THE DEVELOPMENT OF PROCEDURE IN THE HOUSE OF ASSEMBLY OF NEWFOUNDLAND

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THE DEVELOPMENT OF PROCEDURE IN THE GENERAL ASSEMBLY OF NEWFOUNDLAND

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ABSTRACT

This thesis is an account of the development of procedure in the House of Assembly of Newfoundland. It is not a history of government and many matters that would be included in such a history have been omitted. Procedure might be defined as an account of the internal working and operation of a parliament with the politics left out. Rules of procedure, however, do not operate in a vacuum, but develop to enable a legislature to do its work in an efficient and orderly manner. It was necessary, therefore, to give a short history of the General Assembly of Newfoundland in order that the reader might know something of the framework within which the procedure operates. This has been done in the first two chapters.

Chapters three to eleven deal with parliamentary Practice and Procedure and show the workings of The House of Assembly since 1833. While the author has depended for the background of this work on the British and Canadian authorities who have written for guidance of Speakers and Members of Parliament, he has endeavoured to show how The House of Assembly developed, applied and in some cases changed parliamentary practice to suit its own needs.

This has made necessary the use of the topical rather than the chronological method of writing. The last chapter deals with the effect of Confederation on the Newfoundland Legislature, and brings the development of procedure down to the present day.

There was a wealth of material upon which to draw, but the writer found the Journals and Proceedings of the Assembly and the Legislative Council his most fruitful sources. The criterion for including any event was, did it happen in the House of Assembly, or was it directly connected with the House or its procedure. Nothing has been written on this subject in Newfoundland since 1855, when John Little, a St. John's lawyer, wrote a small book, The Constitution of Newfoundland, nor has any Provincial Parliament of Canada before been the subject of a work of this nature.

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CHAPTER I

PERIOD OF

REPRESENTATIVE GOVERNMENT 1833-54

Governor Sir Thomas Cochrane was authorized by Letters Patent, dated March 2nd, 1832, to call a General Assembly of the freeholders and householders of Newfoundland. His instructions specified the nine electoral districts, their boundaries, and the number of members to be elected for each. Any male subject of the King, twenty-one years of age and over, who had not been convicted of an infamous crime, and who, for two years prior to the election, had occupied a dwelling house as owner or tenant was eligible to be a member of the New Legislature. The qualifications of a voter were the same, with only one year's residence. The Assembly was to consist of fifteen members of whom six were a quorum. The members could decide election petitions. No change in the Constitution of the House or the number of members could be effected without the Royal consent. The Governor could not assent to any law changing the size of the Assembly or the qualifications of the electors or the candidates without first submitting the draft Bill to the Colonial Secretary. The Assembly could not re-enact any law which had been refused Royal Assent, nor was it to have any control of the courts, the militia, naturalization, divorce or shipping. The Governor's instructions even laid down the

procedure to be followed in passing laws; each separate matter was to be provided for by a different law; a clause could not be inserted in a Bill foreign to what the title imported; no perpetual clause was to be part of any temporary law; nor could an Act be altered by general words; but each Act altered was to be particularly mentioned and expressed in the enacting part. Bills were to be read a first and second time and reported to a Committee, then read a third time as today. Each Bill went through the same procedure in the Upper House. Private Acts were to be scrutinized carefully, and the public were to be notified in churches for three successive Sundays of the terms of proposed private Act. The Royal revenue could not be lessened, and no Bill authorizing any kind of a lottery could become law without Royal Assent. The new form of Government was to continue at the Royal pleasure.[1]

After David Buchan, a Commissioner appointed by the Governor, had sworn in the members, the Governor met them in the Council Chamber. He welcomed them with an introductory speech. His pleasure and satisfaction is apparent in almost every line of this speech. He referred

[1] Journals of the House of Assembly 1833, Pp. 9-18

to the calling of the House as a momentous measure, and said: "Hitherto, you had no control over finances, henceforth, you will be to a great measure the guardian of your own happiness, the promoters of your own welfare." He explained that the component parts of the Government were a Council selected by the King and an Assembly of representatives of the people, and any measures agreed to by these two bodies, and sanctioned by the Governor, became law. The rights and privileges of the House were to correspond to those enjoyed by the several branches of the Legislature in Britain, so far as they might be applicable. He warned each House not to interfere with the other.[2]

After this speech, the members were ordered by the Governor, through the President of the Council, to return to their Chamber and elect a Speaker. They elected John Bingley Garland, an English merchant carrying on business in Trinity Bay. The Speaker-elect accompanied by the members then returned to the Council Chamber and the Governor approved his election. The Speaker demanded for the members freedom of speech, freedom from arrest, access to the Governor's presence, and all the "customary rights and privileges". These were "cheerfully" granted. The Governor then delivered

[2] Ibid. Pp. 7-8

the Throne Speech, in which he spoke of the harmony and good will that had been maintained during the election, although it had been carried on for eight days, and he hinted at an increase in the number of districts.[3]

When the members returned to their Chamber, they appointed a Committee of five to prepare an address in answer to His Excellency's speech. They next decided to form a Committee of Privilege, which was to consist of the Whole House. The members appeared to be very conscious of their privilege as an elected Parliament. They considered the appointment of a Clerk, Sergeant-at-Arms, and Messenger, but decided to refer these appointments to the Committee of Privilege on the next Thursday. Their action is surprising, because the Governor had already appointed these officials.[4]

The House had much trouble in getting four of its members to take their places. Roger Forstal Sweetman, member for Placentia and St. Mary's, took his seat on January 18th. The Speaker, on orders from the House, had to issue warrants ordering the other members, Charles Cozzins of Conception Bay, William Brown of Bonavista Bay, and William Hooper of Burin

[3] Ibid.

[4] Ibid. p. 10.

to take their places. Charles Cozzins presented himself soon after the opening, but William Brown did not appear until February 5th, and William Hooper did not take his seat until April 12th.

The House of Assembly and the Legislative Council started off with friendly feelings towards each other. Chief Justice R. A.Tucker, President of the Council, wrote to the Speaker on January 16th: "It is the earnest wish of all the members of the Council, at all times, to cultivate and cherish a feeling of the most cordial harmony towards the members of the House of Assembly." To which the Speaker replied on the following day: "I am desired to present the respectful and earnest assurances of all the members of the House, that no opportunity on their part will ever be neglected to cultivate and maintain a spirit of harmony between the two branches of the Legislature."[5]

The House soon got down to business. The first Bill to receive second reading was a Quarantine Bill to provide against the introduction and spreading of contagious and infectious diseases. The first Bill to receive third reading was one regulating the storing of gunpowder in St. John's.[6] The House realized that more revenue must be raised,

5 Journals of the Legislative Council 1833, p.16
6 Journals of the House of Assembly 1833, Pp. 20-22

and passed a Bill levying duties on all wines and spirits. The members were anxious to learn all they could about their duties and to obtain information that would help them carry out these duties. The House requested information from the Governor on many occasions, and he promptly supplied it. Two of the first petitions to be received by the House were from two defeated candidates, Doctor William Carson, a Scottish physician, who had been one of the foremost fighters for Representative Government, and Hugh Emerson, a St. John's lawyer. They complained of unfair means which had been used to defeat them. Both petitions were later withdrawn.[7]

The first quarrel with the Legislative Council came when that body threw out the Revenue Bill, though it had passed unanimously in the House. The members wrote the Governor that without this measure they could not go forward with their programme of public improvement, and they asked him if he possessed any power which could relieve them from their present embarrassment. He replied that he learned with regret of the disagreement, but said that, while he was willing to consent to the Bill, he could not sign it unless the Legislative Council passed it. The House then petitioned the King, explaining the situation, and asking for "such relief as the

[7] Ibid. Pp. 17, 27.

situation may require."[8] The Governor sent this address to the King.

On March 18th the House resolved that owing to the embarrassed position of the colony and the loss of the Revenue Bill, it was inexpedient to agree to any Bill during the present session having for the object of payment of any salary to any public officer.[9] Later they came to see that this would cause much hardship to the Government employees, and passed Bills for the payment of salaries.

A reply to the Petition to the King was received early in July. The British Government agreed with the Assembly on their right to pass the Revenue Bill, and was "unable to concur in the view of the Council, as to the powers of taxation belonging to the Colonial Legislature". The British Government also praised the House for its judgement and for the efforts it had exerted to diminish the inconvenience from the loss of the Revenue Bill.[10] This Bill passed third reading in the House of Assembly on the 15th July, was quickly put through all its readings in the Council on the next day, and received the Royal Assent on July 22nd.[11]

8 Ibid. Pp. 37-40.
9 Ibid. p. 42.
10 Ibid. Appendix, p. 32.
11 Ibid. Pp. 71-74

Chief Justice Tucker, who had strongly opposed the Bill, resigned because the Home Government had disagreed with the stand that he had taken in the matter.[12] Sir Thomas Cochrane was recalled to England in October of 1834. He had become unpopular with the people who thought that he was too aristocratic and that he favoured the rich, and sided with the Council against the Assembly.

The first Assembly was prorogued on August 1st. It had passed Bills to regulate the streets of Harbour Grace; to regulate marriages; to declare the qualifications and character of persons to be admitted to practice as barristers in Newfoundland. It had established a court in Labrador, and had passed a Bill for the more speedy abatement of nuisances.[14] The House limited its own life, and the life of future assemblies, to three years.[15] It showed its nationalism by passing a resolution objecting to the expenditure of money raised in Newfoundland for purposes not connected with the Island.[16]

The House of Assembly derived its general form from the model of the British House of Commons, and drew its rules and system of procedure from the same source.[17]

12 Letters between Tucker and Cochrane, Royal Gazette, 5 March 1833.
13 D.W.Prowse, History of Newfoundland. p. 436.
14 Journals of the House of Assembly 1834. Pp. 42-51
15 Ibid.
16 Ibid. p. 29.
17 Ibid. p. 9.

The Secretary of State for the Colonies warned that distinctions, however, were numerous, and important, because of the difference between the representative bodies of a small colony and an extensive kingdom, but said that the laws and rules of the British Parliament might be taken as the safest guide of the conduct of the Council and the Assembly.[18]

The House adopted its first rules and orders in 1835. Six members, including the Speaker, were to be a quorum. Every member present must vote. Speeches were to be relevant to the matter under consideration. If any member at any time desired the House to be cleared of strangers, the Speaker must immediately order the Sergeant-at-Arms to do so. There was to be no argument on the principle of a Bill in Committee. If one member requested it, the yeas and nays were to be entered on the Minutes. All messages from the House to the Legislative Council were to be sent by two members to be named by the Speaker. They were to be accompanied to the Council Chamber by the Sergeant-at-Arms.[19] Most of these rules are still in use. This shows that Parliamentary procedure by 1833 had reached a high stage of development along the lines which it retained until the present day. The first edition of Sir T. Erskine

[18] Instructions to Governor Cochrane from The Secretary of State, 26 July, 1832.

[19] Ibid, 1835. Appendix.

May's Parliamentary Practice, still the standard reference book of Parliamentarians, was published in 1844.

When the House met for its second session on the 29th of January 1834, two new members took their seats; Doctor William Carson in place of William Thomas; and William B. Row in place of John Bingley Garland. Both Thomas and Garland had been appointed to the Legislative Council. The first business of the House was the election of a new Speaker. Dr. Carson and Thomas Bennett were candidates for the office. Thomas Bennett was elected.[20]

An attempt had been made by the House in 1836, to increase its membership, but the Governor had refused to sign the Bill. On the 13th of April of the same year the House passed a resolution thanking His Majesty for withholding the Royal Assent from this Bill, which they said had been passed in the absence of several outport members, and which it declared was contrary to the wishes of the people.[21] Lord Glenelg, the Secretary of State for the Colonies, supported the Governor's refusal to approve this Bill.[22]

In the meantime Henry John Boulton had become Chief Justice and President of the Council. He did not

20 Ibid, 1834. p. 4.
21 Ibid, 1836. p. 126.
22 Ibid. p. 129.

like the latter title, and called himself Speaker. He also induced the Council to change its quorum from three to five. The Governor, who had not been consulted, objected to these changes. He was supported in his stand by the Secretary of State, Spring-Rice, who said that the Council had no right to change the number necessary to constitute a quorum, and that the presiding officer of the Legislative Council was to be designated President, and not Speaker.

Boulton now declared that the second election had been illegal because the Great Seal had not been attached to the election writs. When this was brought to his attention, the Secretary of State said that while he felt the matter could have been safely ignored, he had to agree with Boulton. New writs were issued, this time bearing the Great Seal, and another election was held. The new Assembly started its proceedings by questioning the validity of the Acts passed by the former Assembly. Some members claimed that this body had never been legally constituted. On being consulted, Governor Prescott ruled that the fact that the Great Seal had not been attached to the first election writs was of no importance.[25]

Quarrels with the Legislative Council, which the Assembly blamed on Judge Boulton, continued. The Assembly

23 C.O. 194/88. p. 140
24 Ibid, 1837, Appendix, Glenelg/Prescott
25 Leslie Harris, First Nine Years Representative Government Newfoundland. Pp. 119-120.

declared that when the Judge was absent the Council passed their Bills, but when he came back he undid what the Council had done in his absence, so that their decisions fade, "and like the baseless fabric of a vision, leaves not a wreck behind."[26] The House even found fault with the way that the Legislative Council kept its journals, and warned the Governor that these Journals were "calculated, not only to lead the members of that honourable board into improper and dangerous conflict with the Assembly, but to deceive Her Majesty's Government on the subject of the best defined and most important privileges of the House of Assembly."[27]

Governor Prescott tried to keep away from these quarrels. He informed the House that while it was his duty to uphold their just and established privileges, he could not interfere in their disagreements with the Council.[28] He denied the Assembly's right to appoint the officials of the House, and when that body retaliated by cutting salaries of Government employees, he used the threat of prorogation to enforce his will.[29] He tried to be a peacemaker, and at every opportunity condemned the religious strife which he called the bane of peace. He asked members to "allay angry feelings and excite and cherish harmony and concord."[30]

26 Ibid. p. 365.
27 Ibid. p. 279
28 Letter from Governor Prescott to Mr. Speaker Carson 18 Nov., 1837.
29 Journals of the House of Assembly 1838, Pp. 19, 28.

The House now petitioned the Queen to "purify the fountains of justice of Her Majesty's most loyal subjects, the people of Newfoundland", by removing Judge Boulton.[31] They elected William Carson, Patrick Morris and John Nugent, to carry this petition to London. The delegation was successful, and Boulton was recalled. While he was found not guilty of corrupt practices or deviation from his duty as a Judge, the British Government did admit that he had allowed himself to "participate in the strong feelings that influenced the community".[32] There was great joy in the colony when this news was received. The Secretary of State instructed Governor Prescott on March 6th, 1838, that in future the Chief Justice of Newfoundland was not to be a member of the Council.[33]

The House endeavoured to prevent its members from carrying on business with the Government, and from entering into contracts for public services by passing an Act forbidding these practices. This Act declared also that the seat of any member who accepted an office of emolument under the Crown, was to become vacant.[34] In 1837, the members voted sessional payments to themselves of £42 each, and to the Speaker of £200.[35]

Many petitions dealing with a wide range of subjects

30 Ibid, 1836. p.59

31 Ibid, 1837. Pp. 244-253.

32 Charles Pedley, The History of Newfoundland. Pp. 401-02

33 Glenelg to Prescott 6 March 1838.

34 13 Victoria Cap. 13.

35 Journals of the House of Assembly 1837. p. 94

were received by the House.[36] On one day, the people of the North Shore of Conception Bay petitioned for relief, and the people of Carbonear asked that they might be permitted to carry on free trade with the United States of America.[37] These petitions were respectful, well-stated, and in the proper form.

The struggle continued between the Assembly, aspiring to broader democracy, and the Council, holding tenaciously to their vested interests. This struggle to control finance constituted a major battle, and the result was a stalemate.[38] As early as January 1833, Governor Cochrane had suggested that a union of the Council and the Legislature would be a more efficient Parliament. He had presented a plan for amalgamation to the Assembly and Legislature, but both Houses had dismissed Cochrane's scheme the same afternoon that it was presented.[39]

In 1837 the Legislative Council rejected the Supply Bill, with the Road Bill attached, thirty-one times. Finally, they refused to receive any further resolutions from the House on the subject.[40] In spite of their disputes, the relations between the two Houses remained formal. Rule 30 of the Council said that when notice is given to the Council by the Usher of the Black Rod, that a deputation is sent by the House of Assembly, they attend until the Council is prepared to receive them. On their coming up to the Bar with the message, the President

36 Ibid, 1833 Appendix.
37 Ibid, Feb. 19
38 Leslie Harris, op. cit. Abstract.
39 Ibid. p. 53
40 Ibid. p. 130

goes down to the Bar, the message is read and delivered to him by one of the deputation, which now bows three times and retires. The President resumes the Chair, and then standing, reports the message to the House.[41] Once when John Valentine Nugent carried resolutions from the Assembly to the Council, and they were refused, he threw them in on the floor of the Chamber. John Boulton who was presiding shouted to the messengers, "kick them out, kick them out".[42]

No communication was held by the Council with the House of Assembly, except through its Master in Chancery. Members were forbidden to enter the House of Assembly without the Council's consent, on threat of being imprisoned by the Black Rod,[43] but seats were reserved in the Council Chambers for visiting members of the Assembly.[44]

In the beginning the House of Assembly and Council managed to iron out their differences. When the Council failed to pass the first Bill dealing with the control of gunpowder in St. John's, the House requested a conference on the amendments made by the Council. The Council agreed and two "managers" were appointed by the House to meet two "managers" from the Council, but the "managers" from the House, instead of stating their objections to the amendments,

41 Journals of the Legislative Council 1833, Appendix.
42 Leslie Harris, op. cit. p. 130
43 Journals of the Legislative Council 1833, Appendix.
44 Ibid.

wished to discuss the propriety of the Council's amending the Bills at all. Only after three meetings did the Council pass the Bill.[45]

The House held its first session in the hotel of Mrs. Mary Travers. The members neglected to pay her, and when the House met for its second session, the Mace, the Speaker's cocked hat, the Sergeant-at-Arms' sword and the papers of the House could not be found. The members were informed that these were in possession of Mrs. Travers, who was holding them as security for her rent. The House instructed the Sergeant-at-Arms to demand these articles, but Mrs. Travers was not easily frightened, and she refused to give them up. The House then appealed to the Governor, who persuaded her to deliver up the papers and other property.[46] She was not paid, however, and twenty years after she petitioned the House from Prince Edward Island, claiming to be in just financial distress, and asking the House to pay the money owed her.[47]

The Council persisted in a course of bickering and obstruction, which was not wisely handled by the Assembly. The press and public meetings added fuel to the fire, and political disorder was rife.[48] The dismissal of Chief Justice

45 [redacted] of the House of Assembly 1833, p. 23
46 Ibid 1834, p. 11
47 Ibid 1854, April 18
48 Sir Charles Harris, The Cambridge History of the British Empire, Vo. VI, p. 429.

Boulton did not bring peace. Serious election riots in 1840 led to the House of Commons appointing a Commission of Enquiry. Governor Prescott was directed to dissolve the Legislature, and to return to England to give evidence before this Committee. For nearly two years the constitution was suspended, and there was no Legislature. Then the Crown instructed the Governor to abolish the Legislative Council as a separate unit, and to merge its members with the Assembly. The result was a single Legislative Chamber partly nominated, and partly elected with James Crowdy, the Colonial Secretary, as Speaker. This worked tolerably well for six years. There was less personal squabbling, and public business was more readily transacted.[49] However, there was much opposition from the colony, and the Home Government was repeatedly petitioned to separate the Executive from the Legislative Council. Lord John Russell, the Secretary of State, refused to do so, stating that there were several other questions relating to affairs in Newfoundland which must precede the subject of the establishment of an Executive Council, in the consideration of Her Majesty's Government.[50]

The old constitution was restored in 1849, to the disappointment of many of the people of Newfoundland, who had hoped for full Responsible Government. Soon after the

[49] Ibid. p. 430
[50] Letter Russell to Prescott, 31 March, 1841

House of Assembly appointed a delegation to carry a long letter to the Duke of Newcastle. In it they expressed their disappointment that they had struggled in vain for the establishment of a thorough British system of Government in the Island, and that their repeated addresses to the Crown for justice had been met with evasions or direct refusal. They pointed out to the Duke, that whether the Government of Newfoundland consisted of one chapter or two, it would always have to contend with the difficulties arising out of the conflicting interests of the two great classes of the community, the commercial and the resident class. They declared that the expiration of the Amalgamated House had been hailed with unanimous approval. They pointed out that even in the Amalgamated House in 1846, resolutions had been adopted asking for a Parliament in which the Executive would be responsible to the Legislature. In this way the Administration would possess the confidence of the representative of the people. They deplored the fact that James Crowdy, the Colonial Secretary and chief advisor of every successive Governor, had so much influence:- "It is notorious that whoever may be the Governor, he ultimately becomes the ruler of the Island." They accused the Public Departments of inefficiency and claimed that the Legislature

was often delayed in the discharge of its business, because of the tardy policy of the council, which compelled members from the outports to return to their homes before the public business was finished.[51]

In spite of this plea, the Secretary of State for the Colonies, the Duke of Newcastle, was not convinced. He doubted whether there were enough qualified persons in Newfoundland to conduct Responsible Government. He thought, too, that sectarian differences among the population would interfere with its harmonious working.[52] But the Assembly kept sending petitions and resolutions to the Imperial Government, the Duke, the House of Lords and the House of Commons. They had stout champions in Joseph Hume and John Bright, both influential members of the House of Commons.[53] Finally on March 23rd, 1854, the House, through a letter from the Duke, received the welcome news: "Her Majesty's Government have come to the conclusion that they ought not to withhold from Newfoundland these institutions and that system of civil administration, which under the popular name of Responsible Government, have now been adopted in all Her Majesty's neighbouring possessions in North America." At long last Responsible Government was to be inaugurated.[54] A new day was dawning for Newfoundland.

51 Report from Delegation Appointed by House of Assembly 1849 to Advocate Responsible Government to the Duke of Newcastle.

52 Letter from Duke of Newcastle to P. F. Little and R. J. Parsons, July 28, 1953.

53 Journals of the House of Assembly 1854. Pp. 46-55

54 C. O. 194. Newcastle to Hamilton, Feb. 21, 1854.

CHAPTER II

PERIOD FOLLOWING ADOPTION OF RESPONSIBLE GOVERNMENT 1855 - 1959.

Responsible Government was granted to Newfoundland in 1855. The last Governor under the old system, Sir Baillie Hamilton, who had strenuously opposed the change, had been transferred to another colony in order that the new system might be successfully inaugurated. The new administration, confident and enthusiastic, under the leadership of the Premier, Philip Little, a young lawyer from Prince Edward Island, met together for the first time in May.[1] Everyone was optimistic, for after centuries of struggle and hardship, the sun of prosperity seemed about to shine on Newfoundland for the first time.

