business in London, which might be much better done on the spot, to join in the proposal to make the tribunals permanent and the inquiries local.

As in the case of the transfer of authority over disputed Elections to the Judges, the projected change, once fairly started, would commend itself at once to the common-sense and the pockets of ratepayers and taxpayers. . . . A carefully-planned measure introduced by Government would be certain of success, when the Report of a Committee would be set aside for a more convenient season.

Mr. Dodson, in opposing the transfer of jurisdiction in the case of Private Bills from the House of Commons to a Permanent Tribunal, made so many concessions that he seems to us to have thrown up his case and practically confined himself to an untenable plea for delay.

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As Mr. Dodson pointed out, it is not the Report of a Committee that is wanted; it is an Act of Parliament. Within the past twenty years sixteen Committees have been appointed to examine the state of business, but very little has come of their Reports. . . . An Act of Parliament, as Mr. Dodson admits, is required; but to meet the urgency of the case it must go much further than the Chairman of Committees is yet prepared to go. It is the business of the Government to take the matter in hand, to devise means for transferring the jurisdiction over private business from an overburdened Parliament to an impartial and permanent Tribunal, examining projects in the places where they are expected to be of service. Of course it would be necessary to provide a safeguard for paramount public interests by reserving a veto to Parliament. But this might be done without impairing the usefulness or the dignity of the Tribunals. The task is one requiring delicate adjustment, but it is not above the capacity of a Statesman."

Twenty-five years have almost elapsed since this article was written, yet the whole matter now stands substantially just where it did in 1871.

Proposal to deal Separately with Irish and Scottish Business.

There remains only the supplemental consideration, whether it is possible or would be desirable to begin by an experiment on a smaller scale, by providing at first a plan for dealing with Irish and Scottish business only, leaving the procedure in regard to English Bills untouched.

PRIVATE BILL PROCEDURE BILL OF 1892.

A tentative step in this direction was taken in 1892 by the introduction of a Government Bill "to Amend the Procedure with respect to Private Bills in Scotland and Ireland."

That Bill had two fundamental defects, both of which also characterised Mr. Craig Sellar's Private Bill Commission Bill of 1890. It dealt only with opposed Bills, and it left wholly untouched every step of the existing procedure, with the single exception of the Committee stage. It thus retained the "incurable defect" of continued association of the proceedings with the Parliamentary Session; although it endeavoured to mitigate this defect by allowing the Bill to be proceeded with after the prorogation of Parliament, and to be presented for Third Reading in the next Session as if that were a continuation of the Session in which the Bill had passed its Second Reading.

Vide ante, p. 38.

The Bill purported to provide for the establishment of a new Standing Joint Committee of both Houses, who, after preliminary examination of all Private Bills, were empowered to refer those which should be found to relate "wholly or mainly to Scotland or Ireland," together with all petitions for or against them, to a Private Bill Commission, whose report the Joint Committee were to receive and lay on the table of the House in which the initial steps had originated, after which, if the Preamble were reported "proved," the Bill was to be treated as an unopposed Bill in its subsequent stages in both Houses.

The Commission to be created was to have consisted of the present Railway Commissioners, together with one specially appointed Commissioner each for Scotland and Ireland respectively.

Difficulty of Separate Treatment for Scotland and Ireland.

A strong opinion has, in these pages, been already expressed against the chances of success of any attempt at compromise between the existing procedure and the satisfaction of local feeling, but this would not absolutely preclude the separate treatment of Irish and Scottish Bills if any practicable method of separate treatment can be devised.

There seem, however, to be almost insuperable difficulties in the way. The notices lodged for Irish Bills for the coming Session of Parliament appear to be only sixteen,* and of these several seem to refer to Provisional Orders, and if the usual proportion be unopposed, the work provided by the whole sixteen will be very small. The quantity and importance of Irish business, therefore—and presumably this is true of Scottish business also—are clearly not such as would justify the appointment of, or would provide employment for a separate Commission of the standing and conspicuous eminence necessary for public confidence in its decisions.

