IN PARLIAMENT

SESSION 2022 – 2023

HOLOCAUST MEMORIAL BILL

THE MEMORIAL

of

WESTMINSTER CITY COUNCIL

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TO THE EXAMINERS OF PETITIONS FOR PRIVATE BILLS IN THE HOUSE OF COMMONS AND THE EXAMINERS OF PETITIONS FOR PRIVATE BILLS IN THE HOUSE OF LORDS

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SHEWETH as follows:

Introduction

1. A Bill (**the Bill**) has been introduced into the House of Commons entitled "A Bill to make provision for expenditure by the Secretary of State and the removal of restrictions in respect of certain land for or in connection with the construction of a Holocaust Memorial and Learning Centre". The restrictions to be removed are imposed by the London County Council (Improvements) Act 1900 (**the 1900 Act**).

2. Your Memorialist is Westminster City Council, the local authority for the London borough in which the "certain land" affected by the Bill, Victoria Tower Gardens (the Gardens), is situated.

3. Your Memorialist is the local planning authority for the Gardens, and responsible for providing parks and gardens for the benefit of local residents. The Gardens are well used by local residents and workers. There is a shortage of public open space generally in the City of Westminster and particularly in the area where the Gardens are situated. It is difficult to provide new open space. Accordingly, your Memorialist has a strong policy to resist the loss of even the smallest open space. The policy is strongly supported by local residents. There were more than 1,000 objections to the planning application for the Holocaust Memorial, most if not all of which objected on the grounds of loss of open space.

4. In its capacity as local planning authority, your Memorialist resolved that had the planning application not been "called in" by the Secretary of State for his own determination, it would have refused the application because of its adverse effects on heritage, trees and the loss of open space.

5. Your memorialist is also the local highway authority and lead local flood authority for the City of Westminster, and so statutory successor to the London County Council in the capacities in which that Council promoted the bill for the 1900 Act.

6. Your Memorialist submits that the Bill is plainly hybrid, for the reasons that follow.

Background: the Bill & the London County Council (Improvements) Act 1900

7. The Bill would enable a Holocaust Memorial and Learning Centre to be built on the Gardens[1] despite the fact that the 1900 Act imposes a requirement upon the Commissioners of Works (now the Secretary of State) to maintain those Gardens. In effect the Bill proposes removing the requirement upon the Secretary of State to maintain as Gardens that part of the Gardens on which the Memorial and Learning Centre are proposed to be built. The Bill does not affect any land outside the Gardens. However, it should be noted that the Gardens provide an element of the setting of the Palace of Westminster World Heritage Site.

8. The circumstances in which the duty to maintain the Gardens was imposed upon the Secretary of State were as follows.

9. In 1899, London County Council deposited in Parliament a private Bill providing for the widening of Abingdon Street and extending the existing embankment of the river to Lambeth Bridge. The proposed consequential re-alignment of Abingdon Street required land to be taken from the then existing Victoria Tower Gardens. This was land that had been acquired by the Commissioners of Works in 1867 and laid out in 1879 as a public open space, the Victoria Tower Gardens. As presented, the scheme that would have been authorised by the bill facilitated but did not require the extension of the Gardens on land to the south; land which was at that time built upon but which it was necessary to acquire and clear in order to widen the road.

10. In these circumstances, the Commissioners objected to the Bill because they wanted the whole of the cleared area laid out as an extension of the gardens. London County Council agreed to do this; for its part, the Commissioners agreed to maintain the gardens so laid out. It is this obligation that the High Court has held precludes the construction of a Holocaust Memorial and Learning Centre. The obligation assumed by the Commissioners under the Act was expressed to be for the protection of the Commissioners but in fact was for the benefit of the public and, in particular, those living and working in the area.

11. The council of the Metropolitan Borough of Westminster contributed £100,000[2] towards the Scheme[3]. In 1965 your Memorialist was created and succeeded to the powers and responsibilities of the former Metropolitan Borough.

Hybrid Bills and the test of hybridity

What is the test of hybridity?

12. As explained in Erskine May, a hybrid bill is

> *A bill brought in by the Government (dealing with Crown property, or with national or other works in different localities etc) that affects private interests...*[4].

13. The test of hybridity was provided by Speaker Hylton-Foster in debate on what became the London Government Act 1963. A hybrid bill is

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[1] It may be noted that planning permission is not deemed to be granted by the Bill. Whatever the reason for this, it does not affect the hybridity of the Bill as further considered below.
[2] Equivalent to more than £10M in present money values.
[3] The facts set out above are drawn from the evidence of Dorian Gerhold to the High Court at the hearing of the challenge by the London Historic Parks and Gardens Trust to the grant of planning permission for the Holocaust Memorial and Learning Centre.
[4] See paragraph 42.3 (25th Edition).

a public bill which affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class.

What is a "private interest"?

14. "Private" in this context should be read in accordance with the meaning ascribed to "private" bills. Erskine May sets out as follows in connection with 'Private' Bills:

> *..private bills are bills for the particular interest or benefit of any person or persons. Whether they be for the interest of an individual ... or of ... a district or other locality, they are equally distinguished from measures of public policy.*

15. Accordingly, a private interest means the interest of a person or body that is distinct from and potentially in conflict with the public interest in the promotion of a bill. As can be seen from the extract from Erskine May above, a private interest in this context goes wider than the concept of a private right or the interest of a private individual. This wider meaning is spelled out in the Cabinet Office's *Guide to Making Legislation* (2022):

> *"Private interest" is wide enough to cover not only the interests of a purely private person or body (such as an individual or company) but also, for example, the interest a local authority has in the administration of its area*[5].

16. This broader definition of "private interest" as including local interests reflects the definition of 'hybrid bill' referenced in paragraph 5.2 of the Secretary of State's submission, namely

> *Hybrid bills are public bills which are considered to affect specific private* ***or local*** *interests, in a manner different from the private or local interests of other persons or bodies of the same category, so as to attract the provisions of the standing orders relating to private business.*

17. In your Memorialist's submission, where a bill, such as the Holocaust Memorial Bill, explicitly states in its long title that it only affects "certain land", the effect on local interests is an important part of considering whether it is hybrid.

Application of the test to the Bill

18. In light of this definition of "private interests", it is not correct to say as the Secretary of State does that "*no person's private rights or local interests (including any special interest groups and local residents) would be 'specially' affected*" by the Bill (as per paragraph 5.13 of the Secretary of State's Representations).

19. Your Memorialist humbly submits that the private and local interests identified in Column 1 of the table below are affected by the Bill for the reasons set out in Column 2. Further, these interests are 'specially' affected, that is affected in a manner different from the private or local interests of other persons or bodies of the same category.

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[5] See paragraph 41.3. This paragraph goes on to note that Bills covering all of London are usually excluded, but that proviso has no application to the Holocaust Memorial Bill as it concerns only "certain land" in part of the City of Westminster.

