

1882.

NEW ZEALAND.

PARLIAMENTARY PROCEDURE AS TO CLOSING
DEBATE, ETC.

(PAPERS RESPECTING).

Presented to both Houses of the General Assembly by Command of His Excellency.

GREAT BRITAIN.

RESOLUTIONS SUBMITTED TO THE HOUSE OF COMMONS BY MR. GLADSTONE (FEBRUARY 28, 1882).

[The Times, Wednesday, February 8, 1882.]

I. PROCEDURE.

1. *Putting the Question.*—That when it shall appear to Mr. Speaker, or to the Chairman of a Committee of the whole House, during any debate, to be the evident sense of the House, or of the Committee, that the question be now put, he may so inform the House; and, if a motion be made “That the question be now put,” Mr. Speaker, or the Chairman, shall forthwith put such question; and, if the same be decided in the affirmative, the question under discussion shall be put forthwith: Provided that the question shall not be decided in the affirmative, if a division be taken, unless it shall appear to have been supported by more than two hundred members, or to have been opposed by less than forty members.

2. *Motions for Adjournment before Public Business.*—That no motion for the adjournment of the House shall be made, except by leave of the House, before the Orders of the Day, or Notices of Motions, have been entered upon.

3. *Debates on Motions for Adjournment.*—That when a motion is made for the adjournment of a debate, or of the House, during any debate, or that the Chairman of a Committee do report progress, or do leave the chair, the debate thereupon shall be strictly confined to the matter of such motion; and no member, having spoken to any such motion, shall be entitled to move, or second, any similar motion during the same debate, or during the same sitting of the Committee.

4. *Divisions.*—That when, before a division, the decision of Mr. Speaker, or of the Chairman of a Committee, that the “Ayes” or “Noes” have it, is challenged, Mr. Speaker, or the Chairman, may call upon the members challenging it to rise in their places; and, if they do not exceed twenty, he may forthwith declare the determination of the House, or of the Committee.

5. *Irrelevance or Repetition.*—That Mr. Speaker, or the Chairman of a Committee, may call the attention of the House, or of the Committee, to continued irrelevance or tedious repetition on the part of a member; and may direct the member to discontinue his speech.

6. *Postponement of Preamble.*—That, in Committee on a Bill, the preamble do stand postponed until after the consideration of the clauses, without question put.

7. *Chairman to leave the Chair without Question.*—That when the Chairman of a Committee has been ordered to make a report to the House, he shall leave the chair without question put.

8. *Half-past Twelve o’ Clock Rule.*—To add to the Standing Order of the 18th of February, 1879, the following words: “But this rule shall not apply to the motion for leave to bring in a Bill, nor to any Bill which has passed through Committee.”

9. *Order in Debate.*—To amend the Standing Order of the 28th of February, 1880, as follows: That whenever any member shall have been named by the Speaker, or by the Chairman of a Committee of the whole House, as disregarding the authority of the Chair, or abusing the rules of the House, by persistently and wilfully obstructing the business of the House, or otherwise, then, if the offence has been committed in the House, the Speaker shall forthwith put the question, on a motion being made, no amendment, adjournment, or debate being allowed, “that such member be suspended from the service of the House;” and, if the offence has been committed in a Committee of the whole House, the Chairman shall, on a motion being made, put the same question in a similar way, and, if the motion is carried, shall forthwith suspend the proceedings of the Committee, and report the circumstance to the House, and the Speaker shall thereupon put the same question, without amendment, adjournment, or debate, as if the offence had been committed in the House itself. If any member be suspended under this order, his suspension on the first occasion shall continue for a week, on the second occasion for a month, and on the third occasion for the remainder of the session: Provided always, that nothing in this resolution shall be taken to deprive the House of the power of proceeding against any member according to ancient usages.

10. *Debates on Motions for Adjournment.*—That if Mr. Speaker, or the Chairman of a Committee of the whole House, shall be of opinion that a motion for the adjournment of a debate, or of the House, during any debate, or that the Chairman do report progress, or do leave the chair, is made for the purpose of obstruction, he may forthwith put the question thereupon from the chair.

