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Parliamentary Promotion from 1797 to 1914

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For My Wife

Lizzy

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PREFACE

My interest–indeed fascination–with "private" or "local" legislation goes back over half a century to 1969, when I was an Articled Clerk (as they were then called) to the Town Clerk and Chief Executive of St. Helens County Borough Council, Mr. Thomas Taylor. The St. Helens Police Force was shortly to be merged into a newly enlarged Lancashire Constabulary,[1] and the Town Clerk instructed me to go through a rather dishevelled leather-bound volume of local St. Helens Acts of Parliament, and to list all the provisions applicable to the Police. My interest was caught, and as well as pursuing it in a general way over the years, I was directly involved in the promotion of what became new local Acts in three local authorities where I subsequently worked–Grimsby (Humberside), Durham City and Northampton.

After retirement from local government, the opportunity arose to undertake a Ph.D. at Leicester University; my thesis was subsequently published in 2017 as *Local Government, Local Legislation: Municipal Initiative in Parliament 1858 to 1872*. Following that book, I determined to try to explore the little-known private statute-book on a wider basis, and to provide both a broad introduction to its development and evolution, and a narrative of its contents and riches for many kinds of research. I owe thanks and much gratitude to my Leicester joint supervisors Professors Steve King and Keith Snell, and further now to Steve King (now Professor at Nottingham Trent University) for his insight and inspiration relating to this book.

"Private" legislation is not, of course, private in the sense of confidential, though its significance may well be confined to very few people–and indeed with personal Acts sometimes to only one person, at least directly. *Private* legislation is contrasted with *public* legislation, the mass of generally applicable statutes to which everyone is equally subject, and which comprise what most people think of in everyday terms as "the law of the land." Both private and public legislation have been passed by Parliament, but the procedures are different, and it is a defining characteristic of private legislation that the Bills coming forward to be considered have originated outside Parliament. Promoting a Bill is apt to be an expensive, time-consuming and often contentious process, so it only

occurs because some person or party needs to pay for the privilege to acquire the legal powers or protections that they want.

Much of the physical shape of modern Britain is the result of nineteenth-century private legislation. Many thousands of Acts, little known and–as a body of material–little studied, were the means by which first canals and then railways were built; lands were inclosed; and private companies were incorporated to provide gas, water, markets, harbours, and later tramways, electricity and other services. To stand in front of the array of hundreds of volumes of private Acts in a law library is to be impressed–and perhaps also appalled!–by the sheer physical effort, energy and expense that went into their enactment–and there were of course thousands more Bills promoted that were unsuccessful.[2] Meanwhile the local authorities of the day–cities, boroughs, local boards, improvement commissioners, sanitary authorities and the like–started to improve, develop and invest in their own areas. My home town was one of these, obtaining an Improvement Act in 1869,[3] the year after four environmentally scarred constituent townships of Parr, Hardshaw, Sutton and Windle had together been granted a Borough charter as St. Helens in May 1868.

Parliament gave a great deal of time–and collected very large sums in fees–from all this legislative activity, and, as well as those enacted, large numbers of Bills were also promoted that for one reason or another were never passed. Parliamentary agents, counsel, and other expert witnesses earned large sums too. The principles and practice of private legislation were the subject of many Select Committee reports and innumerable returns of various kinds, while this small but significant and very lucrative "industry" grew up around Westminster in an era when almost anyone could set up business as a Parliamentary agent. The *Parliamentary Archives* holdings of the Committees that sat to consider the thousands of private Bills are reckoned to comprise some five million manuscript pages.

While historians' monographs will usually cover private or local Acts for the relevant towns and cities, canal and railway companies, and so on, Parliamentary Bills are more rarely considered–and when they are, there is usually little apparent contextual awareness of the wider promotion procedures, costs and other factors behind them. Although there has been voluminous coverage published of railway history, for instance–covering particular companies, lines, types of engine, railway architecture, and so on–there is very much less material on the Parliamentary process side of all that economic, social and technical change. (Most biographies of the great railway innovators and entrepreneurs like the Stephensons, Brunel,

and others, seem hardly to mention the Parliamentary promotion background at all.) Much the same is also true of local government private Bill promotions for town improvements of different kinds. The term "local government," incidentally, first came into use in 1858.

This limited focus on the Parliamentary and promotional sides of all this legislative activity is no doubt in large part because of the sheer volume and obscurity of private legislation (some 21,588 private Acts in the years from 1797 to 1914 alone). These Acts are mostly not available online, and sets of the hundreds of volumes are rare, making accessing them often difficult. They have the reputation of comprising a largely unco-ordinated and often quixotic mass; in fact, scrutiny was much more systematic, objective and principled than is generally understood, so that anyone failing to grasp the scope and potential of this resource will also risk failing to appreciate a crucial part of the wider context. Sometimes these Acts contain a mass of detailed local information–carefully compiled, no doubt, to be proof against Standing Orders challenges–which it would usually be impossible to find elsewhere. Three examples will suffice here: the 28 pages of "owners or reputed owners" scheduled with the Westminster Improvement and Incumbered Estate Act 1865; the five pages of section 7 of the Aberdeenshire Roads Act, also of 1865, defining in detail the county's turnpike roads; and–ancillary to the Bills and Acts themselves–the Parliamentary return listing the hundreds of people who had subscribed £2,000 or more towards the railway Subscription Contracts deposited for the 1846 session.[4]

The objective of this book is not to concentrate on the drafting detail of individual Bills and Acts–there are of course far too many for that–but rather on the process of obtaining permission to build and develop so much of the Britain that we recognise today. From the mid-1840s onwards, the burgeoning mass of railway Bill promotions began to have real impact. After 1845 Parliament considered the principles and procedures of private legislation by means of frequent Select Committee investigations, and also considered closely related questions, such as costs, and the unregulated professional practice of Parliamentary agency.