"Private or local interest" engaged	**How the Bill affects said "private or local interest"**
(1) The interest of your Memorialist in its capacity as the local planning authority for the area. (2) The interest of your Memorialist in its capacity as the local highway authority for Abingdon Street and the length of Millbank between Horseferry Road and Abingdon Street which abut the Gardens. (3) The interest of your Memorialist in its capacity as local authority responsible for the provision of open space and amenity for the area.	As the Cabinet Office guidance referenced above makes clear, the interest of a local authority in the administration of its area is a typical example of a "private or local interest". The Bill proposes to enable the reduction in the area of land available for public access and recreation, and substantively enables the reduction in the availability of such land inside the City's administrative area. That falls squarely within interests of local authorities identified as private or local interests in the Cabinet Office Guidance. In this particular case, your Memorialist takes an acute and serious interest in the amenity and public accessibility arising from the Gardens, as well as its legal functions and role in protecting the Palace of Westminster World Heritage Site. We further refer to the application of an alternative formulation of the hybridity test below which sets out how the Bill plainly engages an interest of your Memorialist and in turn triggers hybridity.
(4) The interest of the Secretary of State for Culture, Media and Sport including as successor to the Commissioner of Works	The Secretary of State is the successor of the named beneficiary (i.e., the Commissioner of Works) of the protections contained in section 8 of the 1900 Act. The Bill proposes to remove the protections in section 8 *in toto*. Prima facie, the Bill therefore clearly affects a distinct interest of the Secretary of State. The Secretary of State for Representations state (at paragraph 5.15) that the effect of the Bill upon the Secretary of State for Culture, Media and Sport as the person under an obligation to maintain the gardens is not adverse and on this basis the Bill should not be regarded as hybrid. However, the commentary in the precedents regarding "adverse" effects relates to *national* Bills which do not identify specific people who are treated differentially. We discuss the use of national/nationalisation precedents below but as the Secretary of State's Representations accept "*it is noted this [precedent] is not directly on point*" for the current Bill, which is only of local effect. In the alternative, if such a test of whether a person is "adversely affected" applies, the Secretary of State has not applied it correctly. A decision on hybridity will not turn upon whether the Secretary of State affected currently supports the objective of the Bill, but on whether implementation of the Bill affects the Secretary of State's extant functions and in particular her duty to maintain the Gardens. Objectively considered the duty to maintain the Gardens cannot be exercised as effectively if the Bill is implemented (i.e., that *objectively determined* interest is in fact adversely affected), and this adverse effect should not be balanced against the support of the Secretary of State for the Holocaust Memorial.

"Private or local interest" engaged	How the Bill affects said "private or local interest"
	This objective approach is supported by the analogy of the Legislative Reform (Epping Forest) Order 2011[6], which was subject to the procedure for hybrid instruments despite the fact the Corporation of London, which was responsible for preventing building on Epping Forest, supported the purpose of that Order.
(5) The interest of the specific local community in exercising its rights to open space, and in respect of which your Memorialist is the local authority.	Your Memorialist submits that it is plain that the Bill has a particular effect on the interests of those living and working in the vicinity of the Gardens; and of the local authority in which they are situated. These individuals and bodies are substantively the beneficiaries of the provisions from the 1900 Act requiring the Gardens to be maintained as open space,[7] as it is they who are able to take advantage of the Gardens for recreational purposes. The Secretary of State's submissions on this point are examined directly below this table.
(6) The interest of your Memorialist in its capacity as the successor to the London County Council for the area in which the Gardens are situated.	Section 8 of the 1900 Act is headed 'for the protection of the Commissioner of Works' but substantively it reflects a bargain reached between London County Council and the Commissioner of the Works.[8] The preamble of section 8 is clear that "it has been agreed between the Commissioners of Works and the Council that the said works shall only be executed subject to and in accordance with the provisions" of section 8. On the one hand, London County Council would contribute to the works and vest the land in the Commissioners, and in return the Commissioners would take on the responsibility of ensuring the laying out and maintenance of the garden. What is proposed under the Bill now is for the successor body to the Commissioners to unilaterally vitiate the agreement referred to in section 8. This plainly engages the interests of the other party to the agreement, interests which are now vested in your Memorialist.

Are Westminster City Council and its private and local interests affected in the same way as any other local authority?

20. In short, no. The matter is a question of substance, and it makes no material difference to say that your Memorialist is not named in the Bill. Substantively:

    a. Your Memorialist is the local authority for all of the land affected by the Holocaust Memorial Bill, has a clear interest in whether land in its administrative area is

[6] S.I. 2011 No. 1761.

[7] In R (on the application of Day) v Shropshire Council [2023] UKSC 8, the Supreme Court held that "Where a local authority uses the powers conferred by the Public Health Act 1875 ("the PHA 1875") or the Open Spaces Act 1906 ("the OSA 1906") to acquire and provide recreation land or open space to the public, the land is subject to a statutory trust in favour of the public and members of the public have a right to go onto the land for the purpose of recreation." It is submitted the 1900 Act created an equivalent statutory trust.

[8] It is readily accepted that the heading of a provision does not have legal force, and should not be taken as determinative (The Queen v A2 [2019] HCA 35). In the case of the 1900 Act, the heading does not alter the clear meaning of the provisions to provide a protection to the LCC, and give a benefit to the LCC. The heading merely reflects the structure and primary purpose of the Act to empower the LCC generally.

removed or altered from its existing function of providing publicly accessible open space (as well such removal or alteration leading to heritage impacts). No other local authority is affected by the Bill in this manner.

b. Your Memorialist is the successor body to the London County Council (the LCC) in the area affected by the Bill. No other local authority has the same status or impact on existing statutory protections in this manner.

Is the right of the local community "too general in nature"?

21. Again, the answer is no. The Secretary of State argues that the Bill's effects on the local community do not lead to hybridity because the relevant provision which is to be repealed by the Bill is for the benefit of the public *generally* and so the provisions of the Bill affects all members of the public equally.

22. Your Memorialist humbly submits that it is the substance of the matter rather than the form that is what matters here. Someone who lives in Cornwall or at any distance from the Gardens may have the same nominal right to use the Gardens as a person who lives in the City of Westminster, but will not use them on a regular basis; indeed, most members of the public may be unlikely to use the Gardens from one year's end to the next. However, those who live and work near the Gardens are likely to use them on a regular basis. Their *local* interests are therefore plainly affected in a way that the interests of those in Cornwall are not. In this context, it is appropriate to note that there is of course use by people other than those living and working locally; the Gardens do not function **solely** as a local park[9]. However, this does not mean that insofar as it does so function, it should not be protected.

23. The Secretary of State's view that "*it is only the rights of the public at large that could be said to be impacted by the Bill*" incorrectly assumes that *local* people are not comprised as beneficiaries of the "*rights of the public at large*" and that the *effect* is the same across those two populations (notwithstanding one population is a subset of another). In other words, it is not a question of whether the *right* in question is general or local, but whether the Bill "*affects a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class*". Put in this light, and substantively, the rights of local residents are disproportionately affected (that is to say, affected 'in a manner different from' the interests of others). Such a reading is consistent with Paragraph 19 of the Report of the Select Committee on Hybrid Bills (Procedure in Committee) 1948:

> *Since a Hybrid Bill, by definition, affects particular interests in a manner different from all other interests in the **same category**....*

24. It is no response to say that the rights to utilise the Gardens as gardens are open to all mankind when particular persons who exercise those same rights 'in the same category' are disproportionately affected.

25. Precedent bears this point out: the Legislative Reform (Epping Forest) Order 2011 also removed restrictions under a local Act (in that case, the Epping Forest Act 1878) in order to enable the construction of a building in line with Government policy (in that case, a Muster, Briefing and Deployment Centre to be used by the Metropolitan Police in connection with the London 2012 Olympic and Paralympic Games). The 2011 Order was considered by the Chairman of Committees in the House of Lords to be a hybrid instrument notwithstanding the

[9] The surveys that have been carried out are of numbers using the Gardens and did not seek to differentiate the place of origin of users.

fact that the restrictions on the use of Epping Forest formally benefit the public at large; it was recognised that in practice the Order affected the local interests of those members of the public who happened to use the Forest for recreational activities[10]. The same position applies under the Bill.

