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1.—*Private Bill Procedure—(The Scotch Act of 1899).*

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[Read Tuesday, November 28th, 1899.]

I FEEL that some apology is due to the members of the Society on my part for bringing again before them this subject so frequently and fully discussed on many previous occasions. The time, however, is not inopportune. Rarely has there been such a waste of Irish capital in Westminster as there has this year been. Hardly even have the efforts of promoters proved so futile, and of opponents so exhausting. The shareholders of some of the most prosperous and of some of the least prosperous of Irish Railways have alike to deplore the dissipation in Parliamentary litigation of their profits for 1899. The ratepayers of Dublin, of Rathmines, of Pembroke, of Clontarf, and other suburbs of the City, long will feel the burden added to their rates by the London litigation of the Session that has past. The Dublin Boundaries Extension Bill of 1899 has cost the City, as I am informed on reliable authority, between £12,000 and £13,000. There were twenty-four separate sets of opponents. The cost to Rathmines of its opposition approaches, I am informed, £8,000. To meet it about one shilling in the pound must be added to the taxation of that township. The costs of Pembroke cannot be far short of the same sum. If we add those of the oppositions of Kilmainham, Drumcondra, Clontarf, and of the County of Dublin, and of private persons and public bodies, the total expense to the inhabitants and ratepayers of the city and its suburbs will not fall short of £45,000.

Mr. Pope, Q.C., stated before the Committee which considered the Irish Railways Amalgamation Scheme of last Session, that the Bill at hearing was costing £5 per minute. A high authority conversant with the proceedings in this case has

informed me that this was an under-estimate rather than an overstatement, having regard to the fact that there were twenty-seven separate oppositions. The Bill occupied twenty-seven working days of four hours each, and its cost to the shareholders of the promoting Company were calculated to amount to about £400 per day. What the loss was to the shareholders of other Companies and to the ratepayers represented by public bodies, it would be impossible to say. The Bill probably cost at least £50,000. There was a Belfast Corporation Bill. There was an Armagh and Keady Railway Bill. There were several other Irish Bills before the Houses, exhausting thousands more of Irish capital, and diverting it from the material development of the country. So abnormal was the waste of Irish money on the Railway Bill that it excited general attention even in England, and became the subject of comment in Parliament. Mr. J. H. Lewis, the member for Flint Burghs, speaking on the 24th July, 1899, on the third reading of the Scotch Private Legislation Procedure Bill, said: "I am sure everybody must have regarded with great dissatisfaction the enormous expenditure to which certain Irish Railway Companies were put during the last few weeks within the walls of the House. Surely a better system can be devised than that which drags over from different parts of the United Kingdom a host of witnesses, who could be examined on the spot. I am sure all honorable members deeply regret this great waste of public money." However, at this moment, the newspapers again are full of Parliamentary notices preparatory to the renewal of this internecine war and waste next Session, and tens of thousands of Irish capital seem destined to be poured out again in England in the coming year. Better far would it be for the shareholders of these Irish Companies and the ratepayers of Irish Municipalities to call upon their directors and representatives to proclaim a truce for the last year of this century, and to devote their influence and energies to secure without delay for Ireland such a Private Legislation Act as was last year passed for Scotland. The enquiries which now must be held before a Parliamentary tribunal in Westminster, would, under such a measure, be heard before a Parliamentary tribunal, sitting locally, the cost of measures would be reduced probably by at least one-half, and the efficiency of the Committees to decide upon the questions at issue would be just as great or greater than before.

