

Chapter CCLIX.¹

THE VOTE BY YEAS AND NAYS.

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3107. The right to demand the yeas and nays is a constitutional privilege which may not be denied or abridged and may not be ruled out as dilatory.—On February,² the House was considering a Senate amendment to the Indian appropriation bill still in disagreement between the two Houses.

Mr. Charles C. Carlin, of Virginia, moved to postpone further consideration of the Senate amendment until the next legislative day.

Mr. James R. Mann, of Illinois, demanded the yeas and nays.

Mr. Leonidas F. Livingston, of Georgia, made the point of order that the request for yeas and nays was made for obstructive purposes and was dilatory.

The Speaker³ held:

The demand for the yeas and nays is a constitutional privilege that no rule or anything else can dispense with, and has never been ruled as dilatory. The gentleman from Illinois demands the yeas and nays.

3108. The House having adjourned after ordering the yeas and nays and before they could be taken, the order stands when the bill is again taken up for consideration.—On February 21, 1919,⁴ the Speaker⁵ announced that when the House adjourned on the preceding day the question was pending on the passage

¹Supplementary to Chapter CXXIX.

²Third session Sixty-first Congress, Record, p. 2797.

³Joseph G. Cannon, Illinois, Speaker.

⁴Third session Sixty-fifth Congress, Record, p. 3937.

⁵Champ Clark, of Missouri, Speaker.

of the bill (H. R. 16020) making deficiency appropriations for railroads under Government control, and on which the yeas and nays had been ordered.

Mr. James R. Mann, of Illinois, suggested that the order for the yeas and nays be vacated.

Mr. Swagar Sherley, of Kentucky, having objected, the Speaker said:

The question is on the passage of the bill. The yeas and nays were ordered, and the Clerk will call the roll.

3109. The constitutional right to demand the yeas and nays does not exist as to the vote to second a motion when such second is required by the rules.—On March 3, 1927,¹ Mr. M. Clyde Kelly, of Pennsylvania, moved to suspend the rules and pass the bill (H. R. 4475) to provide for steel cars in the Railway Post Office Service.

Mr. Albert Johnson, of Washington, having demanded a second, and the vote being taken by tellers, the yeas were 37 and the nays were 74.

Mr. Kelly demanded the yeas and nays.

The Speaker² read section 6032 of Hinds' Precedents relating to a similar point of order and held that on the question of seconding a motion—

the Chair thinks that the right to demand the yeas and nays does not exist. It is simply a question of whether the yeas and nays can be demanded as a right. The Chair thinks not.

3110. The yeas and nays may be demanded even after the pronouncement of a vote if the House has not passed to other business.

The constitutional provision for ordering the yeas and nays has always been construed liberally in favor of the demand by and any Member.

On March 2, 1910,³ while the House had under considerations the bill (H. R. 15814) providing for the purchase or erection of embassy, legation, and consular buildings abroad, Mr. Robert B. Macon, of Arkansas, moved to strike out the enacting clause.

Mr. Frank O. Lowden, of Illinois, moved that the House adjourn.

The vote being taken on the motion to adjourn, the House divided and the Speaker⁴ announced:

Upon this question the ayes are 62 and the noes are 88 and the House refuses to adjourn.

Mr. Lowden demanded the yeas and nays.

Mr. Ollie M. James, of Kentucky, made the point of order that the result of the vote having been announced the request for the yeas and nays came too late.

The Speaker overrule the point of order and said:

The Chair will read from the Manual:

“The yeas and nays may be demanded while the Speaker is announcing the result of a division, while a vote by tellers is being taken, and even after the announcement of the vote, if the House has not passed to other business.”

Now, the matter of unanimous consent, the change of reference which the Chair submitted to the House, the Chair would not consider as “other business,” because the whole thing was

¹ Second session Sixty-ninth Congress, Record, p. 5606.

² Nicholas Longworth, of Ohio, Speaker.

³ Second session Sixty-first Congress, Record, p. 2648.

⁴ Joseph G. Cannon, of Illinois, Speaker.

done by unanimous consent and as a matter of convenience to fix the calendar. The Chair is of opinion that the gentleman is in time with his demand for the yeas and nays.

The gentleman from Kentucky will recollect until the vote was announced the House could not tell what the vote was.

This is viva voce and there may be a further division, and if it is not demanded of course a further division can not be had; but this is a constitutional provision, and the Chair and all previous Speakers have always construed it liberally, as the Chair read from the Manual.

Section 6040 of Hinds' Precedents reads as follows:

"The yeas and nays may be demanded even after the announcement of a vote if the House has not passed to other business."

There are a number of other precedents to the same effect. This ruling was by Speaker Cobb, of Georgia. The Chair thinks the demand for the yeas and nays is in time.

3111. In ascertaining whether one-fifth of those present support a demand for the yeas and nays the Speaker counts the entire number present and not merely those who rise to be counted.—On February 20, 1915,¹ Mr. Swagar Sherley, of Kentucky, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the fortifications appropriation bill.

Pending that motion Mr. Augustus P. Gardner, of Massachusetts, moved that the House adjourn.

Mr. Oscar W. Underwood, of Alabama, asked for the yeas and nays on the motion to adjourn.

The Speaker² announced:

The gentleman from Alabama asks for the yeas and nays on the motion to adjourn. All in favor of the motion will rise and stand until they are counted. [After counting.] Thirty-three gentlemen have risen in the affirmative, not a sufficient number.

Upon request of Mr. William C. Adamson, of Georgia, the Speaker decided to call for those opposed to taking the vote by yeas and nays, and announced:

Those opposed to taking this vote by the yeas and nays will rise and stand until they are counted. [After counting.] There does not seem to be anyone rising. Thirty-three gentlemen rose in the affirmative, not a sufficient number.

Mr. John N. Garner, of Texas, made the point of order that 33 having risen in the affirmative and none in the negative, the constitutional requirements had been complied with and the yeas and nays were ordered.

The Speaker held:

The rule of the House is "one-fifth of those present." The Chair will count to see how many there are here. [After counting.] Sixty-three Members are present, and 33 voted to take this vote by the yeas and nays. That is a sufficient number, and the Clerk will call the roll.

3112. In passing on a demand for the yeas and nays the Speaker need determine only whether one-fifth of those present sustain the demand.

The count of the Speaker in ascertaining whether one-fifth of those present support a demand for the yeas and nays is not subject to verification, and a request for a rising vote of those opposed to the demand is not in order.

¹Third session Sixty-third Congress, Record, p. 4240.

²Champ Clark, of Missouri, Speaker.

On December 15, 1919,¹ immediately following the reading of the Journal, Mr. Thomas L. Blanton, of Texas, made the point of order that there was not a quorum present.

The Speaker having sustained the point of order, Mr. Frank W. Mondell, of Wyoming, moved a call of the House.

The motion was agreed to and the roll was called, when 303 Members answered to their names, a quorum.

Mr. Mondell moved to dispense with further proceedings under the call.

Mr. Blanton demanded the yeas and nays.

The Speaker having submitted the question to the House announced that 45 Members had arisen, not a sufficient number, and the yeas and nays were refused.

Mr. Blanton said:

I ask for the other side.

The Speaker² replied:

There is no other side. The question is whether the demand is seconded by one-fifth of the Members present. The Chair can arrive at it by counting the Members. The Chair suggests that it does not follow that all Members present would vote. It very frequently happens that Members do not rise. The Chair will count.

3113. On January 30, 1924,³ while the bill (S. 794) to equip the penitentiary at Leavenworth for the manufacture of Government supplies was under consideration in the House Mr. Thomas L. Blanton, of Texas, moved to recommit the bill to the Committee on the Judiciary, and on that motion demanded the yeas and nays.

The Speaker on submitting the demand to the House announced that 41 Members had arisen, not a sufficient number, and the yeas and nays were refused.

Mr. Blanton requested that the Speaker call for a rising vote of those opposed to ordering the yeas and nays.

The Speaker⁴ rules:

No; it is not necessary. Two hundred and eighty-eight Members are present; there was not a sufficient number, and the yeas and nays are refused.

3114. In ascertaining whether one-fifth of the Members present support a demand for the yeas and nays the Speaker is not required to take a rising vote of those opposing but counts all present.

On a demand for the yeas and nays it is not in order to request a rising vote in the negative and the count of the Chair is not subject to verification.

On March 1, 1929,⁵ the House divided on the question of agreeing to the conference report on the bill (H. R. 349) amending the naturalization law.

A demand for the yeas and nays having been refused, Mr. Charles R. Crisp, of Georgia, as a parliamentary inquiry, inquired:

As the Speaker well knows, the Constitution of the United States provides that one-fifth of the Members present have the right to have the yeas and nays. There has not been a rollcall or

¹ Second session Sixty-sixth Congress, Record, p. 597.

² Frederick H. Gillett, of Massachusetts, Speaker.

³ First session Sixty-eighth Congress, Record, p. 1714.

⁴ Frederick H. Gillett, of Massachusetts, Speaker.

⁵ Second session Seventieth Congress, Record, p. 4951.

any count of the House, so far as I know, since we convened at 8 o'clock. On a request here for the yeas and nays, 52 rose. The Chair stated that that was not one-fifth of those present, and when the other side was asked to be counted to see if 52 was one-fifth of those present, the Chair did not count, and, therefore, I appeal to the Speaker. Under the Constitution, one-fifth of those present in the House being entitled to the yeas and nays, I asked the Speaker to ascertain if 52 is not one-fifth of those present in the House.