26. The test for a hybrid instrument in the House of Lords is set out in Standing Order 216(1) relating to Private Business in that House:

> *Where in the opinion of the Chairman of Committees an affirmative instrument as defined by Public Business Standing Order 72 (Affirmative instruments) is such that, apart from the provisions of the Act authorising it to be made, it would require to be enacted by a private or hybrid bill, he shall report his opinion to the House and to the minister or other person responsible for the instrument.*

27. It will be apparent that this test is reliant on the test of hybridity for a bill. Accordingly, a bill which sought to achieve similar effects to the Legislative Reform (Epping Forest) Order 2011 would have to be a private or hybrid Bill. In your Memorialist's view, the Holocaust Memorial Bill is plainly such a bill.[11]

Application of an "alternative" hybridity test

28. Although hybrid bills are now relatively rare, this was not always the case. Introducing the point of order which led to Mr Speaker Hylton-Foster's ruling on the test for a hybrid bill, the then Member for Kettering referred back to the Report of the Select Committee on Hybrid Bills (Procedure in Committee) of 1948. This report will have been in the mind of those advising the Speaker and forms part of the background to his ruling. It is therefore relevant to the application of the hybridity test. The 1948 Select Committee report set out the following test for whether a Bill is hybrid:

> *A hybrid Bill is a public Bill which affects private interests in such a way that, if it were a Private Bill, it would, under the Standing Orders relating to Private Business, require preliminary notices to be served on affected parties*[12].

29. This was not just the Committee's point of view: a Memorandum from Mr L. A. Abraham, (former) Clerk of the Private Bills and Examiner of Private Bills, confirmed this formulation of the test, setting out that:

> *A hybrid Bill is a public Bill which contains provisions affecting private rights in such a manner that, if similar provisions had been contained in a private bill, preliminary notices would, under the standing orders relative to private bills, have had to be given to parties whose rights are affected.*[13]

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[10] See the Report of the House of Lords Hybrid Instruments Committee: https://publications.parliament.uk/pa/ld201012/ldselect/ldhybrid/152/152.pdf

[11] Your Memorialist notes that other Memorials deposited make reference to the Festival of Britain (Supplementary Provisions) Bill. This sought Parliamentary authorisation for the use of Battersea Park for the Festival of Britain. It should also be noted that the Harrogate Stray Act 1985 (Tour de France) Order 2014, Harrogate Stray Act 1985 (Tour de Yorkshire) Order 2017 and Harrogate Stray Act 1985 (UCI Road World Championships) Order 2019, which similarly removed statutory restrictions on the use of particular land to enable activities to take place (in those cases, professional road cycling races), could have engaged Lords Standing Order 216 if they had been affirmative, not negative instruments. https://publications.parliament.uk/pa/ld201314/ldselect/lddelreg/156/156.pdf

[12] Paragraph 2 Report of the Select Committee on Hybrid Bills (Procedure in Committee) together with the Minutes of Evidence, Sir Geoffrey Cox, His Majesty's Stationary Office (published 1949). The Annex to the Memorial contains the relevant extracts.

[13] Paragraph 3 of the Memorandum quoted in Report of the Select Committee on Hybrid Bills (Procedure in Committee) together with the Minutes of Evidence, Sir Geoffrey Cox, His Majesty's Stationary Office (published 1949). The Annex to the Memorial contains the relevant extracts.

30. Mr B. H. Coode, (former) Clerk of the Public Bills, was asked if he agreed with this characterisation and he confirmed.[14] Your Memorialist submits that there is no conflict between this test (the **Abraham formulation**), and Mr Speaker Hylton-Foster's ruling (the **Hylton-Foster formulation**). Indeed, the Abraham formulation makes clear that any attempt to read a restrictive reading into the definition of "private interests" is not supported by pre-21st century Parliamentary practice, and that "private interests" should be interpreted so far as consistent with the parties who need to be notified under the Standing Order and/or rights of persons to petition against a Private Bill.

31. Without prejudice to that view that the Abraham formulation and the Hylton-Foster formulation are compatible, applying the Abraham formulation, your Memorialist notes the following Standing Orders under which notices would be required if the Bill was a Private Bill:

    a. Standing Orders 4, 10 and 11 – the publication of a notice with a concise summary of the Bill. As set out in the Appendix to the Secretary of State's Representations, "The purpose of this PrBSO is to notify persons interested/affected by a Bill of its existence and of the ability to petition against it". In considering who might be interested or affected by a bill, it is worth considering who the Standing Orders permit to be heard on a petition against a bill. Under Standing Order 95 a society, association or other body sufficiently representing amenity, educational, travel or recreational interests may be permitted to be heard on a petition against a private bill in respect of the interest that they say will be adversely affected to a material extent; similarly by Standing Order 96, a local authority may be permitted to be heard on a petition in respect of an alleged adverse effect on the whole or part of its area; as well as the inhabitants of such an area. It is plain therefore that preliminary notices would be served under this paragraph (and it is noteworthy the Secretary of State accepts this "would apply in principle").

    b. Standing Order 18 – this requires a notice to any person who has the benefit of a protective provision that a bill is proposing to alter or repeal. The Secretary of State's Representation acknowledge both that "It could be said that section 8 of the 1900 Act is a protective provision in favour of the "Commissioners of Works"" and that it "would apply". For completeness, your Memorialist considers itself a beneficiary of a protective provision under section 8 (for the reasons set out in Row (6) of the Table above), and should have received notice under Standing Order 18.

    c. Standing Order 5 – this Standing Order requires that where "use of" of open space is authorised by a Bill, a notice shall also contain a description of "open space or protected square… in which it is situate, and an estimate of the area of so much of such surface as is proposed to be compulsorily acquired or used". Unlike paragraph (a) and (b), this does not require a notice to a specific person, but your Memorialists submits that this is plainly indicative of the fact that "*if similar provisions had been contained in a private bill, preliminary notices would, under the standing orders relative to private bills, have had to be given to parties whose rights are affected*".

32. The Secretary of State's Representations state that the consideration of the Standing Orders in the Appendix thereto is provided "*should the Examiners find that the Bill is hybrid*". As is

[14] Ibid, ("Yes, quite" at paragraph 360 of the Minutes of the Evidence, quoted on page 48 of the same Book). The Annex to the Memorial contains the relevant extracts.

made plain by the Abraham formulation, the mere finding that a Standing Order requiring the giving of notices would apply if the Bill was a Private Bill is definitive of whether a Public Bill should instead be a Hybrid Bill. It should therefore be accepted, given the Secretary of State agrees some of the Standing Orders could or would in fact apply, that the Bill is properly to be regarded as a Hybrid Bill.

The Secretary of State's reliance on precedents relating to public policy

33. The Secretary of State's representations claim (in paragraph 5.10.3) that the Bill is not hybrid because it "*is implementing public policy*", and refer to a number of precedents in this regard.

34. First, it is clearly wrong to argue that a bill cannot be hybrid simply because it implements public policy: all recent railway hybrid bills have implemented public policy, but they also affected private interests and so were hybrid. It is also clear that the public policy test properly formulated applies to "*bills dealing with matters of public policy whereby private rights over large areas or of a whole class are affected*", as set out in paragraph 5.9 of the Secretary of State's representation. The Holocaust Memorial Bill is not such a bill, and so the precedents on which the Secretary of State seeks to rely are not directly relevant to the Bill.