Over the years, two features of the private legislation world of the nineteenth century–in addition, that is, to the sheer number and bulk of all those measures–have particularly struck me, and in some respects they appear contradictory. On the one hand, especially around the middle years of the century, the business of preparing, promoting and then progressing Bills through Parliament became a kind of "cottage industry" from which

a small class of people made a lot of money, and which it was very much in their self-interest to foster and perpetuate. Moreover, Parliament itself, and indeed in the earlier years some of its officials, in turn collected very significant fees from the private Bills processes. This state of affairs was well known, and many viewed its continuation for so long as a scandal that discredited Parliament.

On the other hand, however, the Parliamentary Standing Orders governing Bill promotions, the rules about *locus standi* (that is, the right to present objections and so on in the Select Committees considering Bills), and the care and time taken by those Select Committees to inquire into the processes and proceedings involved–even if recommendations were not always acted upon–are generally to Parliament's credit. This was not an era when, in so many contexts, today's twenty-first century opinions would perhaps regard ethical behaviour, and respect for individuals' rights, as having been well developed. Social conditions in Victoria's first decade were so very different. Yet, just after the Great Reform Bill of 1832, there was the Duke of Richmond chairing a Select Committee on turnpike trusts in 1833, and the Duke of Buccleuch chairing another on the state of large towns and populous districts in 1844. This was at a time when M.P.s became debarred from sitting in consideration of private Bills in which they had a constituency interest, and the demands of sitting in consideration of dozens, and ultimately hundreds, of railway Bills meant that it was very difficult to persuade the unpaid M.P.s and peers of the day to give up their time to do it.

This presents to us another contrast, between the conditional opportunity for promoters in effect to *buy* from Parliament the legal provisions that they wanted, and the reciprocal obligation on Parliament–also conditionally–to *deliver the service* that those promoters expected. The Bills they put forward had to be handled and assessed according to fixed and predictable rules and standards, and the whole process had to be completed, whether eventually passing or rejecting the Bills, within a short time. There was of course no privilege or right to have your Bill passed just because you had cleared the procedural hurdles and met the necessary expenses: the right was merely to petition Parliament, or to promote. The Houses of Parliament, however, had provided the private Bill system–that was the way you obtained the powers, protections and privileges that you needed, so both Lords and Commons had to make that system work fairly and manageably.

This book opens with an Introduction and a first chapter setting out the size and scope of the private statute-book, and including an additional narrative of how systematic listing and grouping gradually was brought to the unco-ordinated mass of statutory documents and materials that were variously housed and shelved at Westminster at the close of the eighteenth century. Inevitably these pages are quite technical, but the detail is important to understanding and working with the *corpus* of private legislation as a whole. There is also some colourful history to it: the first *Index* was burnt in the 1834 fire that destroyed much of the old Palace of Westminster, and the work had to be done all over again, while Select Committees were meeting in temporary structures besides the Thames until the new buildings were ready. Following those technical pages, we shall examine the costs and proceedings of the private Bill "cottage industry," and the consideration given from time to time to reforming and renewing it. In the years of "railway mania" in the mid-1840s and 1860s, the creaking mechanism of both Houses of Parliament was plunged into particular turmoil as the Parliamentary agents scurried around desperately struggling to lodge their hundreds of Bills and plans by the deadline dates in order to comply with Standing Orders–only to be followed by the Lords and Commons, and those working for them, struggling in turn to deal with the enormous demands of all those submissions.

Of course, the years of "railway mania"–1846 and 1866 being its peaks–were not typical of the whole period from 1797 to 1914. It is, however, extremes of situation that tend disproportionately to draw the attention, and it is how any system operates when under the greatest pressure that is most telling. A final chapter 8 seeks to make some brief observations on the nineteenth century private legislation "pantechnicon," and to suggest some conclusions. The promotion of private–and occasionally even of personal–Bills continues to this day, but it is the essentially its Victorian heyday with which we are concerned here. The legacy of that heyday is also still with us, with many of its enactments still relevant or in force. It comprises a very rich and diverse historical source, which this book seeks to make much better known.

I am grateful to Jess Farr-Cox at the Filthy Comma, who has very ably prepared the Index and the two Tables of Acts and Bills and of Cases.

Notes

1. It was effected on 29 March 1969 by the Lancashire Police (Amalgamation) Order 1968, S.I No. 1899, made under the Police Act 1964, c.48. The author attended the final parade of the St. Helens Police.

2. Full runs of private Acts are relatively rare, and most are not available online. The Law Society's Library possesses a fine collection shelved along the upper gallery.
3. 32 & 33 Vict., c. cxx. There had been earlier Improvement Acts in 1845, 1851 and 1855.
4. See note 25 to chapter 1. The two 1865 Acts referred to are respectively 28 & 29 Vict., c. clxxxvii and c. ccxl.