The Speaker¹ responded:

The present occupant of the chair announced not very long ago, after having carefully counted, that 287 Members were present. The Chair assumes there are still 287 Members present. So there was not a sufficient number.

The Chair has before him this precedent:²

"Such count (meaning such count as the present occupant of the chair made long since) is not subject to verification and a request for a rising vote of those opposed to the demand is not in order."

Now, if the gentleman makes the point of order there is not a quorum present, the Chair will be delighted to count.

3115. In passing on a demand for the yeas and nays the Speaker need determine only whether one-fifth of those present sustain the demand.

While the count of the Speaker in determining whether a requisite number of Members has sustained a demand for the yeas and nays is not subject to verification, and a call for those opposed may not be demanded as a matter of right, in exceptional instances requests for tellers have been entertained.

The integrity of the Speaker in counting a vote has never been questioned in the House.

On March 7, 1914,³ the Speaker,⁴ having asked and secured unanimous consent to address the House, requested the Clerk to read the following excerpt from an article appearing in a Washington newspaper:

Application of commission and manager forms of government to states and even of the Nation was advocated last night by Charles Zueblin, former professor of sociology at the University of Chicago. His address was delivered under the auspices of the Congressional Union.

"The House of Representatives," he said, "is too unwieldy to accomplish anything, and will never grow less so. The situation is such that any majority Member must go to Representative Underwood or Speaker Clark to find out what he himself thinks."

As an instance of control by the minority Doctor Zueblin cited the vote in the House on the report of the Mulhall investigation, asserting that the Speaker announced the number voting for a roll call was 23, whereas 50 men, he said, have signed a statement that they rose to their feet. "I am not blaming all this on the Speaker," said Mr. Zueblin. "He is only one of the ring up there."

At the conclusion of the reading the Speaker said:

I am now serving my twentieth year in the House, and never yet rose to a question of personal privilege and would not do so now, if it were simply a personal question involved, but the words of Professor Zueblin of Winchester, Mass., as reported in the Washington Post, go far beyond that.

¹Nicholas Longworth, Speaker.

²Sec. 3112 of this work.

³Second session Sixty-third Congress,

⁴Champ Clark, of Missouri, Speaker. Record, p. 4470.

His words involve the integrity of the proceedings of the House as well as the courage, intelligence, patriotism, vigilance, and fidelity of at least 165 Members, for that many were here in the Hall by actual count. This is too serious a thing to permit to go unchallenged. What this man wanted his hearers to believe, though he did not say so in so many words, is this: That on the demand by Mr. MacDonald of Michigan, for the yeas and nays, on the motion of Mr. Garrett, of Tennessee, to refer the matter to the Committee on the Judiciary, 50 Members rose in the affirmative and that I reported only 23, and that 165 Members sat here dumb and made no protest against my action. It is absolutely unthinkable that any Speaker would do such a brazen, outrageous, and corrupt thing, and it is equally incredible if any Speaker should be so unworthy of his high responsibility as to do such a thing, that 165 Members should be so forgetful of their duty to themselves, their constituents, their country, and the cause of representative government as to sit mute and motionless. All any Member had to do to expose such a performance on my part, if there had been any such performance, was either to raise the point of no quorum, which would have been well taken, because there were only 165 Members present, while it takes 218 to constitute a quorum, or any Member could have demanded tellers.

The custom of the Chair, is, if there is a very large vote on each side, to count by fives, and in the shuffling around that takes place in the House, if there is anything like a full vote, it would not be anything strange if he was out of plumb 5 or 6, or even 10 votes. But when a few gentlemen stand up and try to get the yeas and nays, or do anything else which they have a right to do, the Chair counts with the greatest accuracy possible.

Mr. James R. Mann, of Illinois, said:

Mr. Speaker, it would be an error which ought not to be permitted to go forth for the people to believe that the Speaker has the power to defraud the House by a wrong count. If there had been 50 gentlemen who rose at that time, it would have been an easy matter to have asked for tellers on that proposition, and thus take the count out of the hands of the Speaker and place it in the hands of two gentlemen representing each side of the proposition. We frequently resort to tellers, not because we doubt the count of the Speaker or of the Chair, but because we wish to have gentlemen pass between the tellers so everyone can see them, and give those who do not happen to be in the Hall when the first vote was taken on a division an opportunity of voting.

It is undoubtedly true that many persons throughout the country believe that at least in some of the State legislatures the speaker exercises the gavel to do what they call "gaveling things through" regardless of the vote. I have served in this House for quite a number of years, and I never yet have seen any Speaker attempt to override the House by the exercise of autocratic power in refusing a fair count or a fair vote. In many places, especially in conventions outside or congresses outside of legislative bodies, people take advantage of certain situations to declare that the demand for a division or the demand for a roll call comes too late. That is seldom exercised in the House of Representatives. Here the Speaker attempts to preserve the rights of every Member to have an actual count of the real vote, and no Speaker would be permitted to remain as Speaker 48 hours who attempted to defraud the House of its right to a square vote upon a proposition.

3116. On November 16, 1921,¹ the House was considering the bill (S. 843) providing for relief in contracts connected with the prosecution of the war.

The question being on the passage of the bill, Mr. Eugene Black, of Texas, demanded the yeas and nays.

The Speaker on submitting the request to the House announced that 48 Members had risen to sustain the request, not a sufficient number, and the yeas and nays were refused.

Mr. William H. Stafford, of Wisconsin, asked for tellers.

¹First session Sixty-seventh Congress, Record, p. 7816.

Mr. Frank W. Mondell, of Wyoming, made the point of order that the Speaker's count was not subject to verification and the demand for tellers was not in order.

After debate the Speaker pro tempore¹ ruled:

In the judgment of the Chair a sufficient number not having arisen to support the demand for the yeas and nays, if a sufficient number arises in support of the demand for tellers, the Chair's count is subject to verification by the House, if it so desires, and the Chair overrules the point of order. As many as are in favor of seconding the demand for tellers on the question of ordering the yeas and nays will rise. The Chair will count all gentlemen standing. (After counting.) Sixty-seven gentlemen have risen, a sufficient number:

Tellers were ordered.

3117. On June 3, 1926,² Mr. S. Wallace Dempsey, of New York, moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the river and harbor bill.

The question being submitted to the House, on a division, the yeas were 230 and the nays were 55.

Mr. Louis C. Cramton, of Michigan, demanded the yeas and nays.

The Speaker³ announced:

The gentleman from Michigan asks for the yeas and nays. Forty-four gentlemen have arisen, not a sufficient number.

Mr. Cramton asked for tellers.

Mr. John McDuffie, of Alabama, submitted a parliamentary inquiry as to the propriety of demanding tellers on the Speaker's count.

The Speaker decided that tellers might be ordered and directed that the vote be taken by tellers.

3118. On March 21, 1928,⁴ the House resumed consideration of the bill (H. R. 8141) authorizing additional employees for the Federal Power Commission, on which the previous question had been ordered on the previous day.

The Speaker having put the question on agreeing to the amendment to the bill reported by the Committee of the Whole House on the state of the Union, Mr. James S. Parker demanded the yeas and nays.

After counting, the Speaker³ announced that 60 Members had arisen, not a sufficient number.

Mr. Parker requested that the number of Members announced as supporting the demand for the yeas and nays be verified by tellers.

Mr. Carl E. Mapes, of Michigan, questioned the right to demand a verification of the Speaker's count by tellers.

The Speaker overruled the point of order and submitted the request for tellers.

¹ Joseph Walsh, of Massachusetts, Speaker pro tempore.

² First session Sixty-ninth Congress, Record, p. 10636.

³ Nicholas Longworth, of Ohio, Speaker.

⁴ First session Seventieth Congress, Record, p. 5111.

3119. A Member failing to respond when his name is called may not be recorded as voting, even by unanimous consent.—On July 17, 1919,¹ Mr. William B. Bankhead, of Alabama, submitted the following request:

Mr. Speaker, I desire to make a request for unanimous consent. The gentleman from Texas, Mr. Parrish, was called out while we were taking the vote on the passage of the sundry civil bill, but is now present. Inasmuch as there is no opposition to the bill, I ask unanimous consent that he may be recorded in the affirmative.

The Speaker² said:

The Chair thinks that can not be done by unanimous consent.

3120. In counting to ascertain the presence of a quorum or whether a sufficient number have voted to order yeas and nays, the Chair counts all Members visible, including those in lobbies and cloakrooms.—On June 10, 1921,³ Mr. Oscar E. Bland, of Indiana, moved to recommit the bill (H. R. 6611) to establish a Veterans' Bureau in the Treasury Department to the Committee on Interstate and Foreign Commerce with instructions.

The question being taken, Mr. Bland, demanded the yeas and nays. The demand being put, the Speaker pro tempore⁴ announced that 44 Members had arisen, not a sufficient number, and the yeas and nays were refused.

Mr. Bland submitted that 44 constituted one-fifth of the Members present, and asked that those present be counted.

The Speaker pro tempore proceeded to count, when Mr. Sam Rayburn, of Texas, asked that members retiring from the Hall be counted.

The Speaker pro tempore said:

Under the precedents the House is not considered as limited merely to the Hall of the House, but also includes the cloak rooms and the lobby adjacent to the Chamber. The Chair included in his count 193 members on the floor of the Chamber, 11 who had left the Chamber after the demand for the other side had been made—a sufficient number, and the Clerk will call the roll.