35. The Secretary of State's Representations attempt to paraphrase a test of hybridity on this issue (at paragraph 5.10: "*the Bill is implementing public policy*"). The Memorandum from Mr L. A. Abraham, (former) Clerk of the Private Bills and Examiner of Private Bills makes clear that "*most hybrid bills, though they are of only local application are... founded on reasons of State policy*" and that "*in general, hybrid bills are measures of public policy.*"[15] Your Memorialist humbly requests that the test (proposed at 5.10 of the Secretary of State's Representations)[16] should therefore be rejected.

36. It is important to acknowledge, as clearly noted by the Report of the Select Committee on Hybrid Bills (Procedure in Committee) 1948[17], that Hybrid Bills are not all of the same nature. The use of precedents in the Secretary of State's Representations frequently relate to a specific type of Hybrid Bills of a national nature. In particular, no weight should be given to the attempt to pray in aid the Iron and Steel Bill of 1948-49 and the Education Reform Bill of 1987-88 (as suggested in paragraphs 5.3 to 5.11).

37. The Report of the Select Committee on Hybrid Bills (Procedure in Committee) 1948 sets out four types of Hybrid Bill and most pertinently notes (at paragraph 3):

> *The definition embraces a number of different types of hybrid bills. There are first bills promoted by Ministers of the Crown to acquire particular sites for the construction of public offices or post offices... in future the number of these [hybrid] bills will be considerably reduced [given the compulsory acquisition powers under the Town and Country Planning Act 1947]. But as Sir Thomas Barnes has pointed out, an act of Parliament will still be necessary where there are statutory restrictions on the use of the Site. Secondly there are bills regulating Crown property which, if they affect private rights, must proceed as Hybrid bills. Thirdly, there are bills such*

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[15] Paragraph 16 of the Memorandum quoted in Report of the Select Committee on Hybrid Bills (Procedure in Committee) together with the Minutes of Evidence, Sir Geoffrey Cox, His Majesty's Stationary Office (published 1949). The Annex to the Memorial contains the relevant extracts.

[16] For completeness, at paragraph 5.20 of the Secretary of State's Representations, the proviso is added that "should the Bill implement public policy where a whole class is affected, it will not be hybrid". For the reasons explained in this Memorial, the Holocaust Memorial Bill does not fall within that proviso in any event.

[17] Paragraph 3 of the Report of the Select Committee on Hybrid Bills (Procedure in Committee), Sir Geoffrey Cox, His Majesty's Stationery Office (published 1949).

as the Agricultural (Miscellaneous Provisions) Bill, 1944, which are public bills with only one or two clauses which affect private rights. Finally there are bills involving the transfer of properties belonging to particular corporations or companies to the State or to public boards.

38. The examples given in the Secretary of State's Representation are all bills which might have fallen into this final, fourth category. However, the Bill does not. Rather it falls squarely into the first category as a bill which removes "*statutory restrictions on the use of*" a particular site. It is respectfully submitted that principles relating to the fourth type of hybrid bill mentioned are not properly capable of extrapolation to the first kind. In particular, the Secretary of State's references to the materiality of an 'adverse' effect, as well as its attempt to paraphrase a test of hybridity into "*the Bill does not single out a person or body from a defined class for special treatment*" must been seen in the context of the fourth type of hybrid bill. It is clear, when Government has previously proposed nationalisation or non-specific consolidation across the country why the absence of a 'single person' is relevant. No such principle applies in the first type of hybrid bill where a statutory restriction and protection is proposed to be removed from a specific parcel of land which is subject to various "private rights" (defined broadly to include the interests of a local authority in administering its area). This is plainly seen in the analogous Legislative Reform (Epping Forest) Order 2011.

Conclusion

39. Your Memorialist submits this Bill should proceed as a Hybrid Bill on the basis that:

    a. applying the Hylton-Foster formulation, the Bill affects:
        i. the private and local interests (as defined in the Cabinet Guidance) of your Memorialist in its capacity as a local authority and a successor body to the LCC in a manner different from other local authorities;
        ii. the particular interests of the local community in a manner that is substantively and disproportionately different from the public at large; and
        iii. the objective position of the Secretary of State in her statutory capacity as the preserver of the public gardens under the 1900 Act;

    b. applying the Abraham formulation, the Bill would – if it were a Private Bill – clearly engage the requirement to serve preliminary notices under the Private Bill Standing Orders; and

    c. the Bill falls squarely within the first type of Hybrid Bill identified in the 1948 Select Committee's typology of Hybrid Bills, as a bill that removes statutory restrictions on the use of certain land, as may be seen from the close analogy of the hybrid Legislative Reform (Epping Forest) Order 2011.

YOUR MEMORIALISTS therefore request that they may be heard by themselves, their Agents and witnesses in support of the allegations contained in this Memorial.

13 April 2023

BDB Pitmans LLP

Parliamentary Agents for Westminster City Council

ANNEX: EXTRACTS FROM REPORT OF THE SELECT COMMITTEE ON HYBRID BILLS (PROCEDURE IN COMMITTEE), SIR GEOFFREY COX, HIS MAJESTY'S STATIONERY OFFICE (PUBLISHED 1949).

REPORT

The Select Committee appointed to consider the procedure in select committees on public bills to which the Standing Orders relative to Private Business apply and to report whether any, and if so what, rules should be laid down to regulate their proceedings have agreed to the following Report:—

I.—*Introduction*

1. Your Committee have held 14 meetings and examined the following witnesses: Mr. L. A. Abraham, Clerk of Private Bills; Mr. A. Ellis, C.B.,* First Parliamentary Counsel to the Treasury; Mr. B. H. Coode, Clerk of Public Bills; Sir Charles Browne, Parliamentary Agent for His Majesty's Government and a member of the firm of Messrs. Dyson Bell and Co., Parliamentary Agents; Mr. W. Craig Henderson, K.C., Leader of the Parliamentary Bar; Mr. A. H. Jeffreys, Chief Clerk, Committee and Private Bill Office, House of Lords; and Sir Thomas Barnes, G.C.B., C.B.E., Treasury Solicitor.

II.—*Definition of a Hybrid Bill*

2. It will be useful at the outset to state the difference between a public bill and a private bill. According to Erskine May, "Public bills ... relate to matters of public policy and are introduced directly by Members of the House. Private Bills are bills for the particular interest or benefit of any person or persons, public company or corporation, or local authority, and are solicited by the parties themselves, who are interested in their promotion, being founded upon petitions deposited in accordance with the Standing Orders relating to Private Business."† A hybrid Bill is a public bill which affects private interests in such a way that, if it were a private bill, it would, under the Standing Orders relating to Private Business, require preliminary notices to be served on affected parties. A hybrid bill is a public bill, since it accords with the two fundamental criteria of public bills described by Erskine May; it has also, in large or small degree, the character of a private bill, since it affects the interests of specific individuals or corporations as distinct from all individuals or corporations of a similar category.

III.—*Types of Hybrid Bill*

3. This definition embraces a number of different types of hybrid bills. There are, first, bills promoted by Ministers of the Crown to acquire particular sites for the construction of public offices or post offices. The Public Offices (Site) Bill, 1947, is the most recent example. Your Committee are aware that section 37 of the Town and Country Planning Act, 1947, gives power to certain Ministers to acquire land by order for these purposes, so that in future the number of these bills will be considerably reduced. But as Sir Thomas Barnes has pointed out,‡ an act of Parliament will still be necessary where there are statutory restrictions on the use of the site. Secondly, there are bills regulating Crown property which, if they affect private rights, must proceed as hybrid bills. Thirdly, there are bills such as the Agriculture (Miscellaneous Provisions) Bill, 1944, which are public bills with only one or two clauses which affect private rights. Finally there are bills involving the transfer of properties belonging to particular corporations or companies to the State or to public boards. The London Passenger Transport Bill, 1931, the Bank of England Bill, 1946, and the Cable and Wireless Bill, 1946, are examples of this type of hybrid bill.

