

MEMORANDUM

ON

PROPOSED NEW STANDING ORDERS

ON

PRIVATE BILLS;

BY MR. SPEAKER.

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MEMORANDUM BY MR. SPEAKER ON PROPOSED NEW ORDERS RELATING TO PRIVATE BILLS.

THE existing Standing Orders make provision for a special mode of dealing with Private Bills, regarding them as essentially distinct from legislative measures of a public character. They are framed upon the model of those in use in the Imperial Parliament, much reduced, however, and simplified. The existence of a special office common to both branches of the Legislature is taken for granted, in which the greater portion of the formal and technical business connected with Private Bills is to be transacted; also, the existence of a special officer, called the Examiner, whose duties with regard to these Bills are important and well defined.

Looking to the fact that the number of Private Bills is very small, it may very reasonably be argued that it is unnecessary to maintain the Private Bill Office and the Examiner. The duties of the Private Bill Office might be done in the ordinary Clerk's Office of the House, and there can be no difficulty in providing some other method of performing the duties which are discharged by the Examiner. By cutting out the various orders which relate to the practice in the Private Bill Office, and the Examiner, the Standing Orders may be very materially reduced in number, and made more simple, without impairing those guiding principles which it appears to me essential to preserve.

In various respects the proposed Standing Orders do not appear to me to recognize sufficiently the distinction between Public and Private Bills. I infer this from the proposed order which provides that Private Bills shall be introduced upon leave granted by the House after motion made, and from a second order which provides that, after the second reading, they shall be treated as Public Bills. The existing practice, founded upon that of the Imperial Parliament, is to require a petition as a preliminary to every Private Bill; but when the petition has been examined by the officers of the House specially deputed for that purpose, and has received their endorsement with a certificate that the Standing Orders have been complied with, an order is at once made to bring the Bill in, almost, it may be asserted, as a matter of right. The difference between the two classes of Bills, and the practice with regard to each respectively, cannot be better described than in the following extract from *May's Practice of Parliament*:—

“In passing Public Bills, Parliament acts strictly in its legislative capacity; it originates the measures which appear for the public good, it conducts inquiries when necessary for its own information, and enacts laws according to its own wisdom and judgment. The forms in which its deliberations are conducted are established for its own convenience, and all its proceedings are independent of individual parties, who may petition, indeed, and are sometimes heard by counsel, but who have no direct participation in the conduct of the business, nor immediate influence upon the judgment of Parliament.

“In passing Private Bills, Parliament still exercises its legislative functions, but its proceedings partake also of a judicial character. The persons whose private interests are to be promoted appear as suitors for the Bill; while those who apprehend injury are admitted as adverse parties in the suit. Many of the formalities of a Court of Justice are maintained; various conditions are required to be observed, and their observance strictly proved; and if the parties do not sustain the Bill in its progress, by following every regulation and form prescribed, it is not forwarded by the House in which it is pending. If they abandon it, and no other parties undertake its support,* the Bill is lost, however sensible the House may be of its value. The analogy which all these circumstances bear to the proceedings of a Court of Justice is further supported by the payment of fees, which is required of every party promoting or opposing a Private Bill or petitioning for or opposing any particular provision. It may be added that the solicitation of a Bill in Parliament has been regarded by Courts of Equity so completely in the same light as an ordinary suit, that the promoters have been restrained, by injunction, from proceeding with a Bill, the object of which was held to be to set aside a covenant;† and parties have been restrained, in the same manner, from appearing as petitioners against a Private Bill pending in the House of Lords.‡ Such injunctions have been justified on the ground that they act upon the person of the suitor and not upon the jurisdiction of Parliament, which would clearly be otherwise in the case of a Public Bill; and, acting upon the same principles, Parliament has obliged a Railway Company, under penalty of a suspension of its dividends, to apply, in the next Session, for a Bill to authorize the construction of a line of railway which the Company had pledged itself to make, and in good faith to promote it.”