3121. The Clerk in calling the roll calls Members by surnames only, omitting the prefix "Mr."—Formerly the Clerk in calling the roll called the full names of Members. In 1879,⁵ in the interest of brevity, the House adopted a recommendation reported by the Committee on Rules directing that Members be called by surnames with the prefix "Mr." The increase in the membership of the House in the Sixty-second Congress rendered imperative further economy of time in calling the roll, and by common consent the prefix "Mr." was dropped and Members are called by surnames only.

In the Senate with its smaller membership the practice of using the prefix "Mr." still obtains.

3122. Members who have not taken the oath of office are not entitled to vote.—On May 9, 1913,⁶ the House was considering the resolution (H. Res. 99)

¹ First session Sixty-sixth Congress, Record, p. 2775.

² Frederick H. Gillett, of Massachusetts, Speaker.

³ First session Sixty-seventh Congress, Record, p. 2426.

⁴ William H. Stafford, of Wisconsin, Speaker pro tempore.

⁵ First session Forty-sixth Congress, Record, pp. 471, 1017.

⁶ First session Sixty-third Congress, Record, p. 1457.

directing the Sergeant at Arms to take in custody one Charles C. Glover, when finding itself without a quorum a call of the House was ordered.

In response to a parliamentary inquiry by Mr. James R. Mann, of Illinois, the Speaker held that 216 Members constituted a quorum.

Mr. Mann submitted that the membership consisted of 434 Members and therefore 218 Members were required to constitute a quorum.

The Speaker¹ said:

Four hundred and thirty-five Members constitute the whole membership of the House; but one is dead and three have never been sworn in. The Chair does not know whether their names are carried on the roll or not. They ought not to be. This matter was in a good deal of doubt for a long time until Speaker Henderson rendered a very elaborate written opinion in which he defined what constitutes a quorum as being one more than a majority of Members elect sworn in and living who have neither resigned nor been expelled.

3123. Under the more recent practice recapitulation of a vote may be had either before or after the announcement of the result of the vote.

A Member may change his vote at any time before its announcement—

On June 1, 1920,² a yea-and-nay vote was had on agreeing to the resolution (H. Res. 324) to amend the rules of the House in connection with the establishment of a national budget.

Prior to the announcement of the result of the vote a recapitulation was ordered.

Mr. Charles Pope Caldwell, of New York, as a parliamentary inquiry desired to know if it would be in order for a Member to change his vote on recapitulation.

The Speaker³ held that it would be in order for members to change their votes at any time prior to announcement.

3124. Under the more recent practice recapitulation of a vote may be had either before or after the announcement of the result of the vote.

A Member may not change his vote on recapitulation if the result of the vote has been announced prior to recapitulation.

On May 29, 1920,⁴ the Speaker in announcing the result of the vote on an appeal taken by Mr. Finis J. Garrett, of Tennessee, from a decision of the Chair, said:

On this vote the yeas are 192 and the nays 189. The result is so close that the Chair thinks there ought to be a recapitulation. The Chair will ask the Clerk to recapitulate the vote.

The vote having been recapitulated, Mr. Warren Gard, of Ohio, asked if the vote of Mr. Peter E. Costello, of Philadelphia, had been recorded, and being informed that it had not, said:

Mr. Speaker, the arrangement I had with the gentleman from Pennsylvania I do not think contemplated the roll call which has just been had.

The Speaker³ said:

The Chair thinks that it would be too late to change the vote in any event.

¹ Champ Clark, of Missouri, Speaker.

² Second session Sixty-sixth Congress, Record, p. 8108.

³ Frederick H. Gillett, of Massachusetts, Speaker.

⁴ Second session Sixty-sixth Congress, Record, p. 7924.

3125. Under the more recent practice recapitulation of a vote may be had either before or after the announcement of the result of the vote.

Errors in the record of votes are corrected on recapitulation at the close of the reading of the votes in the affirmative, in the negative, and those answering present, respectively.

On March 1, 1919,¹ the House was considering the contested-election case of Britt against Weaver.

The question being taken by yeas and nays on agreeing to a substitute proposed by Mr. Cassius C. Dowell, of Iowa, for the resolution reported by the Committee on Elections, the Speaker² announced that there were 180 yeas and 177 nays.

Subsequent to the announcement of the vote Mr. James R. Mann, of Illinois, demanded a recapitulation.

The Speaker directed the Clerk to recapitulate the vote, and the names of those voting in the affirmative having been called, Mr. Leonidas Dyer, of Missouri, asked when it would be in order to correct a vote inaccurately reported.

The Speaker said:

Now or never.

Mr. Dyer thereupon called attention to an error in the Record of those voting in the affirmative.

The Clerk then read the list of Members voting in the negative.

Mr. Richard N. Elliott, of Indiana, having addressed the Speaker, was recognized to make a correction.

The list of names of those answering "present" was then read by the Clerk, and Mr. James R. Mann, of Illinois, called attention to inaccuracies, which were corrected.

3126. The motion that a vote be recapitulated is not privileged.

A Member may not, as a right, demand the recapitulation of a yea-and-nay vote, but if the vote is close the Speaker usually orders it.

Discovery of error in the count of a vote subsequent to the announcement of the vote, even on another day, vitiates the proceedings.

On March 1, 1909,³ the yeas and nays being ordered on the question of agreeing to the resolution (H. Res. 607) amending the rules, the yeas were 168, nays 163, answering present 2, and the Speaker⁴ announced that the resolution was agreed to.

Mr. William P. Hepburn, of Iowa, moved that the vote be recapitulated.

The Speaker declined to entertain the motion.

Mr. Champ Clark, of Missouri, requested a recapitulation of the vote.

The Speaker held:

There is no necessity for a recapitulation. The gentleman has no right to demand a recapitulation of the vote. But if the gentleman from Missouri has reason to believe that a recapitulation of the roll may show a different result that would change the vote, the Chair will take that statement into consideration, it being discretionary with the Chair, as is shown by all the precedents.

¹Third session, Sixty-fifth Congress, Record, p. 4802.

²Champ Clark, of Missouri, Speaker.

³Second session, Sixtieth Congress, Record, p. 3572.

⁴Joseph G. Cannon, of Illinois, Speaker.

But the Chair, in the discretion of the Chair, will order a recapitulation of the vote, although if it should appear to-morrow that there was an error that would change the result all the proceeding would fall.

The Chair will read:

“A Member may not, as a right, demand the recapitulation of a yea-and-nay vote, but if the vote be close the Speaker usually orders it.

“The usage as to a recapitulation of a yea-and-nay vote does not permit it to be done after the announcement of the result except by unanimous consent. There is no rule or practice requiring a recapitulation of the names of those who appeared on a call of the House after their names have been called.”

There is the matter in a nutshell, and now the Chair, sooner than have a shadow cast upon the use of the discretion that is lodged in the Chair under the rules of the House and the uniform practices of the House, will direct the Clerk to recapitulate the vote.

3127. On June 27, 1918,¹ the pending question was on agreeing to the conference report on the post-office appropriation bill.

The vote being taken by yeas and nays, the yeas were 149 and the nays were 150, and the Speaker² announced that the conference report was rejected.

Mr. Robert Y. Thomas, jr., of Kentucky, offered a motion that the roll be again called by way of recapitulation.

The Speaker refused recognition and said:

You can not do that.

3128. Recapitulation of a vote is within the discretion of the Speaker and may not be demanded as a matter of right.

The Speaker declined to entertain an appeal from his decision refusing recapitulation of a vote.

On February 28, 1919,³ the question being taken on agreeing to the conference report on the bill (S. 1419) to regulate the construction of dams across navigable waters, the Speaker announced there were on the roll call 263 yeas and 65 nays, and the conference report was agreed to.

Mr. William E. Mason, of Illinois, requested a recapitulation of the vote.

The Speaker² held:

A verification of the vote rests entirely in the judgment of the Speaker. If it were a close vote, so close that mistakes enough might have been made to change it, the Chair would have no hesitancy in granting that request, but the Chair declines to order a verification of the vote.

Mr. Mason having appealed from the decision of the Chair the Speaker declined recognition for the purpose and said:

The gentleman from Illinois appeals from the decision of the Chair. The gentleman from Illinois has no right to appeal from the decision of the Chair on that particular point, as it is a matter that is entirely within the discretion of the Speaker.

3129. On July 13, 1932,⁴ the Committee of the Whole House on the state of the Union reported the bill H. R. 12946, the relief bill, to relieve destitution and expedite

¹ Second session Sixty-fifth Congress, Record, p. 8388.

² Champ Clark, of Missouri, Speaker.

³ Third session Sixty-fifth Congress, Record, p. 4641.

⁴ First session Seventy-second Congress, Record, p. 15231.

employment, to broaden the lending powers of the Reconstruction Finance Corporation and to create employment by providing for a public works program with amendments, and with favorable recommendation.

Mr. Willis C. Hawley, of Oregon, having demanded a separate vote on the amendment providing for publicity of loans made by the Reconstruction Finance Corporation, and the yeas and nays being ordered, there were 170 yeas and 169 nays.

Mr. Bertrand H. Snell, of New York, requested a recapitulation of the vote. The Speaker¹ said:

The gentleman from New York asks for a recapitulation of the vote. That question is entirely within the discretion of the Chair. The Chair believes, however, in the interest of fairness and correctness the vote ought to be recapitulated. Therefore he will order a recapitulation of the vote.