11. *Consideration of a Bill, as amended.*—That, on reading the Order of the Day for the consideration of a Bill, as amended, the House do proceed to consider the same without question put, unless the member in charge thereof shall desire to postpone its consideration, or notice has been given to recommit the Bill.

12. *Motions on going into Committee of Supply.*—That, whenever the Committee of Supply appointed for the consideration of the ordinary Army, Navy, and Civil Service Estimates stands as the first Order of the Day on a Monday, Mr. Speaker shall leave the chair without putting any question, unless an amendment be moved, or question raised, relating to the Estimates proposed to be taken in Supply, on first going into Committee on the Army, Navy, and Civil Services respectively.

II. STANDING COMMITTEES.

1. *Standing Committees on Law and Courts of Justice, Trade, &c.*—That two Standing Committees be appointed for the consideration of all Bills relating to law and Courts of Justice, and to trade, shipping, and manufactures, which may be committed to them respectively.

2. *Nomination by Committee of Selection.*—That the said Standing Committees do consist of not less than sixty nor more than eighty members, to be nominated by the Committee of Selection, who shall have regard to the classes of Bills committed to such Committees, to the composition of the House, and to the qualifications of the members selected; and shall have power to add and discharge members from time to time provided the number of eighty be not exceeded.

3. *Commitment and Report of Bills.*—That all Bills comprised in each of the said classes shall be committed to one of the said Standing Committees, unless the House shall otherwise order, and, when reported to the House, shall be proceeded with as if they had been reported from a Committee of the whole House.

BRITISH COLONIES.

[Extracted from paper presented to the Imperial Parliament, "Reports respecting the Practice and Regulations of Legislative Assemblies in Colonies possessing Responsible Government." C.-2984, 1881.]

CAPE COLONY.

The rules and practice of the House of Assembly being substantially the same as those adopted by the House of Commons, there is no authorized mode of procedure for directly interfering with the freedom of debate, or for abridging or terminating a discussion by *clôture*. In the protracted session of 1865, what is known as "obstruction" tactics were adopted, and so determinedly carried on, that the sittings of the House on one occasion lasted 17 hours, during which 162 motions were made to accomplish a "count-out;" and on another occasion, during a continuous sitting of 21½ hours, the House was counted 145 times. This course of obstruction, however, failed in its object, and was acknowledged to have been an unwise, as well as an undignified, mode of procedure. It has never been repeated, and on any appearance of an approach of it, the good sense of the House has always asserted itself, and checked any undue exercise of the inherent powers of a minority.

The Standing Rules and Orders of the Legislative Council of the Cape of Good Hope differ from those of the House of Assembly. They contain provisions which, in practice, are somewhat analogous to the *clôture*, and give to a majority the power of closing a debate and coming to a decision on the main question. According to Rules 30, 31, and 32, it is competent for a member, whether in full Council or Committee, whenever he can obtain possession of the House, to call for a division on any matter under debate. The Council thereupon votes without discussion as to whether there shall be a division. If it is resolved in the affirmative, the main question is, without further discussion, immediately put from the chair, and, if carried, is thus at once disposed of. The practice conveniently enables the Council to abridge a debate, or to put a stop to obstruction by abruptly terminating it; but at the same time it is open to the objection of giving power to a majority to stifle discussion and to silence opposition by a vote.

SOUTH AUSTRALIA.

As regards the working of the *clôture*, or other mode of abridging or summarily terminating discussion, Standing Order No. 168 directs that, "A motion that the House do now divide," moved and seconded, "shall take precedence of all other business, and shall be immediately put from the chair without any discussion taking place: Provided that no such motion can be made so as to interrupt a member while speaking." This question is constantly put, both in the House and in Committee.

Standing Order 169 prevents a fresh motion for division being entertained until a quarter of an hour shall have elapsed.

Standing Order 46 provides that a motion, "That the House do now adjourn," shall be put forthwith, that is, without debate.

Standing Order 47 prevents delays from the motion for adjournment being put too frequently.

A motion that the House at its rising adjourn to some time other than fixed by sessional order, can only, by Standing Order 48, be moved before the business of the day is proceeded with, and this motion is often made to consider some question thought important, but the practice of the House is to restrict the debate exclusively to the matter brought forward by the mover. The debate on this motion can (under the 123rd Standing Order) be stopped by any member objecting.

