REPORT

OF THE

New York (State)

Commission to Recommend Changes in Methods of Legislation,

Appointed by the Governor of the State of New York, pursuant to Chapter 1025, Laws of 1895.

DATED, NOVEMBER 30, 1895.

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Commissioners.

THE EVENING POST JOB PRINTING HOUSE, N. Y.

REPORT.

Hon. LEVI P. MORTON, GOVERNOR OF THE STATE OF NEW YORK:

SIR:

The undersigned Commissioners, appointed by you, pursuant to Chapter 1025 of the Laws of 1895, to "investigate "in relation to the organization and government of the "Legislature, the introduction and progression of bills, and "generally in relation to legislative business and methods," respectfully report:

The title of the act under which the undersigned were appointed implies, in its terms, that the condition of legislation in the State of New York is such that recommendations of changes in the methods of legislation are necessary.

The single legislative session of 1895 was productive of upwards of 1,045 Acts, requiring for their printing three large volumes of 3,250 pages. There can be no proper legislative need so great as to require in one year, for a single State, 1,045 new enactments. This vast bulk of legislation represents about one-third of the bills that commanded the attention of the Legislature, and bears witness, first, to the fact that probably a great number of these bills which became laws are needless, and some, probably, mischievous, and, second, that it is not physically possible for the members of the Legislature, under existing conditions, to carefully scrutinize or become cognizant of the measures before them. These evils have been manifest and have been constantly growing in dimensions. Therefore, to reduce, if possible, the number of the measures which come before the Legislature for its attention, and to subject those which make their appearance at the annual sessions to a proper scrutiny and consideration, have, for a number of years past, been the desirable ends had in view by legislative enactments, and even Constitutional Amendments. Notwithstanding the efforts heretofore made, it must be

confessed that they have not proved adequate checks to the evils of over-legislation and of slipshod and ill-considered measures. This condition of affairs is evidenced by the constant growth of the annual output of laws, the increasing difficulties which beset courts in their interpretation, the large proportion of laws which, under the guise of general laws, seek merely private ends, and the very large amount of evidently unnecessary special and local bills which become statutes.

These great grievances and mischiefs are not confined to the State of New York alone. The National Legislature suffers from the same constantly-growing evil—perhaps not to the same degree, but sufficiently to have justified the following opinions of two leaders of opposite political parties, simultaneously expressed at the ceremonies attending the conclusion of the labors of the Forty-eighth Congress, March 4, 1885.

Senator Edmunds, as presiding officer of the Senate of the United States, said:

"It may not be improper for me to say that, in view of our recent experience, it may be doubted whether Congress can congratulate itself on being the best example of a legislative body conducting its business with that deliberate and timely diligence which is the inseparable handmaid of wisdom and justice, as well in the making as in the administration of laws. It is, I think, an evil of large and growing proportions that measures of the greatest importance, requiring much time for proper examination and discussion in detail, are brought to our consideration so late that it is not possible to deal with them intelligently, and which we are tempted (over-tempted, I fear), to enact into laws in the hope that fortune, rather than time, study and reflection, will take care that the public suffer no detriment."

Mr. Carlisle, the Speaker of the House of Representatives, at the same hour, said:

"It is evident that unless some constitutional or legal provision can be adopted, which will relieve Congress from

the consideration of all, or at least a large part, of the local and private measures which now occupy the time of the committees and fill the calendar of the two Houses, the percentage of business left undisposed of at each adjournment must continue to increase. It is not reasonable to suppose that an alteration of the Constitution could be effected; but it is worthy of serious consideration whether a general law might not be enacted which would authorize the Executive Departments and Courts of Justice to hear and determine these matters, under such rules and regulations, of course, as would amply protect the interests of the Government and secure to the citizen, doubtless, a more expeditious and appropriate remedy than is now offered."

On January 1, 1875, an amendment to the Legislative Article of the Constitution went into force, as the result of the recommendations made by a Constitutional Commission appointed by Governor Hoffman a few years prior thereto, and subsequently adopted as Section 18 of Article 3 of the Constitution. This amendment was expected to remedy the evil of careless and over-legislation from which this State was then, as it is now, suffering.

The Legislature was prohibited by that section from passing private or local bills upon certain specified subjects, to the end, doubtless, that the statute books should not be cumbered with a multitude of special laws, the objects of which could be better secured by the enactment of general statutes. But whatever benefits may have accrued from the provision (and there are some), it certainly may be said to have brought into existence, or, at least, greatly aggravated certain evils, the most mischievous of which is the practice of concealing, under the guise of general laws, legislation designed to affect private interests and to meet individual cases. This practice, which has become very common, tends to destroy the symmetry of the laws that are thus amended; to substitute fickleness and changeableness for certainty and stability; to unsettle judicial construction and precedent, and, in many cases, to deprive citizens of vested rights, without giving them an opportunity to be heard in their own behalf.

The enemy of good legislation was not driven from the field of operations by this constitutional amendment, but concealed itself in a disguise more dangerous to the Commonwealth than the theretofore open and avowed purpose of obtaining either private and local immunity from the general law by a declared special or local enactment, or a special and local law governing a particular case not contemplated or provided for by the general law.

The Code of Civil Procedure has been the special object of attack from those desirous of promoting this kind of legislation, now known as the general law, with a specially private or local object. Ingeniously drafted bills, steering clear of constitutional inhibitions, are passed for effect on pending litigation, and the unities of Code procedure are destroyed and lost sight of, for the benefit of a suitor or the discomfiture of his adversary.

The Constitutional Amendment referred to has failed to restrict local or special legislation; it has failed to diminish the demand upon the legislative time, or to lessen the pressure on the time of the members, or to increase, by giving additional leisure to members, the chances of general laws being carefully considered and passed.

The undersigned Commissioners, therefore, do not favorably regard the further extension of such restrictions upon the passage of special or local bills, as are imposed by Section 18, Article 3, of the Constitution, and have been led, by consideration, reflection, and the practice of sister States of the Union and of other nations, to seek in other directions for relief from the conditions which hamper and impede the usefulness of the successive legislative bodies of the State of New York.