3130. On January 26, 1921,² at the conclusion of a yea-and-nay vote on agreeing to an amendment to the agricultural appropriation bill providing for congressional distribution of valuable seeds, the Speaker³ announced that the yeas were 141 and the nays were 142, and the amendment was rejected.

By direction of the Speaker the vote was recapitulated, when Mr. Leonidas C. Dyer, of Missouri, stated that he had voted in the negative and desired to change his vote from "no" to "aye."

The Speaker ruled.

The Chair does not think so, after the vote has been announced. The recapitulation, of course, is simply for the purpose of verifying the vote, and the Chair does not think it could be used as an engine for changing the vote.

3131. A roll call may not be interrupted even by a point of order.— On Friday, February 17, 1911,⁴ Mr. James R. Mann, of Illinois, moved to dispense with the proceedings in order on that day on the Private Calendar.

The question being taken, the yeas were 38, and the nays were 120, when Mr. Mann made the point of order that there was not a quorum present.

The Speaker pro tempore,⁵ after counting, announced that a quorum was not present and directed a call of the House under the rule.

During the roll call Mr. Finis J. Garrett, of Tennessee, requested recognition to present a point of order and said:

Mr. Speaker, I make the point of order that this roll call is not in order. I venture to call the attention of the Chair to section 2968, volume 4, of Hinds' Precedents. It read thus:

"When a Committee of the Whole rises and reports the lack of a quorum, the sitting of the committee is resumed upon the appearance of a quorum."

Now, I understand the situation to be this: The Committee of the Whole rose and reported to the House the lack of a quorum.

The Speaker pro tempore ruled:

The Chair thinks it is not in order to interrupt a roll call for the making of a point of order. The Chair thinks it is too late to make that point of order after the roll call has been begun, or that

¹ John N. Garner, of Texas, Speaker.

² Third session Sixty-sixth Congress, Record, p. 2099.

³ Frederick H. Gillett, of Massachusetts, Speaker.

⁴ Third session Sixty-first Congress, Record, p. 2809.

⁵ Marlin E. Olmsted, of Pennsylvania, Speaker pro tempore.

it can not be entertained until after the roll is completed. The Chair declines to entertain the point of order in the midst of a roll call. The Chair does not pass upon it, but declines to entertain it in the midst of a roll call.

3132. The roll call may not be interrupted for a parliamentary inquiry.—On January 26, 1921,¹ the House was considering the agricultural appropriation bill with the question pending on a motion to lay on the table a motion to reconsider the vote by which the House had rejected an amendment providing for the free distribution of seeds.

The yeas and nays being ordered, the Clerk was calling the roll when Mr. Frank Clark, of Florida, addressed the Speaker and desired to submit a parliamentary inquiry.

The Speaker² in declining to entertain the inquiry said:

The gentleman can not interrupt the roll call. The gentleman knows that during a roll call nothing else is in order. Nobody can make a parliamentary inquiry during a roll call.

3133. A roll call was held not to be subject to interruption by the arrival of the hour at which the House and previously agreed to recess.—On February 24, 1921,³ on motion of Mr. Frank W. Mondell, of Wyoming, by unanimous consent, it was ordered that at 6 o'clock p.m. of that day the House stand in recess for two hours.

Subsequently, during the consideration of Senate amendments to the post-office appropriation bill, Mr. John Jacob Rogers, of Massachusetts, moved to concur in Senate amendment No. 33 providing for continuing in force the existing law relating to passports for aliens seeking admission to the United States.

The question being taken on the motion to concur, Mr. William L. Igoe, of Missouri, raised the question of order that there was not a quorum present, pending which Mr. Finis J. Garrett, of Tennessee, inquired:

It has already been agreed to that the House will recess at 6 o'clock. Now an automatic roll call will come. If 6 o'clock should come before the roll call is completed, would the roll call be interrupted?

The Speaker² held:

The roll call would not be interrupted. The House would not adjourn until after the roll call.

3134. A Member is permitted to vote after the roll call has been concluded on a ye-and-nay vote only on the theory that the Clerk inadvertently failed to call his name.

Although a Member may have been present during roll call, unless he was listening when his name should have been called he does not qualify to vote at the end of the roll.

On December 12, 1908,⁴ the House was considering the bill (H. R. 11733) punishing conspiracies to intimidate persons in the exercise of a right under the Constitution.

¹Third session Sixty-sixth Congress, Record, p. 2100.

²Frederick H. Gillett, of Massachusetts, Speaker.

³Third session Sixty-sixth Congress, Record, p. 3814

⁴Second session Sixtieth Congress, Record, p. 173.

The roll call on the passage of the bill having been concluded Mr. Richmond P. Hobson, of Alabama, submitted:

Mr. Speaker, I was mistaken as to the call. I had voted on the previous question, and was under the impression that this was another call on that vote. I was ready to vote, but did not hear my name. I was giving general attention, but did not expect my name to be called. Within two numbers, the name after mine or the next after that, they told my the Clerk had just passed my name, and I did not know it. I was here, was giving attention, and was anxious to vote.

The Speaker¹ ruled:

The gentleman hardly brings himself within the rule. The meaning of the rule is the supposition that the gentleman's name was not called. Therefore, under the rule, the gentleman should have been present giving attention when his name should have been called, and did not hear it. The gentleman says that he was not expecting to vote, but others heard his name called, and his attention was called to it one or two names further along. The rule forbids the Chair to entertain the request, unless the gentleman brings himself within the rule.

This is the rule:

"Upon every roll call the names of the Members shall be called alphabetically by surname, except when two or more have the same surname, in which case the name of the State shall be added; and if there be two such Members from the same State the whole name shall be called; and after the roll has been once called, the Clerk shall call in their alphabetical order the names of those not voting; and thereafter the Speaker shall not entertain a request to record a vote or announce a pair unless the Member's name has been noted under clause 3 of this rule."

That is where a quorum fails, and is not this case. The Speaker has been accustomed, in the construction of this rule, where it appears that a gentleman was present giving attention, expecting to vote, and failed to vote because he failed to hear his name called to allow the Member's name to be called again. This is as far as the construction of the rule had gone, and so far as the Chair knows or is informed, it has been the uniform construction of the rule by the Chair. Now, except for the construction of the rule by the Chair, the letter of the rule would not even cover that case.

The rule was adopted by the House, and under the strict interpretation of the rule the gentleman would not be entitled to vote even if he was giving attention when his name should have been called and did not hear it called. But the construction of the rule by former Speakers, adhered to by the Chair, has been that where a gentleman states that he was giving attention when his name should have been called, and that he failed to hear his name called, to allow him to vote. Now, if the Chair should enlarge this construction of the rule, it would practically nullify the rule. It is quite in the power of the House to change the rule. The Chair does not think the gentleman has brought himself within the rule.

3135. On May 20, 1932,² the yeas and nays were ordered on agreeing to the resolution (H. Res. 167) providing a special order for the consideration of the bill (H. R. 4668) amending the flood control act of 1928.

At the conclusion of the second roll call, Mr. Hampton P. Fulmer, of South Carolina, addressed the Chair and asked to be recorded.

The Speaker³ inquired if the gentleman was present in the Chamber and listening when his name was called.

Mr. Fulmer replied:

Mr. Speaker, just as I entered the Chamber I heard my name called, but I was unable to answer.

¹ Joseph G. Cannon, of Illinois, Speaker.

² First session Seventy-second Congress, Record, p. 10822.

³ John N. Garner, of Texas, Speaker.

The Speaker held:

The gentleman does not qualify.

3136. On August 7, 1911,¹ the bill H. R. 8768, the pawnbroker's bill, regulating the loaning of money in the District of Columbia, was being considered in the House, when Mr. James Hay, of Virginia, moved that the House adjourn.

The vote being taken by yeas and nays and the roll call having been concluded, Mr. Samuel W. McCall, of Massachusetts, requested that his vote be recorded.

In response to an inquiry from the Speaker pro tempore,² Mr. McCall said: Mr. Speaker, I was present in the Hall, but was not giving attention.

The Speaker pro tempore held:

The gentleman does not bring himself within the rule.

3137. The practice does not contemplate that a Member shall be permitted to vote simply because he does not hear his name called, but is on the theory that through inadvertence on the part of the Clerk the name was not called at all, and therefore only those Members qualify who are present and listening when their names should have been called.—On June 4, 1919,³ the House was considering the agricultural appropriation bill.

The roll call on the passage of the bill having been completed, Mr. Charles C. Kearns, of Ohio, who had not responded on the roll call, asked that his vote be recorded.

The Speaker⁴ propounded the usual inquiry as to whether the gentleman had been present and listening when his name should have been called.

Mr. Kearns said:

I was in the Hall, but I did not hear my name called. I could not hear my name if it had been called—there was so much confusion in the room. I was present.

The Speaker explained:

The Chair would like to say that the rule does not contemplate that a Member can vote simply because he did not hear his name called. It is on the theory that the gentleman's name was not called at all, and therefore the only way that a Member can properly qualify is that he was present and listening, did not hear his name called, and therefore is allowed to vote on the theory that his name was not called. Unless gentlemen can state that they were present and listening when their names should have been called, they do not qualify. Unless the gentleman will state that he was present and listening to hear his name called, the gentleman can not qualify.

Mr. Kearns submitted:

I think I was; I was doing nothing but watching the roll call, and did not hear my name called. There was much confusion in the Hall.

The Speaker held:

The Chair does not think the gentleman has qualified.