The economic waste to Ireland of the Private Bill System during this century has been incalculable. Had a local tribunal been created to deal with this local litigation for Ireland, when the Union was carried, her progress would have been far greater than it has been. The expediency of dealing with the subject was present to the minds of the framers of

the Act of Union. But, unfortunately, no provision was inserted in the Act to secure the localization of Irish Private Bill business, and the suggestions for dealing with the matter were never carried into effect. The injury that has resulted to this country, through this omission, has been vastly greater than could have been anticipated at the time. The discoveries and inventions of the nineteenth century, and their employments in industrial enterprise, could hardly then have been imagined. Railways, telegraphs, telephones, gas and electric lighting, steam and electricity in their thousand applications to the wants of our every day life were as yet unheard of. The granting by Parliament of compulsory powers to municipalities and great trading corporations was to come later by many years to its full development. Although the necessity of providing a local tribunal to deal with such matters, was foreseen by the statesmen who framed the Union, it was unhappily forgotten when the measure was carried into enactment, and the industrial and municipal progress of Ireland has been, through this omission, cruelly penalized and retarded for the last one hundred years. Let us hope that the twentieth century will see this grievance remedied, and the social, municipal, and economic energies of Ireland allowed a free development.

The Duke of Portland writing, on behalf of the English Cabinet, to Lord Cornwallis, Lord Lieutenant of Ireland, in reference to the Articles of the intended Union, on 24th Dec., 1798, says: "One of the greatest difficulties, however, which has been supposed to attend the project of union between the two kingdoms, is that of the expense and trouble which will be occasioned by the attendance of witnesses in trials of contested elections, or in matters of private business, requiring Parliamentary interposition. It would, therefore, be very desirable to devise a plan (which does not appear impossible) for empowering the Speaker of either House of the United Parliament to issue his warrant to the Chairman of the Quarter Sessions in Ireland, or to such other person as may be thought more proper for the purpose, requiring him to appoint a time and a place within the County, for his being attended by the agents of the respective parties, and reducing to writing in their presence, the testimony (for the consents or dissents, as the case may be) of such persons as by the said agents, may be summoned to attend, being resident within the County (if not there resident, a similar proceeding should take place in the County where they reside); and such testimony so taken and reduced into writing, may by such Chairman or by the Sheriff of the County be certified to the Speaker of either House, as the case may be. It seems difficult to provide a detailed Article of the Union for the various regulations which such a proceeding may require, but the principle might perhaps be

stated there, and the provisions left to be settled by the United Parliament." *

This passage is quoted from the *Castlereagh Memoirs*. The original is to be found, as appears from Lord Ashbourne's Work on Pitt, among Pitt's papers endorsed "Irish Union—note respecting evidence to be taken in Ireland—sent to Lord Castlereagh, December 18, 1798." There is also, he states, in existence among the Pretzman MSS., with notes in red ink, made by Pitt himself—a paper of "Point's to be considered with view to an incorporating union of Great Britain and Ireland," which contains suggestions for the formation of a Court of Appeal, to be constituted of the Lord Chancellor and the three chief judges in Ireland, which was to deal not only with appeals in matters of law, but power "was to be given" to the same Court to examine evidence and certify all preliminaries and other points for private Bills. "This power," the memorandum proceeds, "might be extended . . . so as to diminish the objection of the expense of resort to Parliament here for such private business as is now transacted by the Irish Parliament." "It is plain," Lord Ashbourne concludes, "that on the discussion of these "points the Cabinet had decided, at all events, in favour of "making an effort to try and save expense by means of local "inquiries, and thus obviate resort on such matters to Parliament."† May we hope that the Cabinet of 1899 will repair the omission of the Cabinet of 1799?

The Private Legislation Procedure (Scotland) Act, of last Session, has been the final outcome of many tentative measures introduced for the purpose of simplifying and cheapening Private Bill Legislation. The Bill introduced into the House of Commons was considered by a select Committee, and was recast and remodified and altered in Committee of the House, it received the most careful and ample consideration, and it is clear that it must be taken as the standard and model of any measure which can now be introduced for Ireland. To me it appears that the same Act, with such technical alterations, as will make it applicable to Irish administration, ought to be accepted with alacrity by the Irish public. It will at once cheapen procedure and localize expenditure—preserve parliamentary control and get rid of the alternate delay and rush of Sessional investigation. The Bill substitutes for procedure by way of Private Bill, procedure in the first instance by way of Provisional Order. The words of the Act dealing with the initiation of measures are as follows.—

When any public authority or persons desire to obtain parliamentary powers in regard to any matter affecting public or private interests in

* *Castlereagh's Memoirs*, vol. II., pp. 56-57.