On the other hand the principles underlying Irish or Scottish Bills are just as important and critical as those of Bills from England, and require no less acumen and experience in dealing with them; but there is no existing Authority to which the work can be suitably transferred. The Railway Commission is open to the same objections as any strictly Judicial Tribunal, and in no less degree. Its present work is of an eminently technical and judicial character, and is governed by strict precedents, and the work of dealing with Private Bills and "cutting

* Parliamentary Return: List of Plans deposited at the Private Bill Office for Session 1896.

Gordian knots" when necessary, is incongruous with the ordinary experience and operations of that Commission. Moreover, there is an initial difficulty in absolutely discriminating in all cases between a Bill "which relates wholly or mainly to Scotland or Ireland" and one that chiefly concerns England only. Pope, Q.C., 1221.

If it be necessary or desirable to divide the work of Parliamentary Committees into sections, with a view to beginning the experiment on a moderate scale, a more natural and scientific method would be to divide Private Bills, not geographically, but into classes, according to the subject-matter of the projects dealt with; by this means it might be made possible, by a re-classification, at a future time to re-adjust the work of the Commission, and to enlarge or diminish if need were the range of its jurisdiction.

For instance, if it be deemed necessary to proeeed by experimental stages, it might perhaps be possible at first to exclude from the jurisdiction of the new Tribunal, all Bills promoted by Railway Companies, or all such Bills involving a capital expenditure beyond a certain amount, leaving these still to be dealt with in Parliament as at present. Parliament might also retain its jurisdiction over very large schemes of any sort; and these might be defined either by the amount of capital involved or perhaps by excluding works which concerned more than one county. This latter test would, in most cases, exclude any important new Railway scheme, as well as such great undertakings as for instance the Manchester Ship Canal or the Liverpool or Manchester Waterworks.

The ultimate control might be retained by Parliament; firstly, by the power of veto, as suggested by Mr. Courtney. Secondly, it might be practicable under certain circumstances to reserve power to some Parliamentary Authority, say to the Chairman of Committees of either House,

assisted, if need be, by a small Standing Committee of Members, on an appeal from the decision of the Commission, to order that the matter should be referred back to the Commission for re-hearing. This power should be exercised only on sufficient cause being shown, and on security being given for the costs, which in most cases, if not in all, should follow the result. But it is submitted that a case having been heard by the Commissioners should not be subject, unless under exceptional circumstances, to a re-hearing by a Parliamentary Committee. On the other hand, the Commissioners might have power to reserve any special point for the decision of Parliament, or even to refer the whole Bill to the jurisdiction of Parliament, should it appear to them to involve any principle so new or of such paramount public importance as to justify such a reference.

GENERAL CONCLUSIONS AND RECOMMENDATIONS.

In closing this Paper, it may be desirable to summarise the general conclusions arrived at. They may be summed up in the following propositions—

1. The existing system of Parliamentary procedure in respect of Private Bills is cumbrous, slow, and very costly.
2. These defects are mainly due to the intimate association of all the stages of the procedure with the conditions of the Parliamentary Session.
3. The present system entails a waste of the time of members of the House of Commons, injurious to the functions of the House in regard to general legislation, and which makes it increasingly difficult to provide members for the Committees.

4. The present scale of House Fees imposes a serious and disproportionate burden on small and unopposed undertakings, and ought in any case to be greatly reduced.

5. No mere modification of the existing system can do more than very slightly alleviate its inconveniences, or can effect any substantial economy of the time of Members of Parliament.

6. No considerable reform of the procedure can be effected except by dissociating altogether from Parliamentary life all its stages up to the final one of approval or rejection.

7. The only feasible way of effecting this, as yet suggested, is by the creation of a Permanent Commission, which should carry on the business throughout the year, and should deal with all the stages of Private Bills whether opposed or unopposed.