The undersigned are reluctant to enter into the details of the special evils incident to the lack of proper consideration of, and deliberation upon, bills which are presented to a legislative body, but they would be unmindful of their duty if they did not briefly draw attention to some of those which are most manifest.

The chaotic condition of the general statute law of the State, and its unscientific arrangement, have long been the

subject of complaint and animadversion. Notwithstanding the fact that several attempts have been made, there has been no complete revision since the Revised Statutes of 1830, although the changes in business conditions since that date have been extraordinary. Corporations, then small in number, and limited in the scope of their operations to a few purposes, have become almost numberless, and may be organized for any legitimate object whatever. The wonders wrought by steam and electricity have revolutionized travel and transportation, and the complications incident to the operations of such great interests have correspondingly left traces of change on the pages of the written law.

Recognizing the importance of a more simple and philosophical arrangement of the statutes, the Legislature in 1889 directed the commencement of such a work, which from that time to the present has been carried on by the Commissioners of Statutory Revision. The plan on which they have proceeded contemplates the consolidation of all the public statute law, outside the Penal Code, the Code of Criminal Procedure and the Code of Civil Procedure, into a series of about fifty chapters, each independent in itself, and having a short title, expressive of its subject matter, and easy of reference. This plan has been repeatedly sanctioned by the Legislature, and has progressed so far that about three-fifths of the proposed chapters have now become law, and most of the remainder are, as we are informed, in varying stages of completion.

The importance of finishing this work, and of incorporating therein, the independent general statutes passed since 1889 and not already so consolidated therewith, is manifest. When done, if well done, a careful and competent lawyer will, for the first time in two-thirds of a century, be able after a given examination to be certain what the law actually is. But, even then, the classification thus begun must be maintained, and new statutes must be framed by way of amendment and not independently, else the rapid multiplication of new laws will speedily produce a renewal of present conditions.

Among the ills that would be eradicated by a strict adherence to the programme thus outlined, is the pernicious system of repeal by implication, which places on the citizen, and often on the public official, the responsibility of construction; in which process he must determine rightly at his peril. Apparently conflicting and irreconcilable positive requirements of law compel the exercise of legislative and judicial functions by persons whose duties are supposed to be administrative simply. As illustrative of their meaning, the undersigned Commissioners quote from the report of the Commissioners of Statutory Revision made in 1894, in their memorandum accompanying the draft of the canal law which was enacted at that session, and which, in 107 sections, occupying 49 pages of the Session Laws (including a long schedule of laws repealed), consolidated the provisions of the statutes referred to which were actually in force:

"The written law of the State relating to the canals is in a condition of almost hopeless confusion. This has arisen, in great measure, from the frequent enactment of statutes partly or wholly inconsistent with preceding ones, without express repeal, thus frequently devolving, in the first instance, on the administrative officers of the State, and in the last resort on the courts, the difficult task of deciding, at the peril of the former, the status of the law and the rights and liabilities of the citizen thereunder. * * * "

"The result of all this legislative patchwork has been the present exceedingly unsatisfactory labyrinth of the statute law. The duties of the Commissioners of the Canal Fund, of the Canal Board, of the Comptroller, of the Superintendent of Public Works and of the State Engineer are involved in inextricable confusion. In practice, consequently, important rights and privileges depend on construction and not on the letter of the law."

Chief Justice Church, in the Matter of Kiernan (62 N. Y., 459, decided in 1875), said, in delivering the opinion of the Court, that it was not safe for him to speak confidently of the exact condition of the law in respect to public improvements in the cities of New York and Brooklyn, and added,

'that the enactments in reference thereto had been modified, superseded and repealed so often and to such an extent that it is difficult to ascertain just what statutes were in force at any particular time." What a commentary is this upon the condition of the laws of a great Commonwealth, when its Court of last resort has to confess that it finds it almost impossible to ascertain upon a given subject what the statutory enactments are! And yet every citizen is presumed to know these laws.

By far the major part of the bills which are presented to the Legislature are drawn at the instigation of private or local interests, and frequently without regard either to their effect upon the general body of legislation of the State, or upon adverse interests, or upon any interests other than those which prompt the drawing of the bill. They are presented during the greater part of the legislative session practically without limitation as to time of introduction, and without notice of their purposes to interests to be affected. They come upon the Legislature in such bulk and numbers that their proper consideration is impossible, even on the part of the committees which have them in charge, whose duty nominally it is to digest, examine, study and have hearings upon every measure which is submitted to their care. No reflection is intended to be made upon the committees or their members for the non-performance or partial performance of a duty which has become too onerous for human possibility. When presented to the Senate or Assembly, and placed upon the files of members in printed form, they are presented with so little method as to procedure when they are to be considered on second reading or in committees of the whole, that it is practically impossible for even the best informed and most industrious legislator to understand what changes are being made in the existing law, or to keep himself so informed as to the major part of the legislation, during its passage in the Senate or Assembly, as to exercise a deliberate judgment before he votes. It is no exaggeration to say that it is physically impossible for him to even read the contents of his files during the session, in addition to the performance of his other

duties. The consequence is that usually each member takes an active personal interest in the bills which come from his own constituency, and sometimes takes an interest in the general bills which come before the legislative bodies, and, as to the remainder, constituting the vast majority of the bills, is compelled, in the language of Senator Edmunds, to enact, by his vote, the measures into laws "in the hope that fortune rather than time, study and reflection will take care that the public suffer no detriment."

The Commission is advised that the number of bills introduced into the Legislature of 1895, was about 3,000, some of which, doubtless, exceeded 100 large pages of closely printed matter. From this statement, some idea of the magnitude of a legislator's duties may be conceived. It follows that many unobtrusive yet radical changes in the law are frequently first brought to the attention of a majority of the members of either House on their third reading, or only after the bill becomes a law.

The Commission is not unmindful of the very considerable benefits which have been derived from the provision of the Constitution as in force on January 1, 1895, requiring bills to be printed and on the desks of the legislators three days before their enactment. This prevents some of the worst evils which heretofore attended the closing days of the legislative sessions. The orderly and decorous procedure of the closing days of the legislative session of 1895, as compared with the closing days of legislative sessions prior thereto, attests the efficacy and wisdom of this Constitutional Amendment, and shows how much good can be produced by the introduction of method and order and by properly systematized legislative procedure.