INTRODUCTION

THE PLAN OF THIS BOOK–THE PRIVATE STATUTE BOOK–INDEXING AND CLASSIFYING PRIVATE LEGISLATION

"Considering how largely private legislation has contributed to social and material progress within the United Kingdom, but little attention has been given to its origin and development." So began the magisterial two-volume *History of Private Bill Legislation* that Frederick Clifford published in 1885 and 1887–and which is still the major commentary, standing alongside the rather more narrowly drawn two-volume *Historical Development of Private Bill Procedure and Standing Orders in the House of Commons* by O. Cyprian Williams (1948, 1949). As Clifford continued, "Most people are aware that, from the earliest times, by private or quasi-public measures, Parliament has made laws affecting personal and local interests as well as the interests of the whole community. But private Bills have ever been the humble companions of public measures, largely ignored at one period in the statute book, hardly noticed by contemporaries, almost wholly neglected in history."[1] He credited Alexander Pulling with being the first to use the term "private Bill legislation," which was in an *Edinburgh Review* article in 1855, and which by the mid-1880s had "gradually come into general use."[2]

Walter Bagehot was one of those who seemed almost to brush private and local Acts aside, writing that "The 'special acts' which crowd the statute book and weary parliamentary committees are applicable to one case only. They do not lay down rules according to which railways shall be made, they enact that such a railway shall be made from this place to that place, and they have no bearing upon any other transaction." This seems an uncharacteristic view from the usually thoughtful and perceptive Bagehot, and both before and around the time of his two editions of *The English Constitution*,[3] the often narrow boundary between the two categories of public and private had caused problems, as the Parliamentary Counsel to the Treasury, Courtenay Ilbert recorded:

> "In some cases private Bills have been defeated by a resolution of the House that they ought to be dealt with as public Bills. Instances are supplied by the Manchester Education Bill 1854, the Liverpool Licensing Bill 1865, and the Keble College Bill 1888. The Presbyterian Church of Ireland Bill 1871 was introduced as a private Bill, but was withdrawn in consequence of an objection that the matter ought to be dealt with by public legislation; and a public Bill, which became law as the Irish Presbyterian Church Act 1871 took its place."[4]

When A. V. Dicey published his *Introduction to the Study of the Law of the Constitution* some years later, his verdict was very different from that of Bagehot:

> "Parliament … habitually interferes, for the public advantage, with private rights. Indeed such interference has now (greatly to the benefit of the community) become so much a matter of course as hardly to excite remark, and few persons reflect what a sign this interference is of the supremacy of Parliament. The statute-book teems with Acts under which Parliament gives privileges or rights to particular persons or imposes particular duties or liabilities upon other persons. This is of course the case with every railway Act, but no one will realise the full action, generally the very beneficial action of Parliamentary sovereignty, who does not look through a volume or two of what are called *Local and Private Acts*. These Acts are just as much Acts of Parliament as any Statute of the Realm."[5]

Giving evidence to the *Joint Select Committee on Private Bill Legislation* in 1888, John Henry Warner, Counsel to the Chairman of Committees in the House of Lords, went even further, saying that "…the history of Private Bill legislation before 1837 is, to some extent, the history of the country."[6] Peter Jupp, writing at the end of the twentieth century about the situation in 1828-30, said that "it would not be an exaggeration to say that most of the man-made environment was the product of private bill legislation."[7]

The Plan of This Book

Immense as the private statute book is, describing its evolution and scope is relatively straightforward. The Acts comprising it are sequentially numbered, listed and (except perhaps for earlier years) printed and published. They can be described and analysed accordingly.

Systematic discussion of the process and background of the private legislative process is much more difficult. Formal Parliamentary requirements, the wider legal context and–above all–commercial realities

and practicalities are closely inter-related. Chronological treatment is usually required because the process of seeking and being granted a private Act changed and developed very considerably–especially during the middle years of the nineteenth century, when the business of private Bills became almost a "cottage industry," and the numbers involved during the periods of so-called "railway mania" in the mid-1840s and mid-1860s would have astonished the Parliamentarians of the canal age in the later 1700s.

The Standing Orders regulating how private Bills were to be introduced into one or other House of Parliament, and then considered for enactment, changed frequently–mostly in minor ways, but occasionally in wholesale revision. The same applied, though somewhat less often, to the fees payable to each House. For promoters, the expenditure required to meet these procedural requirements and access costs could be very significant, but was at least much more predictable than the open-ended liabilities that could arise if the Bill were opposed, when prolonged hearings and the high costs of specialised agents, counsel and witnesses could potentially bankrupt, or at least severely encumber, a business proposal before it had started. As the third report of the *Select Committee on Private Bills* in 1847 ruefully noted of the £432,620 spent obtaining royal assent to the Great Northern Railway Bill, "And it is to be remarked, that all that sum was expended without a spade having been put into the ground."[8]

The year-by-year amendments to Standing Orders–as well as associated resolutions and recommendations about practice and procedure–are set out in the *Calendar* that comprises Part II of the definitive work by O. Cyprian Williams referred to above.[9] To provide a thematic overview of the private Bill process, chapters 3 and 4 concentrate respectively on the process of promotion (predominantly Standing Orders) and on fees and costs. Chapters 5, 6 and 7 then describe what may be termed *regulation*, the reviewing by Select Committees (mostly in the Commons) of the private Bill system and situation, divided into the periods up to 1846, from 1847 to 1863, and from 1864 to 1914. These reports ranged widely across practical issues and contemporary concerns about process and cost–and also about the concept of being able, in principle, to pay for an Act of Parliament for private advantage, and the safeguards that should apply to such a privilege. *Parliamentary Papers* additionally contain a wealth of incidental material about other matters such as printing costs, the preparation of Bills, and the printing of private and personal Acts.