8. The real functions of Parliamentary Committees being neither essentially legislative nor strictly judicial, the delegation of those functions to a Permanent Commission, such as that suggested, involves no dangerous departure from precedent.

9. The quantity and importance of Irish and Scottish business respectively are not such as would justify their separate treatment, there being no existing tribunals to which such business could suitably be transferred.

10. Whilst the Commission would naturally have its head-quarters in London, it should also have local offices in Edinburgh and in Dublin, where the preliminary stages of Scottish and Irish business would be transacted.

11. The Commission should have power to hold enquiries on the spot with regard to the whole or any part of the projects coming before it, and should, as a rule, sit in Scotland or in Ireland when dealing with Scottish or Irish schemes.

12. No special technical or professional training is necessary as a qualification for the Commission, which should not be presided over by a judge of the High Court or be otherwise associated with legal or judicial precedents or practice.

CONCLUSION.

After careful consideration of this very important subject, the conclusion of the Joint Committee of 1888 seems irresistible, that "a Commission presents the best hope of an adequate solution of the difficulties of the situation," but the further conclusion seems equally irresistible, that, of all the schemes that have been suggested, that sketched in Mr. Courtney's Memorandum affords by far the best, if not the only basis on which to proceed, and that only by a resolute grasp of the subject, on the bold principles therein laid down, can the Government which hereafter shall successfully deal with it, confidently hope "out of this nettle Danger to pluck the flower Safety."

Vide ante, p. 39.

APPENDIX.

EXPENSES OF PRIVATE BILLS UNDER THE PRESENT (PARLIAMENTARY) PROCEDURE.

Statement of Mr. Thomas FitzGerald.

The following particulars were furnished to the Joint Committee (1888), by Mr. Thomas FitzGerald, of the firm of D. & T. FitzGerald, Solicitors, 20 St. Andrew Street, Dublin.

The remarks appended to each Schedule are taken from Mr. FitzGerald's statement, accompanying the Accounts.

FIRST SCHEDULE.

"There were three Bills, all relating to the same project."

1. Rathmines Water Act, 1880.

	£	s.	d.	£	s.	d.
Amount of Certificate of Taxing Officer of House of Lords ...				5,520	19	2
Made up as follows:—						
Solicitors' Costs	1,403	7	7			
Parliamentary Agents' costs ...	736	1	1			
House Fees, Lords and Commons	281	1	0			
Messrs. Gurney and Son [short-hand writers], Printing Account, Bill, Evidence, &c. ...	586	5	7			
Counsel	1,298	16	0			
Advertising (4 papers) ...	178	2	6			
Witnesses (24 in number) ...	686	5	0			
Railway and Hotel Expenses ...	240	9	5			
	5,410	8	2			
Miscellaneous Payments ...	110	11	0			
				5,520	19	2

2. Milltown Extension Act, 1880.

	£	s.	d.	£	s.	d.
Amount of Certificate of Taxing Officer				2,114	2	2
Made up as follows :—						
Solicitors' Costs £469 16 10						
Parliamentary Agents 314 13 6						
	784	10	4			
House Fees, Lords, Commons	224	6	6			
Messrs. Gurney, Printing Bill, Evidence, &c.	98	17	0			
Counsel	419	10	0			
Advertising	43	1	6			
Witnesses	115	13	2			
Messrs. Bentley, Costs ...	350	0	0			
	2,035	18	6			
Miscellaneous Payments ...	78	3	8			
				2,114	2	2

3. Vartry Bill (Opposition).

	£	s.	d.	£	s.	d.
Amount of Certificate of Taxing Officer				1,394	11	8
Made up as follows :—						
Solicitors' Costs £373 14 3						
Parliamentary Agents 232 0 4						
	605	14	7			
House Fees, Lords, Commons	34	11	0			
Messrs. Gurney, and Printing Bill, Evidence, &c.	77	1	5			
Counsel	639	19	6			
Railway and Hotel Expenses ...	10	19	0			
	1,368	5	6			
Miscellaneous Payments ...	26	6	2			
				1,394	11	8

REMARKS.