The adoption of the Constitutional Amendment recommended by the Constitutional Convention of 1894, relating to laws which affect cities, has also limited the opportunity for improper, hasty legislative enactments in relation to the interests affecting so large a proportion of the inhabitants of the State of New York, and the vast pecuniary interests embraced within urban limits in this State.

The requirement which gives to the Mayors of these cities an opportunity for inspection and an opinion consequent upon the inspection of such laws before they can be finally acted upon by the Legislature, has been promotive of the public good.

The criticism which is made, however, is that whilst this may prevent mischievous legislation and bring public opinion to bear against it, it deals with the measure as a whole, and only after it has passed all the legislative stages, and that no proper opportunity is afforded by this Constitutional Amendment to improve and perfect proposed legislation whilst it is upon its passage, by compulsory timely notice of intention to apply for its passage, and proper hearings whilst the bill is on its way to become a law.

This Commission invited the opinions of persons of large legislative experience, and at several sessions have been favored by their attendance and their views. There has been a general agreement with the views of the Commis-mision on the part of those who have been thus invited and attended, that to secure better legislation in the future it is necessary to methodize and improve legislation in the following particulars:

FIRST.—That all private and local bills, including bills which relate to municipalities, shall be filed either before the beginning of the legislative session or within thirty days before their presentation to the Legislature, unless the Governor of the State takes upon himself the responsibility of making a special recommendation of urgency; and that each bill shall be accompanied with proof that a notice was duly published or personally served, or both, as the circumstances of the case may require, on every interest which may be affected by such legislation.

SECOND.—That the petition for such legislation shall set forth its general scope, object and utility. This petition may be answered in writing by any adverse interest. Such petition and one or more answers which partake of the nature of pleadings in a civil suit, shall be filed with the

bill, and these petitions and counter-petitions, duly signed, shall accompany each bill of this character during the whole of its legislative progression.

THIRD.—That Committees of Revision, both Senate and Assembly, should have their powers enlarged for the consideration of all measures, both public and private or local, and that each of such committees shall be assisted in its labors by a lawyer of at least ten years' standing, with an adequate salary to insure proper talent, who shall have such assistants as may be necessary. These committees to act as advisory committees for redrafting bills, and for recommendations as to their effect, with suggestions as to their operation upon the general body of the law, and to point out constitutional or other defects. Such counsel to be appointed by the Governor, Lieutenant-Governor and Speaker of the House, for a fixed term.

FOURTH:—That a day calendar shall be printed one day in advance and distributed among the members.

FIFTH.—That general public measures should be referred before passage to the Commissioners to Revise the Statutes, to report upon the effect of such measures and their place in the body of the statute law.

SIXTH.—That committees of the Legislature should be empowered to take testimony.

SEVENTH.—That every committee should be required to report the private and local bills which have been submitted to it, with the reasons for its action, within a certain number of days after the bill has been committed to its care.

EIGHTH.—That some of the Senate Committees should be enlarged, particularly such committees as have imposed upon them the most onerous duties of the legislative session, such as the Committee on Cities, the Committee on Finance, the Committee on Judiciary.

NINTH.—That a proportionate share of the printing expenses incident to a legislative session, which amounted, during the last session, to the sum of $200,000, should be borne by the parties interested in the bills, and in whose interest and at whose request legislation is considered, particularly moneyed corporations, stock corporations or private individuals.

TENTH.—That the general laws should be completed as rapidly as possible, and all public statutes should be incorporated into them or into one of the Codes.

ELEVENTH.—That all bills amendatory of the general laws, or of the Code, should refer briefly in their title to the general subject to which they relate.

TWELFTH.—That all amendments to City Charters or to the general municipal incorporation laws should briefly state in the title the subject of the sections of the Statute which are proposed to be amended.

THIRTEENTH.—That with reference to every bill affecting any department of the State Government, or the general administration of the law subject to the supervision of such department, notice thereof shall be given to the head of the department having the administration of such subject under his supervision, and an opportunity afforded him to be heard before the bill is reported or passed.

Most of these propositions have been considered in other States of the Union, and the more important of them have been adopted in some of those States and work well. Attention is particularly called to the provision relating to the giving of notice of intention to apply for the passage of special and local bills, and also to the requirements that applicants for bills shall pay the expense of printing the same, and that committees shall report within a certain time upon private and local bills. The States of Rhode Island, Pennsylvania, New Jersey, North Carolina, Georgia,

Florida, Alabama, Texas, Arkansas and Louisiana have constitutional provisions on the subject of publication of notice of intention to apply for certain bills before they can be considered by the Legislature.

The provisions of the Rhode Island Constitution are to be found in Article 4, Section 17, and Article 9, Section 1, and are not so full as those of the other States.

Pennsylvania, by Section 8, Article 3 of its Constitution, provides that no local or special bill shall be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall be at least thirty days prior to the introduction into the General Assembly of such bill, in the manner to be provided by law; the evidence of such notice having been published shall be exhibited in the General Assembly before such act shall be passed.

This has been followed by an act substantially incorporating the constitutional provision and amplifying it for the purpose of making it more effectual. Sections 30–34, of the Pennsylvania Revised Statutes of 1874, state the manner in which notice shall be given. The notice must state specifically the title and objects of the bill, and be published once a week for four successive weeks in two newspapers, one of which may be in a language other than English, printed in the county or counties where the matter or thing to be affected may be situated, at least thirty days prior to and within three months immediately preceding the introduction of such bill into the Legislature, and be signed at least by one of the parties.

Although other States have embodied either in their Constitutions, or by statutory enactments, like provisions to those of Pennsylvania, the latter State affords in its characteristics and legislative necessities, a closer analogy to the State of New York than any of its sister States, with the exception, possibly, of Massachusetts. It contains two large cities at each end of the State—Philadelphia and Pittsburg—bearing close analogy to New York and Buffalo. It has a large number of second and third class cities within

its domains, and therefore a legislative reform which has worked well in that State cannot but prove beneficial in the State of New York. Hence, the Commission directed inquiries to be made of public men and leading lawyers of the State of Pennsylvania, and received from them the unanimous assurance that the requirement of timely notice of intended legislation and of the publication of the general purposes of the bill, in advance of the session of the legislation or the consideration of the measure, has prevented a large number of bills from coming before the Legislature like those which had previously encumbered the statute book of that State; that it has prevented ill-considered measures, diminished the evil of over legislation, and that it has been fruitful of unmixed benefits to the inhabitants of Pennsylvania.