The enacted Bills–the thousands of private, local and personal Acts–are the immediately visible results of much effort, energy, business initiative and (needless to say) expenditure. Their story is told in the reports and evidence described in chapters 5, 6 and 7 and elsewhere. The purpose of this book is not only to make the contents of the private statute book better known, but also the contemporary Parliamentary materials, as they open up the story of Victorian achievement–of what has been termed the Victorian *competence*–and of how the private Acts that, in effect, gave permission for the creation and shape of the building of modern Britain came to be as they were.

The Private Statute Book

Defining what are–and are not–private Bills has never been entirely straightforward. William Fielden Craies and Henry Hardcastle gave 1539 as the first instance of a distinction between public and private Acts being "specifically stated on the enrolment in Chancery."[10] Writing in the late nineteenth century, they averred that "Parliament now understands by private Bills all those projects of law which affect the interests of particular localities, and not of a public general character, and are introduced by petition." They added, however, that "Sir E. May[11] points out the difficulty which is found in distinguishing between public and private Bills in Parliament, and that many Acts, included in the public general statutes are, if public, not general, being confined to particular local areas."[12] At this time the legal distinction between public and private Acts remained important in the contexts of judicial notice, pleading and construction, and the authors provided a critical analysis of the distinctions and implications in their ensuing pages.[13]

What a court considered to be a private Act was, therefore, potentially much more significant than questions merely of classification or printing–and more significant too than formal considerations about whether a private, local or personal Act needed to be specially pleaded, or would be noticed as a "public" Act. Section 21 of Lord Brougham's Interpretation Act of 1850[14] had declared all Acts henceforward to be "public" from the point of view of judicial notice; that was not, however, necessarily conclusive that the parties to an action brought under or involving such an Act would be able to rely on a private Act's provisions.

More recently, *The History of Parliament* approached the definition with a differing emphasis. "Private Bills were not always defined by their subject matter. Technically they were measures which had been introduced at the

behest of particular individuals or groups of individuals, who were responsible for paying fees to the clerks and other officers of the House."[15] As an earlier commentator put it, "A private Act is one coming into existence on the giving of royal assent to a private Bill, that is one founded upon a petition deposited by the promoter (who may be anyone *except* a member of the House of Commons or the House of Lords)."[16] How courts, as opposed to commentators, approached judgments as to whether given Acts were public or private in character is briefly considered further later in this chapter. Private Bills and Acts are subdivided again into *local* and *personal* categories. The numbers–and the wider significance–of both local and personal measures were much greater in the eras before 1914 than they are now, though they remain current legislative instruments. Maurice F. Bond, the former Clerk of the Records at the House of Lords, provided an extensive summary of private Bill categories and procedures in his 1971 *Guide to the Records of Parliament*.[17]

Before 1797 statutes were not categorised into "public general" and "public local and personal". Not all Acts were printed. In 1797–in regnal year terms 38 Geo. 3–the public Acts were for the first time divided into two series, and separately printed and numbered. There is potential for immediate confusion, because "the modern practice [is] of distinguishing Public General, Local, Private and Personal Acts …"[18] The term "local" is, however, not confined to its usual conversational sense, or entirely related to local government: it includes much else that has been promoted through the private Bill procedures. The first twenty local Acts of 1976, for instance, include diverse subjects such as the Australian Estates Companies, the Standard Life Assurance Company, the Railway Clearing House Superannuation Fund, Foyle and Londonderry College, and the Bucks Land and Building Company.[19] In this study "public general" is used to refer to Acts that were *not* the product of private Bill procedures, and–unless specifically distinguished–the term "private legislation" is used for simplicity to refer to all other Acts which *were* products of those procedures. The style "personal Acts" came into use from 1948; they have a different evidential status, in that they require to be proved in court, and judicial notice is not otherwise taken of them as it is of others Acts declared to be "public."[20]

Bennion significantly–and surely unintentionally–understates the historical significance of local legislation, writing that "There are a great many local Acts, usually promoted by local authorities. They regulate matters such as behaviour in public parks, the control of public processions, and the licensing of coffee bars or massage parlours."[21] The implications of this

statement relegate them to the roles of byelaws or miscellaneous provisions, and whereas local *government* private Acts in recent years have certainly declined in number and constitutional significance, his sweeping generalisation denies their past scale and scope in shaping modern Britain–and often in leading the legislative way ahead of a Parliament that, until the later nineteenth century, was usually markedly reluctant to provide national or universal statutory provision for the improvement and evolution of cities, towns and communities.[22]

The new categorisation of statutes in 1797 had become increasingly desirable. "The Statute Book confirms that private legislation was, in fact, moderate in amount, and remained so until the middle of the eighteenth century when a tremendous increase began."[23] From the 1750 session up to and including 1797, 3,994 private and personal Acts had been passed, an average of some 83 per year. In the most recent five years from 1793, however, the total was 619, an average of around half as many again. Meanwhile, in that same five-year period the public statutes numbered 826; of these, 122 were marked "local" in the *Chronological Table*,[24] with dozens more concerned with roads and other matters that would be regarded as of only local import in the everyday sense. Moreover, until 1815 there was no requirement for private and personal Acts to be printed; some were printed by individual initiative, but the only authoritative texts were (and still are) those housed in the Parliamentary Archives. The difficulties that this must sometimes have presented, and the expense of making copies where the validity of any given enactment needed to be formally proved, are obvious. Moreover, when most private and personal Acts were concerned with changes of name, naturalisation, estate issues and the like, their impact was likely to be confined to the family involved. As more Bills were promoted, however, for enclosures, canals, docks and the like, their wider significance grew; it became much more likely that knowledge of them, and reference to them, would be needed by far more lawyers and others.[25]