John Little, in his booklet The Constitution of Newfoundland, stated that under the former system of Government the Governor did not consider himself bound to choose his advisors from men who enjoyed the confidence of the representatives of the people. He said that this was the cause of the antagonism which prevailed for so long between the Assembly and the Council. "Now", he wrote, "Responsible Government will remedy this evil, by obliging the Governor to choose his councillors, from among men having

[1] G. O. Rothney and M. O. Morgan, "Historical Review of Newfoundland", Royal Commission on The Terms of Union, Pp. 56-57.

confidence of the majority of the representatives, and will bring about between the different branches of the Legislature and the Government the harmony necessary to promote the prosperity of the colony."[2]

For the first few years the colony was prosperous, the fishery was good, and the cable communication with the mainland proved to be of great benefit. Soon, however, party strife, sectarianism and political riot began to raise their ugly heads.[3] The Governor quarreled with the Assembly which promptly reduced his salary.[4] The Legislative Council again began to give itself airs. In 1858 the House of Assembly wrote the President of the Council: "In the description of the practice given by the Legislative Council, it is said that during a conference the Lords are to sit and be covered. Now the House of Lords is composed of the Lords spiritual and temporal, and it is obvious that the Legislative Council must show, before they can be said to fall within the scope of their own definition, that the Legislative Council is composed of Lords spiritual and temporal. Honourable gentlemen, the House of Assembly believe the gentlemen who compose the Legislative Council to be, but certainly they are not lords, and therefore they are not

2 John Little, The Constitution of Newfoundland Pp. 3-8.
3 See the testimony of Witnesses before the Select Committee of the House in the Journal for 1861, Appendix.
4 Letter from W. J. Coen, the Governor's Secretary to Hon. E. D.Shea, Acting Colonial Secretary, 22nd July 1859.

entitled to the privileges which belong to the Lords of England."[5]

Under Responsible Government the Assembly had an undoubted right to initiate money Bills, so one cause of quarreling with the Legislative Council was removed, but now the Council members wished to be paid a sessional allowance. The Assembly refused all their requests, although the Duke of Newcastle thought they should be paid.[6] In retaliation the Council would not pass Bills providing pay for members of the Assembly, and in 1863 they received no sessional pay.[7] The quarrel with the Legislative Council continued spasmodically for nearly a hundred years, because of that body's insistence on its right to amend money Bills. As late as 1926, a member of the House of Assembly said: "It is regrettable that there is not a leader in this House to lead the thirty-six of us into the other place, and wipe them out."[8]

Serious rioting took place in Harbour Main during the election of 1861. When the House opened on May 13th, a mob attacked the Colonial Building because the members refused to allow George Hogsett and Charles Furey, who claimed to be elected for that district, to take their seats. Later that evening the rioting became so violent that the soldiers

5 Letter from the House of Assembly to the Legislative Council, Journals of the House of Assembly 1858, p. 215.
6 Journals of the House of Assembly 1863, p. 121.
7 Letter of President of the Legislative Council to the Speaker of the House of Assembly, 28th March 1863.
8 House of Assembly Debates 1926, p. 743

had to fire into the mob. Three people were killed, and about twenty others were wounded.[9] The soldiers were blamed by the people[10] but in a letter to Governor Bannerman, the Duke of Newcastle on the 3rd of September wrote: "I am bound to express my sense of the exemplary forbearance played by the troops, commanded by Lieutenant Colonel Grant, under the outrages to which they were subjected."[11]. The House of Assembly appointed a Committee to enquire into these riots. It took three hundred and seventy three pages in the Appendix of the Journal for 1861, to list the claims that were received for damages, which amounted to £7995.6s.11d.

The new Parliament did not possess the full powers of Responsible Government. On March 4th, 1861, John Kent, the Colonial Secretary and Premier who had been dismissed from office by the Governor, introduced this resolution: "Whereas contrary to the Royal instructions, His Excellency the Governor, having notified the Hon. John Kent that the Executive, of which he is the Premier, only hold office until their successors are appointed, and that he has entrusted to Hugh W. Hoyles Esquire, the task of forming a new Ministry. It is resolved that the outgoing Ministry have the confidence of this House and the country, and that any new Ministry formed under such leadership, cannot hold their place without a dissolution of the House." This motion was passed on the 5th

10 Letter from Joseph Little to Bishop Mullock 28 June 1861.
11 Letter from the Duke of Newcastle to Governor Bannerman, 3rd Sept., 1861.

of March by a vote of 16 to 12, but the Governor disregarded it, and on March the 7th he dissolved the House.[12] He was within his constitutional rights in doing so, for eight years later Governor Hill was instructed by the British Government that if it should in any case appear right for him to act in opposition to the advice given him by the Executive Council, or the Legislature, or both, he was to disregard them, and do whatever he thought best.[13]

On the 3rd of February 1870, at its first sitting, the House passed a resolution of no confidence in the Government by a vote of 19 to 8, and recommended to the Governor that he ask Charles Fox Bennett to form a new administration. The Governor replied that the request was unconstitutional and should not be established as a precedent. He informed the members that they ought not to have passed such a resolution before considering the Address in Reply. But he promised that should the Executive resign, he would follow "the accustomed and constitutional practice, in appointing their successors."[14]

By 1873, the convention that if the Executive did not possess the support of the majority of the House it had to

12 Journals of the House of Assembly 1861, Pp. 70-72

13 Instructions to Governor Hill from the British Government 1869.

14 Journals of the House of Assembly 1870, Pp. 15-19

resign, was well established. When that year Charles Fox Bennett, who had been returned with a very small majority, lost his majority, Sir Frederick B. T. Carter was called upon by the Governor to form an administration. He did so, and carried on during the session of 1874, by the help of the Speaker's casting vote. After the General Election that year he was returned with a good working majority.[15] As early as 1861, John Kent had been called Premier,[16] and since 1872 the Journals have used this word in referring to the Leader of the Government. The term "Leader of the Opposition", however, did not come into general use for another thirty years.

Lieutenant Colonel R. B. McRae, in his book Lost in the Fogs, gives a good description of the House as it was in the winter of 1863: "In front we beheld a well-lighted hall, railed off, about one-third of its length from the hoi-polloi, whose chosen representatives, divided into Ministry and Opposition, were ranged at little desks at either side, with a long table for the lawyers in the centre. Above all at the far end, raised three steps over the floor, sat the black-gowned Speaker in a commodious armchair, his face gazing intently at the ceiling. A member with stentorian lungs of about a thousand horsepower was wearying the Government about some unimportant motion." McRae calls his speech a torrent of wordy nonsense. He writes that next afternoon the member

15 Cambridge History of the British Empire, Vol. VI, p. 672
16 See Resolutions of House of Assembly given on p. 24.

who had started about four o'clock the previous evening, was still speaking. This filibuster, aimed at bringing about the fall of the Government was unsuccessful, for at last the giant caved in from sheer exhaustion. The Speaker instantly called a division, and the matter was settled in a trice. McRae describes the Legislature as being made up wholly of merchants, lawyers and businessmen.[17]

In 1855 the House adopted new rules of procedure similar in scope and application to those it had passed in 1834. Lord Campion points out in his Procedure of the British House of Commons, that the rules of the House of Commons had been established in their present form, before the passing of the "Reform Bill".[18] The House of Assembly opened in 1833, the year after the Reform Bill was passed and immediately adopted the British Parliamentary rules of procedure.[19]

In 1889 the House increased its membership to thirty-six, and in 1925 to forty, the largest number that ever sat there. It reduced its membership again in 1928 to twenty-seven, the number of members in the House when it suspended Responsible Government in 1933.

The House extended its life on July 20th, 1917,

17 Lt. Col. R.B. McRae, Lost in the Fogs. Pp. 280-285
18 Sir Courtenay Ilbert, Parliament, Pp. 47-67, has a good account of this development.
19 Journals of the House of Assembly, 1834. p.

and it suspended all rules in relation to matters then before it. In 1918 the House again extended its life. A National Government had been formed during the war, and when the Premier, Sir Edward Morris, resigned to accept a seat in the House of Lords, the former Leader of the Opposition, who had been a member of the coalition Government, quietly became Premier.[20] The House adopted a strange procedure to get rid of this coalition Government. On Tuesday, May 20th, 1919, Sir Michael Cashin, Minister of Finance, in moving the adjournment of the House, moved an amendment: "That the House place on record its opinion, that the Government, as at present constituted, does not possess the confidence of the House." This motion was seconded by the Premier and passed without a division.[21] Three days later a new Government was formed with Sir Michael Cashin as Premier.

As the House of Assembly gradually gained more power, it resented interference from the British Government. When Sir William Whiteway, the Premier of the day, introduced the unpopular Newfoundland French Treaties Act in 1886 he said that he did so at the request of the Imperial Government. For this he was soundly rebuked by the Governor.[22]

There has always been a big turnover in the membership of the House of Assembly. Out of the thirty-six members who

20 G.O. Rothney and M.O. Morgan, op. cit. p. 78
21 Journals of the House of Assembly, 1919. p. 77
22 Debates of the House of Assembly, 1917. p. 469

took their seats in the House in 1924, only eighteen had ever sat there before.[23] Party feeling ran very high in Newfoundland in the 1920's, and the position of the Government was always very unstable. When the Administration came into power in 1924, the Government had twenty-five members and the Opposition ten. In March 1925, the ranks of the Government were depleted by one. In May 1926 five more members deserted the Government, and in 1926 two Opposition members went over to the Government.[24] In 1928 nine members of the Liberal Party repudiated the leadership of A. E. Hickman, and wrote the Speaker that they had elected W. W. Halfyard as House Leader.[25] Although he had lost the support of more than half of his party, Mr. Hickman still continued to keep the title of Leader of the Opposition. These years were remarkable for disorders in the House. The Speaker, unless he happened to be a strong personality, found it difficult to maintain order and to stop the flow of abuse, which members hurled at each other. The bad feeling was aggravated by partisan newspapers, and much of the time of the House was taken up with complaints about articles in newspapers. Sometimes members of the House themselves, were accused of having written or inspired these articles.

On many occasions members deliberately broke the rule of previous debate, they addressed each other directly by name, and indulged in personal attacks. Much of the debate

23 House of Assembly Debates 1928, p. 315.
24 Ibid. 1927. p. 115
25 Ibid. 1928. p. 14

was concerned with matters that happened outside of the House. On several occasions the Speaker was brought into the quarrels, and attacks were even made on the Governor.[26] In 1920 a member said: "politics is a dirty game".[27] The abuse in the House and in the newspapers had brought the whole political system of Newfoundland into bad repute, and most people would have agreed with him. Sir William Coaker wrote about this time: "Party politics are no worse here than elsewhere, but they are so bad here that a self-respecting man who enters the game cannot continue in it long before he is ashamed to look at himself in the mirror. It is a cursed game. Politics is not a clean game."[28]

The membership of the House continued to be merchants, lawyers and businessmen, an occasional journalist, and medical doctor. Even when the Fishermen's Protective Union elected members to the House, they did not choose many who were fishermen. Most of their representatives were ex-school teachers. Perhaps the most influential body of men in the House have been the lawyers. This was resented, for in 1929 a member said: "My experience in this House is that lawyers on one side have nothing to say against lawyers on the other side. When lawyers on one side propose something, the lawyers on this side always say 'aye aye'".[29] There was the same

26
27 House of Assembly Debates, 1922. Pp. 66-67
28 Ibid. 1920. p.925
Sir William Coaker, Newfoundland Past Present and Future Pp. 45-46
29 House of Assembly Debates, 1929. p.306

feeling in the Legislative Council, where Sir Patrick McGrath said: "I agree with my honourable friend that we have too many lawyers. We should make it difficult to have any more in politics. In Canada now, there is a well developed movement to eliminate lawyers from politics.[30] In spite of these opinions, Newfoundland has had eighteen Premiers, and of these nine have been lawyers, eight have been merchants or businessmen, and one, Sir Robert Bond, whose father had been a merchant, was a gentleman of independent means.

The first woman member took her seat in the House in 1930. The Leader of the Opposition expressed a fear that she might take too prominent a part in Government deliberations.[31] His fears were groundless, for the lady, who was wife of the Premier of the day, took very little part in the proceedings of the House.

After the First World War, Newfoundland was recognized as a self-governing Dominion, but her Parliament did not ratify the statute of Westminister.[32] She relinquished that status in 1933 when the Government of the day petitioned the British Government to suspend self-government in Newfoundland, and to appoint a Commission of Government of six members. It is noteworthy that during the Commission of Government's term

30 [redacted]lative Council Debates, 1922. p.37

31 House of Assembly Debates, 1930. p.19

32 Newfoundland is classed as a Dominion by the Statute of Westminster, and is referred to as a Dominion several times in The Report of the Newfoundland Royal Commission 1933.

it dealt with the Secretary of State for Dominion Affairs and not with the Secretary of State for the Colonies.

In 1933 when the House met for the first time after the General Election of that year, the Premier was F. C.Alderdice, a prominent St. John's businessman. The Government had elected twenty-five members, and the Opposition consisted of but two. The country was in financial difficulties, and the Government was unable to raise a loan. The Executive Countil consisted of twelve members, seven of whom held portfolios. Many of the Executive carried on their private occupations, and few looked on Cabinet membership as a full-time occupation.[33] When the Government in desperation appealed to the British Government for financial assistance, a Commission of three members was sent to Newfoundland. This Commission, after holding meetings in St. John's for three months, and travelling in many parts of the Island and interviewing a great number of people finally, made a report in which they recommended that self-government should be suspended until such time as the country again became self-supporting.[34] This motion came up in the House of Assembly in December 1933. It was strenuously opposed by the two Opposition members, F. Gordon (now Senator) Bradley, and Roland Starkes, who proposed alternative measures. The

[33] John Parker, Newfoundland. p.35
[34] Newfoundland Royal Commission 1933 Report.

motion was passed,[35] and so in 1934 the curtain rang down on Responsible Government, this time to stay down for fifteen years, and to rise again only after Newfoundland had entered into Confederation with Canada.

Commission of Government was inaugurated on February 16th, 1934. It was not welcomed, but on the other hand no one objected. Many people believed that the present ills had their origin in the defects of party politics. "There was self-pity", wrote A. B. Perlin, "but no self-blame".[36] It would seem that party politics, and political newspapers, had done their worst. The people of Newfoundland were satisfied to see the House of Assembly abolished and the Colonial Building shut down. An evaluation of the Commission of Government does not come within the scope of this work, so we will pass over this period of dictatorship, as one of the Commissioners, Thomas Lodge, calls it.[37] The Commissioners seemed to make a deliberate effort to stamp out the memory of Newfoundland's past. The Colonial Building, which had housed the Legislature since 1850, was taken over for Government offices. The Legislative Library was plundered. All the books and furnishings disappeared. The Museum was closed down, and its contents scattered. In 1940, H. A. Innis wrote: "For those who believe in democracy the prestige

35 Journals of the House of Assembly 1933. 2nd Session Pp. 13-14.

36 A. B. Perlin, The Story of Newfoundland. p.46

37 Title of a book by Thomas Lodge, Dictatorship in Newfoundland.

of the British Empire must have suffered a blow with the destruction of its fundamental basis in the Oldest Colony. We cannot base our argument on the importance of the British Empire to the maintenance of democracy when we calmly allow the light to go out in Newfoundland."[38]

Economic progress was slow. It only came with the war boom, which followed 1940, when the Americans and the Canadians began to build defence bases. As the construction of these bases proceeded, and increased the employment of the work force of Newfoundland, the demands for Newfoundland's basic products also improved. The Commission of Government began to pile up a surplus. Many people now felt that the time had come for Great Britain to make good her promise and restore self-government to Newfoundland. Late in 1945 Lord Addison, the Secretary of State for the Dominions, announced that a National Convention would be elected in the summer of 1946. This Convention was elected by full adult franchise, and consisted of forty-five members. Each candidate was required to have resided for two years in the District which he represented.[39]

Joseph R. Smallwood, journalist, broadcaster and labour organizer, soon emerged as the dominant personality in the Convention, dedicated to the cause of making Newfoundland

[38] H. A. Innis, The Cod-Fishery, 1940. Preface.
[39] A. B. Perlin, op. cit. p. 55

the Tenth Province of Canada. The Convention sent delegates to Ottawa and London. The Ottawa delegation was warmly received. The London delegation had a cold reception and returned empty handed. The majority of the National Convention members opposed putting Confederation with Canada on the referendum for the choice of Government to be submitted to the people of Newfoundland, but in response to a popular appeal the United Kingdom Government declared Confederation with Canada must appear as a choice on the ballot paper in the referendum to be held in the summer of 1948. This referendum was indecisive for neither Responsible Government, Commission of Government nor Confederation with Canada succeeded in getting an overall majority. In the second referendum, the result was 78,323 votes for Union with Canada, and 71,334 votes for the restoration of Responsible Government.[40] A second delegation was sent to Ottawa to discuss the Terms of Union of Newfoundland with Canada, and on December 11th, 1948, the agreement was approved and signed. One minute before midnight on March 31st, 1949, Newfoundland became the tenth Province of Canada.[41] The next day Joseph R. Smallwood was invited by the new Lieutenant Governor, Sir Albert Walsh, to form a Government until a Provincial General Election could be held. The General Election took place in May. The Liberals, headed by Premier Smallwood, won twenty-three of the twenty-eight seats, and on

[40] A. B. Perlin, op. cit. p. 55
[41] Terms of Union between Newfoundland and Canada, Term 50.

July 13th, 1949, the House of Assembly opened its doors again to the elected representatives of the people of Newfoundland.[42]

[42] Journals of the House of Assembly of Newfoundland 1949, p. 10.

CHAPTER III

THE SPEAKER

The Speaker of the House of Assembly is the representative of the House itself, and its powers, proceedings and dignity. The Standing Orders of the House say: "The Speaker is the official mouthpiece of the House, and entitled on all occasions to be treated with the greatest attention and respect by the individual members, because the power and dignity and honour of the House of Assembly are officially embodied in his person.[1] His functions fall into two main categories. On the one hand, he is the representative of the House in its relations with the Crown and any outside persons, and on the other hand, he presides over the debates of the House, and enforces the rules for preserving order in its proceedings.

The position of Speaker has been recognized in England for nearly six hundred years, and the roll of Speakers, from Sir Thomas Hungerford in 1377, is unbroken.[2] Until the seventeenth century, the Speaker was a Royal officer, but since then he has come to be the representative of the Commons.[3]

1 Standing Orders of the House of Assembly Nfld. 1951, p. 10
2 Wilding and Laundy, An Encyclopedia of Parliament, p.543
3 Ibid. p. 544

Arthur Onslow, who was Speaker of the British House of Commons from 1728 until 1760, is credited with having laid the foundations for the modern speakership.[4]

The office of Speaker was well established when the first Speaker of the House of Assembly, John Bingley Garland was elected to that office on the first of January, 1833. The procedure by which he was elected differs very little from that used by the House in electing its Speaker today. At that time, the Parliament of Newfoundland was bicameral, and the members, after they had been sworn by commissioners appointed by the Governor, would proceed to the Upper Chamber where the Governor would inform them that he would not give the reasons why he had summoned the House to meet until they had elected a Speaker. The members would then return to their own Chamber and the Speaker would be elected.[5] A good example of an election is given in the House of Assembly Journal for 1834. When the House met it was without a Speaker, John Bingley Garland, its previous Speaker, having been appointed a member of the Legislative Council. One of the members, John Martin, addressing the Clerk, moved that Thomas Bennett, the member for Fogo, be the Speaker. The motion was seconded by Robert Carter. Robert Pack then moved that Dr. William

4 Ibid.
5 Journals of the House of Assembly 1833, p. 31

William Carson be Speaker, and his motion was seconded by Peter Browne. The members voted and chose Thomas Bennett. Both nominees voted, but Mr. Bennett voted for Dr. Carson, and Dr. Carson for Mr. Bennett.[6] The same procedure was followed on the 30th of January 1866, when William Valance Whiteway won the contest for the speakership over Thomas Glen. Mr. Whiteway was voted upon first, and the motion that he be the Speaker passed by a vote of seventeen to thirteen. He was then conducted to the Chair by his nominators.[7]

Almost exactly the same procedure is still followed, but since Newfoundland has now only one House, the initial meeting in the Upper House has had to be abandoned. Immediately after the members are sworn by commissioners, who are appointed by the Lieutenant Governor, these commissioners inform the members that the Lieutenant Governor will not give his reasons for having called them together until they elect a Speaker. The commissioners then withdraw from the Chamber, and some member, usually the Premier, standing up, addresses himself to the Clerk and moves that Mr. --------- member for the District of ---------- "do take the Chair of this House as Speaker." This is usually seconded by the Leader of the Opposition, and if no one else is nominated,

6 Ibid, 1834. p. 6
7 Ibid, 1866. p. 5

the Speaker-elect is conducted to the Chair. Standing on the dais, he thanks the members for the honour they have done him in electing him their Speaker.[8]

There has not been a contest for the speakership in Newfoundland since 1909. At that time the Opposition and the Government had each eighteen members, and the Opposition did not wish a Speaker to be elected. The Premier nominated W. R. Warren, who belonged to the Government Party; this was seconded by the Minister of Justice. The Leader of the Opposition then nominated W. J. Ellis of his party; this was seconded by one of the Opposition. Mr. Warren then withdrew in favour of Mr. Ellis, but Mr. Ellis withdrew also. After being urged by the Premier to reconsider, Mr. Warren accepted nomination. The Leader of the Opposition then immediately nominated W. J. Ellis again. Upon the Clerk putting the motion that W. R. Warren take the Chair, all the members on the Government side of the House, except Mr. Warren who did not vote, voted for him. All the members of the Opposition voted against him, so that the motion was lost, by a vote of seventeen to eighteen. The Clerk now put the second motion, that William J. Ellis take the Chair, whereupon the Premier and all the members of the Government Party, including Mr. Warren voted for Mr. Ellis, but all the members of the Opposition Party voted against their own motion,

[8] Beauchesne, op. cit. p. 20

so that this motion was again lost, the vote this time being eighteen to eighteen.[9] When it was reported to the Governor that neither side could elect a Speaker, he dissolved Parliament and issued writs for a new election. The Government were returned by an overwhelming majority, and the next year, at the first sitting of the new Legislature, Mr. W. R. Warren was elected Speaker.[10]

Today, the elction of the Speaker takes place in secret session. This was not always so, for we read in The Royal Gazette of February 8th, 1934, that, "the public were admitted to the House of Assembly on Wednesday last, during the election of the Speaker, Mr. Thomas Bennett."

A few minutes before three o'clock, on the day following his election, and every day thereafter while the House is sitting, the Speaker and his suite leave the Speaker's office for the Chamber. In Newfoundland, the Speaker's procession is in the following order: a police constable, two pages, bearing the Speaker's books and papers; the Clerk and Law Clerk; the Assistant Clerk; the Sergeant-at-Arms, carrying the Mace; and immediately after, the Speaker himself. At the Chamber door the policeman halts, and stands at attention while the others enter. On normal sitting days,

9 House of Assembly Debates 1909, p. 6

10 Ibid. p.21.

the Speaker wears a heavy black silk gown over a black suit, and a wing collar with tabs, similar to those worn by a barrister. The Speaker of the House of Assembly, unlike the Speaker of the British House of Commons, does not wear a wig, nor does he, like the Speaker of the Canadian House of Commons, and of most of the other Provincial Legislative Assemblies, wear a tricorn. Whenever the Speaker goes outside the House wearing his official robes and preceded by the Mace, he wears a top hat. In the Chamber he is bare headed. This has been the custom since the beginning of the Newfoundland Parliament.

Once a year, the Speaker leads the members of the House of Assembly in a procession to Government House, a distance of about three hundred yards, where they present the Address in Reply to the Speech from the Throne to the Lieutenant Governor.

When Newfoundland had two Houses, the Speech from the Throne was read at the opening of every Parliament by the Governor in the Legislative Council Chamber. Today, the Lieutenant Governor reads the Speech from the Throne, while seated in the Speaker's Chair in the House of Assembly. At the beginning of a new Parliament, when the Lieutenant Governor enters the assembly, and takes his place in the

Speaker's Chair, some member will rise to inform him that the House has elected a Speaker, and will present the Speaker-elect to him. The Governor will then say that he approves of the House's choice of a Speaker. In accordance with ancient tradition the Speaker will then thank the Lieutenant Governor for his acceptance of him, and will request through him the rights and privileges historically granted by the Crown to members of the House. These are: freedom of speech during debate; freedom from arrest while carrying out their duties; and the right of free access to the Crown. After the Lieutenant Governor has granted these requests he will then read the Speech from the Throne which, although ready by him, is written by the Premier.[11]

The Mace - originally a weapon of war - became an emblem of the office of the Sergeant-at-Arms, and as such became identified with the growing privileges of the Commons, and was recognized as the symbol of the authority of the House, of which the Speaker is the representative.[12]

The Sergeant-at-Arms, attending at the House, bears the Mace, which is a Royal Mace, having the Royal Coat of Arms and the Royal Insignia engraved upon it. It is carried before the Speaker when he enters and leaves the Chamber and upon state occasions. It is placed upon the Table when the

[11] Ibid, 1949. p. 4

[12] Beauchesne, op. cit. p. 331

Speaker is in the Chair. A beautiful gold-plated Mace was presented to the House of Assembly by the people and Parliament of British Columbia shortly after Confederation. There is a batteredold wooden Mace, crudely made and painted, in the Speaker's office of the House of Assembly. This is probably the original Mace of the House, which was used for the hundred years from 1833 to 1933.

The Speaker's Chair of carved walnut resembles that in the House of Commons at Ottawa, and was given to the House of Assembly of Newfoundland by the Provincial Legislature of Ontario. Prince Edward Island also presented a silver gavel, which may be seen on the small table at the Speaker's right, but he never uses it.