New Jersey, by Article 4, Section 7, Subdivision 9, and North Carolina, by Article 2, Section 12, of their Constitutions, have substantially the same provision as that of the Pennsylvania Constitution, without stating the length of the notice and the evidence thereof, which are, however, to be prescribed by an act of the Legislature in those States.

Missouri, by Article 54, and Louisiana, by Article 46, of their Constitutions, have the same provision as the Pennsylvania Constitution, with the addition that the act itself shall recite that the notice has been given.

Georgia, by Section 7, Paragraph 16, of its Constitution, follows the language of the Pennsylvania Constitution on the subject.

Florida, by Article 3, Section 21, of its Constitution, has the same provision as that of Pennsylvania, except that the length of the notice is sixty days.

Alabama, by Article 4, Section 21, of its Constitution, has the same provision as that of Pennsylvania, except that the notice is twenty days, and limitation is made as to the objects to which the act shall apply.

Texas, by Article 3, Section 57, and Arkansas, by Article 5, Section 26, of their Constitutions, have the same provision as the Pennsylvania Constitution.

In nearly all of the States above mentioned the Legisla-

ture has passed statutes to conform to the constitutional provisions.

In Massachusetts there is no constitutional provision on the subject, but the legislative body of that State dealt with the subject by Chapter 24, Laws of 1885, as amended by Chapter 302, Laws of 1890, which provides for the publication of notice once a week for three consecutive weeks, at least fourteen days before the session at which the petition for the bill is presented, and the petition and proof of publication must be transmitted to the Legislature during the first week of the session, with the endorsement that the required notice has been given.

The Legislatures of the various States above referred to have also adopted legislative rules on the subject, in accordance with the constitutional and statutory provisions of their States.

Virginia has also, by its House Rules 80 and 81, provided that if the petition or memorial relate to a special local interest, or private law or interest, it shall appear that the parties to be affected have had notice at least equal to that required by law in regard to the matters to be transacted in a court of justice.

Maine and Vermont have also in their legislative rules provided for the giving of like notice.

Although there are inadequate and meagre provisions as to notice in Title 3, Chapter 7 of the New York Revised Statutes (1 R. L., 268, Chap. 121, Laws of 1818), those provisions have fallen into disuse, and have been generally disregarded.

Assembly Rule 15 of this State provides that "no bill affecting the rights of individuals or of private or municipal corporations, otherwise than as it affects generally the people of the whole State, shall be reported by a committee unless it is made to appear to the satisfaction of the committee that notice has been given by public advertisement, or otherwise, to all parties interested, without expense to the State. In case the bill affects the rights of a municipal corporation, such notice shall be given to the Mayor in cities and to the President of the Board of Trustees in villages." This rule is scarcely ever

observed, but both the law and rule are a recognition that notice of some kind is essential to good legislation. No requirement to secure adequate notice, nor for the publication of the intention to apply, is embodied in the rule, and if legislation is effected without the required notice, it is questionable whether there is any impairment of validity by reason of the absence of such notice. The undersigned Commissioners have, therefore, drawn a bill which provides, with great precision and stringency, for such notice and the filing of bills considerably in advance of their consideration. In addition to this bill, the Commission recommends that a constitutional amendment on the subject, similar to the provision in the Pennsylvania Constitution, be adopted in this State, so as to carry out adequately this proposed reform.

It also seems to the Commission that a long step in the right direction would be taken if bills, before their third reading and while yet capable of amendment, could be submitted for scrutiny and revision to one or more trained lawyers, whose only client in the matter would be the State, and for whose conclusions, if satisfactory, a carefully selected committee of the best men in either House would become responsible to that body.

It seemed to the Commission that the best method of securing competent persons to perform the duties of counsel would be to leave their selection to a Board consisting of the Governor, Lieutenant-Governor and Speaker, as the responsibility for an improper or incompetent appointment could then be easily located, while the importance of creditable selections would doubtless be correspondingly appreciated. It would seem, too, that public opinion would enforce in such case permanency of tenure in actual practice, while leaving the power of change where it could be exercised, if desirable, without producing friction.

This part of the system of improved legislative methods which the undersigned have decided to recommend has already substantial recognition in legislative procedure, in the form of the Committee on Revision, of the Assembly. By Rule 16 of that body, this committee is charged with the duty of examining and correcting all bills prior to their third

reading, " for the purpose of avoiding repetitions and unconstitutional provisions, insuring accuracy in the text and references, and consistency with the language of the existing statutes." It is also to " report whether the object sought to be accomplished can be secured without a special act, under existing laws, or without detriment to the public interests, by the enactment of a general law." Alterations in sense or legal effect and material changes in construction are guarded by the provision that they shall be reported as recommendations, and not as amendments.

It is the testimony of those familiar with the facts that some good has been accomplished by this Committee since 1890, the time of the adoption of the present rule, but that much more might have been done with counsel of experience and ability, and by enlarging the duties of the House Committee and equipping the legislative machinery of the Senate with a like committee, equally provided with proper counsel.

The undersigned Commissioners have, therefore, determined to advise the amendment of the legislative law so as to make statutory provision for Committees on Revision in each House, with counsel therefor, who shall be lawyers of experience, and receive sufficient compensation to secure the adequate talent.

It is true that, to some extent, in 1895 the Legislature charged the Commissioners of Statutory Revision with certain duties, which would ordinarily be performed by legislative counsel, and such duties have ever since been discharged by those Commissioners during the session. It is not intended to repeal this provision, but to enlarge it. The urgent necessity for the completion of the general laws, which is the specific purpose for which the Commission was instituted, has already been shown, and to that burden is likely to be added the herculean task of a scientific revision of the Code of Civil Procedure. These labors alone must occupy several years. If the Commission of Statutory Revision is to be, in addition, the only legal adviser of the Legislature during many months of each year, the reduction of the general statute law to anything like system, must be considered as indef-

initely postponed. Besides, the great majority of bills do not reach the Commissioners for examination until they have passed both Houses. To render revisory powers of any considerable value they must be exercised before third reading. Any other course would be of little use, so far, at least, as concerns "thirty-day" bills.