† Lord Ashbourne's *Pitt*, p. 6.

Scotland for which they are entitled to apply to Parliament by a petition for leave to bring in a Private Bill, they shall proceed by presenting a petition to the Secretary for Scotland, praying him to issue a Provisional Order in accordance with the terms of a draft Order submitted to him, or with such modifications as shall be necessary.

A printed copy of the draft Order shall be deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons, and also at the office of the Treasury and of such other public departments as shall be prescribed.

Before presenting a petition the petitioners shall make such deposits and give such notice by public advertisement, and, where land is proposed to be taken, by such service on owners, lessees, and occupiers, as shall be prescribed.

The Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons shall take into consideration the draft Order, and report thereon to the Secretary for Scotland.

If the Chairman report that either of the Chairmen is of opinion that the provisions or some provisions of the draft Order do not relate wholly or mainly to Scotland, or are of such a character or magnitude, or raise any such question of policy or principle, that they ought to be dealt with by Private Bill and not by Provisional Order, the Secretary for Scotland shall without further inquiry, refuse to issue the Provisional Order, so far as the same is objected to by the Chairmen or Chairman.

If the Secretary for Scotland shall refuse to issue the Provisional Order or part thereof, the notices published and the deposits made for the proposed Provisional Order shall, be held to have been published and made for a Private Bill applying for similar powers: Provided that the petitioners shall inform all opponents of their intention to proceed by way of Private Bill, and the petition for the Provisional Order shall be deemed to be the petition for leave to bring in a Private Bill.

Except under these provisions it shall not be lawful to apply to Parliament by Private Bill for powers which may be obtained by Provisional Order in terms of the Act.

It will be seen that in all ordinary cases the procedure will be by way of Provisional Order. If, however, the Chairman of Committees in the Lords, or of Ways and Means in the Commons, consider that the proposal is one introducing a new policy or principle, or is of exceptional magnitude, or is not wholly or mainly Scotch in its scope, they can report that the case is one for the introduction of a Private Bill in the ordinary way and a measure can then be brought forward by its promoters, utilizing for the Private Bill the advertisements and notices they have already given for the Provisional Order.

The Chairmen of Committees and of Ways and Means stated before the Select Committee that they were willing to and could perform the duties of considering the draft orders, so long as they related to Scotland and Ireland only, but if a similar measure is introduced for England hereafter, some larger body must be constituted for the purpose of considering the numerous measures that would then have to be dealt with. As far as Ireland, however, is concerned, they are willing to undertake the duty.

If the Chairmen do not report against the Order, or report only against a part of it, then the Secretary of Scotland, if

the measure is opposed, directs an enquiry to be held by the Commissioners under the Act. If the measure is unopposed, the Order may be proceeded with without enquiry, or after an enquiry if the Secretary of Scotland thinks the case one for enquiry.

It will thus be seen that in the case of unopposed measures the saving of expense will be enormous, if they are of such a kind as not to require a hearing before the Commissioners. Some years ago an expenditure of several hundreds of pounds became necessary to carry an unopposed and simple private Bill through Parliament, to bring about the amalgamation of two charitable institutions in Waterford. Were it not for the benevolence of an individual, this necessary measure could not have been carried for want of funds. We may hope to hear of the last of such scandals if a measure similar to the Scotch Act is passed for Ireland.

The question of the tribunal has always been the great difficulty in dealing with the proposals made from time to time for reforming Private Bill Procedure.

The public has had great confidence in the Parliamentary Committees. On the other hand, the difficulty of manning a tribunal, with members of Parliament, to sit locally, has hitherto seemed insuperable—but the question has been solved satisfactorily in the Scotch Act. Two Panels—a Parliamentary Panel and an Extra-Parliamentary Panel, are to be formed. The Parliamentary Panel is to be constituted from members of both Houses—the Extra-Parliamentary Panel is to be chosen by the Chairman of the two Houses, in conjunction with the Secretary of Scotland, and is to be selected from persons “qualified by experience of affairs to act as Commissioners.” These persons so qualified are not necessarily to be Scotch, they may be Irish or English for Scotland, and for Ireland they could be Scotch or English—the only condition is, that they shall have no local or personal interest in the questions at issue.