The practice of ingrossing was the subject of a *Select Committee on the Present Method of Ingrossing Bills, &c.* in 1823,[26] which took evidence on a wide variety of matters of interest which were antiquarian even then: handwriting; sizes of parchment and its rolling up; joining skins of vellum and the "poor woman and her daughters" employed to sew them together; the need for "turkey quills" not "common pens" for ingrossment work; and the recipe that an old Mr. Brown living in Westminster used in making the Exchequer ink to his own formulation–"Forty pounds of galls, ten pounds of gum, and nine pounds of copperas to forty-five gallons of rain water."[27]

The reform in 1797 of what was termed the "promulgation of statutes" followed agreement by both Houses of Parliament. They had resolved on several practice reforms; on 5 December 1796 the Commons, and on 1 May 1797 the Lords, ordered the printing of the *Report from the Committee for Promulgation of the Statutes*–some seventy-two detailed and erudite pages on the past practice of printing Acts.[28]

> "It cannot have escaped the Attention of any who have opened the Annual Volumes of our Statutes, that the Acts which are politically and legally speaking, of a PUBLIC AND GENERAL Nature, bear a very small Proportion to the whole Mass. But it may not have been commonly noticed, that the LOCAL ACTS, respecting Drainages, Bridges, Churches, Canals, &c. which by special Clauses and for particular Uses are declared to be Public, fill more than double the Space occupied by the first and more important Class; and this Excess is the more striking as the Road Acts are not included in this Estimate of the LOCAL ACTS, the Road Acts not being printed with the Rest of the Statutes. It may also have escaped Notice, that the Abstracts annually subjoined to each Collection, which are the mere private Performance of inferior Persons in the Service of the Editors, also contribute very largely to the Bulk of these Volumes. And it must not pass unobserved, that the mere Repetition of useless Titles, in the total Impression of One of these Sessional Collections, even according to the present limited Degree of their Publication, appears to have amounted nearly to Three hundred Thousand Pages.
>
> What Your Committee would therefore propose is, to exclude from the Collection of Public Acts, all the Local Acts, all the Abstracts, and all the useless Repetitions of Titles."[29]

The Commons, in a Committee of the whole house, had already on 20 March 1797 recommended similar reforms, of which the key point was resolution 6–

> "That His Majesty's Printer should also be authorized and directed to class the General Statutes and the Special Statutes (viz. the Public local and private Acts) of each Session in separate Volumes; and to number the Chapters of each Class separately; and also to print One general Title to each Volume, together with a general Table of all the Acts passed in that Sesssion."[30]

The several Commons resolutions were communicated to the Lords at a conference held on 1 May 1797. Among the provisions agreed was resolution 3, that two hundred copies of "each Public local and private Statute" should be distributed according to the list therein set out.[31] It was on the 7 and 8 May 1801 that–along with other related resolutions–the Commons

subsequently resolved, and the Lords agreed on 8 May following a further conference, that the general statutes should be classed in separate volumes from the rest, those being public local and private.[32]

The change of practice was thus both carefully considered and generally agreed. It remained important for situations where powers or provisions depended on the classification applicable to a particular statute. The Exchequer Chamber considered the statute book classification in *Shepherd v. Sharp* in 1856 (which concerned Ramsgate Harbour), Cresswell J. remarking that "It would seem the most rational way to judge of the quality of an Act by its contents, and not by a mere arrangement of its printing."[33] The court considered that the allocation of some previous Acts to "local and personal" had been mistaken; the matter could have great significance because while many earlier enactments of a private or local character (especially relevant in this instance prior to 1797) were declared within them to be "public" and therefore to be judicially noticed accordingly, a private or personal Act otherwise required to be specially pleaded. The court also noted that the Limitation of Actions and Costs Act 1842[34] distinguished local and personal Acts from others, referring in s. 1 to "any Act or Acts commonly called public local and personal, or local and personal, or in any Act or Acts of a local or personal nature." After 1850 local and personal Acts printed by public authority had ceased to be private from the point of view of *judicial* notice–though there may still be requirements even today for personal Acts to be pleaded or proved in court.[35]

A leading late nineteenth-century case was *R. v. London County Council* in 1893,[36] (which related to burial-ground land bought for St. George, Bloomsbury parish from St. Pancras parish and then consecrated accordingly in 1730). The Court of Appeal judgment referred to various eighteenth-century Acts, regarded as being of a local character but enacted long before the classification was adopted. The decision in 1893 depended on what could be regarded as a "local and personal Act" under s. 59(6) of the Local Government Act 1888,[37] and cited several earlier cases. The Master of the Rolls Lord Esher approved as "the best definition that could be proposed" wording taken from Parke, B. in *Richards v. Easto*[38]–"local, as being confined to local limits; personal, as affecting particular descriptions of persons only, as distinguished from all the Queen's subjects."