3138. On May 2, 1921,⁵ during consideration of a motion to suspend the rules and pass the joint resolution (S. J. Res. 30) authorizing the President to appoint a

¹ First session sixty-second Congress, Record, p. 3708.

² John J. Fitzgerald, of New York, Speaker pro tempore.

³ First session Sixty-sixth Congress, Record, p. 639.

⁴ Frederick H. Gillett, of Massachusetts, Speaker.

⁵ First session Sixty-seventh Congress, Record, p. 940.

representative to cooperate with the Joint Committee on Reorganization, the House found itself without a quorum, and a call of the House was ordered.

After a yea-and-nay vote had been concluded on a motion to dispense with further proceedings under this call, and before the result of the vote had been announced, Mr. J. C. Pringey, of Oklahoma, asked to be permitted to vote.

The Speaker¹ said:

The Chair will state, inasmuch as a part of the Members may not be familiar with the rule, that there is one to the effect that unless a Member votes when his name is called he can not vote on the roll call. But the theory being that the Clerk may have neglected to call a Member's name, and, of course, in that case he having had no opportunity to vote ought to be allowed a further opportunity. So, if a man was listening and did not hear his name called, he can vote. Was the gentleman from Oklahoma present and listening when his name was called?

Mr. Pringey having answered in the affirmative, the Speaker directed that he be recorded.

3139. It is the duty of the Speaker to qualify a Member asking to vote at the end of the roll, but it is for the Member and not the Speaker to say whether he was in the Hall and listening and unless he answers categorically in the affirmative he may not vote.—On August 13, 1912,² the House voted on reconsideration of the bill H. R. 22195, a tariff bill reducing the woolen schedule, returned by the President without his approval.

At the conclusion of the roll call Mr. David J. Lewis, of Maryland, asked to be permitted to vote, and in response to the usual inquiry by the Speaker said:

I was at the door of the cloakroom, if that embraces the Hall. I do not know what the interpretation of the word "Hall" is, whether it embraces the cloakroom or not, I can not answer otherwise than that I was standing in the door of the cloakroom waiting, and did not hear my name called, owing to the noise and other interruptions. I was listening for it and waiting.

The Speaker³ said tentatively:

The gentleman knows whether it is inside the door or not. The only question the Chair has a right to ask is whether the gentleman was in the Hall, listening, when his name was called.

The chair is not entertaining arguments on the subject. The question is, Was the gentleman: in the Hall, listening, when his name was called?

The chair thinks the gentleman brings himself within the rule, although it is a close shave.

Mr. James R. Mann, of Illinois, submitted that it was not a question for the Speaker to decide and that in order to qualify the Member must himself answer and answer unequivocally in the affirmative.

The Speaker ruled:

The Chair thinks that the gentleman from Illinois states the rule correctly; and really the only question that the chair is expected to ask of a Member is whether he was in the Hall listening. It rests entirely with the gentleman from Maryland. If he says he was in the Hall listening, the Chair will have his name recorded. If he was not, he is not entitled to have it recorded.

3140. On December 3, 1918,⁴ Mr. Frank Clark, of Florida, moved that the House resolve itself into the Committee of the Whole House on the state of the Union

¹ Frederick H. Gillett, of Massachusetts, Speaker.

² Second session Sixty-second Congress, Record, p. 10847.

³ Champ Clark, of Missouri, Speaker.

⁴ Third session Sixty-fifth Congress, Record, p. 51

for the consideration of the bill (H. R. 12917) to provide for the establishment of a sanatorium for discharged soldiers and sailors.

The roll call on agreeing to the motion having been concluded, Mr. Henry D. Flood, of Virginia, Mr. Robert Crosser, of Ohio, and Mr. Carter Glass, of Virginia, addressed the Speaker and asked to vote.

In reply to the inquiry of the Speaker as to whether they were in the Hall and listening at the time their names should have been called Mr. Flood said:

I reckon not.

The Speaker¹ held that he was not entitled to vote.

Mr. Crosser said:

Mr. Speaker, I do not know whether I was here when my name was called or not. I have been here a good part of the time. I do know.

The Speaker ruled adversely and said:

The gentleman has to qualify and say whether he was in the Hall listening or not.

Mr. Glass said:

Mr. Speaker, I was in the Hall engaged in conversation and did not hear my name when it was called. Whether that is a qualification or not, the Speaker will have to decide. I shall be very glad to state, Mr. Speaker, I had intended voting. I missed my name on the first roll call and hoped to hear it on the second roll call, but I was engaged in conversation with a colleague and did not hear it.

Mr. James R. Mann, of Illinois, submitted that he ought to state that he was in the Hall expecting to vote and listening "as Members usually listen."

Mr. Glass agreed:

Well, I do state that. I was listening, just about as we are in the habit of listening.

The Speaker held:

I think the gentleman is entitled to vote.

3141. On October 27, 1919,² the Speaker laid before the House the message of the President returning with his objections the bill (H. R. 6810) to prohibit intoxicating beverages and to regulate the use of spirits for other than beverage purposes.

The question being taken on the passage of the bill, on reconsideration, the Speaker³ announced that the yeas were 175, the nays were 55, and two-thirds having voted in the affirmative, the bill was passed, the objections of the President to the contrary notwithstanding.

Thereupon Mr. Nicholas Longworth, of Ohio, addressed the Speaker and desired to be recorded as voting "nay."

The Speaker inquired if the gentleman was present and listening when his name was called.

Mr. Longworth said:

Practically.

The Speaker held that the gentleman failed to qualify.

¹ Champ Clark, of Missouri, Speaker.

² First session Sixty-sixth Congress. Record, p. 7611.

³ Frederick H. Gillett, of Massachusetts, Speaker.

Mr. Longworth inquired if he might be recorded as voting "present."

The Speaker ruled:

The Chair has no discretion to allow the gentleman to vote at all.

3142. On July 26, 1921,¹ at the conclusion of a roll call, Mr. Thomas U. Sisson, of Mississippi, announced that he desired to vote.

In reply to the interrogation of the Speaker² as to whether he was present and listening when his name should have been called, Mr. Sisson said:

I was present. I do not know whether I was listening at the time or not, but I did my best to listen. I can not positively state whether or not I was listening at the time my name was called. I do not know.

The Speaker said:

The gentleman must decide that question for himself. Can the gentleman state that he was listening when his name was called?

Mr. Sisson failing to answer in the affirmative, the Speaker ruled that he did not qualify to be recorded.

3143. When the Clerk in calling the roll call fails to note a Member's vote, the Member may, at any time, before the approval of the Journal, demand as a matter of right that it be recorded.—On January 7, 1910,³ the House had under consideration the joint resolution (H. J. Res. 103) for the investigation of the Interior Department and the Bureau of Forestry of the Department of Agriculture.

The yeas and nays being demanded and had on an amendment striking out language providing for investigation of the Bureau of Forestry, the Speaker⁴ announced that the yeas were 65, the nays were 225, and the amendment was rejected.

Mr. George E. Foss, of Illinois, asked if his vote has been recorded, and being informed that it had not, demanded that he be permitted to vote.

Mr. John J. Fitzgerald, of New York, made the point of order that the request came too late after the result of the vote had been finally pronounced.

The Speaker ruled:

This is the general practice of the House:

"When a vote actually given fails to be recorded, the Member may, before the approval of the Journal, demand as a matter of right that correction be made."

This is not a correction of the Journal. The vote can be recorded, if the gentleman voted, at any time before the approval of the Journal. The practice is well settled. While the vote does not change the result, even if it did it could be recorded under the well-settled practice of the House.

The Chair reads from Hinds' Precedents, volume 5, section 5970:

"On July 19, 1882, during the consideration of the contested-election case of Smalls against Tillman, the question was taken on the resolution declaring that Tillman was not elected, etc., and the announcement is made that there were—yeas 145, nays 1, not voting 145.

"The vote was next taken on the resolution declaring that Smalls was elected, etc., and there were—yeas 140, nays 5, not voting 145. The Speaker thereupon voted, making—yeas 141 nays 5, a total of 146, just a quorum.

¹First session Sixty-seventh Congress, Record, p. 4324.

²Frederick H. Gillett, of Massachusetts, Speaker.

³Second session Sixty-first Congress, Record, p. 406.

⁴Joseph G. Cannon, of Illinois, Speaker.

“The Speaker thereupon announced that on the vote preceding the last there had been an error in the tabulation and that in reality the result on the resolution declaring Tillman not elected had been—yeas 144, nays 1, a total of 145, 1 less than a quorum.

“The Speaker declared that he would vote, and did so, making the result 145 yeas and 1 nay—a quorum voting.”

That is, in principle, the same as the present situation. The Clerk will call the gentleman’s name.

3144. In order to qualify to vote at the end of the roll, a Member must have been within the Hall proper at the time his name should have been called.

A Member in the lobby, cloakroom, or gallery is not entitled to vote even though he hear his name called.

On February 27, 1915,¹ the House was considering Senate amendment No. 1 to the District of Columbia appropriation bill, authorizing appointment of a joint select committee to determine the proper proportion of the expenses of the District of Columbia to be borne by the United States.

Mr. Oscar W. Underwood, of Alabama, moved to concur in the Senate amendment with an amendment providing that the joint committee be instructed to report not later than January 1, 1916.

The roll call on agreeing to the motion to concur having been completed, Mr. Henry W. Temple, of Pennsylvania, asked to have his vote recorded.