The 23d joint rule, as printed in the Legislative Manual, requires that some brief reference to the subject matter shall be incorporated into the titles of all bills amending either the Revised Statutes, the Codes or the Consolidation Acts of New York City and Brooklyn. A similar provision exists in the rules of many States. Whenever complied with, this provision has been found beneficial as providing, to some slight extent at least, a barrier against surreptitious changes in existing law. As matter of fact, however, the joint rules have not been in force for several years, and when they are adopted are not considered as having the binding sanction of a statute, which is at any rate obligatory on each House taken separately. The Commission, therefore, reports a proposed amendment to the legislative law containing the substance of the joint rule referred to, adding to the statutes therein enumerated the General Laws and the charters of all municipal corporations.

The requirement that legislative committees shall report certain classes of bills within a certain time cannot but prove to be a very desirable one to be adoped in this State, in such form as to impose an obligation on the Legislature to comply therewith. Assembly Rule 15 was intended to cover this subject by providing that it shall be the duty of each of the several committees to consider and report without unnecessary delay upon the respective bills and other matters referred to it by the House. Assembly Rule 60 also requires a report on all bills before a certain time. These provisions, however, as remarked, are not complied with.

In Vermont, Delaware and Iowa, as well as in Congress, the rules of the Legislature require a report within a certain time. In Vermont the time is 15 days after commitment; in Delaware, 5 days; in Iowa, 10 days.

The requirement that private bills shall be printed at the expense of the applicants would be a very salutory one if adopted in enforceable form. Connecticut, by Joint Rule 12, has such a requirement, as also New Jersey by Assembly Rule 49. In Rhode Island, Senate Rule 34 and Assembly Rule 38 require a presentation of copies of the bill to the Clerk for distribution.

The Commissioners have considered, only to dismiss, the suggestion that any relief from over-legislation and careless law-making is to be found in biennial sessions of our legislative bodies. It is obvious that when it is impossible under the existing system to secure, even with annual sessions, the time necessary for careful, deliberate and painstaking work, and when the pressure for legislation, even with annual sessions, is beyond the capacity of the Legislature to deal with it adequately, such pressure and the number of bills would manifestly be largely increased by biennial sessions, with a consequent decrease in the possibility of passing carefully and deliberately considered statutory enactments. The undersigned Commissioners have, therefore, determined from the outset to see whether the methods of legislation could be improved, instead of seeking for a remedy in a less frequent meeting of the legislative body.

Through the courtesy of Hon. Richard Olney, Secretary of State of the United States, moved by the request of one of the Commissioners, the undersigned have been supplied with documents and answers to a set of interrogatories put, through the State Department, to the various members of the diplomatic corps representing the United States abroad, on the legislative methods adopted in the countries to which they were respectively accredited. The answers to these questions were promptly made, and by this light the Commission was enabled to examine the rules of legislative procedure of the various civilized nations whose laws are enacted by representative bodies. From them it appears that England has the most developed and systematic course of procedure for the enactment of measures into laws, and withal the most carefully guarded

methods of preventing ill-considered and slipshod legislation.

Public bills in England are separated from private bills by a clear line of cleavage. There is ministerial responsibility for one set of public measures, and individual and local responsibility for the other set. So as to have the ministerial responsibility clearly attach, a public measure which passes through Parliament is either proposed or adopted by the ministry, and the measure, after it has been subjected to amendment, is redrafted by parliamentary draughtsmen in the constant and steady employ of the Government. Usually some lawyer of distinction is at the head of this corps of draughtsmen, who obtains a salary almost equal to that of a judge of a court of record and has a permanent tenure of his position.

Private and local bills, under what are known as standing orders which have been developed into a perfect system since 1845, are no longer treated as legislation, strictly speaking, but as petitions to Parliament for special immunity or privileges, which are conducted by private parties or interests subject to a strict rule of procedure. Such bills are tried as a lawsuit is, the petition and bill being filed before the beginning of the parliamentary session and usually opposed at every step as a whole or in detail—if a railway or canal act, by the Board of Trade—and also by every private interest which may be menaced or affected thereby. Counter-petitions, attorneys, counsel and a trial, a standing and a day in court to all parties in interest before the bill can become a law, prevent wrong to individuals and localities. Counsel for the ministry for the public bills, and special counsel for the private bills, trained specialists to aid committees in the intelligent discharge of their work, prevent the possibility of working by collusion a public wrong.

By virtue of this system of standing orders, no private or local bill is considered by Parliament unless deposited in the private bills office sixty days in advance of the session. If it be a railway or canal project, a deposit of five per cent. of the estimated cost of construction must be made at the

time of the filing of the bill. If it involve the exercise of the right of eminent domain, evidence must be given that notice of intention to file the bill has been served on all the persons whose interests are likely to be affected adversely by legislation. Accompanying these documents, as to the contents of which the most precise instructions are given in the rules, there must also be deposited a sum of money to cover the expenses of preliminary examinations of the bill, in order to ascertain, officially, whether the standing orders have been complied with.