* Now Sir Alan Ellis, K.C.B.

† 14th Edition, p. 463.

‡ Evidence, Q. 886.

4. This last group does not, however, include bills affecting all the undertakings of an industry throughout the country, even where particular exceptions and exclusions have been made. Rulings of Mr. Speaker that the Railway Bill, 1921, and the Electricity Supply Bill, 1926, should not be regarded as hybrid bills, have served as precedents for proceeding with recent bills nationalising Coal, Transport, Electricity and Gas, in which all private rights in a particular industry are taken away,* as public bills. Most public bills in some sense affect private rights, so that the decision to treat a measure of public policy as a hybrid bill when it affects the private rights of certain members of a class and as a public bill when it affects the rights of all members of that class is difficult to justify on grounds of principle or equity; but Your Committee consider it defensible as a procedural expedient, in as much as a select committee—to which all hybrid bills are committed—would be a wholly inadequate piece of legislative machinery for considering either these large complex bills nationalising whole industries or the extensive opposition which they arouse.

5. A hybrid bill may be introduced by a private Member as well as by Ministers of the Crown. At a time when corporations such as County and Rural District Councils were not empowered to promote private bills, private members would introduce bills on their behalf which those introduced as public bills were, in effect, private bills. Since the passing of the Local Government Act, 1933, however, no individual, company or corporation has been disqualified from promoting a private bill, and if a hybrid bill had been introduced by a private member since that date, its main object must have been to advance the public interest. Although the vast majority of hybrid bills are introduced by a Minister of the Crown, Your Committee have therefore referred throughout to " the promoters " of a hybrid bill, and have found no reason for differentiating in their recommendations between hybrid bills introduced by a Minister of the Crown and by a private Member.

IV.—*Survey of past practice and precedent*

6. A public bill becomes a hybrid bill when the Examiners of Petitions for Private Bills have reported that it affects private rights in a manner which requires the serving of notices under the Standing Orders relating to Private Business. The office of Examiner was instituted by the House in 1847, superseding the Select Committee on Petitions for Private Bills, which had performed similar functions since its first appointment in the session 1837-38. Before 1837, therefore, it is difficult positively to identify a bill as a hybrid bill; and, as before 1851 no minutes of evidence of committees on hybrid bills are extant, no factual account of the methods and purposes of committees before that date can be given.

7. Some general deductions can, however, be made from the minutes of proceedings on bills which after 1837 would have become hybrid bills, such as bills promoted by a Minister of the Crown or bills regulating Crown property which affected particular interests or areas. These bills were undoubtedly public measures and were brought in on motion as public bills; but wherever they affected private interests the Standing Orders which related to the serving of notices had to be complied with, and compliance had to be proved before the select committee to which the bills was referred. It is now impossible to judge on what principle, or even to discover by what machinery, it was decided in each particular case that the standing orders did apply. But where compliance was enforced, bills were treated in the same manner as private bills, except that either before or after committal to a select committee they were invariably considered in a committee of the whole House. By 1830

* Evidence, p. 46, paras. 5 and 6.

it is true to say that these bills, either through an undue emphasis on their analogous features, or more probably through the indifference of the House, had been virtually assimilated to practice and procedure on private bills.

8. At the same time a radical change was taking place in the powers and procedure of committees on private bills. The multiplication of private bills made it impossible for the House to do other than condone the usurpation by committees of its powers to pronounce upon the expediency of a bill, and to mutilate or even to reject it. As Ley, Clerk of the House, said of private bill committees in evidence given before the Select Committee on Private Business, 1838: "the real province of the committee is only to make the bill perfect according to the intentions of the promoters and to see that proper compensation is made to those whose property may be taken by the despotic power of Parliament; but in consequence of the House having declined to hear counsel and evidence on second reading, according to former practice, upon the principle of the bill, that inquiry has devolved upon the committee, and the committee have in fact become the House in this respect".* Henceforward the onus of proving that the powers sought in the bill should be granted fell upon the promoters, and the committee gave their decision after weighing the expediency of granting those powers against the submissions of petitioners against the bill. The appropriateness of this procedure to private bill legislation has been noted by Sir William Holdsworth: "Because the promoters of a private bill are asking for a *privilegium* they must assign reasons for their request, and they must prove the truth of those reasons. Moreover it is not improbable that the advantages sought by the promoters may infringe the rights of other persons. Since these rights are given to these persons by law, they are entitled to ask that these rights shall be protected, or if it is decided that they must be infringed, to ask compensation for the infringement."†

9. The whole of this doctrine and tradition is not applicable to hybrid bills. As public bills they are part of the general law, not exceptions to it; and it could not have been the intention of the House that such bills should be submitted to the scrutiny of a committee with power to reject them.‡ It is difficult to point to a decision of the House in which any such rule was applied to hybrid bills. It is true that on four occasions since 1837, committees on hybrid bills with preambles have reported that the allegations were not proved, and the House has acquiesced by taking no further stages of those bills. But the last report of this kind being made to the House of Commons was in 1891;§ and with the exception of the Ouse Drainage Bill, 1927, which was considered by a joint committee, no example has been discovered of a select committee of the House of Lords or a joint committee reporting that it is not expedient to proceed with the bill.‖ Nor do the precedents reveal that any attempt was made in constituting select committees on hybrid bills to create an impartial tribunal, by insisting, as in private bill committees, upon disinterested membership. As a general rule, the member who introduced the bill in the House was a member of the committee and was usually elected Chairman. A striking instance of this practice was the Telegraph (Construction) Bill, 1911, where notwithstanding the bill was an opposed bill, the Postmaster-General who introduced it was himself chosen Chairman of the committee.

10. In spite of these indications, Your Committee are aware that the question whether the expediency of a hybrid bill is a proper subject for discussion in

* Report from the Select Committee on Private Business, 1838, Parl. Pap. Sess. 1837–38, No. 805.
† History of English Law, Volume XI, p. 326.
‡ See, however, para. 25 *infra*.
§ Evidence, Q. 162.
‖ Appendix C, p. 109.

select committees has never been decided, and that precedents, even from the beginning of the present century, are conflicting. In the London Water Bill, 1902, and the Port of London Bills of 1903 and 1908,* the basic proposal to transfer certain properties to public boards was placed by the committees beyond the contentions of parties. These decisions were all the more significant in that they were made by joint committees, who could not be considered bound by a previous affirmation of principle by one House. On the other hand, in the Telegraph (Construction) Bill, 1911, the London Passenger Transport Bill, 1931, and the Cable and Wireless Bill, 1946, no evidence as to the expediency of these measures was excluded†: indeed, in the second case, the Minister of Transport was called as a leading witness for the promoters to justify the policy which had inspired the bill. In effect, all the arguments which had been put forward in the House during the second reading debate were reproduced by the advocates of the parties before the Committee.

11. Procedure in joint committees on hybrid bills lies outside the province of Your Committee. In select committees on hybrid bills, however, Your Committee consider that the broad principle should be upheld of restraining the petitioner from attacking the public policy which inspires a hybrid bill. At the same time they have no wish to prevent any person whose interests have been injuriously affected by the provisions of the bill from defending those interests before the select committee. The exception to the rule that the expediency of the bill is to be decided by the House may be appropriate to private bills. It should not apply to hybrid bills, which despite a resemblance to private bills which has led some committees inadvertently to treat them as such, are primarily measures of public policy.