Craies and Hardcastle provided a lengthy exposition of the nature and characteristics of private Acts, citing many cases considering their implications–and the strict rules of construction applicable wherever the

meanings of any provisions were at all unclear. Lord Eldon is quoted as saying in 1832 –

> "When I look upon these [private] Acts of Parliament I regard them all in the light of contracts made by the Legislature on behalf of every person interested in anything to be done under them, and I have no hesitation in asserting that, unless that principle is applied in construing statutes of this description, they become instruments of greater oppression than anything in the whole system of administration under our Constitution. Such Acts have now become extremely numerous, and from their number and operation they so much affect individuals, that I apprehend that those who come for them to Parliament do in effect undertake that they shall do and submit to whatever the Legislature empowers and compels them to do, and that they shall do nothing else; that they shall do and shall forebear all that they are required to do, and forebear as well with reference to the interests of the public as with reference to the interests of individuals."[39]

It could result from this contractual approach that parties might be treated as having varied by agreement between them provisions which had apparently been fixed and finalised by the language of the private Act obtained. An example occurred in *Savin v. Hoylake Railway Company* (1865) L.R. 1 Ex. 11, where the plaintiff had agreed to pay the promoter's costs for obtaining an Act which, however, when passed, provided in the usual terms for the railway company as promoter to bear the expense. The court did not accept that the Act had negated the parties' agreement. Pollock C.B said that –

> "A private Act of parliament is in the nature of an agreement between the parties; why, then, may not an agreement be made in derogation of that private Act, provided the agreement be not inconsistent with the public interest?"[40]

Plans for works previously deposited for a private Bill in Parliament could not necessarily be relied upon; a landowner in *North British Railway Company v. Tod* (1846) 12 Cl. & F. 722 saw deposited plans apparently showing that his property would not be closely affected by works proposed in a Bill. Once enacted, however, the actual works were very different, but the landowner's application for a restraining injunction was refused by the House of Lords, Lord Cottenham saying that the court could have regard only to the wording of the Act, and not to earlier plans. The landowner could, he said, have sought a clause in the Bill protecting his property, but did not. In a decision that may be regarded as having been rather unfair on the landowner, he was, as Lord Campbell expressed it, "considered as having acceded to the company having all the powers

which the Act confers on them."[41] It has to be said that not all the decisions, approaches and *dicta* cited by Craies and Harcastle appear wholly consistent; it must be noted, however, that the courts have not always regarded the exact terms of private Act provisions as necessarily conclusive according to the facts and context of the particular case in hand, and that the interpretation and application of private legislation often involved subtlety and doctrines distinct from those concerned with public general Acts. It is a matter of conjecture whether–in cases turning on the rights of parties supposedly conferred or contradicted by private Acts–the courts at any time were influenced by the contemporary climate of opinion around private and local legislation, or by what they knew of how Parliament handled the conferment of private legislative powers, rights and privileges on those who came seeking them, and often paid expensively to do so.

Indexing and Classifying Private Legislation

From 1797 the texts of all public general and local Acts, as then newly categorised, were "authoritatively or officially printed."[42] There was, however, no officially published Index at that time, or for long afterwards: when H.M.S.O. published an *Index to The Statutes, Public and Private* for the years 1801-1859[43] everything before the end of the eighteenth century remained unlisted. The lack of commonly used short titles made identification and referencing even more cumbersome.

There were, however, some early initiatives seeking to fill practical needs. In 1813 George Bramwell published *An Analytical Table of the Private Statutes* covering the years between 1727 and 1812. Even today, what he says of himself in his Preface may strike a chord with anyone requiring to use them:

> "Having found, in the course of his professional experience, that searches for private acts in the tables prefixed to the statute books were attended with great labour, and consumed a most inconvenient portion of time, he was induced, some years ago, to begin the present table, which has since, during intervals of comparative leisure, been gradually enlarged to its present extent.
>
> In compliance with the request of some professional friends, who have had resort to the manuscript, and experience of its utility, the editor has been induced to print it, in the hope that it will be found useful to a considerable portion of the profession, as well as to others who, in the exercise of any

> public, official, or professional duties, are engaged in preparing, or approving private acts of parliament."[44]

Others also compiled important reference books: the year after Bramwell's volume, John Raithby published a three-volume *Index to the Statutes at Large* in 1814–the phrase *At Large* a useful and succinct way of making clear with which side of the public-private statutory divide he was concerned. Raithby's work was printed by George Eyre and Andrew Strahan, "Printers to the King's Most Excellent Majesty", which must have accorded it some valuable status, but anyway he appended some cautionary remarks to the end of his Preface, saying in relation to potential errors that–

> "…due allowance will doubtless be made, when it is remembered that the attempt is the first of its kind; that, extensive and minute as the labour necessary to its completion has been, it could receive but slender aid, either from its Predecessors or its Contemporaries; and that the whole has been produced by an Individual, not with the facilities of a disembarrassed attention, but in the midst of those active duties, from which it must be well known that few persons, engaged as Advocates in Courts of Justice, can long be free."[45]

A hazard of a very different order beset Thomas Vardon, the Librarian of the House of Commons, before the completion of his *Index to the Local and Personal and Private Acts: 1798-1839*. Through its Library Committee, the House had been considering the growing problems of acute shortage of space, the level of usage by Members, the nature of their requests and requirements, and the very imperfect nature of the collections and lack of indexing of Parliamentary papers. The report from the *Select Committee on the Present State of The Library of The House of Commons*[46] was largely based on evidence from Thomas Vardon's predecessor, the first Commons Librarian Benjamin Spiller (appointed at the age of 22 in 1818, the year in which the Commons Library was first formally established), who indicated that, apart from any books, the accumulating papers, reports, journals and other Commons publications amounted to forty additional folios per year. The recommendations included the sessional appointment by the Speaker of a small Committee to oversee Library matters.