The Standing Orders of the House state that the Speaker is responsible for the enforcement of its rules, its rights and privileges, and that when he rises, he is to be heard in silence. When the Speaker takes notice of any expression as unparliamentary, and calls upon the offending member to explain, it is that member's duty to explain immediately, or to retract and apologize for the breach of order. The Speaker decides questions of order only when they arise. He will not answer hypothetical questions, nor will he decide upon a constitutional question

or upon a point of law.[13]

If a member who has been guilty of using unparliamentary language or of some other breach of the rules is called to order by the Speaker, and is ordered to withdraw the offensive remarks on threat of being named, he usually does so quickly. If he refuses to retract and apologize, the Speaker will name him. When a member has been named, the Speaker will then order him to leave the Chamber, but he will not suspend him from the House, for that is one of the privileges of the House itself. After the offending member has left the Chamber, some member will move, and another will second, that he be suspended from the House for a specified number of days. In the early House a member who disobeyed the rules had his conduct referred to a Committee of Privilege, consisting of the full House. This Committee would being in a report, which would ask the Speaker to reprimand the offending member. There is no record of the Committee ever exonerating a member whose conduct was referred to it. A good example of this procedure occurred on the 11th of March 1884, when the Chairman reported from the Committee that they had agreed to the following resolutions: that the reckless use of the language used by the member was a violation of the decorum and decency which should be observed in debate, and derogatory to the dignity of the House, and that the

[13] Standing Orders 1951, p. 10.

Committee desired to express its strong condemnation of the language used by the member. The Committee also asked the Speaker to censure the member upon his conduct. This report, upon motion, was received by the House. The offending member was then brought to the Bar of the House by the Sergeant-at-Arms, where the Speaker informed him of the report of the Committee on Privilege. When the member refused to apologize the Speaker censured him, and in doing so, said that if these words were permitted to pass unnoticed it would be the forerunner of others, which would lead to disorders and would cause a grave scandal to the country.[14]

By 1890 the procedure had changed somewhat, for when Alfred B. Morine was called to order by the Speaker for unparliamentary language, and he refused to apologize, the Speaker, without a prior resolution of the House, ordered that Mr. Morine be expelled. The next day when Mr. Morine was allowed to take his seat, he moved a resolution: "That the Speaker, by ordering the suspension and expulsion from the House of one of its members, without a prior resolution of the House itself, was guilty of a gross breach of the privileges of the House." The House upheld the action of the Speaker by a vote of twenty-two to eight.[15] However, this did not become a precedent, and it is not the procedure that would be followed today.

14 Journals of the House of Assembly, 1884. p.60

15 Ibid, 1890. p.16

In 1956 a member who refused to obey the Speaker's orders to retract certain unparliamentary words was suspended by the House for two days upon a motion of the Attorney General. Before this was done, however, the member had been ordered by the Speaker to withdraw from the Chamber, while his case was being considered by the House.[16]

On many occasions the ruling of the Speaker has been challenged in the House of Assembly by a member making a motion "that the Speaker's ruling be not sustained". In every case, except one, the ruling of the Speaker has been upheld. The modern form of this motion is: "That the Speaker's ruling be sustained".[17] When Speaker Mott, on April 6th, 1900, informed the House that he desired to render his decision on the question of the Leadership of the Opposition, the House not only failed to approve of the Speaker's decision, but on motion ordered that his ruling be expunged from the records of the House. The motion to do this was supported by the Government.[18] It is unfortunate that no record is available of the ruling that caused the House to take such an unusual action.

It is not the practice in the Canadian House of Commons for the Speaker to order the withdrawal of strangers of his own accord,[19] but it is the practice at Westminister.[20]

16 Ibid, 1956, p. 31.
17 Beauchesne, op. cit. p. 411
Ibid, 1900. p. 11
19 Beauchesne, op. cit. p. 64
20 Ibid.

The English custom has always been followed in Newfoundland, and is retained in Standing Order Number 12 of the House of Assembly: "If an individual or group of persons misconduct themselves in the gallery, the Sergeant-at-Arms may eject them or take them into custody, without any specific instructions".

The Speaker of the House of Assembly is specifically forbidden by the Standing Orders to take part in a debate. When the votes in a decision are equal in number, he gives a casting vote. Any reasons for the way he voted, which are stated by him, are entered in the Journal.[21] The Speaker usually votes in such a way as to leave the question open for future settlement. This has been the practice in the House of Assembly since its beginning. The Speaker, however, has often taken part in debates when the House was in Committee of the Whole. In 1913 the Speaker prefaced his entry into a debate in Committee with these words: "It is not usual as a rule for me to speak, and I do not take part in the debates owing to my position, but the fact that I am a member of this House is my warrant for standing here, and dealing with some of the arguments that have been advanced against this Bill."[22] There are many other examples in Hansard of the Speaker taking part in debates in Committee, in the years between 1920 and 1931, usually when some matter

[21] Standing Order 10.

[22] House of Assembly Debates, 1913. p. 481

affecting his district was being considered. Since 1949 the Speaker of the House of Assembly has not taken part in any debate, even when the House was in Committee of the Whole. Only once was this rule broken. When the House was considering the Standing Orders which were adopted on the 8th May, 1951, the Speaker, Reginald F. Sparkes, took a seat at the Clerk's Table when the House was in Committee, and explained the various Standing Orders to the members, and answered questions on them.[23]

The Speaker is often addressed in the House as "Your Honour", but there is no written authority for such a title, although it has been used in Newfoundland for perhaps a hundred years. At Westminster, the Speaker is addressed as "Sir", the theory is that the Speaker is not a Magistrate sitting in a court over the members, but one of their colleagues whom they have chosen to be their official spokesman, and to preside at their sittings. Hence, members ought not to address him as if he were their master. He is but primus inter pares.[24]

In Newfoundland, as in England, the duties of a Speaker do not end with the dissolution of a Parliament, but continue until the election of a Speaker by the next Parliament.[25] This is to allow him to perform the various

[23] Ibid, 1951. p. 413
[24] Beauchesne, op. cit. p. 32
[25] Revised Statutes of Nfld. 1952. p. 117.

administrative duties which must be performed even when parliament is not meeting. The most important of these are in connection with his position as Chairman of the Internal Economy Commission. The Speaker is the administrative head of the Department of the House, which includes the Clerk and his staff, the Editor of Debates and his staff, and the staff of the Sergeant-at-Arms. He is the Chairman of the Internal Economy Commission, which hires all the officials except the Clerk, Assistant Clerk, Law Clerk and the Sergeant-at-Arms. These officers are appointed by the Lieutenant Governor-in-Council. The Speaker also exercises control over the Parliamentary Buildings through the Department of Public Works. This duty goes back for many years. In 1834, the Speaker was asked to make arrangements for the convenience and comfort of the House and for the admission of the public.[26]

The procedure to be followed in the resignation of the Speaker of the Canadian House of Commons has caused much controversy. This is not true in Newfoundland's House. One of the most simple and effective ways of resigning was that adopted by Robert J. Kent on February 24th, 1885. This is the first resignation of the Speaker that is recorded. The entry in the Journal reads: "The Honourable the Speaker acquainted the House of his intention of resigning the office as Speaker, immediately after the adjournment this evening."

26 Journals of the House of Assembly 1834, p. 10.

On the following day, the Journal reported that the Clerk read the Speaker's letter of resignation, which was addressed to him, and which began: "Sir: I beg through you to inform the House of Assembly that I do hereby resign my office as Speaker of that House." The Clerk, at the request of the Attorney General, took the Chair. This would be the Chair at the head of the Table which is usually occupied by the Chairman of Committees. The Attorney General then informed the members that he was commanded by the Governor to tell them that owing to the House being without a Speaker they should elect a fit and proper person to fill that office, and that the Governor would receive the Speaker-elect at half past three on Saturday in the Council Chamber.[27] Today it would be unnecessary for the Clerk to take the Chair because the House has a Deputy Speaker, who can take the Chair when the Speaker is absent, without a motion authorizing him to do so having to be passed by the House.

The office of Deputy Speaker was introduced by legislation in 1858.[28] "The Act Respecting a Vacancy in the Office of the Speaker", provides that, "whenever the Speaker of the House of Assembly shall be unable to attend the House, upon the same being certified to the satisfaction of the House, the members may elect from amongst them one of such members who shall, during the absence of the Speaker, take

[27] Ibid, 1885. p. 23
[28] Ibid, 1858. p. 89

the Chair and act as Speaker, and every Act passed, and every order made, and everything done by the said Assembly while such member is acting as Speaker, shall be as valid and as effectual as if done while the Speaker himself was in the Chair."[29]

The member of the House elected to be Speaker must divest himself of most of his political activities, if he is to establish a reputation for that complete impartiality which his office demands. Unlike the Speaker of the House of Commons of Canada, the Speaker of Newfoundland's House can look forward to more than one term of office, should his Party be returned. Prescott Emerson was re-elected Speaker even when the Government changed hands.[30] During the Speaker's term of office he is unable to take part in any political activity, either in his own constituency or in the larger political field.[31] He will continue to receive, like any other member, correspondence and appeals of all kinds from his constituents, and he will give what help he can. He is not allowed to advocate their interest in the House during debate, nor can he even present a petition on their behalf. In Newfoundland, the practice has been for the Speaker's District to be contested during an election, in the same way as any other member's. Until lately, this was not

[29] Revised Statutes of Nfld. 1952. p. 115.

[30] Journals of the House of Assembly, 1875. p. 42

[31] When campaigning in his district for his own re-election the Speaker engages in political activities, but remembering his position he must be careful to keep his campaign on a high level.

the practice in the British House of Commons, while in Eire the Speaker's constituency is not contested because it is forbidden by Law. In Newfoundland it has always been felt that every District ought to have the right to choose its own representative.

In 1929 the Prime Minister, Sir Richard Squires, in congratulating Albert Walsh on his election to the Speakership, paid this tribute to the men who have filled the Speaker's Chair since 1833: "Newfoundland has had many distinguished men occupying the Speakership of this House, political leaders, Supreme Court Judges, men who have taken high rank in finance, men outside of Newfoundland and leaders here, doing honour to themselves and to us, have been identified with the Speaker's Chair of this House. We hope, Sir, that not only will you maintain the traditions of the House with much credit to yourself, but will have such honourable success in your career as may have been handed to you as examples".[32] Sir Richard Squires was not inaccurate: The Speakership has been filled by men of high quality. Albert Walsh, who was then only thirty years old, certainly fulfilled the hopes which Sir Richard had in him. He was the first Lieutenant Governor after Confederation, and when he died in December 1958 he was Chief Justice of the Province.

Fifteen of the twenty-eight Speakers were lawyers,

32 House of Assembly Debates, 1931. p. 17

two others had studied law but had not been called to the Bar. One was a journalist, one a medical doctor, several were businessmen, and one was a fisherman. In later life three retired to the Legislative Council and six became Premiers. Sir Frederick Carter went from the Speaker's Chair to the Premiership in 1865, thus following the example of Henry Addington in the British House of Commons in 1801. Eight Speakers have become judges of the Supreme Court; three Registrars of the Supreme Court; four have become Magistrates, and three Managers of the Newfoundland Savings Bank. Sir Ambrose Shea became a Colonial Governor, and Sir Albert Walsh, Lieutenant Governor. Henry Yoemans Mott, after leaving the Chair of the House was for more than twenty-five years its Clerk. His experience was of great assistance to the Speakers who were fortunate enough to have him as their Clerk. William J. Higgins, later a Judge of the Supreme Court, after leaving the Speaker's Chair became Leader of the Opposition. Robert J. Kent, A. J. W. McNeilly and Prescott Emerson were members of the Executive Council before they became Speaker. There are only three living ex-Speakers: Mr. Justice Winter; the Hon. A. J. Winter, Registrar of the Supreme Court; and the Hon. R.F. Sparkes, the first Speaker after Confederation, now Manager of the Newfoundland Savings Bank. The first two are sons of Sir James Winter, a former Speaker and Premier.

During the eleven years since Confederation, the House of Assembly has had but two Speakers, the Hon. Reginald F. Sparkes, who was elected in 1949, and re-elected in 1952, and the writer, who was elected in March 1957, after having been for eight years Deputy-Speaker and Chairman of Committees. In each of these elections the Speaker was nominated by the Premier, and the nomination was seconded by the Leader of the Opposition.[33]

There has not in the long history of Newfoundland been any action taken against a Speaker, other than a vote that the Speaker's ruling be not upheld, and in all cases, with the one exception which has been mentioned, the Speaker's ruling has been sustained. Nor has the impartiality of the Speaker ever been seriously questioned either in the House or outside.

The weaknesses which have plagued the Speakership of the Canadian House of Commons, and which were responsible for the regrettable happenings there in 1956, when the Leader of the Opposition moved a vote of censure against the Speaker, have never troubled Newfoundland.

The Speakership does not change with every Parliament, as is usual in Canada. However, the Speaker

33 Journals of the House of Assembly, 1957. p. 7

does not have the degree of permanency which exists in Great Britain, where the Speaker usually retains his office, even should the Government change. The Speaker's position in Newfoundland is more like that of the British than the Canadian Speakership, since the House of Assembly in 1833 adopted the British system of procedure. Until 1949 it had little to do with the Canadian Parliament. The following rules, which were passed by the Legislative Council in 1834, and recorded in their Journal for that year, give a surprisingly modern resume of the Speaker's position:

The Speaker when addressing the House is to be uncovered. He cannot act as the mouth of the House without its authority. His rulings are subject to the House. He may leave the Chair and speak as a member.[34] The only rule that has been changed is the last one, and as we have seen, that rule did not change until after Confederation. It is noteworthy that the third rule, which is still in force in Newfoundland, has never been used in the British House of Commons, but it applies in the Canadian House, and in the Provincial Legislatures of Canada.[35]

Since many written and unwritten rules develop from Speakers' rulings, the Speaker must be careful that these rules are certain and consistant. It is dangerous for a Speaker to give snap rulings. Rene Beaudoin, the former

34 Journals of the Legislative Council 1834, Appendix.

35 Canadian S. O. 12; Nfld. S.O. 11.

Speaker of the Canadian House of Commons, once told the writer that most of the troubles he had experienced in the Session of 1956, were due to his allowing himself to be rushed into giving hasty rulings. The wise and prudent Speaker will always defer decision if he is at all in doubt, until he can give a well-reasoned and well-documented statement of what the proper procedure is.

CHAPTER IV

THE CHAIRMAN OF COMMITTEES, THE CLERK, AND OTHER OFFICIALS OF THE HOUSE

The Chairman of Committees is the member of the House of Assembly who presides over the Committee of the Whole House. In England he is referred to as the Chairman of Ways and Means. When the House goes into Committee, the Speaker leaves the Chair and the Chairman of Committees takes his place, not in the Speaker's Chair, but at the head of the Table of the House. At the same time, the Mace is removed from the brackets on the Table, and placed in those beneath the Table.[1]

The Chairman presides in Committee with the same impartiality as the Speaker in the House, and his authority is final.[2] There is no appeal from his rulings to the Speaker.[3] He is empowered to select amendments, and his conduct cannot be questioned, except on a substantive motion before the House, when the Speaker is in the Chair.[4] He is not empowered to inflict any serious form of punishment, but he can direct a member to withdraw, and he can also order the Sergeant-at-Arms to expel from the galleries of the House

1 Beauchesne, Parliamentary Rules and Forms, p. 195
2 Lord Campion, Introduction to Procedure of the House of Commons, p. 78
3 Ibid.
4 Ibid.

strangers who are causing a disturbance.[5] In Committee he has a casting vote only, but when the Speaker is in the Chair, his status is the same as that of any other member.

Unlike the Speaker, the Chairman is attended by no ceremonial, nor does he take part in the Speaker's procession. It has been the practice in the House of Assembly of Newfoundland, since Confederation, for the Chairman to wear a gown.

The Chairman of Committees is appointed for the duration of a Parliament. He is nominated by a member of the Government, usually the Prime Minister, from among its own supporters. Care, however, must be taken to select a candidate who is acceptable to the Opposition in order to secure a unanimous vote. The Chairman of Committees does not take a very active part in political controversy, because he must retain the good will of the members on both sides of the House.[6] His seat, however, is liable to be contested at General Elections.

The Chairman of Committees acts in that capacity until the end of the Parliament for which he was elected, and in the case of a vacancy by death, resignation, or for other cause, the House immediately elects a successor.[7]

5 House of Assembly Debates, 1916. p. 444
6 Lord Campion, op. cit. p. 79
7 Standing Order 43 (b).

Should he be absent, Mr. Speaker may, in forming a Committee of the Whole House, appoint any member as Chairman of Committees before leaving the Chair.[8] It has not been the practice in Newfoundland for the Deputy Speaker to be appointed Speaker. The writer is the first person in the history of the Newfoundland House to be elected Speaker after having served as Deputy Speaker and Chairman of Committees.

The Standing Orders of the House of Assembly provide that the Chairman of Committees shall also be Deputy Speaker, and that he shall be elected at the commencement of every Parliament, as soon as an address has been agreed to in answer to the speech from the Throne. They state also that the member so elected is to take the Chair of all Committees of the Whole, including the Committee of Supply, and Ways and Means.[9]

The Standing Orders of the House are observed in Committee of the Whole House, insofar as they are applicable, except the rules as to the seconding of motions and limiting the number of times a member may speak. The Chairman maintains order, and decides questions of order, subject to an appeal to the House. But disorder in a Committee can only be censured by the House after it has been reported.[10]

8 Standing Order 43 (c)
9 Standing Order 43 (a)
10 Beauchesne, op. cit p. 192

According to the Legislative Disabilities Act, the person who holds the office of Deputy Speaker and Chairman of Committees is eligible to sit and vote in the House, even though he holds a place or appointment of profit or emulument from the Legislature. This means only that he is entitled to receive pay for his services. As early as 1856, the Chairman of Committees was paid £50 during the session. The present Chairman of Committees receives a sessional payment of three thousand dollars, in addition to his pay as a member. The Chairman of Committees is also appointed a member of the Internal Economy Commission at the beginning of every Parliament.[11]

The procedure in the early House of Assembly was for the Speaker to ask any member to take the Chair of Committee, but the members would sometimes disagree. In 1836, when the Speaker nominated Roger Sweetman to the Chair, Dr. Carson, seconded by John Kent, nominated Peter Carter.[12] On April 8th, 1858, a Select Committee of the House recommended: "That provision, by statute, should be made for the execution of the Office of Speaker, in the event of the Speaker's unavoidable absence." A Bill was introduced to give effect to this resolution, and it received third reading on the 7th of May, 1858.[13] This Bill

11 Revised Statutes of Newfoundland, 1952. p. 117
12 Journals of the House of Assembly, 1836. p. 123.
13 Journals of the House of Assembly, 1858. p. 106.

was made necessary because on several occasions the House had not been able to meet on account of the illness of the Speaker.[14]

Although the House created the office of Deputy Speaker, he did not take the Chair without leave of the House. On the 5th of February 1861, when the Clerk informed the House that the Speaker was indisposed, and unable to attend, the members elected Robert J. Parsons Acting Speaker.[15] This member had for many years previous to this been Chairman of Committees and Deputy Speaker. It seems that the Deputy Speaker did not take over as Speaker without leave of the House even as late as 1931. That year on May 18th, Hansard quotes the Speaker as saying: "I would ask the indulgence of the House, if the Speaker may be allowed to leave the Chair for five minutes."[16] The practice has grown up since 1949, for the Chairman of Committees to wear a gown, and to be prepared to take the Chair at a moment's notice, should the Speaker ask him to do so.

In 1918 when the Clerk announced that the Speaker was unavoidably absent, Mr. Edward Parsons, Chairman of Committees, took the Chair.[17] And for the last three weeks of the Session of 1957 when the Speaker was ill, the Deputy Speaker carried on as Speaker without any motion for him to

14 Ibid, 1834. p. 43
15 Ibid, 1861. p. 42
16 House of Assembly Debates, May 18, 1931.
17 Ibid, 1918. p. 235

do so having been passed.[18]

The position of Chairman of Committees is extremely difficult because in Committee a member may speak as often as he wishes,[19] and since the rules of the House are relaxed, there is a greater danger of disorder arising. Sometimes the Chairman of Committees has been insulted. In 1921, when Mr. Hibbs, a Fishermen's Protective Union member was in the Chair, and he ventured to call a member to order, the member turned on him and said: "So you've woke up at last. It was your master who brought up the Fishery regulations." To which the Chairman replied rather weakly: "I am the Chairman. You will address me and I do not want this House ridiculed". The member retorted: "I am addressing you all right. Do you want me to address the audience?"[20] On another occasion, the Chairman was answered in this fashion: "Mr. Chairman, I am speaking in your interest. I am helping you in your onerous task as Chairman of this House. You are not alone useful, but you are ornamental. It is a pleasure for us to look at you and to realize that not only are you here in the position of arbitrator in this House, but you are the personification of all the personal graces, and that your presence here goes a long way towards enlivening what would otherwise be a very solitary existence."[21] In 1926, we have this example of wit from a member who was called to order by

18 Journals of the House of Assembly 1957
19 Standing Order 44 (a)
20 House of Assembly Debates 1921. p. 273
21 Ibid 1921. p. 610.

the Chairman for reflecting on the Chair: "I am not, Sir, reflecting on the Chair, but on the person who is in it."[22] In none of those flagrant cases of disrespect to the Chair was any action taken, or any report made to the House.

The officials of the House who are not members are the Clerk, the Assistant Clerk, the Law Clerk, the Sergeant-at-Arms, the Editor of Debates, the Pages, Doorkeepers, Messengers, the Stenographers, and the Speaker's Attendant. The Clerk of the House is appointed not by the House, but by the Lieutenant Governor in Council.[23] His office is one of great dignity, and in Canada he takes precedence over all Deputy Ministers.[24] The office is one of such importance in Newfoundland that an Act Respecting the Office of the Clerk of the House of Assembly has been passed. Its main provisions are: that the Clerk, soon after his appointment, must take the Oath of Office before the Speaker, who is empowered to administer it. The prescribed form is: "I, --------, appointed to the Office of Clerk of the House of Assembly of Newfoundland, do swear that I will make true entries, remembrances and journals of the things done and passed in the said Assembly."[25]

The Clerk and Assistant Clerk are responsible for the safe-keeping of the Records, and for all dispatches,

22 Ibid 1926. p. 930
23 "An Act relating to the Office of Clerk of the House of Assembly".
24 Beauchesne, op. cit. p. 324
25 "An Act respecting the Office of Clerk of the House of Assembly, Revised Nfld. Statutes 1952."

Bills, Petitions and documents, presented to or laid on the Table of the House, and they must produce them when required by the Speaker, or by order of the House.[26] Other duties of the Clerks, where no special provision is made, are similar to those of the Clerks of the House of Commons in England, according to the practice of Parliament.[27] The Clerk prepares annually an estimate of the sums which will be required by the Legislature for payment of their indemnity to members, and for all salaries, allowances, and contingent expenses of the House during the year, commencing the first day of July in each year. These estimates are submitted to the Commission of Internal Economy for approval.[28]

The Clerk needs a sound knowledge of Parliamentary Law, including Statutory enactments, as well as of the ordinary rules of Parliamentary usage. An experienced Clerk is of great value to the Speaker and Chairman of Committees; especially if they are not lawyers. Both Government and Opposition members rely greatly on the Clerk, whose assistance is often necessary in the preparation of decisions given from the Chair.

The Clerk has no say or vote in the House. He is addressed by members, and puts the questions only once each

26 Ibid.
27 Ibid.
28 Ibid.

Parliament - at the election of the Speaker. When a member nominates another member to take the Chair as Speaker, he rises and addresses the Clerk, who stands up and points at him, but does not speak. Should another member be nominated, the Clerk would put the first motion, if that did not pass, then the second.[29] In doing so he must be careful not to exceed his duties. The Clerk of the House of Assembly has always been recognized in Newfoundland as an important position. The Journal for 1863 reports that the Speaker received a sessional indemnity of £200, members were paid £42, while the Clerk received £275.

Patrick, afterwards Sir Patrick, McGrath, who was Clerk of the House 1900-1911, became a member of the Legislative Council in 1912, and President of the Council three years later. The present Clerk, Mr. Robert W. Shepherd, was for three years Assistant Clerk. He was appointed Clerk in 1957.

It is noteworthy that many of the experts on Parliamentary Procedure have been Clerks. Sir T. Erskine May, whose book, now in its fifteenth edition, is still the bible of procedure in Parliaments all over the world, Lord Campion and Sir Courtenay Ilbert, were all Clerks

[29] Beauchesne, op. cit. p. 20

of the British House of Commons. Dr. Beauchesne, the recognized authority on Parliament in Canada, was for many years Clerk of the House of Commons of Canada. His book, Beauchesne's Parliamentary Rules and Forms, is the standard work in all Canadian Parliaments.