V.—*Present Procedure on Hybrid Bills.*

12. A public bill is referred to the examiners of Petitions for Private Bills if it appears that the Standing Orders relative to Private Business apply to it. The Standing Orders in question are those dealing with the giving of notices to persons whose property or rights are proposed to be compulsorily acquired or otherwise affected by the bill, with publication of a summary of the bill's purposes in certain journals, and with the deposit of plans and documents. If the Examiners report that these Standing Orders are applicable and have been complied with, the second reading of the bill can be taken. When the Examiners report that the Standing Orders are applicable but have not been complied with, their report is referred to the Standing Orders Committee, who recommend whether compliance should be dispensed. It may happen, for example, that a hybrid bill is not introduced at a sufficiently early date for the Orders prescribing dates for the publication and service of notices to be complied with. In such a case, compliance with the Standing Orders would be dispensed, and the bill could proceed as a hybrid bill. If the Standing Orders Committee recommend that compliance should not be dispensed, the order for second reading is discharged. If the Examiners report that none of the Standing Orders applies to the bill, it proceeds through its several stages as an ordinary public bill.

13. After second reading a hybrid bill is committed to a select, or in some cases a joint committee. The order of the House appointing the Committee provides that petitions against the bill presented within a defined period shall be referred to the Committee and that petitioners praying to be heard by themselves, their counsel or agents shall be heard against the bill, and counsel or agents heard in support of the bill. If objection is taken to the *locus standi* of petitioners, the Committee decide the matter on the basis of previous decisions by the Court of Referees.

* Appendix B, pp. 107, 108. † Appendix A, p. 105

14. Procedure in committee has varied considerably according to the presence or absence of a preamble in the bill under consideration. In order to understand why this has been so, it is necessary to bear in mind that it was on the pretext of examining the allegations contained in the preambles of bills that committees on private bills assumed power to decide the expediency as well as the details of the bills. So, where a hybrid bill has had a preamble, procedure in the select committees has by extension been generally similar to the procedure of private bill committees.* Counsel for the promoters has opened proceedings with a speech in support of the expediency of the bill, calling evidence and commenting on petitions against the bill. The petitioners have then presented their case against the bill. If they called witnesses or put in documentary evidence, the promoters have been entitled to a right of reply. The Committee have then decided the expediency of the bill on the question whether the preamble had been proved, and have then considered the clauses, disposing of opposition to them in like sequence.

15. Where the bill has not contained a preamble, two courses have been followed.† In some cases, the promoters have undertaken to establish the expediency of the bill, notwithstanding the absence of a preamble. In other cases, no evidence has been adduced in support of expediency on the ground that, as the bill contained no preamble, the principle of the bill must be taken as affirmed by the second reading in the House. In presenting their case, the petitioners have called in question the expediency of the bill, unless debarred from doing so by the committee. The committee have either passed a resolution as to the expediency of the bill, or have immediately considered the clauses.

16. With unopposed bills, though on a few occasions evidence has been called in support of the expediency of the bill, the preamble has generally been formally proved, or, if there was no preamble the agent or counsel for the promoters has confined himself to an exposition of the bill's provisions. The committee have either taken a decision as to the expediency of the bill or, more usually, have passed directly to consider the clauses.

17. When the committee has reported the bill, it is re-committed to a committee of the whole House, and passes through its remaining stages as a public bill.

VI.—*The effect of the second reading of a hybrid bill.*

18. The principle of a public bill is affirmed when the House has given it a second reading. From this usage stems the rule that no amendment destructive of the principle of the bill may be moved in the committee to which it is referred. In reading a private bill for the second time, the House is by practice understood to convey nothing more than that the bill is not *prima facie* objectionable on public grounds; but any affirmation of principle is conditional upon the allegations of the bill being proved before a private bill committee. Your Committee consider that neither doctrine can be applied inflexibly to all hybrid bills. In a particular instance it might be clearly indicated in the course of the debate on second reading that the affirmation of principle was conditional upon the finding of the select committee that the expediency of the bill had been established. Again it would be open either to the Government or to private Members to put down Instructions to the select committee in which the expediency of the measure is specifically referred to the committee for investigation and decision. In the absence of any indication or instruction to the contrary, however, Your Committee consider that the second reading of a hybrid bill should relieve the promoters of the onus of establishing the expediency of the bill.

* Evidence, p. 2, para. 4. † Evidence, p. 3, paras. 5–7.

VII.—*Purpose of committing a hybrid bill to a select committee.*

19. Since a hybrid bill by definition affects particular interests in a manner different from all other interests in the same category, an opportunity must be provided for those interests which have been singled out to state fully their case for amending the bill in order to secure their protection or compensation. This seems to Your Committee to be the purpose of committing the bill to a select committee. Unless otherwise instructed, the function of a select committee on a bill should not be to conduct roving investigations into its general merits. Your Committee cannot accept the view that "it is only before a select committee of the bill . . . . that Parliament for the first time is put in a position to judge calmly the whole question and to arrive at a decision which can be justified on the basis that the question in dispute has been fully and fairly considered* ". If the proposition be accepted that the House could not form an opinion upon the merits of a hybrid bill and must delegate the function to a select committee, this would be an argument for committing a hybrid bill not to a committee of a forensic character, but to an ordinary select committee which would not be dependent for its facts on evidence furnished by promoters and petitioners pleading solely in favour of their private interests. The practice of giving select committees on hybrid bills power to send for persons, papers and records was, however, discontinued by the House in order to prevent such general inquiries being held, and to prevent committees from hearing parties who had not presented petitions against the bill. This confirms Your Committee in the view that the peculiar function of a select committee on a hybrid bill is to hear those affected parties who petition and to reduce as far as possible the hardship and inconvenience which would be inflicted on them if the bill passed into law.

VIII.—*Rights of Petitioners against a hybrid bill.*

20. The initiative in the select committee rests therefore with the petitioners, for it is to hear their case that the committee has been primarily convened. It does not follow that a petitioner's opposition to the bill should be unrestricted. It has been represented to Your Committee that the right of a petitioner "to present, and to be heard upon, a petition against the bill is specifically given to him by the order of reference without any limiting conditions†". The fact that no limiting conditions are expressed in the orders does not mean that none is implied. One such condition is that the petitioner must have a *locus standi* to speak for some interest or property upon which the bill impinges. Nor does it follow from the right of a petitioner to be heard, that he is entitled to be heard in support of all the allegations in his petition. Even in the case of private bills, it is competent to a committee to restrict petitioners as to the topics they may bring forward. So in the case of hybrid bills, Your Committee cannot see that any injustice is done to a petitioner, who is allowed to be heard only because his property or interest are affected by restraining him from urging objections which, if they were the only ones he had to urge, would not entitle him to be heard.

21. The validity of this conclusion may be tested by contrasting the rights of a petitioner against a hybrid bill with the rights of members of the general public. It has been stated that only parties with a *locus standi* will be heard by a select committee against a hybrid bill. A member of the general public may object to the bill but will not be heard, since the House will not take notice of persons, other than Members, discussing the merits of public legislation. It is reasonable, therefore, that an interested petitioner should not be heard in his capacity as a member of the general public, and should not be permitted to urge objections which might equally well be urged by a

* Evidence, p. 72, para. † Evidence, p. 56, para. 19.

RE IN COMMITTEE)

ES

MINUTES OF EVIDENCE

TUESDAY, 27TH JANUARY, 1948.

Members present:

MR. BENSON (*Chairman*).