The resulting Select Committee took evidence and reported in July 1832.[47] By this time, following Benjamin Spiller's death, Thomas Vardon was himself the Librarian.[48] Their report was wide-ranging, and the evidence taken, together with the report's several recommendations, showed just

how bad–and indeed vulnerable–the supposed archival collections were. There was no Index either of the Private Acts, or of the Local and Personal Acts, except in the latter case the annual list. Asked "There is no General Index even of that collection of the Local and Personal Acts now in the Library?" Vardon replied–

> "No, there is no General Index; in the year 1829, Mr. Spiller wished very much there should be one; and while I was Under Librarian, he formed his plan of the way in which he wished it to be made, and I commenced working on that system, and have brought it down in manuscript till the year 1827, but it yet wants arrangement and examination."[49]

The Clerk of the House of Commons, John Henry Ley, explained that every paper, account and petition going through the House was preserved; when then asked "whether any use exists in the maintenance of these original Papers?" he opined "Certainly not, in most instances, especially all the original paper Bills." He thought that "a great number of [the original Bills and Papers] might be destroyed, without any prejudice to any body."[50] The Committee did not agree with this "except, perhaps, the first Paper Drafts of Bills"–they considered (in rather awkward phrasing) that if early records had been destroyed "History would have wanted [i.e. lacked] some of its most curious and valuable materials and illustrations; and such some of these may possibly be, several of them not having been examined perhaps for two centuries." An asterisk against this sentence refers to a printed marginal note that "one of the presses contains a green bag, which itself contains a Post Office bag of unopened letters of the year 1690."[51]

The indexing work being done in the Library under the Committee's directions was lost in the fire that engulfed the Palace of Westminster on 16 October 1834. The losses and the fire's aftermath were reviewed a few months later by the Standing Committee on the Library.[52] Much had been done to repair so far as possible (from sources of duplicates) the almost total losses of papers, but the manuscript indexes were gone. These included Benjamin Spiller's *General Index to the Public Acts 1801-1828*, with its annual updates, and work on the *Index to the Local and Personal Acts*, which had been reported to the previous year's Committee in 1834[53] as probably ready for press by the end of the 1835 session. The 1835 report set out the scale of what was involved:

> "The extent of the labour applied to this work can be best estimated by the fact, that the number of Local and Personal Acts, the titles of which had been copied and arranged alphabetically, designating also the nature, of the enactment, amounted to 7,504: being the number passed from 1797 to

> 1833. The private Acts from the year 1757 to 1800 had also been arranged in alphabet, to the number of 3,738; making in all, 11,242."[54]

Up to £300 was to be paid to compensate the Librarian for his lost work, and it was also decided "that Mr. Vardon be directed to resume the compilation of the Index, as soon as circumstances will permit." Next year the 1836 Standing Committee, however, heard that "Some progress has been made in the work, but not sufficient to enable the Committee to consider that the Index can be printed before 1837." The following year, the Committee reported that "The compilation of an Index to the Local and Personal Acts, as directed by previous Committees, is in progress; but has been somewhat retarded from the undivided attention which has been necessarily given to the Journal Index. The work will be proceeded with at the earliest date consistent with the publication of that work."[55]

Successfully finishing the *Index to the Local and Personal and Private Acts: 1798-1839* took five more years: the pending completion of the work was recorded by the Standing Committee in 1839.[56] Thomas Vardon's *Preface* of 6 May 1840 simply records–with laconic self-restraint, one feels–that

> "an Index to the Local and Personal Acts had been compiled in pursuance of the recommendation of the Committee on the library of the House of Commons; but the MS., when nearly completed, was destroyed in the Fire of the House of Parliament in October 1834. The Committee, in the following year, order that a similar index should be re-compiled and completed to the close of the Session preceding the printing of the Work."[57]

In 1838 a major report by Arthur Symonds–a respected authority on statute law and legislative drafting–was presented to Parliament. Entitled *Papers Relative to the Drawing of Acts of Parliament*, it comprised a lengthy and scholarly critique of the current situation with Symonds' explicit adverse commentary on it. In an introductory letter, Symons commented that–

> "In one branch of legislation,—the private, as it is called,—the House of Lords have had for a long while a Chairman of Committees with his Counsel, by whose aid some degree of uniformity has been attained; but the House of Commons being without the same kind of assistance, the labours of those officers have been less effectual than they might have been in that limited range.

> The recent appointment by the House of Commons of an officer to prepare the breviates of private bills, affords some hope that the deficiency will be supplied both in the public and private legislation of that branch of the legislature as well as in the other."[58]

In the following pages, he provided a thoughtful analysis of the structure of private Bills, reproduced here in Appendix 4.