The Clerk Assistant is usually a lawyer, as is the case in Newfoundland at the present time. Sir John C. Bourinot, to whom much praise is due for his excellent work on the Procedure of Parliament, was for many years Assistant Clerk of the Canadian House of Commons. The Assistant Clerk sits at the Table to the right of the Clerk, and both are described as "Clerks at the Table." The Assistant Clerk sees that notices of questions, motions and amendments, which have to be entered on the Notice Paper, are properly drawn, and he refers any that are doubtful to the Speaker, or the Clerk. Should the Clerk leave the Table, the Assistant Clerk takes his place. This frequently happens when the House is in Committee, and the Clerk must attend to his other duties.

In 1833, James Humphrey Watson, who had been elected to the office of Clerk Assistant, took the oath prescribed by law in the presence of the House. This oath was administered by the Speaker as follows: "I, James Humphrey Watson, elected to the Office of Clerk Assistant to the House of Assembly,

do swear that I will diligently, faithfully, and impartially, discharge the duties of Clerk Assistant to the House of Assembly to the best of my knowledge and ability."[30] The Journal says, Mr. Watson was "elected" rather than "appointed", because for many years it was the custom for a member to move that his protege be appointed Clerk, and another member would second the motion. Sometimes several people would be nominated and voted upon before one was chosen.[31] In 1843 there was a lengthy debate on the choice of a Clerk, and Mr. Holden was appointed to that office only after five motions for adjournment of the House were defeated.[32]

In 1882 this entry appears in the Journal: "Mr. Speaker announced to the House that in the absence of the Clerk, by leave of the House, the duties of the office would be performed by Richard Holden, Esq., Clerk Assistant, whom he had appointed to the acting office until otherwise ordered."[33] This practice, however, did not become a precedent. Mr. Holden had a very long tenure of office, for as early as October 1839 we find in the Journal a letter from him to the Speaker in which he stated that he had been accused of altering the Contingency Bill, and asking to be given an opportunity of clearing himself before the House.[34]

30 Journals of the House of Assembly, 1883. p. 28
31 Journals of the House of Assembly, 1862. p. 62
32 Ibid, 1943.
33 Ibid, 1882. p. 72
34 Ibid, 1837. p. 240

The Law Clerk is the legal advisor to the Clerk and the Speaker, should neither of them be a lawyer. He helps with the drafting of Bills and the amending of Bills in Committee. The office is one of great antiquity in the House of Assembly. The first Law Clerk was Charles Simms, appointed in 1833. He was called Solicitor of the House, and his duties were given:- to assist in preparing and drafting Bills.[35] The present Law Clerk, Mr. Henry H. Cummings, M.A., LL.B., was for eight years Clerk of the House. The Law Clerk, like the Clerk and Assistant Clerk, is appointed by the Lieutenant Governor in Council.

The Sergeant-at-Arms is responsible for the safekeeping of the Mace and of the furniture and fittings of the House. He serves all warrants and orders of the House. He preserves order in the galleries, corridors and the other precincts of the House. He is responsible for the movable property of the House. He has the direction and control of all constables, doorkeepers, messengers, pages and other such employees, subject to such orders as he may receive from the Speaker of the House. His duties are to attend the Speaker with the Mace when he enters and leaves the House, and when he goes to Government House to present the Address in Reply to the Speech from the Throne to the Lieutenant Governor. He will ask the members to take their

35 Journals of the House of Assembly, 1833. p. 20

places, and not to stand or move from their places when the House is sitting. The Sergeant-at-Arms has a chair close to the Bar of the House, and from there he keeps an eye on the lobbies and corridors adjoining the Chamber. He also gives orders to the constables who are on duty at the doors of the Chamber.[36] When the Lieutenant Governor visits the House, the Sergeant-at-Arms announces his coming, and shows him into the Assembly Chamber. The members rise as the Lieutenant Governor enters, and remain standing until he is seated. The Sergeant-at-Arms then tells them that it is the wish of the Lieutenant Governor that they be seated. In the House of Assembly, as in most Parliaments, the Sergeant-at-Arms, Sergeant Thomas Christopher, M.M., is a gentleman who has had a very distinguished career as a soldier.

The Standing Orders of the House of Assembly in 1855 provided a scale of fees to be paid the Sergeant-at-Arms, for escorting people to the Bar of the House. For taking a stranger into custody he got £1.1s, but should he have to arrest a member, he was paid twice as much.[37]

The first Sergeant-at-Arms of the House of Assembly, Elias Rendell, was appointed in December 1832 by the Governor.[38] The Governor at that time appointed all the

36 Beauchesne, op. cit. p. 322
37 J. I. Little, The Constitution of Newfoundland, p. 86
38 The Royal Gazette, December 18, 1832.

officials of the House. One of the first things that the first House did was to select a Committee to search for precedents, "as to the right of the House to appoint its own officers."[39] This led to a long dispute with Governors Cochrane and Prescott as to who had the right to appoint the Clerks, Sergeant-at-Arms, and other officials. On one occasion the Governor refused to receive the Address in Reply from the members of the House, because they had not recognized his nominee as their Clerk.[40] At the same time, the Governor refused to have anything to do with the Acting Clerk, Mr. Hoyles, whom the House had appointed. When, finally, he threatened to dissolve the House, the members capitulated and agreed to receive the Governor's nominee.[41] When in 1834 the Sergeant-at-Arms was absent because of "a recent domestic calamity", the Speaker, by order of the House, appointed the principal doorkeeper to act as Sergeant-at-Arms.[42]

After the House of Assembly had won the right from the Governor to appoint its own officials, there were often many conflicts amongst the members themselves about the appointment of an official. This was especially true of the position of Sergeant-at-Arms. The usual procedure was for some member to move that such and such be appointed Sergeant-at-Arms, this would be seconded by another member,

39 Journals of the House of Assembly, 1833. p. 10
40 Ibid, 1837. p. 35
41 Ibid.
42 Ibid, 1834. p. 86.

but before the motion could be put, an amendment would be moved and seconded, that some other person be appointed Sergeant-at-Arms to this House. Usually, however, the first motion, on being put, was carried. On one occasion when this happened, the disgruntled member, who had moved the appointment of the second person, then moved that the salary of the Sergeant-at-Arms be reduced to $200. The Government members opposed this, and after some debate, the House fixed the salary at $300.[43]

The Legislative Council also quarrelled with Governor Cochrane over the appointment of their Clerk. When in 1833 he appointed Captain Campbell, his Private Secretary, as Deputy Clerk, the Council refused to accept him. The next day they appointed Christopher Ayre to the post.[44] The Governor gave in, and approved of Mr. Ayre's appointment.

No official of the House of Assembly except the Clerk, could count on a very long tenure of office, although some did remain in office for many years. Henry Mott, who had been Speaker of the House, was afterwards Clerk for more than twenty years. Often, officials would be turned out in order to give place to the new Government's supporters. In 1924, there was a complete change of all officials of the

[43] Ibid, 1869. p. 18
[44] Journals of the Legislative Council, 1833. p. 4

House, from the Law Clerk to the Speaker's Attendant.[45] This practice is not followed in the present House, and no official has been dismissed since 1949. Only the Sergeant-at-Arms, and the Law Clerk, have been continuously employed in the House since that time, but those who have left resigned of their own free will. There has not been a change of Government, however, during this period.

[45] House of Assembly Debates, 1924. p. 28

CHAPTER V

DEBATE

The word Parliament comes from the old French word "parler" - to talk. It is not surprising then that a great part of the time of a Parliament is taken up with debating. Debate in Parliament is more than a means of free and general discussion of a definite proposition, it must culminate in a decision. All debate must take place between the rising of a member to make a motion, and the ascertainment by the Chair of the decision of the House upon this motion.[1] Debate is the medium through which every Parliament works. It means coming together to talk in freedom about the nation's business. The rules of debate are, therefore, of fundamental importance. Without these rules debate would degenerate into a confused chatter. The subject of a debate should be a definite proposal which some member submits for the consideration of the House. The process is simple - viz: a motion is moved and seconded, the Speaker proposes the question in the same terms as the motion. It now becomes the subject of the debate. At the conclusion of the debate he puts the question for the purpose of determining the decision of the House. Motion, question, decision are all parts of

[1] Wilding and Laundy, An Encyclopedia of Parliament, p. 394

a process which might be called the elementary form of debate.[2]

The next principle is the ancient one that not more than one question can be before the House at any one time. The system of debate resulting from these two principles has been adopted in all Commonwealth Legislatures. It has become so familiar to members and others that they often fail to appreciate its value. Nevertheless, it has not just grown, it has been carefully developed. Should a legislature wish to adapt rules to suit its own local conditions, it would still have to hold to this basic system which has been proven over the years. The main advantage is that one can determine exactly what the House is meant to be talking about. Anyone who visits a Parliament often will know that this is not always easy. But so long as there is a question, and the Speaker acting as guide has this question before him, the subject of a debate can be determined. Without a question the edges of the subject would become blurred, and members would wander and waste time. It is impossible to have a debate without wasting some time, but a clear decision is nearly always reached. This is unlike what often happens in the debates of Continental Parliaments.

[2] Beauchesne, Parliamentary Rules and Forms, p. 111.

The process of debate may develop through the stages of a motion made and question proposed without interruption to a decision; but it may be interrupted by amendments. As soon as an amendment has been moved and, unless made in Committee, seconded, the debate on the main question is suspended, and the question then before the House becomes that to which the amendment gave rise. An amendment may propose to leave out, to insert, or to add words to the original motion. This last must be done in two or more stages, but they must not be confused. The leaving out of words from a motion has to be discussed before the insertion of words in place of those left out.[3] Amendments must be discussed in the order in which they deal with the text of the motion.[4] After disposing of all the amendments, either by passing them or rejecting them, the House returns to the question as a whole. Amendments should be important, representative and definite, and they should neither be repetitious nor narrow the debate. The Speaker can rule an amendment out of order, in which case he could be asked to give his reasons. A member can ask leave to withdraw an amendment which he has proposed, but the permission of the House is withheld if even one member objects to the withdrawal.[5] Once the House has made its decision no further debate is allowed on that amendment or on any earlier part of the question. Any member who infringes

[3] Standing Order 36.
[4] Beauchesne, op. cit. p. 169
[5] Ibid. p. 168.

this rule, which is called the rule of previous debate, will be called to order by the Speaker immediately.[6]

In the early days of the British House of Commons the Speaker had the task of framing the question to be submitted to the House. Speakers were then not always impartial, being the king's or queen's men. Early in the 17th Century, the rule was evolved at Westminster that the mover of a motion was responsible for framing it. The Speaker has no right to make a motion, and the question which he proposes and puts to the House must be the exact words of the motion. Gradually the House worked out a new procedure designed to prevent the Speaker influencing decisions, and to prevent snap decisions contrary to the will of the House.[7] This new procedure evolved in three stages: It became a rule that no matter should be decided without a question first being put; questions had to be debated, or at least seconded before being put to the House, thus ensuring that the House was not suddenly faced with unexpected questions; and not more than one question could be before the House at any one time.[8]

A debate may be cut short by a member moving what is called a "Dilatory Motion", i.e., "that the debate be

6 Ibid. p. 126

7 Lord Campion, Introduction to Procedure of the House of Commons gives a good account of the development of this phase of procedure.

8 Beauchesne, op. cit. p. 167

now adjourned". This motion might be moved to give the Government a chance to have second thoughts on a Bill, to avoid a decision, or to ascertain how long the House would sit, or if a member is speaking at the time when the House adjourns. In the last case the member speaking would be given the preference of resuming the debate when the matter was called on the next sitting of the House.[9] Unlike the Speaker of the British House of Commons, the Speaker of the House of Assembly has no power to reject such motions. He must accept and propose the question to the House.

After a member has made a motion, the Speaker decides who shall take part in the debate. This is the process known as "catching the Speaker's eye". It is sometimes asked if the Speaker has a list of members who intend to participate in a debate. The answer is no. Members of a party usually tell the Whip who decides in what order they will speak; while the Whip may tell the Speaker the number of members who wish to speak on his side, he does not give him the names of the members. The Speaker uses his discretion in calling on members to speak, for in the House all members are equal.[10] In a small House this is not of great importance, because usually every member who wishes to speak can do so. At Westminster, however, where

9 May, Parliamentary Practice. p. 432

10 Campion, op. cit. p. 17

there are more than six hundred members, or at Ottawa, with two hundred and sixty-five, the Speaker has a problem. He is guided by the obligation of seeing that the debate is carried on, and of giving the opportunity for the expression of all points of view. A new member is given priority in making his first speech, known as his "Maiden Speech". This speech is usually not of a controversial nature, and it is the practice for members who speak afterwards on the same subject to congratulate him. Earl Gray, in his autobiography says that for two weeks he rose more than once each day every day, during his first session in Parliament, but he was never able to "catch the Speaker's eye.[11]

The mover of a substantive motion only has a right of reply, otherwise a member can speak but once to a motion except when the House is in Committee. He may seek permission of the House to speak a second time, and the House may agree.[12] This would be unusual in Newfoundland. In the British House of Commons, a member speaks for as long as he wishes, but in Ottawa must limit his speech to forty minutes, and in Newfoundland to ninety minutes, except when he is moving a substantive motion or he is a member of the Opposition speaking immediately after a Government member who moved a substantive motion or a member

[11] Grey of Fallodon, Vol. 1. Introduction.
[12] Standing Order 48.

making a motion of no confidence in the Government, and the member replying. The Premier and the Leader of the Opposition may speak as long as they wish, for they are excepted by the Standing Orders from this rule.[13] The manner of speaking in debate follows certain customary rules. A member must stand and wear no hat, since he is addressing the Chair, but a lady member may keep on her hat. He must speak in English, or in the Canadian House of Commons, in English or French. The rule that a member must address the Chair has been established in the British House of Commons as far back as 1660, for a member addressing the imposing figure of the Speaker in his wig and gown is not likely to give way to anger and abuse in the heat of the moment. For the same reason members refer to each other in debate by naming their constituencies. This rule has not been strictly followed in Newfoundland. Before 1949 it was the practice for members to call each other by name. On one occasion, when a member was called to order by the Speaker for referring to the Minister of Finance and Customs as Mr. Coaker, he said, "but Mr. Speaker, Coaker is his name, is it not?"[14]

It is important that angry incidents be checked. Abuses and irrelevancy disrupt debate and prevent the business of the House proceeding to an orderly conclusion.

13 Standing Order 49.

14 House of Assembly Debates 1921. p. 15

The rules of every House forbid offensive remarks, and unparliamentary language. Sir T. Erskine May and Mr. Beauchesne both give long lists of examples of unparliamentary language. The Newfoundland Standing Orders refer members for examples of unparliamentary language to "Beauchesne", pages 104-106-107, and to "May", pages 431-432. Standing Order 52 states that no member shall speak disrespectfully of Her Majesty nor of any of the Royal Family, nor of the Governor, or Administrator of the Government of Canada, nor of the Lieutenant Governor of this Province, nor use offensive words against any member of this House. This rule was not always easy to enforce. On several occasions the Governor's name has been brought into the debate, and he has been accused of being a pawn of the Government.[15]

Members in Newfoundland have long insisted that they could talk on any subject at any time. This disrupted business. Since Confederation it has become a firm rule that a member must speak to the motion before the House, avoiding repetition and irrelevancy. The Speaker has power to order a member to resume his seat if he offends against this rule.[16] It is contrary to the practice of the House for a member to read his speech[17] but the Speaker exercises discretion in forcing compliance with this rule. When called to order a member

15
16 Ibid, 1928. p. 52.
17 Standing Order 51.
Standing Orders, page 38.

will usually say, "I am sorry, Mr. Speaker, but I was quoting rather freely from my notes".

While the Speaker has power to enforce order and check licence in the House, this responsibility should not be left entirely to him, and the House must always back the Speaker in the exercise of his power. When the Speaker names a member, the Leader of the House should immediately move his suspension. Most members wish to see an orderly House. In 1921 a young member said: "The honourable member for ---------- has invariably interrupted the different speakers, he has abused us collectively and individually, he has appealed to the galleries, he has overruled the Speaker's decisions and conducted himself in such a manner as to bring discredit upon himself and the party which he now leads. As a young, (and if you please) impertinent member of this Assembly, I wish to remind him that most of us, and I believe Newfoundland too, wish to see this House conducted decently, we are still in duty bound to maintain here that dignity handed down to us from the Mother of Parliaments."[18] This speech had little effect on some members of the House, for the member whom he criticized once boasted: "My dear man, I am not excused by not knowing the rules of the House, I am excused for breaking them. I have broken them all."[19] At that time members insisted on complete

[18] House of Assembly Debates, 1921. p. 141.
[19] Ibid, 1922. p. 187.

freedom of debate. In 1921 a member said: "I contend that any man in this House can talk on all matters, all over this Island, even on education, and he won't get away from the subject."[20] In 1926 a member declared: "I am an independent citizen of this country, who owes no man anything, and I will not stand in this House if I can't speak my mind as freely as I wish."[21] No limitation on the length of speeches was ever adopted by the House until May 8th, 1951. In 1926, however, an attempt was made to limit the speeches on the Debate on the Address in Reply to half an hour. This brought a strong protest from a member: "I am going to speak as long as I like. We are come to a pretty pass, when we are told not to speak for more than half an hour on the Speech from the Throne."[22] The House of Assembly never attempted to choke off debate by the guillotine as in the British House of Commons, or by closure as in the Canadian House, or the motion that the previous question be now put. In 1931, Speaker Walsh refused to put the previous question, declaring that it was not in order. This motion is not contrary to the rules today. Such limitations on freedom of speech would have been highly unpopular in a House where members insisted that they could talk whenever they liked, and as long as they liked, if they were discussing the affairs of the country. The dismissal of a minor Government employee would become the occasion for a long tirade from the Opposition, and dismissal

20 Ibid, 1921. p. 323
21 Ibid, 1926. p. 910
22 House of Assembly Debates, 1926. p. 168.

of Civil Servants was common in the nineteen twenties.

Debate sometimes became abusive and violent. In 1925 a member was ordered by the Speaker to retract this statement: "Members of the Government are either fools or knaves".[23] 1921 was probably the most disorderly session on record. We read these examples of abuse in Hansard: "You are a beaten dirty cur",[24] and "You have not a particle of manners or respect."[25] The Prime Minister came in for a special attack: "You are a hyprocite, and I won't listen to your bluff."[26] Another member was more moderate in his attack: "I can speak sincerely that I do not believe that the Prime Minister is sincere in half he says."[27] These remarks were not noticed by the Speaker or by the House.

Now and again we find flashes of wit in the speeches. In 1911 Sir Robert Bond referred to another member as a political mosquito.[28] In 1917 one member told another that he would make a cat laugh.[29] In 1922 a member who had just spoken of his own great knowledge of the fishery and the Government's ignorance, ended his speech with these words: "You have got an Executive with you that don't know a sculpin from a squid". To which the Prime Minister, Sir Richard Squires, retorted: "We are unable to identify you, sir."[30] In the same session a member said

23 House of Assembly Debates, 1925 p. 118.
24 Ibid, 1921. p. 516
25 Ibid, 1922, p. 481.
26 Ibid, 1921. p. 109
27 Ibid, p. 183
28 Ibid, 1911. p. 161.
29 Ibid, 1917, p. 238.
30 Ibid 1922, p. 473.

to Sir Richard: "I am in daily connection with you." To which he replied: "Yes, and in spite of that, I can't make a gentleman out of you."[31] When Sir Edward Morris was accused by Sir Robert Bond of appealing to the galleries he retorted: "Sir, I do not appeal to the heels, but to the heads."[32] Political feeling often ran high outside the House. When five members left the Government side of the House in 1926, the Prime Minister read this telegram from the political committee of one of these deserters to the House. "Committee here congratulates you on action taken. We do not want a traitor here. Regret you do not have the power to behead him."[33]

Often people came to the House to applaud those they supported, and to boo and hiss speeches of which they did not approve. In 1921 the Prime Minister noted that men outside the Bar are enjoying the joke.[34] The same year we read of a member of the House who had held the offices of Minister of Justice and Speaker saying: "I address those at the Bar as my friends."[35] Sometimes a member openly appealed to the followers he had placed in the galleries, while others taking part in the debate would answer a man outside the Bar who had interrupted him. The Journal for April 25th, 1921, records that "disorder having arisen, Mr. Speaker left the Chair at a quarter to five until six o'clock."[36]

31
32 Ibid 1921, p. 561.
House of Assembly Debates
33 [redacted], p. 189
id, 1921. p. 545.
34 Ibid 1921, p. 545.
35 Ibid. p. 882
36 Ibid, 1921. p. 143

During the nineteen twenties the disorder inside the House was but a reflection of the general disorder in the Island. Once a party of unemployed men from a settlement close by boarded the train to come to St. John's. They did not have tickets, and they were sent back by order of the Minister of Justice. The member for the District to which the men belonged made an impassioned speech in the House, in which he tried to make this incident a big issue, and to show that these men had been discriminated against by the Government.[37]

Often the Speaker was dragged unwillingly into the debate. In 1921, when he stopped a member who rose to move the adjournment of the House, and told him that according to the rules, ten members must support him before he could make such a motion, the member confessed that he had no regard whatever for the rules of the House. The Speaker ordered him to resume his seat, but he refused to sit down, and continued speaking. When the Speaker tried to call him to order, he said to him: "You have not got sense enough to hold your tongue."[38] Instead of demanding that he retract and apologize, the Speaker merely held his tongue.

The rule that ten members must support a member in moving an adjournment of the House to speak on a matter of urgent public importance, was enforced by Speaker Walsh in 1931.[39] In the present House of Assembly it is the Speaker's

37 Ibid 1921, p. 840.
38 Ibid 1921, p. 842.
39 Ibid 1931, p. 550.

responsibility to decide whether or not the member's statement comes within the scope of Standing Order 23, which states: "if Mr. Speaker thinks the motion in order and of urgent public importance, he will read it, and ask whether the member has the leave of the House. If objection is taken, the Speaker will request those members who support the motion to rise in their places, and if not less than twelve members rise, he will call upon the member who has asked for leave, but if less than twelve but not less than three members rise in their places, the question whether the member has leave to move the adjournment of the House must be put, without debate."

The longest debates took place on the Address in Reply to the Speech from the Throne and on the Budget Speech. Often there would be many amendments to these. These amendments would in turn give rise to long and tedious debates, and there was no Mr. Balfour in our House to point out the necessity to "Dam up this destructive flood."[40]

Strong Provincial interests necessitate a member who does not live in his district visiting there frequently, and local feeling cannot be ignored. There is a tendency, too, for members to express local views before national. Edmund Burke, in his speech to the electors of Bristol on the

[40] W. F. Dawson, Development of Procedure in the British House of Commons. p. 329

3rd of November, 1774, said: "Parliament is not a congress of embassadors from different and hostile interests, which interests each must maintain as an agent and advocate against other agents and advocates, but Parliament is a deliberative assembly of one nation with one interest, and that of the whole, where not local purposes, nor local prejudices ought to guide, but the general good resulting from the general reason of the whole. You choose a member indeed, but when you have chosen him, he is not a member of Bristol, but he is a member of Parliament."[41] Experience has shown that this viewpoint is idealistic, but it is better than that of the member of the House of Assembly who said: "I am not in this House to speak for the country. I am not concerned with the country, but this matter closely touches my district."[42]

In the Legislative Council the speeches were shorter and more relevant than in the House of Assembly. The debates were dignified and restrained. There were occasional examples of unparliamentary language, but on the whole, order was much better kept than in the Legislature. In 1919 a Scottish businessman, John Anderson, who had spent many years in the Legislative Council said "I was not put here as an ornament or a puppet to jump up and sit down

41 Speech to the Electors of Bristol, Nov, 3, 1774.
42 House of Assembly Debates, 1922. p. 498.

at the crack of a party whip. I will support the Government when they do what is right, and will condemn them when they do what I think is wrong, and my conscience will never be at the beck and call of the leader of any Party, or of any man."[43] Not even Edmund Burke could have put it better.

[43] Legislative Council Debates, 1919. p. 67

CHAPTER VI

BILLS

One of the chief functions of the House of Assembly is to pass legislation. This legislation comes before the House in the form of Bills. A Bill is a statute in draft, and no Bill, public or private, whether introduced by the Government or a private member, can become law until it has received the approval of the House of Assembly, and the Royal Assent through the Lieutenant Governor.[1] The House must, therefore, have opportunities to consider all Bills, both in general principle and detail. Every Bill must pass through a number of stages. When Newfoundland had two Houses, a Bill had to go through all stages in both Houses. At present a Bill becomes law after it has received the third reading and the Royal Assent.