Mr. Lennox-Boyd.	Mr. Granville Sharp.
Sir Hugh Lucas-Tooth.	Mr. Sparks.
Mr. McLeavy.	Mr. William Wells.
Mr. Hopkin Morris.	

Mr. L. A. ABRAHAM, Clerk of Private Bills, called in and examined.

Chairman.

1. Mr. Abraham, would you mind telling us exactly what your position is?—I have two capacities. I am the head of the Private Bill Office, which is the office that is charged with, first of all, the various routine work that has to be done in regard to the bills themselves, that is to say, the reception of the petitions for the bills themselves, the various deposits that have to be made, under the Standing Order, of plans and so forth, the reception of petitions against bills when the bills are opposed, and the preparation of the private business notice paper—the list of notices and the list of proceedings that are taken at the time of private business; and, secondly, we are responsible for providing the clerks to take the committees on opposed private bills. The Unopposed Bill Committee is taken by a clerk who, though nominally in my office, is in fact seconded to act as Private Secretary to the Chairman of Ways and Means, who is *ex officio* Chairman of the Committee on Unopposed Bills; and, as far as my personal duties in that regard are concerned, I only come in so far as the clerks to opposed bill committees may come to me for advice on procedure; and the committees themselves may also do that, if they wish. My other function, of course, is as one of the Examiners of Petitions for Private Bills, in which capacity I am responsible for seeing that the Standing Orders have been complied with. The agent for the promoters of every private bill appears at the beginning of the Session to prove whether or not they have complied with Standing Orders, and I report accordingly to the House; and sometimes, though not very often, they are contested at that stage, in which case it falls on me to decide between the parties.

In regard to hybrid bills, I come in in this way. When a bill on the face of it appears to affect private rights, the clerks in the Public Bill Office advise the Speaker of that, and if the Speaker is satisfied that there is a *prima facie* case for supposing that the bill may affect private rights, an Order is supposed to be made by the House, ordering the Examiners to examine the bill, and then I or my brother Examiner in the House of Lords, Mr. Jeffreys, examine it, and we decide whether or not it does come within that category and whether or not the Standing Orders have been complied with.

2. You have prepared a Memorandum for us on the subject of hybrid bills. Will you hand that in formally?—Yes. (*Memorandum was handed in.*)

Memorandum by Mr. L. A. Abraham, Clerk of Private Bills, one of the Examiners of Petitions for Private Bills

PRELIMINARY OBSERVATIONS

1. A hybrid bill is a public bill which contains provisions affecting private rights in such a manner that, if similar provisions had been contained in a private bill, preliminary notices would, under the standing orders relating to private bills, have had to be given to the parties whose rights are affected.* For a bill to be

* A Bill purely public has been converted by amendment into a hybrid bill. Thus the Waterworks Clauses Act (1847) Amendment Bill, 1884–85, as introduced into the House of Commons, applied to every water company in the kingdom. By an amendment made in Committee it was limited to the metropolis. The House of Lords referred the bill to the Examiners who held that it had become a hybrid bill, 117 Lords Journals 252, 268.

hybrid it must not merely affect private interests—as Mr. Speaker Whitley once said, " every public bill in some sense affects some private interests "*—it must affect the interests of particular individuals or corporate bodies as distinct from the interests of all persons or corporate bodies in the particular category to which the individuals or corporate bodies whose interests are affected belong.

2. Hybrid bills are committed in the first instance to a select, or in some cases to a joint committee† and an order is made that all petitions presented against the bill within a certain time shall be referred to the committee, and that the petitioners praying to be heard by themselves, their counsel, or agents, shall be heard against the bill, and counsel or agents heard in support of the bill.‡ Hybrid bills, when reported from select, or from joint, committees, are recommitted to a committee of the whole House, and thenceforward pursue their course as public bills.

3. Formerly hybrid bills invariably contained preambles. The first instance I have found of a hybrid bill without a preamble is the New Forest Bill, 1877. Since then 39 hybrid bills with no preamble have been introduced. In recent years the absence of a preamble has become increasingly frequent.

Present Procedure in Select Committees on Hybrid Bills

A. *Where the Bill contains a Preamble.*

4. Where the bill has a preamble the procedure in select committees on hybrid bills is generally similar to the procedure in private bill committees. The Committee will be familiar with this. On occasions, however, a course of procedure different in material respects from that followed in private bill committees has been adopted. Thus, committees have sometimes accepted reports of commissioners or evidence taken before committees on bills in former sessions as sufficient proof of the allegations in the preamble instead of requiring them to be proved by parol evidence.§ In some instances committees have found the preamble proved without taking any evidence.‖ In other cases the proving of the preamble has been postponed until after the clauses have been considered.¶ And whereas, in the case of private bills, " the persons whose private interests are to be promoted appear as suitors for the bill,"** in the case of some hybrid bills the promoters have not been represented by either counsel or agents. In such cases the chairman of the committee (who was often the Member who had introduced the Bill) took upon himself the examination in chief of the witnesses in support of the bill.††

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* 193 H.C. Deb. 5s. 1687.

† This proceeding has been dispensed with, see Sir Walter Scott Monument and Dean Forest Bills, 1841, 96 Com. Journ. 251, 385, both unopposed bills, and Metropolis Subways Bill, 1867–8, 123 Com. Journ. 61, 71, 76. Several petitions had been presented against the last-named bill, praying to be heard by counsel, but as the parties had been heard by the committee on a similar bill in the preceding session, the House refused to allow the question to be reopened.

‡ The words " or agents "; where they occur for the second time, were first inserted in the order in Session 1933—34 to meet a doubt raised by a parliamentary agent whether the agent for the bill could be heard in its support. This doubt originated in a complete misconception of the purpose of the order which was to give the promoters, not a right to be *heard*, but a right to be heard by *counsel*. The right of the promoters to be heard was a corollary of their obligation to prove the preamble.

§ E.g. Chelsea Bridge and Thames Embankment Bill, 1846, MS Minutes; Metropolis Water Supply Bill, 1852, Evidence, Parl. Pap. (H.C.) Sess. 1852, No. 395, p. 2; Parochial Charities (London) Bill, 1883, Report, Parl. Pap. (H.C.) Sess. 1883, No. 185, p. iv.

‖ River Thames (No. 2) Bill, 1885, Report, Parl. Pap. (H.C.) Sess. 1884–85, No. 218, p. iv; London Institution (Transfer) Bill, 1912, Report, Parl. Pap. (H.C.) Sess. 1912–13, No. 306, Evidence, p. 1.

¶ E.g. Lloyds' (Signal Stations) Bill, 1888, Report, Parl. Pap. (H.C.) Sess. 1888, No. 344, Evidence, pp. 2, 9.

** May, Parliamentary Practice, 14th ed., p. 825.

†† E.g. County of Suffolk Bill, 1904 (an unopposed bill), Report, Parl. Pap. (H.C.) Sess. 1904, No. 273, p. iv; Watermen's and Lightermen's Company Bill, 1892 (an opposed bill), Report Parl. Pap. (H.C.) Sess. 1892, Nos. 237, 280, Evidence, p. 3.