The Act provides for the formation of the Panels as follows:

There shall be formed a panel of persons (referred to as the extra-parliamentary panel) qualified by experience of affairs to act as Commissioners under this Act.

The extra-parliamentary panel shall be formed in manner following; that is to say,—

- (a.) The Chairmen, acting jointly with the Secretary for Scotland, shall nominate twenty persons qualified as aforesaid, and the persons so nominated shall constitute the extra parliamentary panel and shall remain thereon until the expiration of five years, any casual vacancy on the panel caused by death or resignation being filled up by the Chairmen acting jointly with the Secretary for Scotland.
- (b.) At the expiration of every period of five years, the extra-parliamentary panel may be re-formed in like manner and with the like incidents.

When it is determined that Commissioners shall be appointed for the purpose of inquiring as to the propriety of making and issuing a Provisional Order or Orders under this Act, the Chairmen shall, with due regard to the character and magnitude of the provisions in the proposed Order or Orders appoint four Commissioners for that purpose, and shall at the same time nominate one of the Commissioners as Chairman.

Standing Orders may, if the two Houses of Parliament think fit so to order, provide for the formation of panels of members of the two Houses respectively to act as Commissioners under this Act (herein-after referred to as the parliamentary panels).

Subject to Standing Orders, two of the Commissioners shall be taken from the parliamentary panel of members of the House of Lords, and two shall be taken from the parliamentary panel of members of the House of Commons.

If the Chairmen shall be unable to appoint Commissioners as in the immediately preceding subsection mentioned, three, or if need be all of the Commissioners, may be members of the same parliamentary panel.

If the Chairmen shall be unable to appoint Commissioners as in either of the two immediately preceding subsections mentioned, so many persons as are required to make up the number of Commissioners shall be taken by the Secretary for Scotland from the extra-parliamentary panel.

Any casual vacancy among the Commissioners, or in the office of Chairman of Commissioners caused by death or resignation, or inability to give attendance, such resignation or inability to attend being certified by a writing under the Commissioner's hand, shall be filled up by the Secretary for Scotland by appointing a member of any of the panels, and in the case of a vacancy in the office of Chairman by nominating as Chairman one of the remaining Commissioners.

Notwithstanding a dissolution of Parliament, any member of either House of Parliament may continue to act as Commissioner in any inquiry for the purpose of which he has been appointed to act.

The persons appointed as Commissioners shall have no personal or local interest in the matter of the proposed Order or Orders, and shall as a condition of such appointment make a declaration to that effect, provided that Scottish Members of either House of Parliament shall not be disqualified from acting as Commissioners to deal with proposed Orders in which they have no personal or local interest.

Commissioners shall hold their inquiry at such place in Scotland as they may determine, with due regard to the subject-matter of the proposed Order and to the locality to which its provisions relate. The sittings shall be held in public.

The Commission is thus to consist of four members. In the first instance it is provided that the members shall be taken—two from the Lords and two from the Commons. In the event of that being found impossible, three may be taken from one House and one from the other. In the next resort all may be from the same House. Finally—if Members cannot be procured to serve—the extra Parliamentary Panel can be called upon, and the Commission manned from it.

The next great reform introduced by the measure is, that the enquiry is to be held at such place, in Scotland, as may be convenient. The enquiry is to be localized as far as possible. It is to be held in public. The Commissioners are to settle questions of *locus standi*—they can decide upon the preamble before discussing clauses—and persons having a *locus standi* can appear before them in person or by counsel or agent.

When they have heard the evidence, the Commissioners are to report to the Secretary of Scotland, and they can recommend that the Provisional Order should be issued as prayed for, or with such modifications as they may make. If there is no opposition to the Provisional Order as finally settled by the Commissioners, it is embodied in a Confirmation Bill by the Secretary of Scotland, and passed through Parliament.