When Newfoundland waa bicameral, a Bill might be introduced in either the House of Assembly or in the Legislative Council.[2] The majority of Bills were introduced in the Lower House. No Bill involving finance could be introduced in the Legislative Council,[3] but this body in its early days often amended such Bills. The House of Assembly strongly resented interference with money Bills

1 Standing Orders p. 45.
2 Little, Constitution of Newfoundland, Pp. 72, 82.
3 Journals of the House of Assembly, 1837. p. 287.

by the Legislative Council, and insisted that it was a breach of its privileges.[4]

In 1834 the Legislative Council adopted a number of rules regarding Bills, some of which today are still embodied in Standing Orders.[5] Every member has the right to bring in a Bill.[6] Very few Bills originate with the member himself, or with the Cabinet Minister who brings it to the House, and pilots it through its various stages. When a Department intends to submit legislation to the House of Assembly, the Deputy Minister will instruct the officer of the Department, who knows most about the matter, to prepare the draft of the Bill, and compile the necessary information. This first draft is sent to the Attorney General's Department where the legal officers make it into a Bill. It then goes before the Cabinet for its consideration. The Cabinet approves or amends it and returns it to the Attorney General's Department for a final drafting. It is next printed and forwarded to the House.

In the House of Assembly the Clerk and Law Clerk examine every Bill and if they see anything wrong with it, they point out the shortcomings to the Attorney General, who refers it back to his Department for correction. Every

4 Journals of the House of Assembly 1837, p. 287.
5 Journals of the Legislative Council, 1834. Appendix.
6 Beauchesne, Parliamentary Rules and Forms, p. 269.

Bill receives three readings on different days previous to being passed. On urgent occasions a Bill may, by leave of the House, be read twice or thrice or advanced two or more stages in one day. It is a general practice in all Parliaments of the British Commonwealth for the Leader of the House to give notice towards the end of the session that he will next day move the suspension of rules for the purpose of expediting the passage of all Bills now before, or about to come before the House. This motion is almost invariably carried without any dissenting voice. This procedure is today embodied in Standing Order 58, which was passed in 1951, but it had been the practice in the House more than one hundred years before that time.[7]

The House always carefully scrutinizes Private Bills. These must be introduced by petition which is read and referred to the Committee on Standing Orders. When the petition is favourable reported on by the Committee, a motion is made for leave to introduce the Bill. No petition to introduce a private Bill is considered unless accompanied by a certificate from the Clerk that all the fees have been paid.[8] Every private Bill after it has been

7 Journals of the House of Assembly 1838, p. 160.
8 Standing Order 64.

read a sedond time, is referred to a Select Committee, and all petitions for and against the Bill are referred to this Committee.[9] No Committee on a Private Bill may consider it until after a week's notice of its sitting has been posted on the notice board in the House.[10] These sittings must be advertised in the press, in order to give all persons whose rights or property may be affected an opportunity of appearing before the Committee.[11] A person or corporation objecting to a Bill may appear before the Committee by Counsel. It is the duty of the Committee on a private Bill to determine whether the promoters of the Bill have justified their request and whether private interests are properly protected. All questions before the Committee on a private Bill are decided by a majority of voices, including the voice of the Chairman.[12] No important amendment may be proposed to any Private Bill in a Committee of the Whole House or at third reading of the Bill, unless one day's notice has been given.[13] A Private Bill is not necessarily a Bill brought in by a private member, but a Bill which affects private rights and interests.[14] A good example might be a Bill to incorporate the Society of Architects, passed by the House of Assembly in 1956.

9 Standing Order 66.
10 Standing Order 67.
11 Standing Order 68.
12 Standing Order 71.
13 Standing Order 73.
14 Beauchesne, op. cit. p. 337

One of the earliest private Bills came before the House of Assembly in March, 1865. The Bill, to incorporate certain persons under the name of the "St. John's Market Company" was first considered by a Committee of the Whole House, which reported to the House that the Bill be referred to a Select Committee "to take evidence thereto and report to the House." The Speaker then appointed five members to form this Select Committee.[15]

The practice of reading a Bill three times is very ancient. Sir Thomas Smith at the beginning of the reign of Elizabeth I, in an account of the procedure on a public Bill, wrote: "All Bills shall be thrice read in three divers days, and disputed upon before they come to the question. After the Bill has been twice read, and then engrossed, and then read and disputed upon enough as is thought, the Speaker asketh if they will go to the question, and if they agree, he holdeth the Bill up in his hand and sayeth, as many as will have this Bill go forward, which is concerning such a matter, say yea. They which allow the Bill cry yea, and as many as will not say no. As the cry of yea or no is bigger, so the Bill is allowed or dashed. If it be a doubt which cry is the bigger, they divide the House. It chanceth sometimes

[15] Journals of the House of Assembly, 1865. p. 53

that some part of the Bill is allowed, some other part hath much doubt, and contrariety made of it, and it is thought if it were amended it would go forward. Then they choose certain committees of them, who have spoken with the Bill and against it, to amend it and bring it again so amended, as they amongst them shall think meete, and this is before it is engrosses, yea and sometime after."[16] In this account, more than three hundred years old, it is easy to recognize the three readings, the committee stage, and the other features of Bill procedure as it exists at present. The account given by Smith shows that the procedure was simple and informal. The three readings gave rise to debates, but only one question is expressly stated to have been put that the Bill go forward. The Committee was not necessary if they were all of one opinion regarding the Bill. The House abstained from making amendments itself, and contented itself with accepting or rejecting those made by a Committee or referring the Bill back to the Committee.

The form of a public Bill is that of a draft statute: First, the short title, which is printed at the head of the Bill and also set out in the last clause, next the long title, which sets out in general terms the purposes of the

[16] Lord Campion, Procedure of the House of Commons. p. 22

Bill, then the preamble, which is framed for stating the reasons and intended effects of the proposed legislation. Often the preamble is left out of a public Bill. A Bill is preceded by a short paragraph, which is called the enacting formula. This formula is "Be it enacted by the Lieutenant Governor and House of Assembly in Legislative Session convened as follows". The body of the Bill consists of a series of numbered clauses, each with a descriptive title printed in the margin. Long clauses are divided into sub-clauses and these into paragraphs. At the end of some Bills is found a set of provisions called schedules, containing matters of detail dependent upon the provision of the Bill. A schedule is as much a part of a Bill as the preceding clause upon one of which it is dependent, and by means of which its provisions are enacted.[17]

The way in which a Bill is introduced in the House depends upon whether it is a money Bill or not. A money Bill has as its main object the expenditure of money or the imposition of taxation. Such a bill must be preceded by Resolutions passed in Committee of the Whole House, and agreed to by the House on Report. The Bill is brought in immediately after the Resolutions are

[17] May, Parliamentary Practice. p. 496

agreed to.[18] Bills, other than money Bills, are introduced by a member asking for leave to introduce the Bill, and upon leave being given by the House the next day the Bill is read a first time.[19] Bills are seldom opposed at first reading. The principle of a Bill is debated at second reading, and no argument against the principle of the Bill is allowed in Committee. On the day ordered for second reading the short title of the Bill is printed as one of the Orders of the Day. When it is called, the member in charge rises to explain and recommend the provisions of his Bill, and concludes his speech by moving that it be now read a second time. After the second reading has been moved and seconded the Speaker proposes the question and the debate proceeds.[20]

A Bill may be opposed by voting against the Question, or by moving an amendment that the Bill be read upon this day six months, instead of now. The carrying of this amendment is accepted as the rejection of the Bill even if the session extends beyond the period of six months.[21] After a Bill has passed second reading, it is referred to a Committee of the Whole House. The function of this Committee is to go through the text of the Bill, clause by clause, and word by word if necessary,

18 Beauchesne, op. cit. p. 204
19 Standing Order 54.
20 Standing Orders, p. 46
21 May, op. cit. p. 506

with a view to making any amendments it may need. The Committee has a fairly free hand, but it is limited in various ways, i.e., the Committee cannot discuss the principle of the Bill, nor can it pass any amendment which would interfere with the principle, nor should it admit amendments which are irrelevent to the Bill.[22] While a Bill is in Committee the House has no control over it. It does not interfere in the proceedings of the Committee.

The power of a Committee to destroy a Bill is limited. A Bill cannot be withdrawn in Committee for this requires the leave of the House, nor can a Committee defeat a Bill. But it can report progress without asking leave to sit again. This would put an end to its own existence, and the Bill would disappear from the Order Paper. The House would be unable to proceed with a Bill which the Committee had not recommended. A Committee may pass a motion that it do not proceed further with the consideration of the Bill, and bring in a report explaining the circumstances which render it inexpedient to proceed any further with the Bill.[23] Such a motion would only be accepted from the member in charge of the Bill, but in Committee of the Whole, or in a Select Committee, the right

22 Standing Orders. p. 46
23 House of Assembly Debates, 1924. p. 254

of moving amendments to clauses is not restricted to the member in charge of the Bill.

The Chairman calls each clause by its number, and if no amendment is offered, immediately proposes the question in the form "that this clause do now pass". Debate on the clause may take place on this question, but after it has been proposed it is no longer in order to move an amendment.[24] As soon as the first clause is disposed of, the Chairman calls the next clause, and so on. A separate question should be put on each clause, but if the bill is not contentious it is usual to save time by the Chairman saying "carried". If there is no objection he goes on to the next clause. Sometimes, however, in a contentious or comples Bill, a member may ask that each clause be read. The Chairman will then ask if it is agreeable to the Committee that the Clerk read the clauses. The Committee always consents to this request.

When the motion is made that a clause pass, debate should be strictly relevant to the clause, and should not refer to other clauses. This rule of relevancy is difficult to enforce, since members often wish to debate, at the one time, several amendments. No amendment should be inconsistent with the Bill so far agreed to, or with a decision already

[24] Standing Orders. p. 46

taken on a previous amendment.[25] An amendment to leave out a clause is not in order in Committee; the proper course is to vote against the motion that the clause pass. It is out of order to propose to leave out the only effective words of a clause or the words upon which the rest of the clause depends, this is equivalent to destroying the clause.[26] The Chairman will also rule out an amendment if he considers it to be vague, trifling or tendered in a spirit of mockery.[27]

No question is put on the title of a Bill unless it is required to amend it, and the preable is not passed until after the consideration of the clauses and schedules.[28] If consideration of a Bill is unfinished at the conclusion of a sitting of a Committee of the Whole, the Chairman puts the question that "I do report progress and ask leave to sit again". If the proceedings of the Committee are finished, the Chairman puts the question that "I do report the Bill as amended, or without amendment, as the case may be, to the House", and leaves the Chair. The Speaker immediately resumes the Chair, and the Chairman approaching him makes his report. The formula is "Mr. Speaker, the Committee of

25 Ibid.
26 Ibid.
27 May. op. cit. p. 401
28 Standing Order 61.

the Whole have considered Bill No.---- An Act to (here give the title) and directed me to report the same", with or without amendment as the case may be.[29]

In the British House of Commons, the third reading of a Bill is taken immediately after the report stage has been concluded. In Newfoundland, it is the practice for the Speaker to ask, "When shall this Bill be read a third time, tomorrow?" The leader of the House will then nod, and the Speaker puts the question that this Bill be read a third time on tomorrow. However, if the rules of the House have been suspended, the Speaker will put the question that the Bill be now read a third time. The same amendments which are in order on second reading, may now be moved on third reading.

Sometimes a Bill, after second reading, would be referred to a Select Committee. This happened in 1921 with the Bill for the Protection of Neglected, Dependent and Delinquent Children. The Minister of Justice moved that this Bill be referred to a Select Committee. He then named the Committee.[30] This procedure was unusual because as a rule the Speaker names Select Committees. In 1910, the Committee recommended that the Bill "An Act Respecting Certain Changes in the Hours of Day and Night" be not proceeded with although this Act had been passed by the Legislative Council,[31] and in

29 Beauchesne, op. cit. p. 412
30 House of Assembly Debates 1921. p. 426.
31 Ibid 1910. p. 561.

1913, a Select Committee reported that a Bill to amend the Election Act of 1913 be not considered by the House at this session.[32]

The Assembly has always claimed the privilege of originating all money Bills, and protested the Legislative Council's right to alter or amend them. If the Council disagreed with the provisions of a Supply Bill, it would not pass it. In 1839 the Council's reason given for refusing to pass the Supply Bill was that no money had been voted by the House of Assembly for the salary of the constable at Toad's Cove.[33] No Supply Bill was passed in 1837 by the Upper House, because of quarrels between the two Houses, and the members of the House of Assembly received no sessional pay.[34] In 1838, Lord Glenelg, in a letter to Governor Prescott said: "However much the deficiency of the supply, or the extreme minuteness of the appropriation might justly be regretted, these circumstances do not seem to afford any valid reason for the rejection of the Supply Bill."[35] He recommended that should a Supply Bill of a similar kind be passed in the next session, the Legislative Council ought not to refuse to pass it.

32 Ibid, 1913.
33 Journals of the Legislative Council, 1839. p. 13
34 Ibid, 1837. Letter Glenelg to Prescott Feb. 1, 1938.
35 Ibid.

Sometimes the House put a limitation on the number of Bills. In 1834 it was resolved "that no member hath leave to introduce any Bill into the House during the present session after the tenth day of March next".[36]

In 1834 the House of Assembly and the Legislative Council quarreled because the House of Assembly tacked an appropriation of three-quarters of the revenue, for roads and bridges, to a Supply Bill, although such a measure had been thrown out by the Council in the same session. Both the Governor and the Legislative Council had warned the House before of tacking this sort of a measure on to a Supply Bill.[37]

It had long been the practice in Newfoundland since Responsible Government for a Supply Bill to be founded upon a recommendation of the Governor, but on one occasion the Supply Bill was read a third time although a member objected and pointed out to the House that this procedure was a violation of the Rules of the House, and of the prerogative of the Governor. The Speaker held that the Bill might be read a third time, but this ruling was reversed by a Speaker's decision in 1904.[38] Today the Supply Bill is brought in on recommendation of the Lieutenant Governor.

36 Journals of the House of Assembly 1834. p. 16
37 Ibid. p. 104
38 Ibid, 1904. p. 26

In 1869 the House was rebuked by Governor Hill because of the style of enacing laws which they had adopted that year. (The Assembly had begun calling itself "The Commons of Newfoundland"). He tells them: "The style of enacting laws shall be the Governor, Lieutenant Governor, or officer administering the Government, as the case may be, the Council and the Assembly and no other".[39]

When a Bill has been read a third time, it may be rescinded by a majority vote, and recommitted, but if it has received the Royal Assent it can only be amended by bringing in another Bill for that purpose.[40] One of the earliest rules prohibited the bringing in of two Bills with the same object in the same session.[41] When a Bill is read in the House the Clerk certifies upon it the time of the readings. After it has passed he certifies this with the date at the foot of the Bill.[42]

At one time it was the procedure for the Speaker and members of the House to go on to the Legislative Council where the Governor would give the Royal Assent to Bills. At the present time the Lieutenant Governor goes to the House of Assembly, and there gives the Royal Assent to perhaps a dozen Bills at one time. At the closing

39 Instructions to Governor Hill 1869, Section XVI.
40 Beauchesne, op. cit. p. 264
41 Standing Order 60 as revised April 24,1953.
42 J. I. Little, The Constitution of Newfoundland. p. 84

of the House he gives the Royal Assent to all bills that had been passed and not assented to. On May 20, 1953, when the Lieutenant Governor prorogued the House, he assented to seventy-five Bills.[43]

[43] House of Assembly Debates 1952, p. 1192.

CHAPTER VII

PETITIONS

The right of petitioning the Crown and Parliament for redress of grievances is acknowledged as a fundamental principle of the Constitution. The Commons Resolutions in 1669 laid down that it is the inherent right of every commoner in England to prepare and present petitions to the House of Commons in case of grievance, and the House of Commons must receive them; and that it is the right and privilege of the commons to judge and determine, from the nature and matter of such petitions, how far they are "fit and unfit to be received".[1] Clearly, petitions are only proper when praying for the redress of grievances. Neither at Westminster nor at Ottawa are they received when they involve an expenditure of public funds, therefore, petitions praying for the construction of roads, breakwaters, etc., are improper. While the House of Commons of Canada will refuse to receive a petition that asks for a grant of money out of the public revenue, unless the grant has first been recommended by the Crown, it will not reject a petition which asks simply for legislation or for such measures as the House may think expedient to take.[2] In the Newfoundland House the practice of receiving such

1 May, Parliamentary Practice. p. 811
2 Beauchesne, Parliamentary Rules and Forms. p. 260

petitions as pray for roads, bridges, etc., and referring them to the Government Department concerned, grew up long ago.[3]

Every petition should commence with the subscription: "To the Honourable the House of Assembly in Session Convened," and then should follow the formula: "The Petition of the Undersigned, Humbly Sheweth." Then follows the subject matter of the petition, in the third person throughout, commencing each paragraph with the word "THAT". The conclusion should be a prayer, tersely and clearly expressing the particular object which the petitioners have in view in coming before Parliament, and should close with the formal words: "And your Petitioners, as in Duty Bound Will Ever Pray." Here follow the signatures, which must be in writing and not typewritten or printed.[4]

In the British House of Commons, a petition may be presented either orally, or informally by placing it in a bag kept at the back of the Speaker's chair. A member who intends to present a petition orally should request the Clerk of the Committee on Public Petitions to examine the petition, and advise him whether it is in order or not.[5] To present it informally, he merely sends it to the Clerk, but does not present it to the House. In Newfoundland there is no such official as the Clerk of the Committee on

3 Standing Orders House of Assembly 1951. p. 62
4 Beauchesne, op. cit. p. 256
5 May, op. cit. Pp. 819-20

Public Petitions, therefore, a member who is in doubt about a petition, usually brings it to the Speaker. However, petitions need to be more carefully prepared and scrutinized. The Speaker has had to warn members, on occasion, that they are responsible for the petitions which they present. There is no informal way of presenting a petition in the House of Assembly, such as putting it into a receptacle, as may be done in the British House of Commons. Petitions can only be presented orally.

In the Newfoundland Assembly, members like to have the newspaper reporters in the House when they present petitions, so that their constituents will learn that the member has presented the petition in the House, and that he has supported it. It is not in order for a member to read the petition verbatim.[6] He usually gives a digest of it, then supports it by giving reasons why the petition should be considered by the House. Every member offering a petition to the House should confine himself to the statement of the petitioners, the number of signatures attached to it, request it contains, and reasons for granting the request.[7] In no case should a member occupy more than five minutes in presenting a petition, unless by permission of the House.[8] At one time, all petitions presented in the House of Assembly

[6] Nfld. Standing Order 92.
[7] May, op. cit. p. 819
[8] Ibid.

were read by the Clerk at the Table. It would be unusual but not out of order to do this today.[9]

The only outside bodies who are privileges to present petitions at the Bar of the House of Commons at Westminster, are the Corporation of London, by its sheriff, and the Corporation of Dublin by the Lord Mayor.[10] All other petitions are presented by a member. Because he is a representative a member is precluded from presenting a petition from himself, but a petition may be presented for him by another member.[11] It is not generally known, but a petition from one person in quite in order.[12] A petition forwarded by telegraph cannot be received, because it has no signature attached to it.[13] A member attempted to present such a petition on January 30, 1958, but it was ruled out of order by the Speaker for the reason which has just been given.[14] Since he may have to rule on the regularity of petitions, and as he does not take part in debate, the Speaker cannot present a petition to the House.

If there is any irregularity in a petition, the member having charge of it should not bring it in the House, but should return it to the petitioners to have it corrected.

9 Standing Order 93.
10 May, op. cit. p. 817
11 Ibid. p. 818
12 Ibid. p. 812.
13 Bourinot, Parliamentary Procedure p. 236.
14 House of Assembly Debates 1957. p. 9

If a member believes that the signatures of a petition are genuine, he is justified in presenting it, even though doubt may have been raised as to their authenticity. In such a case, he should direct the attention of the House to the circumstances. Any forgery or fraud in the preparation of a petition is a breach of privilege.[15]

Many of the petitions presented in the early House of Assembly concerned elections. In 1861 John Kent presented a petition from George J. Hogsett and Charles Furey, candidates in the General Election. They claimed that a riot in their District on election days had prevented their being elected, and begged the House to make an immediate enquiry into the matter, and in the meantime to allow them to take their seats as members for Harbour Main.[16] This petition was referred to the Committee on Privileges. The same day, another petition was presented by Patrick Nowlan and Thomas Byrne, the rival candidates for Harbour Main, in which they told their side of the story and enclosed a certificate from the Returning Officer to support their claims. This, also, was referred to the Committee on Privilege.[17] In 1874 Azariah Garland of Lower Island Cove petitioned the House of Assembly against the return of James J. Rogerson as member for the

15 May. op. cit. Pp. 813, 818.
16 Journals of the House of Assembly 1861. P. 12
17 Ibid. p. 13

District of Bay de Verde. He had a long story to tell concerning the way that he had been treated by the Returning Officer, and by the Rev. Mr. Peach, a Methodist clergyman. But let Mr. Garland speak himself: "Many persons within the room laid hold of your petitioner, some by the hair of his head, others by his coat and vest, which they tore in pieces, and turned him out of the building, then pelted him with stones and mud, following him to the north side of Western Bay, a distance of about one mile; many of these stones struck the petitioner and he miraculously escaped with his life, by riding from them as fast as he could; the Rev. Mr. Peach was with the said mob when they commenced the pelting. On being so forced out your petitioner met his brother, Eli Garland, who intended to propose him for nomination, and Benjamin Trenchard, who was to second him, his said brother, Eli, was then being covered with blubber and his coat, vest, hat and shirt thereby spoiled. The Rev. Mr. Peach was standing by, and did not attempt to prevent them."[18]

Often under Representative Government the petition was sent to the Governor, and transmitted by him to the House of Assembly. This happened when Thomas Reid, Sipendary Magistrate of St. Mary's, petitioned for more salary and a magistrate's residence. This petition was

[18] Ibid. 1874. p. 11.

partly successful, for Reid was given a raise of £40.[19]

Not all petitions had a happy ending. We get this letter to Mr. Secretary Crowdy, and sent by him to the House of Assembly in 1837: "Sir. In reply to your letter of the 25th inst. forwarding the petition of John Power, which had been presented to His Excellency the Governor, by a deputation of the House of Assembly, praying admission into the hospital. Having laid the same before the Board of Directors of the hospital, I am desired to state that the man, not having qualified himself, according to the provisions of the Act, (he had not paid his hospital fees) cannot be admitted. Signed, Robert Job, President of the Board of Directors."[20]

In 1841 Thomas Fitzgibbon Moore rose to present a petition. When he was asked to sit down by the Speaker he said: "I hold in my hand the petition of fishermen, and I suppose that's the reason I am ordered to sit down." This was an open reflection on the Speaker, and the doughty Dr. Carson, who occupied the Chair, was not the man to allow this sort of thing. It was moved by John Kent, seconded by John Nugent, that the words used by the member for Trinity were grossly insulting to Mr. Speaker and the whole House. This motion passed, with all the members in

19 Ibid, 1837. p. 211.
20 Ibid. p. 223

favour of it, except of course Mr. Moore. Thomas Fitzgibbon Moore, whom the historian Prowse calls, "the mad Irishman", was then severely reprimanded by the formidable Speaker.[21]

The House received so many petitions in 1867, that it ordered that Wednesday should be specially appointed for receiving petitions, and that they should be received on other days only after the Orders of the Day had been disposed of.[22] That year two hundred and one petitions were received. One hundred and thirty four of these were concerned with roads, and most of the others with education.[23] The banner year for petitions was 1873, when three hundred and seventy two petitions were received.[24] The record number of petitions for one day was on June 10th, 1901, when thirty nine petitions were presented.[25]

Petitions to the House of Assembly have dealt with all sorts of things. A Government employee would petition for an increase in salary,[26] or an Orange Lodge might petition for a road to be built to their hall.[27] The Legislative Council once received a petition from a number of leading citizens of St. John's asking them not

21
22 Ibid, 1841. p. 26
23 Ibid, 1867. p. 70.
24 Ibid, Appendix.
Ibid, 1873. Appendix.
25 Ibid, 1901. p. 38
26 Ibid, 1856. p. 115.
27 Ibid, 1911. p. 48

to assent to the Supply Bill sent up from the House of Assembly.[28] Perhaps the strangest petition came in on March 7th, 1862, from a forgotten man. The Journal records: "Mr. Prowse presented a petition from Robert H. Dawe of Burgeo setting forth that for six years he had performed the duties of customs officer in that locality, and had collected during that time a great deal of money, but that he had never been paid by the Government for his services."[29] It is very unlikely, today, that a civil servant would wait six years for his salary. It is probable that Mr. Dawe had never been given an official appointment by the Government.