"The expenses of Bills have ranged in our offices from a minimum of £470, to a maximum of £9,029 13s. The latter maximum sum refers to the Rathmines Water Act of 1880. There were three Bills before the House for the one purpose; that is, the Bill

promoted by the Rathmines Commissioners, a Bill promoted for a rival scheme by some ratepayers, and a small annexation Bill connected therewith, but they were grouped together and formed but the one case. The taxed costs of the promoters amounted to £9,029 13s. An epitome of the expenses is given in First Schedule. In the above I have not included the costs of our opponents, but I think they must have amounted to about £7,000; so that the whole costs of that Act may be put down as £16,000. The Act was purely local, and no one outside the district had a particle of interest in it. If the enquiry, which so long occupied the time of the Committee, had taken place before a local tribunal in Dublin the cost would probably have been one-eighth of the sum."

SECOND SCHEDULE,

RATHMINES AND PEMBROKE MAIN DRAINAGE ACT, 1877.

Schedule of Costs.

	£	s.	d.	£	s.	d.
Amount of Certificate of Taxing Officer of the House of Lords				5,129	9	0
Which is made up as follows :—						
Solicitors' Costs	1,113	18	10			
Parliamentary Agents' Costs	666	1	0			

Cash Outlays.

House Fees, Lords, Commons	320	0	6
Messrs. Gurney & Sons ...	50	4	7
Printing Account for Bill, Evidence, &c.	614	16	7
Counsel	1,513	1	6
Advertising	200	3	10
Paid Fifteen Witnesses ...	508	11	11
Miscellaneous Payments by Solicitors for Sundries during progress of Bill, including Telegrams, Acts of Parliament, Clerks, Cabs, Postages	120	18	3
The like by Messrs. Holmes and Co.	21	12	0
			5,129 9 0

REMARKS.

"We had an Act in 1877 for carrying out a system of Main Drainage for the Pembroke and Rathmines Townships. It was a simple engineering scheme to carry the sewage of the two townships to a point about three miles distant, and to discharge it into the sea with the outgoing tide, so that it would be thus carried away without injuriously affecting anyone. The Scheme has been a perfect success, but it was opposed in Parliament, and it cost the two townships about £5,129 9s., and I think it cost their opponents £3,000 or £4,000, so that the total cost was, say, £9,000. It was a purely local matter, no one outside the district having a particle of interest in it."

"Schedule 2 gives the principal items of the costs."

THIRD SCHEDULE.

THE MUNSTER BANK (LIMITED) LIQUIDATION ACT, 1887.

	£ s. d.	£ s. d.
To Amount of Costs Certified ...		1,090 15 9
Made up as follows:—		
Solicitors' Costs	314 3 1	
Parliamentary Agents' Costs ...	190 8 2	
Fees to Counsel	142 5 6	
House Fees, Lords and Commons	201 8 0	
Paid for Printing Bills, &c. ...	80 5 0	
Advertising...	33 19 6	
Witnesses	29 5 6	
Travelling and Hotel Expenses	72 4 3	
	£1,088 4 0	
Miscellaneous payments ...	2 11 9	
		1,090 15 9

This was an unopposed Bill—See Pages, 21, 22.

FOURTH SCHEDULE.

THE BLACKROCK AND KINGSTOWN TRAMWAYS BILL, 1883.

	£ s. d.	£ s. d.
To amount Costs certified ...		2,108 17 1
Made up as follows:—		
Parliamentary Agents' Costs ...	259 10 2	
Solicitors	639 14 2	
Fees to Counsel	361 4 6	
House Fees, Lords and Commons	273 7 6	
Messrs. Gurney, Printing Bills, &c.	35 13 8	
Advertising...	253 6 4	
Witnesses	60 0 0	
Travelling and Hotel Expenses	80 1 0	
	1,962 7 0	
Miscellaneous Payments ..	146 10 1	
		2,108 17 1

REMARKS.