Standing Orders 115 and 116 prevent any debate on questions seeking information.

By Standing Orders 284 and 380, there can be no debate on the Order of the Day being read for the consideration of any Bill, or other matter (not being connected with the Estimates) on which progress has been reported, and leave given to sit again.

By the practice of the House, no debate is allowed in Committee on the motions, "That the Chairman report progress," or "That the Chairman leave the chair."

TASMANIA.

There is no rule of the House which, like the *clôture* of the French Legislature, provides a means of stopping discussion arbitrarily whilst a member is addressing the House. This can only be effected by the other members leaving the chamber, and thus forcing a "count out."

VICTORIA.

In the session of 1875-76, Sir James McCulloch carried a new Standing Order (limited in its operation to that session) "for the purpose of enabling the majority of the Assembly, or of the Committee of the whole House, to resolve that the question under discussion be at once put for decision." No Standing Order having a similar object has since been adopted by the Assembly. During 1875-76, the question "That the motion be now put," was, as explained by the Clerk, "proposed seven times in the House, on three of these occasions by members who had previously opposed its adoption. On one, it was negatived, on another it was carried in the affirmative without a division, and on one it was carried on a division. Of the other four occasions, one was negatived, one carried without a division, and two were carried on division. In Committee of the Whole, the motion was proposed twelve times, on five of these occasions by members who had opposed the adoption of the Standing Order. In four instances it was carried without division, and in the fifth the motion was negatived on division; of the other seven occasions, two were carried without division, and five were carried upon division."

QUEENSLAND.

No method, other than those known to and in practice by the House of Commons, of abridging or summarily terminating discussion, is in force in the Legislative Assembly.

NEW ZEALAND.

With regard to the second inquiry, as to abridging or summarily terminating debate, there is now under the Standing Orders of the House, no means of doing so. In the first code of Standing Orders framed by the House, there were the following:—

"13. Any member may, at any stage of a debate, move that the House do at once divide upon the question in debate, and such motion, if seconded, shall be put from the chair without discussion, so soon as the member then in possession of the House shall have concluded his address.

"14. If the question for division be carried, the motion previously under debate shall be immediately put from the chair, without further discussion; but, if the question for division be lost, debate on the previous motion shall be resumed where it was interrupted."

In 1863, these rules were taken advantage of to terminate a debate on the question of the removal of the seat of Government; but subsequently, in the same session, a proposal to expunge them from the Orders of the House was agreed to without a division.

In 1877, a motion proposing that a member should not be permitted to address the House for a longer time than twenty minutes, was rejected.

FOREIGN COUNTRIES.

[Extracted from paper presented to the Imperial Parliament, "Reports respecting the Practice and Regulations of Legislative Assemblies in Foreign Countries." C.-2753, 1881.]

AUSTRIA-HUNGARY.

1. THE REICHSRATH AND THE DELEGATION.

In each of these three Assemblies, "If the President finds it necessary to call a speaker back to the question repeatedly, he may stop the speech. If he has to call a speaker to order because the matter of his speech is objectionable in itself, as an offence against morality, propriety, or law (that is to say, for the use of language which, out of the House, would be punishable by law), he may at once silence him." In each House of the Reichsrath, "The President may put a motion to close the debate to the vote at any time, and a simple majority suffices to carry it. This must be done, however, without interruption to any speech in actual course of delivery. When a vote to close the debate is passed, each party, for and against the proposition under discussion, shall choose one member to make a final speech for it. If, however, after these two speeches, any member of the Government rises, the debate shall be considered to be re-opened. There are also rules, applicable to both Houses, for shortening procedure in urgent affairs."

2. HUNGARIAN DIET (LOWER CHAMBER).

There is no *clôture*. "The President alone has the right to interrupt the member speaking, or to remind him that he has deviated from the subject. If a member, having so been called upon twice, still continues to disregard the President's ruling, the President can order him to discontinue his speech."

BELGIUM.