Today, as a rule, one petition is presented at a time to the House, unless it deals with the same subject, but formerly, different petitions dealing with different subjects would be presented together. On May 6th, 1931, the member for White Bay presented three different petitions on three different subjects from three different places.[30]

The Journals show that in the early days of the House of Assembly petitions could be dealt with in one of four ways: They could be laid on the Table of the House; or referred to the Committee on Supply; or to the Committee on Roads and Bridges. Sometimes they were went to the

28 Journals of the Legislative Council 1837. p. 30.
29 Ibid, p. 67.
30 House of Assembly Debates 1931, p. 371.

Governor for his attention. Later, the practice developed of receiving petitions and referring them to a Select Committee of the House. There are numerous examples of this. Today under Standing Order 95, a petition, the granting of which would involve an expenditure of public money, is referred to the Government Department concerned. This procedure was adopted for the first time in 1910. The same year the House adopted a Standing Order that petitions should not be received after 4 p.m., unless they related to an Order of the Day or the subject of a motion.[30]

On April 19th, 1921, a member expressed some doubts as to what happened to the petitions that he had been making to the House, and he was critical of the Ministers for not taking any notice of them. The Prime Minister in answer said: "Mr. Speaker, I might say that the practice is for the Clerk of the House to gather the petitions together, and send them to the Deputy Heads of the various Departments to which they relate. They do not go to the political heads, the Deputy Heads are responsible for them."[31] This is the practice which is followed in the House of Assembly at the present time.

Mr. Speaker Walsh ruled in 1931 that a member could

30 House of Assembly Debates, 1910. p. 38
31 Ibid, 1921. p. 73

only speak to a petition for five minutes, unless he obtained the consent of the House to continue.[32] This ruling was made necessary because members were making long speeches, mostly in praise of their constituencies, or detailing the needs of their district, when they presented petitions. This was not a new development, for in 1918 there are two examples of members taking advantage of the presentation of petitions to make long speeches, and inaugurate full scale debates.[33]

The rule that a petition must be respectful has not been always followed. In 1921 a number of resolutions sent in by the Burin Board of Trade, and signed by its President, were read in the House of Assembly. The tone of the resolutions was brusque. The petition contained no prayer, and even went so far as to criticize the members themselves in the following words: "Be it resolved that we protest against the keeping in office of persons who are paid from the public funds of the colony, and from whom we derive no benefit". No member took exception to these resolutions, nor did the Speaker comment upon them.[34]

It has been noted that only two bodies, the Corporations of London and Dublin, have the right to present petitions through their mayors to the Bar of the British

32 Ibid, 1931. p. 245.
33 Ibid, 1918. Pp. 118, 219.
34 Ibid, 1921. p. 130.

House of Commons, and that no one has the right to present a petition at the Bar of the Canadian House of Commons. Several petitions have been received at the Bar of the Newfoundland House of Assembly. In 1921 the Journal records that a deputation representing the working men appeared at the Bar of the House, and through their Chairman presented a petition. The Speaker directed the Clerk to read it.[35] The same year a deputation of ex-Royal Naval Reserve Men marched up to the Bar of the House and boldly requested a share of prize money, which they claimed was due to them for having served in the British Navy.[36] In 1930 a deputation from the Medical Association appeared at the Bar of the House and presented resolutions from that Association. The spokesman boldly addressed the Speaker who ignored him and said, addressing the House: "The deputation will retire, and the Clerk will read the resolutions."[37]

It is unlikely that a deputation bearing petitions would be received today at the Bar of the House of Assembly. Instead, the Speaker would instruct the Sergeant-at-Arms to have the petitioners shown in to the strangers gallery, and through the Sergeant-at-Arms, or the Clerk, would suggest to their leader that the petition ought to passed to one of the members for presentation to the House.

[35] Ibid, p. 93.
[36] Ibid, p. 871.
[37] Ibid, 1930. p. 391.

The only rule relating to petitions in the Standing Orders of the House of Assembly of 1855 is still in use: "All petitions after the Minutes are read, and such petitions shall be read by the Clerk after the third readings of any Bills, that may stand for that purpose, on the Orders of the Day."[38] The only change which has been made is that petitions are now seldom read by the Clerk. Instead the Speaker calls out: "Presenting Petitions" immediately after the doors are opened, and before any other business is proceeded with. Members then present petitions. Each ends his short supporting speech with a motion that the petition be received and referred to the Department concerned. After the Speaker has put the motion, the member passes the petition to the Clerk, who forwards it to the Deputy Minister of the Department to which it relates. While the presentation of a petition concerning a matter to the House of Assembly does not ensure its performance, yet it does give it publicity. It draws the attention of the House to it, and enlists the personal attention and support of the Member who presents it. Nearly all of the roads and bridges that have been built in Newfoundland originated with the presenting of a petition in the House of Assembly.

38 John Little, The Constitution of Newfoundland. p. 85.

CHAPTER VIII

QUESTIONS

Immediately after petitions have been disposed of, the Speaker will call: "Notice of Questions". This is to allow members to comply with the Standing Orders of the House of Assembly rule that a member wishing to ask a question give twenty-four hours notice.[1] The question hour is looked forward to by visitors to the House and the press, who expect it to provide lively moments, and for the latter it also provides copy. The question period is modern, and affords a useful method of supervising the administration of the Government. Questions turn a searchlight upon every corner of the public service.

The first recorded question to a Parliament was asked in 1721 by Lord Cowper in the House of Lords. He asked whether there was any ground for a certain rumour,[2] a form of question which should now be out of order.[3] For more than a century questions were infrequent and were looked upon by members as an irregular form of debate. It was not until 1835 that a notice of a question was first printed.[4]

1 Standing Orders of the House of Assembly of Nfld. 1951. p. 21
2 Lord Campion, Procedure in the House of Commons. p. 146.
3 Ibid.
4 Ibid.

Questions did not come very early to the Newfoundland House of Assembly; they are not mentioned in the rules of the House of Assembly published in 1855. Their importance today may be judged by the fact that the latest Standing Orders has no less than three pages of rules governing forms in which questions may be cast, and the kinds that may be asked. These Standing Orders are an abbreviation of the rules for questions set forth in "May's Parliamentary Practice" and in "Beauchesne's Parliamentary Rules and Forms".

The rules of the House state that questions relating to public affairs may be placed on the Order Paper, and directed to Ministers. In putting, or replying to a question, however, no argument or opinion may be offered, nor any facts stated, unless they are necessary to explain the question. Standing Order 25 says also that in answering a question there must be no debate.[5] Every Speaker knows that this is easier said than done. Questions and their answers have stirred up many a first rate row in Parliament. Our Standing Orders do not give a list of inadmissible questions but merely refer to "Beauchesne" 3rd Edition, pages 119-129, and "May" 14th Edition, pages 336-338. "Beauchesne's"

[5] Standing Order 25.

list with ten pages is exhaustive.

A Minister may decline to answer a question without giving any reason, except that an answer would not be in the public interest. The refusal of a Minister to answer on this ground cannot be raised as a matter of privilege.[6] While a Minister is not compelled to answer any questions unless there are obvious reasons for his refusal, it would create an unfavourable impression in the House and cause criticism in the newspapers.

The excuse, "Not in the public interest", is very old. In 1837 Governor Prescott refused to produce documents to the House on the grounds, "I do not think it would be expedient to make it public."[7] In 1839 the same Governor wrote a letter in which he politely told the House of Assembly to mind their own business: "Gentlemen: I do not consider that the production of correspondence between the Home Government and me, on the subject of the late delegation from the House of Assembly, is necessary or expedient, or that it could in any way conduce to the public good. I am therefore under the necessity of declining to comply with the present address."[8]

6 Standing Orders of the House of Assembly. p. 22
7 Journals of the House of Assembly, 1837. p. 92
8 Ibid, July 18, 1939.

Insistence on an answer to a question is out of order.[9] This is another rule that has caused trouble. In 1917 W. F. Lloyd, who had a very fine record as an orderly member, became dissatisfied with the answers to certain questions by the Minister of Finance and Customs. He repeated the question and said that it had not been answered. The Minister said: "I have no other reply." Mr. Lloyd demanded an answer, and requested that the questions be kept on the Order Paper. The Speaker refused. Mr. Lloyd appealed to the House against the Speaker's ruling, but it was sustained.[10]

In 1916 the Speaker of the House of Assembly gave a lengthy ruling on the subject of questions: "At the request of the Minister of Marine and Fisheries, I now give my ruling on questions: 'a question fully answered whether orally or in print cannot be revived, nor can a question which one Minister has refused to answer, be addressed to another. A question has been refused a reply because it referred to a matter of opinion. A hypothetical question is out of order. A question should not be ironical or convey an imputation. A question is out of order which impugns the accuracy of certain information conveyed to the House by the Minister. No question is in order which reflects

9 Standing Orders p. 22

10 House of Assembly Debates, 1917. p. 52.

on the character or conduct of a member.'"[11]

Although at Westminster a member may hand a question to the Clerk, in Newfoundland this has been ruled out of order.[12] A question as to why someone has been given a knighthood is also not permissible. The words used by the Speaker in disallowing this question were: "Such a question is highly irregular".[13] Since knighthoods are not bestowed now on Canadians, it is unlikely that the Speaker will be troubled again by such a question.

In 1929, many questions were asked, and often they touched off long debates. Sometimes the Speaker would rule firmly that these debates were out of order, but members on both sides continued to break the rules. The Speaker in 1930 reminded members that questions asked in previous years, and which were still on the records of the House, should not be asked again. He stated further that members were entitled to written answers, but that if they were satisfied with verbal answers, "Then," said he, "that's their own look out".[14]

Questions should be addressed to the proper Minister, but if addressed to the wrong Minister a question may be re-addressed by the member asking it and left on the Order Paper. The usual procedure today is for the Minister, when the

[11] Ibid 1916, Pp. 511-12.
[12] Ibid 1928, p. 168.
[13] Ibid
[14] Ibid. p. 201.

question is called, to rise and say, "I am sorry, Mr. Speaker, but this question concerns a matter which does not come under my Department."[15] Whenever this happened, the member who asked the question makes a note of it, and so does the Clerk. The question is then readdressed to the proper Department. In 1930 the Prime Minister, Sir Richard Squires, pointed out to a member that Ministers did not answer questions themselves, but that they were answered by Civil Servants, and that a Minister, having no reason to question their veracity, merely read out the answers. So if an answer was not correct, while the Minister was not responsible, yet he would see that the correction was made.[16] This would not be considered a valid excuse for a member who gave the House wrong information.

It is the inherent right of every individual in the land, however humble, to pursue through his member of Parliament a grievance against any injustice of the Government. Usually such cases are settled by the member through correspondence with a Government Department or in conversation with a Minister, but failing success by these means, it was always possible to pursue it further at Question time. So we find questions like this in Hansard: "Mr. Speaker, I should like to ask the Minister for Posts and Telegraphs a question. Why was the postmistress at Squid

15 May, op. cit. Pp. 338-348.
16 Ibid. 1930.

Tickle dismissed?"[17] Sometimes a member would not wait for his protege to be dismissed, but if he had some reason to think that he or she was going to be dismissed, he would ask a question. We find this one in 1918: "Is the daughter of Thomas Thistle, who is operator at King's Point, going to be dismissed?"[18] Much time was wasted in answering questions like these. The question: "Why was Mr. Fitzgerald, late inspector of pickled fish, dismissed from his office?" touched off a debate which lasted for nearly an hour, judging by the amount of space it took up in Hansard.[19] As Herbert Morrison points out in his book Government and Parliament, the opportunities for parliamentary questions are very wide".[20]

Some questions are ridiculous and a waste of time, yet members feel that they ought to have the right to ask them if Parliamentary democracy is to be a live and vital force. A Government must be prepared when they take an action to answer questions on that action. Question time is one of the most effective ways by which Parliament manages to exercise some form of control over the Executive. A question period is to be found in every type of Parliament in the Commonwealth.[21] In deciding whether a question is in order or not, two concepts are clear; the question must not give rise to a debate, the question must be of interest

[17] House of Assembly Debates, 1920. p. 369.
[18] Ibid, 1918. p. 162.
[19] Ibid, 1921. p. 562.
[20] Morrison, Government and Parliament. p. 261.
[21] Lord Campion, op. cit. p. 146.

to the other members of the House. A question must seek for information or press for action within a Minister's responsibility. It must not demand from the Minister his opinion. A question should not be argumentative, or contain insinuations or innuendoes.[22] A member must himself assume responsibility for the accuracy of the facts contained in his question. Rumours and newspaper reports are in themselves insufficient basis for a question. If information sought has already been published, the question is inadmissible.[23]

All questions must be on matters for which the Government is responsible. If a question concerns a matter that comes within the scope of the Federal Government it is out of order in the House of Assembly. A question must not ask one member to influence the actions of another, although the Prime Minister could be asked to give directions about the allotment of ministerial duties and responsibilities.[24]

The Speaker will not allow questions that are of excessive length. The limit is usually about seven or eight lines, or about seventy or eighty words.[25] There are certain persons whose actions cannot be called in question: the Sovereign, the Governor General, the Lieutenant Governor, judges and members of Parliament themselves. A Standing Order of the House prohibits asking the Speaker questions.[26]

22 Beauchesne, Parliamentary Rules and Forms, p. 147.
23 Ibid, p. 152.
24 Lord Campion, op. cit. p. 152.
25 Bourinot, Parliamentary Procedure, p. 314.
26 Standing Order 26.

The Clerk scrutinizes all questions to see if they conform to the rules of order. If a question is not in order, the Clerk will consult with the member and advise him to modify it. A member need not accept the advice, and can ask for the Speaker's ruling.[27] This is very rarely done - perhaps once a session at most. At Westminster a question may be sent by a member through the post to the Clerk.[28] This would be most unusual in Newfoundland, and there are Speaker's rulings on record stating that questions must be asked personally by members in the House.

After a question has been asked and answered, supplementary questions are sometimes asked. Strictly speaking all supplementary questions are irregular, and they are only permitted in order to clarify answers.[29] There is a tendency to allow these questions to take up more and more time, but Speakers everywhere are opposed to the practice. They find them wasteful and troublesome, and tending to lead the House into aimless debates, yet the practice of asking supplementary questions has become so strongly entrenched that Speakers cannot refuse to allow them. They permit them reluctantly, hoping that members will keep within the rules.

[27] Lord Campion. op. cit. p. 149.
[28] Ibid, p. 148.
[29] Beauchesne, op. cit. p. 149.

On February 2nd, 1960, Mr. Speaker Michener had this to say in the Canadian House of Commons on supplementary questions: "I should like to say a further word about the form of questions put at this time of the day. I do not wish to mention the subject matter of the questions, but to speak on the form, and to remind honourable members that both the question and answer are subject to Standing Order 39 which reads in part as follows: 'In putting any such question, or in replying to the same, no argument or opinion is to be offered, nor any facts stated, except so far as may be necessary to explain the same, and in answering any such question, the matter to which the same refers shall not be debated'." Mr. Michener goes on to say: "There is never any difficulty with questions which are put on the Order Paper because they are written out and prepared with some care, but with respect to supplementary questions, and their replies, the Speaker is in the unfortunate position of having to decide on the spur of the moment whether or not the question, or the answer goes beyond what the proper practice permits."[30] This is an excellent summing up of the position most presiding officers would take regarding the supplementary question.

[30] Canadian House of Commons Debates, 1960. Pp. 611-12.

CHAPTER IX

COMMITTEES

The principle underlying the Committee system is that of relieving the House of functions which in its opinion can be more conveniently and appropriately discharged by Committees than by the House itself. Three kinds of Committees are known to Parliament: Committees of the Whole; Special Committees; and Joint Committees. The last applies only to a bicameral Parliament.

Committees of the Whole are composed of all the members, and sit in the House itself, with the Chairman of Committees instead of the Speaker presiding. Special Committees fall into two classes: Standing Commitees, appointed at the commencement of each session; and Committees appointed when required to enquire into and report on matters referred to them by the House, and relating to special fixed subjects. In the House of Commons of Canada there are eight Standing Committees,[1] but the House of Assembly of Newfoundland manages to get along with four.[2] These are: Committee on Privileges and Elections; on Standing Orders and the Library; on

[1] Munro., The Constitution of Canada. p. 155.
[2] Standing Order 88.

Miscellaneous and Private Bills; and on Municipal Affairs. Other Committees are set up as and when needed. A Select Committee considering Private Bills can examine witnesses under oath.[3] The House of Assembly still maintains the old English rule that a member opposed to the principle of a Bill cannot serve on a Select Committee to which the Bill is referred.[4]

Joint Committees can only exist in a bicameral Parliament, since they are appointed by both Houses.[5] In Newfoundland, the practice used to be for each House to appoint a number of members (they were called managers at first), to meet with a similar number appointed by the other House to consider a special subject. Each part of the Committee would then inform its House by a messenger what it had done. The Committee would being in a report embodying its recommendation to its House. There are many examples both in the early days of Representative Government, and of Responsible Government, of Joint Committees of the House of Assembly and Legislative Council meeting together and bringing in reports. They also appointed a Joint Committee to manage the Library.

[3] Standing Order 69.
[4] Ibid, 85.
[5] Munro. op. cit. p. 156.

There are two main types of Committees, those created by the Standing Orders, and those created as and when needed by a motion. This is the usual practice in a large House. In a small House, the Speaker often appoints the members of a Select Committee. On April 8th, 1951, no less than three Select Committees, to consider various Private Bills, were named by the Speaker.[6] When the House set up a Committee of Privilege on April 20th, 1954, to consider a complaint which a member brought against a newspaper, the Premier seconded by the Leader of the Opposition selected the five members who were to constitute this Committee.[7]

The House not only sets up Committees but also lays down their terms of reference. A Committee cannot go outside these terms. In a Committee on a Bill, the Bill itself constitutes the terms of reference.[8] Whenever the House sets up a Committee, it expects that Committee to produce a report, and only one report.[9] But although the Select Committee set up in 1949 to consider the Bill to incorporate the Certified Public Accountants recommended the Bill to the House, the Leader of the Opposition brought in a minority report.[10]

6 Journals of the House of Assembly, 1951. p. 30.
7 [illegible]. 1954. p. 23
8 Lord Campion, Procedure of the House of Commons, p. 247.
9 Beauchesne, op. cit. p. 359.
10 Journals of the House of Assembly 1949. p. 115.

After the report of a Committee has been made, it is entirely at the discretion of the House whether it will take any action. At Westminster and Ottawa, Committees play an important part, and not only do work which the House is unsuited to do, but take some of the load of business from the shoulders of the House.

The House of Assembly consists of its thirty-six members, with the Speaker in the Chair. The Committee of the Whole House also consists of its thirty-six members, but with the Chairman of Committees in the Chair. In present day practice the Speaker does not attend this Committee, although it was usual until 1933 for the Speaker to speak in Committee of the Whole, if a matter concerning his District came before it.

The Committee of the Whole was unknown in Parliament until the seventeenth century, when the House was endeavouring to establish its independence. One special concern was to prevent Committees from being dominated by the comparatively few members of the Sovereign's Party. They did this by convening the Committee of the Whole House, and excluding the Speaker

who at that time was regarded as the sovereign's spy. The battle for the independence of the House has long since been won, but it was found that the Committees of the Whole had become so embedded in Parliamentary procedure that they could not be dispensed with.[11] The Committee of Supply is a Committee of the Whole House which considers the estimates for the expenditures of the next year and votes the money. After this has been done the Committee of Ways and Means authorizes the imposition of taxes, and passes a resolution that the money voted shall issue out of the Consolidated Fund. The amount to be paid by the various departments is now authorized by the Appropriation Act.

The size of a Committee is often relative to the size of the Parliament. At Westminster a Committee of fifteem members is considered small. In the House of Assembly the usual Committee consists of from four to six members in Newfoundland.

An ordinary public Bill is always referred to the Committee of the Whole House. The Appropriation Bill is not since the Estimates are carefully examined, and fully debated in the Committee of Supply. It is the rule for

[11] Lord Campion, op. cit. p. 43

this Bill to receive its three successive readings, immediately the Committee on Supply recommends it to the House. In some cases, where a Bill was founded on resolutions passed in Committee of the Whole, the House instead of recommitting it gives it thrice successive readings.[12] When the House is going into Committee on a Bill the procedure is: The Speaker calls the item on the order paper and if it is desired to have any instructions given to the Committee, a motion to that effect is made, i.e., that the House go into Committee of the Whole to consider Bill number 49. The Speaker puts the question, "that I do now leave the Chair". When the House is in Committee the Mace is placed under the Table, and the Chairman of Committees takes the Chair at the head of the Treasury Table. Before there was a permanent Chairman of Committees the Speaker would call on any member to take the Chair.[13] He does this now only when the Chairman of Committees is absent. On August 4th, 1894, the Speaker called another member to the Chair, although the Chairman of Committees was present. When this was brought to his attention, he replied that the House might at any time elect as Chairman any other than the person called by the Speaker, and quoted May's Parliamentary Practice in support of his ruling. He then

[12] Standing Orders 1952. p. 34
[13] Beauchesne, op. cit. p. 195.

agreed to call the usual Chairman of Committees, but upon motion the first member the Speaker had called was elected to the Chair.[14] No select Committee may consist of more than seven members.[15] If it is proposed to add or substitute members to a Committee, notice of motion must be given, and this notice must name the members to be added or substituted. A majority of the members of a Special Committee constitute a quorum.[16] The Select Committee appointed to draw up the Address in Reply to the Speech from the Throne may be appointed without notice.[17] Early each session the House appoints a Nominating Committee of five members on motion of the Leader of the Government. Its duty is to prepare a list of members to form the Standing Committees. All other Committees are appointed by the Speaker when needed.[18]

It used to be the custom for the House of Assembly to go into Committee of the Whole on Ways and Means, for the Finance Minister to deliver his Budget Speech. In 1931 John Puddester, at that time Chairman of Committees, suggested that the Budget Speech should be delivered to the House, and not in Committee. Mr. Puddester's suggestion, however, was not taken.[19] Since 1949 this has been the practice.

14 Journals of the House of Assembly, 1894. p. 51.
15 Standing Order 84.
16 Ibid, 86.
17 Ibid, 87.
18 Ibid, 88.
19 Debates of the House of Assembly, 1931. p. 234.

The Journal for 1956 states: "On motion that the House resolve itself into a Committee of Ways and Means, the Honourable the Minister of Finance delivered the Budget Speech."[20]

It is sometimes very difficult for the Chairman of Committees to keep order, because the rules of the House are relaxed, members are able to speak more than once to a motion, and a motion does not need to be seconded. A disturbance took place on April 28th, 1931, and the Speaker had to take the Chair. The disturbance was caused by a quarrel between two members of the Cabinet, the Minister of Marine and Fisheries, and the Minister of Public Works over the amounts voted to Public Works, and the high salaries paid to some of the Civil Servants there.[21] On another occasion, the Chairman was asked to rise the Committee at 6.30, according to the Rules of the House. He did not do so, but allowed the member who was speaking to continue. For this he was bitterly attacked by certain members.[22]

Should a member raise a question of privilege in Committee, the Chairman will refuse to entertain it, and

20 Journals of the House of Assembly, 1956. p. 35.
21 Debates of the House of Assembly, 1931. p. 309.
22 Ibid, 1911. p. 157.

will tell him that it should be brought up when the Speaker is in the Chair.[23]

The following rules relating to Committees have been in use in the House of Assembly since 1855: the rules of the House shall be observed in Committee of the Whole, so far as they may be applicable, except the rule limiting the times of speaking; in forming a Committee of the Whole House, before leaving the Chair the Speaker shall appoint a Chairman to preside, subject to appeal to the House; the majority of a Committee constitutes a quorum competent to proceed to business; in the Committee of the Whole, a motion that the Chairman leave the Chair is in order; when a question of order or privilege arises the Speaker shall resume the Chair, without discussion or vote of the Committee; also in a Committee of the Whole all motions relating to the matter under consideration should be put in the order in which they are proposed. In a Committee of the Whole House a member may at any time previous to a Bill being passed, move to have any clause that has been passed reconsidered. Private Bills should be brought before a Select Committee, and this Committee on reporting the Bill should state whether the

[23] Ibid, 1927. p. 655.

parties concerned have given their consent to the satisfaction of the Committee. Another Standing Order says that all Committees which meet on Private Bills require all persons whose interest or property will be effected by the Bill to appear before them to give their consent. If they cannot personally attend, they may send their consent in writing. When any Committee is appointed on a Private Bill, notice of the appointment must be set up in the lobby of this House twelve days before the meeting of the Committee.[24]

One of the most important Committees of the House is the Internal Economy Commission, which regulates the finance and business of the House. When Newfoundland had a Legislative Council, the Internal Economy Commission was a joint Committee appointed by the Governor and consisted of the President and two members of the Legislative Council, and the Speaker and two members of the House of Assembly.[25] Today the Lieutenant-Governor-in-Council appoints the Commission of Internal Economy and it consists of the Speaker, the Chairman of Committees, and three members of the Executive Council, usually these are: The Premier, the Attorney General, and the Minister of Finance.[26] The

[24] Little. The Constitution of Newfoundland, p. 84.
[25] Journals of the House of Assembly,
[26] Ibid, 1954. p. 20.