Problems of accessibility remained, however; they were set out by the Library Standing Committee in 1841. But by this time it could be said that the Parliamentary authorities recognised them, and were consistently minded to recommend that the requisite resources be made available, and steps taken, to provide the necessary sources that everyone concerned with the making or use of legislation required. Accordingly this Committee, in its short report, declared–

> "that, under the authority of The House, and under the superintendence of Mr. Speaker, a new and complete edition of all the Statutes of the United Kingdom, including those of England, Scotland, Great Britain, and Ireland, be forthwith undertaken.
>
> Your Committee have had under their consideration the expediency of publishing those Acts which have been repealed, or which were of a temporary nature; and they are of opinion that it would be of advantage, for the purpose of keeping up a connected view of the legislation of the Empire, to show what laws have been repealed or have expired; such Statutes to be inserted chronologically, but distinguished by different types. It is enough to add, that the foundation of many of the decisions which govern the construction of the existing Statutes is to be traced to Statutes which have been repealed.
>
> Additional value would be given to the proposed edition, if notes and references were appended, showing in what respect any Statute had been altered or amended; and also if references to reported decisions of Courts of Justice formed part of the marginal illustrations of the work.
>
> Your Committee have reason to think that such a mode of explaining and illustrating the Statutes would be most useful; and they further recommend that a General Index and full Digest of all the Statutes should accompany the work."[59]

This laudable sentiment, which required a Ministerial response rather than a strictly Parliamentary initiative, was not, however, directly followed up, and the Standing Committee repeated its view in 1845:

> "Your Committee having had again under their consideration the unanimous recommendation of the Library Committee of the year 1841 relative to the publication of a new edition of the Statutes, the grounds of which recommendation were fully stated in that Report, desire to repeat the expression of their conviction, that such a work would be highly valuable to the lawyer, the statesman, and to the general members of the House,–there not being in existence any one edition of the Statutes which, even as to Public Acts, contains the entire series; repealed Acts, which are often very essential to the interpretation of existing Acts, being continually omitted in the trade-editions of the Statutes. Your Committee accordingly close this Report by renewing on their own part the recommendation formally addressed to The House four years ago, and trust that it will receive the early attention of Her Majesty's Ministers, who alone can give effect to it, and who will thereby facilitate to both Houses the enlightened discharge of their legislative functions, and will supply a deficiency,–perhaps discreditable to the empire,–that those who are intrusted with the making of its laws, or with their administration, cannot obtain by any cost or labour a complete collection of the Acts of England, Scotland, Ireland, and the United Kingdom."[60]

By the time of the 1857 Standing Committee report, the new Library room was almost fitted up for occupation, and the general indexes to journals, Bills and sessional papers–prepared yet again under Thomas Vardon–were either printed or almost ready.[61] The lack of storage space had long been a problem: a note in small print on an August 1847 record of private Bills states that "This Return is in some cases incomplete; some of the Minutes of Proceedings, from want of accommodation for Papers in the Office, appear to have been mislaid."[62]

By 1860 a fourth edition of the *Index to the Statutes Public and Private* was ready to be published, covering the years 1801 to 1859.[63] The huge volume of legislation promoted and passed over the preceding quarter-century shows how timely was the work of indexing, compiling and printing done during the period up to 1840. A firm and authoritative schedule was henceforth available for practitioners and others, on which all subsequent work could be based, and Thomas Vardon–together with everyone else who helped give effect to the systematic recording of the statute book–deserves saluting for the prodigious efforts involved, when all such work required laborious longhand, and candles if there were no good daylight.

The May 1860 *Index* was in two parts,[64] and some of the complexities of recording and categorising the thousands of Acts involved are apparent from the *Prefatory Observations* set out on pages iii-vii.

> "The Design of this Part of the Index being rather to afford a ready Reference to the immediate Object of each Act than to specify minute Details, Headings of a familiar Kind have been selected, under which it might be supposed the Inquirer would seek the Information desired: each Act has therefore been made the Subject of several References, which may be described as *direct* or *indirect*."

There follow examples of each kind of reference, in addition to which "A few Local and Private Acts have been inserted in this Part, either because they appeared to be of a Public Nature, or because their Subjects were in other Instances found amongst the Public General Acts. The Chapters of the Local Acts are denoted by Roman Numerals, and those of the Private Acts by the Word (*Private*)." A page and a half of commentary on what are termed *The Local and Personal, Local, and Private Acts* is repeated on pp. iii-iv of Part II of the 1860 Index. This commentary marks an important new approach to compilation; whereas Thomas Vardon's work in 1840 had been alphabetical, the 1860 edition categorised entries under a so-called "Series of Heads"–actually a series of twenty-one Classes of Acts set out on p. v. It thus became far easier to find legislation by type or subject-matter, rather than by name–and therefore to see what other enactments had been passed by Parliament in similar or related fields.

Providing classes of course also gave rise to problems that alphabetical arrangement avoided. Local Acts in particular were very often promoted for a variety of objectives that could not be ascribed to a single purpose, and the Part II *Prefatory Observations* referred to several of the problems. The inclosure Acts (class 12, "Inclosures and Allotments") "in particular frequently contained provisions for granting Allotments of Land to Schools, Poorhouse, Workhouses, and other Establishments, besides Compensations for and Exonerations from Tithes, which are very numerous." Class 1, "Bridges and Ferries", comprised only those whose titles specifically mentioned particular ones, with general repair provisions listed under class 20, "Turnpike and Other Roads". Class 11, "Improvement in Towns," presented particular difficulties because of the diversity of municipal and other provisions involved. Accordingly classes 13, "Markets and Fairs," 21, "Waterworks," and 9, "Gaslight Companies," were separately created, and in the latter case "a Distinction has been drawn between Acts under which lighting and watching are carried into effect by Trustees or Commissioners, and those by which Companies are incorporated for the purpose." Road Acts were also problematic, since as well as total and partial repeals there were also instances where "in the formation of new Districts or in the Alteration of existing ones, previous