"In the Senate, the close of the debate (*clôture*) may be demanded by five members—in the Chamber of Representatives by ten members; and may be pronounced by a vote of the Assembly. There is also a mode of checking the undue prolixity of a Speaker, viz., that of 'calling him to the question,' and, finally, of withdrawing his right to speak on the subject during the rest of the sitting." Sir H. Barron, who reports to Lord Granville, says, "I am not aware that this system has given rise to any complaints or abuses."

DENMARK.

The rule as to the *clôture*, literally translated, is as follows: "If the President considers that a debate is being improperly drawn out (*drages utilbørlig i Langdrag*), then he can propose the *clôture*, which shall be decided by the Chamber without debate. Likewise, any fifteen [in the Landsting twelve] members united may demand that the *clôture* be put to the vote. The names of these members shall be read out." Mr. Fane, who prepared the paper on the subject for the Foreign Office, says, "The best proof of the above rule being found to work well is, that it has rarely to be enforced, for every member feels himself powerless to obstruct business by wilfully abusing the freedom of discussion; and, although it may be thought that the President is vested with excessive power for the purpose of checking obstruction, it should be considered how unlikely he is to make a wrong or injudicious use of that power. In the first place, he is certain to be a man chosen specially for his acknowledged impartiality and sound judgment; but, besides this, it is to be borne in mind that he is elected for a term only of four weeks at a time, at the expiry of which period his mandate must be renewed. The Chamber have it, therefore, always in their power to dismiss their President, should they feel dissatisfied with the manner in which he exercises his functions. As a matter of fact, he has been for many years past re-elected without opposition, and this may be considered to indicate that no discontentment is felt with his practice of applying the *clôture*."

FRANCE.

Before pronouncing the *clôture*, the President consults the House (Senate or Chamber of Deputies); and, if the *parole* be demanded for the purpose of speaking against the *clôture*, it can only be granted to one speaker. Should there be any doubt as to the decision of the Chamber, after a second vote has been taken, the discussion continues. The *clôture* once pronounced, the *parole* can only be allowed on the position of the question. With regard to the close of the day's sitting, it may be as well to add, that no formal motion to adjourn is ordinarily made. The President seems to be guided by the apparent feeling of the House at the moment, and certainly a motion to adjourn is never used as a means of obstruction, or as a peg on which to hang a speech.

Mr. Adams appends to his report the following note: "The speaker who is actually addressing the House is said to have the *parole*, and no member can speak without having obtained the *parole* from the President, who, under certain circumstances, can take the sense of the House as to withholding it. Ministers, Government Commissaries, and Reporters of Committees are not bound by this rule, and obtain the *parole* whenever they claim it. One member has always a right to speak after a Minister or Government Commissary; consequently, if a member demands the *parole* immediately after a Minister or Commissary has spoken, the *clôture* cannot be pronounced until that one member has been heard."

GERMANY.

Sir J. Walsham explains that "the *Règlement* of the Reichstag varies in no important points from the Standing Orders of the two Houses of the Prussian Parliament;" and he reports essentially upon the former. The *clôture*, he says, is "very frequently put in force."

As to the power of controlling members, Sir J. Walsham reports, "If in addressing the House a member wanders from the subject under discussion, or is out of order, he can in the one case be cautioned by the President, and in the other called to order. Should the President be required to do one or the other twice during the same speech, the House may, on the question being put by him, determine without debate that the speaker be no longer allowed to address the House on the matter before it. Should any member commit a breach of order, he can be called to order by name. In this case, the member named can appeal in writing, and the House has to determine without debate, but not before its next sitting, whether such call to order was justified."

"At any time during a debate, a member may submit a motion in writing to the President in favour either of adjourning or of closing the discussion (*clôture*). Such motion must be supported by thirty members. When this is done, the President puts the question, 'That the debate be closed,' and the House, without requiring the mover to defend his motion by arguments, and without further discussion, proceeds to vote by show of hands. Should there be any doubt as to whether the 'Ayes' or 'Noes' have it, or if the votes are even, the motion is lost, and the debate proceeds; but at any time during its continuance the same process, as regards the adjournment or *clôture*, can be repeated, and the sense of the House taken.