The opponents of the bill have until fifteen days before the opening of the session of Parliament to file their objections to the bill, and to point out wherein the standing orders have not been complied with by the petitioners. If, either by the unaided investigations of the official examiners, or at the suggestion of adversaries, it become apparent that the promoters have failed to give the requisite notice by advertisement in the public gazettes, and by personal service, or that the map is not in conformity with the bill, or that in any other particulars they have failed to comply with the standing orders, the bill is endorsed "standing orders not complied with," and Parliament is relieved from its consideration during that session. If there be a question whether the standing orders have been complied with, the parliamentary agent is heard upon the subject. If he can explain a seeming neglect, the examiners may allow the bill to be entertained, but no substantial deviation from the rules is tolerated, and non-compliance means non-consideration. If the bill is entertained, a further payment is to be made by the promoters to pay its way during its consideration in Committee. Each one of these payments is about £50. Bills are then separated by the Chairman of the Ways and Means Committee and the Chairman of the Committee of the House of Lords. Those that involve railway or canal projects or the exercise of the right of eminent domain, are referred for special scrutiny to the Board of Trade. All are examined by the Chairman of the Committee of the House of Lords, who makes his suggestions and amendments, which are

generally accepted by the parliamentary agents, who are the attorneys for the promoters of private and local bills in filing the same and conducting them until the Parliamentary Committees come to consider the bills in open session. The bills are then referred for trial. The Trial Committees are composed of chairmen, who are members of Parliament, one or two additional members, and several experts, thoroughly conversant with the technical elements of the subject matter of the bills and who need not be members of Parliament. A calendar, analogous in character to calendars of trial causes in a court of justice, is then prepared containing a list of the bills, and a trial is had in which the petitioners for, as well as the adversaries of, the bill are represented by counsel. The question of the expediency of the passage of the measure is determined first, as a whole, on the preamble, and then by sections, and every injury, direct or indirect, is presented for the consideration of the Committee, to be avoided if possible, by amendments to clauses of the bill, or by the awarding of proper compensation. The adversary who, in the defense of a property right, succeeds in securing by amendment the insertion of a clause which, in all fairness, should, for his protection, have originally been inserted in the draft deposited by the promoters of the bill, mulcts the latter to pay the contestant's costs. If the Committee determine in favor of the bill, they so report, together with their amendments, to the House, and with but very rare exceptions the House regards the finding of a committee on a private or local bill as final. This method of ascertaining the merits of a measure is so complete, the examination of witnesses and experts is so thorough, every element that can enlighten the mind of the legislator has been brought to bear with so much accuracy and forensic skill, that the margin of human error, after such a trial, is very small. The amount paid to Parliament for considering a private or a local measure is, on the average, one thousand dollars a bill. By these payments, which are somewhat in excess of the cost of the service of examination, the expense of private legislation is not only avoided

to the English Parliament, but even the expense of public legislation is defrayed.

Other European nations have either adopted this system in part only, or are exempted, by their constitutional organization, from the necessity of adopting a system of this character. In France and in Prussia the statutory law occupies itself with general laws only. In France these are submitted before enactment to a Council of State, composed of leading lawyers and publicists for revision. The functions which here are performed by private or special and local laws are in Prussia and France accomplished by ministerial rescripts, and are part of the executive duties of the State.

So elaborate a system as that which England has developed to guard its legislation from becoming mischievous to the community it would not be practicable to recommend for adoption in the State of New York. Progress must be taken cautiously in that direction, and such steps in legislative reform must be taken from the experience of sister American Commonwealths rather than from a highly developed form of European procedure, making advances beyond such experience only when the greater pressure of business upon the Legislature of the State of New York, as compared with the legislative bodies of other States, imperatively demands a treatment differing from their own.

Therefore, whilst recognizing the great superiority of the English system over those which are in vogue in American Commonwealths, the Commission also recognizes that changes even of a beneficial character cannot be made in a revolutionary spirit, but must be gradual in their adoption, to secure permanence, and be in conformity with the spirit and habits of the people adopting them.

The developed system of legislative methods, as it is now to be found in England, has been the growth of fifty years of active, persistent and intelligent co-operation on the part of its statesmen, of all shades of political opinion.

As the work of such revision of legislative methods has been commenced here by the passage of the Act creating this Commission, it will, it is to be hoped, take a very much

less number of years than the half century which was required for the development of the procedure of Great Britain's law-making instrumentality, to secure, in the State of New York, the adoption of as beneficial and complete a system of legislative reform as has been established by the elder branch of English speaking Commonwealths.

Accompanying this report are additions to the sections of the Legislative Law, embodying the recommendations of the Commission.

The Commission is of the opinion that the rules of the Senate and Assembly should provide that all bills of a private or local nature shall be on a calendar known as the Private and Local Calendar, and that all bills relating to cities shall be on a calendar known as the Cities Calendar, and that all other bills shall be placed on a calendar known as the General Calendar; that all calendars of bills shall be printed, and on the desks of the members twenty-four hours prior to their consideration, and that certain days shall be set apart for the consideration of the various calendars as above subdivided. But the Commission has not assumed to formulate rules upon these or other similar subjects, leaving that matter for the action of the two Houses of the Legislature.

Dated, November 30, 1895.

Respectfully submitted,

CHARLES T. SAXTON,
DANFORTH E. AINSWORTH,
JOHN J. LINSON,
JOHN S. KENYON,
SIMON STERNE,
Commissioners.

AN ACT

TO AMEND ARTICLE 2 OF THE LEGISLATIVE LAW, RELATING TO LEGISLATIVE PROCEDURE.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Legislative Law is hereby amended by adding to Article 2 thereof the following sections:

Section 50. *Filing of and petition for local bills.* Neither the Senate nor the Assembly shall consider any bill of a local character unless the same has been filed with the Secretary of State thirty days before its introduction. Every such bill shall be accompanied by a petition signed by the promoters thereof, whose post office address shall be given after their signatures, and who, in the case of a local bill, shall not be less than in number. Such petition shall contain a brief statement of the objects to be attained by the bill, a synopsis of its main provisions, a reference to the general laws applicable thereto, if any, and the reasons why a special law is required. Such petition shall also contain a general statement of the interests which will be affected thereby, both adversely and beneficially. The filing of such petition shall be deemed an application to the Legislature for such bill.

Every private bill, other than a local bill, shall fulfill all the requirements of the foregoing provision, except that it may be signed by a single promoter instead of promoters.

Section 51. *Notice of Filing.* The title, file number, date of filing in the office of the Secretary of State, and a general synopsis of a local bill affecting a city of the first class, or any subdivision or part of such city, shall be published, together with the names and post office addresses of the promoter or promoters thereof, at least three times a week for two successive weeks (the last publication to be within

one week before such bill is introduced) in two daily newspapers published in such city of the first class, which two newspapers shall be designated by the Secretary of State.