In response to an inquiry from the Speaker pro tempore as to whether he had been in the Hall and listening when his name should have been called, Mr. Temple said:

I was in the lobby.

The Speaker pro tempore² held:

The gentleman does not bring himself within the rule.

3145. On June 27, 1918,³ at the conclusion of the roll call on agreeing to the conference report on the post-office appropriation bill, Mr. William Gordon, of Ohio, addressed the Speaker and desired to have his vote recorded.

In response to the usual inquiry from the Speaker as to whether he had been in the Hall and listening when his name should have been called, Mr. Gordon replied:

I was in the smoking room. I heard my name called, but I did not get in in time to answer.

The Speaker⁴ ruled:

Nobody can vote who was outside of the Hall when his name was called. If the gentleman was in the smoking room, he cannot vote. The gentleman must be present and listening. He might be in the gallery listening, but that would not be sufficient.

3146. A Member failing to qualify as entitled to vote after the roll has been called may not be recorded as “present,” although present before the pronouncement of the vote.—On December 21, 1920,⁵ at the conclusion of the

¹Third session Sixty-third Congress, Record, p. 4865.

²Finis J. Garrett, of Tennessee, Speaker pro tempore.

³Second session Sixty-fifth Congress, record, p. 8387.

⁴Champ Clark, of Missouri, Speaker.

⁵Third session Sixty-sixth Congress, Record, p. 607.

roll call on the passage of the resolution (H. Res. 544) providing for the consideration of the bill (S. 3477) to increase the opportunities of the people to acquire rural homes, Mr. James W. Dunbar, of Indiana, and Mr. Edward B. Almon, of Alabama, appeared in the well of the House and asked to be permitted to answer "present."

Both submitted that although absent at the time their names were reached on the roll they had come into the House before the vote was concluded and were entitled to be recorded as present.

The Speaker pro tempore¹ held that not being entitled to vote they were not entitled to be recorded as present.

3147. In order for a Member to qualify as being entitled to vote, he must not only state that he was present when his name should have been called but that he was listening at that time.—On March 3, 1919,² at the conclusion of the roll call on the motion to strike from the Record certain remarks made by Mr. Otis Wingo, of Arkansas, Mr. C. Frank Reavis, of Nebraska, who had failed to vote when the roll was called, asked to have his vote recorded.

In response to an inquiry from the Speaker³ as to whether he had been in the Hall listening when his name should have been called, Mr. Reavis replied:

I was in the Hall, but I was talking.

The Speaker held:

The gentleman does not bring himself within the rule.

3148. In order to qualify as entitled to vote after the second calling of the roll, it is not sufficient that a Member be in the Hall when his name should have been called but he must be listening at the time.—On June 4, 1919,⁴ at the close of the vote on the agreeing to the resolution (H. Res. 78) for the appointment of a select committee on war expenditures, and before the announcement of the result, Mr. John F. Miller, of Washington, addressed the Speaker⁵ and stated that he desired to vote "yea."

The Speaker having inquired if he was present and listening, Mr. Miller replied that he "was present."

The Speaker said:

That is not sufficient.

3149. It is not sufficient that a Member be present but he must also be listening when his name was called in order to qualify on a yea-and-nay vote.

Instance wherein a bill with Senate amendments was taken from the Speaker's table and the Senate amendment agreed to by resolution from the Committee on Rules.

Form of special order providing for summary agreement to Senate amendment.

¹ Martin B. Madden, of Illinois, Speaker pro tempore.

² Third session, Sixty-fifth Congress, Record, p. 4914.

³ Champ Clark, of Missouri, Speaker.

⁴ First session Sixty-sixth Congress, Record, p. 647.

⁵ Frederick H. Gillett, of Massachusetts, Speaker.

On April 28, 1932,¹ Mr. John J. O'Connor, of New York, from the Committee on Rules, by direction of that committee, called up the following resolution:

Resolved, That immediately upon the adoption of this resolution the bill H.R. 6662, with the amendment of the Senate thereto, be, and the same is hereby, taken from the Speaker's table to the end that the amendment of the Senate be, and the same is hereby, concurred in.

Debate on the resolution having been concluded, the yeas and nays were ordered on agreeing to the resolution.

At the close of the second roll call, Mr. John M. Nelson, of Wisconsin, said:

Mr. Speaker, I was in the Hall talking to my colleague and did not hear my name called.

The Speaker² ruled:

The Chair does not think the gentleman qualifies.

Mr. Nelson explained:

I was here listening, except temporarily when I was talking to my colleague.

The Speaker said:

If the gentleman will say he was in the Hall listening when his name was called, the gentleman will qualify.

The Member in order to qualify must answer the question: "Was the gentleman in the Hall listening when his name was called" in the affirmative. The gentleman made the statement that he was in the Hall, but that he was talking to his colleague when his name was called.

The Chair wants to be absolutely fair. When he asked the gentleman if he was in the Hall listening when his name was called he must answer "yes"; otherwise he does not qualify.

3150. On April 21, 1933,³ on a yea-and-nay vote in agreeing to the motion to recommit the bill H. R. 4606, the unemployment relief bill, Mr. James P. Bushanan, of Texas, rose at the conclusion of the second roll call and desired to be recorded.

In response to the Speaker's inquiry as to the gentleman's qualification, Mr. Buchanan said:

I was present, but listening to one of my colleagues talk.

The Speaker⁴ ruled:

The gentleman does not qualify.

3151. It is not in order after a record vote on which he failed to vote for a Member to announce how he would have voted if present.⁵—On February 6, 1915,⁶ Mr. John E. Raker, of California, rising in his place said:

Mr. Speaker, I want to ask unanimous consent to make a statement for a minute. I was here yesterday afternoon, but on account of sickness in my family I was called out and could not get back in time to vote on the motion to recommit the naval appropriation bill. I returned, but too late to have my vote recorded. If I had been here, I would have voted against the motion to recommit.

¹ First session Seventy-second Congress, Record, p. 9156.

² John N. Garner, of Texas, Speaker.

³ First session Seventy-third Congress, Record, p. 9129.

⁴ Henry T. Rainey, of Illinois, Speaker.

⁵ Similar decisions were rendered by Speaker Henry T. Rainey, of Illinois, First session Seventy-third Congress, Record, pp. 2587, 3834.

⁶ Third session Sixty-third Congress, Record, p. 3155.

Mr. James R. Mann, of Illinois, made the point of order that the statement was "wholly improper."

The Speaker¹ sustained the point of order and said:

The statement is out of order.

3152. At the end of a yea-and-nay vote on a motion to adjourn, pending a call of the House, Members appearing prior to the announcement of the vote were recorded without the qualification.—On October 8, 1913,² during consideration of the joint resolution (S. J. Res. 5) providing for the appointment of a commission to report on vocational education, the House found itself without a quorum, and on motion of Mr. John J. Fitzgerald, of New York, a call of the House was ordered.

During the proceedings incident to securing a quorum Mr. Fitzgerald moved that the House adjourn.

The yeas and nays having been ordered on the motion to adjourn, the roll was called, twice, when Mr. Ezekiel S. Candler, jr., of Mississippi, and Mr. Thetus W. Sims, of Tennessee, appeared on the floor and desired to be recorded as voting.

Mr. James R. Mann, of Illinois, made the point of order that it was necessary for the gentleman to qualify in order to vote.

After debate the Speaker pro tempore³ held:

The Chair thinks a motion to adjourn, pending the obtaining of a quorum, is such a proceeding as entitles anyone appearing, prior to the announcement by the Chair of the vote, to the right to vote.

The question that is worrying the Chair is whether under a proceeding to obtain a quorum the ordinary rule to which the gentleman from Illinois has referred would apply, and whether the exception stated in clause 3 of Rule XV does not apply. The language of clause 3 is not limited to questions requiring a quorum to decide. Manifestly, if there has been no call of the House, it would not have been the right of any gentleman to have himself recorded on a motion to adjourn or on any other roll call, unless he qualified under the rule by stating that he had been present when his name was called, giving attention, and had failed to hear it. The question that raises the doubt in the mind of the Chair is whether, there being a proceeding pending to ascertain the presence of a quorum, even though not arising by an automatic call of the House, and any Member having the right to come in and have himself recorded, a subsidiary motion like the motion to adjourn would not also carry with it the right of the Member to be recorded prior to the announcement of the vote.

Prior to the announcement of the vote upon the motion to adjourn, would it not be within the power of the Chair to note the presence of a Member, the House then being without a quorum and desiring to obtain one? And that being so, would not the Member have the right to have his name recorded?

The Chair appreciates the importance, as a precedent, of a ruling of this kind, although of no importance in its bearing upon the present situation. Not having had an opportunity to examine the precedents, and as far as the Chair is aware, the point not having been raised heretofore, the Chair would prefer not to have to make such a precedent.

The Chair is aware of the fact that many matters of this kind are arranged by unanimous consent. If the gentleman insists upon his point of order, which is equal to an objection, the Chair will hold that the gentleman whose names have been called and have been permitted to vote have the right so to vote.

¹ Champ Clark, of Missouri, Speaker.

² First session Sixty-third Congress, p. 5506.

³ Swagar Sherley, of Kentucky, Speaker pro tempore.

3153. Failure of the signal bells to announce a vote does not warrant repetition of the roll call.

Exceptional instances in which the Speaker has entertained requests for unanimous consent that the roll be called a third time because of failure of the bells to signal the beginning of the vote.