"A simple motion, 'to pass to the Order of the Day,' can be made at any time, and need not be seconded. One member for, and one member against, such motion may be heard, and then the question is put to the House. During the course of the discussion in which it is made, a motion 'to pass to the Order of the Day' cannot, if once negatived, be renewed; nor is a motion of this kind at any time admissible in the case of a debate on questions brought up from the Bundesrath."

ITALY.

"The *clôture* exists in the Italian Parliament," writes Sir A. Paget, in reporting to Lord Granville. "It may be demanded by one or more members, at any time during a discussion. On its being demanded, the President consults the Chamber. One member only has the right of speaking against the *clôture* before it is pronounced; but, once the *clôture* has been decided by the Chamber and pronounced by the President, the debate ceases, and no further speaking is permitted, unless some member, who may have been personally alluded to in the course of the debate, demands to speak on a personal matter (*per un fatto personale*), but he is bound to confine himself to the personal explanation, and must not enter into the subject-matter of the debate. Any member, however, who may have given notice of an Order of the Day before the *clôture* has been pronounced, has the right of developing it after it has been pronounced. The President has the right of suspending or even of closing the sitting, but in either case, on the Chamber re-assembling, business is resumed at the point where it was interrupted."

NETHERLANDS.

As regards the *clôture*, the rules of the two Chambers of the States-General are essentially the same. Those adopted by the Second Chamber stand as follow: "Every motion of order for the closing of the debate must, before the President can put it to the vote, be supported by at least five members. The motion for the *clôture* must not be accompanied with reasons. No debate can take place on the motion for the *clôture*; but the President asks, before putting it to the vote, whether the Ministers or Commissaries of the King, or the proposers, desire to speak further on the question under discussion."

PORTUGAL.

According to the Standing Order of the Chamber of Peers, "No Peer shall be entitled to ask that the opinion of the Chamber shall be taken as to whether the matter has been discussed, unless at least two Peers shall have spoken in favour of the question and two against it; in which case he will ask leave to speak, stating at once that he does so in order to consult the Chamber as to the closing of the discussion, and then none of the Peers who may have already asked to speak will be allowed to do so."

In the Chamber of Deputies, there is no power to ask that discussion be closed; but the Standing Orders contain the following provisions:—

"Art. 141. Any Deputy who shall have obtained permission to speak shall be entitled to do so as long as he may think proper. No one can interrupt him without his express consent, unless he should deviate from the order of discussion, either by any lengthy wanderings to another matter, or by making use of any insulting or offensive words, or, in fine, by infringing in any way the provisions contained in these Standing Rules. In these cases the President will call him to order in accordance with these Standing Rules. (1.) Should the President fail to comply with this duty, any Deputy may call upon him to do so, but he must never address the Deputy who may be speaking personally. (2.) Any Deputy who shall avail himself of the power accorded to him in the foregoing section, is bound to give his reasons for his application to the President, should he be required to do so.

"Art. 142. Any Deputy who may have been called to order is bound to submit to the ruling of the President, saving an appeal to a special vote of the Chamber, for which he may apply in the event of his being of opinion that he has not been out of order. The President cannot refuse to allow a Deputy to speak who, after being called to order, shall submit to his ruling, but shall be desirous to explain his conduct."

SPAIN.

Mr. L. S. Sackville West supplies to Lord Granville the following "Memorandum on the Working of the *Clôture* as it exists in Spain.—The *clôture* in Spain may be said to exist indirectly, and to result in the action allowed to the President on the order of parliamentary discussion. This action may be brought to bear by him at his own discretion, in order to postpone the discussion of any question in the Orders of the Day before the Chamber, until the next sitting. The question next in order must then be debated. The effect of this procedure is to facilitate Government business, by enabling them either to adjourn or bring on any particular discussion during any particular sitting: in fact, it enables them to arrange the business before the Chamber as best suits their convenience. The President has not the power of arbitrarily declaring the sitting closed, and can only do so in the case of general disorder in the Chamber which cannot otherwise be dealt with. The Presidents of both Chambers are virtually nominated by the Government in power, although in theory elected irrespective of political bias. Their action, therefore, on all discussion, may be said to emanate directly from the Ministry, which thus indirectly obtains the control, more or less, over all debates on the questions of the Order of the Day."