Internal Economy Commission approves of the estimate of the money to be provided by the Legislature for payment of indemnity to members, and salaries allowances and contingent expenses of the House. It also appoints the doorkeepers, pages, messengers and other subordinate officers. The Committee provides for the reporting and publishing of Hansard. It is a disciplinary Committee to consider the misconduct or unfitness of any of the officials of the House, and may suspend or dismiss any official, guilty of misconduct, even if appointed by the Crown, and may report such suspension to the Lieutenant-Governor in Council. If the official was not appointed by the Crown, the Speaker may suspend him, and report it to the Commission of Internal Economy. The Speaker is the Chairman, and Section 2 of the Internal Economy Commission Act says that the person who fills the office of Speaker, at the time of the dissolution of the Legislature, shall continue until another is chosen in his place by the new Legislature.[26] In this way the Speaker is a link between Parliaments.

26 The Revised Statutes of Newfoundland 1952, p. 117.

CHAPTER X.

PARLIAMENT AND THE PRESS

The official report of the debates of the House of Assembly is prepared by the House of Assembly reporting staff, and is printed and published by the Guardian Press at their office in St. John's. It is issued under the title, Parliamentary Debates, but as in Britain is always referred to as Hansard, and by association, the reporting staff itself is generally known as the Hansard staff. The name was derived from that of Thomas Curzon Hansard, a printer, who in 1803 first printed the Parliamentary Debates of the British House of Commons.[1] It was not until 1909 that the British House of Commons established an official reporting staff, appointed by, and responsible to the Speaker.[2] This was the date that the House of Assembly in Newfoundland began publishing verbatim reports of its proceedings. Until that time it had contented itself with printing its Journals. The Journals recorded the business of the House, such as the motions and amendments, the votes and how the members voted, but they did not report any of the speeches, even in digest form.

The Canadian House of Commons issues a daily account of its proceedings, as well as a number of bound annual

[1] Wilding and Laundy, An Encyclopedia of Parliament. p. 259.
[2] Ibid, p. 258.

reports, but in Newfoundland the Hansard reports are bound and issued annually. These are usually three years later because of printing difficulties. The Hansard staff consists of the Editor of Debates, one Stenotypist who sits in the House and takes down the speeches, and two stenographers who type them afterwards. The Stenotypist has a chair at the end of the room, not far from the Speaker, the position from which it is easiest to hear and follow the proceedings. After she has typed her notes, they are passed to the Editor of Debates for correction. They are then retyped by the stenographers before being sent to the Guardian Press to be printed.

The question is sometimes asked whether the Hansard report is, in fact, a verbatim report; that is, whether it reproduces, without omission or alteration, every word uttered by a speaker in the course of his speech. In this, as in many other matters, the House of Assembly follows the practice of the British House of Commons. In the current edition of May's Parliamentary Practice, the official report of the Commons is described in these terms: "It is a full report, in the first person, of all speakers alike. A full report being defined "as one which, though not strictly verbatim, is substantially verbatim report with repetitions and redundancies omitted, and any obvious mistakes corrected, but which, on the other hand, leaves out nothing which adds

to the meaning of the speech or illustrates the argument."[3]

The Editor of Debates does not give out any speech to a member, or anyone else, without the consent of the Speaker. The successful production of Hansard is made possible only by the co-operation of the skilled and experienced staff in the House of Assembly, and at the printing office, who work with the same impartial efficiency, whether they are dealing with a statement from the Prime Minister, or from a back bencher. Hansard is prepared and printed at the direction of the House itself, so that there may be a complete, accurate and impartial record of what has been said in Parliament. Sometimes when there is a difference of opinion in the House as to the exact words which have been said, the Hansard reporter may be asked to read back her transcribed notes. There has been at least one occasion when a member did not wish this to be done, although he had risen to a point of order, and declared that he had been misquoted.[4]

Hansard has never been popular with some members. In 1928 Mr. Monroe, the Leader of the Opposition, said that he would like to do away with Hansard altogether.[5] There are some gaps in it. The House of Assembly proceedings

3 May, Parliamentary Practice, p. 255.
4 House of Assembly Debates, 1928. p. 622
5 Ibid, 1928. p. 325.

in 1919 lasted from April 2nd to June 5th, but for some reason, the proceedings were not reported after April 28th. Even the report of the Budget Speech in the official printed Hansard of 1919 states that it was copied from a newspaper.[6] Strangely enough, there is not a single reference to Hansard in the Standing Orders of the House of Assembly.

The first accounts of happenings in the House of Assembly, were published in the local newspapers. The Royal Gazette on January 8th, 1833, carried a full account of the opening of the first House of Assembly on January 1st. In 1878, Robert J. Kent, the Leader of the Opposition, asked for the appointment of a Committee of the House to make arrangements for the publication of the debates of the House in a newspaper to be named by the members of the Opposition.[7] The Government already had a Conservative newspaper which printed the reports of the House, probably slanting it in their direction. This, of course, would upset some members. In 1881, Joseph English petitioned the House for permission to publish the debates of that session in his paper, The Terra Nova Advocate.[8] But the newspapers had their enemies. On April 9th, in 1885, the Solicitor General moved: "that the publication of the debates in The Advocate and Patriot newspapers, is of no advantage to the public and

6 Ibid, 1919.
7 Journals of the House of Assembly, 1878. p. 11.
8 Ibid, 1881. p. 14.

unnecessary." Although supported by some Government members, this resolution was defeated with only eleven for it, and seventeen against.[9] At this time, newspapers were each paid $300.00 each session by the House, "for copying debates".[10]

The people of Newfoundland took an interest in Government even before Representative Government was granted. On November 30th, 1830, The Royal Gazette, published in St. John's, reported the opening of the Nova Scotia House of Assembly in full, and gave the Throne Speech verbatim. The proceedings of the British House of Commons and House of Lords were also well covered at this time.

Members realized very early that the proceedings of Parliament are of much interest to the electorate and they made friends with the newspapermen. The newspapers took sides, and this led to a long series of complaints in the House. On March 5th, 1907, the Premier rose to a question of privilege and explained that an article in The Daily News had falsely charged him with a statement during the debate on the previous Friday. He was reported as having said that the financial condition of the commercial community of St. John's was unsafe. He claimed that he had not said anything of the kind. The House contented itself with ordering

9 Ibid, 1885. p.92.
10 Ibid, p. 143.

that the explanation of the Premier should receive the fullest publicity.[11] Another time a member complained in the House that a newspaper had stated that he had been told how long he should speak and what he must say.[12]

When the Government and the Opposition began publishing their own newspapers they soon degenerated into propaganda organs, and the fur began to fly in the House of Assembly. We read in the 1922 Hansard: "And then again, Mr. Chairman, when one has a word or two to say in this House, he is held up to ridicule in some filthy rag of a newspaper. I noticed that in yesterday's edition of The Advocate some penny-liner, scallyway and character assassin was trying to do me an injury. I do not know, Mr. Chairman, whether you were a party to it or not, although I know you are interested in that newspaper." The Chairman did not reply, and the House took no notice of the complaint.[13] In 1914 The Daily Mail charged that the Finance Minister had used the knowledge that increased duties would be placed on certain articles to his own advantage as a businessman. This article was brought to the attention of the House by the Leader of the Opposition, who said that the charge ought to be fully investigated by the House and that, if it were

11 Journals of the House of Assembly, 1907. p. 31.
12 House of Assembly Debates, 1917. p. 232.
13 Ibid, 1922. p. 334.

proven untrue, the paper "should be dealt with by the House". The Prime Minister agreed that the House should be the guardian of its own honour, but pointed out that the Finance Minister was going to issue a writ for libel against the paper, and that referring the matter to a Committee of Privilege of the House might prejudice his case. The Leader of the Opposition persisted in its opinion that the House should deal with the matter,but the Prime Minister retorted that he did not think that a mere suspicion against a member affected the rights and privileges of the House.[14]

The same year a member produced a copy of The Fishermen's Advocate in the House, and showing an article to W. F.Coaker, asked him if he had written it. Mr. Coaker not only proudly admitted authorship, but took advantage of the situation to quote it in full: "This country has always been maintained by you (he is speaking to the workers), you pay the salaries of the hose of employees at St. John's, and in the outports. From your earnings, bishops, priests, ministers, doctors, lawyers, politicians, bookkeepers, clerks and tradesmen of all descriptions derive their incomes. You are five to one, yet you have always permitted the one to do with you as

[14] Ibid, 1914. Pp. 767-76.

it would. Out of fifty thousand voters in the colony, you number forty thousand. Why then do you permit ten thousand to handle you as though you were something or nothing? Be men, you have been fools long enough. Take the power lying dormant in you and shake off these rascals who now control you, as you would a dog, if discovered killing a sheep." "Yes", said Mr. Coaker concluding, "I am very pleased with this little article. I am proud of it."[15] In 1912 the Government took eighteen libel actions against an Opposition paper, The Advocate.[16] No action, however, was at any time taken in the House of Assembly against the Editor of a paper. During the First World War, the Government closed the offices of The Plain Dealer, because it opposed the Government's Conscription Laws.[17] The House of Assembly of Newfoundland, however, never did take the drastic action which was taken by the House of Assembly of Nova Scotia, when in 1914 it committed the Editor of a newspaper called The Herald and Evening Mail to imprisonment for forty-eight hours for contempt of the House.[18] In 1921 the House condemned an article which appeared in The Daily Star newspaper of April 19th,[19] and in 1930 the Speaker informed the House that it could pass

15 Ibid, p. 324.
16 The Advocate, Jan. 27, 1912.
17 House of Assembly Debates 1917, p. 69.
18 J. M. Beck, Dalhousie Review, Winter 1956, Pp. 351-61.
19 Ibid, 1921. p. 96.

a vote of censure upon a newspaper guilty of publishing inaccurately the proceedings of the House. It did not do so.[20] Presumably the proceedings had been reported inaccurately. There have been several complaints against newspapers since the House was restored in 1949. On Feb. 15th, 1950, a member raised a point of privilege on articles in The Evening Telegram and The Sunday Herald. He tabled copies of these papers.[21] The matter was referred to a Committee of Privilege, but this Committee recommended that no action be taken.[22] Several complaints about newspapers have been raised in the House since that time, but no one has made a motion of censure, nor asked the House to refer a complaint to a Committee of Privilege of the House.

Newspapers are not free to publish any part of the proceedings, which by order of the House has been expunged; nor can they report the proceedings of a Committee of the House, or resolutions, questions or motions before they are brought before the House; nor will freedom of speech within the walls of Parliament protect a member who publishes a speech containing defamatory matter, for his published speech is unconnected with any proceedings in Parliament.[23]

It is the view of most members today that the press

[20] Ibid, 1930. p. 336.
[21] Journals of the House of Assembly, 1950. p. 5.
[22] Ibid, p. 11.
[23] May, Parliamentary Practice, p. 55.

keeps both the people and Parliament awake and informed. It also helps citizens to make up their minds about rival policies and programmes. There are bound to be clashes between Parliament and press, because as Herbert Morrisson wrote in his book Government and Parliament, Parliament is jealous of its rights. In spite of this most parliamentarians realize today that the work of Parliament would be incomplete without the press. In Newfoundland as in other parliaments, seats and offices are provided for reporters in the Legislative Buildings. Today members realize that the objectives of an elected Parliament are defeated if the press has not the right to publish its proceedings. But on the other hand, the publication of these debates must be fair and accurate.

CHAPTER XI

PRIVILEGE

Parliamentary privilege means the special rights attaching to Parliament , its members, and others, necessary for the discharge of the functions of Parliament without hindrance and without fear of prosecutions.

At the beginning of every new Parliament, immediately after the Speaker has received the Royal approval of his election from the Lieutenant Governor, he asks for four things: (1) freedom of access; (2) the most favourable interpretation; (3) freedom from arrest; (4) freedom of speech. But these are not all of the privileges which Parliament claims. There are four other privileges which are not demanded, but which Parliament has always claimed for itself. These are: (5) privacy of debate; (a) exclusion of strangers, (b) restriction of the publications of debates; (6) regulation of the constitution of the House, (a) by enforcing legal disqualifications, (b) by expelling unfit members, (c) by determining election petitions; (7) exclusive cognizance of matters arising within the House; (8) punishment for breach of privilege.[1] Since Anson laid down the foregoing, as being the privileges of Parliament in 1911,

[1] Sir W. Anson, Law and Custom of the Constitution, Vol. I, p. 151.

there have been some changes. Freedom of access is now thought to be obsolete. Parliament itself by legislation has made changes in the regulation of some of its constitutional privileges, for example, today in Newfoundland election petitions are determined by the courts and not by the Legislature.

Privilege exists chiefly for the maintenance of the dignity of the House.[2] In view of the smallness of the legislature, it is no wonder that the House of Assembly of Newfoundland, like other Provincial Parliaments, has had to make legislation to protect some of its privileges from encroachment.

The Authorities on Constitutional Law - Coke, Blackstone and Dicey, have all advanced the claim of parliamentary supremacy. Coke said: "Of the power and jurisdiction of Parliament, for the making of laws, it is so transcendent and absolute, as it cannot be confined either for causes of persons within any bounds".[3] Blackstone wrote: "An Act of Parliament is the exercise of the highest authority that this kingdom acknowledges upon earth, and it cannot be altered, amended, repealed, but by the same authority of Parliament."[4] Dicey laid down this principle: "Parliamentary sovereignty means neither more nor less than this; that Parliament thus defined, has under the

2 Ibid, p. 141.
3 Allen, Law in the Making, p. 367.
4 Ibid,.

English constitution the right to make or unmake any law whatever, and further, that no person or body is recognized by the law of England, as having a right to override, or to set aside, the legislation of Parliament."[5]

The request by the House for a favourable construction of its proceedings is generally held to be made merely by courtesy, although this privilege may have seemed of great importance to members in the reign of Queen Elizabeth, and several of her successors. The claim of freedom of access to the Royal person is not for the access of members as individuals but for the House as a body headed by the Speaker and today is only for the purpose of presenting an address.[6]

Freedom from arrest is now no very important matter, because this immunity does not extend to imprisonment on a charge of an indictable offence. Until comparatively recent times, in view of the free use of imprisonment which the law made in civil cases, the privilege was one of great importance, and necessary to the discharge of its functions by the House. It is a right of great antiquity. It has been traced back by some writers to pre-Norman times, and it exists in many foreign legislatures.[7] In its present

[5] Dicey, Law of the Constitution, p. 469. It should be noted that Provincial Parliaments are limited by the British North America Act 1867.

[6] Lord Campion, Procedure of the House of Commons, p. 63.

[7] Ibid.

form, it protects members from arrest in civil cases for the duration of the session, and in England, for a period of forty days.[8] No member of the House of Assembly of Newfoundland is liable to any civil action, or prosecution or arrest, imprisonment, or damages, by reason of any matter or thing brought by him, by petition, Bill, resoltuion, motion, or otherwise, or said by him before the House.[9] This relates only to freedom of members from arrest, by reason og things said, or done by him, before the House, and does not protect him in civil matters, although should a member be arrested and imprisoned while the House was in session, it is likely the House would regard the arrest as a breach of privilege.[10] Beauchesne says that members of Parliament enjoy freedom from arrest. assault, insult, or menace in their coming and going from the House.

In the early House of Commons of England, privilege of speech was often challenged by the monarchs, but it was finally confirmed after the Revolution of 1688 by the Bill of Rights. This Bill declared "that freedom of speech and debates on proceedings in Parliament ought not to be

[8] Beauchesne, Parliamentary Rules and Forms, p.93.
[9] House of Assembly Act, Section 13.
[10] Beauchesne, op. cit. p. 103.

impeached or questioned in any court, or place out of Parliament."[11]

In 1837 Chief Justice Boulton instituted an action in the Supreme Court against three members of the House of Assembly for libel, because of statements they had made in the House. Shortly after on November 18th, the House passed this resolution: "Resolved, that all matters touching the privilege of the House of Assembly, are only triable before the House, and it is a high breach of the privilege of this House, to entertain or prosecute, either civilly or criminally, for, or on account of, any matter or thing done by order of the House, or any words spoken by the House; and that it is a breach of the privilege of this House to institute a suit in any court in Newfoundland on account of words spoken by any member in his place in the House, or to summon any officer of the House to give evidence."[12] The House sent this resolution to Governor Prescott, with a letter claiming that the most eminent judges had laid down the rule that a House of Commons is a Supreme Court, and is the judge of its own privilege and contempt. The House charged that Chief Justice Boulton's action against the three members, was made in order to impede the proceedings of the House, to obstruct the legitimate course of justice, and delay the punishment due to his offences.[13] This principle has now

[11] Wilding and Laundy, An Encyclopedia of Parliament, p. 454.
[12] Journals of the House of Assembly 1837, p. 360.
[13] Journals of the House of Assembly 1837, p. 336.

become law. Judge Boulton's case came before the Supreme Court, and was heard by the two assistant judges. The Chief Justice acted as Prosecutor, as well as Plaintiff. The action was thrown out of court on a legal technicality, the two judges claiming that without the Chief Justice the court was not properly constituted.[14]

The House of Assembly very early abrogated to itself the right to exclude strangers from its debates, and in its first session admitted only those to whom members gave tickets. This right was never challenged. Strangers have been excluded on many occasions, at the request of members, by the Speaker and by the Chairman of Committees. Standing Order 12 says that if any member takes notice that strangers are present, Mr. Speaker or the Chairman, as the case may be, must put the question, "that strangers be ordered to withdraw". There is to be no debate or amendment. This Standing Order also gives the Speaker and the Chairman the right to order the withdrawal of strangers.[15] This follows the British practice. But the Speaker of the House of Commons of Canada does not have the right to exclude strangers, except in cases of misconduct.[16]

Every House reserves to itself the right to publish its own debates, and to restrict the publication of debate.

[14] J.G. Higgins, The Story of Law in Newfoundland, p. 23.
[15] Journals of the House of Assembly, 1833. p. 13.
[16] Beauchesne, Parliamentary Rules and Forms, 4th Ed., p. 65.

Newspaper reporters, freely publish the proceedings of the House, but do so as a privilege, and not as a right.

The House of Assembly has always claimed the right to regulate its own constitution, and to suspend, or even to expel, unfit members, and until 1887 to determine election petitions. In 1861 immediately after the election of the Speaker, George Hogsett and Charles Furey, who claimed to be the elected members for Harbour Main took seats in the House. They refused to leave when ordered to do so, and had to be forcibly removed by the police. Later these gentlemen tendered certificates of a due return affirmed by two respected medical doctors, "and other respectable persons", to the commissioners appointed to swear in the members. But on motion of Mr. Hoyle, seconded by Mr. Walbanke, the members decided that they were not entitled to seats in the House.[17] The motion to exclude them was carried by a vote of fourteen to eleven.

On December 14th, 1860, the House received a petition from sixty-one electors of the District of Harbour Grace, praying that the election of James L. Prendergast for that District be set aside, because it was obtained "by illegal and outrageous means". The House postponed consideration of

[17] Journals of the House of Assembly 1861, p. 6.

the petition until the 25th of January. When the matter came up on that day, the Colonial Secretary moved that the House adjourn, "in order to afford the Speaker an opportunity to notify, in writing, all persons concerned, to attend at the Bar of the House". This motion was defeated. The doors were then locked, and the House selected a Committee to consider the matter immediately. The method of selecting this Committee is interesting. First, the Clerk drew the names of eleven members from the ballot boxes. The Colonial Secretary was nominated to act on this Committee as the agent of Mr. Prendergast, and Stephen Randell was the nominee of the petitioners. This Committee of thirteen, accompanied by the Clerk of the House, then retired to the Committee Room. The Colonial Secretary and Mr. Randell now struck off three names each from the Committee. This left Messrs. Knight, Garland, Nowlan, Rodgerson, E. D. Shea, and the agents. These were then sworn in by the Clerk, "to try the matter".[18]

A Select Committee of the House had then, as it has now, the power to summon witnesses and to hear evidence. The Select Committee appointed to enquire into the contested election for the District of Harbour Main in 1861 summoned more than thirty persons and heard their evidence.[19] In 1887

18 Journals of the House of Assembly 1860, Pp. 21-36.
19 Journals of the House of Assembly 1861, Appendix, Pp. 51-124.

the House of Assembly passed a Bill, which gave to the Supreme Court the right to try contested elections. It is ironical that only six years later in a General Election, thirteen members, including the Premier, were unseated and disqualified under this Act by the Supreme Court.[20]

The early House of Assembly thought to counterbalance the weakness of its position by demanding everything included in the nebulous term, "Parliamentary Privilege". Very conscious of its own dignity, it triumphed over the Legislative Council in maintaining its right to pass Revenue Bills, and over the Governor in its claim to appoint its own officers. In an over-zealous attempt to maintain its dignity and protect its members, it became embroiled in a quarrel, which led to the important constitutional case of Kielly vs. Carson. On the 6th of August, 1838, John Kent, a member for St. John's, complained in the House that Dr. Kielly, a St. John's physician, had threatened and insulted him that morning because of statements he had made in the House about the St. John's General Hospital.[21] He now claimed the protection of the House. At once the House resolved itself into a Committee of Privilege. This Committee examined two witnesses to the quarrel, Patrick Byrne and Richard Butt. Both men testified that Dr. Kielly had called Kent a puppy, and had threatened

[20] Prowse, A History of Newfoundland, p. 661.
[21] Journals of the House of Assembly 1838. p. 60.

to pull his nose. Butt testified too that Dr. Kielly had told Kent that his privileges would not protect him. This was enough. The Committee immediately rose, and reported to the House that the conduct of Dr. Kielly was "a gross breach of the privileges of this House", and that if allowed to pass unnoticed, it would be a sufficient cause of "deterring members from acting in the independent manner, so necessary for a free assembly". The Speaker was authorized to issue his warrant to the Sergeant-at-Arms, to arrest Dr. Kielly, and bring him before the Bar of the House.