16. It is sometimes said that the reason why many hybrid bills are introduced as public bills instead of on petition is because they are promoted by the Government, and the Crown cannot petition Parliament. In the latest edition of May's Parliamentary Practice, at page 827, Sir Gilbert Campion intimates a doubt whether this is sound doctrine. He suggests that the true explanation is that "each department has a Minister representing it in Parliament" and it is simpler for him to introduce a public bill. But in many cases this explanation will not apply. There are, indeed, hybrid bills such as those introduced by the Postmaster-General from time to time the object of which is to enable him to acquire lands compulsorily for the purposes of the Post Office, which bear a very close analogy to private bills. But most hybrid bills, though they are of local application only, are, like public bills of the ordinary type, founded on reasons of State policy. They are proposed for the public benefit, not for the benefit of any government department. Moreover, if government departments could get bills of a private nature introduced as public bills because they had Ministers representing them in Parliament, other parties would be equally entitled to get bills for their benefit introduced as public bills provided they could induce members to sponsor them. The historic rule, embodied in Standing Order 2, relating to private bills, that no private bill is to be brought into the House except on petition, would in that event be virtually abrogated and the first step taken towards the complete obliteration of the distinction between private and public legislation.

17. At first sight some of the hybrid bills which have been brought in by private members may seem, as Sir Gilbert Campion says, "hardly distinguishable from private bills."* It has been suggested that such bills have been introduced as public bills in order to save expense. The more reasonable supposition surely is that these bills, though calculated to benefit some particular person or body of people, were proposed primarily for the public benefit. The only other ground on which a bill of a private nature could properly be introduced as a public bill is that there were no parties able to petition Parliament.† But the fact that bills which are in their nature private have been in special circumstances introduced as public bills does not affect the general principle that, in general, hybrid bills are measures of public policy.

B. *The Proof of Expediency*

18. A hybrid bill might be committed to a select committee because it was considered advisable, before coming to a decision, to take evidence as to its expediency. Public bills have occasionally been committed to select committees for this reason.‡ It is, however, hard to see why, if this was the purpose of the reference, committees on hybrid bills have in practice confined themselves to hearing the evidence called by promoters or opponents of the bills, and have been content, when the bills were unopposed, to depend for their information wholly on the interested representations of the promoters. It must be remembered that until recently a committee on a hybrid bill was given power to send for persons, papers and records. There was therefore nothing to stop it examining witnesses other than those produced by the parties. In fact one of the reasons which led to the practice of giving these committees power to send for persons, papers and records being discontinued was the fear that they might be tempted to hold inquiries into the

* May, Parliamentary Practice, 14th ed., p. 835. It is hard to see how the Mercantile Marine Memorial Bill, 1927, cited as an instance of a hybrid bill hardly distinguishable from a private bill, falls within this category. This was a bill "to confer powers on the Imperial War Graves Commission with respect to the erection of a memorial to the officers and men of the Mercantile Marine who perished in the late war". For whose "particular interest or benefit" can it be said to have been promoted?

† Down to 1903 county councils (except the London County Council) were not authorised to promote bills. Accordingly, in 1893 the bill to enable the Joint Committee of the County Councils of East and West Suffolk to borrow was introduced as a public bill. One of the reasons for introducing the New Forest (Sale of Land for Public Purposes) Bill, a government hybrid bill, in 1902, was that a rural district council could not promote a private bill. See Report from the Select Committee on the Bill, Parl. Pap. (H.C.) Sess. 1902, No. 265, p. 6.

‡ E.g. Daylight Saving Bill, 1909, 1 H.C. Deb. 5s. 1781–2. Cf. Indemnity Bill, 1920, 128 H.C. Deb. 5s. 1851–4.

Chairman.

347. It was not overlooked because the matter was raised and the Speaker gave a ruling?—The matter was raised and we have a Speaker's decision on two Bills mentioned already. It was never raised on the Transport Bill or on any of the nationalisation bills, curiously enough. I thought the question would be raised as to why they were not referred to the Examiners?

348. So really the hybrid bill, in view of this ruling of the Speaker in 1921, is rather in an anomalous position, in that it goes before a committee on hybrid bills merely because it is something not too large for the committee to handle?—I do not know whether I would go quite as far as to say that. A bill is hybrid and goes to a hybrid bill committee because it has been reported on by the Examiners in a certain way. That is really the reason.

349. But did you send, for instance, the Coal Industry Nationalisation Bill to the Examiners?—No. That Bill was not sent to the Examiners because again it followed on the first precedent which was running after the two I have mentioned in previous years, the Transport Bill; that was the first of those Bills that came up in 1946-47.

350. Was that the London Passenger Transport Bill?—No, the Transport Bill.

Sir *Hugh Lucas-Tooth.*

351. The Coal Industry Nationalisation Bill came first, as a matter of fact.—Did it?

Mr. *McLeavy.*] Yes.

Chairman.

352. Yes. So far as I remember, the only transport bill which seriously interfered with private rights was the London Passenger Transport Bill, which compulsorily transferred a lot of private interests to a public corporation, some of them without compensation—the L.C.C. trams, for example?—Yes, that is so.

353. That was not a hybrid bill?—The London Passenger Transport Bill of 1931 was a hybrid bill. Subsequently their bills have been private bills.

Mr. *Anthony Greenwood.*

354. Was the Bill nationalising mining royalties a hybrid bill?—No.

Mr. *William Wells.*] Presumably it would not be, because it was nationalising all mines.

Chairman.] No, but we are now trying to get at the reason for the ruling that something that nationalises a complete entity is not a hybrid bill whereas something which nationalises a part of an entity is a hybrid bill.

Mr. *Lennox-Boyd.*] Because the entity might all be in one person's hands, so it might be affecting a single private interest.

Chairman.

355. It seems to me we here are up against something which is quite illogical from the point of view of principle but which is obviously defensible from the point of view of parliamentary expediency?—Yes. As I say (and I am only repeating myself) we do base ourselves on Speakers' rulings. I am responsible, through the Clerk of the House, to the Speaker with regard to what it is decided to send to the Examiners, and in this case I was guided into not sending certain things, on the analogy largely of the Electricity and Railways Bills.

356. You have not sent the recent nationalisation bills to the Examiners, and if there were a bill introduced for the nationalisation of the land you would not send that to the Examiners?—No, I do not think so.

357. Always on the Speaker's ruling that the thing is so large or the public interest is so paramount that it is not suitable for a hybrid bill committee?—I may say that that is already enshrined in the present edition of Erskine May as an actual statement of the rule that bills affecting public policy are not sent to the Examiners. I forget what the actual instance was.

358. There again, every public bill, one presumes, affects public policy?—Yes.

Mr. *William Wells.*

359. I do not know if you have read Mr. Abraham's Memorandum?—Yes, I have.

360. In the first paragraph of that Mr. Abraham says: "For a Bill to be hybrid it must not merely affect private interests—as Mr. Speaker Whitley once said, 'every public bill in some sense affects some private interests'—it must affect the interests of particular individuals or corporate bodies as distinct from the interests of all persons or corporate bodies in the particular category to which the individuals or corporate bodies whose interests are affected belong." Now, in the first place, do you accept that as an accurate definition?—Yes, quite.

361. But if you accept that as an accurate definition, would it have been accepted before 1921 or does it derive from Mr. Speaker Whitley's ruling of 1921 in connection with the Railways Bill?—That is a very hard question, going back, as it does, to that period. I do not honestly know. I am guided by that 1921 precedent and by the 1926 precedent, but before that time I do not know.

362. If your predecessor in 1920 had been asked by a Member what a hybrid bill was, would he have understood what the questioner meant or not?—Yes, a bill that affects private interests—and I admit one now has to add "in a particular way". That, I think, is the principle that is adopted now or has been adopted since those particular instances; whereas, as you say, I suppose all public bills might have

IN PARLIAMENT

SESSION 2022 – 2023

HOLOCAUST MEMORIAL BILL

THE MEMORIAL

of

WESTMINSTER CITY COUNCIL

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