If a local bill affects a city of the second or third class, or any subdivision or part thereof, all the requirements in this section provided for as to a bill affecting a city of the first class shall be complied with, except that the publication need be made but twice a week for two successive weeks between the date of the filing and the date of the introduction of the bill. Such publication shall be made not less than one nor more than three weeks before such introduction. Such publication in cities of the second and third classes shall be in newspapers designated by the Secretary of State.

If a local bill affects a county, town, village, or any other place in the State, or any subdivision or part thereof, the Secretary of State, when the same is filed, shall designate one newspaper in such county, town, village or place, wherein shall be published, at least once a week for two successive weeks within the month intervening between the filing and the introduction of said bill, a notice containing a like statement to that which is required by the foregoing provisions of this section as to bills affecting a city of the first, second or third class, or subdivision or part thereof.

As to any private bill, the notice of the application therefor shall be published in two newspapers in the city or county affected, or in which the parties applying for the same reside, or where the matter or thing to be affected is located. One of such newspapers shall be designated by the Secretary of State, and the other shall be a newspaper of general circulation in such locality. Such notice shall contain a like statement to that which is required by the foregoing provision of this section as to a local bill, and shall be published at least twice a week for two successive weeks, within the month intervening between the filing and the introduction of said bill.

Every bill which confers corporate powers, or amends, enlarges, or restricts any corporate powers heretofore conferred by any special, private or general law, except

bills amending the general law submitted by the Commissioners of Statutory Revision, shall, in regard to the filing, notice and publication thereof required by this section, be deemed a private bill.

In the case of any bill relating to street railways, elevated railroads, canal service, telephone service, telegraph service, waterworks, gas companies, electric, steam, lighting or power service, or tunneling, or any service requiring work under, over, or on the surface of the street, the notice required shall, in a city of the first class, be published in two daily newspapers designated by the Secretary of State at least three times a week for three successive weeks, and in a city in the second and third class, in one daily newspaper designated by the Secretary of State, at least three times a week for two successive weeks, immediately prior to the introduction of such bill, the last publication to be within one week before such bill is introduced; in towns and villages, such notice shall be published in a newspaper, to be designated by the Secretary of State, published in such town or village, or if no newspaper is published therein, then in a newspaper published in a town or village nearest thereto, at least once a week for three successive weeks, immediately prior to the introduction of such bill.

If such bill authorizes the construction of any work, or the supplying of any service, such as electricity, heating, lighting, gas, water, transportation or transit of passengers or goods, or both, or power for domestic or manufacturing purposes, or any other work which affects a larger locality than a county, city or town, the publication and notice hereinbefore provided for shall be made and given in each locality to be affected by such work or service, in the same manner as though separate bills affecting each particular locality had been introduced.

Before such bill is introduced, direct notice shall, in the manner provided by law for the service of a summons, be given to every corporation or person engaged in the same business within the territory affected by the provisions of the bill.

Before such bill is introduced, evidence by affidavit of the service and the publication of such notice must be filed with the Secretary of State. The affidavit of publication must be made by the owner, publisher, foreman or editor of the newspaper in which such notice is required to be published, and must be attached to a copy of the bill.

Section 52. *Printing Private and Local Bills.* All bills for the amendment or alteration of local, special or private acts, and all private or local bills of whatever nature shall, before the same are considered, be printed for the use of the Legislature, at the expense of the party applying therefor. Such printing, at the expense of the promoter or promoters of any such bills, shall be done by the Legislative Printer, under the existing provisions of law, and the amount of such expense shall be certified to the Secretary of State, and be audited by the Comptroller, and before the introduction of such bill the expense of printing the same shall be paid by the promoters thereof to the Secretary of State in conformity with such audit of the Comptroller.

Sufficient copies of such local or private bill, not exceeding 500 in number, shall be printed by the Secretary of State, at the expense of the promoter or promoters thereof, in order that such copies may be furnished, without expense, to any one asking therefor.

The promoter or promoters of a private or special bill affecting moneyed corporations, stock corporations or individuals, shall pay all bills incurred by the State for the printing and reprinting of such bills for the use of the Legislature, and such payment shall be made by such promoter or promoters before the same shall be certified to the Governor for his signature, and the certificate that the expense of such printing has been paid shall be made by the Secretary of State to the Governor, and accompany such bill.

Section 53. *Answer to Petition.* An answer to the petition accompanying a private or local bill may be made by any

person or persons opposing the same, who shall sign such answer, and also state therein their post office addresses; such answer shall contain a succinct statement of the reasons why said bill or any of the provisions thereof should not become law, and shall, together with the petition for such bill, be printed, and accompany the bill through all its legislative stages. The expense of printing such answer and accompanying documents, if any, shall be borne by the answering person or persons, and the expense of printing the same shall be certified by the Comptroller to the Secretary of State, and the amount thereof paid to the Secretary of State by the answering person or persons; and unless such expense is so paid by them said answer need not accompany the said petition and bill. Such answer and accompanying documents, if any, shall be printed as nearly as possible in uniform style with the petition.

Such answer may be filed at any time before the bill is called for hearing by a committee of the Legislature. After such answer is filed and the expense of printing the same has been duly paid as hereinbefore provided, the same shall accompany the said bill and the petition therefor through all the legislative stages of such bill.

Section 54. *Counsel. Report of Committees. Power of Committees.* A petition or answer in addition to being signed as hereinbefore provided, may be signed by counsel, to whom, together with the promoters and opponents of such private or local bill, the Clerk of the Committee to which such bill is referred shall send due notice by mail of the time fixed for the hearing of every such bill. Such notice shall be given not less than three days prior to such hearing.

Every Committee to which such bill is referred shall fix a day for the hearing of such a bill, and shall report thereon prior to the adjournment of the Legislature and within thirty days after its reference. Every such Committee shall have power to take testimony of witnesses under oath, and to compel the attendance of such witnesses, and all the provisions of law in reference to the punishment

of witnesses for non-attendance and the giving of false testimony shall be applicable to the witnesses giving testimony before such Committee. Such Committee shall also have the power, on notice of at least five days, to compel the production of such books and papers as in their discretion they see fit to ask for. The signature of the Chairman of the said Committee to a subpœna *duces tecum*, or to an ordinary subpœna, shall, as to any inquiry before such Committee, have the same force and effect as though the same had been issued by a court of record.