The following day the bold Dr. Kielly appeared at the Bar in the custody of the Sergeant-at-Arms. The Clerk read to him the evidence of the witnesses, and the report of the Committee on Privileges. The Speaker then gave him a chance to explain. But in the course of his explanation, the peppery Kielly lost his temper and called John Kent a liar, a coward and "many contumelious epithets".[22] The House ordered the angry doctor to withdraw, and then passed a resolution that he should continue in the custody of the Sergeant-at-Arms "until further orders from the House". An affronted member now moved that Doctor Kielly be sent to gaol until "He do make such apology in manner and form as

[22] Ibid, p. 67.

the House shall dictate". This motion did not pass. On August 9th the House decided to discharge Doctor Kielly, if he would pay all expenses and apologize. But when he was again brought to the Bar of the House, the stubborn doctor again refused to apologize. The harassed House then sent him to gaol. Two days later the House requested Mr. Speaker to order the High Sheriff to bring "to the Bar of this House, the body of Edward Kielly". When the frightened sheriff appeared, he told the House that he had, by order of a writ of "Habeas Corpus" brought Dr. Kielly before Judge Lilly who had then discharged him. He produced a copy of the Judge's order, which read: "The prisoner, having been brought before me on a writ, and after perusing the return of the sheriff hereto, I am of the opinion that the process by which the prisoner is held in custody is void, and I do now order him, therefore, to be discharged. Signed, George Lilly, Assistant Judge."[23] The House did not allow such a defiance of its authority to go unchallenged. It immediately resolved itself into a Committee of Privilege, and after considering the insult to its provileges, the Committee recommended that the Judge and the Sheriff both be imprisoned, "for acting in gross contempt of the Speaker's warrant, and a violation of the privileges of the Commons,

[23] Ibid, p. 73.

the House of Assembly."[24] On the morning of August 13th, 1838, the citizens of St. John's were treated to the spectacle of venerable judge of the Supreme Court, being marched through the town to a common gaol by the Sergeant-at-Arms bearing the Mace. When the House met in the afternoon, the Sergeant-at-Arms informed the members that Judge Lilly and the High Sheriff were both in gaol, but that he had been unable to find Dr. Kielly. While the members were trying to determine what action they ought to take next, a letter from the Governor was brought in. In this the Governor informed the Speaker that he was coming down immediately to the Council Chamber to prorogue the General Assembly. The House then went into Committee of Privilege to decide what it should do. This Committee presented a resolution to the House setting forth what had happened and stating that prorogation at this time would "leave the public to conclude that the House of Assembly had acted unconstitutionally". The Committee also recommended that a deputation be sent to Canada, to lay the whole matter before the Earl of Durham, "Lord High Commander of Her Majesty's North American colonies", and to ask him to suspent Judge Lilly and High Sheriff Garrett, and to enquire into the action of the Governor in proroguing the House of Assembly "in the midst of the business of the colony".

[24] We note here the word "Commons". Apparently the House of Assembly was trying to identify itself with the British House of Commons.

They elected the Speaker, the doughty Dr. William Carson, and Peter Browne, one of the members for St. John's, as the delegates. The House then adopted a long address to the Earl of Durham, in which they set forth their grievances, and described Judge Lilly as "a man whose habits and education unfit him for the high situation of a judge". Another messenger now arrived from the Governor to say that he was prepared to pass the Revenue Bill, and that he requested that it be sent to him immediately for his signature. But the House was not going to be brow-beaten in this way. They sent back a reply that they could not comply with the Governor's message. The exasperated Governor immediately summoned the members to the Council Chamber, and prorogued the House. In his speech from the Throne, he stated frankly that he had prorogued the House in order to put a stop to these proceedings which he described as unsuited to the character and condition of the Colony. He said that the actions of the House of Assembly were calculated to subvert the respect which was due to the administrators of the laws in the exercise of their functions. With the House prorogued, the Judge and Sheriff were released from gaol.

The House of Assembly, jealous of its dignity, before prorogation passed a resolution refusing to receive Brian Robinson, the Chancellor of the Legislative Council, whose duty it was to bring down messages from the Council to the House, because he had offended against the privileges of the House by

acting as Legal Counsel for Dr. Kielly. When the letter containing this resolution was received in the Legislative Council, the members refused to acknowledge that Mr. Robinson had been guilty of any breach of privilege of the House of Assembly.[25]

The Supreme Court of Newfoundland later upheld the actions of the House of Assembly, but this decision was overruled by the Judicial Committee of the Privy Council which in 1842, in its judgement, declared that the privileges of the British House of Commons, of which the right to punish for contempt is one, belonging to it, "by virtue of the lex et consuetudo parliamenti", which is a law peculiar to, and inherent in, the two Houses of Parliament of the United Kingdon, and which is not transferred to Colonial Legislatures.[26]

The bold Dr. Kielly now became the hero of the Tories, and songs were sung in his honour.[27] The author remembers singing as a boy in Fortune Bay, once a Tory stronghold:

> "Did you ever see Dr. Kielly Oh?
> With his boots all polished and styly Oh?
> With his high cocked hat, and fiddle and bow,
> Did you ever see Dr. Kielly Oh?"

The debonaire doctor was not lacking in courage or optimism, for in 1843 he petitioned the Governor asking that all the costs incurred in the suit of Kielly vs. Carson be paid by the House of Assembly.[28] The House refused to pay these

25 Journals of the Legislative Council, 1838. p. 2.
26 Kielly vs. Carson, 4 Moo. PCC 63.
27 Prowse, History of Newfoundland, p. 446.
28 House of Assembly Journals, 1843. p. 111.

costs which amounted to £960.

It is only fair to say, in defence of the actions of the House of Assembly, that the Privy Council's ruling in 1842 was a reversal of its own judgement in the case of Beaumont vs. Barrett in 1836, which had upheld the right of Colonial Assemblies to punish for contempt.[29] Also, in the neighbouring Province of Nova Scotia, the assembly had long held fast to its right to punish and imprison people guilty of breaches of privilege. In 1757, the House of Assembly of Nova Scotia had arrested the Deputy Secretary of the Province for using, "very threatening and scandalous words against a member". In 1829 they had expelled a member, John A. Barry, and later when Barry published a letter in which he referred to the Committee of Privilege as a "privileged committee", the House had ordered him to be imprisoned for the remainder of the session. It is not strange that with these precedents of Nova Scotia, and the decision of the Privy Council in Beaumont vs. Barrett in front of them, that the members of the House of Assembly of Newfoundland had come to the conclusion that they had a right to imprison those who insulted and threatened members, and defied the authority of the House.

Kielly vs. Carson is an important case because it declares that Colonial Parliaments do not have the inherent

[29] 1 Moo PCC 69.

right to adjudicate upon and inflict punishment for contempt, that being a judicial, and not a legislative power, but only the self-preservative power of removing any immediate obstruction to its own proceedings. This principle was again declared by the Supreme Court of Canada in Landers vs. Woodworth in 1878.[30] In 1876 the Nova Scotia House determined to preserve its privileges passed an Act which not only provided privileges similar to those of the Canadian House of Commons, but created itself a Court of Record, competent to try and punish a comprehensive list of offences described in the Act as breaches of privilege. This Act was not disallowed by the Canadian House of Commons.

The Legislature of Newfoundland, in Section 11 of the House of Assembly Act, declared the following actions illegal: Assaulting members during a session; obstructing and threatening members; refusing to obey a rule or order of the House; offering bribes to members; interfering with officials of the House; or tampering with witnesses of the House or its Committees. Section 12 protects from damages persons who act on the authority of the House. Section 16 provides that persons found guilty of violating an Act are subject to a penalty of not more than $100.00 or to imprisonment not to exceed three months during the Session

[30] 2 Can. S.C.R. 158: 2 Cart. 220.

of the Legislature, as the House may determine. By this Act, the House constitutes itself a court competent to try and sentence persons whom it thinks guilty of infringing its privileges. But its authority lasts only during the session, for prorogation or dissolution of Parliament puts an end to the imprisonment of anyone it has sentenced.

For a hundred years, the House of Assembly battled with the Legislative Council over its right to initiate Money Bills and its refusal to acknowledge the Council's right to amend them. As late as 1926 the Speaker informed the House that the Legislative Council had amended a Bill, "An Act Respecting the Civil Service". He pointed out that this was a Money Bill, and that this amendment involved the privilege of the House. The Prime Minister, however, said that these amendments were not important, and the Bill was passed, "without prejudice to the House of Assembly".[31]

The right of the House to censure, reprimand, or even suspend its members for breaches of its privilege has been exercised many times, and has never been questioned. In 1834, the House even claimed to have the right to limit the movements of its members. It is recorded in the Journal for that year that it was ordered that the House be called on Wednesday, and that in the meantime, "no member do leave town without leave of the House."[32] The House does not claim to

[31] House of Assembly Debates, 1926. p. 575.
[32] Journals of the House of Assembly, 1834. p. 156.

have that privilege today for it would be too difficult to enforce.

There are many examples in the recorded debates of the House of members bringing what they considered to be breaches of privilege in the newspapers to the attention of the House, but usually they do not ask that any action be taken. On the first day of the session of 1950, however, a member tabled a copy of a newspaper, and moved that the House consider the articles a gross breach of privilege, in that it was a false and scandalous libel on a member of the House. The matter was referred to a Committee of Privilege which was immediately appointed. The Committee consisted of three members on the Government side of the House, the Leader of the Opposition, and another memver of the Opposition.[33] This Committee reported to the House on February 27th. The report, which was unanimous, stated that since the article complained of did not criticize the member for anything which he had done or said in the House, or for any action in connection with his duties as a member of the House, the House should not proceed further in the matter.[34]

It is usual now for a Committee of Privilege to be set up now as a Standing Committee very soon after the opening of the House. When a question of privilege is raised,

33 Journals of the House of Assembly, 1950. p. 5.
34 Ibid, p. 11.

it is given precedence over all other business,[35] but it is not referred to the Committee of Privilege automatically; it is only referred to that Committee on order of the House. The proceedings which follow upon a complaint by a member, alleging a breach of privilege vary according to whether the complaint is directed against another member, or an outsider, and whether or not it is founded upon a document. Complaints directed against a member, or founded upon a document, are considered in the House itself. If directed against a non-member, and not founded upon a document, the matter is usually referred to the Committee of Privilege. The House takes no action until this Committee has reported.[36]

John Pym once said that Parliament, without parliamentary liberty, is but a fair and plausible way into bondage.[37] In addition to maintaining liberty, every Parliament has the delicate task of preserving the rights and privileges of the House, without extending these privileges. Herbert Morrison says, "It is important to realize that the work privilege in this connection, has a relationship to the dignity, and free functioning of the House as a whole. It is not a question of the privilege of individual members, except so far as they ralate to the functioning of the House."[38]

35 Standing Order 15.
36 Wilding and Laundy, An Encyclopedia of Parliament, p. 456.
37 W. F. Dawson, The Development of Procedure in the House of Commons of Canada. Ch. 4.
38 Herbert Morrison, Government and Parliament, p. 147.

The desire not to extend the privileges of Parliament stems from a general feeling among members that the last thing they should do is to extend parliamentary privilege, in ways which would limit the civil and democratic rights of the people.

CHAPTER XII

THE EFFECT OF CONFEDERATION ON THE HOUSE

We saw in the first two chapters, that before February 1934, Newfoundland had a bicameral legislature, made up of the elected House of Assembly and the appointed Legislative Council. For the next fifteen years the Island was ruled by a Commission of Government of seven members, appointed by the Government of the United Kingdom, three of them Englishmen, and three Newfoundlanders, with the Governor as Chairman.

Parliamentary institutions were returned with the entry of Newfoundland into Confederation, two minutes before midnight, March 31st, 1949. It was then decided by the first Provincial Administration of Joseph R. Smallwood who had formed a Government on April 1st at the request of the new Lieutenant Governor, Sir Albert Walsh, that a unicameral legislature would best serve the Provincial interests.[1]

When the House of Assembly met on July the 13th, 1949, twenty-seven members took their seats, and on August 11th, the first member for Labrador, Harold Horwood, took his seat. In 1956 the House increased its membership to thirty-six. At that time the Cabinet consisted of fourteen members, so that in a small House the Government possessed great influence especially with a majority of thirty members.

[1] A. B. Perlin, The Story of Newfoundland. p. 58.

A General Election on August 20th, 1959, returned the Liveral Government of Premier Smallwood for their fourth consecutive term, with a majority of thirty-one to five. This has meant that the instability which plagued the House of Assembly for so many years previous to Commission of Government had disappeared. Another noteworthy feature is that since Confederation the members of the House of Assembly have been for the most part men who were natives of the district which they represented, or who have a special knowledge of its problems. The turnover in the House, however, is still large, and of the thirty-six members who will take their seats when the House opens this spring, only eight were members of the House in 1949. This compares favourably with the turnover in the first five years of Representative Government for, of the fifteen members elected in 1832, only two were returned in 1838.[2]

The House was fortunate in having as its first Speaker, Reginald F. Sparkes, a former inspector of schools. Mr. Sparkes filled the Chair with dignity. His devotion to duty, his strong sense of fair play, and his knowledge of Parliamentary procedure, soon earned him the respect of all the members. Mr. Sparkes held the position of Speaker for the first two parliaments after Confederation. In 1956 he retired from public life because of ill health.

[2] Journals of the House of Assembly, 1833 and 1838.

In the beginning of its first session in 1949 the House adopted the Standing Orders which had been in use since 1911, but on May 8th, 1951, due to the work of Mr. Speaker Sparkes, new Standing Orders and Rules of Procedure were passed, which embodied in them many of the best features in use in the Provincial Legislatures of Canada. At the same time the House decided that after its own Standing Orders, the authorities were to be the works of Canadian authorities, Beauchesne and Bourinot. If these were not found to be applicable, then the British Parliamentary system, as embodied in Sir T. Erskine May's Parliamentary Practice, was to be followed.

Very little change in the House of Assembly took place after Confederation, because Section 7 of the Terms of Union provided that the constitution of Newfoundland as it existed immediately prior to the 16th day of February 1934, was to be revived at the date of union, and was, subject to the terms of the British North America Acts of 1867 and 1946, to be the constitution of the Province of Newfoundland, until it should be altered under the authority of these Acts.[3]

The powers and authorities and functions of Government were vested in a Lieutenant Governor of the Province, who was to act with the advice and consent of the Executive Council of

[3] The Terms of Union of Newfoundland with Canada.

the Province of Newfoundland. The first Lieutenant Governor was Sir Albert Walsh, who had been Speaker of the House of Assembly, a member of the Cabinet and later a member of the Commission of Government. He resigned on September 5th, 1949, to become Chief Justice, and was succeeded by Sir Leonard Outerbridge. When Sir Leonard retired on December 15th, 1956, he was succeeded by the Honourable Campbell Macpherson.

According to the British North America Act the Government of Canada has responsibility for those matters which concern Canada as a whole, e.g., Defence, the Postal service,[4] while the Provinces control matters of a more local nature, e.g., Education.[5]

A Provincial Legislature should bear it in mind that any law it passes may be disallowed by the Government of Canada. This power of disallowance is not vested in the House of Commons but the Governor General in Council. The only power the House of Commons has in matters of disallowance is to criticize the action of the Dominion Government, after it has either disallowed, or refused to disallow a Provincial Act. The Executive Council has a term of one year after receiving the Bill, in which to make up its mind whether it will disallow it or not.[6]

[4] British North America Act, 1867, Section 91.
[5] Ibid, Section 92.
[6] British North America Act 1867, Section 56.

Although many matters that formerly came under the jurisdiction of the Government of Newfoundland have been transferred to the Government of Canada, the House of Assembly has since Confederation passed much legislation designed to bring the laws of Newfoundland in conformity with those of the other Provinces of Canada. One of the earliest laws passed was that which extended the life of Parliament from four to five years, the usual term in Canada. In the eleven sessions 1949-1959, the House passed eight hundred and forty three Bills.

The new Standing Orders brought few changes to the procedure of the House, A ninety minute time limit is placed on speeches. This rule, however, does not apply to the Premier and the Leader of the Opposition.[7] Provision is also made for the use of the previous question rule to cut short debate.[8] But it has not been used. The rules have been more strictly enforced, and personal abuse has almost disappeared. There have been occasional outbursts of anger, but this is inevitable where members have strong convictions and forget themselves in the heat of debate. On the whole, the House has had little evidence of personal animosities. The rules aim at facilitating the progress of business in an efficient and orderly manner, while protecting the rights of the minority. This ideal was

7 Standing Order 49.
8 Ibid, 40.

developed first in Great Britain and is her guiding principle of Parliamentary Practice. It is a powerful argument for those who claim that Britain's greatest and most lasting contribution to the world has been the British Parliamentary System of Government.

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APPENDIX "A"

THE GOVERNORS OF NEWFOUNDLAND SINCE 1832

Sir Thomas Cochrane.....1832
Captain Henry Prescott.....1834
Sir John Harvey.....1841
Sir G. LeMarchant.....1847
Sir Baillie Hamilton.....1852
Sir Charles Darling.....1855
Sir Alexander Bannerman.....1857
Sir Anthony Musgrave.....1864
Sir Stephen Hill.....1869
Sir John Glover.....1876
Sir F. Maxse.....1881
Sir G. W. Des Voeux.....1886
Sir H. A. Blake.....1887
Sir Terence O'Brien.....1889
Sir H. Murray.....1896
Sir Henry McCallum.....1898
Sir Cavendish Boyle.....1901
Sir William MacGregor.....1904
Sir Ralph Williams.....1909
Sir E. W. Davidson.....1913

Sir Charles Harris.....1917

Sir William Allardyce.....1922

Sir John Middleton.....1928

Sir David Murray Anderson.....1932

Sir Humphrey Walwyn.....1936

Sir Gordon MacDonald.....1946

LIEUTENANT GOVERNORS SINCE CONFEDERATION

Sir Albert Walsh.....1949

Sir Leonard Outerbridge.....1949

Hon. Campbell Macpherson.....1957

APPENDIX "B"

THE PREMIERS OF NEWFOUNDLAND FROM THE GRANTING OF RESPONSIBLE GOVERNMENT TO 1960

Philip F. Little	1855	Liberal
John Kent	1859	Liberal
Sir Hugh W. Hoyles	1861	Conservative
Sir F. B. T. Carter	1865	Liberal
Charles F. Bennett	1870	Conservative
Sir F. B. T. Carter	1874	Liberal
Sir William V. Whiteway	1878	Liberal
Robert Thorburn	1884	Conservative
Sir William V. Whiteway	1888	Liberal
A. F.Goodridge	1894	Conservative
D. J. Greene	1894	Liberal
Sir William V. Whiteway	1895	Liberal
Sir James Winter	1897	Conservative
Sir Robert Bond	1900	Liberal
Sir Edward Morris	1908	People's Party
Sir William Lloyd	1917	Liberal
Sir Michael Cashin	1918	Conservative
Sir Richard Squires	1919	Liberal
W. R. Warren	1923	Liberal
A. E. Hickman	1924	Liberal

W. S. Monroe.....1924.....Conservative

Sir Richard Squires.....1928.....Liberal

F. C. Alderdice.....1932.....Conservative

Commission of Government 1934-1949

Joseph R. Smallwood.....1949.....Liberal

APPENDIX "C"

THE SPEAKERS OF THE HOUSE OF ASSEMBLY SINCE 1833

John Bingley Garland.....1833
Thomas Bennett.....1834
William Carson.....1837
James Crowdy.....1840
John Kent.....1853
Ambrose Shea.....1855
F. B. T. Carter.....1861
W. V. Whiteway.....1866
Thomas R. Bennett.....1870
Prescott Emerson.....1874
J. S. Winter.....1877
A. J. W. McNeilly.....1879
Robert Kent.....1883
Robert Bond.....1885
A. J. W. McNeilly.....1886
George Emerson.....1890
H. Y. Mott.....1898
L. O'B. Furlong.....1901
F. J. Morris.....1905
W. R. Warren.....1910

John R. Goodison.....1914

W. J. Higgins.....1918

William F. Penney.....1920

Harry A. Winter.....1923

Cyril Fox.....1924

Albert Walsh.....1928

J. A. Winter.....1932

SINCE CONFEDERATION

Reginald F. Sparkes.....1949

John R. Courage.....1957

APPENDIX "D"

THE MEMBERS OF THE FIRST HOUSE OF ASSEMBLY (1832)

DISTRICT	MEMBERS ELECTED
St. John's	John Kent William Thomas Patrick Kough
Conception Bay	Robert Pack Peter Brown Charles Cozens James Power
Fogo	Thomas Bennett
Trinity Bay	John Bingley Garland
Ferryland	Robert Carter
Placentia & St. Mary's	Roger Forstat Sweetman John Wills Martin
Burin	William Hooper
Fortune Bay	Newman Wright Hoyles
Bonavista	William Brown

APPENDIX "E"

THE MEMBERS OF THE FIRST HOUSE OF ASSEMBLY AFTER THE GRANTING OF RESPONSIBLE GOVERNMENT (1855)

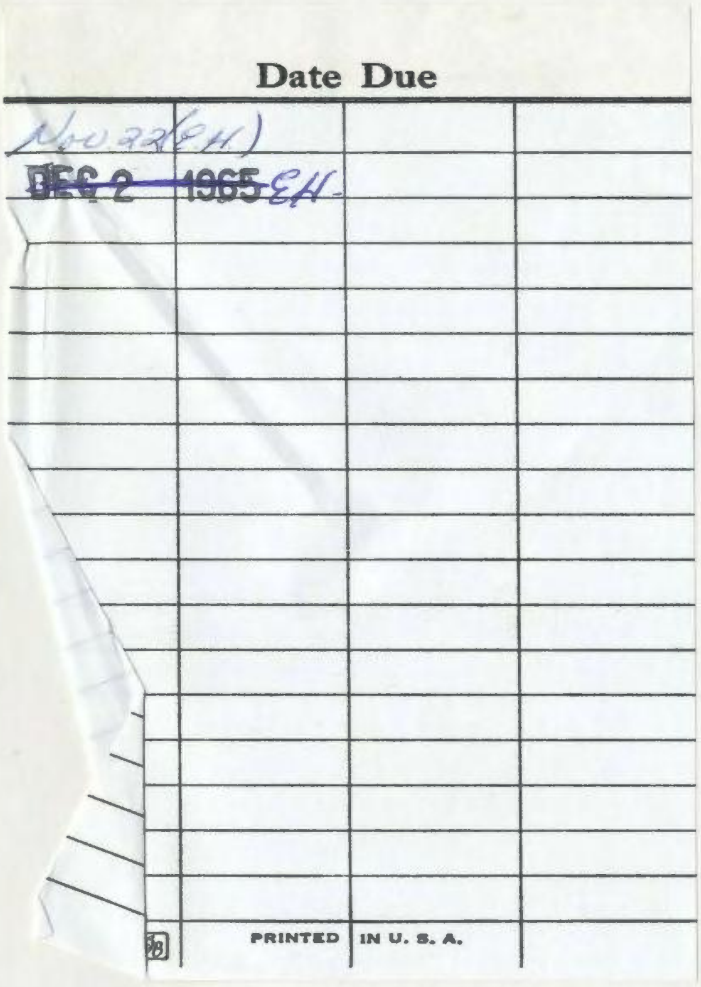
DISTRICT	MEMBERS ELECTED
St. John's East	John Kent Robert John Parsons Peter Winsor
St. John's West	John Fox Ambrose Shea P. F. Little
Harbour Grace	James L. Prendergast John Hayward
Carbonear	Edmund Hanrahan
Brigus & Port de Grave	Robert Brown
Bay de Verde	John Bemister
Harbour Main	Thomas Byrne William Talbot
Ferryland	Thomas Glen Edward D. Shea
St. Mary's & Placentia	George J. Hogsett Micheal John Kelly John Delaney
Burin	Clement Benning Patrick Morris
Fortune Bay	Hugh W. Hoyles
Trinity	Stephen March John Winter F. B.T. Carter
Bonavista	Robert Carter John H. Warren Matthew W. Walbank
Fogo	William Henry Ellis Thomas Knight

APPENDIX "F"

THE MEMBERS OF THE FIRST HOUSE OF ASSEMBLY AFTER CONFEDERATION (1949)

DISTRICT	CANDIDATE ELECTED	PARTY
St. Barbe	Reginald F. Sparkes	Liberal
White Bay	Samuel Drover	Liberal
Green Bay	Albert B. Morgan	Liberal
Grand Falls	Edward S. Spencer	Liberal
Twillingate	Leslie R. Curtis	Liberal
Fogo	Gordon Janes	Liberal
Bonavista North	Joseph R. Smallwood	Liberal
Bonavista South	Edward Russell	Liberal
Trinity North	Samuel J. Hefferton	Liberal
Trinity South	Charles M. Button	Liberal
Carbonear-Bay de Verde	Herbert L. Pottle	Liberal
Harbour Grace	James R. Chalker	Liberal
Port de Grave	George T. Makinson	Liberal
Harbour Main-Bell Island	David I. Jackman Ronald J. Fahey	Conservative Conservative
St. John's West	Oliver L. Vardy James J. Spratt	Liberal Liberal
St. John's East	John G. Higgins Frank A. Fogwill	Conservative Conservative

DISTRICT	CANDIDATE ELECTED	PARTY
Ferryland	Peter J. Cashin	Independent
Placentia & St. Mary's	Leonard J. Miller	Conservative
Placentia West	Patrick J. Canning	Liberal
Burin	Philip S. Forsey	Liberal
Fortune Bay-Hermitage	John R. Courage	Liberal
Burgeo-LaPoile	Herman W. Quinton	Liberal
St. George's-Port au Port	William J. Keough	Liberal
Humber	Charles H. Ballam	Liberal
Labrador	Harold Horwood	Liberal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