If there is opposition a petition must be presented to Parliament against the Order, and then on the second reading of the Confirmation Bill, a member can move that the Bill be referred to a Joint Committee of both Houses of Parliament, and if the motion is carried in the House, a Joint Committee of Lords and Commons shall sit, at the peril of costs to the opponents, to hear and take evidence and decide upon the measure in the same way as in the case of a Private Bill.

In the vast majority of cases there will be no need for such second hearing. A hearing at Westminster will only be granted of the House of Commons or House of Lords, when the motion is made upon the second reading, comes to the conclusion that the case is of such a character as to require a further investigation. Such cases must be exceptional. The power to re-hear is reserved by Parliament, but we may be sure that it will not be exercised capriciously, and will only be resorted to in cases of magnitude and difficulty.

An important clause exists in the Act, under which the scale of fees now paid by promoters and opponents can be modified by the Chairman of the two Houses, acting with the Secretary of Scotland. If a similar measure is extended to Ireland we may hope that a considerable reduction will be made in the extravagant character of these fees, which are such a tax upon industrial and municipal enterprise.

I have indicated the chief features of the Scotch Bill. It provides for a strong parliamentary control. It creates a procedure by Provisional Order, which, of necessity, is cheaper, simpler and shorter, than that by Private Bill. The Chairmen of the two Houses can direct any measure involving questions of novelty, principle and exceptional magnitude to be dealt with by Private Bill. Nothing will be done contrary to the established policy that has grown up in Private Legislation. The tribunal is parliamentary, or as far as possible parliamentary. The Parliamentary Panel will be supplemented, if necessary, for the hearing of a Bill by the addition of men of approved experience whose position will command confidence. In dealing with unopposed Bills the measure is most effective. Every facility is given for passing them cheaply and expeditiously. In all respects the provisions of the Scotch Bill seem admirably fitted for application to Ireland. The Irish

Press, of all political shades, has for years been urging the necessity of a reform of the existing system on successive administrations, and there can be little doubt that those members of the Irish public who have devoted time and thought and energy for so many years to bring about a reform of the system which has so long and so greatly retarded the development of the country, would welcome the introduction by the Government of a Bill framed on the same lines as that passed for Scotland. The Government that carries such a measure into effect will confer a vast benefit on Irish commerce and Irish enterprise, and in no small degree relieve the heavy burdens of Irish ratepayers, and improve and quicken the industrial progress of the land.

As an example of the cost to a locality of the present Private Bill system the following particulars are given of some of the expenses incurred by the County and City of Waterford in recent years:—

	£	s.	d.
1875. Costs of Waterford City Improvement Bill.....	2,001	11	9
1889. Costs of Waterford Corporate Debt Bill.....	927	5	4
1895. Costs of Waterford Grand Jury—			
Opposition to Clonmel Corporation Bill.....	589	0	0
1896. Costs of Waterford Corporation Act—			
Corporation Costs and Grand Jury Costs.....	2,168	9	5
1897. Costs of Opposition of Corporation to Dublin, Wicklow and Wexford Railway Bill.....	375	2	11
1898. Costs of Opposition to Fishguard and Rosslare Railway Bill—			
Opposition of Corporation.....	1,200	0	0
„ Grand Jury.....	1,142	5	4
„ Waterford, Dungarvan and Lis- more Railway Co.....	830	10	0
„ A Private Waterford Firm.....	338	6	6
1899. G. S. W. R. Co. and W. L. and W. R. Co. and W. and C. I. Amalgamation Bill—			
Opposition of Corporation.....	2,146	0	0
„ County Council.....	680	4	1

The Application of Co-operation in the Congested Districts.

By GEO. W. RUSSELL, Esq.

[Read Tuesday, December 19th, 1899.]

ON thinking over my subject I have found it necessary to preface that part of my remarks which deals directly with the application of co-operation to the Congested Districts, with a