It is proposed, I observe, to discontinue the recognition of parliamentary agents, leaving it to the promoters or opponents of Private Bills to employ (if they desire counsel) any solicitor of the Supreme Court they may think proper. The existing practice is, that any solicitor of good character who applies to the Speaker is constituted a parliamentary agent. In receiving his appointment he comes under an engagement to observe the rules of the House, to obey the order of the Speaker, and to pay all fees due. The only practical effect of the proposed change would be to set solicitors free from those obligations towards the House by which they are at present bound.

* The Manchester and Salford Improvement Bill, in 1828, was abandoned in Committee by its original promoters; when its opponents, having succeeded in introducing certain amendments, undertook to solicit its further progress.

† North Staffordshire Railway Company, 1850. The injunction was afterwards dissolved. 5, Railway and Canal Cases, 691.

‡ Hartlepool Junction Railway. 100 Hans. Deb. 3rd Ser. 783.

§ South Western Railway, Capital and Works Act, 1855; 18 and 19 Vict. c. 188, s. 62-69. See also Supplement to Votes, 1853, p. 945; *Id.* 1855, p. 251.

STANDING ORDERS ON PRIVATE BILLS.

It is further proposed to repeal "The Parliamentary Costs Taxation Act, 1861." That Act was passed with a view to the protection of the promoters of Private Bills. It authorizes the Speakers to lay down a scale of charges, and to appoint an officer by whom the bills of parliamentary agents are to be taxed. It must surely simplify business to have a fixed scale of charges instead of a separate bargain upon each transaction, and if the present scale of charges be too high, it is in the power of the House at any time to reduce it. The Committee report that "The list of charges, 150 in number, which the present orders authorize parliamentary agents to make, would disappear, thereby reducing the present book of Private Bill Orders by eleven pages." But these eleven pages contain in reality nothing more than tables of reference. The book might be still further diminished in bulk by striking out the index, but it would hardly be argued that its simplicity or utility would be thereby promoted.

The proposal to submit a Private Bill to a Committee appointed for each special case, appears to me to be open to serious objections. Looking to the nature of Private Bills, and to the functions of the Legislature with regard to them, I conceive that the existing method of appointing the Committee has an incontestable superiority. By that method a Committee, termed the Committee of Selection, is nominated by the House at the commencement of each Session, and that Committee nominates the Committees upon the various Private Bills that come before the House. The question of the Committee upon any Private Bill is thus withdrawn equally from the domain of party politics and from any suspicion of undue influence on one side or the other. Where judicial functions are exercised it is obviously only just that the tribunal should be constituted in such a manner as to secure for it the utmost amount of impartiality.

On the suggestion that the Private Bill Office should be done away with, I have already observed that it is a step that may be taken without infringing any of the principles that should not be departed from. As to the suggestion in the latter part of the clause, to treat Private Bills after a certain stage as Public Bills, I doubt its propriety.

The orders relating to Estate Bills are but seven in number, and direct certain things to be done which do not conflict with the action of the Judges under "The Private Estate Bills Act, 1867." In passing the Act in question the object of the Legislature, as I understood it, was that it should obtain the opinion of the Supreme Court that no legal or technical obstacles existed to the passing of a Bill affecting private estate; but I can hardly suppose that it was the intention of the Legislature virtually to devolve upon the Judges its own responsibilities, or to leave to them the duty of deciding whether it was desirable or not, looking to questions outside mere technicalities, that a law should be enacted in the direction applied for.

As regards the rules which are appended as a schedule to the maxims which are laid down, and upon which I have been commenting, I would observe that they bear evident traces of having been prepared without sufficient time having been allowed for careful revision. I observe, for instance, that in the second order reference is made to the "books of reference," although it is otherwise declared that "it has not been considered necessary to retain the provisions for personal notice served on individual owners."

Notices of the intention to apply for a Private Bill are to be deposited in the Colonial Secretary's Office instead of the office of the Clerk of the House.

There is no machinery provided for examining petitions with a view to the House being satisfied that the preliminary notices have been given. There is no distinction made between unopposed and opposed Bills; and it is proposed to appoint a Committee, by nomination, of the House, for each Bill a proceeding which, it is respectfully submitted, is open to the gravest objections.

D. MONRO, Speaker.