Section 55. *Urgency.* If in the opinion of the Governor any local or private bill, except such as creates, enlarges or amends the powers of railroad, telegraph, telephone, subway, electrical, heating, lighting, steam or gas companies, or any form of power companies, or tunnel companies, or companies performing any other communal service which involves the occupation of a public highway, street, avenue or other public place, or which involves the going under or over or on any such public street, highway or public place, shall, in the public interest, require urgency for the consideration thereof, the Governor may attach to such bill his opinion, duly signed by him, to the effect that such bill should be promptly considered in the interest of the public, and that the promoters of such bill have rendered to him a satisfactory excuse for non-compliance with that part of Sections 50, 51 and 52 of this act relating to filing of proposed bills with the Secretary of State, and notice and publication thereof, or that an exigency has arisen which makes compliance therewith impracticable; and thereupon such bill may be considered by the Legislature as though the provisions of Sections 50, 51 and 52, requiring notice and publication, had been complied with. Such a bill may thenceforth be opposed and answers thereto interposed, which answers shall accompany such bill as though the same had been duly filed, and all other provisions except those requiring the filing thereof within a certain time, and the giving of notice or the publication thereof as substituted notice shall apply to such bill in the same manner as to

every other local or private bill. Such bill, upon such a certificate of urgency by the Governor, shall be filed with the Secretary of State immediately before the introduction thereof, and the expense of the printing thereof for the purpose of distribution to persons asking for the same, and for the use of the Legislature, shall be borne by the parties promoting the same, as hereinbefore provided.

Section 56. *Bills affecting Departments or affecting State Government.* When any general, private or local bill other than an appropriation bill, or a supply bill, affects any executive department of the State, or subordinate bureau thereof, or any official of any such executive department, or any subordinate board or any official thereof, or any court or commission, notice shall be given to such department, bureau, commission, court, official or person affected thereby, at least five days prior to the report or third reading of said bill, and such department, board, court, commission or official shall receive notice of hearing before the eommittee, to whom such bill shall be referred, at least three days prior to the time fixed for such hearing, and be entitled to be heard thereat, and the House before which such bill is pending shall refer every such bill to a committee for such a hearing.

Section 57. *Power of Courts.* Any court before which the provisions of any local or private act hereafter passed shall come for consideration shall have power, when the subject is properly before the court by the pleadings, to inquire whether Sections 50 to 56, both inclusive, of this article have been duly complied with, and if substantial compliance has not been made with such sections, to declare that the act before the court for consideration has, by reason of such noncompliance, not conferred upon the promoters thereof or claimants thereunder, any benefits, privileges, rights or immunities, which would otherwise flow therefrom, and such court shall thereupon adjudge the rights of the parties, or any duties, rights, immunities or privileges claimed thereunder, accordingly.

Section 2. This act shall take effect November 30, 1896.

AN ACT

TO AMEND ARTICLE I. OF THE LEGISLATIVE LAW, RELATING TO LEGISLATIVE PROCEDURE.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Article 1 of the Legislative Law is hereby amended by adding the following sections:

Sec. 24. *Committees on Revision.* There shall be in each House a Committee on Revision, to consist of such number of members as the House shall determine. Every bill before its third reading shall be referred in the House in which it originates to the Committee on Revision of such House, and shall be examined and corrected by such Committee for the purpose of avoiding repetitions and unconstitutional provisions, insuring accuracy in the text and references, and consistency with the language of the existing statutes. Such Committee shall also report whether the object of the bill can be secured under existing laws; or, if the bill is local or private, by the enactment of a general law, and, if there is a general law on the subject, such Committee shall, if practicable, report such bill, if general, as an amendment thereto. A change in the sense or legal effect, and any material change in construction, shall be reported as a recommendation and not as an amendment.

Sec. 25. *Counsel to Committee on Revision.* The Committee on Revision in each House shall each be aided by the service of a counsellor at law of at least ten years' practice, to be appointed by the Governor, President of the Senate and Speaker of the Assembly, or a majority of them, for the term of two years, who shall receive an annual salary of three thousand dollars, and who shall assist such Committee on Revision in the discharge of the duties prescribed in the last preceding section, and shall also, as far as practicable, when requested, perform similar duties for other committees and draft and revise bills for members, officers and committees, and advise with them as to the constitutionality and accuracy of proposed legislation and its consistency with the general statute law of the State. And

the Committees shall each appoint such assistants to such counsel as may be necessary, who shall each receive a salary not to exceed dollars per annum.

Sec. 6. Titles of Certain Bills. The title of each bill introduced amending either the General Laws, the Revised Statutes, the Code of Civil Procedure, the Code of Criminal Procedure, the Penal Code, the New York City Consolidation Act of 1882, Chapter 583 of the Laws of 1888, entitled "An Act to revise and combine in a single act all existing special and local laws affecting public interests in the City of Brooklyn," or the charter of a city or a village, shall contain some brief reference to the subject matter of the proposed amendment; and a reference to the section or sections proposed to be amended shall not be a sufficient compliance with this section.

Sec. 27. Reference of Appropriation Bills. A bill involving an appropriation from the State Treasury, when introduced in the Senate, shall be referred to the Committee on Finance, and, when introduced in the Assembly, to the Committee on Ways and Means.

SECTION 2. Section 23 of said law is amended to read as follows:

Section 23. Duties of Commissioners of Statutory Revision. It shall be the duty of the Commissioners of Statutory Revision on request of either House of the Legislature or of any committee, member or officer thereof, to draft or revise bills or render opinions as to the constitutionality, consistency or other legal effect of proposed legislation, and to report by bill such measures as they deem expedient.

All public measures shall, before their third reading, be referred to such Commissioners, who shall thereupon report to the Legislature the effect of such measures and their proper places in the body of the statute law.

SECTION 3. Section 4 of Chapter 856 of the Laws of 1895 relating to Reference of Appropriation Bills is hereby repealed.

SECTION 4. This act shall take effect on January 1, 1897.