On February 21, 1919,¹ the roll was called on the passage of the bill (H. R. 16020) making deficiency appropriations for transportation systems under Government control.

At the close of the roll call many Members reported that the bells had failed to signal the commencement of the vote.

Mr. Henry D. Flood, of Virginia, asked unanimous consent that the roll be called a third time in order to afford an opportunity for Members not apprised of the vote to be recorded.

Mr. James R. Mann, of Illinois, submitted that it was not in order for the Speaker to entertain the motion.

The Speaker pro tempore² having put the question by consent, there was no objection and the roll was called a third time.

On resuming the chair, the Speaker³ said:

The Chair wants to make one remark to the House in the interest of order. That was a very dangerous precedent that was set down here a little while ago in calling these names. All the effect that will have will be to induce Members to stay in their rooms two or three minutes longer when the signals are sounded on a roll call. The most important days of the session have come, and Members ought to be here until late in the evening.

Mr. Mann said:

Mr. Speaker, in that connection will the Speaker permit me to say that I should not have been willing to grant the request that was made except that various Members stated that there was something the matter with the bells making the call.

The Speaker concluded:

That was excusable; but to attempt to get down here and force a third roll call is dangerous.

3154. On April 15, 1921,⁴ the House having under consideration the bill H. R. 2435, the emergency tariff bill, Mr. John N. Garner, of Texas, moved to recommit the bill to the Committee on Ways and Means with instructions.

The question being taken and the roll having been called twice, Mr. George M. Young, of North Dakota, proposed.

Mr. Speaker, I am informed that the bells over in the House Office Building were not in working condition this afternoon and did not ring for this roll call; and in view of that fact I ask unanimous consent that all who are now present desiring to vote may be permitted to do so.

Mr. Finis J. Garrett, of Tennessee, said:

Mr. Speaker, in view of the peculiar situation I am very reluctant to make objection. My recollection is that this question arose before and that the Speaker decided that this could not be done.

¹Third session Sixty-fifth Congress, Record, p. 3938.

²George R. Lunn, of New York, Speaker pro tempore.

³Champ Clark, of Missouri, Speaker.

⁴First session Sixty-seventh Congress, Record, p. 354.

Mr. Sam Rayburn, of Texas, said:

I am not going to object this time, but I shall not allow another request like this to be agreed to if I am here.

The Speaker,¹ after further debate, decided to entertain the request, and, the question being submitted, there was no objection and the roll was called the third time.

3155. The signal bells having failed to ring announcing a vote, the House ordered that they be tested.—On May 2, 1918,² immediately following the approval of the Journal, Mr. Joseph Walsh, of Massachusetts, being recognized, said:

Mr. Speaker, I desire to inquire, in view of the happening yesterday, when the signal bells were rung and did not sound in the other building, whether it might not be well that the bells might be tested again this morning to see if they are in working order without the necessity of making the point of no quorum?

The Speaker³ replied that the Doorkeeper had already tested the bells.

Thereupon, on motion of Mr. Walsh, by unanimous consent, it was offered that the bells be tested a third time.⁴

3156. The failure of the bells to signal the beginning of a roll call is not taken into consideration by the Speaker in qualifying Members desiring to vote after their names have been passed.—On July 26, 1921,⁵ the House was considering the resolution (H. Res. 151) providing for payment of expenses of the Joint Committee on Reorganization from the contingent fund.

Mr. Finis J. Garrett, of Tennessee, moved that the House adjourn.

At the conclusion of the vote on the motion to adjourn and before the result had been announced, Mr. Theodore E. Burton, of Ohio, Mr. Charles H. Brand, of Georgia, Mr. Louis W. Fairfield, of Indiana, and others requested that their votes be recorded, as the failure of the bells to signal the beginning of the roll call properly had caused them to reach the Hall after their names had been called.

The Speaker¹ held that the failure of the bells to ring might not be taken into consideration and that the gentlemen failed to qualify.

3157. Failure of the bells to function properly in announcing a vote does not waive the rule requiring Members to be in the Hall and listening when their names are called.

Although a Member may not come within the rule permitting him to vote on roll call, the Speaker may count him as present to make a quorum.

On July 8, 1914,⁶ at the conclusion of the vote on the motion by Mr. John E. Raker, of California, to recommit the bill (H. R. 8428) providing for publicity of campaign expenditures, Mr. Henry T. Helgesen, of North Dakota, who had failed to

¹ Frederick H. Gillett, of Massachusetts, Speaker.

² Second session Sixty-fifth, Congress, Record, p. 5951.

³ Champ Clark, of Missouri, Speaker.

⁴ The practice has since been established of testing the signal bells each legislative day at 9 o'clock a.m.

⁵ First session Sixty-seventh Congress, Record, p. 4324.

⁶ Second session Sixty-third Congress, Record, p. 11836.

respond when his name was called, explained that the bells had rung but once, and asked to have his vote recorded.

The Speaker¹ said:

Was the gentleman in the Hall, listening, at the time when his name was called?
The gentleman does not qualify. The Clerk will note the gentleman, Mr. Helgesen, "present."

Mr. Helgesen protested against being noted as present without being permitted to vote.

The Speaker ruled:

The rule prescribes when the gentleman may vote; that is, if he was in the Hall, listening, when his name should have been called and did not hear it, he is allowed to vote afterwards; otherwise he may not vote; but, strange to say, under the rule, although the Speaker refuses to allow a Member to vote, he may count him "present." Voting "present" helps to make a quorum. That is exactly what the gentleman is going to do, because the chair is going to count the gentleman.

3158. An unusual instance in which, by unanimous consent, the signal bells were rung as if for a call of the House.

An occasion of the introduction of distinguished visitors informally to the House.

On May 28, 1926,² pending a motion by Mr. S. Wallace Dempsey, of New York, to resolve into the Committee of the Whole, Mr. Tom Connally, of Texas, rising to a parliamentary inquiry, said:

Mr. Speaker, I have been advised that visiting royalty is going to be present in the gallery at 12 o'clock. Is it expected that the House will be in Committee of the Whole House on the state of the Union at that time, or has any arrangement been made for any ceremony?

The Speaker³ responded:

No arrangement has been made for any ceremony so far as the House is concerned. Before putting the motion of the gentleman from New York, without objection, the bells will be rung as for a call of the House. Is there objection? [After a pause.] The Chair hears none. The question is on the motion of the gentleman from New York that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the river and harbor bill.

Following the ringing of the bells, Mr. J. Charles Linthicum, of Maryland, protested:

I rise to ask why the bells were rung when the point of no quorum was not made?

Mr. Chairman, I am opposed to the ringing of these bells and bringing Members over here unless it means something. I do not think we should begin ringing the bells and fooling Members. I heard no point of no quorum made.

Subsequently Mr. Carl R. Chindblom, of Illinois, speaking by unanimous consent, said in part:

Mr. Chairman, ladies, and gentlemen of the House and of the committee: In the Executive gallery, by courtesy of the President, there have just arrived, as has been shown by the spontaneous applause of the House, some very distinguished visitors from across the sea. [Applause, the Mem-

¹ Champ Clark, of Missouri, Speaker.

² First session Sixty-ninth Congress, Record, p. 10300.

³ Nicholas Longworth, of Ohio, Speaker.

bers rising.] Our distinguished visitors come from a country with which our Republic has always had the most amicable relations; in fact, they are natives of a land that has made valuable contributions to the early beginnings of our national history.

On the morrow there will be dedicated at this Capital a monument erected to the memory of the greatest man of Swedish blood who ever came to the United States, Capt. John Ericsson, the designer and builder of the *Monitor*, who in the Nation's greatest trial met an actual emergency, a great crisis, an impending danger to the cause of the Union. Happily, we are all united today in the great cause for which John Ericsson and the *Monitor* fought in 1862.

The Government of Sweden, His Majesty the King of Sweden, and the people of Sweden, responded to our request, at first informally and subsequently more formally made, that at the dedication of this memorial tomorrow there might be present these distinguished visitors from abroad.

I wish to say to our visitors that the American people, the Government of the United States, as they already know by reason of the assurances of the President, the Secretary of State, and many others, and the Congress of the United States, bid them welcome to America. These noted guests in the Executive gallery are His Royal Highness Gustaf Adolf, the Crown Prince, and Her Royal Highness Louise Alexandra, the Crown Princess of the Kingdom of Sweden. [Applause, the membership standing.]

3159. On undisputed evidence that a Member recorded as voting was not present at the roll call, the Speaker ordered the vote stricken from the tally.

On December 5, 1932,¹ Mr. Henry T. Rainey, of Illinois, moved to suspend the rules and pass the joint resolution (H. J. Res. 480) proposing an amendment to the Constitution repealing the eighteenth amendment.

The question being taken on agreeing to the motion and the yeas and nays being ordered, the vote was reported as yeas 273, nays 144. Mr. Bertrand H. Snell, of New York, inquired if Mr. Francis Seiberling, of Ohio, was recorded as voting.

The Speaker² replied that Mr. Seiberling was recorded as voting in the affirmative.

Mr. Snell said:

Mr. Speaker, I have a letter from the gentleman from Ohio, Mr. Seiberling, asking to be paired and stating that he would not be here to-day. The pair has just been read. I am just informed that the gentleman from Minnesota, Mr. Selvig, answered to Mr. Seiberling's name by mistake and did not answer to his own name until the second roll call.

The Speaker directed:

Inasmuch as the gentleman from Ohio, Mr. Seiberling, is not here and did not answer to his name, the Chair will order his name stricken from the list.