"In the Session of 1883 we were concerned for one of the principal Promoters in the case of the Blackrock and Kingstown Tramways, a line not quite three miles long, and the taxed costs in that case amounted to £2,108 17s. 1d., of which the particulars will be found in Schedule 4."

"We have had from time to time a number of Bills for other Companies, such as the Dublin Gas Company. Their last Act for increase of capital in 1883 cost them £5,700, and it must have cost their opponents some £3,000. It, too, was a purely local affair, no one outside the district having any interest in it."

ANALYSIS OF COSTS OF DUBLIN (SOUTH) CITY MARKET COMPANY'S ACTS.

The three accounts which follow show the expenses connected with three Acts of Parliament obtained at different times by the Dublin (South) City Market Company, Limited, kindly furnished by the Chairman of the Company.

ACT OF 1879.

EXPENSES IN LONDON.

Printer	£177	16	0
Houses of Parliament Fees	302	14	0
Parliamentary Agents' Costs	283	11	2
„ Counsels' Fees	212	18	6
Directors', Witnesses,' and Solicitors' Travelling Expenses	181	5	0
Proportion of Solicitors' Costs relating to time and services in London	75	0	0
	£1,233	4	8

EXPENSES IN DUBLIN.

Newspapers (Advertisements)	£208	8	6
Solicitor and Counsel	240	15	0
Engineer, &c.	112	2	7
	£561	6	1

TIME OCCUPIED.

Directors 37 days
Witnesses 16 „ } 76 days
Solicitors 23 „

Total, £1,794 10 9

This was not the original Act by which the Company was incorporated. It was an Act for extending the powers of the Company for purchase of lands and other purposes, including finance. The Bill was opposed in Committee.

ACT OF 1883.

EXPENSES IN LONDON.

Printer	£41	16	0
Houses of Parliament Fees	217	8	4
Parliamentary Agents' Costs	190	15	8
„ Counsels' Fees	191	6	6
Engineer	5	5	0
Directors' and Solicitors' Travelling Expenses ...	88	11	6
Proportion of Solicitors' Costs for time in London	61	12	0
	£796	15	0

EXPENSES IN DUBLIN.

Newspapers (Advertisements)		£15	16 6
Solicitors' Costs		72	11 3
		£88	7 9

TIME OCCUPIED.

Directors 25 days } 42 days
Solicitor 17 ,, } Total, £885 2 9

This was an Act for the extension of borrowing powers and financial purposes only. The Bill was opposed in Committee.

ACT OF 1884.

EXPENSES IN LONDON.

Printer	£24	10	0
Houses of Parliament Fees	204	0	0
Parliamentary Agents	72	5	1
Parliamentary Counsel	24	18	0
Directors' and Solicitors' Travelling Expenses ...	53	6	3
	£378	19	4

EXPENSES IN DUBLIN.

Counsel	£4	4	0
Newspapers	8	9	6
Solicitors	35	0	0
	£47	13	6

Time occupied uncertain Total, £426 12 10

This Act contains one operative clause only. The Bill was wholly unopposed. (See p. 11.)

CITY OF GLASGOW.

Statement of Costs of Promoting Bills for Departmental purposes.

The following is a summary of a table handed in to the Joint Committee by Mr. Colquhoun, Solicitor, a member of the Parliamentary Committee of Glasgow Corporation. The particulars respecting Nineteen Bills are given in the table. The totals under each head are as follows :—

	£	s.	d.
Parliament-House Fees	5,257	19	6
London Counsels' Fees	5,263	5	4
London Solicitors' Charges	10,699	2	11
Local Solicitors' Charges	20,821	3	9
Deputation Expenses (including Officials) ...	3,383	8	8
Witnesses, other than Members of Deputations ...	1,803	2	3
Engineers, Architects, Accountants, &c. ...	16,279	7	9
Printing, Advertising, Lithographing and Miscellaneous	16,039	7	3
Total	79,546	17	5

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