In a second memorandum, Mr. West says, "The *clôture*, as commonly understood, exists only indirectly in the Spanish legislative bodies, and its procedure is as follows: Any deputy can move, during a political debate, that the question before the Chamber be not discussed, and this motion has preference over every other. It is then taken into consideration, put to the vote, and, if carried, closes the debate on the previous question. Such a course, however, cannot be pursued when any constitutional law proposed by Government is under discussion, although recourse may be had to it in the case of the discussion of a law proposed by any individual Deputy."

In each Chamber, only three speakers are, as a rule, allowed to speak on each side in a debate, but in extraordinary cases four are permitted to do so, and "no debate can be concluded until they have done so." The speakers "are chosen simply by priority of inscription when the debate is announced." No speech can be prolonged for more than one sitting without permission of the Chamber; but "the Chamber has the faculty of declaring a sitting a permanent sitting."

SWEDEN AND NORWAY.

Mr. Erskine reports to Lord Granville, as to Sweden, "There is in this country hardly any guarantee against malevolent waste of the public time in the debates of the Diet. Every member of either Chamber possesses the privilege of speaking as often as and at whatever length he chooses on any question under debate; whilst the majority has no right, as in France and elsewhere, to demand the *clôture*. In fact, the only check which exists against abuse is the moral pressure of an impatient Chamber, and the wholesome influence of unrestricted publicity. No complaint has, however, yet arisen as to any abuse of this excessive liberty of speech, as has been the case in Norway and Denmark, the Swedish character being less addicted to garrulity than those of some other countries."

In the Norwegian Storting, a member is entitled to speak as often as he pleases, and no question can be put to the vote as long as any representative desires to be heard on it. Should debate be unreasonably prolonged, the President may suggest to the House the expediency of being brief and avoiding repetition, or of closing the discussion. He has not, however, the right to interrupt any member.

SWITZERLAND.

Mr. Carew's report to the Foreign Office is, "The *clôture* exists, and is frequently put into practice, in the Conseil National, especially in the course of the more important debates. The text of Article 49 (modified)—which relates to the *clôture*—of the Règlement for the Conseil National, is as follows: 'L'Assemblée peut décider la clôture des débats si les deux tiers des membres présents la réclament; toutefois la clôture ne pourra être prononcée tant qu'un membre de l'Assemblée, qui n'a pas encore pris la parole, désire formuler une proposition et la motiver.' After the *clôture* of a debate has been pronounced by the President of the Chamber, no one has the right to ask permission to speak. Although no mention is made of the existence and application of the *clôture* in the Conseil des Etats, in point of fact it does exist there, and on the same conditions as in the Conseil National, though it is much more rarely put into practice there than in the last-named Chamber. The working of the *clôture* in both Chambers is described as highly satisfactory."

UNITED STATES.

In the "Rules for conducting Business in the House of Representatives of the United States," the following stands as No. 17:—

"1. There shall be a motion for the previous question, which, being ordered by a majority of members present, if a quorum, shall have the effect to cut off all debate and bring the House to a direct vote upon the immediate question or questions on which it has been asked and ordered. The previous question may be asked and ordered upon a single motion, a series of motions allowable under the Rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the Bill to its engrossment and third reading, and then, on renewal and second of said motion, to its passage or rejection. It shall be in order, pending the motion for or after the previous question shall have been ordered on its passage, for the Speaker to entertain and submit a motion to commit, with or without instructions, to a Standing or Select Committee; and a motion to lay upon the table shall be in order on the second and third reading of a Bill.—2. A call of the House shall not be in order after the previous question is ordered, unless it shall appear upon an actual count by the Speaker that a quorum is not present.—3. All incidental questions of order arising after a motion is made for the previous question, and pending such motion, shall be decided, whether on appeal or otherwise, without debate."

Mr. Evarts, writing to Sir E. Thornton, says that these rules "are substantially in use, so far as applicable, in all the local Legislative Assemblies of this country." Mr. Evarts adds, "It is understood that, in practice, the 'previous question' has generally been found to work well, by enabling the majority to resist the factious obstruction of legislation, without unduly interfering with rights of the minority."