The vote was then recorded as yeas 272, nays 144.

3160. A Member who has voted on a roll call may change his vote before the announcement of the result.—On November 3, 1919,³ the yeas and nays were ordered on a motion to adjourn. At the close of the roll call and before the announcement of the result of the vote, Mr. Clay Stone Briggs, of Texas, asked, as a parliamentary inquiry, if it would be in order for him to change his vote on the pending question.

¹ Second session Seventy-second Congress, Record, p. 13.

² John N. Garner, of Texas, Speaker.

³ First session Sixty-sixth Congress, Record, p. 7906.

The Speaker pro tempore¹ held that the roll call had not been complete until the announcement of the result and that it was in order to change a vote at any time prior to the announcement.

Thereupon Mr. Briggs changed his vote from “no” to “aye.”

3161. It having been erroneously announced that a quorum had voted when the roll later disclosed the absence of a quorum on the vote, the Speaker declared subsequent proceedings in connection therewith vacated, and the Journal was amended accordingly.—On July 9, 1911,² when the journal of the preceding day was read, Mr. Henry D. Clayton, of Alabama, called attention to a discrepancy in the Journal between the roll call and the announcement by the Speaker³ of the vote by which the previous question had been ordered on the resolution (H. Res. 597) providing for consideration of the bill (H. R. 22591) amending the Judicial Code.

It was explained that the Clerk in reporting the vote to the Speaker had reported 198 as voting on the bill, a quorum, when the roll later disclosed that only 190 had voted, not a quorum.

Mr. Clayton, asked unanimous consent that the previous question on the passage of the resolution on which a quorum had failed to vote be considered as adopted, and that the record of subsequent proceedings relating there to be approved.

Mr. James R. Mann, of Illinois, took the position that the failure of a quorum to vote on ordering the previous question vacated all subsequent proceedings connected therewith.

The Speaker said:

The Chair has no doubt about the method of procedure; he may be entirely wrong about it, but in his own mind he thinks that the vote on the previous question and all subsequent proceedings must be vacated.

Mr. Clayton moved that the vote on ordering the previous question on the preceding day and proceedings subsequent thereto be vacated.

Mr. Oscara W. Underwood, of Alabama, contended:

Mr. Speaker, if the Chair will pardon me, the first rule of this House and of the Constitution is that the House can not transact business unless a quorum is present. An error was made in announcing that a quorum was present, because of the fact that the tally clerk wrongly added the score. A quorum was not present. Therefore, that roll call was void. The roll call itself disclosed that a quorum was not present, and, therefore, all subsequent proceedings in the day's work would be void until a quorum was found to be present. That must be clear, because the House can not do business unless a quorum is present. It seems to me, therefore, that when the question is raised, and unanimous consent can not be had to correct the error, it is in order for the Chair to declare that a quorum was not present during those proceedings and therefore they are void, and thus, by the order and direction of the Chair, bring the House back to the point where this roll call was originally entered.

Mr. James R. Mann, of Illinois, supplemented:

While I have not the precedent before me, Mr. Speaker, I have no doubt that the Speaker has the authority to declare the proceedings vacated. On the other hand, I have no doubt that the House has the authority to do the same thing by motion. That is the proposition now pending.

¹ John Q. Tilson, of Connecticut, Speaker pro tempore.

² Second session Sixty-second Congress, Record, p. 8775.

³ Champ Clark, of Missouri, Speaker.

The Journal has been read. This is a matter of correcting the Journal. The Journal has, theoretically been approved by the Speaker before being read, and whatever action is taken should be in connection with the approval of the Journal. If the proceedings are vacated by a motion, I assume that carried with it that the Journal shall be corrected accordingly, because the matter now comes up upon the approval of the Journal.

Mr. Mann then asked to have read the following excerpt from the Journal for December 19, 1903:¹

The Speaker announced that by error a different result has been reported from the actual result on the vote on the motion for the previous question on the resolution of the House (H. Res. 76) by the gentleman from Pennsylvania, Mr. Wanger.

The Speaker announced that, therefore, all proceedings relating to the erroneous announcement would fall, and that if there be no objection the Journal will be amended to show the fact.

The Speaker announced:

The Journal shows the fact, except it shows that the Speaker made an erroneous declaration. The way it came about is this: There was great confusion in the House and some of the clerks got the figures wrong and handed up the slip to the Speaker. Of course, the Speaker did not count the vote on roll call and the Speaker announced the vote as handed to him. The Chair wants that declaration of the Chair changed. The Journal shows the correct vote, and the Record shows the correct vote, and shows that there was no quorum present. If the gentleman will withdraw his motion, the Speaker will declare the vote vacated.

Mr. Clayton having withdrawn his motion, the Speaker continued:

The Chair declares the Journal agreed to and the proceedings on that roll call and the subsequent proceedings vacated.

3162. Where by an error of the Clerk in reporting the yeas and nays the Speaker announces a result different from that shown by the roll, the status of the question must be determined by the vote as actually recorded.

A vote having been incorrectly announced through error on the part of the Clerk, it is in order to move that the Journal and Record be amended to conform to the facts, or the Speaker may of his own initiative announce the correction and direct that the Journal be corrected.

On June 28, 1918,² immediately following the reading of Journal, Mr. Claude Kitchin, of North Carolina, referring to the vote taken on previous day on agreeing to the conference report on the post office appropriation bill, said:

Mr. Speaker, as everybody in the House knows, I am very much opposed to the conference report. I voted against it. In the quiet discussion, after vote was taken and the decision announced by the Chair as to whether the figures of the tally clerk were correct as he announced it to the Speaker after the recapitulation of the vote, I went myself and examined the original sheets of the roll call. I found there were 150 votes for the conference report and 149 votes against it. The Chair, upon the tally clerk's figures, announced that there were 149 votes for the conference report and 150 votes against, and declared the report was rejected.

The Constitution requires that upon demand a yea-and-nay vote shall be recorded in the Journal. The Journal shows, according to the record of the vote, that there were 150 votes for the conference report and 149 votes against it, and that therefore, the tabulation or addition of the tally clerk was wrong. I think the Journal and Record ought to be corrected to show the actual fact that the conference report was adopted and not rejected. Any court in the world would correct its own judgment under the circumstances. It is not fair, it is not right, for us who opposed the conference report to insist that the report was rejected.

¹Second session Fifth-eighth Congress, Record, p. 80.

²Second session Sixty-fifth Congress, Record, p. 8422.

Mr. Kitchin then moved that the Journal be corrected to show that the conference report had been agreed to.

The question being taken, the motion was agreed to and the Journal was amended as indicated.

The Speaker¹ said:

The Chair, with the consent of the House, would like to make a few remarks about this matter.

This is the first time for a long while that this has been done, and perhaps not a dozen men in the House ever saw the thing done before. But it is not unprecedented.

Now, the way the Chair arrives at a yea-and-nay vote in the House is by these tally clerks handling up the figures. Of course the Chair cannot go down there and count the votes, and would not know how to do it if he did go down there. They have some system of their own whereby when they get through with the roll they know the number of the yeas and nays and those present. And then these clerks at the desk take the tally sheet out and go over it, one of them a Democrat and one a Republican, and I never heard of anybody that disputed the integrity of either.

Everybody will recollect that yesterday was a very hard, disagreeable day in this House. Everybody was worn out and it is not the first time in the history of this House that clerks have made a mistake in arithmetic. I know of a good many that Members never hear of at all in the counting, and there is nothing unreasonable about it. The clerks are not perfect.

Now, it has so turned out, I suppose, a dozen times since I have been Speaker. I do not read the Record every morning unless there is something particular about it that I want to see. At least a dozen times since I have been Speaker I have happened to remember the vote taken here, and then I would see it next morning showing a difference of two or three; but it did not make any difference, because the corrections they made did not change the result. It is only when it changes the result that the "tug of war" comes.

Now, I want to show you a sample of what happened here. I cite a case on page 566, section 6085, of Hinds' Precedents, volume 5:

"Where, by an error of the Clerk in reporting the yeas and nays, the Speaker announces a result different from that shown by the roll the status of the question must be determined by the vote as actually recorded."

I will read Speaker Carlisle's opinion. It is short. The Speaker said:

"The Chair desires to state, as a matter of justice to the tally clerk, that in recording the affirmative vote in the column assigned for that purpose upon the sheet, when that vote had reached 49 he put down the figures 49 and called two or three more names before there was any other vote in the affirmative. When the next gentleman voted in the affirmative the tally clerk, looking back to his previous figures, took the 9 for a 4—and it looks very much like a 4, as the gentleman from Alabama will see if he examines it—and therefore recorded the next vote as 45, when it should have been 50"—

That is five times as bad as these clerks did—
"and that error was continued until the close of the roll call, and the footings were made accordingly. It was a mistake made simply by the tally clerk on account of mistaking the figure. The Chair, therefore, thinks the Journal should be corrected to show the previous question was ordered."

In conformity with Mr. Kitchin's motion, the Chair announces that the vote stood 150 yeas, 149 nays, and the conference report is agreed to.

Mr. Simeon D. Fess, of Ohio, as a parliamentary inquiry, asked if an error in the Journal could be corrected only by order of the House.

The Speaker replied:

The Chair does not think so; but the gentleman from North Carolina had already made his motion, and the Chair thought the House would be better satisfied to settle the matter itself.

¹ Champ Clark, of Missouri, Speaker.